



NSW Police Force supplementary submission to the review of serious road crime

The NSW Police Force (NSWPF) appreciates the opportunity to provide supplementary comments to the Law Reform Commission (LRC) on its review of serious road crime.

We are happy to discuss these comments and any material from our earlier submissions further. Please make requests to the contact person detailed at the end of this submission.

Proposed vehicular homicide offence

The NSWPF has given further consideration to the creation of a new offence of 'vehicular homicide' and considers the most suitable way to establish such an offence is through the existing dangerous driving structure under section 52A of the *Crimes Act 1900* (Crimes Act).

The creation of a new, standalone offence may be both difficult to establish in statute and difficult to prosecute. Instead, it is proposed that a new offence of 'specially aggravated dangerous driving occasioning death' is included as a sub-section under section 52A of the Crimes Act, to be a death occasioned by an impact with a motor vehicle where two or more of the aggravating factors, including the proposed new aggravating factors below, are present in the same collision. Due to the seriousness of this offence, it should be tried in the Supreme Court.

The existing dangerous driving occasioning death offences would be retained under section 52A of the Crimes Act as the simpliciter and singly aggravated forms of the offence.

To highlight the seriousness of the offence and address the concerns of the community, it is proposed that these dangerous driving occasioning death offences be grouped under a heading of 'vehicular homicide' within section 52A of the Crimes Act. Subsequent headings would then be added to group grievous bodily harm offences together, and other parts of the section could be grouped separately as appropriate for consistency.

This amendment will negate the need to establish the elements of manslaughter and requisite mens rea, while integrating more serious language into the public domain. Government agencies and potentially media outlets could use 'vehicular homicide' as a generalised term when referring to dangerous driving occasioning death offences. This will help educate the community of the seriousness of the offence and caution drivers that such actions can result in serious consequences.

Existing characteristics of the dangerous driving offences under section 52A of the Crimes Act, most notably strict liability, should be retained and apply to the new specially aggravated form of the offence.

NSWPF considers that this approach would require minor but effective legislative reform to achieve the desired outcomes of increased sentences for serious road crimes, especially those involving death. We note that the existing section 52A Crimes Act offences involving death are essentially codified manslaughter, inserted into the Crimes Act in part due to the reticence of juries to convict for manslaughter in fatal collision matters. The proposed new offence builds upon this existing foundation.



Additional aggravating factors

Further to the existing aggravating factors listed under section 52A(7) of the Crimes Act, additional aggravating factors would help to further develop the new offence and highlight actions that constitute dangerous driving. Proposed additional aggravating factors include:

- hand-held mobile phone use at the time of impact
- unauthorised street racing or competitive driving
- unauthorised driving (unlicensed, suspended, disqualified) where the offence occurs on a road or road related area
- driving with high fatigue
- driving with a known or perceived medical condition that would impair the person's ability to drive, and the medical condition was a causal factor in the crash
- use of a stolen or unregistered vehicle, with knowledge that it is stolen or unregistered
- driving a significantly modified vehicle within the meaning of Part 6, Division 2 of the Road Transport (Vehicle Registration) Regulation 2017, where a compliance certificate has not been issued
- a Professional Driver (with a meaning similar to any person that receives payment for employment or offering a service involving the use of a motor vehicle, to include truck, bus, taxi and ride share operators) driving in the capacity of a Professional Driver at the time of the crash

The NSWPF notes that careful consideration would need to be given to description of these factors in statute to avoid unintended consequences.

Penalties

To further strengthen the 'vehicular homicide' dangerous driving occasioning death provisions under section 52A of the Crimes Act, the NSWPF considers that the existing maximum penalties for dangerous driving occasioning death and aggravated dangerous driving occasioning death should be increased from 10 and 14 years' imprisonment to 15 and 20 years' imprisonment respectively, as noted in the NSWPF's previous submission. The new offence of 'specially aggravated dangerous driving occasioning death' should have a maximum penalty of 25 years' imprisonment.

Additionally, the NSWPF considers that there should be commensurate increases to the maximum penalties for the 'grievous bodily harm' offences contained in section 52A, to 9 years' imprisonment (simpliciter offence), 12 years' imprisonment (aggravated offence), and 15 years' imprisonment (specially aggravated offence). Similarly, if 'actual bodily harm' offences are created as raised in the consultation paper and previous NSWPF submission, the same structure could be applied, consisting of maximum penalties of 5, 7 and 10 years' imprisonment respectively.

Application of guideline judgments

NSWPF considers that the proposed increases to penalties will render the *R v Whyte* guideline judgment no longer applicable in determining the length of sentences due to the significant penalty increases, addressing concerns with inadequate sentencing due to the application of guideline judgments. An application for a new guideline judgment would not be immediately necessary and could be sought once new sentencing patterns begin to emerge.