

**Submission
No 19**

INQUIRY INTO SPEED ZONING AND ITS IMPACT ON THE DEMERIT POINTS SCHEME

Organisation: Safety and Policy Analysis International
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MEMORANDUM

STAYSAFE Committee inquiry into the process of determining speed limits on NSW roads and the imposition of demerit point penalties for speeding offences

Preamble

1. This submission is provided to the fourth STAYSAFE Committee inquiry of the 54th parliament, under the terms of reference:

That the Committee inquires into and reports on the process of determining speed limits on NSW roads and the imposition of demerit point penalties for speeding offences with particular reference to:

- the contribution of speed to crash rates on NSW roads;
- b) the rationale for and current operation of speed zones on NSW roads;
- c) key factors governing the establishment of speed limits;
- d) mechanisms for reviewing the appropriateness of maximum speed limits;
- e) the operation of speed limits in other jurisdictions;
- f) the appropriateness of current thresholds in the Demerit Points Scheme for speeding offences;
- g) the impact of demerit points in reducing speeding behaviour; and
- h) any other related matters.

JOINT STANDING COMMITTEE ON ROAD SAFETY Inquiry

Proceedings of the NSW Legislative Assembly
Thursday 31 October 2013

2. Mr Greg Aplin, as Chair, informed the House that, pursuant to Standing Order 299 (1), the Joint Standing Committee on Road Safety has resolved to conduct an inquiry into speed zoning and its impact on the Demerit Points Scheme.

3. No further details have been forthcoming.

Generally

If all drivers obeyed the posted speed limits, did not drink alcohol and drive or use other drugs and drive, always wore a seat belt, and ensured that they were attentive and not distracted or fatigued when driving, then the incidence of road crashes and its resultant trauma would be reduced.

Despite intensive efforts in graduated driver licensing, road safety education and traffic law enforcement, drivers do engage in behaviour which contributes to serious road crashes. This includes behaviours such as exceeding posted speed limits, drink driving, drug driving, non-use of restraints, attending to in-vehicle and outside distractions while driving, driving whilst fatigued, and driving whilst unlicensed or disqualified from driving. Drivers also repeat these offences despite police traffic interceptions, automated traffic enforcement technologies, and regulatory and Court-based interventions. While these behaviours do not inevitably result in road crashes and while not all crashes result from these types of behaviours, drivers who behave in such dangerous ways are over-represented in serious road trauma and unnecessarily increase the risks faced by other road users.

The Demerit Points Scheme is a national program in Australia that allocates penalty points (demerits) for a range of driving offences. The scheme is designed to encourage safe and responsible driving. Along with financial penalties, demerit points provide a strong incentive to drive within the law. A driver who has not committed any offences has zero points. If a driver commits an offence that carries demerit points, the points are added to the driving record maintained by a driver licensing agency (in New South Wales, Roads and Maritime Services). If the driver repeatedly commits traffic offences and incurs the threshold number of demerit points within a three-year period, a driver licence suspension or refusal is applied. The three-year period is calculated between the dates the offences were committed. It ends on the day that the most recent offence was committed.

It is important to recognise that many – but not all – drivers with demerit points on their driver licence record can be considered to be repeat offenders. This would seem to be particularly the case for speeding offenders.

This submission is specifically focused on Item (g) under the heads of inquiry, relating to demerit points.

The Safe System approach

The Safe System approach requires that all aspects of the transport system (i.e., roads, vehicle speeds, vehicles, and the users of the system, as well as the wider framework including health, justice, policing and licensing agencies) work together for the safest possible outcomes. The Safe System approach also requires system users to be unimpaired and to be able to respond appropriately to road situations and comply with key road rules. The principal task of the Safe System therefore is to manage vehicles, road infrastructure, and speeds within the capabilities of road users who act reasonably and without impairment, and to facilitate the safest interactions between these components.

The Safe System intervention strategies under the Safe System encompass a variety of actions. The Organisation for Economic Co-operation and Development has outlined the major interventions that have a proven evidence-base:

- Safety-conscious planning and proactive safety engineering design;
- Encouraging use of safer transport modes and safer routes for travel;
- Safe separation/ safe integration of mixed road use (across pedestrians, bicycles, other non-registered motor vehicles, motorcycles, cars, and trucks);
- Managing speeds to crash protection levels that avoid or minimise injury;
- Providing crash-protective roadsides and vehicles;
- Deterring dangerous behaviour and ensuring compliance with key safety rules by social marketing and increased highly visible police enforcement using camera technologies and other means, by providing proven driver assistance safety technologies in cars to help drivers keep to speed limits, wear seat belts, or avoid excess alcohol;
- Managing risk through vehicle standards and design requirements;
- Managing risk through driver standards (e.g., graduated driver licensing schemes); and
- Fast and efficient emergency medical help, diagnosis and care.

In the model shown in Figure 1, the human body is situated in the centre of the conceptual model and is surrounded by protective layers to counter the threat of kinetic energy in the traffic system. In the first layer, (1) Safer Vehicles, (2) Safer Roads and Roadsides, and (3) Safer Speeds are highlighted as the countermeasures of first order in managing the human tolerance to the physical forces involved in road crashes. The next layer identifies (1) Relevant (i.e., responsive, timely, appropriate) and Strategic Management of the Road Transport System and (2) Alert, Attentive and Compliant Road Users as two crucial requirements. A third layer identifies elements such as Admittance to the system, Understanding crashes and risks, Regulatory systems, Policing and safe behaviour, Education and information supporting road users, and the Health system as relevant to the operation of a Safe System.

The principal Safe System elements to be considered in the context of the Demerit Points Scheme are:

- Alert, Attentive and Compliant Road Users (particularly in terms of compliance with traffic laws, Court-imposed sentences and driver licensing requirements)
- Admittance to the system (involving the operation of the demerit points scheme, driver licence suspension, cancellation and disqualification processes, driver re-licensing, and fitness to drive issues)
- Regulatory systems (including the operation of the Courts, traffic offender interventions, etc.)

The Safe System and Behavioural Change Solutions

Access or admittance to the roads transport system is a key element of the Safe System approach to driving and use of the road transport system in Australia. The issue of “access to the system” within the Safe System approach is a critical element within the national Austroads guides (e.g, these were adopted in New South Wales in July 2009). That means it is now a requirement of the Australian State and Territory governments to improve the systems that we use to obtain a government-issued driver licence to operate a motor vehicle on public roads. Drivers who do not comply with road transport laws – by drink driving, speeding, drug driving, being careless or inattentive, or failing to use mandatory occupant protection equipment – are subject, when detected for traffic offences, to various sanctions. These commonly include fines and loss of

demerit points, but for offences that have been defined by legislators as serious or major offences, or for drivers who repeatedly commit traffic offences, the sanctions can be severe, such as loss of a driver licence, de-registration of a vehicle, vehicle impoundment, vehicle forfeiture, or custodial penalties for the offending driver.

Access to the road transport system is regulated through a number of processes – the driver licensing system (ensuring knowledgeable and well-trained drivers), the vehicle registration system (ensuring crashworthy and roadworthy vehicles), and the traffic law compliance systems (traffic policing, the demerit points process in driver licence administration), and the justice system (for traffic offenders).

Driver licensing system have been gradually improving the over the past 40-50 years. In New South Wales, for example, obtaining a full car or motorcycle operator licence for the first time means a person has passed four separate tests to progress from pre-driver to fully licensed driver. For many new drivers, there have been further assessments as part of the training involved in learning to drive safely. Upgrading to a driver licence for higher mass vehicle (heavy vehicle) or multi-passenger vehicles (buses) requires additional testing. It can be assumed that driver first entering the driver licensing system are thus knowledgeable and can demonstrate, at the least, basic competencies required for safe travel within the road transport system.

Under the Safe System approach, the identification of “access to the system” means that our frame of reference for access to the road transport network into driver licensing is not limited to questions concerning new drivers. It requires a comprehensive assessment of the effectiveness and efficiency of the operation of the licensing system throughout a driver’s licence tenure, that is, for the lengthy period extending from the time when a driver is issued a learner licence and on through the regulation and management of ‘whole of driving life’ to the time when a driver ceases to drive permanently. The management of drivers who commit traffic offences – including the penalty structures for offences, questions of sentencing proportionality, as well as treatment and rehabilitation interventions to allow re-entry into driver licensing - thus become issues of central concern, rather than being, as it may have been considered in the past, matters on the periphery of road safety concern as questions of deterrence (general and specific or personal deterrence) were seen as more important. Thus, a revision of the Organisation for Economic Co-operation and Development listing of major interventions under a Safe System should include

- Addressing dangerous behaviour and ensuring compliance with key safety rules for repeat traffic offenders through management and rehabilitation programs in custodial and community settings.

The Safe System and Traffic Offender Management

However, “access to the system” includes drivers who are excluded from holding a driver licence for a period and then re-enter the system. This, for example, would include the 75,000 people in New South Wales who between January and September 2011 were holders of a driver licence, who then lost their licence, and who want to get it back again. In the main, this element of the system is administered not by the Roads and Maritime Services but by the Attorney General’s Department, as many of the people who lost their driver licence have been dealt with by the Courts.

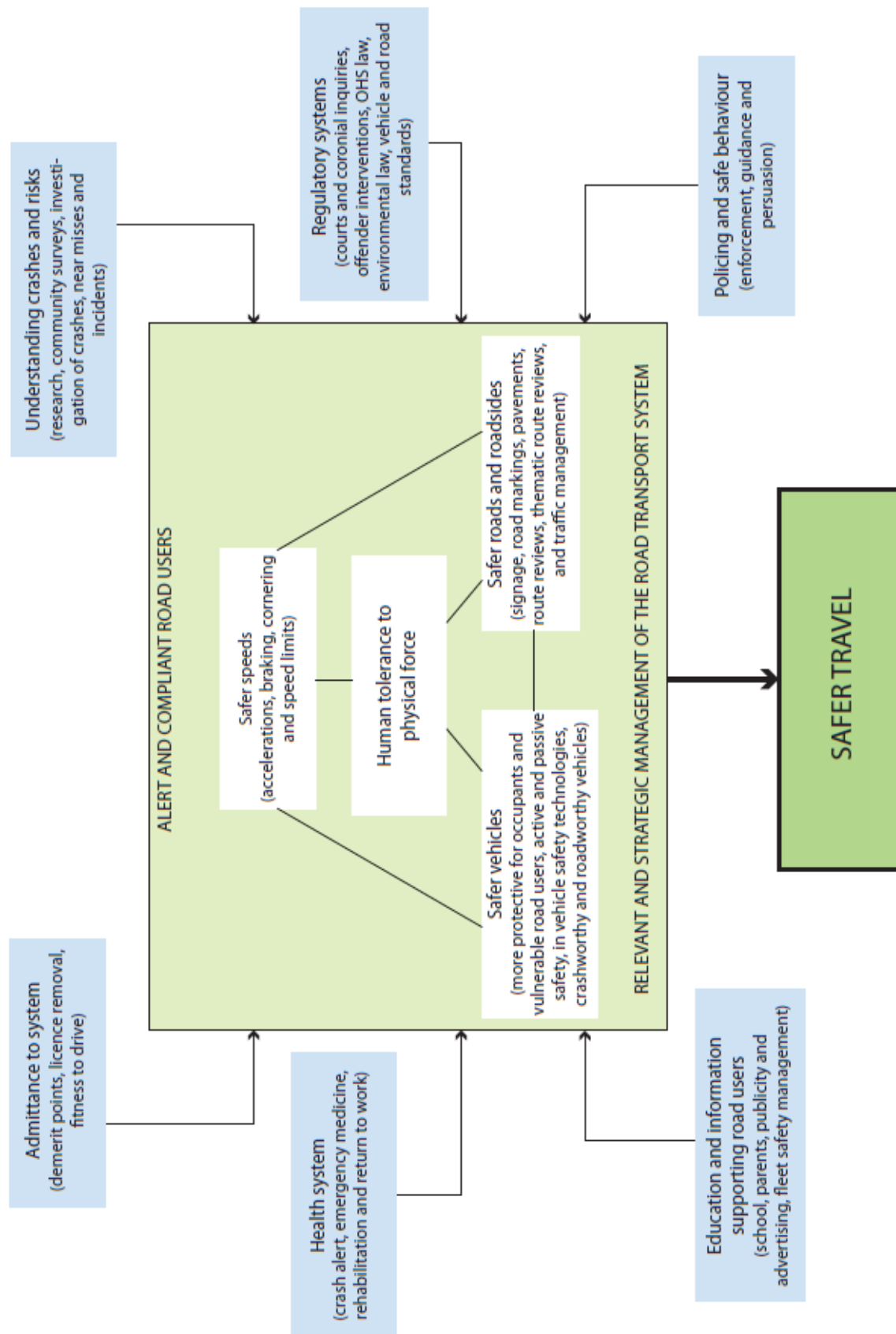


Figure 1: The Safe System approach.

Unfortunately, while the first entry into the driver licence system for new drivers consists a graduated driver licensing scheme involving many hours of training and driving experience and several tests of knowledge of road transport law, understanding of safe behaviour, and hazard perception, the driver licence re-issue process in New South Wales often involves paying a fee, having a photo taken, and collecting a new licence. It may simply involve the resumption of driving: retaining the actual “plastic” – the driver licence – and simply not driving for a specified period until authorised to drive again by Roads and Maritime Services.

This driver licence re-issue process applies equally to persons who have lost their licence for the accumulation of demerit points (for repeated instances of speeding at less than 30 km/h over the posted maximum speed limit, for seat belt and child occupant restraint offences, for parking offences). The driver licence re-issue process also relates to loss of licence owing to unpaid fines for offences in areas unrelated to road use (such as unleashed dogs, environmental offences, etc.). And the driver licence re-issue process applies to persons who have incurred an immediate loss of a driver licence for a drink drive offence, a drug driving offence, or for speeding at 30 or 45 km/h over the limit.

If any of these individuals are not offered attendance at a traffic offender course under the Traffic Offender Intervention Program prior to sentencing there is no legal requirement for any remedial or additional training or education to be completed in order to have their driver licence re-issued. For drivers who lose their driver licence but are not required to attend Court, or do not seek a relief from a Court for a variation on their driver licensing penalty, there is no possibility of a referral to a traffic offender course under the Traffic Offender Intervention Program currently.

For repeat traffic offenders there are limited options available. In New South Wales, the Sober Drivers Program operates for high-risk drink driving offenders, but there is no other program for equivalent high risk driving behaviours such as speeding and DWD. In other Australian States and territories a similar situation exists, although recently Victoria conducted a trial of a repeat speeding offenders program.

Road Safety Strategies and Traffic Offender Management

The following sections review the national road safety strategy and the individual Australian State and Territory road safety strategies with a focus on traffic offenders and drivers who drive while disqualified.

The National Road Safety Strategy 2011–2020

The National Road Safety Strategy 2011–2020 proposes a variety of actions that are aimed at reducing fatal and serious injury crashes on Australian roads. It coincides with the International Decade of Action for Road Safety, 2011-2020. The strategy has adopted the ‘Safe System’ approach formally. This approach proposes that the majority of the road users will walk, ride or drive responsibly, but their judgment and their behaviour may falter or fail occasionally. In accepting that people who use the road transport network will, on occasion, make mistakes (errors, slips and lapses), the system therefore needs to be more

accommodating and forgiving of those mistakes. The ultimate aim of a Safe System approach is to eliminate road crashes, but the immediate objectives are to minimize crashes that result in death or a life-long disabling injury. This approach stands in contrast with earlier policies that focused instead on trading off safety with mobility within the road transport system.

The National Road Safety Strategy 2011–2020 explicitly addresses the issue of traffic offenders in a recommendation for a review of international best practice to identify cost-effective interventions for dealing with high risk and repeat traffic offenders (Recommendation NRSS 42. Relevant comments are made in several sections relating to drink driving, speeding, wearing of seatbelts and helmets, drug driving, and the use of mobile phones (see Table 1 for a detailed outline of the proposed actions).

A specific recommendation is made for actions to address general aspects of access to the road transport system involving driver licensing, vehicle registration, and CTP insurance through extending the use of vehicle sanctions to drivers of unregistered vehicles, and unlicensed or suspended drivers (Recommendation NRSS 40 (b)).

The NSW Road Safety Strategy 2011–2020

The Foreword to the New South Wales Road Safety Strategy 2012-2021 notes that there are many new initiatives which the New South Wales government will explore over the next decade to improve road safety for the community, including targeting interventions for repeat traffic offenders.

Some related initiatives that could be expected to impact on traffic offenders include:

- Proactive and positive prevention communications
- Addressing driver fatigue and drink driving
- Exploring new technology advancements

However, with the discussion sections of the New South Wales Road Safety Strategy there is, in fact, no mention of traffic offender initiatives at all, although it is noted under “Impaired road users’ that one activity will be to:

- Develop revised education communications and programs, to address drink driving including alcohol ignition interlocks

TABLE 1: Comments and strategies that are already implemented or under consideration in the National Road Safety Strategy 2011–2020 that address issues concerning the management and rehabilitation of traffic offenders.

ISSUE	TRAFFIC OFFENDER MANAGEMENT AND REHABILITATION
Drink driving	<p>IMPLEMENTED</p> <p>Licence sanctions Monetary penalties Custodial sentences Availability of TOIP as pre-sentencing intervention Availability of Sober Drivers program for high range or repeat drink driving offenders Alcohol ignition interlocks</p> <p>PROPOSED / UNDER CONSIDERATION</p> <p>NRSS 36. In relation to alcohol interlocks:</p> <ol style="list-style-type: none"> Extend the application of alcohol interlocks to cover a wider segment of drink driving offenders. Undertake research on options to extend alcohol interlock applications to other high-risk road user groups and potentially to the broader driver population. Encourage voluntary use of alcohol interlocks by corporate fleets and other drivers. Investigate the option of requiring demonstrated rehabilitation from alcohol-dependence before removal of interlock conditions. <p>NRSS 37. Expand the use of vehicle sanctions for repeat drink and drug driving offences.</p> <p>NRSS 42. Review international best practice and identify cost-effective interventions for dealing with high risk and repeat traffic offenders.</p> <ul style="list-style-type: none"> In consultation with stakeholders and the community, examining the scope to reduce the legal blood alcohol concentration (BAC) limit for all drivers. Compulsory blood testing for drugs and alcohol for all drivers involved in serious casualty crashes.
Speeding	<p>7. Safe Speeds</p> <p>Intelligent Speed Adaptation (ISA) systems are vehicle-based devices incorporating digital speed limit maps and satellite navigation technology. They have proven effectiveness in improving driver compliance with posted speed limits by warning drivers when they are speeding or (in more interventionist approaches) by physically limiting the speed of the vehicle.</p> <p>PROPOSED / UNDER CONSIDERATION</p> <p>Mandatory ISA systems for high-risk groups (such as repeat speeding offenders)</p>

ISSUE	OFFENDER MANAGEMENT AND REHABILITATION
Use of seat belts or helmets	<p>PROPOSED / UNDER CONSIDERATION</p> <p>NRSS 42. Review international best practice and identify cost-effective interventions for dealing with high risk and repeat traffic offenders by examining the use of seatbelt interlocks and other regulatory means to increase seatbelt wearing by heavy vehicle drivers.</p>
Drug driving	<p>PROPOSED / UNDER CONSIDERATION</p> <p>NRSS 42. Review international best practice and identify cost-effective interventions for dealing with high risk and repeat traffic offenders through . . .</p> <ul style="list-style-type: none"> • Developing national workplace random drug testing standards for commercial vehicle industry application. Companies with testing regimes in place which meet this standard would have a defence against chain of responsibility prosecutions for drug driving. • Investigating the use of emerging roadside drug testing technology to apply to other illicit and licit drugs. • Compulsory blood testing for drugs and alcohol for all drivers involved in serious casualty crashes.
Inappropriate use of mobile phones (distraction)	<p>PROPOSED / UNDER CONSIDERATION</p> <p>NRSS 39. In relation to mobile phones: No offender management or rehabilitation proposed, but may get picked up by TOIP if licence loss through demerit points is challenged in court by an offender</p> <p>NRSS 42. Review international best practice and identify cost-effective interventions for dealing with high risk and repeat traffic offenders by monitoring and assessing the evidence on driver distraction associated with mobile phones and other communication devices, for identification of potential countermeasures (including for professional drivers).</p>
Road transport system access (drivers licence, vehicle registration, CTP insurance)	<p>IMPLEMENTED</p> <p>ANPR technologies as surveillance to improve detection of unregistered vehicles and unlicensed drivers</p> <p>PROPOSED / UNDER CONSIDERATION</p> <p>NRSS 40. Address the risk associated with unlicensed drivers and unregistered vehicles:</p> <p>(b). Extend the use of vehicle sanctions to drivers of unregistered vehicles, and unlicensed or suspended drivers.</p>

The ACT Road Safety Strategy 2011-2020

Of all the Australian jurisdictions, the ACT Road Safety Strategy 2011-2020 provides perhaps the most explicit policy directions to address traffic offender issues, spanning speed, road safety education, targeted enforcement interventions, drink driving, drug driving, other areas of impairment (psychiatric, medical, ageing, etc.).

The following directions form the basis of the ACT Strategy:

- Support cultural change in the community towards road safety, and subsequently improve behaviour.
- Encourage best practice in adopting vehicle safety technology.
- Implement an educational approach to road safety for all road users, with investment in strategic awareness campaigns and lifelong learning measures.
- Support this broad educational approach with targeted, effective and sustained enforcement measures, including an increased focus on visible police enforcement of all traffic offences.
- Use stringent controls to remove repeat and high end traffic offenders from the road system.
- Focus on impaired driving as a priority area.
- Obtain strong alignment with key road safety stakeholders on the overall approach to road safety in the ACT.
- Implement best practice data, performance monitoring and evaluation processes.

Drink driving continues to be a road safety issue for the ACT. Of major concern to ACT Policing is the high rate of repeat offences for impaired driving. The ACT has been progressing revisions to ACT drink driving legislation, and legislation for roadside drug testing has been implemented. Further impaired driving reforms are expected, including a need for a stronger focus on the links between enforcement, penalties, offender courses, sentencing and treatment programs. Impairment issues also result from specific medical conditions which can affect driving ability.

In the Action Plan 2011-2013 developed from the ACT Road Safety Strategy, it is noted that the Territory and Municipal Services Directorate has completed an initial study examining the potential for offenders to attend a Speed Awareness Course. This study has not, in seems, been released publicly. Jurisdictions that have introduced similar education programs to address speeding have reported that such programs are difficult to evaluate. Nonetheless, the ACT noted that the feasibility of introducing speed awareness courses will be considered as part of a “lifelong learning” or “lifetime learning” approach to road safety education. The development of an ACT Road Safety Education Strategy will look towards encouraging good behaviours by road users, particularly in relation to improving knowledge of the road rules, and will place an emphasis on the positive aspects of driving, rather than focussing only on illegal, inappropriate and unsafe behaviours. While an important part of this approach will be the development of targeted road safety awareness campaigns using a variety of media channels, including print, radio and television, appropriate courses for offenders will also be considered.

In addition to the broad educational approach of the ACT Road Safety Education Strategy, best practice traffic enforcement measures are to be identified and implemented. The penalties for offences will be reviewed to deter road users from breaking the rules, including removing the privilege of road use from repeat and high end offenders. This could potentially include promoting enforcement outcomes and improved mechanisms allowing the reporting of potential offenders by the community. The ACT will also continue to participate in national forums considering best practice interventions for high risk and repeat offenders, and ways to improve the consistency and applicability of traffic penalties across jurisdictions. A focus will be on drink and drug driving offences, and possible actions could include extending the applicability of alcohol interlock programs, and expanding the use of vehicle sanctions for repeat drink and drug driving offences.

The Northern Territory Police Road Safety Strategy 2008–2013

The Northern Territory Police Road Safety Strategy 2008–2013 makes no specific mention of traffic offender programs. However, in a discussion of the road safety activities outlined in the strategy, it is noted that the immediate actions required include: targeting repeat traffic offenders; targeting common traffic offence patterns; targeting traffic offence “hotspots”; and taking preventative measures.

The Queensland Road Safety Strategy 2004–11

The Queensland Road Safety Strategy 2004–11 does not mention traffic offender issues explicitly.

The South Australia Road Safety Strategy 2020 – Towards zero

The South Australia Road Safety Strategy 2020 clearly identifies that drivers need to uphold the standards and laws that have been designed to provide protection for all who use the road system. When drivers engage in dangerous behaviour, such as exceeding speed limits, drink driving, drug driving, not using seat belts or helmets, attending to in-vehicle distractions, driving whilst fatigued, and driving whilst unlicensed or disqualified from holding a driver licence, there is an increased risk of serious road trauma for all road users. Moreover, some drivers are repeat offenders for these types of dangerous driving behaviour.

The focus of efforts under the South Australia road safety strategy is towards stopping dangerous driving behaviour and removing dangerous drivers from the roads. There are some specific categories of driving offenders that are recognised under the strategy: motorists who drive with high levels of blood alcohol; or when they are affected by drugs; those motorists who frequently drive at inappropriate speeds; and those who drive when not wearing a seatbelt.

The proposed solutions under the South Australian road safety strategy to target high risk driving behaviours are targeted enforcement, and related road safety marketing. With regard to compliance with speed limits, the strategy notes that while it is expected that new vehicle technologies, such as intelligent speed adaptation (ISA), can provide support for

drivers to comply the speed limit and travel at an excessive speed, there is also scope for these technologies to be used as speed limiting devices that can be mandated for recidivist speeding offenders. As well, alcohol ignition interlocks can target drink- drivers.

Driving while disqualified or driving while unlicensed is linked to all of these behaviours. The South Australian road safety strategy comments:

“These measures increase the awareness of enforcement and also the actual likelihood of offenders being caught. The willingness of high-risk drivers to continue to drive while disqualified is a major challenge in developing effective countermeasures. Loss of licence is the usual deterrence to continuing to offend but is obviously ineffective for those road users who do not value their licence. Use of automatic number plate recognition may increase the detection of unlicensed drivers but further work is required to develop other effective countermeasures.” (p.27)

The Tasmanian Road Safety Strategy 2007-2016

The Tasmanian Road Safety Strategy 2007-2016 has no specific mention of traffic offender programs.

The Victoria Road Safety Strategy: arrive alive 2008-2017

The Victoria Road Safety Strategy 2008-2017 is strongly focused on intervention technologies, and the possibility of supportive rehabilitation programs.

While regard to speeding offenders, the Victorian road safety strategy proposes measures such as increasing the proportion of vehicles with top speed limiting devices and ISA, preventing recidivist speed offenders who lose their licences from continuing to speed when they return to driving, again through top speed limiting and ISA, and promoting voluntary take up of ISA to reduce risks among young drivers.

To address drink driving, the Victorian road safety strategy notes that alcohol interlock programs and rehabilitation programs aimed at addressing alcohol problems can be effective in modifying the behaviour of recidivist offenders who do not respond to mainstream deterrence and public education campaigns. The use of vehicle impoundment is also to be considered for repeat offenders who cannot comply with the alcohol interlock program and for those motorists who have been disqualified or suspended but who persist in driving under the influence of alcohol. The strategy proposes such measures as extending the alcohol interlock program to young and inexperienced motorists, strongly encouraging the voluntary take up of alcohol interlocks, encouraging vehicle manufacturers to include alcohol interlocks in the design of new vehicles, developing and assessing mandatory rehabilitation programs for recidivist drink drivers as a condition of relicensing, and looking towards imposing tougher penalties for recidivist drink drivers, including extension of vehicle immobilisation and impoundment provisions, and the possibility of vehicle forfeiture.

The Victorian road safety strategy proposes that a response to drug driving could include exploring the introduction of a drug interlock program to separate driving from drug use, similar to the alcohol interlock program.

To address hoon offenders (drivers who engage in street racing, and overt displays such as burn-outs), the Victorian road safety strategy proposes impoundment for first time, and loss of vehicle for repeat offenders.

The Western Australia Towards Zero Road Safety Strategy 2008-2020

The Western Australia Road Safety Strategy 2008-2020 does not explicitly address traffic offender issues. However, to reduce repeat drink driving, alcohol assessment and treatment programs and technological solutions will be considered as the use of alcohol ignition interlocks can significantly reduce drink driving as a primary risk factor for road safety. The strategy also explicitly notes that the development of new ways of thinking about dealing with risky driving behaviours must be supported by, and within, agencies and organisations.

Road transport law (the traffic law)

Road transport law – the traffic law – in Australia addresses the orderly movement of vehicles and other road users, access and efficient movement of traffic, the safety of road users, and the amenity of communities. There is a large body of traffic legislation that has been established, a considerable effort is expended in the enforcement of traffic legislation, and the legal system and judiciary (at least at the level of Local Courts) are heavily involved in dealing with traffic matters.

Road transport law is a very complex mix of legislation. It comprises enacted legislation – the statutes, as passed by parliament – and, subordinate legislation – the regulations and other orders, as authorised and gazetted by the relevant Minister. The principal purposes of the statutes and regulations are, first, to provide for the identification of motor vehicles, second, to licence the drivers of those vehicles, and third, to provide a legislative basis for orderly and safe traffic movement.

During the course of the twentieth century, road transport legislation grew in size and complexity, reflecting changes in road and vehicle technology, in traffic management, as well as new enforcement methods and technologies (such as random breath testing and automated enforcement to detect non-compliance by drivers). Road transport legislation became more complex, regulating all aspects of the road environment from registering motor vehicles and licensing drivers and to road rules, vehicle standards, traffic management, drug and alcohol testing, driver training, motorcycle rider training, and compliance and enforcement. For example, in New South Wales, traffic law comprises the “road transport legislation” administered by Roads and Maritime Services and by Transport for NSW. This legislation is derived from template Commonwealth legislation such as the Australian Road Rules and other national road-related law, specific crimes legislation relating to driving (administered by the Attorney General’s Department), and a range of legislation relating to road use and driving – such as, noise, vehicle emissions, parking, use of specialist vehicles such as ambulances and fire engines, and the involvement of teachers in driving-related activities, to name a few – administered by many different areas of government, including policing (e.g., the Law Enforcement (Powers and Responsibilities) Act

2002), as well as local government, workplace safety, environmental safety, emergency services, and the education and training agency.

Road transport legislation impacts on everyone in the community, either directly or indirectly. Directly, for example, there are some 5.5 million driver licence holders in New South Wales and 5.7 million registered vehicles—mostly cars. In 2011-2012, motor vehicle travel totalled 66 billion kilometres on New South Wales roads. Indirectly, road transport legislation impacts on the economy by underpinning road freight transport, and on communities through road passenger services using public transport, or through travel involving the use of private and fleet-owned vehicles. Non-motorised transport is also subject to road transport law, as applicable to pedestrian and bicycle movements.

A limited number of areas of traffic law have been developed with an exclusive focus on safety, with less, or very limited, effect on the orderly and efficient movement of traffic, or on the amenity of road users and the general community. These areas include:

- driver licensing laws;
- impaired driving (and in particular, drink-driving and drug-driving matters);
- manner of driving offences (including negligent driving (without causing death or grievous bodily harm), dangerous driving, wanton driving, furious driving, menacing driving and predatory driving; and
- motor vehicle offences (unregistered and uninsured vehicles, unroadworthy vehicles)

The major concepts underpinning road transport legislation are often collated and published as a highway code, incorporating additional educational materials and advice. Road transport laws are, of course, legal requirements, and if road users disobey these rules, they commit a criminal offence. Such rules are identified by the use of the words 'must/must not'. For breaches of road transport law, a road user may be fined, given penalty points on the driver licence, or be suspended, cancelled or disqualified from driving. In the more serious cases – those considered to involve a major traffic offence, or where a driver continues to commit offences despite prosecutions and convictions (repeat offences) - a driver may be sent to prison.

Road transport offences (traffic offences)

Offences relating to the use and operation of a motor vehicle predominate in the list of offences that are dealt with in the local or magisterial courts. The following traffic offences formed over half of the top twenty offences dealt with in New South Wales Local Courts in 2011 (the relative ranking is shown in brackets) (see Table 2). Just under 40% of all offences dealt with by Local Courts are driving offences. Driving is defined as actually driving a vehicle, or occupying the driving seat of a vehicle and attempting to put the vehicle in motion, or (if the holder of a licence other than a provisional licence or a learner's licence) occupying the seat next to a holder of a learner's licence who is driving the vehicle. Driving includes riding a motorcycle or riding a bicycle.

TABLE 2: Most common driving-related statutory offences (principal offence only) sentenced in the New South Wales Local Court in 2010. Before March 2009 the offence of “Drive whilst suspended” included driver licence suspension for both unsafe driving and fine default. The offence of “Drive while licence suspended under s.66 of the NSW Fines Act 1996” was created to distinguish between these offenders as it is considered that there is a lower threat to the community posed by those who drive unlicensed as a consequence of failure to pay a fine, compared with those drivers who lost their licence as a consequence of unsafe driving actions.

Offence	N	%
Mid Range PCA (1)	9,867	9.5
Low Range PCA (3)	6,769	6.5
Drive while disqualified (5)	5,136	5.0
Drive while suspended (7)	3,839	3.7
High Range PCA (11)	3,506	3.4
Never licensed person drive on road (12)	3,444	3.3
Drive without being licensed (15)	2,101	2.0
Negligent driving (without causing death or GBH) (16)	1,621	1.6
Drive unregistered vehicle (17)	1,617	1.6
Drive while licence suspended under s.66 of the Fines Act 1996 (18)	1,481	1.4
Special range PCA (20)	1,184	1.1

Defences against prosecutions for traffic offences typically target either the interpretation of terms and expressions used in the road transport legislation, or relate to procedural issues such as the maintenance and calibration of measuring equipment used to detect and record alleged traffic offences or the procedures used in the conduct of traffic enforcement. Offences under the road transport legislation (and criminal offences relating to driving under crimes legislation) rest upon defined words and expressions: “driver”, “motor vehicle”, “motor bike”, “vehicle”, “bicycle”, “driving”, “use” (of a vehicle), “road”, “shoulder” (of a road), “intersection”, “road related area”, “footpath”, “adjacent land”, “park” (a vehicle), “crash”, etc.. The Australian Road Rules incorporates a dictionary which defines the words and expressions that have special meanings in the Rules and specifies the relevant Rule in which a word or expression is defined. The Australian Road Rules dictionary is incorporated in the road transport legislation (see the dictionaries to the Road Transport (Safety and Traffic Management Act) 1999 and the Road Transport (Driver Licensing) Act 1998, and section 3 of the Road Transport (General) Act 2005).

Driver licensing

Driver licensing systems are implemented to ensure that no other person but the holder of a drivers licence is authorised to drive a motor vehicle on a road. This prohibition is imposed in the interests of safety, access and mobility for all persons using the road transport system. As a consequence, traffic law has, as an object, the prevention of driving of motor vehicles by any persons except licensed drivers. The phrasing of traffic law relating to driver licensing is to exclude persons who are licensed from the general category of persons who are not permitted to drive a motor vehicle on a road, that is, the presumption is that a person is not entitled, as a right, to drive a motor vehicle on a road. This distinction is critical to understanding the nature of unlicensed driving and the effective of a driver licensing system is dealing with such behaviour.

The driver licensing system in New South Wales and in other Australian jurisdictions include a number of system elements that relate to classes of vehicles and classes of drivers. Riders of motorcycles are required to have a separate licence. Drivers of heavy vehicles – including medium rigid, articulated, and multi-combination trucks, buses – are subject to separate driver licensing requirements; drivers of public passenger vehicles – taxis, buses, hire cars – are required to hold separate driver authorities; and, drivers of vehicle carrying specific loads – dangerous goods, radioactive materials – are also required to hold separate driver authorities. These different types of drivers licences may include specific conditions that impose restrictions on engine capacity and design (e.g., turbocharged vehicles), access to roads, specific speed restrictions, and time limits on hours of driving.

There are also driver licensing interventions relating to the age of a driver or the length of time since licensure. Older drivers in New South Wales, for example, are subject to a medical review for fitness to drive from the age of 75 years, and are required to hold either a modified drivers licence (with restrictions of access and mobility) or undertake a biennial test or assessment of driving competency from the age of 85 years.

In 1966, New South Wales commenced one of the world's first graduated driver licensing systems, providing for a structured introduction to independent, unaccompanied driving. This system is highly successful in providing guidance and assistance to novice drivers as they learn to travel safely within the road transport system. While the New South Wales graduated driver licensing system has been subject to reform over the past four and a half decades, there were major reforms from 2000 in response to findings and recommendations of the STAYSAFE Committee. These reforms have resulted in significant reductions in road trauma for young drivers and improvement in overall road safety. A 2010 research study examined fatal crash trends for Australian young drivers over the period 1997-2007 as part of the DRIVE Study, reporting that young driver fatality rate significantly decreased 5% per year. There were disparities, with higher relative risk of fatality for rural versus urban drivers, and for drivers of low versus high socioeconomic status. These higher relative risks were maintained over the period 1997-2007. Factors such as higher posted speed limits (indicating travel on high speed roads), driver fatigue, drink driving, the no-use of seat belts, and driving an older vehicle were identified as strongly related to the risk of road fatality.

The New South Wales graduated driver licensing system is one of the few licensing systems that has been the subject of intensive study. The DRIVE Study, a major examination of novice driver experiences over the first few years of driving, collected data on a cohort of 20,822 New South Wales drivers aged 17-24 years at the time of provisional licensure (their first independent drivers licence). A variety of information concerning demographics, driving experience, interaction with accompanying drivers, and various risk factors was collected via an online questionnaire and subsequently linked to police-reported crashes two years later. For example, the association between supervisory driver offences and subsequent crashes of novice independent drivers was examined. Newly-licensed drivers who had been supervised by accompanying drivers with had incurred recent traffic offences had a one-third higher risk of crashing. This risk is independent of the supervisor demographics, but mitigated by the young drivers' personal characteristics. Careful consideration should be given to policy developments regarding supervised driving requirements that rely heavily on parents to adopt this role.

Under the New South Wales graduated driver licensing system there are both offences that are specific to a particular licence category (e.g., a requirement to display of L, P1 and P2 Plates, or curfew and passenger carriage restrictions). There are also particular elements of more general traffic offences (e.g., drink driving, speeding) that relate to a licence category, such as the novice range prescribed concentration of alcohol that apply for all L, P1 and P2 Plate drivers, and speed restrictions that apply differentially for L, P1 and P2 Plate drivers.

Driver licence suspension

Immediate suspension of a driver licence

The Road Transport Act 2013 section 224 provides that a police officer may suspend immediately, or within 48 hours, the driver's licence of a defendant charged with specified major offences. Police in New South Wales may immediately suspend and confiscate a driver licence for the following driving offences:

- A serious driving offence causing death or grievous bodily harm;
- Speeding in excess of 45 km/h over the speed limit;
- Middle or high range prescribed concentration of alcohol, or committing other serious alcohol-related offences;
- A street racing offence.
- An aggravated burnout offence (The definition of an aggravated burnout includes a hoon driver's mates who willingly participate in, urge others to participate in, photograph or film to promote or organise hoon activity);
- Speeding in excess of 30km/h over the speed limit whilst the holder of a learner driver licence or a provisional driver licence;
- Driving unaccompanied by a supervising driver whilst the holder of a learner driver licence.

Police can suspend and confiscate a licence on the spot, or within 48 hours of a person being charged or issued a traffic infringement notice for a relevant offence. Where a person is charged by police with one of the offences, the driver licence suspension will remain until

the offence is heard by a Local Court. The Court may take into account the period served under suspension when imposing the driver licence disqualification period. For a traffic infringement notice for speeding in excess of 45 km/h over the limit, the suspension will apply for a period of six months; while for a traffic infringement notice for speeding in excess of 30km/h but not more than 45km/h over the limit as the holder of a learner or provisional licence, or a learner driver driving unaccompanied by a supervising driver, the driver licence suspension will apply for a period of three months.

Camera-detected excessive speed offences are not included in the immediate licence suspension scheme. However, Roads and Maritime Services may apply a driver licence suspension following payment of the traffic infringement notice. Demerit points and fines also apply to speeding offences.

A driver has the right to appeal a driver licence suspension at a Local Court (see Section 2.7.3 Appeal to Local Court against suspension of a driver licence by police officer in New South Wales). The appeal must be lodged with a court within 28 days of the suspension notice being issued. Unless the court in the meantime orders otherwise, a person must not drive unless the court upholds the driver licence appeal.

A driver may appeal to the Local Court (Road Transport Act 2013 sections 266, 267). The Court may hear and determine the appeal and may vary or revoke the driver licence suspension. In many cases, the Court will adjourn the case and order the offender to attend a Traffic Offender Intervention Program. The Road Transport Act 2013 section 268(5) provides that in determining such an appeal, the Court is not to vary or set aside such a suspension unless it is satisfied that there are exceptional circumstances justifying a lifting or variation of the suspension. The court is not, for the purposes of any such application, to take into account the circumstances of the offence with which the driver is charged.

Demerit points and driver licence suspension

The Demerit Points Scheme allocates penalty points (demerits) for a range of driving offences. The scheme is designed to encourage safe and responsible driving. Along with financial penalties, demerit points provide a strong incentive to drive within the law.

A driver who has not committed any offences has zero points. If a driver commits a road transport offence that carries demerit points, the points are added to the driving licence record (in New South Wales, this record is maintained by Roads and Maritime Services). If a driver accumulates sufficient demerit points to reach the threshold number of points allowed within a three-year period, a driver licence suspension or refusal is applied. The three-year period is calculated between the dates the offences were committed. It ends on the day that a driver's most recent offence was committed. The thresholds are:

- Unrestricted driver licence – 13 points
- Professional drivers – 14 points.
- Provisional P2 driver licence – 7 points
- Provisional P1 driver licence – 4 points
- Learner driver licence – 4 points

- Unrestricted driver licence with a good behaviour period – 2 points within the term of the good behaviour period.

Double demerit points apply for speeding, seatbelt and motorcycle helmet offences during all holiday periods such as for long weekends, the Christmas and New Year holiday period, and Easter.

Certain driving and parking offences attract an additional demerit point if committed in an operating school zone. Double demerit points can also apply when school zones are in operation during holiday periods. If a driver commits a speed, seatbelt or helmet offence during this combined period, the demerit point value applying for the school zone is doubled.

Reaching or exceeding the demerit points limit results in a driver licence suspension or refusal. Driver licensing agencies such as Roads and Maritime Services send a Notice of Suspension or Refusal if a driver has reached or exceeded the number of demerit points available for the type of driver licence held.

In New South Wales a Notice of Suspension or Refusal is also sent if a driver has committed an excessive speed offence.

A Notice of Suspension or Refusal specifies the date the driver licence suspension or refusal begins. The imposition of a driver licence suspension or refusal period relies on the driver licensing agencies, such as Roads and Maritime Services, serving a Notice on the driver. For unrestricted driver licence holders, the period of suspension depends on the number of demerit points accumulated:

- 13 to 15 demerit points - three months
- 16 to 19 demerit points - four months
- 20 or more demerit points - five months
- For provisional and learner driver licence holders, the suspension period is three months.

As noted earlier, unrestricted driver licence holders who reach or exceed 13 demerit points are sent a Notice of Suspension, or are refused a licence if they apply for one. However, professional drivers have a demerit points threshold of 14 points, so any suspension (or refusal) that was applied based on 13 demerit points exactly will be withdrawn. If a professional driver subsequently reaches or exceeds 14 demerit points, the driver licence suspension or refusal is applied as per other unrestricted driver licence holders.

Demerit points age with time, although the record of any demerit points that are incurred is not deleted by Roads and Maritime Services. The register held by Roads and Maritime Services is a driving record listing all demerit points and the offences they relate to. Over time, demerit points will age and there is a point in time after which they are not considered for driver licence suspension even though they, along with other offences committed, have resulted in the demerit point threshold being reached within a three-year period. Any demerit points that are more than 40 months old are not counted for demerit point suspension.

Licence suspension and disqualification periods for speeding

A driver may be disqualified or have a driver licence suspended for serious speeding offences:

- Driving more than 45 km/h above the speed limit – six months
- Driving more than 30 km/h but not more than 45 km/h above the speed limit – three months

In addition to the suspension and disqualification periods, these offences also carry demerit points which are added to the driver licence record. If these demerit points cause a driver to reach or exceed the demerit point threshold, then an additional suspension or refusal period may apply under the Demerit Points Scheme.

Holders of a learner driver licence or a provisional driver licence will receive a minimum of 4 demerit points for any speeding offence. This means that both learner drivers and provisional P1 driver licence holders will have their licence suspended or refused for at least three months for any speeding offence. A fine is also payable.

Demerit point offences that are heard in court

If a Local Court rules that a person is not guilty of an offence that attracts demerit points, it is the end of the matter. There are no fines to pay or demerit points to be recorded.

If a Local Court finds a person guilty of the offence and convicts the person, the Court usually orders a fine. In this case, the offence will be recorded on the offender's traffic record and Roads and Maritime Services must apply the relevant number of demerit points.

Subsequent to 31 January 2011, if a court finds a person guilty of the offence and dismisses the offence under the Crimes (Sentencing Procedure) Act 1999 section 10(1), the demerit points related to the offence are not recorded (see 2.10.3 Crimes (Sentencing Procedure) Act 1999 (NSW) S.10).

Refusal of a driver licence

In New South Wales, Roads and Maritime Services may refuse to renew a driver licence if the holder has exceeded the demerit point threshold, or has committed a serious speeding offence. The periods that a driver licence may be refused are the same as those that apply for suspensions. Roads and Maritime Services issues a Notice of Refusal to the offender. Formal refusal is only applied and a refusal notice given when the person attends a motor registry and applies for a driver licence or driver licence renewal.

There is no right of appeal against the suspension or refusal of an unrestricted licence on the grounds of demerit points.

Good behaviour period

Unrestricted driver licence holders who receive a Notice of Suspension due to the accumulation of demerit points can apply for a 12 month good behaviour period instead of

serving the period of suspension. This option is not available to learner driver licence holders or provisional driver licence holders, or to those already serving a good behaviour period. If a driver accumulates two or more demerit points while serving a good behaviour period, the driver licence will be suspended for double the original suspension time.

Some concluding comments

The operation of the Demerit Points Scheme has played a vital role in addressing young driver behaviour in New South Wales. The graduated driver licensing system used in New South Wales, with its zero tolerance approach not only to speeding behaviour but also alcohol use and drink driving, drug driving, use of mobile phones, etc., has been, in my view, the primary contributor to the reductions in road trauma associated with young drivers and their passengers.

With the zero tolerance approach, risky or foolish young drivers are taken off the road for a minimum three month suspension, or they may initiate a licence appeal process in the Local Courts. If the latter course of action is taken, then these persons will usually be ordered to attend a traffic offenders program under the Traffic Offender Intervention program.

The key to continuing to deliver what are truly impressive road safety benefits for the New South Wales community will lie in the area of speed policies and programs.

A cautionary approach is recommended for this inquiry by the STAYSAFE Committee. Some changes to the Demerit Points Scheme might seem to be desirable from a narrow point of view. However, all road safety efforts in New South Wales are coordinated under a road safety strategy that is tied to the national Road Safety Strategy 2011-2020, and an appreciation of the overall, systemic effects of such changes is required.

Ian Faulks
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