

**INTERVENTIONS TO REDUCE ROAD TRAUMA IN REGIONAL NSW CAUSED  
BY SPEEDING, FATIGUE, DRINK AND DRUG DRIVING**

**Organisation:** Road Trauma Support Group NSW

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Road Trauma  
Support Group  
NSW

**Submission to the**

**NSW Parliamentary Inquiry into Interventions to Reduce Road Trauma in Regional  
NSW, caused by speeding, fatigue, drink and drug driving.**

**25 July 2025**

## About Road Trauma Support Group NSW

We stand beside those left behind.

Road Trauma Support Group NSW provides compassionate, personalised support to families and friends whose loved one was killed due to a criminal act on NSW roads.

Our services are free and available for as long as they're needed—from 24/7 counselling and peer support groups to remembrance events and regional outreach.

Everything we do is shaped by lived experience. Together with our family members, we also share insights, stories and research to help improve support systems and drive change—so that no family must face this alone again.

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## Introduction

Regional NSW carries a stark and unacceptable burden of road trauma. Fatal crashes in these communities are not simply "accidents"- they are often the foreseeable, preventable outcomes of speeding, fatigue, drink and drug driving, distraction, and entrenched attitudes of risk-taking on our roads.

For the families we support, these are violent criminal acts that result in catastrophic, lifelong grief. Yet the systems designed to prevent them - from road infrastructure and driver education to police enforcement, crash investigation, sentencing, and insurance - too often fail to treat them with the seriousness they deserve.

Official Transport for NSW data highlights the scale of this problem. Over the past decade (2014–2024), country NSW has recorded 2,456 road fatalities - more than twice the 1,181 deaths in metropolitan areas, accounting for over two-thirds of all fatalities statewide. Annual country deaths have ranged from 176 to 267 per year, compared to 81 to 128 in metropolitan areas. Country fatalities have climbed again in recent years, with 239 deaths in 2023 and 223 in 2024. This persistent disparity underscores the urgent need for region-specific interventions to address high-speed rural roads, fatigue, limited enforcement, infrastructure deficits, and unsafe driving culture.

Our family members know the human cost of these numbers. They are parents, partners, siblings, children and friends who have lost loved ones to choices that should never have been possible on our roads. Through their lived experience, they have identified practical, urgent reforms that would save lives and reduce suffering.

This submission shares their voices and offers clear recommendations to address the key risks of speeding, fatigue, drink and drug driving, and other dangerous behaviours in regional NSW.

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## **Findings and Recommendations from RTSG NSW family members**

### **Fatigue and Rest Areas**

Fatigue is a leading cause of crashes on long regional stretches yet rest stop infrastructure has declined. Family members spoke of the frustration of having nowhere safe to pull over, describing this as a low-cost, practical measure the government could invest in to save lives.

RTSG family members call for urgent restoration and expansion of Driver Reviver sites and rural rest areas along major routes, with safe, accessible and well-lit amenities.

“If the government is serious about saving lives on regional roads, they could put some money back into this.” – RTSG family member.

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### **Police Resourcing and Crash Investigation Standards**

RTSG family members reported distressing inconsistencies in police crash investigations, with witnesses left uncontacted for weeks and critical evidence lost. They also raised concerns about inadequate checks on driver medical fitness.

“When Katrina was killed the truck driver behind who saw it all wasn’t interviewed for six weeks. By then the dashcam footage was gone.”

“Police saw he (the driver) had a medical condition on his licence but didn’t ask to see the medical certificate.” – RTSG member.

RTSG family members recommend increased regional crash investigation resources and training, standardised evidence protocols, and independent review mechanisms for serious crashes.

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### **Unsafe Roads and Infrastructure Maintenance**

Poorly maintained roads with high-speed limits are a consistent danger. RTSG family members described massive potholes, patchworked repairs, poor visibility, and substandard surfaces that make rural driving hazardous.

“If the Snowy Mountains Highway is an indication of country roads, then there is absolutely no doubt that’s where the primary focus should be.” – RTSG member.

RTSG family members urge prioritisation of maintenance on regional roads - particularly blackspots - and review of speed limits on roads that cannot safely support high speeds.

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### **Coronial Recommendations and Accountability**

RTSG families told us coronial inquests often identify unsafe roads but lack power to enforce change. This failure perpetuates the same risks for others.

“The coroner said the road was substandard but made no recommendations. We learned a lot from the coronial report, but it hasn’t made the road any safer.” – RTSG member.

RTSG family members propose legislation requiring government agencies to formally respond to coronial findings, with mandatory safety reviews and transparent reporting on their actions.

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### **Speed Limits and Political Will**

RTSG family members expressed frustration that evidence-based speed reductions are politically unpopular and avoided by decision-makers.

“We spoke to a Police Minister who told us they can’t slow down speeds in country NSW because people would object.” – RTSG member.

RTSG family members call on government to prioritise life-saving speed management over political considerations and fund public education campaigns explaining the rationale for safer speeds.

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### **Drink Driving and Alcohol Interlocks**

The devastating impact of repeat drink drivers was a consistent theme. RTSG family members described loved ones killed by drivers with multiple prior offences, criticising courts for treating interlocks as an unfair burden on offenders.

“My husband was killed by someone with very high-range alcohol in his bloodstream who had three previous DUI offences.” – RTSG member.

RTSG family members recommend mandatory alcohol interlocks for all high-range offences, removal of judicial discretion to waive conditions, and improved enforcement of interlock compliance.

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### **Drug Driving and Enforcement**

RTSG family members reported significant drug-driving in regional areas and questioned the adequacy of police resources and penalties.

“A lot of road users out here are high on drugs and drunk.” – RTSG member.

RTSG family members support increased funding for regional drug-driving enforcement and consistent, deterrent penalties.

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### **Overloading of Vehicles**

RTSG family members highlighted the risk from overloaded trade and freight vehicles poorly policed on rural highways.

“The amount of overloaded tradie utes and trucks speeding on the freeway—they’re like overloaded weapons.” – RTSG member.

RTSG family members recommend strengthening enforcement of vehicle weight limits and introducing public reporting hotlines for unsafe loads.

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### **Learner Driver Education and Licensing Reform**

RTSG family members criticised inadequate learner education in regional NSW, warning this is a generational problem. Many learners are taught by parents or carers with poor habits, and forging of logbook hours is common.

“It’s got to be mandatory that kids have awareness about road safety before they even think about getting their licences.” – RTSG member.

RTSG family members support mandatory professional lessons, low-cost defensive driving and hazard perception courses tailored to regional risks, and reform of the logbook system to ensure integrity.

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### **Road Lighting and Night-time Visibility**

Poor lighting on rural roads was consistently raised as a risk, especially at intersections. Participants also flagged problems with modern vehicle headlights causing glare.

RTSG family members recommend installing solar-powered lighting at blackspots and reviewing regulations on headlight brightness and automatic high-beam use.

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### **Sentencing Reform and Legal Framework**

RTSG family members were united in their call for serious reform of sentencing for fatal crashes caused by criminal driving. They described sentences that do not reflect the loss of life, and a justice system that retraumatizes victims while protecting offenders.

The group’s research, *The Human Impact of Fatal Road Crimes in NSW*, shows the catastrophic and enduring mental health impacts of these crimes on families, made worse by inconsistent sentencing and dismissive language such as “accidents” for acts that are, in fact, crimes.

“Whether someone is killed metro, regional, rural - a killing is a killing, a choice is a choice.” – RTSG member.

RTSG family members urge the government to consider reforms that guarantee stronger sentencing outcomes in cases involving aggravating factors - such as intoxication, deliberate risk-taking, or prior convictions - to ensure justice for victims and families. The group also suggested the removal of ICOs and CCOs for offences involving death, replacement of outdated guidelines such as *R v Whyte*, inclusion of Victim Impact Panels, and transparency in sentencing outcomes.

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## Community Attitudes and Public Education Campaigns

Finally, RTSG family members emphasised the need to challenge complacency and unsafe driving culture in regional communities. Current campaigns were described as “weak as water” and failing to change behaviour.

“Until we address driver, rider and road user attitudes, behaviours won’t change.” – RTG member.

RTSG family members urge funding of confronting, evidence-based campaigns that show the real human cost of fatal crashes and shift attitudes on speeding, distraction, and impaired driving.

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## Broader Context from RTSG Research

The group’s 2024 research paper, *The Human Impact of Fatal Road Crimes in NSW*, underscores the urgency of action:

- NSW road deaths rose 23% in 2023, with 346 lives lost and remained the same in 2024, but is trending higher in 2025.
  - One in five NSW adults has lost someone they know to a road crash.
  - Fatal road crimes have devastating, long-term mental health impacts on bereaved families, including grief, PTSD, and even suicidal ideation.
  - Judicial and insurance systems compound this trauma by failing to treat these deaths as violent crimes.
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## Conclusion

Regional communities deserve the same level of safety investment, policing, and legal protection as urban areas. These deaths are not inevitable, they are preventable with the right investment, evidence-based interventions, and a willingness to confront uncomfortable truths.

RTSG family members call on the NSW Parliament to prioritise equitable infrastructure, strong enforcement, sentencing reform, and cultural change that respects the lives lost and the families left behind. This is not about convenience. It is about saving lives, reducing preventable trauma, and honouring those already lost.

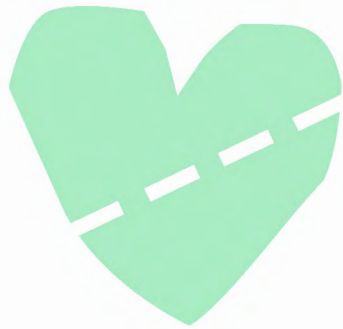
On behalf of our family members, the Road Trauma Support Group NSW would also welcome the opportunity to appear before the Committee to share these concerns in person. For further information or to arrange this, please contact us at [info@rtsgnsw.org.au](mailto:info@rtsgnsw.org.au).

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## Attachments

- RTSG NSW original Law reform Commission Submission, including:
  - RTSG NSW research paper: *The Human Impact of Fatal Road Crimes in NSW*
  - RTSG NSW Law Reform Manifesto
- RTSG NSW research paper: The Unheard Trauma of Fatal Road Crimes in NSW





**Road Trauma  
Support Group  
NSW**

**Road Trauma Support Group NSW**

**Submission to**

**Serious Road Crime Consultation Paper  
23,  
NSW Law Reform Commission**

**5 APRIL 2024**

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## Executive Summary

Too many people are dying as a result of serious road crime which could be avoided but which is instead rapidly increasing in New South Wales (NSW). Laws and sentences are outdated and ineffective. Court decisions are being made based on a century-old law and even with amendments and guidance, sentencing trends are still not reflective of community expectations.

Specifically, average head sentences of approximately three years for dangerous driving occasioning death and five years for aggravated dangerous driving occasioning death are wholly inadequate, disrespectful to the value of human life, and misaligned with community views and expectations. This clearly demonstrates the need for major reform in relation to serious road crime.

The Road Trauma Support Group NSW (RTSG) has mapped a root and branch law reform pathway and is seeking the following outcomes to be delivered promptly to avoid further avoidable loss on our roads:

- New road crimes Act
- New offence of Vehicular Homicide
- New offences and penalties hierarchy with standard non-parole periods for vehicular homicide
- Sentencing that recognises criminality associated with serious road crime and the devastating impact on families and communities.
- Legislating mandated victim impact panels
- Embedding a better approach to victim-centred design and services
- Road fatality reporting of all road deaths in NSW, drawing from safety practices in workplaces and aviation, to enhance investigations, promote transparency, and inform road safety measures while safeguarding individual privacy.

The recommendations RTSG has provided meet modern community expectations, and we stand ready to work alongside the NSW Government and the NSW Opposition to expedite these reforms.

Road crime needs to be recognised by the law and judiciary for what it is – a violent and unprovoked assault on the person with a deadly weapon (a motor vehicle) with potentially catastrophic consequences, often occurring in situations where the offender has a reckless disregard for other road users as demonstrated by their blatant disrespect for road rules and wilful neglect of human life.

In the same way recent reforms have helped shift attitudes and responses to crime such as domestic violence, revenge porn, and one-punch assaults causing death, realising genuine change will rely strongly on attitudinal shifts amongst law makers, enforcers and the judiciary, as well as seeing behaviour change in the community.

The current situation requires a formal, bi-partisan crisis response that centres around root and branch law reform. This will then underpin effective initiatives that better deter criminal behaviour, rehabilitate offenders, educate road users and provide broader justice for victims and the community.

## **Summary of recommendations to the NSW Law Reform Commission**

**Recommendation 1: New Law** – strong action, strong message. Urgently draft and introduce a new separate road crimes Act as the foundation for reform, by 2025.

**Recommendation 2a: A New Vehicular homicide offence** to be created and incorporated into the new road crimes Act.

**Recommendation 2b: New hierarchy of offences** – define new offences for serious road crime to be included in a new road crimes Act.

**Recommendation 2c: New offences for non-drivers (Accessorial liability)** to be included in the new road crimes Act.

**Recommendation 3a: Penalties – Vehicular Homicide** maximum penalties to be set consistently and in line with other crimes that result in death.

**Recommendation 3b: Penalties – licence disqualification** periods to be increased and rehabilitation programs applied.

**Recommendation 3c: Penalties – mandatory alcohol interlocks** to be enforced for all convicted drink driving offenders.

**Recommendation 3d: Penalties for repeat traffic offenders** must be increased and use of technology, such as black box telematics, expanded.

**Recommendation 4a: New sentencing approach** that recognises that deaths and serious injuries caused as a result of serious road crime must receive sentencing outcomes consistent with sentencing outcomes for death and serious injury in other criminal circumstances.

**Recommendation 4b: Victim impact panel program** – to be mandated for serious and repeat offenders and enshrined in legislation.

**Recommendation 4c: Standard non-parole periods** – sentences for serious road crime that results in death must include a standard non-parole period.

**Recommendation 5: Appropriate jurisdiction of higher courts** – serious road crime offences to be heard in District or Supreme court only.

**Recommendation 6: New approach to designing laws and services** – Embed a victim-centred design approach to new laws and services and include road crime in the Charter of Victims' Rights.

**Recommendation 7: Road fatality reporting of all road deaths in NSW** drawing from safety practices in workplaces and aviation, to enhance investigations, promote transparency, and inform road safety measures while safeguarding individual privacy.

## 1. Introduction

### About us

The Road Trauma Support Group NSW (RTSG) is the voice of families impacted by road trauma and an active advocate for safer road for all. We provide support and education to victims of road trauma and walk alongside them as we continue to campaign for reform and work toward ensuring there are more effective connected support systems in place to help victims through the experience of road trauma.

RTSG has over 370 active members and seeks to achieve its Vision by working with all stakeholders and acts as an advocate for safer roads for all road users in NSW, with a special focus on trauma support, education, reform and research.

Support for families impacted by the death of a loved one due to criminal acts of another road user is available through Road Trauma Support Group on **1800 808 384**, [www.roadtraumasupportnsw.org](http://www.roadtraumasupportnsw.org)

For those suffering from grief and trauma following an accident or injury, we recommend grief and trauma support services on our website:

<https://www.roadtraumasupportnsw.org/usefulinformation>

RTSG founding members have prepared this submission, representing the views of RTSG members across NSW. The founding members are:

*Roxanne Arnold, wife of Steve killed by a drunk driver.*

*Tom Daher, son of Tannous killed by an unlicensed drugged driver.*

*Craig Mackenzie, stepfather of Veronique killed by a drugged and drunk driver.*

*David Vidal, father of Aaron, killed by a dangerous driver.*

*Duncan Wakes-Miller, father of Barney killed by a drunk driver.*

RTSG's Law Reform Manifesto (**Appendix A**), founded on evidence-based research and lived experience, provides an achievable plan to save lives. It represents our members' call for urgent action by government and the courts.

*The Unheard Trauma of Fatal Road Crimes in NSW* (April 2023) (**Appendix B**) is a research study conducted for RTSG by FiftyFive5 part of Accenture Song. Thanks go to 2,102 surveys completed by NSW residents, 20 interviews with families and close friends intimately affected by road trauma and 20 interviews with experts who interact with families included a range of perspectives from the professionals who support families in the days, weeks, months, and years post-crash.

While our submission to the NSW Law Reform Commission (LRC) *Serious Road Crime* Consultation Paper December 2023 (Consultation Paper) focuses on the Consultation Paper's topics, we urge reviewers and policymakers to refer to the Manifesto for the full suite of actions required, including initiatives that would support law reform.

### The Problems

The system is broken, current approaches to reducing road trauma are not working and NSW citizens are paying too high a price – death of loved ones. Road trauma death numbers in New South Wales are unacceptably high with (on average) one person dying on NSW roads every day in circumstances that should be avoidable.

At the NSW Road Safety Forum held on 22 February 2024, Transport for NSW Secretary, Josh Murray, and Chief of the Centres for Road Safety and Maritime Safety, Bernard Carlon, both described the jump in numbers of people dying on NSW roads as “a crisis situation”<sup>1</sup>. In the 12 months to 22 March 2024, 367 lives have been lost in NSW. 99 more people died in this 12-month period compared to the previous 12 months<sup>2</sup>. (NSW Centre for Road Safety, 2024)

Alarming, the number of people dying on NSW roads during 2023 and into 2024 is trending sharply upwards, following a downward or steady trend up until 2022. Compared with 2022, in 2023 there was a 36% increase of deaths where speeding was involved, an increase of 60% of deaths where fatigue was involved and an increase of 58% where alcohol was involved. Last year there was a 69% increase in people being killed in country urban areas on roads with speed limits below 80 km/hour and an 89% increase in people killed across NSW on roads with speed limits below 50km/hour.<sup>3</sup>

Risky behaviours are too often normalised by the Australian love-affair with the car and attitudes that driving is an individual right rather than a privilege that comes with responsibility. Combined with the social acceptance of alcohol consumption, recreational drugs (both legal and not) and speeding, this is a recipe for disaster.

Drivers – sometimes encouraged by their passengers and others – who commit road crimes can be emboldened in their risky behaviours because of a lack of visible policing and a light touch sentencing regime. There is no Australian legislation around accessorial liability for specifically dealing with serious road crime, that is for letting or getting into a car with an impaired driver, or otherwise encouraging or turning a blind eye to a clearly impaired driver.

We submit that the penalty regime in NSW is not reflective of the destructive and detrimental consequences road crime has on victims and members of the community. The penalties do not denounce and deter this conduct sufficiently so as to minimise its prevalence in our community. It is RTSG’s submission that the current penalty framework offers little deterrent for drivers who continue this course of criminality on our roads. Sentencing lacks proportionality with other violent crimes or wilful neglect for human life.

RTSG’s ground-breaking research on the impact of road crime in NSW conducted by independent research agency FiftyFive5, *The unheard trauma of fatal road crimes in NSW* (2023)<sup>4</sup> (Appendix B), provides a clarion call to action and explains the ripples of road trauma that are felt throughout the NSW community.

Our research shows that road trauma has severe economic and social consequences for individuals and the community, including mental health challenges, loss of faith, decrease in work/study performance, loss of friendships, suicidal thoughts and alcohol/drug/gambling problems.

Our research also shows that community expectations are not being met, with:

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<sup>1</sup> Transport for NSW, NSW Road Safety Forum 2024

(<https://www.transport.nsw.gov.au/roadsafety/what-we-do/nsw-road-safety-forum-2024>)

<sup>2</sup> Transport for NSW, Centre for Road Safety, statistics

(<https://www.transport.nsw.gov.au/roadsafety/statistics>)

<sup>3</sup> Transport for NSW, 2024 NSW Road Safety Forum, Attendees Information Pack, Feb 2024

<sup>4</sup> Road Trauma Support Group NSW and FiftyFive5, *The unheard trauma of fatal road crimes in NSW* (April 2023)

- 62 per cent of people supporting the charging of drivers with vehicular manslaughter when they kill someone on the road;
- 73 per cent believing punishments for driving on drugs should be harsher;
- 59 per cent wanting public investigations and reporting of causes of fatal crashes; and
- 69 per cent supporting participation in Victim Impact Panels for offenders to regain their licence.<sup>5</sup>

NSW is in the midst of a road crime and road trauma crisis. The consequences of this are that members of the community are not protected and, relevantly, justice is not being afforded to the most important stakeholder group in this – victims and their families.

### ***The Solutions***

The LRC has been asked to review and report on whether the existing provisions dealing with serious road and dangerous driving offences and accessorial liability provisions remain fit for purpose.

To answer the guiding question proffered in the Consultation Paper 2023<sup>6</sup> –

**Yes, the law needs to change. And drastically.**

NSW should (and could) be the leader in road crime reform, analysing and incorporating best practice policy and judicial outcomes of other Australian and overseas jurisdictions.

It is our ultimate submission to the LRC that the current provisions of the *Crimes Act 1900* (NSW) and *Road Transport Act 2013* (NSW) are outdated and are not able to combat the epidemic of road crime on NSW roads. The punishments and consequences for serious road crime offences have not evolved to reduce rates of reoffending.

*We must go to the heart of the behaviours that are causing such a rapid increase in road deaths.*

The legislation<sup>7</sup> and the guideline judgment of *R v Whyte* [2002]<sup>8</sup> are decades old and are now not the correct or appropriate instruments to sentence, reduce road crime and protect our community.

*New stand-alone legislation should become the centrepiece of reform, complimented by government policy on a safe systems approach to road safety which has been proved effective (for example, in Sweden).*

The *R v Whyte* guideline judgment is outdated and can be eradicated with the introduction of new, over-riding legislation. New provisions drafted within new legislation to encapsulate the objective seriousness, moral culpability and aggravating and mitigating factors for an offender will provide a clearer guideline for dealing with serious road crime.

<sup>5</sup> Road Trauma Support Group NSW and FiftyFive5, *The unheard trauma of fatal road crimes in NSW* (April 2023)

<sup>6</sup> NSW Law Reform Commission, *Serious road crime Consultation Paper* (December 2023), 1

<sup>7</sup> *Crimes Act 1900* (NSW) *Road Transport Act 2013* (NSW)

<sup>8</sup> *R v Whyte* [2002] NSWCCA 343; 55 NSWLR 252



Road crime needs to be recognised for what it is – a violent and unprovoked assault on the person with a deadly weapon (a motor vehicle) with potentially catastrophic consequences, often occurring in situations where the offender has a reckless disregard for other road users as demonstrated by their blatant disrespect for road rules and a willful disregard for human life. The crucial aspect requires an attitudinal shift amongst all stakeholders, which will lead to behavioural changes, by systematically altering mindsets and strategies to combat this crime, like we have addressed the attitudes surrounding alcohol-fueled violence, one-punch assaults, revenge porn and domestic violence.

Cultivating a steadfast attitudinal and cultural mindset shift that road crime will not be tolerated in any circumstances will consequently lead to a decrease in road-related crimes and dangerous driving. Everyone in the NSW community, including government officials, professionals who interact with bereaved families, the media, and the wider community, can play a role in both reducing fatalities on NSW roads and in minimising the traumatic aspects of the experience for those who find themselves in the horrific situation of losing a loved one due to the criminal act of another.<sup>9</sup>

The Consultation Paper has clearly identified the complexity of road crime identification, conviction, sentencing and parole options. The discrepancy in penalties and sentencing outcomes for road crime is both distressing and insulting for the community and victims of crime and does little to address the increasing numbers of lives lost and families damaged irreversibly.

We recognise the support for a review of serious road crime expressed by the NSW Police Force in its preliminary submission, notably that it “welcomes any insights and recommendations to improve the experiences of victims and their families and works towards providing a stronger framework of deterrence and accountability associated with road trauma”.

The road trauma crisis response must be centred around root and branch law reform that educates all on vehicular responsibilities, deters criminal road behaviour, rehabilitates offenders and provides justice for victims and the community. And this must be done with a sense of urgency and bi-partisanship so as to address this crisis and save the avoidable loss of lives on NSW roads.

***Law Reform Action Plan: how NSW can lead the way***  
**RSTG NSW responses to Consultation Paper<sup>10</sup>**

## **2. Serious road crime offences**

In the pursuit of justice, support for those impacted by the tragic loss of a loved one due to criminal acts on our roads, and the compelling need to save lives, the Road Trauma Support Group NSW (RTSG) calls for major and urgent law reform.

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<sup>9</sup> Road Trauma Support Group NSW and FiftyFive5, *The unheard trauma of fatal road crimes in NSW* (April 2023)

<sup>10</sup> NSW Law Reform Commission, *Serious road crime Consultation Paper* (December 2023)



Existing serious road crime offences are **not** fit for purpose. The following RTSG recommendations form the foundation for legislation that reflects the true criminality and destruction associated with these crimes.

### **Recommendation 1: New Law – strong action, strong message.**

Urgently draft and introduce a new separate road crimes Act as the foundation for reform, to take effect no later than 2025.

*Ref: Consultation Paper Question 2.10*

Public policy and legislative reform are the keys to addressing the current road trauma crisis. This reform needs to be based on a foundation of new serious road crime laws that articulate more appropriate offences, penalties and sentencing guidance that achieves better outcomes and reflects community expectations.

*“Crimes committed in a motor vehicle must be considered just as seriously as other crimes. The concept of proportionality should apply.”*

*RTSG Member*

To effectively reduce death and serious injury from road crime, the full hierarchy of indictable offences and penalties relating to vehicular crimes should be clearly articulated in the one Act. This legislation should encompass a range of provisions specifically tailored to handle cases involving criminal acts on the road, accessorial accountability and recidivist driving offenders.

A new singular road crimes framework for NSW would streamline legal processes, improving consistency and fairness in the pursuit of justice and reduce the complexity of other involved Acts. It would provide a centralised framework and raise social awareness of the seriousness of road crime, and it would complement a safe systems approach to road management.

#### **Strong action: Why change**

A major shift in law signals to the community that road crime is unacceptable. In recent times, new legislation has been passed to respond to escalating criminal conduct such as firearm offences, domestic violence, drugs and even the recent revenge porn laws. Similarly, responses to road crime offences such as unlawful killing and violent crime need to be more effectively enshrined in a new standalone legislation.

*35 people were killed during an abhorrent criminal act in Port Arthur. Ten times this number of people were killed on NSW roads last year.*

The mass killing of 35 people in Port Arthur in 1996 was an appalling and destructive act that devastated the families and friends of those who lost their lives, and shock and sadness reverberated throughout the entire nation. With respect to the victims' families and communities, we would like to use the response to this as an example of swift government action, including support for law reform to drive the change.

Within 12 days of this incident, then Prime Minister John Howard announced a scheme for uniform gun laws and the National Firearms Agreement, which was quickly endorsed by Australian governments<sup>11</sup>. This gun law reform resulted in an immediate and major reduction

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<sup>11</sup> The Howard Library UNSW, Case Study National Firearms Agreement

(<https://www.howardlibrary.unsw.edu.au/sites/default/files/2021-01/Case%20Study%20National%20Firearms%20Agreement.pdf>)

in homicides involving firearms and eventually shifted the community's attitude towards firearms.

*The Firearms regime in NSW is a perfect example of how owning a gun is about being a fit and proper person. A new serious road crime Act should similarly define what is a fit and proper person to be in charge of a motor vehicle.*

In her book *A Lesser Species of Homicide. Death, Drivers and the Law*, the accomplished academic author and researcher Dr Kerry King recommends that only by “cementing understandings that the mismanagement of a vehicle is as dangerous or negligent as discharging a firearm in a public” place even without the presence of aggravating factors and by completing a “wholesale revision of penalties across the entire spectrum of driving conduct” can we envisage real change.<sup>12</sup>

### **Case Study – Domestic Violence Law Reform**

RTSG strongly supports all policy and legislative reform that has improved outcomes and raised awareness of the seriousness of domestic violence crimes, especially victim-informed responses that have shaped this shift.

We acknowledge that true reform and the widespread behaviour change needed to address family and gender-based violence is very much a work in progress. By using domestic violence legislative reforms as a case-study, we do not wish to take away from the serious nature of these deaths and injuries. Instead, we believe it may serve as a multi-faceted framework for road trauma law reform, by radically improving public policy, speeding up behaviour change and providing a systemic and community-wide way to address the road trauma crisis.

This broadscale reform provides a case study to show the impact that can be achieved from new public policy, new action plans, new stand-alone laws, new offences, intergovernmental agreement, improved rapid response mechanisms, new information and data sharing.

Campaigners for domestic violence reform and victims of violence had long been calling for urgent law reform to better protect families and reduce the abhorrent numbers of people, mostly women and their children, dying and being injured and scarred for life. Too often it was referred to as a silent epidemic, although women had been attempting to shine a light on violence for decades.<sup>13</sup>

In April 1999, the Domestic Violence Legislation Working Group, comprising Commonwealth, State and Territory officials, produced the *Model Domestic Violence Laws*

<sup>12</sup> Dr Kerry King, *A Lesser Species of Homicide. Death, Drivers and the Law*, Perth, UWA Publishing (2020), 272-3

<sup>13</sup> Alana Piper and Ana Stevenson, *The long history of gender violence in Australia, and why it matters*, The Conversation, (15 Jul 2019) (<https://theconversation.com/the-long-history-of-gender-violence-in-australia-and-why-it-matters-today-119927>)

*Report*. This contained model State/Territory legislation dealing with domestic violence protection orders, as well as commentary on specific features of the model.<sup>14</sup>

The *Crimes (Domestic and Personal Violence) Act 2007*<sup>15</sup> repealed and enacted Part 15A of the *Crimes Act 1900* (NSW) with modifications as a Principal Act. The new Act was designed to help address the unacceptable levels of personal and domestic violence and provide police and magistrates with more specific powers to respond quickly, for example with interim orders, especially in the case of repeat offenders. The Act included a new offence (at that time) of domestic violence designed to “help identify repeat offenders”<sup>16</sup>.

Since the decision by many state and territory legislatures to establish new domestic and personal violence laws, awareness has grown that violence in the home and between current and former intimate partners is abhorrent and not to be accepted as just part of our culture. It has moved it from a private to a community issue and reforms are continuing as the number of deaths remain high.

In 2022, Commonwealth, State and Territory governments pledged to end violence against women and children in Australia within one generation. The National Plan to End Violence against Women and Children 2022-2032 includes Prevention, Early Intervention, Response, and Recovery, and healing and implementation is being guided by a victim-survivor advisory group. Underpinning the plan is ongoing data collection and evidence building.<sup>17</sup>

The plan provides definitions for gender-based violence and describes key focus areas for government, including coercive control, intimate partner homicide, sexual violence and harassment, pornography and economic abuse including financial abuse. Governments have commenced legislative reform that recognises these particular crimes.

While some states have already implemented new information and data sharing regimes, the Australian Government is now establishing a new national online system to provide more up-to-date information on the number of Australians killed by a current or former partner, which will provide quarterly updates on intimate partner homicides.<sup>18</sup>

**Strong message: Improving outcomes from new laws relies on changing the narrative.**

The language used by those in authority, and within our laws, is also a significant factor in the way death and injury due to road crime is perceived, and subsequently, dealt with by the law

<sup>14</sup> The National Council to Reduce Violence against Women and their children, *Domestic Violence Laws in Australia* (June 2009) ([https://www.dss.gov.au/sites/default/files/documents/05\\_2012/domestic\\_violence\\_laws\\_in\\_australia\\_-\\_june\\_2009.pdf](https://www.dss.gov.au/sites/default/files/documents/05_2012/domestic_violence_laws_in_australia_-_june_2009.pdf))

<sup>15</sup> Parliament of NSW, Bills (2007) (<https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=1265>)

<sup>16</sup> NSW, *Parliamentary Debates*, Tanya Gadiel, Member for Parramatta, Legislative Assembly Hansard, (16 Nov 2007) (<https://www.parliament.nsw.gov.au/bill/files/1265/LA%208007.pdf>)

<sup>17</sup> Commonwealth of Australia, National Plan to End Violence against Women and Children 2022-2032, A joint Australian, state and territory government initiative (2022) ([https://www.dss.gov.au/sites/default/files/documents/10\\_2023/national-plan-end-violence-against-women-and-children-2022-2032.pdf](https://www.dss.gov.au/sites/default/files/documents/10_2023/national-plan-end-violence-against-women-and-children-2022-2032.pdf))

<sup>18</sup> Senator the Hon Katy Gallagher, The Hon Amanda Rishworth MP, the Hon Mark Dreyfus KC MP, Media Release *Albanese Government to improve reporting on intimate partner homicide* (25 Nov 2023)

and the courts. The use of the term 'accident' when referring to road crime is insulting and distressing to victims and their families but also greatly undermines the gravity of the situation. Minimising the severity of a crash and its consequences by using language that does not match that used to describe other manslaughter and murder allegations, can also contribute to the inclination of lesser penalties being applied or a sense that the community sees the causing of 'an accident' as a lesser or somehow avoidable incident.

### **Case Study – Domestic Violence Law Reform**

*Road fatalities that involve criminal behaviour need a different term.*

As described by respected academic Dr Kerry King<sup>19</sup>:

"In 1960, Professor Lewis told the Commonwealth Senate Select Committee of Inquiry into Road Safety that "civilised society had never really faced the problems of road injury and fatality and deplored the use of the word 'accident' with its connotation of inevitability".

"In 2004, almost half a century after Professor Lewis' frustrated observations, the World Health Organisation declared a preference for the word 'crash' in that it denoted amenability to investigation and corrective, preventative action."<sup>20</sup>

Produced in collaboration with research agency FiftyFive5, part of Accenture Song, and the lived experience of road trauma victims, The Australian Road Collision Reporting Guidelines<sup>21</sup> were launched by RTSG in 2023. These guidelines encourage Australian media to report road crashes responsibly, which is crucial for informing the public and promoting safety.

[rc-rg.com.au](https://www.rc-rg.com.au)

The term 'accident' suggests a crash was inevitable and unavoidable. Most often, these are NOT accidents but collisions that could have been avoided.

The preliminary submission of the Office of the Director of Public Prosecutions (ODPP) proposes that "use of the term 'accident' ...be avoided in the prosecution of serious road crimes..."<sup>22</sup>

Many areas of the NSW government such as the NSW Police Force and Transport for NSW have already moved to ensure the word 'crash' is used, but the term 'accident' is still commonly used in legal settings and the media.

New policy and legislation must set the standard by using only the word 'crash' in drafting of public policy and programs, including in legal submissions, deliberations and decisions, road traffic reports and media guidelines.

<sup>19</sup> Dr Kerry King, *A Lesser Species of Homicide. Death, Drivers and the Law*, Perth, UWA Publishing (2020)

<sup>20</sup> Dr Kerry King, *A Lesser Species of Homicide. Death, Drivers and the Law*, Perth, UWA Publishing (2020)

<sup>21</sup> Road Trauma Support Group NSW and FiftyFive5, Australian Road Collision Reporting Guidelines (2023) <https://www.rc-rg.com.au/>

<sup>22</sup> PRC77, NSW Office of the Director of Public Prosecutions, NSW Law Reform Commission website (17 Feb 2023)

*In recommending this change, we seek to accurately reflect the nature of these incidents and foster a mindset of social unacceptability for dangerous driving encouraging a generational change in road safety such as we have seen in attitudes to domestic violence and one-punch laws.*

## **Recommendation 2a: New vehicular homicide offences**

to be incorporated into the new road crimes Act

*Ref: Consultation Paper Question 2.1*

Serious road crime offences that result in death need urgent review and modernisation. A new offence of vehicular homicide should be created with maximum penalties that are aligned with the maximum penalties for homicide in the Crimes Act.

“Dr Claire Corbett of Brunel Law School noted that serious traffic offences are rarely conceptualised as ‘real’ crime, or offenders’ ‘real’ criminals. For the most part, Corbett noted, deaths on the road have been positioned as a traffic problem rather than a crime problem.”<sup>23</sup>

Observing the propensity to prosecute road crime at the lower range of road traffic offences rather than homicide charges, we propose clear definitions for a new offence of vehicular homicide be created as part of new stand-alone legislation.

*Crimes Act 1900 (NSW) s18(1)(a)* defines murder and maximum penalties. In NSW, a person commits murder if they kill another person and:

- they acted with reckless indifference to the person’s life, or
- they intended to kill the person, or
- they intended to cause “grievous bodily harm” to the person, or
- they killed the person while attempting to commit, or during or after actually committing, a “crime punishable by imprisonment for life or for 25 years.

Manslaughter is defined as “every other punishable homicide” that is not murder (*Crimes Act 1900 (NSW) s18(1)(b)*).

Driving a vehicle, or being encouraged to drive a vehicle while drunk, drug-affected, tired, speeding or any other illegal act which contributes to impairment, is irrefutably a reckless indifference to other people’s lives. While road deaths can be captured under existing law, a new offence of vehicular homicide contained within the new legislation would send a clear message that vehicular homicide is just as serious a crime as other forms of homicide.

*Britain’s head of road policing (Chief Constable Jo Shiner) has said that intoxicated motorists who cause fatal crashes should face the same penalty as a murder charge.*

*“If someone takes the decision to get behind the wheel of a car when they have taken drink or drugs and would know what impact that would have on their driving, why would you not expect them to face the full consequences?” she said.*

<sup>23</sup> Dr Kerry King, *A Lesser Species of Homicide. Death, Drivers and the Law*, Perth, UWA Publishing (2020)

*"I liken it to some of the homicide investigations, to some of the sentences that we get for murders.*

*"I actually do believe that if someone makes that decision to get behind the wheel, under the influence of drink or drugs, that is a conscious decision they have made... to put others at risk."<sup>24</sup>*

"In Australia, vehicular manslaughter sits at the bottom of the fault hierarchy of intention, knowledge and recklessness, as criminal negligence. Intention's stronghold on the apex of criminality is generally considered non-controversial. Yet, reckless indifference to the lives and safety of others, particularly when in charge of a dangerous object in a public thoroughfare, arguably represents a challenge to received notions of blameworthiness."<sup>25</sup>

*RTSG also recommends that the issues raised in the preliminary submission of the NSW Office of the Director of Public Prosecutions (ODPP) relating to a new vehicular manslaughter offence to be considered in the creation of the new legislation.*

As expressed by the ODPP, "...although no category of manslaughter can be considered more or less serious than the other, the determination of the basis upon which category of vehicular manslaughter the offence lies is nevertheless of some importance. Properly identifying the category provides clarity regarding the nature of the prosecution case and assists the Court in the sentencing process".<sup>26</sup>

### **Case Studies – One Punch Laws**

One-punch laws have been strengthened and clarified in most Australian jurisdictions over the past decade, in response to demands from victim groups and the community.

*These crimes are now broadly seen as socially unacceptable. What was once known as a 'King Hit' is now known as a 'Coward's punch'.*

A common theme in these reforms has been an increase in penalties, including minimum sentences in the case of NSW, and new offence definitions particularly around intent.

This could provide guidance for the drafting of new road crime offences.

#### **Queensland**

In 2014, Queensland created a new offence of Unlawful striking causing death, carrying a maximum penalty of life imprisonment. Intent to kill or reasonable foreseeability of death or grievous bodily harm does not need to be proven to convict under this offence.<sup>27</sup>

#### **Victoria**

<sup>24</sup> Daily Mail, *Drug and drink-drive killers should be treated like murderers, Britain's head of road policing says* (22 Feb 2024)

<sup>25</sup> Dr Kerry King, *A Lesser Species of Homicide. Death, Drivers and the Law*, Perth, UWA Publishing (2020)

<sup>26</sup> PRC77, NSW Office of the Director of Public Prosecutions, NSW Law Reform Commission website (17 Feb 2023)

<sup>27</sup> Queensland Government Cabinet office, *Safe Night Out Bill 2014 Explanatory Notes* (2014) (<https://cabinet.qld.gov.au/documents/2014/jun/safenightoutbill/Attachments/ExNotes.pdf>)



Also in 2014, Victoria strengthened its laws relating to one-punch attacks. The *Crimes Act 1958* (VIC) amendment states that a single punch or strike is to be taken to be a “dangerous act” in prosecutions of “manslaughter by an unlawful and dangerous act”.<sup>28</sup> The maximum penalty applicable is 25 years imprisonment.

A minimum non-parole period of not less than 10 years applies, unless the court finds that a special reason exists.<sup>29</sup>

### **New South Wales**

In NSW S25A of the *Crimes Act 1900* describes “assault causing death”, commonly referred to as a “sucker punch”.

“(1) A person is guilty of an offence under this subsection if—

- (a) the person assaults another person by intentionally hitting the other person with any part of the person’s body or with an object held by the person, and
- (b) the assault is not authorised or excused by law, and
- (c) the assault causes the death of the other person.”<sup>30</sup>

The maximum penalty is imprisonment for 20 years; or 25 years with a mandatory minimum sentence of 8 years, when the person is intoxicated as a result of having voluntarily consumed alcohol or illicit drugs.

Even if the offender did not intend the other person to die, these penalties still apply.

*Although no other Australian state or territory currently has a specific offence of vehicular manslaughter or homicide, it is incumbent on NSW to lead the way.*

As noted in the Consultation Paper, the ACT Legislative Assembly’s Standing Committee on Justice and Community Safety held an inquiry into dangerous driving in 2023. The committee made recommendations that the ACT Government consider:

- Renaming the ACT offence of culpable driving causing death to ‘vehicular manslaughter’, and
- Bringing the maximum penalties for culpable driving causing death (14 years for a basic offence, 16 years for an aggravated offence) up to the maximum penalties for manslaughter (20 years for a basic offence, or 28 years for an aggravated offence).<sup>31</sup>

The ACT Standing Committee considered that “culpable driving causing death is effectively the same thing as manslaughter” so renaming the offence would “better reflect what it is”. In its view, raising the penalty would align “with the nature of the offence” and its impact on victims and families.

The ACT Government has agreed to consider the appropriateness of the offence’s name, the benefits of renaming it, and the current penalties for the offence in the context of the penalties for manslaughter.<sup>32</sup>

<sup>28</sup> Sentencing Amendment (Coward’ Punch Manslaughter and other matters) Bill 2014 (VIC)

<sup>29</sup> *Sentencing Act 1991* (VIC) s9C

<sup>30</sup> *Crimes Act 1900* (NSW) s25A

<sup>31</sup> NSW Law Reform Commission, *Serious road crime Consultation Paper* (December 2023), 15, paragraphs 2.30, 2.31

<sup>32</sup> Australian Capital Territory, Legislative Assembly, Standing Committee on Justice and Community Safety, *Inquiry into Dangerous Driving*, Report 16 (2023) [2.52], rec 2; *Crimes Act 1900* (ACT) s 29(2)–(3), s 15.

Clearly, the creation of new offences with maximum penalties would enliven a real consideration of the purposes of sentencing being that the offender is punished, deterred, community protected, held accountable, denounced and most importantly for the recognition of the harm done to the victim of the crime and the community.

### **Recommendation 2b: New hierarchy of offences**

– define new offences for serious road crime to be included in a new road crimes Act

*Ref: Consultation Paper Questions 2.2 – 2.6*

As described in the Consultation Paper, “...moving serious road crime offences from the Crimes Act to the new legislation,” and “...shifting certain related RTA offences to this new legislation” could possibly form the basis of new legislation. “Consolidating related offences...could assist to reduce complexity and set out the legislative hierarchy more clearly. It could provide an opportunity to review and amend related offences and remove unnecessary duplication.”<sup>33</sup>

*With new serious road crime legislation as the foundation of reform, RTSG calls for an evidence-based approach to drafting of all new offences, rather than trying to retrofit existing offences into the new legislation.*

All road crime offences currently contained within the Crimes Act and the Road Transport Act should be reviewed to inform a new hierarchy of offences. The creation of a new instrument of law would allow for a new offence of vehicular homicide, a new hierarchy of offences for inclusion in the new road crimes Act, commencing with this practical and powerful first step.

Driver conduct, and those who encourage or allow them to break the law and drive illegally, must be considered in this new framework of offences and we have addressed several of the discussion points raised in the Consultation Paper below.

*Ref: Consultation Paper Question 2.2*

RTSG recommends that any person of any age who is in control of a motor vehicle and offends in a way that their driving is dangerous or intended to be dangerous not be afforded the discretion enlivened currently at law. For example, exceeding the speed limit, driving while tired or driving following excessive intake of alcohol or drugs, or any other illegal act which contributes to impairment needs to be acknowledged as an intentional action that encapsulates behaviours of contemplation, moral impropriety, actions of criminality, wilfulness and most importantly not a momentary lapse of attention or decision-making which could not ever be considered as involuntary.

The term ‘at the time of impact’ is restrictive and binds the judicial system when contemplating objective seriousness. The term should incorporate all of the conduct of the offender prior to and after the crime being committed including if the driver is aware of any significant risk of impairment, such as a medical condition, fatigue or other risk factor not already described in Section 52A of the Crimes Act.<sup>34</sup>

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<sup>33</sup> NSW Law Reform Commission, *Serious road crime Consultation Paper* (December 2023), 34, paragraphs 2.121, 2.122

<sup>34</sup> *Crimes Act 1900* (NSW) s 52A



The Consultation Paper canvassed an option that could be considered in the new hierarchy of offences, that a person should be “guilty of dangerous driving if the impact is:

- caused by the dangerous driving, and
- a reasonably foreseeable consequence of that driving.”<sup>35</sup>

*Ref: Consultation Paper Question 2.3*

RTSG concurs with the recommendation provided in the ODPP preliminary submission that there should be consideration of “the need for a legislative approach to causation that accommodates an appropriate period between the act of voluntary dangerous driving and any causally related impact that causes death or grievous bodily harm”.<sup>36</sup>

The word “very” should be removed when describing circumstances for aggravated driving. Without qualification [over and above s7 a,b,c<sup>37</sup>], or reference to direct correlation to the manner of driving, it provides little to the legislation. Additionally, as presented by the ODPP in its preliminary submission, “‘very substantially impaired’ ...is unnecessarily confusing and may pose an inordinately high bar on proof of the circumstance of aggravation...”<sup>38</sup>

Driving offences such as speeding, not stopping at red lights, drug and drink driving, reckless driving are all serious offences that have resulted in the death of many victims, many of whom have families that are members of RTSG. Many of these offences do not have a sentence of imprisonment, yet ought to be properly regarded as high-risk offences, as evidenced by the Government’s own advertising campaign.

There are many factors that should be considered aggravating, and the current list of factors provide too many loopholes that can result in lower sentencing. “Degree of” and “extent of” can be difficult to apply, especially when those terms do not change the outcome or finality of death and trauma. For example, exceeding the speed limit should be recognised as an aggravating factor where someone dies, because driving at 10km/hour over the limit or 45 km/hour over the limit did not change the outcome of the death.

Circumstances relating to speed must be amended. The definition of “high range speeding offence” in the Road Transport Act does not accurately reflect the risk of increased speeding in lower speed limit areas, for example where there are speed limits of 40km/hour or 50km/hour.

Amendments should consider the speed of the offender relative to the legal speed limit. 72 people died on NSW roads with designated speed limits of 50 km/hour in 2023, an increase of 89% compared to the previous year.<sup>39</sup>

If an offender does not cause their own or someone else’s death on the roads, it should be enshrined in the new legislation that reoffending will be severely penalised at law.

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<sup>35</sup> NSW Law Reform Commission, *Serious road crime Consultation Paper* (December 2023), 20, paragraph 2.56

<sup>36</sup> PRC77, NSW Office of the Director of Public Prosecutions, NSW Law Reform Commission website (17 Feb 2023)

<sup>37</sup> *Crimes Act 1900* (NSW) s 7 a, b, c

<sup>38</sup> PRC77, NSW Office of the Director of Public Prosecutions, NSW Law Reform Commission website (17 Feb 2023)

<sup>39</sup> Transport for NSW, 2024 NSW Road Safety Forum, Attendees Information Pack, Feb 2024

*Ref: Consultation Paper Question 2.5*

References to vague terms such as 'furious' or 'wanton' should be removed and should not be included in any new road crimes legislation. Without direct correlation to the manner of driving, it provides little value to legislation.

The RTSG supports a framework that identifies dangerous and negligent driving but does not support a middle tier of reckless, or any other type of, driving. Our view is that anything higher than negligent is dangerous, whether on or off-road.

*Ref: Consultation Paper Question 2.7*

RTSG views a failure to stop and assist where a person has died or been seriously injured in a crash as very serious. This offence would be akin to a vehicular homicide offence where a driver or accessory at the fact has fled, or in the case of other people not stopping and assisting.

If absconding drivers are later located, they are not able to be alcohol or drug tested due to the time delay and hence their intoxication levels at the time of the crash are not taken into consideration by courts. This allows them to reduce their culpability at the time of the crash when considering charges and sentencing.

Definitions for not stopping and assisting following a crash must be strengthened and penalties increased.

*Ref: Consultation Paper Question 2.9*

RTSG is extremely concerned by the increase in risky driving and supports the option on predatory driving described in the Consultation Paper to expand the offence of predatory driving to cover predatory driving that does not involve actual or threatened impact.<sup>40</sup>

*For the drafting of a new road crimes Act, we would recommend a review of both the predatory driving and menacing driving offences, clarification of definitions and increase in maximum penalties in both cases.*

### **Recommendation 2c: New offences for non-drivers (Accessorial liability)**

to be included in the new road crimes Act

*Ref: Consultation Paper Question 2.11*

RTSG submits that the current law on accessorial liability in relation to road crime is wholly inadequate.

It places focus on the driver to the complete exclusion of other persons who have played a contributory role in the criminal behaviour by the defendant (for example, other passengers in the vehicle and/or adults who have turned a blind eye to their children's illegal behaviour). We refer the LRC to the case of *R v Davidson* [2021] NSWDC 164<sup>41</sup> with respect to the offending behaviour of the passenger in that matter, as documented by Bennett SC DCJ.

We also refer to *R vs Merrington* [2021]<sup>42</sup> with respect to the offending behaviour of adults who allowed underage drinking on their premises and encouraged dangerous driving behaviours.

Consistently applying significant sentencing to accessorial offences is critical to being able to improve the reduction of serious road crime. A person sitting in a getaway car whilst other offenders commit an armed robbery would be also charged with the armed robbery if they had knowledge of what was occurring under the 'common purpose' principle of law. The same is not for road crime.

To send a strong and clear message to the community that such conduct by offenders will be met with very significant punishment will be one of the strongest deterrents of this reform.

It is necessary to start imposing sentences of sufficient severity to deter passengers, drivers and the broader community from engaging in conduct that in anyway encourages or simply ignores risky and dangerous behaviour that can lead to any manner of road crime.

If someone is involved in enabling a violation of the law, they can and should be held just as responsible as the primary offender. Complicity at law exists in NSW and should be applied to road crime. There are also relevant laws in NSW that create a joint criminal enterprise (JCE) that may find relevant application in the new road crimes Act.

Creating a new offence for non-drivers, and including it in the new road crimes Act, would help clarify that a person (or people) who provides assistance before, during or after (eg fleeing the scene) the offensive acts can be liable for the offence under the principles of JCE or common purpose.<sup>43</sup>

Under a recommended new offence, a person may be criminally liable in various ways for a crime physically committed by another person. In this case the driver would be the principal offender and the person assisting would be the accessory.

A new serious road crime offence of accessorial liability should also include:

- failing to exert effort to prevent criminal driving behaviour;
- failing to render immediate assistance by calling emergency services straight away;
- responsible serving of alcohol in all public venues and private homes. (RTSG can provide many case studies where public and private venues enabled drink driving deaths and serious injury.)

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<sup>40</sup> NSW Law Reform Commission, *Serious road crime Consultation Paper* (December 2023), 32, paragraph 2.115

<sup>41</sup> *R v Davidson* [2021] NSWDC 164

<sup>42</sup> *R v Merrington* [2021]

<sup>43</sup> Peter Zahra SC and Jennifer Wheeler, *Principles of Complicity*, Public Defenders Chambers (2015) [https://www.publicdefenders.nsw.gov.au/Pages/public\\_defenders\\_research/Papers%20by%20Public%20Defenders/public\\_defenders\\_principles\\_of\\_complicity.aspx](https://www.publicdefenders.nsw.gov.au/Pages/public_defenders_research/Papers%20by%20Public%20Defenders/public_defenders_principles_of_complicity.aspx)

Implementing accessorial liability for impaired driving could revolutionise road safety efforts. By emphasising accountability and fostering responsible behaviour, we can create a cultural shift where impaired driving is no longer tolerated or excused. Just as society now views violent assault as abhorrent, we can make impaired driving equally reprehensible—a social anathema that is met with swift and severe consequences.

### 3. Penalties

The existing application of penalties are not fit for purpose and do not adequately address the purposes of sentencing as outlined in section 3A of the *Crimes (Sentencing Procedure) Act 1999*.

A fundamental pillar of this section is to ensure the offender is punished, deterred and the community is protected. More importantly, the conduct is denounced with the offender held accountable for their actions and the harm to the victim and community is recognised.

The senseless road trauma in this State remains at far too high a level, and alcohol and speed play a significant role in the level of deaths and serious injuries that occur on our roads. The need to condemn and denounce the type of conduct involved in these offences by way of the imposition of a significant sentence is high, in order to properly reflect general deterrence, that is, to send the message to the community that such disgraceful and appalling conduct will be met with very significant punishment.

Penalties currently are not in line with the prevalence and continued course of road crime committed by individuals in the community. To protect the community and combat the increase in road crime, the consequences of road crime penalties must be felt by offenders, particularly repeat offenders. Mandatory disqualifications, compulsory completion of traffic offender programs, financial and reputational consequences such as further costs to be licensed, offences being recorded as criminal convictions, and restrictions as to individual accessing certain motor vehicles are what peak bodies such as RTSG and the wider community require.

Nearly every member of our community is a road user in some capacity, whether as a driver, passenger or pedestrian. The majority of our community are drivers. People are entitled to use our roads without the risk of having someone drive with no regard or consequence to their actions.

The United Nations Crime Prevention and Criminal Justice educational advice, provides for five underlying justifications of criminal punishment to consider: retribution; incapacitation; deterrence; rehabilitation and reparation<sup>44</sup>. None of these are addressed with specificity and precision in the National or State Legislation when road crime is committed.

Recent sentence outcomes have been wholly inadequate and inappropriate because maximum sentences are very rarely imposed.

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<sup>44</sup> United Nations Office on Drugs and Crime, E4J University Module Series: Crime Prevention and Criminal Justice, Topic Two *Justifying punishment in the community* (sourced Mar 2024) (<https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-7/key-issues/2--justifying-punishment-in-the-community.html>)

RTSG recommends that the best way forward is to prepare a new road crimes Act with clear penalty options and standard non-parole periods. It is of utmost importance to have new sentencing guidelines that are continually improved so that the new penalties are applied well and do not become outdated. We propose that a full review of the penalties is undertaken to align with the new offences and the hierarchy of offences that are required. Regular evaluation of sentencing trends is also required to ensure alignment with community expectations.

As a guiding approach, RTSG is recommending that vehicular homicide maximum penalties mirror those of other homicide offences and include Standard Non-Parole Periods (SNPPs) for these offences.

For remaining offences (including the suite of new offences that may be created), we recommend reviewing of maximum custodial sentences and a package of new programs that could form a condition of sentence or release, such as education, new driving tests for offenders and technology including alcohol interlocks and black box telematics to reduce the possibility of repeat offending.

*"Intensive correction orders (ICOs) are still considered custodial, yet they paradoxically entail individuals fulfilling community orders unsupervised, a practice deemed benign, devoid of punishment, rehabilitation, or deterrence for offenders, thus categorically ineffective and disrespectful to victims of road crime."*

RTSG member

### **Recommendation 3a: Penalties – Vehicular homicide**

- penalties to be set in parity with other crimes resulting in death.

Ref: Consultation Paper Question 3.1

Maximum penalties for serious road crimes should be in parity with other crimes which result in death, to properly reflect the trauma experienced by the victim, their family, friends and community. Causing a loss of life by breaking the law while driving a vehicle must be punished just as seriously as other causes of death and injury.

Many states in the USA have vehicular homicide offences with increased penalties and non-parole periods for repeat or aggravated offences.

In Tennessee, penalties include 8 to 60 years for Vehicular Homicide: Class B felony, not less than 8 years or more than 30 years and a fine of not more than USD\$25,000 may be imposed. Aggravated Vehicle Homicide: Class A felony, not less than 15 years or more than 60 years and a fine of not more than USD50,000 may be imposed.<sup>45</sup>

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<sup>45</sup> Mothers Against Drunk Driving (USA) *Vehicular Homicide* (July 2018)  
(<https://madd.org/wp-content/uploads/2022/06/Vehicular-Homicide.pdf>)

In England and Wales, penalties for those who cause death by dangerous driving and for careless drivers who kill while under the influence of drink or drugs were increased, effective June 2022. Drivers who cause death by speeding, racing, or using a mobile phone could face sentences equivalent to manslaughter, with maximum penalties raised from 14 years to life imprisonment.<sup>46</sup>

*Maximum penalties for offences in NSW involving death should align with maximum sentences for homicide.*

The current NSW maximum penalty for dangerous driving occasioning death (10 years' imprisonment) is far too low for the seriousness of the crime.

RTSG also proposes that intensive correction orders should **not** be available to offenders and that road crimes involving death are added to Section 67(1) of Part 5, Division 2 Crimes (Sentencing Procedure) Act.

Intensive correction orders do not reflect the community expectation for serious road crime penalty. Minimum non-parole periods should be applied for any offence that results in a person's death. Therefore, intensive correction orders must not be an option for serious road crime that involves death.

### **Recommendation 3b: Penalties – licence disqualification**

- period to be increased and rehabilitation programs applied.

*Ref: Consultation Paper Question 3.4*

Licence disqualification periods do not reflect victim and community expectations in relation to serious road crime.

*RTSG recommends an increase in default and minimum licence disqualification periods, even more so for second and subsequent offences. Recidivists should not be able to drive on our roads.*

In addition to licence disqualification periods being increased, specific rehabilitation programs designed to address recurrence of the risky driving behaviour for courts to order offenders to complete. This would help to ensure the offender is fit to regain a licence.

Similar to NSW work development orders where people with fines can undertake various rehabilitation courses, these should be expanded to include traffic offences/offenders who must undertake courses in order to have their licence returned.

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<sup>46</sup> Sentencing Council (UK) *Sentencing guidelines for motoring offences published* (15 Jun 2023) (<https://www.sentencingcouncil.org.uk/news/item/sentencing-guidelines-for-motoring-offences-published/>)

In addition, NSW should be exploring all avenues of technology to curb road crime. Any reduction in the civil liberties of convicted road criminals through the technological monitoring of behaviour is completely overshadowed by the urgent need to curb reckless and risky behaviour and save lives. Event Data Recorder (black box) technology has enormous potential for road safety and could be a condition for offenders regaining licence. It is also capable of recording all the parameters in the event of a road crash.

Means tested fines must be tested in the period prior to them having a licence suspended, and consideration should be given to whether an assets test, rather than an income test, is more appropriate. Criminals could easily just reduce their income to circumvent this penalty.

### **Recommendation 3c: Penalties – mandatory alcohol interlocks**

to be enforced for all convicted drink driving offenders

*Ref: Consultation Paper Question 3.4*

In addition to maximum penalties for all serious road crime, RTSG calls for Mandatory Alcohol Interlocks for all convicted Drink Driving Offenders. Enforcement of the program must be enshrined in legislation with an agency assigned accountability and reporting on the program.

US research by Mothers Against Drunk Driving (MADD) discovered people who are caught drunk driving have, on average, driven drunk 80 times prior to being charged, arrested and sentenced. MADD released a 50-state report in 2022 which found that ignition interlocks stopped 3.78 million drunk driving attempts over 14 years.<sup>47</sup>

Austrroads' publication Effectiveness of Drink Driving Countermeasures: National Policy Framework<sup>48</sup>, provided a policy and regulatory framework for reform, including the following key recommendations to reduce drink driving across Australia:

- extending a lower legal BAC limit to more drivers;
- improving general deterrence through more highly visible and randomised enforcement, combined with covert operations;
- expanding the use of interlock programs, with improved monitoring and case management;
- working more closely with the alcohol and other drug (AOD) sectors to manage alcohol dependent drivers;
- supporting measures to reduce societal use of alcohol;
- fast-tracking vehicle-based systems to prevent alcohol impaired driving.

Effective technology is affordable and proven effective. As a crucial step in preventing alcohol-related incidents on the roads, we advocate for the mandatory installation of alcohol interlocks for all individuals convicted of drunk driving. This proactive measure will contribute

<sup>47</sup> Mothers Against Drunk Driving (USA) Ignition Interlock Report: Putting an End to Drinking and Driving Attempts (Jan 2022)( <https://madd.org/wp-content/uploads/2023/01/2021-Ignition-Interlock-Report-FINAL-COPY.pdf>)

<sup>48</sup> Austrroads, *Effectiveness of Drink Driving Countermeasures: National Policy Framework* (18 Feb 2020) ( <https://austrroads.com.au/publications/road-safety/ap-r613-20>)



to the reduction of alcohol-related road trauma and influence public perceptions ensuring safer roads for everyone.

This technology can be funded at the offender's expense and can include facial recognition technology.

"The *Road Transport Act 2013* prescribes certain driving offences as 'mandatory interlock offences' and outlines applicable disqualification and interlock periods, which vary in length by offence type. The interlock licence conditions and offences relating to the program are contained in the *Road Transport (Driver Licensing) Regulation 2017*"<sup>49</sup>

In August 2022, the NSW Bureau of Crime Statistics and Research published research by Sara Rahman (The effectiveness of alcohol interlocks in reducing repeat drink driving and improving road safety).

"The Mandatory Alcohol Interlock Program (MAIP), which commenced in NSW in February 2015, introduced alcohol interlocks as a mandatory penalty for high range and repeat PCA offences. MAIP was expanded on 3 December 2018 to include offenders convicted of first-time mid range drink driving and alcohol drive under the influence (DUI) offences (Phase 2 of MAIP) and from 28 June 2021, offenders convicted of a combined PCA and drug driving offence also became eligible for MAIP (Phase 3 of MAIP)." <sup>50</sup>

The research showed that interlocks significantly reduce drink driving while interlocks are active but only reduce it modestly following their removal.

It is time to amend MAIP again to ensure **all drink driving offences** include penalty of mandatory interlock and require courts to issue a Mandatory Alcohol Interlock Order (MAIO) for every drink driving conviction, as well as an increased minimum period of disqualification and interlock. RTSG is also calling for stricter criteria which enables offenders to move from the 'disqualification period' to the 'interlock period'. Black box technology should also be available to apply as a further deterrent.

Most importantly, the enforcement of MAIP by the NSW Police Service and Transport for NSW needs to be enshrined in legislation.

### **Recommendation 3d: Penalties for repeat traffic offenders**

must be increased and use of technology, such as black box telematics for repeat speeding offenders, expanded

*Ref: Consultation Paper Question 3.4*

Serious road criminals should not be on our roads and need to face much greater penalties. Custodial sentences for blatant repeat offending are needed and a range of additional actions to change behaviour should include technology, education and retraining for licence.

Australian research on repeated illegal driving behaviour does not exist and is urgently needed, as outlined in our Manifesto (Appendix A).

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<sup>49</sup> NSW Roads and Maritime Services, *Alcohol Interlock Program Guide for Magistrates, Legal Practitioners and Police Prosecutors* (December 2018)

<sup>50</sup> Sara Rahman, NSW Bureau of Crime Statistics Crime and Justice Bulletin (Aug 2022) (<https://www.bocsar.nsw.gov.au/Publications/CJB/CJB251-Report-Effectiveness-of-MAIP-in-reducing-drink-driving.pdf>)



In NSW, we are particularly alarmed by drivers who continually flout traffic laws and put the lives of the public at risk. Evidence-based research commissioned by RTSG confirmed repeat offenders are six times more likely to be in a serious or fatal crash than first-time offenders. Urgent action is needed to curb repeat offending and protect the community.

Drivers with one or more offences (including high risk offences) in the past 5 years are overrepresented in fatal and serious injury crashes, while drivers with no offences are underrepresented. The current system for regulating traffic offences is complex and changing. Existing penalties and interventions include:

- licence suspension for accumulation of demerit points
- licence suspension for certain speeding offences
- driver disqualification for certain offences after conviction in court
- the mandatory alcohol interlock program
- vehicle sanctions, such as seizure or forfeiture of vehicles
- speed inhibitor conditions
- prevention courses such as the Traffic Offender Intervention Program, and the Sober Driver Program, and
- increased penalties for certain second or subsequent driving offences.<sup>51</sup>

We note that the NSW Government response to the recommendations of the NSW Sentencing Council Review of Repeat Traffic Offenders<sup>53</sup> stated that further analysis was required for Recommendation 6.3: Imprisonment as a maximum penalty for a second high range speeding offence.

*Existing penalties for repeat offenders are pitifully low and do nothing to curb repeat offending. In fact, the current regime of higher penalties for "second or subsequent offence"<sup>54</sup> sends the wrong message to serious road crime offenders by signalling similar penalties no matter how many times the offender breaks the law.*

Penalties should be proportional to the offence, proportional to the previous behaviour of the offender and proportional to the outcome of the offending.

RTSG calls for a more structured and methodical approach to better define various categories of repeat serious offenders with a graduated and targeted scale of reform outcomes focussed on each group. This should work to better address the attitudes of repeat serious traffic offenders with penalties for these new offences scaled appropriately.

RTSG recommends that the new road crimes Act includes a hierarchy of penalties for ALL repeat offenders with stronger penalties as repeat offending recurs. RTSG recommends that definitions for repeat offending include repeat traffic offences in totality, that is not just a

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<sup>51</sup> NSW Sentencing Council, *Repeat traffic offender report* (September 2020)

<sup>52</sup> NSW Sentencing Council, *Repeat traffic offender report* (September 2020)

<sup>53</sup> NSW Government, *NSW Sentencing Council Review of Repeat Traffic Offenders NSW Government response to the recommendations* (April 2022), 10

<sup>54</sup> *Road Transport Act 2013* (NSW)

repeat of the same traffic offences but to capture the entirety of road crimes by offenders with a clear disregard of other road users. The most serious of offenders should be facing a custodial sentence with a standard non-parole period.

Holding a driver's licence is a privilege and brings with it a range of responsibilities to other road users. It feels incongruous that persons must undergo a rigorous process to obtain a licence in the first place (knowledge and driving field test) yet once the licence has been granted, serious repeat traffic offenders have a much lower bar to jump in terms of regaining their licence, despite having shown little or no respect for the safety of other road users through their illegal conduct.

In our view, serious repeat traffic offenders should be subject to the following mandatory obligations before being permitted back on NSW roads:

1. Knowledge test
2. Field driving test
3. Online education program (we regard the Traffic Offender Intervention Program TOIP as best practice in this regard, though we note it's largely voluntary nature)
4. Alcohol Interlocks including first DUI offenders
5. Telematics to monitor repeat speeding offenders
6. License conditions and restrictions
7. Victim's Impact Panel participation for all serious and repeat serious traffic offenders.

Advances in vehicle safety technology, such as the ability to impose speed limits, collect data (vehicle black box) or prevent impaired drivers from getting behind the wheel (alcohol interlocks), must be actively supported by government and communicated with the community and policy makers to ensure continual improvement in our responses to road trauma.

Driving while disqualified should be seen as a breach of parole and serious consequences are warranted such as possible jail term instead of an increase of the suspension period.

#### **4. Sentencing principles and procedures**

It is becoming increasingly evident to victims and their families, as well as the community, that vehicular homicide is treated as a lesser type of homicide because of the significantly lower maximum sentences. And relying on old case law for charges and sentencing is not producing just outcomes.

Widespread feelings of injustice prevail when there is a lack of consistency in sentencing for criminal road behaviour compared to other crimes resulting in death (e.g. minimal sentences, community service or suspended licence).<sup>55</sup>

##### **Recommendation 4a: New sentencing approach**

- that recognises that deaths and serious injuries as a result of road crime must receive sentences akin to death and serious injury in other criminal circumstances

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<sup>55</sup> Road Trauma Support Group NSW and FiftyFive5, *The unheard trauma of fatal road crimes in NSW* (April 2023)

Ref: Consultation Paper Question 4.1

RTSG recommends that general sentencing principles are reviewed and updated following the drafting of a new road crimes Act, to better reflect the responsibility of driving on roads. Our recommendations on mitigating factors and sentencing discounts are provided below.

Having reviewed the sentencing trend of road deaths in Western Australia over 70 years, and including evidence that the trend is similar in other states, Dr Kerry King, the author of *A Lesser Species of Homicide. Death, Drivers and the Law* notes that “loved ones customarily report that a penalty is never enough, but in the case of death on the roads, sentences and charges have *invariably* not been enough. Not only have charges, if laid, and sentences imposed been distressing to victims’ families, they have been detrimental to efforts to elevate the seriousness of the wrong, the duty of care of *all* drivers, and the offence’s criminal status.”<sup>56</sup>

*Low sentences do little to deter criminal behaviour.*

“In *R v McKenna* [1992] 7 WAR 455, Ipp J (then of the Western Australian Court of Criminal Appeal) stated that “criminality is not reduced simply because the crime can be categorised as ‘motor vehicle manslaughter’”<sup>57</sup>. This approach has since been adopted in New South Wales. In *R v Lawler* [2007], the applicant appealed against his sentence of 10 years and 8 months, with a non-parole period of 8 years for manslaughter caused when his prime mover collided with the victim’s vehicle. The applicant was aware that the braking system of his prime mover and trailer was defective but continued to drive for commercial gain. In dismissing the appeal, the Court of Criminal Appeal emphasised the importance of general deterrence in such cases<sup>58</sup> and held that the applicant’s conduct involved a high degree of criminality, adding, “It is to be clearly understood that manslaughter is no less serious a crime because it is committed by the use of a motor vehicle”.<sup>59</sup>

*RTSG would like to see the Court of Criminal Appeal reviewing serious road crime cases to correct under-sentencing.*

Increasing inadequate sentences helps send the message on the seriousness of road crime and should reduce the number of cases going to the court of criminal appeal.

Ref: Consultation Paper Question 4.2

The *R v Whyte* guideline judgment<sup>60</sup> for dangerous driving offences is outdated and must no longer be the guide for sentencing of serious road crime.

In *Hili v The Queen* (2010) 242 CLR 520; [2010] HCA 45, it was said at [54]:

“In *Director of Public Prosecutions (Cth) v De La Rosa*, Simpson J accurately identified the proper use of information about sentences that have been passed in other cases. As her Honour pointed out, a history of sentencing can establish a range of sentences that have in fact been imposed. That history does not establish that the range is the

<sup>56</sup> Dr Kerry King, *A Lesser Species of Homicide. Death, Drivers and the Law*, Perth, UWA Publishing (2020)

<sup>57</sup> *R v McKenna* [1992] 7 WAR 455, Ipp J at 469

<sup>58</sup> *R v Lawler* [2007] NSWCCA 85 at 42

<sup>59</sup> *R v Lawler* [2007] NSWCCA 85 at 41

<sup>60</sup> *R v Whyte* [2002] NSWCCA 343; 55 NSWLR 252

correct range, or that the upper or lower limits to the range are the correct upper and lower limits.

As her Honour said: ‘Sentencing patterns are, of course, of considerable significance in that they result from the application of the accumulated experience and wisdom of first instance judges and of appellate courts.’ But the range of sentences that have been imposed in the past does not fix ‘the boundaries within which future judges must, or even ought, to sentence.’ Past sentences ‘are no more than historical statements of what has happened in the past. They can, and should, provide guidance to sentencing judges, and to appellate courts, and stand as a yardstick against which to examine a proposed’ ... When considering past sentences, ‘it is only by examination of the whole of the circumstances that have given rise to the sentence that “unifying principles” may be discerned’<sup>61</sup>.

RTSG agrees with the above observations and want enshrined in legislation for the Judiciary to have the ability and confidence to sentence and not be shackled by *R v Whyte*.<sup>62</sup>

Well-drafted, new road crime legislation should override the need for an immediate new guideline judgment. New legislation that improves clarity and works to address the current road death crisis, may in time be the subject of its own guideline judgment. It should also set case law time limits, so that sentencing reflects contemporary standards and views.

Many aggravating factors listed in the *R v Whyte* guideline judgment for dangerous driving offences<sup>63</sup> would need to be changed in the new legislation and the Crimes (Sentencing Procedure) Act.

Aggravating factors: an additional specific reference to committing a crime(s) (breaking the law) while in control of a vehicle should be added to the Crimes (Sentencing Procedure) Act. The aggravating factor of “involved the actual or threatened use of violence or a weapon” should be clarified in a new serious road crimes Act, to explain that committing a road crime while in charge of a vehicle, renders that vehicle a weapon.

In a recent CCA case, Justice N Adams stated that “driving a motor vehicle is like driving a weapon”.<sup>64</sup>

Previous road offences should also be considered criminal acts and count toward the definition of a recidivist driver and, therefore, trigger higher baseline sentencing.

Also, “offences committed without regard to public safety” is not enough of a mitigating factor where a driver is breaking the law by speeding, drink driving, driving under the influence of drugs, driving tired or affected by a medical condition.

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<sup>61</sup> *Hili v The Queen* (2010) 242 CLR 520; [2010] HCA 45, at [54]

<sup>62</sup> *R v Whyte* [2002] NSWCCA 343; 55 NSWLR 252

<sup>63</sup> *R v Whyte* [2002] NSWCCA 343; 55 NSWLR 252

<sup>64</sup> *Davidson v R* [2022] NSWCCA 153 [215] (N Adams J).

Mitigating factors: Conversely, in our view applying a mitigating factor of pleading guilty to the offence should not enable for a finding of remorse especially in matters where it is an overwhelming prosecution case against the offender.

The automatic reduction in sentences being reduced to age, background, psychiatric condition or moral culpability must also not result in reductions at sentence. It should be on Counsel for the accused to prove to the Judiciary that if any of those factors are to be considered they meet a higher level of evidentiary burden and if they cannot, a sentence will be ordered to send a clear message that such actions will not be tolerated in society.

Degree of speed, degree of intoxication and degree of sleep deprivation are also not necessarily accurate measures of likelihood of a crash and are too open to interpretation. They should not be used to reduce sentences.

*"The concept of an unprovable 'microsleep' as a standard go-to defence for car crimes must be evaluated as to whether it is a loophole being exploited by defence lawyers".*

RTSG member

The approach to discounting of sentencing should be reviewed. The measurement of remorse, contrition and risk of reoffending cannot be systematically achieved yet we see repeated discounting applied.

RTSG seeks to differentiate the available range of sentences in specific instances from the typical utilisation of sentencing statistics and other materials indicating appropriate sentences in comparable cases.

RTSG advocates for consistency in sentencing offenders across Local, District, and Supreme Courts. However, this consistency pertains to the application of relevant legal principles outlined by new legislative instruments, rather than adhering to past practices. While past cases may establish a precedent for sentencing ranges, they do not necessarily define the outer limits of permissible discretion in imposing maximum sentences.

The historical context serves as a benchmark for evaluating proposed sentences, with emphasis placed on the underlying principles revealed and reflected by previous sentences. These underlying principles concerning road-related offenses are crucial.

Research undertaken and published by Dr Kerry King notes that "to date, no longitudinal research has been undertaken on legal responses to deaths occasioned by the use of motor vehicles in Australia."<sup>65</sup>

Access to accurate and transparent data is essential to ensure that policy and statutory responses are evidence-based and contemporary. Regular publication of NSW road crime sentencing outcomes, as well as longitudinal research to assess trends, is needed.

### **Recommendation 4b: Victim Impact Panel program**

– to be mandated for serious and repeat offenders and enshrined in legislation

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<sup>65</sup> Dr Kerry King, *A Lesser Species of Homicide. Death, Drivers and the Law*, Perth, UWA Publishing (2020)

Ref: Consultation Paper Question 4.1 and 6.1

Recognising the profound emotional and psychological impact of road trauma, RTSG calls for the incorporation of Victim Impact Panels as part of the sentencing process (post-conviction), to be mandatory for all serious and repeat offenders and applied in addition to any other conditions (for example, alcohol interlocks).

These panels would provide a pathway to re-education for serious road criminals by supporting offender rehabilitation. They bring the human impact of crime and can help offenders understand the repercussions of road crime while still holding them accountable.

By attending a Victim Impact Panel program, offenders hear from different people who have lost loved-ones so that the offender can better understand the impact and consequences of their road crime. Panel members are not the victim families directly affected by the particular offender who participates.

Most importantly, it is essential that Victim Impact Panels are mandatory and cannot be used as a way to reduce a sentence. The sentence should be imposed and mandatory involvement in a victim impact panel program added as a condition, with parole not granted until participation is complete.

*"Undertaken properly, evidence shows that Victim Impact Panels contribute to significant reduction in recidivism by offenders."*

*-Victim Impact Panel designer and practitioner*

Being confronted with the profound emotional and psychological impact road trauma has made to the lives of survivors and their families, evidence of similar models has been shown to significantly alter the perception and behaviours of serious offenders and reduces potential for recidivism.<sup>66 67</sup>

### **US Case Study**

Mothers Against Drunk Driving's (MADD) Victim Impact Panel® program<sup>68</sup> brings together the criminal justice system and those directly or indirectly affected by drunk and drugged driving crashes and underage drinking. Speakers may be bereaved or injured victims, and may also include victim families, first responders or substance abuse/treatment representatives.

The Victim Impact Panel program follows a restorative justice model by allowing crime victims a healing opportunity by talking about the crime's impact upon themselves, their families, friends, and the community as a whole.

<sup>66</sup> Jiska Jonas-van Dijk, Sven Zebel, Jacques Claessen and Hans Nelen, *How can the victim-offender mediation process contribute to a lower risk of reoffending? A synthesis literature review*, The International Journal of Restorative Justice, vol. 6(2) pp. 207-234 (2023)

<sup>67</sup> Jiska Jonas-van Dijk, Sven Zebel, Jacques Claessen, and Hans Nelen, *Victim-Offender Mediation and Reduced Reoffending: Gauging the Self-Selection Bias*, Crime & Delinquency, Vol. 66(6-7) pp. 949-972 (2020)

<sup>68</sup> Mothers Against Drunk Driving (USA), Victim Impact Panel program (<https://maddvip.org/how-it-works/>)



During the panel, speakers describe the crash in which they, or their loved ones, were involved, and how life has changed since the crash. They do not blame or judge the audience; they simply share their personal experiences.

Victim Impact Panels are designed to provide offenders with the understanding that drunk driving is a choice that impacts the lives of innocent people—and how the resulting consequences and tragic outcomes are 100% preventable.

Victim Impact Panels are not intended to replace conventional sanctions. Rather, they are offered to enhance and supplement such programs by placing offenders face to face with real people whose lives have been permanently changed by a substance-impaired driver.

RTSG's proposed Victim Impact Panel model differs from the MADD US case study, as its primary purpose is to address serious offending and recidivism. While it could additionally serve as a restorative justice mechanism for the family of road trauma victims, existing restorative justice practices of victim impact statements and the Traffic Offender Intervention Program (TOIP) are already in place.

*Victim Impact Panels can be a torch for changing serious offender perceptions and attitudes about the social acceptability of dangerous behaviour. The evidence from the US (Mothers Against Drink Driving in US) is irrefutable that they work to reduce recidivism.*

RTSG member

While those charged with driving-related crimes are currently not required to learn about the impact of road trauma before getting their driver's license back, seven in ten (69%) members of the community believe it is an essential or high priority change to require those charged with driving-related crimes to participate in a Victim Impact Panel (where victims of road trauma share their experiences) before they can re-gain their licence.<sup>69</sup>

However, careful drafting of new road crime legislation is needed to ensure that participation in a Victim Impact Panel is not considered a mitigating factor on sentencing. We do not want to see the purpose of the process being corrupted by pretenders. Therefore, it should only be offered post-sentencing to maximise its focus upon helping victims in the aftermath of such tragic circumstances and to reduce recidivism.

We support the option described in the Consultation Paper "to legislate to prevent courts from considering participation in restorative justice as a mitigating factor in sentencing"<sup>70</sup> of serious road crime.

#### **Recommendation 4c: Standard non-parole periods**

– sentences for serious road crime that results in death must include a standard non-parole period.

Ref: Consultation Paper Question 4.3

Vehicular homicide sentences should include Standard Non-Parole Periods (SNPPs).

<sup>69</sup> Road Trauma Support Group NSW and FiftyFive5, *The unheard trauma of fatal road crimes in NSW* (April 2023)

<sup>70</sup> NSW Law Reform Commission, *Serious road crime Consultation Paper* (December 2023), 120, paragraph 6.66

In fact, SNPPs are a better guide for sentencing than guideline judgments. NSW Sentencing Council, Standard Non-Parole Periods for Dangerous Driving Offences, Report (2011), discusses the complexity of sentencing if both SNPPs and guideline judgments exist.<sup>71</sup>

*SNPPs are needed to reflect the serious nature of road crimes, especially those that result in loss of life, and to better align with community expectations.*

As the community witnesses more frequent road trauma caused by people that should never have been on our roads, there is an increased expectation that death and serious injury results in time served.

We would argue that the potential risks of SNPPs for serious road crimes are far outweighed by the benefits. More and more people are dying on NSW roads and other prevention methods have failed. Serious interventions are well overdue.

The NSW Sentencing Council Standard Non-Parole Periods Report (2013)<sup>72</sup> suggests that SNPPs should generally be 37.5% of the maximum penalty for the offence. But this could be reduced, or increased up to 50%, taking certain factors into account. RTSG contends that the SNPP should be set high to reflect the severe impact of serious road crime death and we would urge a 50% SNPP be considered. RTSG recommends that appropriate SNPPs for vehicular homicide are provided for further comment during consultation on drafting of new laws.

We also contend that the Sentencing Council views of 2011<sup>73</sup> that none of the dangerous driving offences should have a SNPP is outdated. At the time of the review, no submissions were made to extend the SNPP scheme to dangerous driving offences. Since that time, awareness of the inadequacy of sentencing has increased and organisations such as RTSG have been formed to advocate for change, as this submission shows. In fact, implementation of the law reform called for in this submission – creating new serious road crime legislation with stricter sentencing guidelines and dealing with offences in a jurisdiction higher than the Local Court – would address many of the concerns listed by those who opposed applying SNPPs to dangerous driving offences.

When the SNPP scheme was introduced, the second reading speech explained that the original SNPPs were set by taking into account the seriousness of the offence, the maximum penalty for the offence and current sentencing trends. The same speech also noted “(t)he community expectation that an appropriate penalty will be imposed having regard to the objective seriousness of the offence has also been taken into account in setting standard non-parole periods.”<sup>74</sup>

SNPPs provide a more objective guide for judges to determine sentences. As SNPPs consider the “community expectation that an appropriate penalty will be imposed having regard to the

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<sup>71</sup> NSW Sentencing Council, Standard Non-Parole Periods for Dangerous Driving Offences, Report (2011) 38

<sup>72</sup> NSW Sentencing Council, Standard Non-Parole Periods Report (Dec 2013)

<sup>73</sup> NSW Sentencing Council, Standard Non-Parole Periods for Dangerous Driving Offences, Report (2011)

<sup>74</sup> NSW, *Parliamentary Debates*, Legislative Assembly, Second Reading Speech (23 October 2002) 5813



objective seriousness of the offence”, applying SNPPs to serious road crimes would be a step in the right direction in aligning deterrents with community expectations.

SNPP can be adjusted upwards or downwards to consider certain factors. This includes the special need for deterrence and need to recognise exceptional harm, among other factors. The harm in this case constitutes the taking of human life and grievous body which is indeed exceptional and as illustrated in recent road crash statistics mentioned earlier, there is certainly a genuine need for increased deterrence.

## 5. Jurisdictional issues

### Recommendation 5: Appropriate jurisdiction of higher courts

– serious road crime offences to be heard in District or Supreme court only

*Ref: Consultation Paper Question 5.1 and 5.2*

All serious road crime should be tried on indictment and categorised as strictly indictable. A new stand-alone Act would bring together all serious road crime offences to be heard only by District Court or Supreme Court. No serious road offences, as currently included in the Road Transport Act, should be heard summarily in Local Court due to its sentencing limits and road crimes that result in death should not be heard in the Children’s Court.

A new road crimes Act should ensure categorisation of offences as strictly indictable.

## 6. The experiences and rights of victims

Our research report *The unheard trauma of fatal road crimes in NSW*<sup>75</sup> (Appendix B) outlines the widespread feelings of injustice reported by victims’ families and friends killed by criminal road crimes, and a sense of inconsistency of sentencing compared to other crimes resulting in death.

The report’s key findings noted that families who experience the sudden death of a loved one due to criminal road trauma often find themselves lost, trying to navigate unfamiliar systems with no idea where to start. They do their best to work out where to go for support and what steps to take next, but their experience is usually haphazard and traumatic, leading to severe psychological burden.

It also found that the ideal is a connected system which links people to services and supports the post-crash journey (like solid links in a chain). With the right information and resources at each step, they are connected to the right professionals at the right time and supported in their lived experience which prevents further traumatisation and allows families to move through the grieving process.

The ripple effects of criminal road crime are also felt far and wide throughout the NSW community, and the impacts are extensive and enduring. As well as law reform described above, which should simplify the system and improve transparency and accountability, it is important to minimise the secondary trauma that bereaved families experience and to better

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<sup>75</sup> Road Trauma Support Group NSW and FiftyFive5, *The unheard trauma of fatal road crimes in NSW* (April 2023)

support families as they navigate the current complex systems and processes imposed on them.

RTSG strongly encourages the careful review by LRC of every submission to the review that outlines the impacts and changes called for by victims of road crime and their families, friends and communities, who are also indeed victims of road trauma.

### **Recommendation 6: New approach to designing laws and services.**

– embed a victim-centered design approach to new laws and services and include road crime in the Charter of Victims Rights.

*Ref: Consultation Paper Question 6.1*

RTSG recommends that the LRC advises the NSW Government to start anew to engage and consult victims and stakeholders on development of a nation-leading policy to address the road trauma crisis and to completely shift the current paradigm and cultural support of road user privilege and provide a framework for reform that shifts mindsets and deals with road death and injury as seriously as other heinous crimes.

To understand the impact, RTSG urges the LRC and policymakers to read the detail of *The unheard trauma of fatal road crimes in NSW*<sup>76</sup> (Appendix B) and to authentically engage with victims' families and friends, who are victims themselves, and with victim support groups such as RTSG.

*Good policy starts with the community in mind, embeds victim experience and applies lessons learned from the successful shifts in other policy areas.*

We need to add the best safety technology, transparency and currency of data, education and preventative measures, to our systemic approach to saving lives.

We also need to move quickly and we call for urgent publication of review findings and response by government.

Accordingly, we are keen to work with the LRC and the NSW Government to expedite this Review and the implementation of its recommendations so that meaningful change can occur at the earliest possible opportunity and innocent lives may be saved.

Victim rights and support services must be improved and expanded. RTSG has called for the implementation of victim-centred support systems, including access to counselling services, legal and financial assistance, and community resources tailored to meet the unique needs of those affected by road trauma. As more and more NSW families and friends are left to navigate a complex justice system, expanded resources are needed – and are needed urgently. This includes outreach to regional NSW where support services in remote locations are hard to access.

As referenced in the RTSG submission to the NSW review of the *Victims Rights and Support Act 2013* (NSW), the scope of the Victims Rights and Support Act, and the incorporated

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<sup>76</sup> Road Trauma Support Group NSW and FiftyFive5, *The unheard trauma of fatal road crimes in NSW* (April 2023)

Charter of Victims Rights, needs to be broadened to include victims of serious road crime so that they are able to receive mental health support and financial support immediately after the collision.

We note the preliminary submission of the ODPP which states that “(t)he operation of the [Victims Rights and Support] Act and the definition of motor accident effectively excludes the majority of victims of serious road crime from receiving the support offered to victims of serious and violent crime”. It recommends careful consideration of any submissions received that could minimise “the complexity involved in navigating the compensation system”<sup>77</sup>.

RTSG acknowledges the recent establishment of a Trauma Support Service operated by the State Insurance Regulatory Authority. However, we need to see real impact and support, including outreach services for regional NSW. We recommend an evaluation of the service and consideration of how to recognise this right within the new legislation if appropriate.

The reform of serious road crime must also encompass any new ways to further enhance these support mechanisms, empowering victims, their families, loved ones and children for their long-term post-traumatic growth.

In 2022, RTSG called for road crime to be included in the current Charter of Victims rights or that a stand-alone Charter of Victims Rights for Road Crime be established. Victims of road crime not covered by compulsory third-party insurance, that is those not directly impacted by the road crime but are still victims, must be included in the charter and provision also made for people injured. The charter should also include financial, mental health support and support during the court process to avoid aggravated trauma.

## Other Relevant Matters

### **Recommendation 7: Road fatality reporting of all road deaths in NSW.**

drawing from safety practices in workplaces and aviation, to enhance investigations, promote transparency, and inform road safety measures while safeguarding individual privacy.

Reporting on all fatal road incidents in NSW is needed urgently to inform road safety policy and law reform. Drawing inspiration from proven safety practices in workplaces and aviation, the RTSG proposes NSW introduces fully transparent and nationally shared public reporting of road deaths.

This recommendation outlines a specific strategy for examining road fatalities, moving beyond the current emphasis on crash scene investigations and legal proceedings.

The suggested reporting framework entails detailed analyses of incidents, encompassing factors such as causes, road infrastructure design, vehicle safety features, and human behaviour contributions.

*By fostering transparency and building an evidence-based foundation, this approach aims to support the adoption of a national safe systems approach.*

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<sup>77</sup> PRC77, NSW Office of the Director of Public Prosecutions, NSW Law Reform Commission website (17 Feb 2023)

While protecting individual privacy through the redaction of names, the emphasis remains on preserving and disseminating critical insights gleaned from these analyses.

### **RTSG Contacts**

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### **Appendices**

[Appendix A: RTSG Law Reform Manifesto](#)

[Appendix B: RTSG The unheard trauma of fatal road crimes in NSW](#)