



NSW Law Reform Commission

Serious Road Crime

Written by:

Kerrie Thompson: Chief Executive Officer

Damien Sloane: Community Member

Frank Gilroy: Community Member

February 2023



1/432 Hunter Street
(PO Box 1310) Newcastle NSW 2300

E admin@vocal.org.au
P 02 4926 2711

VOCAL Inc Y1170743
ABN 99 422 394 085

www.vocal.org.au

About the Victims of Crime Assistance League

Victims of Crime Assistance League (VOCAL) is an incorporated charity that supports all people, including children, throughout NSW, who are victim-survivors of violent crime. For the past 30 years we have been providing information, guidance and support to individuals and families who have been impacted by crime. We act in a consultative capacity to State and Federal governments on matters pertaining to victims' rights.

VOCAL's Victim Support Unit receives funding from the NSW Department of Communities and Justice (via Victims Services) to provide a free service to victims of crime, particularly in NSW's Hunter Region. Support is individualised to the specific needs of each survivor and includes physical, psychological and socioeconomic support and assistance.

Sentencing for Serious Road Crimes

The law in NSW requires that sentencing serves the seven purposes described in section 3A of the *Crime (Sentencing Procedure) Act 1999*¹:

- (a) To ensure that the offender is adequately punished for the offence,
- (b) To prevent crime by deterring the offender and other persons from committing similar offences,
- (c) To protect the community from the offender,
- (d) To promote the rehabilitation of the offender,
- (e) To make the offender accountable for his or her actions,
- (f) To denounce the conduct of the offender,
- (g) To recognise the harm done to the victim of the crime and the community.

With over 30 years' experience in assisting victim-survivors and families dealing with the criminal justice system, we are acutely aware that serious road crimes are treated very differently compared to other serious offences that result in death or serious injury to another person.

Regardless of the presence of aggravating factors, our experience is that serious road crimes, in the criminal justice system, are often referred to as "a terrible accident" and most of the time, are dealt with accordingly and not as a criminal offence. For example, in a Judgment handed down in a District Court matter regarding dangerous driving occasioning death, with a secondary charge of negligent driving occasioning death, the Judge repeatedly referred to the death of a 17 year old student walking to school, as "a terrible accident" This connotation severely minimised the offender's culpability. Care must be taken by legal professionals in these matters, as such wording provides very little comfort to grieving families who are in the criminal justice system because a crime has been committed.

Similarly, it is our experience that the sentences being given for driving offences that cause grievous bodily harm are grossly inadequate. Despite the availability of respective maximum sentences of 11 and seven years imprisonment, for Aggravated Driving Occasioning Grievous Bodily Harm and Dangerous Driving Causing Grievous Bodily Harm, we have yet to come across either maximum sentence being imposed. In one instance, in stark contrast to the maximum of seven years, one offender received only 10 months jail for dangerous driving causing grievous bodily harm.

1

https://www.judcom.nsw.gov.au/publications/benchbks/sentencing/purposes_of_sentencing.html

We acknowledge that law reform is a complex issue and there is no quick fix that will improve how the criminal justice system responds to serious road crimes. With that in mind, we submit the following recommendations for consideration.

Considerations for Law Reform

Recommendation 1: Increase maximum penalties

Dangerous driving occasioning death

VOCAL advocates that the maximum penalties for matters of aggravated dangerous driving occasioning death and dangerous driving occasioning death be increased. It is our experience that sentences for driving offences resulting in death are generally on the low side, despite the maximum penalty of 14 years for aggravated dangerous driving occasioning death, and 10 years for dangerous driving occasioning death. In comparison, the charge of manslaughter has a maximum sentence of 25 years however all three crimes involve the involuntary killing of a person.

We are not able to confidently recommend a specific maximum penalty but are of the opinion that an increase from the current 14 years and 10 years, respectively, would represent a more effective deterrent, put a more significant emphasis on offenders' accountability, and have greater alignment with community expectations. There must be stronger penalties for dangerous driving that results in loss of life.

Driving matters causing grievous bodily harm

Similarly, we recommend that the maximum sentence for aggravated dangerous driving occasioning grievous bodily harm (currently a maximum of 11 years) and dangerous driving occasioning grievous bodily harm (currently a maximum of seven years) be increased. The life changing physical, psychological and financial impact on victim-survivors of road crimes must be adequately acknowledged by the Criminal Justice System. It is our experience that sentences for negligent and/or dangerous driving occasioning grievous bodily harm are grossly inadequate, as highlighted in a later section.

However, we acknowledge that increasing maximum penalties will be of little use when the existing penalties are not being imposed.

Recommendation 2: Sentences which apply all Sentencing Principles

It could be argued that the maximum sentences for road crimes as they currently exist are adequate, however they are not being imposed. On 24 November 1994, at the Second Reading of the Crimes (Dangerous Driving) Amendment Bill, the NSW Attorney General recommended increasing the maximum sentences to their current level, stating:

"This Bill will provide a stronger deterrent against these types of offences. In particular, the Government is sending a message to the community and to the courts that dangerous driving which kills or maims will be severely punished wherever and whenever it occurs".²

Despite this legislative change, courts are still imposing sentences that are far too lenient for serious driving offences, ultimately ignoring the expressed intentions of Parliament and failing to protect the community. Our criticism is directed towards the failure to impose stiffer sentences already allowed for under the legislation.

² Parliament of New South Wales (2023) *Legislative Council Hansard – 23 November 1994*.
<https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-6271>

VOCAL has seen an increase in serious road offences, especially regarding driving under the influence. The seriousness of these crimes must not be underestimated, yet sentencing outcomes typically leave victim-survivors, their families and the community angry and frustrated with the criminal justice process, specifically regarding sentencing. As stated in the decision of Spigelman CJ in the case of *Regina v. Jurisic* (1998)³,

“Significant disparity between public opinion and judicial sentencing conduct will eventually undermine the perceived legitimacy of the legal system. Trial judges in New South Wales...do not appear to have reflected in their sentences the seriousness with which society regards the offences of occasioning death or serious injury by dangerous driving.”

The objectives of legislative amendments in 1994 directly related to the expressed concern with a rising road toll and were imposed to act as a deterrent factor in incidences of dangerous driving. The sentencing principles are already in place but are not being adequately applied.

It is our experience that the Courts’ focus appears to be primarily on offender rehabilitation, giving greater weight to this over the other sentencing principles. Our experience is that for serious road offences, courts ignore the reality of recidivist offenders, and place very little weight on community safety and offender accountability. We have many case examples of this, one which will be outlined in the next section.

Deterrence, as a sentencing principle, appears to be non-existent. The NSW Sentencing Bench Book advises *“It has been held that weight should be given by a court to specific and general deterrence for a range of offences, including drink driving offences*⁴. Victim-survivors, their families and the wider community report that low and inadequate sentences for serious driving offences do nothing to instil faith in the criminal justice system and provide little consequence to repeat offenders. Penalties are not harsh enough to act as a deterrent and unless this changes, the community remains at risk of repeated exposure to serious road crimes.

Recidivism occurs due to the absence of serious punishment and deterrence. This is highlighted in the next section. There is little accountability for driving offenders who commit crimes and show reckless indifference to the community and to the law. Their actions are then often minimised by legal professionals who refer to serious road crimes as “accidents”. These crimes are not accidents.

Offenders who commit serious driving offences make a conscious decision to behave recklessly and to break the law (intent), and there appears to be little accountability when sentencing prioritises rehabilitation above all else, as outlined in the next section. In the matter of *R v Whyte* (2002)⁵ the offender lost his licence for longer than his jail term.

It becomes apparent in many cases in which we have assisted, that sentencing procedures focus more on the offender, as not the offence itself. People impacted by serious road crimes are generally appalled that special circumstances submitted as mitigating factors appear to have significant weight in sentencing. It is common for victim-survivors and families to hear defence submissions relating to an offender’s mental health problems, their age (either “too young” or “too old” to go to jail), childhood trauma, alcohol or drug dependency or their inability to adapt to a possible jail term. These excuses for breaking the law are common, and such attempts to minimise offender accountability shift the focus away from the crime they committed, focusing instead on how their personal circumstances will be impacted by a proposed sentence. At no stage during sentencing is sufficient weight given to the

³ Supreme Court of New South Wales (2023) *R v Jurisic Matter No 60131/98 NSWSC 423* (12 October 1998)

⁴ Judicial Commission of New South Wales (2023) *Sentencing Bench Book: Purposed of sentencing*.

⁵ New South Wales Court of Criminal Appeal (2023) *REGINA v WHYTE* (2002) NSWCCA 343

suffering of victim-survivors, or to the harm that serious driving offences have on our community (including first responders). Society expects sentencing to focus on the *criminal offence*, as opposed to the excuses of the *offender*.

As a result, we urge the NSW Attorney General to give serious consideration to Guideline Judgements under s37 of the Crime (Sentencing Procedure) Act 1999 to provide equal weight to sentencing provisions. This will help ensure sentencing remains fit for purpose in accordance with legislation.

Recommendation 3: Make serious road crimes strictly indictable offences

It remains questionable as to why driving offences that result in the death of another person can remain in the Local Court. It is unheard of to have a manslaughter case finalised in the Local Court, so to allow this to occur with serious driving offences causing death, plays into the view that the whole justice system minimise the seriousness of serious road crimes.

We recommend that consideration be given to Section 52A offences be made strictly indictable, so they cannot be finalised within the Local Court. This would provide greater sentencing options to Judges. As shown in the case outlines below, serious driving matters that cause extensive physical and psychological injuries to victims, should be afforded a stronger criminal justice response. Strictly indictable offences for serious road crimes may prove to offer greater deterrence, as offenders are not granted the security of lower sentencing penalties in the Local Court.

Experiences of victim-survivors and their families

Feedback from victim-survivors and families around how the courts treat serious road crime is consistently the same; that it is viewed as “an accident” and that lenient sentences add additional trauma and further promote loss of faith in the criminal justice system. The below cases are shared with permission, in the hope of highlighting the current inadequacies with sentencing for serious road crimes.

Case Outline 1: Local Court

Charges Laid

An offender in his early 20’s was charged with three counts of dangerous driving occasioning grievous bodily harm. He was driving under the influence (mid-range blood alcohol reading), and hit a car with two passengers, and a pedestrian standing at a set of traffic lights.

The offender had prior drink-driving offences and had previously been court ordered to complete the Traffic Offenders Course.

He pleaded guilty in the Local Court to three charges of dangerous driving occasioning grievous bodily harm.

Each of the three victim’s medical information provided to the Court

One victim-survivor’s Victim Impact Statement detailed injuries including a broken jaw, loss of all but two of his teeth, major facial injuries, a neck injury, broken back, fractured ribs, damage to his sexual organs, ruptured ligaments in his leg and knee, ankle injuries and permanent nerve damage. The psychological and financial impact he suffered was, and still is, insurmountable.

Another victim-survivor’s Victim Impact Statement detailed injuries so significant that the muscles were ripped off the bone in her arm, and her internal organs were so damaged that her bowel became stuck to a bone. She suffered neck injuries, fractured ribs, shoulder injuries, permanent nerve damage and is unable to return to work, causing significant financial hardship.

The third victim-survivor's Victim Impact Statement detailed injuries of a broken neck, spinal cord damage resulting in permanent prosthetic framework in two areas of his spine, loss of feeling in one hand rendering three fingers permanently useless. The permanent disability has impacted his ability to work, creating ongoing psychological and financial hardship.

Court Outcome

Due to the offender's guilty plea in the Local Court, the sentence for the three charges were discounted by the maximum 25% each.

He was sentenced to 30 months imprisonment (10 months for each offence) with a non-parole period of 24 months. On appeal, his parole period was reduced to 12 months.

He was released after serving 12 months in jail.

Case Study 2: Local Court

Charges Laid

An offender in his early 70's was charged with dangerous driving occasioning grievous bodily harm.

He pleaded guilty to the dangerous driving occasioning grievous bodily harm, based on the evidence of the victims' front and rear dash-cam footage.

Victim Medical Information Provided to the Court

The victim, a 33 year old mother, detailed in her Victim Impact Statement the horrific injuries she received as the result of the driver "being distracted", as he put it. The force of impact to her vehicle was so significant that both of her legs were de-gloved. Between the time of the road crime and sentencing, she had endured nine operations on her legs. Doctors reported she was extremely fortunate that her legs were not amputated. The victim-survivor detailed the extensive rehabilitation required to teach her how to walk again and how, at age 33, the subsequent loss of employment and the financial impact put on her family.

The victim received a supposed letter of apology from the offender, which stated how badly the crime has impacted his life because he has lost his licence and is now unable to provide transport for his wife. There was no apology, just a comment of "I hope your life gets better now".

Court outcome

Defence submissions contended that the offender was "too old" to spent time in jail, and he had a wife to look after.

The Local Court Magistrate sentenced the offender to a 24 month Intensive Correction Order with home detention.

The sentence was an insult to the victim and her suffering and given the lack of remorse displayed to the victim, it is questionable why the personal circumstances of the offender was prioritised over many of the other sentencing principles.

Conclusion

We thank the NSW Law Reform Commission for looking into this important issue. For decades we have seen the impact that serious road crimes have on victim-survivors and their families. This pain is often exacerbated by inadequate responses from the Criminal Justice System. We recommend that language moves away from referring to such crimes as “accidents”, for this significantly minimised the offenders’ culpability.

When sentencing for serious road crimes, we urge the Courts to adopt an approach that is more in line with legislation. We urge that there is shift away from rehabilitation as the primary consideration in sentencing and put stronger emphasis on deterrence, condemnation of the offenders’ criminal conduct, and a significant improvement on how the courts recognise the harm suffered by victim-survivors and their families.

References

Judicial Commission of New South Wales (2023) Sentencing Bench Book: Purposed of sentencing. https://www.judcom.nsw.gov.au/publications/benchbks/sentencing/purposes_of_sentencing.html .

New South Wales Court of Criminal Appeal (2023) *REGINA v WHYTE (2002) NSWCCA 343*
<https://www.caselaw.nsw.gov.au/decision/549fa6a33004262463b4f30a>

Parliament of New South Wales (2023) *Legislative Council Hansard – 23 November 1994*.
<https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-6271>

Supreme Court of New South Wales (2023) *R v Jurisic Matter No 60131/98 NSWSC 423 (12 October 1998)*
http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NWSC/1998/423.html?context=1;query=R%20v%20Jurisic%20%20;mask_path