

Dear [REDACTED]

Thank you for granting us an extension for our submission.

The NSW Road Toll is tragically going through the roof and repeat traffic offenders contribute greatly to this carnage.

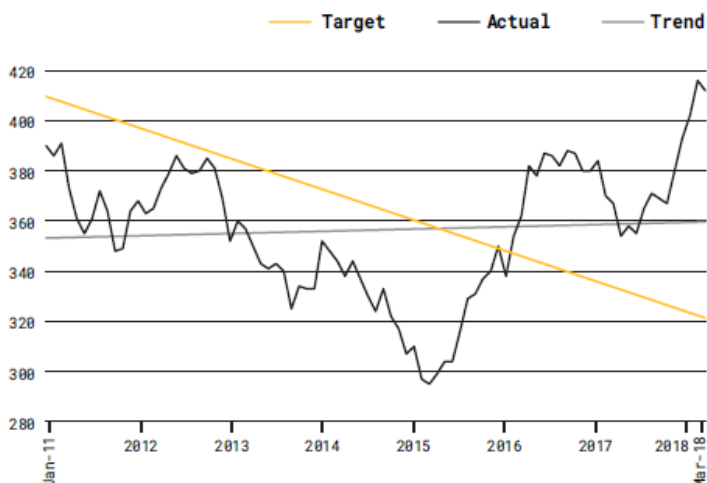
The courts play a vital role in managing this problem and this call for submissions, in our view, is long overdue.

To quote the AAA Q1 2018 Report:

The Australian Automobile Association's (AAA) Benchmarking of the National Road Safety Strategy (NRSS) tracks progress against the NRSS target of reducing road deaths by at least 30 per cent by 2020. All Australian governments committed to this strategy in 2011.

Alarming, the fatalities in the 12 months to March 2018 for New South Wales and Tasmania have exceeded the levels prior to the commencement of the strategy. With two years of the strategy to go, it is concerning that fatalities in these jurisdictions are now worse than before the strategy commenced.

New South Wales fatalities per annum



Red

- 412 road deaths occurred in the 12 months ending March 2018, compared to 367 in the same period in 2017.
- An increase of 12.3 per cent.

The Yellow Line is where the Government had hoped to be (or far better).

It must be understood that well over 90% of the crashes on our roads are NOT accidents. They occurred when someone broke the law.

Yet by calling them accidents, we suggest that they were unavoidable and no-one was at fault.

As discussed, my Opinion article pertaining to much of this matter was published in the Daily Telegraph on 13 March 2018. A copy is attached and I understand you have read it.

Apart from the issues addressed and the remedies suggested, I will address some of the other serious issues. This will be from the perspective of an advocate with 25 years experience in Road Safety, not as a lawyer.

For instance, we have recommended automatic vehicle confiscation for those people who drive while disqualified. And an option of fingerprint recognition devices for partners/spouses of those who can prove a need for the vehicle.

Clearly the courts and the current system have failed dismally to keep repeat offenders off our roads and from killing and seriously injuring innocent people.

In our view, anyone caught driving any vehicle while disqualified must have their vehicles confiscated automatically without appeal to the courts, for at least a month, as in Western Australia.

The function can be easily sub-contracted so that police will simply remove the plates and inform the contractor, who will be responsible for storing the vehicle until it's due for release.

Vehicle owners will quickly realise that they will need to see a current driver's licence before lending or leasing their vehicles to other drivers.

A second offence within 5 years should see the vehicle forfeited and sold at auction, the proceeds should go to help fund Road Safety initiatives.

There was an interesting finding in the NRMA Serial Serious Offenders study in 2002 (copy attached) which found:

**VIEWS ON THE POTENTIAL USE OF VEHICLE SANCTIONS TO CONTROL SERIAL SERIOUS OFFENDERS**  
96% of people believe that vehicle impoundment would be an effective measure for controlling serial serious offenders.  
The vast majority (93%) would like to see vehicle impoundment as a sentencing option for cases where a disqualified driver re-offends during or after the period of disqualification. Several people believe that vehicle sanctions should be used in conjunction with other penalties.

While this study is 16 years old, it is likely the community generally would hold similar views today and would be politically popular.

In NZ they have been using automatic vehicle confiscation and forfeiture for a variety of offences, in particular, disqualified driving, since at least 2002

Our Media Release of 2004, featured a NZ study by NZ Transport which found:

<http://www.walk.com.au/pedestriancouncil/page.asp?PageID=763&SiteID=1>

**Summary:**

The role of disqualified and unlicensed drivers in crashes has decreased since the introduction of vehicle impoundment, mandatory licence carriage and photo driver licences. The proportion of crash involved drivers who were disqualified or unlicensed decreased by between 1.5 and 2.2 percentage points (95% confidence interval) when these interventions were introduced, from 5.8% of all drivers to 4.0%. The number of crash-involved disqualified and unlicensed drivers reduced by approximately a quarter relative to other drivers.

In our view, the issue which needs the greatest attention is the indiscriminate use of Section 10.

In NSW, over 50% of drivers convicted of Low Range Dul offences, receive a Section 10 bond.

It sends a very clear message to all motorists: In NSW – DRINK-DRIVE – GET-OFF

Many of these people don't even pay a fine.

And to add insult to injury, these people do not even have to inform their insurers.

This means the vast majority of law-abiding drivers are effectively subsidising drivers who have been "convicted" of Dul.

It's an utterly untenable situation.

One thing must change: Magistrates (and Judges) must be restricted to giving Section 10s except under very special circumstances and within very specific guidelines – and never more than once within any 5 year period. They should also be required to publish their reasons for handing out a Section 10.

In our view, the Guideline Judgment applying to High Range Dul in respect to Sections 10s, should be applied to ALL Dul and Drug Convictions.

Your study must certainly investigate the cost of Section 10s as they relate to traffic offences. What were the real court and other costs which the community had to pay, per Section 10?

That may indeed make the Government realise that it's been a rort and it's time has come.

Why should the community be subsidising drivers who choose to drink and drive and put other road-users lives and limbs at risk.

(We would add that wherever we mention drink-driving, it should include drug driving. The suppliers of alcohol have always been very clever at separating the two, when in fact, the drug alcohol is the biggest killer in our society. )

Additionally the drug problem is extremely serious and likely to worsen significantly over the next decade. Recently, at a lecture from NSW Police, we were told that in their roadside random breath testing operations, they are now detecting one driver in 250 over the limit. In their drug testing operations, they are now detecting one in 10 – and they can presently only detect 50% of illegal drugs. This horrific statistic is a major reason your inquiry must ensure the system gets these people off our roads until it is proven they are safe to drive again)

In Victoria, the Government became so fed up with Magistrates handing out Section 10s, that they changed the entire system.

Drivers who were detected under .07 BAC, would receive a \$500 on-the-spot fine and 10 Demerit Points.

Most importantly, in Victoria, Magistrates can't quash Demerit Points, so any driver receiving this penalty was effectively on a 3 year Good Behaviour Bond.

However, as of 1 May this year, Victoria has dropped the Demerit Point system and apparently adopted an even tougher regime.

We are not certain of the reasons, but for example, a low range Dul

## Penalties for first offences committed on or after 30 April 2018

Offence description	Penalties
<p>BAC less than 0.05</p> <p>You have a:</p> <ul style="list-style-type: none"><li>• learner permit</li><li>• P1 or P2 licence</li><li>• full licence with a Z condition (or otherwise have a zero BAC requirement)</li></ul>	<p>You will:</p> <ul style="list-style-type: none"><li>• receive a fine</li><li>• need to complete a Drink Driver Behaviour Change Program</li><li>• have your licence or learner permit cancelled</li><li>• be disqualified from driving for at least 3 months</li><li>• have an alcohol interlock for a minimum of 6 months.</li></ul>

Victoria generally leads Australia in Road Safety initiatives, so it will be very important to discover why they have made these changes, especially as the NSW Government has signalled that it intends to introduce On-the-Spot fines for low-range Dul

The main problem is that just prior to the 2011 NSW state elections, the former NSW Minister for Roads, in an outrageous political gesture, increased the number of Demerit Points to 13 before drivers lost their licences (all other jurisdictions are 12 in a system where points are shared/transferred across borders and designed to be equal for all Australians) but additionally, allowed Magistrates to quash Demerit Points.

This means that if the NSW Government introduces a system which emulates the old Victorian system, there is little doubt that just as many drivers will come to court (in spite of the On-the-Spot fine) knowing that NSW magistrates hand out Section 10s like confetti.

It is hard to imagine that the NSW Government will reverse this decision, so it is absolutely vital, that there be an inquiry into the use of Section 10s, including the costs – and very strict guidelines (like a Guideline Judgment) be introduced to ensure it is only used in very limited circumstances, otherwise the intended effect of having on the spot fines coupled with DPs will be utterly neutered.

In our view the NSW Government should look very closely at the new Victorian system, especially as their Road Toll is so much better than ours (not to suggest that the Road Toll can ever be good)

The most important objective of all is not to look at all the individual interventions, rather how can we keep repeat (recidivist) offenders off the road.

The deaths of four of the Falkholt family on the south coast early this year should serve as a case study in proving that the current system is utterly broken and bankrupt.

It is more the norm that the exception and highlights a system which shows that politicians and the courts seem far more concerned about how recidivists can get their licences back, than how the community can be protected and keep these killers waiting to happen off our roads.

Ask any NSW Police officer of their frustrations in bringing recidivist, dangerous drivers before the courts, only to have them thrashed with a feather and back on the road.

Here's an excerpt from the Daily Telegraph of 12 January 2018, re the recidivist driver Craig Whit tall who killed four members of the Falkholt family:

<https://www.dailytelegraph.com.au/news/nsw/licence-to-kill-the-truth-about-horror-road-record-of-falkholt-family-death-driver-craig-whitall/news-story/1dd3c9ec0e4773e8a0710a910f1e134c>

“I was shocked he was out on the streets, but not shocked he was involved (in the crash),” the former officer who wanted to be known only as Andrew told 2GB radio.

“He was a repeat offender. He didn’t care about law. How he got his licence back I will never know. It astounded me that he was out on the road.”

The former officer says Whitall was involved in a lot of break and enters and was a “well-known drug offender” in the region

“He was extremely well known to us,” Andrew said.

“He was a menace to society ... and should have been in jail.”

The Daily Telegraph today exclusively revealed Craig Whitall served four jail sentences over traffic offences, one nine-year driving ban and at least 10 convictions for driving while disqualified – yet he was still allowed back behind a wheel.

When Craig Whitall fatally [smashed his Toyota Prado four-wheel-drive into the Falkholt family’s car on his way home from a methadone clinic](#), the 50-year-old had been declared an habitual traffic offender by the courts with more than 60 convictions to his name.

But only recently the NSW Government changed the law so that drivers who have been declared habitual traffic offenders can now go back to court and get their licences back.

Why?

When are we going to subscribe to the fact that a driver’s licence is a privilege, not a right.

When are we going to ban certain drivers for life and if they keep driving they automatically go to jail – and have their vehicles forfeited.

The Falkholts are all dead because we have a system which is Four-Ply Sorbent Soft on dangerous drivers.

The system is far more concerned about their “wants” over the community’s “rights”.

#### **ADDITIONAL OBSERVATIONS AND COMMENTS:**

We have sought expert advice from other road safety practitioners and these are some observations and comments:

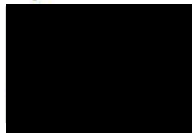
- the reason there are so many repeat offenders is the failure to detect. When I get their driving history before sentencing, I will note on the record they have paid an infringement for an offence they have committed whilst suspended, disqualified etc and the RMS does absolutely nothing
- Drivers on student visas (and other types) that live and study here for years do not accumulate points. Some attend court where they have accumulated 30+ points ( up to 60+)
- Why do courts have a discretion, with the most serious matters of drink driving, to disqualify within a minimum and maximum range even when they are repeat offenders. Disqualification periods should be fixed terms.
- If a driver with a **Visa** is done for DUI or PCA and is disqualified they should have to sit a driving test regardless of how long the disqualified period is for.
- **ALL** DUI and PCA drivers should be retested before their licence is returned regardless of the period of disqualification.
- DUI (drugs) – fitness to drive should be considered by the RMS – the licence should **not** be automatically restored after conviction.

- DUI and PCA should attract demerit points (providing magistrates cannot expunge them unless there are exceptional and well defined circumstances)
- Drivers found with illegal drugs in their vehicle should be disqualified.
- Anyone with a drug/alcohol addiction should be required to prove their fitness to drive. If they have more than 2 drug matters on their criminal record or 2 drink driving charges, regardless of whether they have been dealt with under Section 10 (1) or some other way.
- Driving 'privileges' for overseas visitors should not extend beyond 3 months – if they are staying longer they should be tested even if it is a simple 'knowledge' test.
- Anyone driving 'under privilege' with a visa (perhaps not a simple tourist with a defined holiday period) should be considered a 'special category' driver allowing a concentration of alcohol between .02 and less than .05 only.
- If they are to be a licensed driver in this state they should be able to read and speak English (there was a case in the coroner's court where a tourist bus driver who could not speak English drove over a pedestrian in the city 3 times because he could not understand the witnesses were telling him to move his bus away from her body).
- P plate drivers being able to appeal their suspensions due to loss of demerit points is a nonsense – put them on a probationary period where they cannot lose even 1 point if the RMS is so keen to have them on the road. C class drivers have not right of appeal. That same C class system could be offered to novice drivers and eliminate the right to appeal.
- Liability for Camera detected offences – companies with vehicles registered in the company name FAIL to nominate the driver. Whilst the fines are high the loss of demerit points is avoided and a great incentive for the actual driver to hide behind the company. Many companies that have multiple 'fail to notify' offences and apart from increasing the penalty each time nothing else happens. There should be a (maybe) 3 strike rule where the company cannot register any further vehicles in the company name – therefore an individual would have to be personally responsible. Many bad drivers hide behind this system.
- Anyone who goes to court and seeks to have their driving matters considered under Section 32 Mental Health (Forensic Procedures) Act should have their licences suspended and again their fitness to drive considered by the RMS.

We hope our ideas, observations and recommendations assist in the implementation of better laws and more importantly, the enforcement of those laws, in the hope that we can significantly reduce our horrific road toll.

Thank you for inviting us to comment.

Regards



Harold Scruby  
Chairman/CEO



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