

OUR REFERENCE

DIRECTOR'S CHAMBERS



ODPP
New South Wales

YOUR REFERENCE

DATE

12 June, 2018

The Hon James Wood AO QC
Chairperson
NSW Sentencing Council
GPO Box 31
Sydney NSW 2001

By email: sentencingcouncil@justice.nsw.gov.au

Dear Mr Wood

Sentencing Council review of sentencing for repeat/recidivist traffic offenders who may pose a risk to the community: Preliminary submission

Thank you for the opportunity to make a preliminary submission in relation to the above enquiry. As this is a preliminary submission, I will direct my comments to some of the specified areas of interest.

Before doing so, I raise the preliminary issue of what is a repeat or recidivist offender? Is it to be calculated by the number of offences committed irrespective of their nature or is it to be quantified by repeat offending involving the most serious specified offences, such as drive manner dangerous causing death or grievous bodily harm and/or high-range prescribed concentration of alcohol? And what will be the measure of "may pose a risk to the community": is this to be calculated by verifiable harm done to the community or by the possibility that harm could be done to the community due to the nature and circumstances of the offending?

2. Consider the principles the courts should apply when sentencing such offenders.

General sentencing principles such as specific and community deterrence are vitally important when sentencing repeat or recidivist offenders but so is tailoring the sentence to fit the offender. Some repeat traffic offenders will be dedicated career criminals, others will be persons who are otherwise law-abiding but who repeatedly disobey traffic rules and yet others will be persons disadvantaged by their socio-economic status, and/or by their location and/or by their options. It is important that the different classes of offender are recognised and catered for by the available sentencing options and intervention programs.

In terms of deterrence, consideration could perhaps be given to the "second or subsequent" regime so that there is clearer (and more) differentiation between, for example, penalties for a second offence and penalties for a fifth offence. And perhaps the "applicable re-offending period" should also be looked at, as the present default five-year period may not provide enough of a deterrence to reoffending.

3. Have regard to the availability of, and relevant findings on, driver intervention programs and other initiatives in NSW and other comparable jurisdictions.

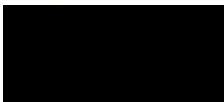
Consideration could perhaps be given to the ongoing funding of, and extension of, some of the existing intervention programs such as the use of alcohol interlock and speed inhibitor devices (although I understand that regulations have yet to be enacted that would allow for the use of speed inhibitor devices). Consideration could also be given to the scope of the provisions allowing for the Downgrading of Licences and the Power to Prevent Driving. The compensation provisions could also be more widely used as another form of deterrence.

4. Consult with road safety and other experts, and consider international best practice on how best to deter recidivist traffic offenders from reoffending and encourage safe driving practices.

As referred to in my response to #2, it is important to consider the differing factors leading to reoffending but not only in terms of tailored sentences. Deterrence initiatives need to clearly identify offenders, such as Aboriginal juveniles or offenders in country locations, and the reasons leading to their reoffending, such as a lack of access to licenced drivers and therefore lessons that would enable them to obtain licences, and a lack of transport/entertainment options.

I look forward to making further submissions as the Review progresses.

Yours faithfully



Lloyd Babb SC
Director of Public Prosecutions