

**Submission to Inquiry into Road Safety in Tasmania**

Mr Tim Mills, (Inquiry Secretary)  
 Hon Rosemary Armitage MLC (Inquiry Chair)  
 Hon Bastian Seidel MLC (Inquiry Deputy Chair)  
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9 August 2021

**Objective: To inquire and report on ways in which to improve road safety in Tasmania**

**1. Purpose of our Submission**

Unfortunately, Tasmania is in a position where, as at December 2020, Tasmania had the worst road safety record of any state, with 6.6 deaths per 100,000 people. However, strong leadership can provide direction to make the necessary changes and to advocate for a new culture of road safety.

This submission calls for improvements to road safety through:

1. Systematic data collection, analysis and evaluation of legislation, enforcement and penalties;
2. Targeted messaging to change cultural attitudes and behaviour; and
3. Road speeds which are consistent and suited to the road conditions.

This Inquiry provides an opportunity for Parliament to provide real leadership and demonstrate a willingness to recommend real change in the interest of road safety. This can be achieved through effective legislation, enforcement and penalties and measured against community expectations.

Cultural change can be led through more targeted communications with those who are not currently driving safely. Key messages should use language, motivations and imagery on media platforms which are appropriate to reach the different target demographics. For example, local identities who are held with respect by the target, can become champions of the road safety message.

There is welcome evidence of positive initiatives such as the Tasmania Police's Police Officer Allocation Model to better prioritise police resources however the success of this model needs to be measured against the success or otherwise of enforcement. Similarly, the multi-year 'Project Unify' IT transformation which uses contemporary systems and technology to increase the safety and efficiency of our police officers, needs to be measured in how successful it is in protecting our communities.

Hopefully Project Unify can facilitate easier reporting of incidents by the community. Further, real time data could be used to provide improved communications with the local community. The community can be better informed and reassured about enforcement activities and community feedback can be included for improved evaluation of legislation, enforcement and penalty effectiveness.

**1.1 Our Background and Research:**

For many years we have engaged with state government through participation in the Road Safety Advisory Committee's *Towards Zero* community consultation, direct discussions with the Department of State Growth and the Kingborough and Huon Valley local councils including the provision of well researched submissions. More recently through the *Huon Pride Together*

community group and facebook page, we have engaged with the community in the Huon Valley and found similar issues in other areas such as New Norfolk. We have highlighted community concerns around the extent of drink driving, "hooning", driving unlicensed and unroadworthy vehicles.

While we have achieved some success, what is best for road safety is often not always the outcome of current processes. We have witnessed resistance to change such as the setting of speed limits which are consistent with the condition of the road and adequate consideration for vulnerable road users such as tourists, the elderly, cyclists and pedestrians. This resistance comes from unfair weighting given to lobbyists such as some business, transport associations and recreational groups (eg motorcar/motorcycle associations).

Another blocker is the current ad hoc system where a member of the community identifies a speed limit which is not appropriate to road conditions and requests it be changed. Currently the request is tossed between the Department of State Growth (DSG) and local council. The result is an overall lack of continuity and appropriateness of speed limits.

Resistance to change has also been from some police officers who do not take action against people driving without a licence and only "move people on" from hooning on local roads, directing them to quieter and more remote locations rather than taking action.

Our extensive community consultations have resulted in numerous submissions including a Regional Huon Valley and Channel Road Safety Audit of current speed limits including surveys of the residential and the business communities. The veracity of this report is demonstrated by the number of successful recommendations implemented since 2015, for example,

- a) A turning lane to access Willie Smiths has been constructed;
- b) The Lower Longley bends have been reviewed with a reduction to 80kph;
- c) The local rural-residential area of Lucaston is now generally speed limited to 70kph;
- d) Reduced speed limit from 90kph to 70kph at the Oyster Cove end of Nichols Rivulet Road;
- e) Designated cycle route on the Cygnet Coast Road has now been speed limited at 60-70kph;
- f) Lymington Road Cygnet has a reduced speed limit of 60kph from 100kph; and
- g) A 100kph speed zone approaching the single lane Oates Bridge at Lucaston-Ranelagh has been reduced to 80kph with a Give Way sign installed.

However, a number of well supported recommendations remain unattended, for example,

- h) The Old Huon Road from Neika to Longley remains at 90kph despite a 2015 resident survey for a reduced speed limit of 60kph to 70kph being supported by 86% of residents;
- i) The Grove straight from Willie Smiths to Grove remains at 100kph despite the risks presented by cross traffic and school buses; and
- j) Inconsistency of speed limits between Kingborough (max 90kph) and Huon Valley (max 100kph) Councils often on common roads.

## **2. Evaluation, Enforcement and Communication**

### **2.1 Background**

To address a problem, one must first acknowledge it honestly. For example, in answer to a *Question Without Notice* by Hon Bastian Seidel on w/c 22 March 2021, Hon Mark Shelton MP said (in part) "police presence at Huonville Station had not decreased over the last 5 years and that the numbers had increased from 10 to 11 in 2021 and will increase to 12 in 2022." However, clearly those numbers are not in attendance at all times. The Hon Minister also said, "The number of charges specific to the Huon Valley area is not currently reportable as the relevant system does not record that data".

Colin Riley, President Police Association of Tasmania, described police resources in a different fashion (Examiner Newspaper article, 22 June 2021),

*"Deterrence is about increasing the perception that you will get caught breaking the road rules. The latest Tasmania Police statistics suggest there has been a reduction in road enforcement activity. However, this is a symptom of less intervention, with police being diverted to other duties - COVID-19 security, airport and home quarantine compliance and supplementing other government agency capacity shortfalls. We need a complete and operationally-focused cross-government plan to coordinate enforcement and deterrence activities with strong leadership."*

### **2.2 Recommendations**

2.2.1 It is recommended the speed limit assessment and decision making processes between local councils and Department of State Growth (DSG) be reviewed to better consider the condition of the road; residential and business development approvals and their effect on speed zones; conduct professional community consultation; and remove inconsistencies across council boundaries. Stakeholders must provide evidence based input rather than lobby against any change. Access by members of the community to request changes (eg local speed limits) must be improved.

2.2.2 Review the membership and stakeholders of the current Advisory Committees reporting to a Ministerial Steering Committee to ensure balanced input from Local Councils, DSG, Tasmania Police, Transport Commissioner and the community.

Ensure collaboration between state and local departments (Police and DSG) with Local Councils including:

- a) Formal two-way reporting of road safety incidents;
- b) Evaluation of Police Officer Allocation Model based on this two-way reporting;

2.2.3 Evaluate of the effectiveness of current legislation and penalties as a deterrence regionally with particular attention to city versus rural compliance and typical offences;

2.2.4 Ongoing system data analysis and reporting of infringement numbers, offence types and areas via 'Project Unify'.

2.2.5 Targeted communications with those who are not currently driving safely. Key messages should use language, motivations and imagery on media platforms which are appropriate to reach the target.



### 3. Safety Standards and Community Acceptance of Change

#### 3.1 Background

Tasmania operates as a state within the National Road Safety guidelines and standards. However political influences on State Government and departmental cultures often combine to deflect or avoid significant or substantive change based on known evidence. The ramifications of this are evident in the high number of serious accidents and fatalities in Tasmania. The extent of the problem is revealed in the statistics when Tasmania Police do conduct road safety operations. Unfortunately, these operations have been all too infrequent and often not held at peak risk times or days or in a sufficient range of locations to act as a deterrent.

This culture leads to the setting of speed limits which are inconsistent with the actual road conditions; a lack of clear messaging that the speed limit is a maximum and not a target; insufficient road safety enforcement such as random speed, drug and alcohol checks; vehicle roadworthiness; license checks. "People should 'Drive to conditions'" is an overused quotation after serious accidents or fatalities, however, this is subjective being open to any personal circumstance or interpretation. The theme of 'Defensive Driving' might be more educational.

*After 20 fatalities in the year to date, Tasmania Police conducted a road safety operation which was reported in the Examiner Newspaper, July 28, 2021. Even though this operation was held mid-week, on a Wednesday, it still indicates a high level of non-compliance. In the north 111 offences were recorded with six unlicensed drivers. A further 227 offences were recorded in the Southern and Western districts. Northern District Commander, Stuart Wilkinson said the sheer number of offenders remained a serious concern.*

Two other recent Tasmania Police exercises at Hamilton and Cygnet identified 22 vehicles and about 30 vehicles respectively as being unroadworthy and defected. Rather than examples of successful policing it is indicative of a broken process that is also inconsistent with national standards. Feedback from department and political representatives has suggested the cost of annual roadworthy checks on the Tasmanian public as being prohibitive. We would contend that any checks aligned with normal annual maintenance routines are not onerous or expensive and of national safety expectations.

Tasmania remains outside the interstate processes of annual roadworthy checks aligned with registration renewals. Such roadworthy checks ensure effective lights, brakes, tyres and body sturdiness (eg rust). In the near future it may even extend to emissions on a national basis. It is of serious concern that such unroadworthy vehicles are prominent on Tasmanian roads with prevailing weather conditions often speeding, driving dangerously or hooning.

It is welcome news that the DSG will start a procurement process in August for an initial four state-of-the-art mobile speed cameras, focussed on high-crash locations. The current location of fixed cameras, as per correspondence from Minister Shelton, 16 March 2021, is most frequently around high volume, arterial routes with recommendations made by the Auditor General. However, the location should be in non-urban areas where high speeds and older vehicles cause the majority of serious casualties in Tasmania according to *Towards Zero Quarterly Progress Report to 30 Sept 2020*.

Like most rural roads in Tasmania, on which the majority of Tasmanians live, there are no footpaths nor are there suitable nature strips on which to walk. The maintenance of a safe lateral distance has not been legislated for Pedestrian safety. Only cyclists are considered in the legislation (sec 144A Keeping safe lateral distance when passing bicycle rider). This is a dangerous oversight.

Our research has revealed an entrenched culture of anti social behaviour which is going unaddressed. Dangerous driving has been reported to Huon Valley Councillors and community groups such as Huon Pride Together have received reports and correspondence (some of which is attached as **Addendum C**) from members of the public and the business community outlining ongoing issues of hooning and drink driving which have been reported to the police

The community are told by the Police that they need identification such as type of vehicle, registration number, photographs etc in order to investigate. However, many in the community are sceptical their calls will gain a response and fear ramifications of being seen getting proof of identity or reporting to police. As can be seen on the links at Addendum C, much of this identification and evidence can be obtained on facebook sites however it seems this avenue is not pursued.

### **3.2 Recommendations**

#### **3.2.1 Setting the safety standards through a combination of:**

- a) Nationally aligned traffic infringement penalties. In 2015 a vehicle (eg truck in Hobart) proceeding through a red traffic signal in Tasmania would be fined \$140. At this same time not wearing a bicycle helmet in Sydney attracted a \$400 fine (refer **Addendum B**).
- b) Mandatory annual or biennial roadworthy checks to ensure Tasmanian vehicles comply with national safety standards;
- c) Conduct a review into the effectiveness of the current “hooning” laws across numbers, offences and localities detected since 2009 including where severe sanctions were imposed eg arrests, clamping or confiscation of vehicles.
- d) Extend current legislation for passing cyclists to include the same safe lateral distance requirements when passing all recreational road users such as pedestrians or horse riders where there are no footpaths or suitable nature strips on which to walk.

#### **3.2.2 Improved policing initiatives including:**

- a) Adoption of administrative penalties for low level DUI offences rather than court imposed civil penalties. The ability for police to administratively impose penalties for driving without a license or lower level “driving under the influence” offences (as per NSW) would also free court time for more serious offences (refer **Addendum A**).
- b) Schedule road safety operations more often, at various times day and night and in differing locations to change the current culture from one where people feel they are unlikely to be detected for dangerous driving behaviours;
- c) Greater use of technology through:
  - I. Deployment of mobile speed cameras in non-urban / rural areas where there is a higher incidence of older vehicles and many kilometres of poorly maintained road networks which are currently not being effectively policed. Also account for the current use of mobile phones where members of the public advise others of police activities, eg by rapidly shifting locations of speed cameras, RBT and vehicle checks after 30 minutes of police activity;
  - II. Collection of fines in real time through the use of eftpos to ensure payment without diminishing the right of appeal and save in the cost of collection of unpaid fines;
  - III. Real time analysis of Facebook groups connecting those involved in ‘hooning’ activities;
  - IV. Review the current use of technology from interstate policing eg mobile phone detection, speed cameras, mobile CCTV, drones and helicopters (as per South Australia policing of street races and the recent Tasmanian Police blitz in July 2021).

## 4 Achieving National Standards through an Audit of Road Speed Limits

*Two highly applicable National Road Safety Standards to drive change in Tasmania are:*

- 1. Road speeds should reflect how the road exists rather than the future intention*
- 2. Speed zones should be consistent over distance*

### 4.1 Background

The undue weight afforded to groups such as industry, motor cycle, car enthusiast, commuter and freight associations often shifts the focus away from road safety to an economic focus of speed and relative travel times.

Throughout Tasmania there are many examples exist of an aging speed sign infrastructure where poorly maintained backroads frequented by school buses and farm machinery are often set at 100kph while the connecting arterial roads or “highways” only allow 80kph eg Wattle Grove and Golden Valley Rds (100kph) against the Channel Highway, Cygnet (80kph). Wattle Grove Road was also the site of a recent twin fatality in *Targa Tasmania*.

Many of Tasmania’s “highways” are only country road standard and not at a national highway standard on maintenance, separation of traffic, camber or surface eg many parts of the Channel Highway and Huon Highway are typical of a country road standard. Our survey of businesses along the Huon Trail showed 67% support for a reduced and consistent speed limit along the Channel Highway being 80kph. This was seconded by the Kingborough KISS evaluation where a significant majority in the community supported further reductions below the current 90kph maximum speed.

Road speeds are inconsistent with multiple changes often set at Council boundaries eg

4.1.1 Old Huon Road is 90kph in Kingborough but 50-70kph in Hobart municipality. A resident survey conducted in 2015 found 86% desired 60-70kph as a maximum speed due to experiences with dangerous drivers yet authorities have refused any change. Resident approaches to DSG and Council were continuously redirected to the other until the requests ceased;

4.1.2 Channel Highway is a maximum of 90kph in Kingborough but 100kph in the Huon. A consistent speed limit of 80kph and designation as a Tourist Route would only add 3’54” to the entire 80km journey yet improve both safety and the tourism experience. Practically, a speed of 80kph could not be maintained south beyond Kettering anyway;

4.1.3 The recently reviewed Huonville to Franklin stretch of the Huon Highway has six changes of speed limit from 50kph to 100kph over 9 klms. This stretch is also the subject of current residential and tourism development so a uniform lower speed limit will be required in the not too distant future.

4.1.4 The recently reduced speed limit at Lower Longley (the Sandfly bends) from 100kph to 80kph, despite having one of the highest accident rates in the state, drew the ire of the trucking industry. Simply put, which truck drivers want to drive these dangerous bends at 100kph? The argument is a nonsense. Speed signs were then subjected to ramming and destruction as a strong indicator of the need for cultural change. Politicians then promised another review.

Reviews require sound leadership, independent advice and ownership to adopt real improvements. It is no longer adequate to claim local Tasmanian standards override national guidelines when, for example, interstate and international tourism is a key industry across the Tasmanian business sector.

In normal times international and interstate tourists factor significantly in accidents, serious injuries and fatalities. Similarly, insufficient government funds available to maintain road networks to a high standard equal to interstate expectations requires adoption of the national standard "speed limits to be set with the road conditions as they are now."

#### 4.2 Recommendations

Conduct a strategic review of Tasmanian speed limits to achieve consistency across regions or zones. By way of example the following road types and zones should have statewide consistency:

- a) CBD and schools 40kph – initiatives by HCC have already commenced
- b) Suburban 50kph
- c) Arterial roads into a CBD set at 90kph unless a separated highway
- d) Divided highway 110kph
- e) Rural residential areas (main city surrounds) 70kph
- f) Non arterial rural (eg orchards, dairy, farm machinery etc) 80kph
- g) Designated Tourist Routes (eg Heritage or Wine Trails) 80kph – Examples would include The Huon Trail along the Channel Highway and the Heritage Trail at Westbury.

*The Monash University Accident Research Unit Evaluation Report into the Kingborough Safer Speeds Demonstration (KiSS) dated 2015 states:*

***"Community survey results collectively indicated that the reduced rural speed limits in Kingborough had a positive and substantial impact upon the local community. The large majority of respondents either considered the new reduced limits to be appropriate or preferred further reductions."***

Thank you for the opportunity to present this submission to address a most important need across our Tasmanian community. Governments and its Members of the Legislative Assembly and Council are there to effect real change on behalf of the community and road safety is paramount. We are available for additional information or interview.

Yours faithfully

Mark and Catherine Temby

## **ADDENDUM A**

### **SENTENCING ADVISORY COUNCIL - October 2016**

#### **Sentencing Advisory Council**

Sentencing of Driving Offences that Result in Death or Injury: Consultation Paper [October 2016]

Community Feedback:

Mark Temby

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I am a general member of the public who has campaigned for improved road safety through the Premier Mr Hodgman; Minister for Roads and Police, Rene Hidding; the Department of State Growth; the Road Safety Advisory Council; and local southern Councils. I have also written several articles on road safety and improvement priorities for Tasmanian Times.

#### **Key Observations:**

1. The Minister should be informed the Terms of Reference (Scope) is inadequate to satisfactorily respond to the desired reduction in trauma or frequency associated with driving offences that result in death or serious injury because -
  - a. Statutory penalties without consideration of complementary administrative penalties cannot provide adequate deterrence from dangerous or negligent driving as is acknowledged in this report where prior offences are noted.
  - b. The limitation to 2015 ignores the spike in road deaths and trauma that has occurred in 2016 (a 16% increase to 29 deaths as at 30 September 2016) as does the report where statements are made concerning the "reduction in deaths and serious injury over a decade." NSW had an even larger spike of 24%.
2. Where a case of driving causing death or serious injury occurs then -
  - a. The separation between manslaughter, indictable and summary offences is not seen as being consistently applied. Referrals to the Supreme Court would be argued as time, cost and resource prohibitive but leading to inconsistent treatment of an offence. However, consideration should be given for all cases of driving causing death to be heard in the Supreme Court and let the court and jury decide on culpability and the circumstances.



- b. Variations to statutory penalties could include longer periods of disqualification (eg 10 to 25 years) and the confiscation of the motor vehicle. Mandatory medical assessments (drug or alcohol dependency; mental instability) should precede trials in the most serious cases (eg road rage) and be a requirement before the reissue of a licence. Disqualified offenders usually reoffend with the same vehicle and the ability to apply this penalty should be available under normal Police administration with the avenue of an appeal through a Court or Tribunal.
  - c. A comprehensive table of aggravating and mitigating circumstances is supported and, again, this should also be available for application through Police administrative penalties. I note driving whilst disqualified is not generally listed as an aggravating circumstance for escalation of an offence to dangerous driving. The same can be said of an unregistered and uninsured vehicle.
- 3. The Tasmanian government should aim for consistency with other Australian states in relation to statutory and administrative penalties. A suitable forum would be COAG and should not be onerous.

## General Feedback:

I will refer mainly to the following case study to highlight my key observations above.

### **MICHAEL LEE McCULLOCH HANDED SUSPENDED TERM FOR CAUSING THE DEATH OF CYCLIST CRAIG SAUNDERS BY NEGLIGENCE DRIVING**

David Killick, Mercury

September 12, 2014

**AN unlicensed driver who failed to see a cyclist wearing high-visibility clothing in daylight on a straight stretch of road has been given a suspended jail term for killing the man.**

The sentence was condemned as inadequate by the state's peak cycling body.

Michael Lee McCulloch, 50, was last week found guilty of causing the death of another person by **negligent driving**.

McCulloch pleaded guilty to driving while not the holder of a driver's licence.

Hobart Magistrates Court heard McCulloch did not swerve or brake before he drove his ute at 80km/h into Pelverata man Craig Saunders, 57, on the road between Huonville and Cygnet on the morning of August 5 last year. Mr Saunders died on the way to hospital.

Michael Lee McCulloch, 50, of Ranelagh, leaves the Hobart Magistrates Court after yesterday's sentencing. McCulloch said he didn't see Mr Saunders or his riding companion Steve Barrett in the seconds before the collision. His claim the sun was in his eyes was rejected by Deputy Chief Magistrate Michael Daley.

During sentencing yesterday, Mr Daley noted McCulloch was **unlicensed at the time** and that he had a poor driving record, including **four convictions for drink-driving**.

Victim impact statements from Mr Saunders's partner and children were tendered to the court. Mr Barrett, who was riding with Mr Saunders at the time, told the court he continued to be plagued with memories of the crash and pleaded with motorists to take more care.

"Cyclists are fragile, with little protection. We just ask for respect and a few moments of a driver's time. If this was forthcoming, fewer people would have to go through the ordeal we have all just experienced," he said.

**Mr Daley said the cyclists would have been visible to McCulloch for up to 12 seconds before the crash and no blame could be attached to Mr Saunders.**

"If the defendant has been keeping a proper lookout he would have seen him," he said.

The magistrate sentenced McCulloch to four months' jail, but suspended the sentence on condition he not commit another offence punishable by a prison term for three years.

The father-of-four was ordered to perform 150 hours of community service and disqualified from driving for 18 months. **The crime carries a maximum penalty of 12 months in jail and a \$1300 fine.** Mr Saunders's family and friends were present at court during the proceedings.

Bicycle Tasmania's Emma Pharo said tougher penalties would provide greater protection for cyclists.

"Given he was found guilty and there was no obvious reason he shouldn't have seen the riders, this seems to be a very light sentence," Ms Pharo said. "There needs to be disincentives for drivers who aren't careful. **In serious offences like this one, some drivers should be disqualified for life.**"

**Aggravating factors:**

In this case the prosecution chose to advance through the Magistrates Court as a Summary Offence despite four prior convictions for drink-driving and driving without a current licence. The offender was driving a vehicle (his own), unlicensed on a public road yet the behaviour apparently did not qualify as dangerous driving. Despite the Magistrate observing the offender had a clear view on a straight stretch of road on a clear day with a cyclist wearing high visibility clothing, the offender was only prosecuted for negligent driving. I note in your report it states,

*"An examination of sentencing comments from cases where an offender was convicted of motor manslaughter and dangerous driving causing death or grievous bodily harm revealed that at the time of the crash which resulted in death or injury, the driver was disqualified or unlicensed in 26.2% of cases. Research conducted by the Road Safety Advisory Council reported that crash data from 2011 showed approximately 10% of drivers involved in fatal crashes were unlicensed and that it was evident from 'a random sample of Tasmanian crash reports involving an unlicensed driver ... that they were engaging in high risk behaviours at the time of the incident'."*

Further, it states,

*"In sentencing offenders for serious driving offences, courts have recognised the danger presented by dangerous and risky driving and the need for community protection. Community protection is specifically identified as one of the purposes of sentencing in Tasmania." [6.4 Incapacitation/protection of the community]*

It is contended driving whilst disqualified or unlicensed constitutes "dangerous and risky driving" and requires "community protection." The table at 3.5.2 "Driving behaviour, Negligent driving causing death, 2008–15" lists six cases (26% of the total) as "Alcohol/drug affected driving" and "Speed." It is also contended the consumption of alcohol or drugs and the driving at excessive speed are conscious and deliberate decisions presenting a danger to the public and not negligence. This demonstrates the systemic repetition of inconsistency as per my case study.

**Current Statutory Penalties:**

The case study lists the current maximum penalty as "a maximum penalty of 12 months in jail and a \$1300 fine." Below are the statutory penalties for Negligent Driving as prescribed by the Act. It is contended the penalties are manifestly inadequate and it would be noteworthy to identify unpaid court fines. The Act in referring to a second offence becomes almost surreal.

*"Under the Traffic Act 1925 (Tas) s 32, the maximum penalties are as follows:*

*Negligent driving causing death 10 penalty units (\$1570) and one year imprisonment for a first offence.*

*20 penalty units (\$3140) and two years imprisonment for a second offence.*

*Negligent driving causing grievous bodily harm 10 penalty units (\$1570) and six months imprisonment for a first offence.*

*20 penalty units (\$3140) and one year imprisonment for a second offence."*

The inadequacy of the current penalty regime and its application through the courts is shown at 3.5.3 Sentencing Outcomes for Negligent Driving wherein the report states,

*"Use of Imprisonment and Sentence Length*

*"In the period July 2006 to May 2016, there were 21 charges where a single sentence was imposed for negligent driving causing death and the majority of offenders received a fully suspended sentence (66.7%)."*

In the meantime, the family of the case study is without primary income, a husband and a father from a collision with a car driven by a man not licensed to be driving.

**The need for a complementary review of Police Administrative Penalties**

The report makes numerous references to preventative or deterrent measures as being not fully effective such as,

*"While it is certainly agreed that having a punishment structure (police, courts, and sentences) does have a deterrent effect and does reduce offending, research suggests that increasing sentence severity does not better deter would be offenders (marginal deterrence) or reduce crime rates. This was recognised by the Full Bench of the Supreme Court of South Australia in R v Payne, where it was stated that:*

*"When one considers the range of factors that contribute to fatal accidents, one becomes all the more conscious of the fact that the punishment of offenders through the courts is only one of a range of appropriate responses to the problem of road fatalities. The courts must play their part, but it is a mistake to assume that increasing the severity of sentences is the answer to the problem. In the light of the information before us we are not satisfied that increasing the level of sentences would further reduce the incidence of this offence. Driver performance and driver behaviour are obviously significant factors, but whether an increased level of sentences would have any significant effect is doubtful."*

Many instances in the report detail where offenders before the courts have prior serious traffic offences and are often disqualified drivers. It is contended most reoffend because they still possess their motor vehicles. It is also contended many would have unpaid police and court fines. The solution requires action away from the status quo. Community behaviours could shift if police administrative penalties better reflected actions that deterred driving that MAY result in death or serious injury. This would encompass:

- Excessive speed such as 45kph or more above the speed limit;
- Driving under the influence of alcohol where the blood alcohol level exceeds .20;
- Hooning such as fishtailing, burnouts or street racing; and
- Instances of road rage.

These offences should result in immediate confiscation of vehicle and loss of licence for an extended period. Where normal offences and police fines are applied then the police should be able to vary the fines with evidence of any mitigating or aggravating circumstances in the same manner as a court. An independent review or appeal capability should be allowed in the most serious cases.



## **ADDENDUM B**

### **Traffic Fines and Penalties - Data reference dated 27 March 2016**

**What are the current offences and penalties in the Tasmanian Traffic Act?**

#### **1. Failing to wear a seatbelt**

Driver or passenger (over 16) fail to wear properly adjusted and fastened seatbelt (when vehicle moving/stationary, but not parked)

\$300 and 3 demerit points (except where the offence relates to the passenger)

This level of penalty is comparable with the new \$319 fine for a cyclist not wearing a helmet.

#### **2. Fail to stop as required on red traffic light**

\$140 and 3 demerit points

Using the same cycling comparison, while noting the differences in momentum and the cycling offence relating mostly to pedestrian crossings, the new NSW equivalent is a \$425 fine. \$140 is an inadequate level of penalty for a motor vehicle continuing through a red light.

#### **3. Exceeding the Speed Limit by less than 10kph**

Current: \$80 and 2 demerit points.

Few fines are issued at this level except in school zones and the offence could be labeled an inadvertent error or genuine mistake. A fine around \$150 would seem appropriate in 2016.

#### **4. Exceeding the Speed Limit by 10 to 14 km/h**

Current: \$110 and 2 demerit points.

Most fines would fall within this speed range with a more suitable fine being around \$250 and similar to not wearing a seatbelt.

#### **5. Exceeding the Speed Limit by 15 to 22 km/h**

\$150 and 3 demerit points.

A typical example might be passing through a school zone at 60kph or passing a school bus without slowing.

#### **6. Exceeding the Speed Limit by 23 to 29 km/h**

Current: \$250 and 3 demerit points.

Examples are now becoming more reckless where a car is travelling at up to 130kph in a 100 zone or 80 kph through a shopping zone. The level of fine is no longer relative to the level of the offence and should be around \$650 and 5 demerit points.

#### **7. Exceeding the Speed Limit by 30 to 37 km/h**

Current: \$450 and 5 demerit points.

A car is now travelling at up to 137kph in a 100 zone or 87 kph through a school zone. The level of fine is no longer anywhere near the level of the offence. This level could be merged with the previous category into "Exceeding the speed limit by 23 to 37km/h" or similar.

#### **8. Exceeding the Speed Limit by 38 to 44 km/h**

Current: \$650 and 6 demerit points.

A car is now pushing 150kph in a 100 zone or over 100kph along a suburban road. The driver has passed from reckless endangerment to deliberate endangerment, in my opinion. The fine is considerably less than average weekly earnings. The fine should be at least \$1,000 with an administrative variable applied by the police for aggravating circumstances like a second offence or hooning laws.

#### **9. Exceeding the Speed Limit by 45 km/h or more**

Current: \$900 and 6 demerit points.

A car is now travelling in excess of 145kph in a 100 zone and the fine remains constant whether the speed is 150kph or 200kph. The driver is clearly engaging in deliberate endangerment. The fine has approached average weekly earnings and is manifestly inadequate. It should be around \$3,000, an immediate loss of licence and confiscation of the vehicle.

#### **10. Use or permit use of an unregistered motor vehicle**

Current: \$200 and no demerit points.

This is a growth area of non compliance in regional Tasmania where unroadworthy, unregistered and uninsured vehicles use our roads illegally. Again it is knowingly and deliberately non compliant. Currently, the average registration fees cost around \$700 and a more appropriate level of fine would be at least \$1,000 and the immediate confiscation of vehicle.

The levels of fines are clearly inadequate and are not tied to the CPI or any other annualised factor. Each is in need of urgent review. The speed classifications could be simplified into fewer categories. Administrative penalties (fines) should allow administratively imposed variables for reckless or deliberate actions. An internal avenue of appeal would provide natural justice. Confiscation of vehicles should be mandatory at the higher deliberate levels of offence such as exceeding the speed limit by 45kph or more, driving an unregistered vehicle or hooning). Court time should be minimized.

#### **What are the Penalties for Driving under the influence of Alcohol or Drugs or other reckless behaviour?**

Source: <http://www.hobartlegal.org.au/tasmanian-law-handbook/crime/traffic-and-parking-offences/>

#### **Penalties Under the Road Safety (Alcohol & Drugs) Act 1970 Section 17**

Range of penalties for first offence

Penalties, that is minimum and maximum Penalty Units, periods of disqualification and periods of imprisonment are doubled for second offences.

*Author's Note: Given the very high range DUIs being reported (over 0.2 and even 0.25) there is a need for even higher penalties. A new category should be considered for blood alcohol readings above 0.2 while mandatory sentencing should also be considered for being guilty of DUI and causing death or injury as Courts currently are too lenient with suspended sentences. Inadequate Court sentences may be with the deliberate understanding of government due to financial pressures in our prison system. Alternative punishments may need to be considered.*

### **Reckless Driving**

A person who drives recklessly or at a speed or in a manner which is dangerous to the public commits an offence and is liable for a penalty of up to 20 penalty units and/or imprisonment for 2 years for a first offence (s32(1), Traffic Act 1925 (Tas)). It is double this penalty for second or subsequent offences.

### **Driving While Disqualified**

An offence will be committed if a person drives a motor vehicle on a public street or attempts to obtain a driver's licence while disqualified, or while their licence is suspended or cancelled (s13, Vehicle and Traffic Act 1999 (Tas)). For a first offence, a penalty of up to 40 penalty units will apply or up to 6 months in jail, plus a further period of disqualification of up to 3 years. For a second or subsequent offence the penalty is up to 80 penalty units, up to a year in jail and up to an extra 5 years disqualification.

### **Failure to Stop after an Accident**

It is an offence for a driver to fail to stop after being involved in a motor accident (s33(1), Traffic Act). The driver must remain at the scene of the crash and give any assistance that is necessary or practicable. Failure to do so may involve a fine of up to 80 penalty points or up to 2 years jail.

### **Unlicensed Driver**

It is an offence to drive a motor vehicle whilst unlicensed, and it is also an offence to permit an unlicensed person to drive (s8, Vehicle and Traffic Act). Penalty for first offence, up to a 20 penalty unit fine.

## **Offences Causing Death or Serious Injury**

### **1. Manslaughter**

A person who drives a motor vehicle in a criminally negligent way and causes the death of someone else may be charged and convicted of manslaughter (s156, Criminal Code Act 1924 (Tas)). A person in charge of a vehicle is under a duty to use reasonable care to avoid danger to human life (s150), and any breach of this duty that amounts to 'culpable' or 'gross' negligence will constitute manslaughter. This is a very high degree of negligence, much higher than the normal degree of negligence in civil matters. There must be pronounced disregard for the life and safety of others.

Manslaughter is a crime which must be tried before a jury, and the punishment may be a term of imprisonment up to a maximum of life imprisonment, but is usually in the range of 18-30 months. However, because in the past some juries were reluctant to convict drivers of manslaughter, the Criminal Code was amended to create a new offence of 'causing death by dangerous driving'.

### **2. Causing Death by Dangerous Driving**

This crime, along with manslaughter, is one of the few crimes where a 'responsible citizen' with no previous criminal record, if convicted, may be sent to jail. The crime involves causing death by driving a motor vehicle at a speed or in a manner that is dangerous to the public, having regard to all the circumstances of the case (s167A). The 'public' includes a passenger. Where a motor vehicle is driven on a public street, the nature, condition and use of the street, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the street, is taken into account.

This crime is a statutory alternative to manslaughter and sentences are normally less than for manslaughter. Once the act of driving has been shown to be voluntary and intentional it is for

the jury to decide whether the driving is objectively dangerous. The driver's opinion on this point is irrelevant.

### **3. Reckless/Dangerous Driving**

A person who drives dangerously, but does not kill anyone as a result, can be charged with 'dangerous' (or 'reckless') driving under the Traffic Act (s32(1)). In other respects, the offence is the same as causing death by dangerous driving. An accused can elect to have the charge tried by either a magistrate in the Magistrate's Court or judge and jury in the Supreme Court.

### **4. Negligent Driving**

A driver may also be charged with negligent driving under the Traffic Act (s32(2)). The manner of their driving in all the circumstances is examined to determine if the manner of driving has been negligent. It is a lesser offence than dangerous driving and the degree of negligence which must be proved will therefore be less. This charge is triable before a magistrate.

Footnote: A penalty unit is a fixed amount of money. Penalty units are used to decide the amount of a fine. The current penalty unit in Tasmania is \$154. This means that if you are fined 2 penalty units, your fine will be \$308. All fines are a multiple of a penalty unit.

### **A Complete Review of the Traffic Offences and Police Offences Acts is needed**

The government has an opportunity to radically update and target the worst of driving behaviours through increased penalties related to the Traffic Offences and Police Offences Acts. Some offending drivers should be required to undertake psychological assessments as to their suitability to hold a licence while longer terms of disqualification (10 years to life) should be implemented. Mandatory loss of vehicle is another penalty option as is a 'one strike' policy for reckless driving like hooning or road rage.

The Police Association, too, is aware of the inadequacies of current penalties in deterring offences. In this day and age of electronic fund transfers there is no longer an excuse to ignore unpaid fines.

The claims by representatives of the legal fraternity to 'increase public education' for an 'uncertain problem' are hollow and self interested. The evidence has been available for many years and amending or implementing an Act of Parliament is the role of government.



## **ADDENDUM C – Business and Community Reports**

Sent to Tas Police and CC'd to DPAC, PWS, STT, TICT, DST and Mayor Enders on the 22<sup>nd</sup> of Dec. 19/12/20

Att. Sgt. Andrew Fogarty,

Huonville Police Station.

By email – [Andrew.fogarty@police.tas.gov.au](mailto:Andrew.fogarty@police.tas.gov.au)

Dear Sgt. Fogarty,

I write to you as the Managing Director of Tahune Adventures wanting to formally draw your attention to the anti-social / hoon behaviour on the Arve Rd. between Geeveston and Tahune Adventures. I have raised this matter at the Huonville and Geeveston Police stations on a regular basis over the years and am grateful for the attention the collective Huon Valley stations have been able to afford this problem in the past. Typically, and as you would know it has been a night-time problem. However, because the Tahune Airwalk site has been closed for rehabilitation for so much of the time since the bushfires of 2019 and this year because of the Covid 19 lockdown the local hoons have taken to demonstrating their talents during daylight hours as much as at night and have expanded their areas of preference from the Arve Rd. Edwards Rd. T Junction to the entire length of the road as is evidenced by the dreadful mess left on the bitumen all the way to Tahune. Our site has been operating on weekends only, since the relaxation of pandemic rules in July of this year, however from Boxing Day the 26<sup>th</sup> of Dec. we plan to reopen 7 days a week. From that date and in line with the expected influx of summer visitors there are likely to be hundreds of cars traversing the full length of that road every day. As we all know, tourists at the best of times have difficulty navigating our charming narrow and twisty country roads.

I put to you -

1/ The uncontrolled activities of these idiots, day and night is leaving an highly undesirable message on our roads for visitors to whom we are espousing a natural, clean, green and safe environment.

2/ Roughly 50% of the Arve Rd. is also the access to another of the state's significant and highly visited destinations, The Hartz Mountain National Park. This facility is already open 7 days a week but again will experience significant growth in visitation during the summer months.

3/ This uncontrolled illegal activity is highly likely to cause a serious or God forbid, a fatal accident on the Arve Rd. An episode like this would likely undo all the good work undertaken this year to resurrect our industry in this state by Government Agencies, Tourism bodies and Operators.

I'm imploring you to take this matter very seriously and to escalate a resolve asap before it is too late.

Please feel free to contact me at any time to discuss.

Ken Stronach Managing Director Tahune Adventures

----- Forwarded message -----

From: **River's Edge Wilderness Camping** <[info@riversedgecamping.com.au](mailto:info@riversedgecamping.com.au)>

Date: Mon, 29 Mar 2021, 10:35

Subject: Re: Invitation to put a voice to your concerns and aspirations - Huon Pride Together

To: Huon Pride Together <[huonpridetogogether@gmail.com](mailto:huonpridetogogether@gmail.com)>

Hello Cathy,

Having lived out at Lonnavele for the past 33 years and managing the Rivers Edge Camping Ground for the past 3 high seasons we get to see a lot of anti-social behaviour on our roads.

Hooning comes in waves, sometimes we will go for weeks not hearing a thing and then we can be confronted with hooning at all hours, burnt out cars and tyres dumped in the forest just a few kilometres up the road from the camping ground.

We have reported instances on many occasions to the police but we are told that they cannot do anything unless they catch them in the act.

Littering is also an issue with the dumping of household items in the bush, whilst in general our roadsides out here are not too bad, the closer you look the more rubbish is found. At the campground we provide a daily rubbish service, going to each camper's site and taking any rubbish that they have away so that they don't need to cart it home with them. This service is welcomed by campers and they are respectful of their surrounds.

We have in recent weeks been targeted by thieves who have broken into the the campground's showers and damaging the coin boxes, stealing the shower money in the process - this occurred twice within a week. There has also been an increase in people snooping on neighbouring properties - for the first time in our 33 years here we are now looking at putting in surveillance cameras and signage to ward off trespassers.

The police have increased to some extent patrols in our area but being such a large community and their resources limited it really does come down to the whole of the community to take action.

Warmly,

Prue DeVries



Message from a Huon Valley community member, concerned about hooning culture:

"these aren't poor kids, kdt, is a registered race team at Symons plains raceway, these videos are from around me. The kdt stands for ketamine drifting Tasmania, some of them live at gravelly beach Launceston way. Those videos are down here, around Southwood, I gave a list of thirty five names with Facebook evidence of local hooning, one video showed them cutting a forestry gate. I have been tackling this activity with police for twelve years. This list of names is only for hooning activity on main roads and does not include quad bike, trail bike or modified 4wd owners that use place as an unregulated theme park every weekend with no respect for respectful road usage.

Footage was mainly of kdt, and also a large gathering at bogan bridge Southwood after last car and bike show run at Geeveston, this gathering had around hundred people, all ages, and ran from midday to midnight, a list of number plates with vehicle description was given to police. Police were informed early in day but I was informed they had not the resources to attend. The scene looked like a mad max movie set, the rubbish left was deplorable.

I would suggest pressure be put on kdt group as they are a professional race team that would be looked up to by the general morons as role models. This certified racing group has promoted by its own videos that you can do burnouts and any anti social behavior anyplace you like and get away with it. They have their own merchandise. If police were fair dinkum the evidence against this group should at least get them suspended from race meetings ."

<https://www.facebook.com/100044177992067/videos/340843233341909/>

<https://www.facebook.com/100044177992067/videos/1559549157425045/>

<https://www.facebook.com/100044177992067/videos/1431822240197738/>

<https://www.facebook.com/100044177992067/videos/309788149625764/>

Another message from Huon Valley community member, Stacey Tomkinson, wrote to us stating "Worth looking into, evidence is there, name is there etc. I used to work down that road at Ta Ann and a lot of logging trucks use that road very dangerous choice of a spot."

[https://www.facebook.com/messenger\\_media/?thread\\_id=108776893985038&attachment\\_id=3017578275130644&message\\_id=mid.%24cAABi7sbEimuBBEuwFV60wZnYU1V2](https://www.facebook.com/messenger_media/?thread_id=108776893985038&attachment_id=3017578275130644&message_id=mid.%24cAABi7sbEimuBBEuwFV60wZnYU1V2)

A small sample of comments from Tas Police

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**Laurel Klemencic**

Tasmania Police you should get on the Southern Outlet outwards in the mornings .... anytime between 0500 and 0730. Mainly on the south side of Mt Nelson. I am constantly being overtaken while i am doing the speed limit. There are also a number of unroad worthy vehicles and trailers using the road ..... can't see trailers or cars with no tail lights.

Dennis Matthews

Driver complacency leaking into the state again. Action days like this are a reminder, but non compliant drivers continue to offend because they don't get caught. Continually getting away with it becomes natural to them.