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Sentencing Advisory Council

By email: [sac@justice.tas.gov.au](mailto:sac@justice.tas.gov.au)

## **Sentencing of driving offences that result in death or injury**

Tamar Bicycle Users Group (TBUG) is a membership based community organisation with around 600 members and supporters across the Tamar region. Our aim is to encourage more people to ride. We do this through a number of means. Firstly via the organisation of training and a community rides calendar that caters for a range of experience from beginners to veterans. TBUG is an affiliated club of Cycling Tasmania who are co-signing this submission.

Secondly we work with state and local government and to encourage, advise and support them in efforts to promote cycling and provide more adequate cycling infrastructure. We collaborate with other cycling organisations such as Bicycle Network and Cycling Tasmania to do this.

Cycling Tasmania (CT) provides memberships for both racing and recreational riders. CT clubs offer approximately 150 'on road' races each year, provide training and organise road and track cycling in Tasmania. There are 752 financial CT members in Tasmania. Cycling Tasmania members are significant road users as CT members use public roads for training and recreation.

We wish to make the following points:

1. Bike riders are recognised as legitimate road users and have the same rights and responsibilities as other vehicles. Unfortunately, like other vulnerable road users, these rights are often denied or contested by other road users i.e. vehicle drivers. Neither do vulnerable road users have the same "power" as other road users; it is highly unlikely for a vehicle driver to be killed or seriously injured if in collision with a bicycle.

This inequity needs to be recognised and protected under law by adjusting the charging and sentencing of drivers who hit bike riders in line with the vulnerability of the victim. This may require new laws or regulations with appropriate penalties that positively discriminate for bike riders.

2. Re Question 6, Adequacy of Sentences. The sentences of only four months suspended jail terms and driving bans that were imposed on drivers who killed three cyclists

(Lewis Hendey, Andrew Bingley and Craig Saunders) are grossly inadequate, in the view of the cycling community, particularly in that:

- there were no contributing traffic or environmental conditions; weather conditions were good and the riders were riding lawfully,
- the drivers should have seen the cyclists,
- the drivers were inattentive and
- in the case of Michael McCulloch (Craig Saunders' death), McCulloch had a history of irresponsible driving, including drink driving.

All of these offenders received four months sentences, all fully suspended. They were banned from driving for periods of 12 to 18 months with McCulloch being fined and required to undertake community service.

It is beyond the resources of TBUG to undertake a review of comparative sentences under other jurisdictions. However in recent cases in Victoria, South Australia and Western Australia (Crown v Maher, September 2016; Crown v Farrer, October 2016; Crown v Lawrence, January 2016; Crown v Murray, August 2012) all four drivers received jail sentences of up to 11 years.

The difference between these cases and the Tasmania deaths are that drugs, alcohol and texting were involved and two drivers left the scene. While these are compounding circumstances, the outcome was still the same; a driver was negligent and a cyclist died.

While it is neither possible nor desirable to mandate sentences for such offences, TBUG submits that wholly suspended sentences are inappropriate and do not send an appropriate message that vulnerable road users are adequately protected by the judicial process.

3. This belief of "under protection" extends also to less serious accidents but which are still significant and cause pain, suffering and social and economic costs to victims. As an example there have been two recent cases on the West Tamar Highway.

- In March 2016, a rider was hit by the wing mirror of a small truck, resulting in hospitalisation. The driver was issued with an infringement notice with a fine of \$140 and three demerit points. The driver was allowed to carry on his business while the rider suffered time off work and a significant recovery period.
- In July 2016, a motorist was not charged due to a lack of witnesses, despite running into the rear of a cyclist, resulting in broken bones, hospitalisation and time off work. The rider was not able to recover the cost of the smashed bike, phone and damaged clothing. At 11am, the driver had a positive blood alcohol level.

Both these riders were legitimately using the road in good visibility and conditions. We submit that it is not acceptable that a driver can hit a cyclist and cause injury and not face the court or can hit a cyclist from behind and not even be charged.

4. Re Question 12 Restorative Justice, we submit that a form of Restorative Justice is required to reduce the risk of re-offending. This should take the form of re-training before being allowed to drive following suspension or as an alternative to a fine. This would increase awareness of vulnerable road users, particularly cyclists and their needs for safety on the road. Conferences with victims would personalise the effect of dangerous and negligent driving with the aim of increasing community knowledge of vulnerable road user

safety and reducing the risk of re-offending.

5. Re Question 13, Comments by Magistrates. We believe that Magistrates should be free to make comment and recommendations on cases to emphasise the effects of negligent driving in the hope of again widening community knowledge.

6. Re Question 14 Definition of Negligent v Careless Driving. We submit that the term “negligent driving” should remain as this implies a failure to exercise the care that a reasonably prudent person would exercise in the circumstances where the term “careless” has no implication of “duty of care” and could imply a lower level of responsibility for actions.

7. We agree with the call from Bicycle Network to expand the terms of reference of the Review to include identifying and sentencing persistent offenders and irresponsible drivers and removing them from the road. As bike riders, we are particularly at risk from negligent drivers and the longer such drivers are on the road, the greater the probability of them hitting a vulnerable road user, either a bike rider or pedestrian.

Yours sincerely

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