

## Review of the *Road Transport Act 2013* Feedback Form

Please provide your comments below and return the completed form to Transport for NSW by **Thursday 31 October 2019**.

You can return your form in one of two ways:

- Email the form (preferably as a word document) to: [RTActReview@transport.nsw.gov.au](mailto:RTActReview@transport.nsw.gov.au)
- Post the form to: Review of the Road Transport Act 2013, Driver and Vehicle Policy, Customer Strategy and Technology, Transport for NSW, PO Box K659, Haymarket NSW 1240.

<b>Contact Name</b>	
<b>Position Title</b>	
<b>Organisation / Agency</b>	<b>Bicycle NSW</b>
<b>Phone No</b>	
<b>Email address</b>	
<b>Mailing address</b>	

Please be advised that all submissions will be published on the Transport for NSW website unless a clear statement is made by the person making the submission that they wish it to remain confidential.

Contact details of individuals making the submission will **not** be published. If you wish all or only certain sections of your submission to be treated as confidential, please indicate below.

Do you wish the whole submission to be treated as confidential?      Yes       No

If you wish only certain sections to be treated as confidential please indicate section(s) with an **X** in the first column below.

Relevant section of Road Transport Act 2013	Brief description of the issue	Proposed change to this section
<p>S 26 (2) Offences created by the statutory rules<sup>1</sup> may be made punishable by a penalty not exceeding 50 penalty units.</p>	<p>50 penalty units = \$5,500  The value of one penalty unit is prescribed in s 17 Crimes (Sentencing Procedure) Act<sup>2</sup> and, currently, one penalty unit is equal to \$110.</p>	<p>Penalties under the act need to change. Deliberate actions by drivers that are negligent or reckless are causing death and life-changing injuries. As at 28/10 305 lives had been lost on NSW Roads,<sup>3</sup> 13 bike riders have died<sup>4</sup> (though Brigit Neilsen is now counted as a pedestrian).</p> <p>The fine for not wearing a helmet in NSW and for a driver close passing a cyclist is \$344, but the road safety impact to others is vastly different.</p> <p>Since minimum passing laws were introduced in 2016, only 107 fines have been issued for close passes. Over the same period 58,300 fines have been issued to bike riders - 27,818 for not wearing a helmet.<sup>5</sup> We are not aware of a single injury or fatality being caused to another person from a cyclist not wearing a helmet, but thousands of injuries and many deaths have occurred as a result of motor vehicles being driven too close to people riding bikes.</p> <p>Close-passing, seriously injuring or killing people riding bikes often has little consequence for motor vehicle drivers. Cyclist injuries are rising in NSW – by 8% between 2007 and 2015.<sup>6</sup></p> <p>In the Sydney metropolitan area, 30% of road trauma presentations to emergency departments<sup>7</sup> are due to cycling injuries. Road safety strategies are not working for people riding bikes. The death toll is mainly related to driver behaviour<sup>8</sup>, and laws need to be changed to make roads safer.</p> <p>Roughly 85% of reported cyclist casualty crashes involve another vehicle,<sup>9</sup> not a bike or a pedestrian.</p>
<p>S 26 (3) In addition to a penalty referred to in subsection (2), the statutory rules<sup>10</sup> may provide for a</p>	<p>Driving disqualification does not change behaviour.</p>	<p>Bicycle NSW recommends that everyone who is disqualified from driving to have to undertake training and demonstrate understanding of and a commitment to changing their behaviour before they get their license</p>

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<p>person who is convicted of an offence against this Act or the statutory rules:  (a) to be automatically disqualified by virtue of the conviction from holding a driver license for a period not exceeding 6 months, or</p>		<p>back.</p> <p>This could be e-learning for more minor, first offences, and should involve practical training and examination for more serious or repeat offenders.</p>
<p>S 26 (3) In addition to a penalty referred to in subsection (2), the statutory rules may provide for a person who is convicted of an offence against this Act or the statutory rules:  (b) to be disqualified by order of the court that convicts the person of the offence from holding a driver licence for such period as the court thinks fit (whether for a period that is shorter or longer than a period of automatic disqualification referred to in paragraph (a)).</p>	<p>Driving disqualification does not change behaviour.</p>	<p>Bicycle NSW recommends that everyone who is disqualified from driving to have to undertake training and demonstrate understanding of and a commitment to changing their behaviour before they get their license back.</p> <p>This could be e-learning for more minor, first offences, and should involve practical training and examination for more serious or repeat offenders.</p>
<p>S. 33 Suspension of License for an accrual of demerit points, operating in combination with S. 36</p>	<p>Too many drivers who speed or exhibit persistently unsafe behaviour have their licenses restored</p>	<p>If the behaviour that has accrued the demerit points demonstrated persistent unsafe behaviour</p>

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38 Suspension of license--graffiti license orders	<p>There appears to be no material connection between graffiti offences and being an unsafe driver, and this section is likely to operate to further marginalise young people from diverse backgrounds.</p> <p>This also sends the message that the Learner driver and Provisional Driver licensing schemes, and their selected durations, are about 'punishing' young people, not about keeping them safe.</p>	<p>Bicycle NSW recommends removing this provision as using road safety legislation to punish offenders has no relevance to safety behaviour on the roads. It also has the potential to alienate and marginalise young people and sends the wrong message about road safety.</p> <p>We would welcome legislation that instead recognises the positive road safety behaviour of young people who ride bicycles and complete rider education training, become accredited ride leaders or who complete similar equestrian training to ride horses safely in the road environment.</p>

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<p>S 111 Presence of certain drugs (other than alcohol) in oral fluid, blood or urine</p> <p>(5) Defence for offence relating to presence of morphine in person's blood or urine It is a defence to a prosecution for an offence against subsection (3) if the defendant proves to the court's satisfaction that, at the time the defendant engaged in the conduct that is alleged to have contravened the subsection, the presence in the defendant's blood or urine of morphine was caused by the consumption of a substance for medicinal purposes.</p>	<p>Some drugs or medicines impair people's ability to operate a motor vehicle safely.</p> <p>These include morphine and some drugs prescribed for pain relief, but also medications to induce sleep, treat allergies, some anti-depressants etc.</p>	<p>Bicycle NSW recommends better education of health professionals and the community about medications that make it unsafe to drive.</p> <p>Over time we would like to see this evolve into requirements to avoid driving under the influence of these medications.</p>

<p>S 117 Negligent, furious or reckless driving  (1) A person must not drive a motor vehicle on a road negligently.  Maximum penalty:  (a) if the driving occasions death--30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence), or  (b) if the driving occasions grievous bodily harm--20 penalty units or imprisonment for 9 months or both (in the case of a first offence) or 30 penalty units or imprisonment for 12 months or both (in the case of a second or subsequent offence), or  (c) if the driving does not occasion death or grievous bodily harm--10 penalty units.</p> <p>S117 Negligent, furious or reckless driving  (2) A person must not drive a motor vehicle on a road furiously, recklessly or at a speed or in a manner dangerous to the public.  Maximum penalty: 20 penalty units or imprisonment for 9 months or both (in the case of a first offence)</p>	<p>As maximum penalties these are too low.  50 penalty units = \$5,500  The value of one penalty unit is prescribed in s 17 Crimes (Sentencing Procedure) Act and, currently, one penalty unit is equal to \$110.</p> <p>Conduct under S117 is not 'accidental' conduct that causes a crash and/or a fatality, this is conduct with intent, the deliberate neglect of the duty of care a motor vehicle operator owes to all road users. The low penalties provide no more than a 'slap on the wrist' for motor vehicle operators intentionally engaged in deadly behaviour, and undermine Towards Zero goals.</p> <p>They may also create a perverse incentive for those wishing to hurt or kill another to do so using a car, knowing that penalties will be low.</p> <p>Under the NSW Crimes Act<sup>11</sup>  S19A Punishment for murder  A person who commits the crime of murder is liable to imprisonment for life- which means the natural term of the person's life  S24 Manslaughter—punishment  A person committing manslaughter is liable to imprisonment for 25 years</p>	<p>Where conduct is deliberate Bicycle NSW recommends more closely aligning penalties with the NSW Crimes Act.</p> <p>If it is not possible to move to parity with the Crimes Act, then we recommend moving to maximum penalties of 10 years for S117 offences that occasion death, and at least 8 years for those that cause grievous bodily harm.</p>
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or 30 penalty units or imprisonment for 12 months or both (in the case of a second or subsequent offence).	S33 Wounding or grievous bodily harm with intent Attracts a maximum penalty of imprisonment for 25 years.	
<p>S118 Menacing driving</p> <p>(1) Offence--intent to menace A person must not drive a motor vehicle on a road in a manner that menaces another person with the intention of menacing that other person.</p> <p>Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).</p>	<p>Menacing other road users can include conduct that is not actually driving – for example breaking suddenly in front of a group of bike riders, parking in such a way as to menace road users attempting to use a bike path, footpath or in a way that blocks pathways or startles horses being ridden in the road environment.</p> <p>Behaviour such as stepping into the roadway suddenly to menace bike riders can cause serious or fatal crashes</p>	<p>Bicycle NSW recommends the below highlighted insertion</p> <p>(1) Offence--intent to menace A person must not drive a motor vehicle on a road <b>or behave</b> in a manner that menaces another person with the intention of menacing that other person.</p>
<p>126 Prescribed traffic control devices generally presumed to be lawful</p> <p>(STM Act, s 55)</p> <p>In proceedings for an offence against this Act or the statutory rules (other than an offence against section 123 (1)), a prescribed traffic control</p>	<p>At times traffic control devices are installed in ways that endanger people riding bikes. This can include obstructing bike paths with temporary signs, using signs or electronic boards with sharp edges that hurt people riding bikes, installing signs or traffic control devices in ways that cause</p>	<p>Bicycle NSW recommends an insertion that refers to a national standard or State standard focused on safe installation</p> <p>126 Prescribed traffic control devices generally presumed to be lawful <b>provided they are installed safely and in conformity with the Austroads Guidelines</b></p>

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<p>device that is installed or displayed on, above or near a road is conclusively presumed to have been lawfully installed or displayed there under this Act.</p>	<p>riders to have to swerve suddenly or that prevent riders from accessing cycleways safely.</p> <p>We have seen dozens of examples across NSW and have shared a report full of pictures from the light rail construction in Sydney.</p>	
<p>Part 5.3 Division 5 Use of evidence obtained from approved traffic enforcement devices S138 to S141 Admissibility of photographs taken by approved traffic enforcement devices</p>	<p>There is currently no provision made for the admissibility of photographs or video from other devices – for example dash-cam or bike cameras. Images from these devices can assist police with investigations, and are sometimes asked for. However the willingness of some officers to accept images from bike riders of offences is highly variable.</p> <p>We are also not aware of any instance in NSW of the installation of an enforcement device to record close passes and protect riders.</p>	<p>Bicycle NSW recommends including a section in the legislation detailing the types of devices and specifications required for images to be admissible.</p> <p>Bicycle NSW also recommend community education to assist citizens and police in the case where people wish to tender a photograph or video in support of their complaint. This should include educating citizens on the types of acceptable devices for taking images or video, and how to format them for submission. It should also include education for police requiring acceptance of submissions in a consistent set of circumstances. acceptance</p>

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146 Offence of failing to stop and assist after impact causing injury Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).	We have seen 3 hit and run crashes involving bike rider fatalities in 2019 alone, numerous injuries where drivers fail to stop.	In cases where it can be shown that a driver knew they had hit another vehicle or person the maximum penalty for failing to stop should be raised and the driver disqualified from driving
PART 5.6 – Automated Vehicle Trials	Automated vehicles have not always been effective at detecting people riding bicycles	Whilst Bicycle NSW have no objection to the laws in this part, we would like to see test results and standards related to automatic vehicle trials to ensure that vehicle detection systems effectively detect people riding bikes and that systems respond safely.

<sup>1</sup> NSW Government – Transport for NSW, Road Transport Act 2013, [http://www5.austlii.edu.au/au/legis/nsw/consol\\_act/rta2013187/s1.html](http://www5.austlii.edu.au/au/legis/nsw/consol_act/rta2013187/s1.html) [Online] 28/10/2019

<sup>2</sup> NSW Government, Crimes (Sentencing Procedure) Act 1999 No 92, <https://www.legislation.nsw.gov.au/#/view/act/1999/92/part2/div4/sec17>, [Online] 28/10/2019

<sup>3</sup> NSW Government – Transport for NSW, Centre for Road Safety, Statistics <https://roadsafety.transport.nsw.gov.au/statistics/index.html> [Online] 28/10/2019

<sup>4</sup> NSW Government – Transport for NSW, Centre for Road Safety, Statistics, Daily Road Toll, <https://roadsafety.transport.nsw.gov.au/downloads/dynamic/nsw-road-toll-daily.pdf> [Online] 28/10/2019

<sup>5</sup> NSW Government – Revenue, Data and Statistics, Bicycle, wheeled toy and non-motor vehicle offences, <https://www.revenue.nsw.gov.au/help-centre/resources-library/Bicycle,-wheeled-toy-and-non-motor-vehicle-offences-DSF-014.xlsx> [Online] 28/10/2019

<sup>6</sup> Nigel Gladstone, WA Today, 2018, Where Sydney's cyclists are most likely to have an accident - and when, <https://www.watoday.com.au/national/nsw/where-sydney-s-cyclists-are-most-likely-to-have-an-accident-and-when-20180423-p4zb3x.html> [Online] 28/10/2019

<sup>7</sup>The George Institute for Global Health, Use of a syndromic surveillance system to describe the trend in cycling-related presentations to emergency departments in Sydney, <https://www.georgeinstitute.org.au/publications/use-of-a-syndromic-surveillance-system-to-describe-the-trend-in-cycling-related> [Online] 28/10/2019

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<sup>8</sup> Peter Chambers & Tom Andrews, Rising cyclist death toll is mainly due to drivers, so change the road laws and culture, 2018, The Conversation, <https://theconversation.com/rising-cyclist-death-toll-is-mainly-due-to-drivers-so-change-the-road-laws-and-culture-102567> [Online] 28/10/2019

<sup>9</sup> Australian Government, Department of Infrastructure and Regional Development, Bureau of Infrastructure, Transport and Regional Economics, Australian cycling safety: casualties, crash types and participation levels, [https://www.bitre.gov.au/publications/2015/files/is\\_071\\_fp.pdf](https://www.bitre.gov.au/publications/2015/files/is_071_fp.pdf) [Online] 28/10/2019

<sup>10</sup> NSW Government – Transport for NSW, Road Transport Act 2013, [http://www5.austlii.edu.au/au/legis/nsw/consol\\_act/rta2013187/s1.html](http://www5.austlii.edu.au/au/legis/nsw/consol_act/rta2013187/s1.html) [Online] 28/10/2019

<sup>11</sup> NSW Government, Crimes Act 1900 No 40, [http://www5.austlii.edu.au/au/legis/nsw/consol\\_act/rta2013187/s1.html](http://www5.austlii.edu.au/au/legis/nsw/consol_act/rta2013187/s1.html) [Online] 28/10/2019