

# The human impact of fatal road crimes in NSW

October 2024

fiftyfive5
Part of Accenture Song

Road Trauma Support Group NSW

“

I think about this domestic violence stuff that’s been going on. There’s been this huge push from the whole of Australia, because it’s terrible what’s been happening in the court system, people have been getting bail and being let out, repeat offenders and horrible violence happening to women across the country.

People don't realise it's similar to what’s been happening in criminal crashes for a long time now. These poor people who face the worst time in their lives when they have lost a loved one to a fatal road crime and have to go through this whole torturous process of the so-called justice system and relive everything terrible that's happened when their loved one was killed. And then find out that in most cases, these perpetrators are getting off with minimum sentences or even no sentence at all. And quite often these offenders are committing further crimes.

In one case that I know of, there was a truck driver who hadn't had a driver’s license for 17 years, and he never had a truck license. He'd been caught multiple times drink driving. Yet he's out on the road and that's how this poor lady ended up dying, being run over by a truck driver.

There's a crisis out there for people that are victims of criminal crashes and it has to stop.



# Contents

**Disclaimer**

The findings of this report may cause some discomfort or distress for those who have experienced the death of a loved one due to road trauma. If you require any further support upon reading this report, please contact one of the following providers:

- Road Trauma Support Group NSW (1800 808 384) and roadtraumasupportnsw.org/
- Beyond Blue (1300 224 636) and beyondblue.org.au
- Relationships Australia (1300 364 277) and relationships.org.au
- SANE Australia (1800 187 263)
- Black Dog Institute (blackdoginstitute.org.au)
- Headspace (1800 650 890) and headspace.org.au

1 Executive summary 7

2 Introduction to the research 11

3 The scale of road trauma in NSW 23

4 Human impact of fatal road crimes 41
CTP Spotlight 49
Judicial Spotlight 91

5 Community support for legislative reform 117

6 Summary and conclusions 125

# 01
# Executive summary







# Summary of key findings

## Introduction

The Road Trauma Support Group (RTSG NSW) represents the interests of victims of fatal road crimes, their families and loved ones, and exists to help alleviate the pain and suffering families experience when they lose a loved one to someone else's criminal behaviour on NSW roads.

This report is the second in a series of publications designed to illuminate the reality of the experience, to identify key intervention points to help drive change and action. The first report in this series was "The Unheard Trauma of Fatal Road Crimes in NSW", published in 2023. This ongoing program of work provides the sole source of data about the number of people impacted by fatal road crimes in NSW. In addition to measuring the prevalence of this experience in the community, the study assesses the nature of the wide-ranging impacts of these crimes.

This year's study focusses on two critical systems that families of victims of fatal road crimes must navigate following the crash: the Compulsory Third Party (CTP) insurance scheme which provides financial compensation, and the judicial system which encompasses the criminal trial and sentencing of the driver who caused the fatal crash. Previous research has shown that these two processes have the highest potential for causing secondary trauma for families, hence these topics were prioritised for further exploration in this report.

### Methodology

This study, and the one preceding it, are the largest studies of this nature in NSW. The research employs a range of complementary methodologies, designed to explore and understand the impact of criminal road trauma from a range of perspectives within the NSW community. This comprehensive report brings together the results from:

- **Quantitative research with NSW community:** A robust, large-scale online survey was completed by 2,088 people living in NSW, including those who have and have not experienced road trauma.

- **Qualitative research with affected families:** Six people shared their personal experiences of criminal road trauma in NSW, and the impact on them and their families. These interviews provided extensive insight into the nuances of the experiences that families go through post-crash, with special attention paid to the CTP and judicial systems.

- **Qualitative research with experts:** The judicial system and CTP scheme are highly complex systems, best understood by those employed in these sectors. Four professionals from legal, police, and support services organisations participated in a comprehensive interview. These interviews provided an invaluable insider perspective on the CTP and judicial systems which helps clarify why families have negative, even traumatic, experiences with these systems.

Key findings

## Prevalence of road trauma in the NSW community

**The period from 2020 to 2023 represents the first time since before 1970 that road fatalities have increased consecutively for three years.**

Every year, more than 300 people die and more than 10,000 are injured on NSW roads. In 2023, 346 people died – a substantial increase of 23% more deaths compared to the year prior. Projections for 2024 are heading in the same direction. Decades of significant progress towards reducing the number of deaths on NSW roads is coming undone, with the current trajectory diverging entirely from the progress required to achieve NSW's Towards Zero Road Safety Plan goals for the year 2030 (no more than 164 road deaths) and the year 2050 (zero road deaths).

Road trauma is of growing concern. As the number of road deaths increases, so too does the number of people left grieving. Compared to 2022, the ripple effects of road trauma are far more widespread among the NSW community. Currently, one in five (22.5%) adults has experienced the death of someone they knew on the roads in NSW (amounting to 1.47M people). The proportion of people affected has increased by a sizeable 10.8% since 2022.

Looking specifically at road deaths caused by criminal driving behaviour, 4.4% of the NSW community have experienced the death of a friend or relative due to the criminal act of another road user on NSW roads (equating to 288K people). This proportion has also increased markedly since 2022, by 11.8%.

Underpinning the substantial size of this growing problem is the often-preventable nature of these deaths. Driver behaviour is a key contributing factor – including decisions related to speed, alcohol consumption, and reckless driving. Compounding these behaviours is a relaxed attitude towards road safety, which highlights the need to shift the mindset among Australians who tolerate risky driving behaviours.

## The lived experience of road trauma

The sudden, violent, and criminal nature of road trauma deaths brings a tidal wave of mental, emotional and physical damage to the victims' families, friends and the community.

The consequences of fatal road offences extend far beyond the initial incident. Families are confronted by a myriad of unfamiliar systems and processes that inhibit the ability to process and grieve. The unique stressors associated with this loss put those who experience them at a higher risk of mental distress and create a more severe impact on their mental health in the long-term. In short, the impacts of road trauma are **profound**, **catastrophic**, and **enduring**.

## Key findings (con't)

### Experience with CTP scheme

The Compulsory Third Party (CTP) scheme in NSW protects drivers from liability if they injure or kill someone else in a motor "accident".

Positive experiences with CTP claims process are **rare**. It is far more common for the experience to cause avoidable trauma because the CTP scheme is not fit for purpose. The injuries inflicted upon families of those killed in a road crash do not fit in existing categorisations designed to classify and treat physical injuries. There is no customised pathway for these unique claims, so the claims process is challenging and traumatic for grieving families:

- **Claim eligibility definitions do not reflect the full impact of fatal road crimes.** Extended family members and those in non-nuclear family relationships are not eligible for support.
- **Deadline to file an initial claim is restrictive at a time of unimaginable grief and limited mental capacity.**
- **Family members must prove that an 'injury' has been sustained**. It is incredulous to require a person grieving the sudden, preventable death of a loved one to prove they have been impacted by the loss.
- **The degree of loss must be calculated – impossible when someone has been killed**. The loss is immeasurable, the impact is profound.
- **Contributory Negligence places blame on the victim who was killed.**
- **The language used is insensitive, incorrect, and harmful.**
- **Insurers who pay CTP claims are not set up for these claims.** Staff are not adequately trained, insurers have incorrect expectations regarding recovery, and multiple claims managers re-traumatise families.

### Considerations for improving the CTP claims process

- Tailor the CTP scheme to suit fatal road crimes.
- Update the injury definitions, burden of proof, and recovery expectations.
- Alleviate the administrative burden by appointing a support person.
- Rectify the language – remove the word "accident" from legislation.

Key findings (con't)

## Experience with judicial process

For most families grieving fatal road crimes, the judicial process involves four key milestones: a bail hearing, a court trial, a sentencing trial, and an appeal process. Throughout the process, victims' families find themselves thrust into a complex judicial system that is difficult to navigate.

At present, there are inconsistencies in the support provided, leading to situations where families are horrified at what they see as a grossly inadequate and unfair system due to some overarching limitations with the judicial process:

- **Fatal road crimes are not viewed the same way as other criminal activities.** Crashes are called "accidents", freeing the criminal driver from culpability by minimising their responsibility for their actions.
- **Bail is very often granted to the offender, despite having killed someone.**
- **The process is protracted, drawing out pain and suffering.** Families are left in a state of perpetual limbo, not able to move forward with their lives while they wait years for the justice process to conclude.
- **Charges and corresponding sentences do not correlate with the magnitude of the crime.** Road crimes receive much weaker charges, and weaker sentences, compared to other crimes resulting in death.
- **Penalties are manifestly inadequate and do not reflect the severity of the offender's actions**. In some cases, offenders found guilty of a crime that resulted in death receive monetary fines, disqualifications from driving, or home detention as punishment. For families, this is a ludicrous outcome.
- **Offenders' rights are prioritised to the detriment of grieving families.** The judicial process protects the rights of offenders and is cruel to victims. For families, it is impossible to grasp why the system favours those who have committed crimes, instead of those affected.

## Considerations for improving the judicial process

- Update the offences (and sentencing) and refine the judicial process to suit the severity of fatal road crimes.
- Refine the process to be more victim-centric. Provide equal support mechanisms for victims' families, akin to those offered to the person who has committed a crime resulting in death.

# 02

# Introduction to the research







# Note to the reader

The authors of this paper are acutely aware of the importance of accuracy in language, and the traumatic effect of using the word “accident” in relation to fatal road crimes.

The word “accident” is used in this report **only** to reflect how it is currently used in practice, such as in the CTP legislation, judicial proceedings, and media coverage. It is not our intention to offend the reader by using this word.

Rather, it is our intention to use the word “accident” in this report to highlight how inappropriate, wrong, and offensive it is, and the need to change to the more accurate “crash” throughout all aspects of legislation and process relating to fatal road crimes.

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# Foreword & Acknowledgements

The research team gratefully acknowledges the participants in this research study, without whom this report would not be possible. Our findings are drawn from primary data shared with us by people affected by road trauma in NSW who have been generous enough to share their stories with us. We extend our gratitude to those who participated for their time and willingness to share intimate details of their traumatic experiences.

We thank the experts from a wide range of fields who participated in this research. Their expertise provides a valuable viewpoint into what it is like working with families experiencing the impacts of road trauma, and the processes and systems that enable them to carry out their jobs successfully (along with those that impede their ability to fully support people affected by road trauma).

We would also like to acknowledge the financial support provided by Transport for NSW which enabled this research to take place.

# Preface

**We are pleased to release this report which summarises our ongoing investigations into the experiences of individuals affected by road trauma in New South Wales (NSW), Australia.**

**This report builds on the previous research, "The Unheard Trauma of Fatal Road Crimes in NSW" released in April 2023. This latest report continues our examination of the experience of road trauma where someone has been killed as a result of a criminal act of another.**

**Despite efforts to reduce fatalities on NSW roads, the number of people killed each year has increased significantly since our initial research. The period from 2020 to 2023 represents the first time since before 1970 that road fatalities have increased for three consecutive years.**

**Criminal road trauma has profound, enduring impacts on the NSW community, and the scale of this issue is growing in tandem with the increasing fatalities on the roads. It was clear this topic warrants further investigation.**

In this report the research team have provided updated population context for criminal road trauma in NSW and highlighted the growing scale of this issue. From there, we explore in detail two significant processes that victim's families must navigate: financial support offered by the CTP scheme, and the judicial process from initial bail hearing through to sentencing and appeal (if applicable).

As with our previous research, our focus is on looking closely at the nature of the **impact** of criminal road trauma, along with **interventions** that could improve the experiences of people who lose a loved one due to someone else's criminal behaviour on the roads.

The authors of this report have not personally experienced the impact of road trauma. Our role in this research is objective, and our findings unbiased by our own personal views - based purely on the stories shared with us by the people who have been generous enough to share them.

Much has been written about road trauma across Australia, and indeed, in jurisdictions across the world. Our research program is distinct from other studies on this topic as we conduct the largest ongoing study of this nature in NSW.

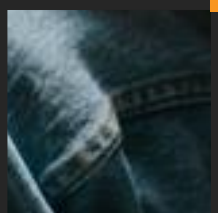
This comprehensive report summarises the results of our 2024 research study. This report compiles results from 2,088 surveys of NSW residents, supplemented by six in-depth interviews with those intimately affected by road trauma living in NSW, and four interviews with experts from legal, police, and support services organisations.

Our intention for this study remains the same as in 2023. It is our sincere hope that by elevating the voice of victim's families and sharing their experiences more widely, we can shine a light on what is needed to create positive change. By amplifying these stories, our aim is to assist decision-makers to make informed decisions about interventions, legislation, and systems that affect impacted families, with a particular focus this year on those in judicial, regulatory and insurance roles.

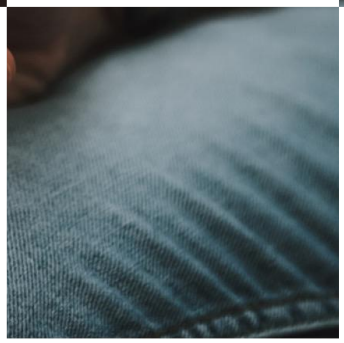
In the immediate term, our aim for this report is that it leads to improvements in the experiences of those who suffer the traumatic impacts of criminal road trauma. Longer-term, it is our hope that ultimately this research supports ongoing efforts to reduce the frequency of fatal road crimes on NSW roads.

Loren Watling
Bella Castle
Belinda Aanensen
**Fiftyfive5, part of Accenture Song**









# Research Objectives

## Purpose

Formed in May 2021, the Road Trauma Support Group (RTSG NSW) represents the interests of victims of fatal road crimes, including their families and loved ones. The organisation exists to help alleviate the pain and suffering families experience when they lose a loved one due to a criminal act on NSW roads.

RTSG NSW commissioned the expertise of an independent research agency, Fiftyfive5, to conduct further research to build on a foundation study released in April 2023. This year's study focusses on two particularly significant processes that victim's families must navigate: financial support offered by the CTP scheme, and the judicial process from initial bail hearing through to sentencing and appeal (if applicable). The purpose of this report is to elevate the voice of victim's families and highlight key reforms required to help drive change and action.

## Primary objective

The objective of this study is to **shine a spotlight** on the ongoing, enduring impacts of losing a loved one to criminal road trauma in NSW. The intention is to bring continued attention to the most pressing issues and inform changes to legislative and appropriate support services for people impacted by road trauma.

Ultimately, this research is intended to provide tools for understanding and empathising with all audiences impacted by road trauma: the victims, their families and communities, professionals involved in road trauma events and the time that follows, and the broader NSW community. By driving greater understanding and empathy, decision-makers can better understand the impact of the current systems and areas that need to change.

# Glossary of key terms

The following definitions are general explanations only. Precise definitions may vary across organisations and jurisdictions.

## Road trauma

A road event resulting in the death of an individual attributable to the movement of a road vehicle on a public road and the resulting impact of the event.

## Fatal road crime

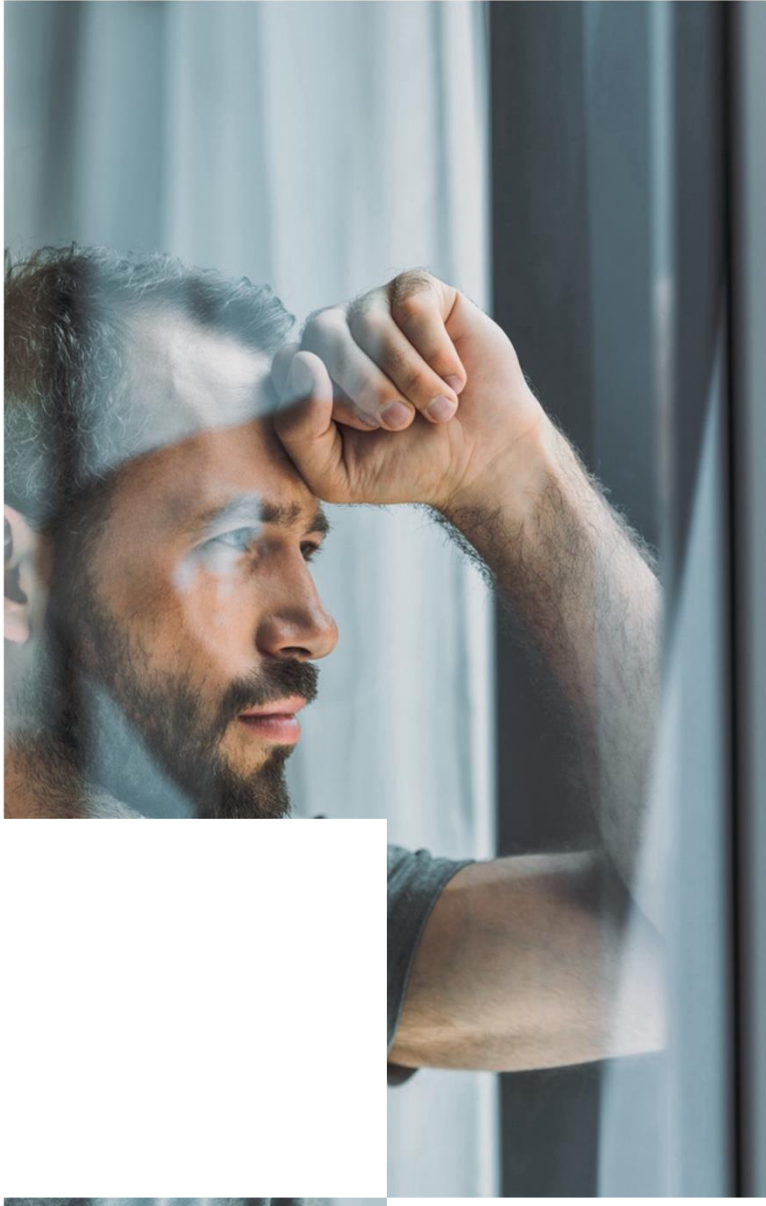
A road event resulting in the death of an individual attributable to the movement of a road vehicle on a public road due to the criminal act of another road user (e.g., dangerous driving, drinking or drug driving).

## Criminal road trauma

Encompasses fatal road crimes along with the consequences that extend beyond the event itself, including the trauma inflicted on the victims' families, friends and the community.

## Secondary trauma (also referred to as re-traumatisation)

The indirect trauma that can occur when exposed to difficult or disturbing images or stories second-hand. For bereaved families who have lost a loved one due to criminal road trauma, this occurs through ongoing exposure to systems and processes such as media coverage and contact with the criminal justice system.





## Compulsory Third Party (CTP) Claims Scheme

CTP insurance is paid at the time of vehicle registration. When a driver causes injury or death to another road user, the victim (or their family) is eligible to make a claim to the at-fault driver's insurer to cover their financial losses.

# Research Roadmap

Each year, this research employs a range of complementary methodologies, designed to explore and understand the impact of criminal road trauma from a range of perspectives within the NSW community.



## 2023 Study

The initial study, "The Unheard Trauma of Fatal Road Crimes in NSW", was the first study of its kind conducted in Australia. The report brought together results from multiple methods including:

- A literature review which shaped the research approach and provided a solid foundation for the primary research to come.
- 18 interviews with family, friends, and loved ones of victims of road trauma to gain an intimate understanding of the impacts on those most directly affected.
- 20 expert interviews with professionals who interact with families post-crash, giving another dimension of understanding of the systems and processes affecting families.
- A robust survey of 2,102 NSW residents including those who have and have not experienced road trauma. This large sample size allowed us to accurately assess the size, scale, and nature of the impact of criminal road trauma throughout the NSW community.

2024 Research Methodology



## Qualitative research with affected families

In the qualitative phase of the 2024 study, six people shared their personal experiences of criminal road trauma in NSW, and the impacts on them and their families.

These interviews were lengthy (up to 2 hours in duration) and provided extensive insight into the nuances of the experiences that families go through after the death of a loved one due to the criminal act of another.

While the interviews covered a range of topics, special attention was paid to delving into experiences with the judicial process from initial bail hearing through to sentencing and appeal (if applicable), and the CTP scheme which offers financial compensation to some of the victim's loved ones.

A diverse set of perspectives was obtained through interviewing different family members (e.g. parents, children) across geographies (metro and regional NSW). All the family members had lost a loved one recently (within the last 5 years) – this was intentional so that families would be able to remember the detailed nuances of their experiences with the CTP and judicial processes, and to ensure they were reflecting on the present-day CTP and judicial processes which evolve over time.



## Qualitative research with experts

The judicial system and CTP scheme are highly complex systems, best understood by those with professional experience.

To complement the lived experiences shared by victim's families who have navigated these systems, four professionals employed in these sectors participated in a comprehensive interview of 1-2 hours duration.

This included experts from legal, police, and support services organisations who interact with victim's families.

The organisational roles of these professionals has not been disclosed in this report to ensure their identity remains anonymous. This was key to the design of the research, to reduce the risk of introducing positivity bias if their feedback could have been attributed to them in this report. Further, some experts only agreed to participate on condition of anonymity.



## Quantitative research with NSW community

The quantitative stage of the research involved a robust, large-scale online survey. A total of 2,088 people completed a survey of 20 minutes duration.

This encompassed a representative sample of NSW residents (n=2,019) including those who have and have not experienced road trauma. To ensure sufficient data was captured from people most intimately affected, a booster sample of an additional 69 people who lost a loved one to criminal road trauma were surveyed, sourced from the RTSG NSW member database and social media. This included a spread of more recent crashes and those occurring over the longer term, among individuals aged 23-79, with a female skew (given bereaved individuals are more likely to be female) across metro and regional NSW.

Everyone who completed the survey was aged 18+ and a resident of NSW. The final dataset was weighted based on age, gender, and metro/regional location of residence. In this report, where figures are presented that represent the entire NSW population, the booster sample has been excluded to ensure the dataset is representative. Results were collected between 1 April and 21 April 2024.

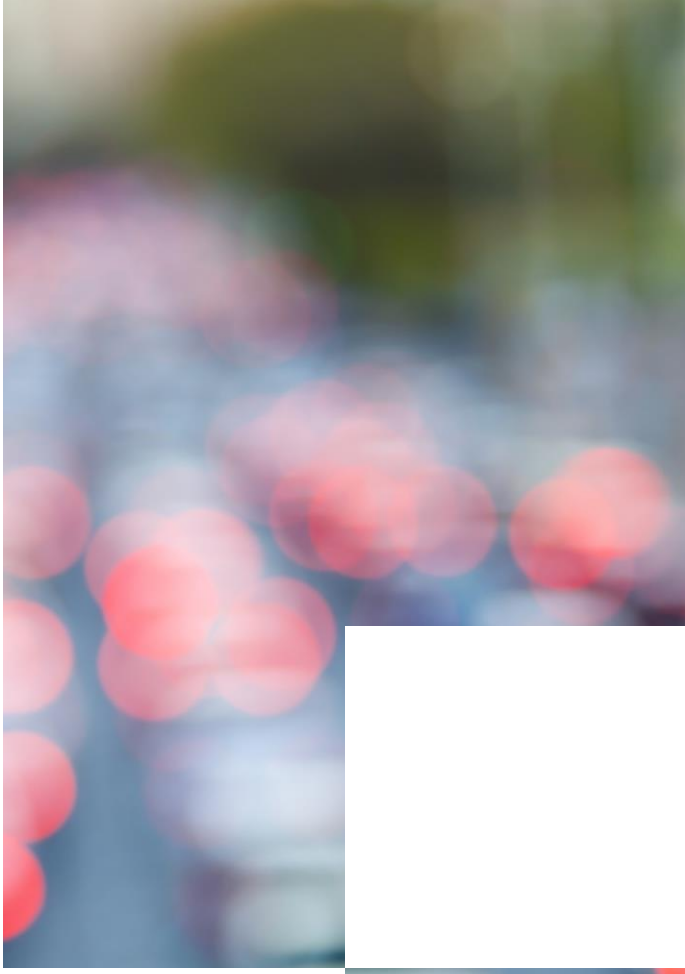


# Limitations of this study

As with all research studies, this study is subject to limitations. First, there is a nearly unlimited amount of detail that could have been captured about the experiences of families affected by road trauma. This study focussed on investigating experiences with the CTP scheme and judicial system. These topics were prioritised given the magnitude of impact they have on the families of those killed by road crimes. However, this means other aspects of the experience were only covered in a superficial manner. This year's research builds iteratively on a previous study, "The Unheard Trauma of Fatal Road Crimes in NSW", published in 2023, and the reader is encouraged to read these reports in tandem for a fuller exploration of the impacts of fatal road crimes and need for reform.

Further, given the logistical difficulties of identifying the right people in the broader NSW population, the family members who participated in the qualitative phase of this study were recruited via the Road Trauma Support Group NSW (RTSG NSW). This means the feedback obtained about the CTP scheme and judicial process comes from people who have navigated these processes with some degree of support from RTSG NSW. This organisation is widely praised for the support it offers its members, meaning the experience of those who have navigated the CTP and/or judicial systems *without* RTSG NSW support is likely to be even worse than the experiences described in this report.

Thirdly, due to ethical concerns about researching children about such a sensitive topic, only adults aged 18+ were included in this research. As such, the experiences of children and teenagers are not reflected in this report. However, adults who lost a loved one due to criminal road trauma when they themselves were under the age of 18 have been included. In this way, the perspectives of those under 18 are presented through a retrospective view, from people who are currently adults.





There are several instances in which public data would have helped support key points, however was not available at the time of this report's publication. Therefore there are some issues that are not fully understood. For example, publicly available statistics about fatal road crashes are general in nature, not specific to fatal crashes involving criminal driving behaviour.

Further to this, although this report draws on a range of secondary data sources, it is not intended to be a comprehensive assessment of road safety in Australia. The reader is encouraged to consult the sources referenced for further detail on the topics discussed in this report.

# 03

# The scale of road trauma in NSW







# Brief history of road fatalities in Australia

## Australia has a culturally complex relationship with cars

Cars have a highly emotional place in many Australian's lives.

The vast scale of Australia's geography means that a car is often seen as a necessity. In suburban Australia, multi-car households are often the norm, with more than half (55%) of households having two or more vehicles[1].

This is especially compounded in regional and rural areas where cars are more than just a convenience - they are a critical part of life. A lack of public transport infrastructure and rideshare options mean driving is the only viable means of transport.

Beyond the functional role that cars play, for many Australians they are also associated with a range of positive experiences and heavily intertwined with the notion of freedom. Family camping trips in the middle of nowhere, long road trips with friends and the rite of passage represented by passing the driver's license test are all highly emotive moments which many hold close to their hearts. Being able to drive a car is considered a right, more so than a privilege, for many Australians.

## Australia also has a legacy of tolerating and down-playing risk on the roads

"To say Australian roads were unsafe 50 years ago is a bit like saying haircuts in the 70s were not that great — it just doesn't capture the full horror of the situation."[2]

In the past, driving on Australia's roads was dangerous. Few vehicle safety features, low-to-no legislation to mandate safe driving behaviours, and high public tolerance of risk resulted in devastatingly high numbers of serious injuries and deaths on the roads. Poor road infrastructure, primitive safety features, and a "she'll be right mate" mentality meant that by the end of the 1960's, Australia was regularly surpassing 3,000 deaths a year on the roads.

Whilst alarming by today's standards, for drivers of the time, this was just part and parcel of the risk involved in driving a car. Drivers were compelled to accept these risks, and believed the onus was on other road users to also accept the dangers involved - especially the dangers imposed by negative behaviours such as drink-driving and speeding.

Legacy data suggests that over 50% of those killed on the roads during the 1960's were under the influence of alcohol[2].

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SOURCES:
1: https://www.abs.gov.au/statistics/industry/tourism-and-transport/transport-census/2021
2: https://www.abc.net.au/news/2023-12-22/australia-history-random-breath-testing-road-toll-police/102849242

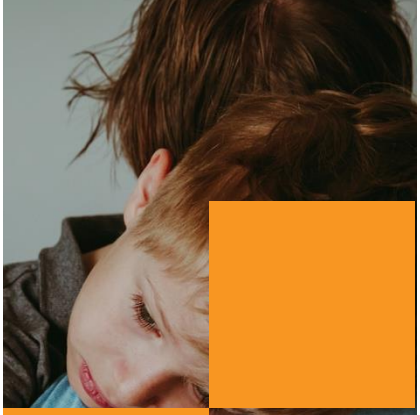


## Annual road fatalities in Australia, 1970 to 2023

The number of fatalities on Australian roads declined significantly and persistently in the decades since 1970 – from nearly 4,000 deaths per year down to just over 1,000.

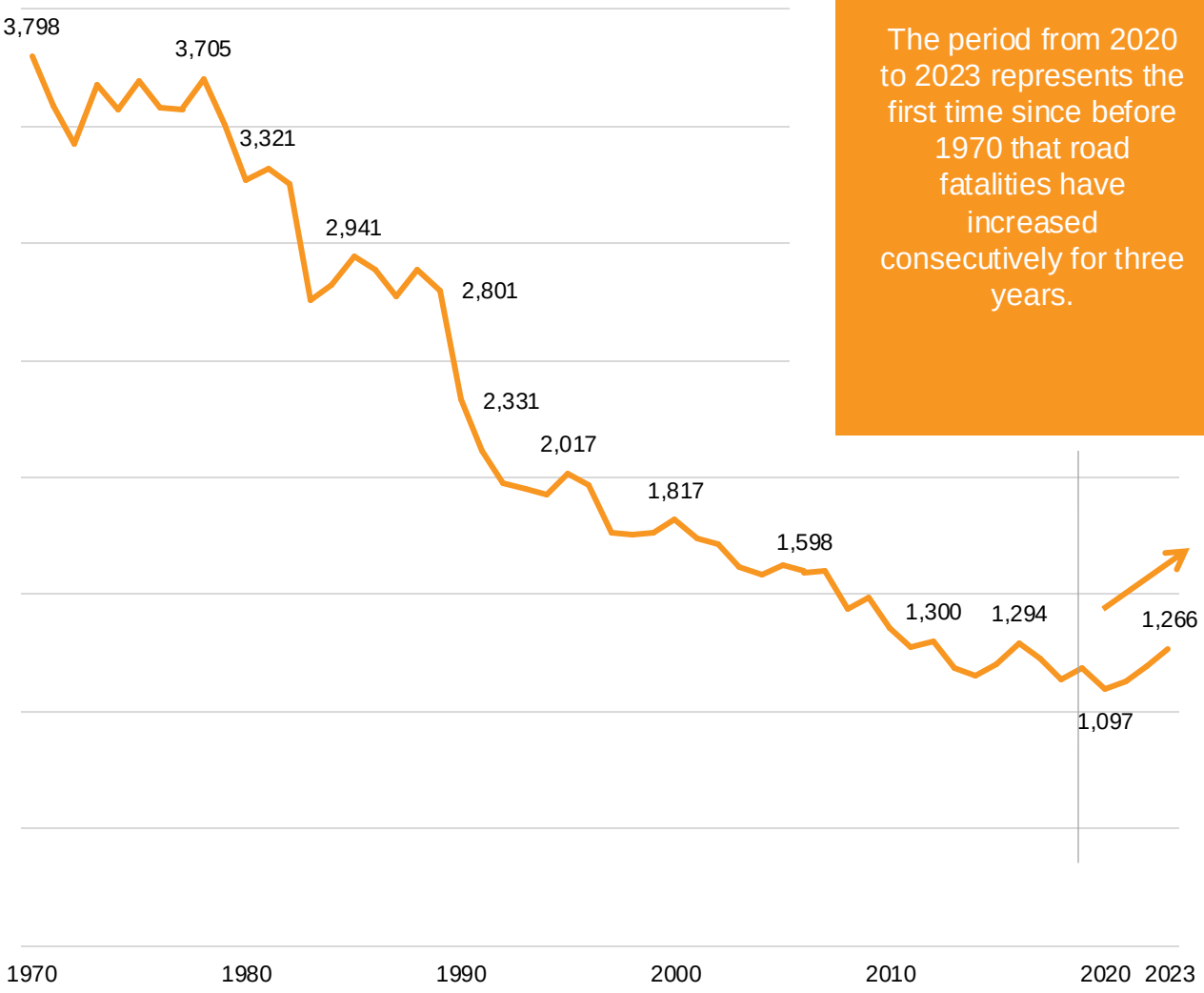
This is in stark juxtaposition to the year-on-year increases in fatalities reported every year since 2020.

Decades of progress have been made, and thousands of lives saved, but that progress is now coming undone as the number of people dying on Australian roads is on an upwards trajectory.





The period from 2020 to 2023 represents the first time since before 1970 that road fatalities have increased consecutively for three years.




SOURCES:
Australian Government Department of Infrastructure, Transport, Regional Development, Communications and the Arts
"The History of Road Fatalities in Australia". https://www.infrastructure.gov.au/department/media/publications/history-road-fatalities-australia
"Road Trauma Australia – Annual Summaries". https://www.bitre.gov.au/publications/ongoing/road_deaths_australia_annual_summaries

## A historically-accepted level of risk continues to trickle through in attitudes today

Significant strides have been made in reducing the number of deaths on the roads. Thousands of lives have been saved.

A range of factors are attributable to this including technological improvements (e.g. seat belts, air bags, blind spot detection mean cars are now safer than ever), new road safety laws (e.g. maximum allowable blood alcohol content of 0.05), and driver behaviour monitoring (e.g. introduction of random breath testing).

Yet, whilst advances in technology and legislation have created powerful change and saved many lives, people are still dying on our roads. And it would appear that despite much progress, a hangover remains in terms of human mindset and resulting driving behaviours.



> **In NSW, roads seem like a race track, there is a lot of speeding going on. What does that say about our driving community: lack of courtesy is prevalent. We need to start from a young age and teach our learner drivers to stick to some basic rules. Every time I'm on the road I see P-platers breaching speed limits, rushing between lanes, tail-gating etc.**

**It is now preventable and avoidable human factors that are largely responsible for risks on the road.**

**As a society, Australia continues to accept a level of risk on the roads, even though it is now preventable through changes to driver attitudes and risky behaviours.**

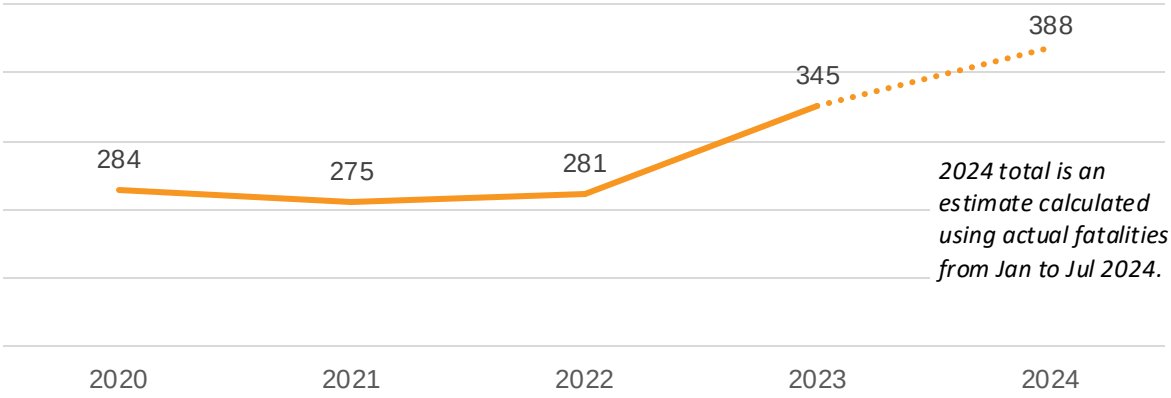
**Roads have never been safer. Cars have never been safer. Why is the road toll still increasing? It is time for a mindset shift.**

# Trajectory of road deaths in NSW

## Deaths on NSW roads are increasing rapidly, defying efforts to save lives

Echoing the pattern seen across Australia, in recent years, road deaths in NSW are up by 23%. The year-on-year increase between 2022 and 2023 is startling, and equally so is the current trajectory in 2024. As of August 2024, the number of deaths is up 25% versus 2023 (based on deaths that occurred between January and July 2024).

## Annual road fatalities in NSW, 2020 to 2023

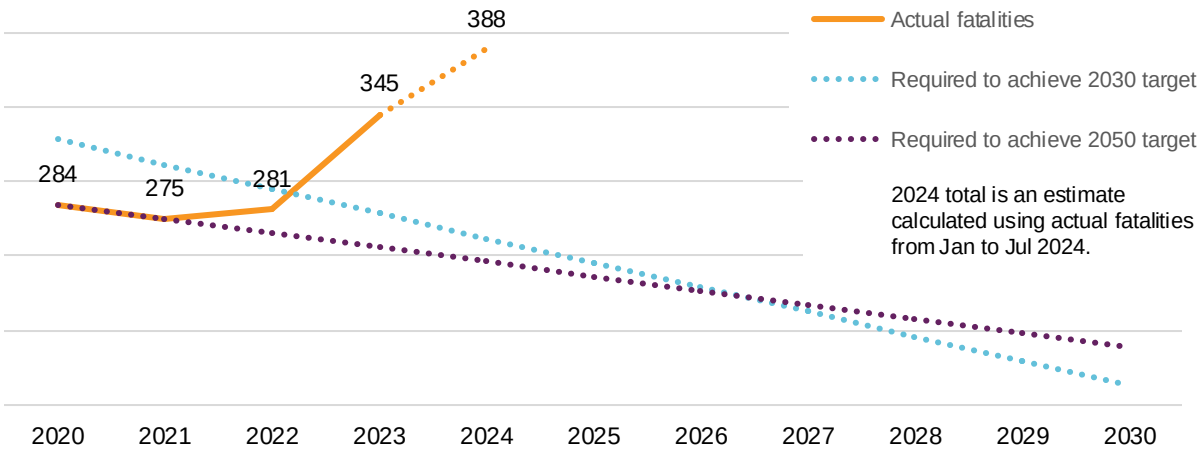



NSW's Towards Zero Road Safety Plan includes two key targets:

1. **Halve** deaths from 2018-2020 levels by 2030 – meaning no more than 164 deaths.
2. **Zero** road fatalities by 2050.

Road deaths are going in the **opposite direction** of these targets, at an alarming rate. More needs to be done to save lives on NSW roads and make progress towards these goals.

## Actual fatalities vs. progress required to achieve targets

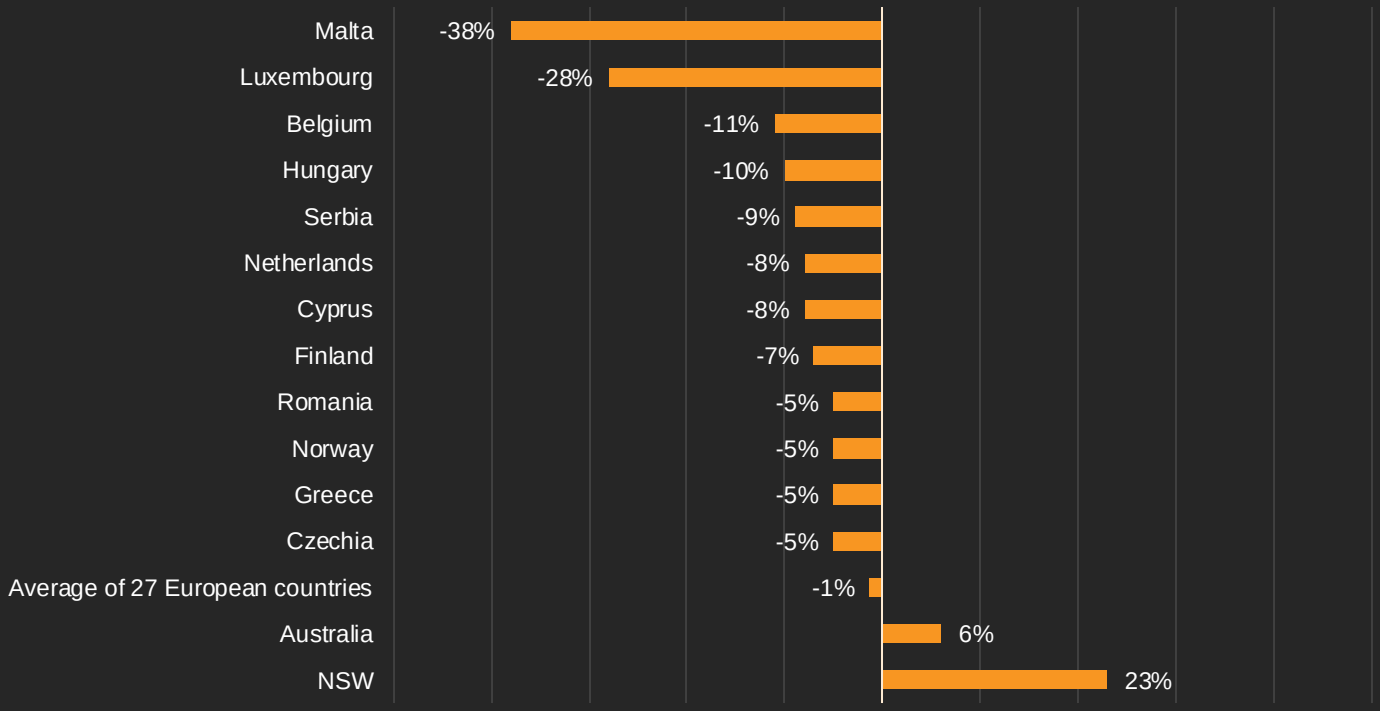



SOURCES:
NSW Annual Fatalities: https://roadsafety.transport.nsw.gov.au/statistics/index.html
NSW Road Safety Targets: https://towardszero.nsw.gov.au/roadsafetyplan

# Comparison to other jurisdictions

A reduction in road deaths is achievable. Other jurisdictions are leading the way, with some making quite substantial progress in recent years.

## Change in road deaths between 2022 and 2023




Behind every person counted in the road toll are countless loved ones left reeling from catastrophic loss.

The road toll figures are not just numbers – they represent mothers, fathers, sons, daughters, aunts, uncles, friends, colleagues, neighbours. Every death causes a tidal wave of impacts on the family and friends left behind, especially when road crimes are involved.

> **I always felt that death only tells a small part of the story. For example, the Easter Road Toll gives us a number we feel sad about for a few days but it doesn't strike a chord with reckless drivers. If only they could see the parents, partners, children whose lives have been radically altered because someone they loved was killed on the roads.**

SOURCE:
Change in road deaths between 2022 and 2023; https://etsc.eu/18th-annual-road-safety-performance-index-pin-report/

# Illegal driving offences in NSW

Against the backdrop of road fatalities is a significant number of illegal driving offences, totalling into the hundreds of thousands per year.

The figures below highlight an ongoing pattern of illegal behaviour that is well-established to increase risks to road users. When drivers habitually behave in ways that are known to increase the risk of fatal crash (e.g., drink driving, drug driving, speeding, negligent driving), it is no surprise that fatalities on the road continue to persist.

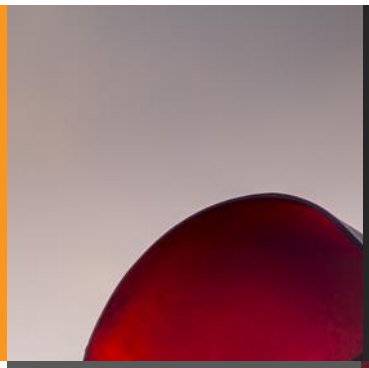
Underpinning these behaviours is a lackadaisical mindset around road safety, and a dismissive attitude towards illegal behaviours that take place on the roads. A mindset shift is required; until these crimes are viewed in the same way as social anathemas like domestic violence, these offences are likely to continue.

## Number of people charged with driving offences in NSW in 2023

01

**180**

Driving causing death



02

**10,140**

Dangerous or negligent operation of a vehicle

03

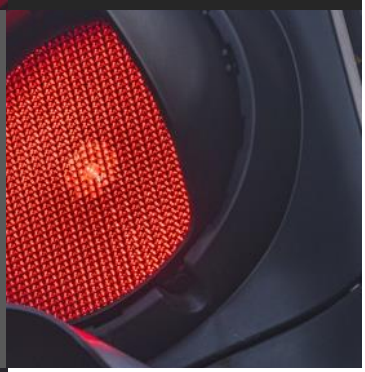
**39,134**

Driving without license / while license suspended

04

**14,717**

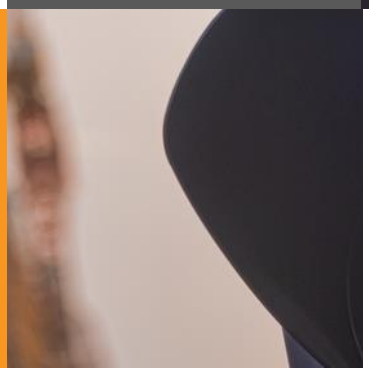
Driving under influence of alcohol (over legal limit)



05

**14,446**

Driving under influence of illicit drugs



06

**176,295**

Speeding

SOURCE:
NSW Bureau of Crime Statistics and Research, https://www.bocsar.nsw.gov.au/Pages/bocsar_pages/Driving-offences.aspx

# Defining trauma caused by fatal road crimes

Criminal road trauma is characterised by serious road crime resulting in death, and the tidal wave of mental, emotional and physical damage inflicted on the victims' families, friends and the community.

Consequences of fatal road offences extend far beyond the initial incident; families face ongoing secondary trauma throughout, and beyond, the initial experience. The sudden, violent and criminal nature of these deaths creates prolonged suffering, inhibiting the ability to process and grieve.

## A deeply complex and unique set of experiences

The knock-on ripple effect of criminal road trauma is widespread and costly.

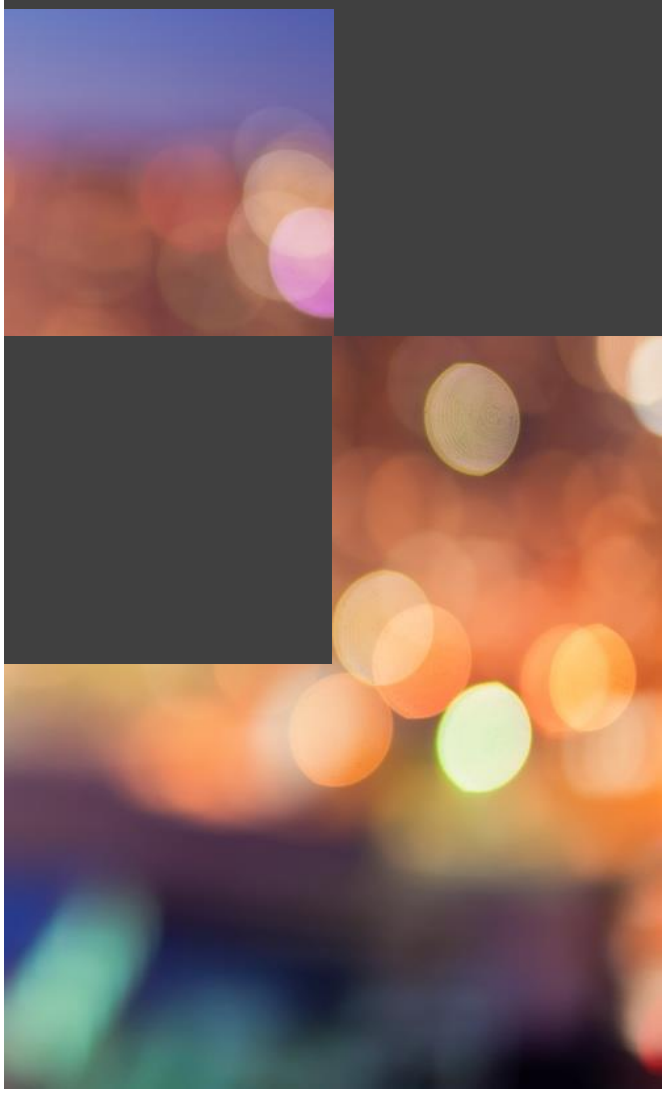
Families are confronted by ongoing financial and legal processes, interactions with police, crash investigations, distressing battles with insurance companies, intrusive media involvement and protracted judicial proceedings in the event the offending driver survives.

The victims' families and friends may be further tormented if they feel the offender's sentence was manifestly inadequate in the context of a death that could have been avoided if not for the senseless, criminal act of another.

## Compounding trauma and severe psychological burden

It's critical that the uniqueness of these types of road trauma events is acknowledged.

The systems and processes which are intended to support should be created with these specific considerations at their centre.



# Road trauma impact on the NSW community

The ripples of road trauma are felt throughout the NSW community, affecting 1.47 million adults.

## Size of NSW population impacted by road trauma

**NSW POPULATION AGED 18+**

**6.54M** (100%)

**ANY ROAD TRAUMA**

Ever experienced the death of someone they personally knew as a result of a **road crash** (due to a criminal offence or otherwise) on roads in NSW

**1.47M** (22.5%)

**CRIMINAL ROAD TRAUMA**

Ever experienced the death of someone they personally knew as a result of a road crash on roads in NSW due to the **criminal** act of another

**288K** (4.4%)

**CRIMINAL ROAD TRAUMA**

Ever experienced the death of a ***close*** family member or friend as a result of a road crash on roads in NSW due to the **criminal** act of another

**177K** (2.7%)

VISUAL DESCRIPTION:
The darker coloured centre of the circle represents the community members with the most immediate experience and impact of criminal road trauma.

Reported incidence figures based on survey responses in the NSW community (representative of the state population based on age, gender, and location) and includes only crashes that occurred on NSW roads among respondents aged 18+. Sizing representative of NSW residents based on September 2023 population aged 18+ and is therefore likely an underestimate of those impacted by road trauma.

NSW Population source: ABS, estimated NSW population age 18+ in Sept 2023 (6,546,393)
Graph source: Fiftyfive5 primary research. Q: Do you personally know someone who was killed in a road crash? Base: n=2,019

Road trauma is of growing concern.
As the number of road deaths increases, so too does the number of people left grieving.
Compared to 2022, the ripple effects of road trauma are far more widespread among the NSW community.

## Change in number of NSW residents affected by road trauma since 2022



### ANY ROAD TRAUMA

Ever experienced the death of someone they personally knew as a result of a **road crash** (due to a criminal offence or otherwise) on roads in NSW

**+213K**
Up 10.8% since 2022

### CRIMINAL ROAD TRAUMA

Ever experienced the death of someone they personally knew as a result of a road crash on roads in NSW due to the **criminal** act of another

**+35K**
Up 11.8% since 2022

### CRIMINAL ROAD TRAUMA

Ever experienced the death of a ***close*** family member or friend as a result of a road crash on roads in NSW due to the **criminal** act of another

**+51K**

# The preventable nature of fatal road crimes

Reckless driving, speeding, and drink driving are the dominant factors associated with fatal road crimes – all of which are entirely avoidable behaviours, well-established as increasing the risk of a crash. Two in three (66%) people who lost a loved one due to a fatal road crime report that multiple illegal factors contributed to the death of their loved one. Knowing that their loved one would still be alive had the offending driver not *repeatedly* broken the law haunts grieving families.

Underscoring these behaviours is a relaxed attitude towards road safety. More than one in ten (12%) license holders in NSW agree that speeding up a little bit (up to 10 kms over) is not a big deal. A mindset shift is required among Australians who tolerate risky driving behaviours if, as a society, we want to reverse the current upwards trajectory of the road toll.

## Top factors associated with criminal road trauma deaths in NSW

01
**52%**
Reckless driving

02
**52%**
Speeding

03
**45%**
Alcohol

04
**21%**
Driving at night

05
**13%**
Drugs

06
**12%**
Unlicensed driver





**My close friend was driving home from work when a drunk driver ran a red light, hit my friend at a high rate of speed, leaving her with fatal head injuries.**

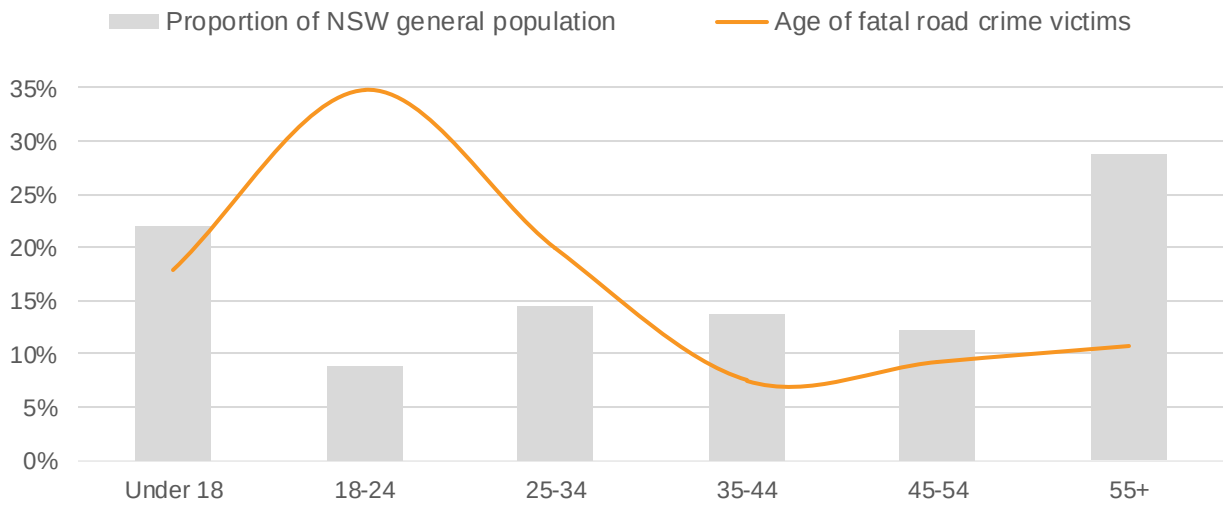
**My daughter was changing a tyre on the side of the road when she was hit by a truck. The truck was travelling 50 km over the speed limit and the driver lost control, hitting my daughter and killing her instantly.**

# Experience of road trauma by age

There are disproportionate fatalities amongst 18-24 year olds due to road crimes vs. their incidence in the NSW population.

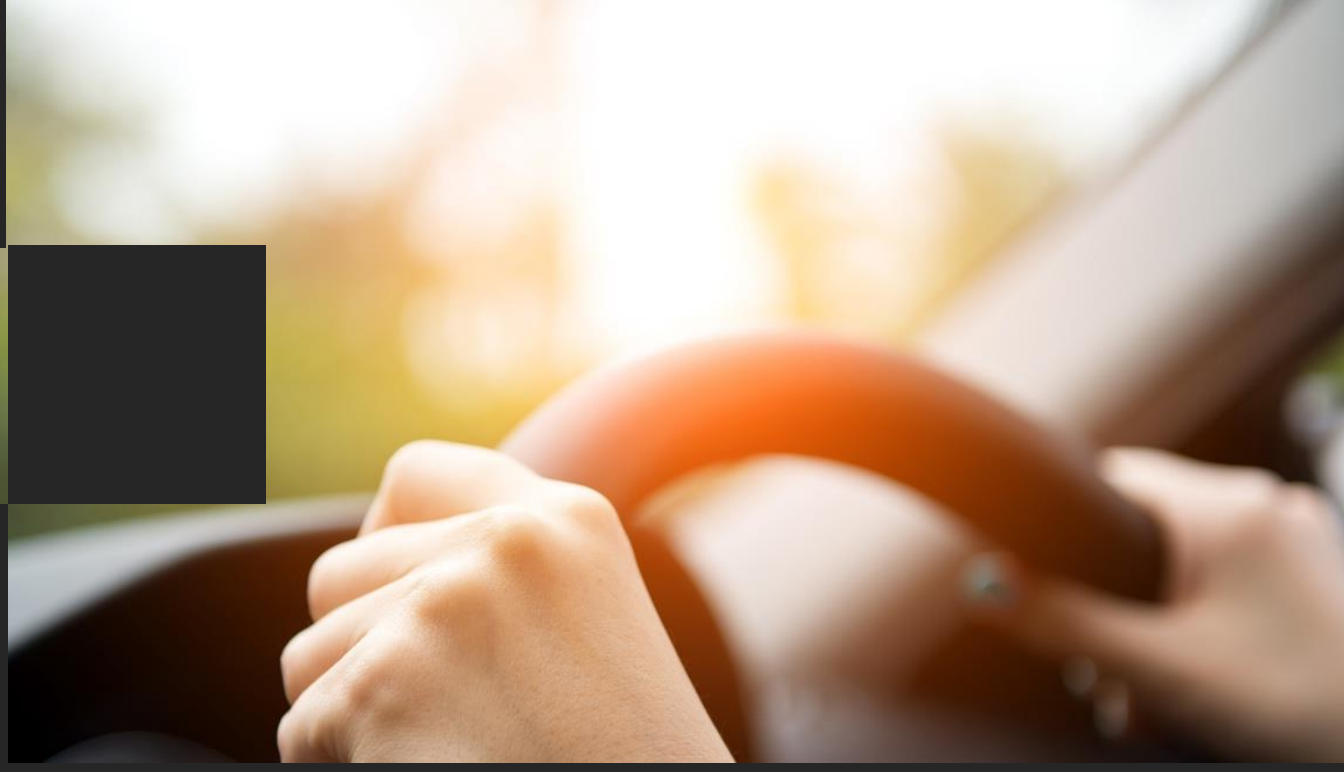
Road crimes are substantially more likely to kill the youngest people in NSW. There are a range of factors that contribute to this problem, as outlined on the following page.

## Age of fatal road crime victims vs. age of NSW population




Visual description:
A gap between the grey bar (the proportion the age group makes up in the NSW population) and the orange line (the age of those killed due to criminal road trauma) indicates the extent to which the age cohort is more or less likely to be killed due to road crime in NSW vs. their incidence in the NSW population.



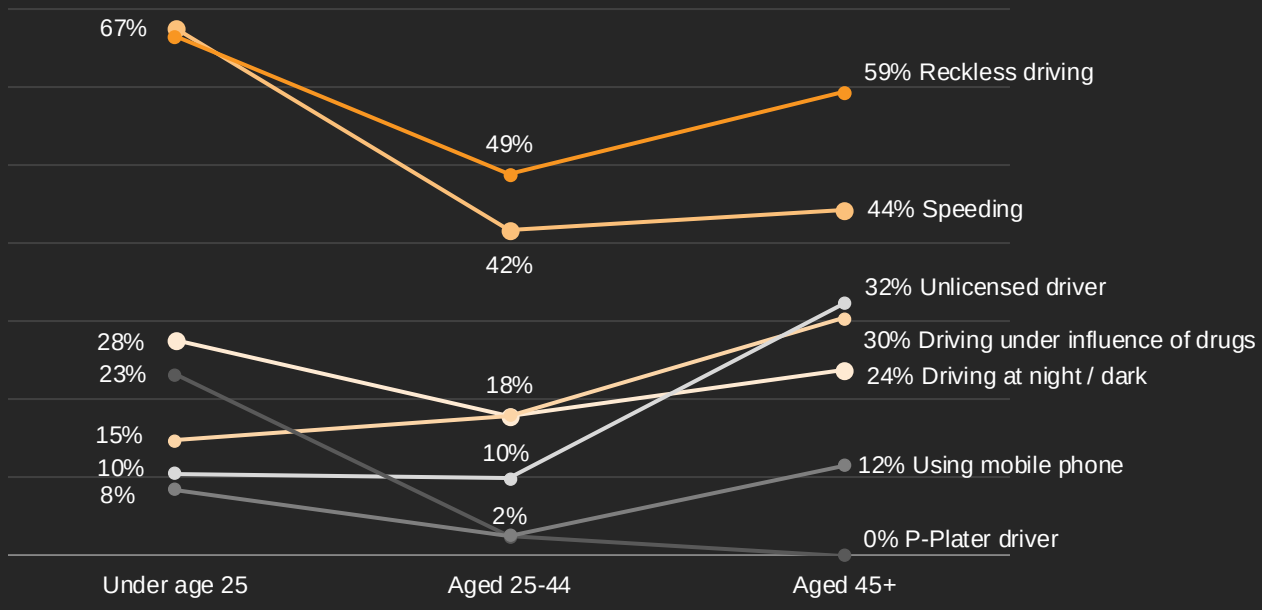


Crashes involving the death of individuals under the age of 25 are more likely to involve a number of risk factors that are proven to increase the likelihood of a crash on the roads.

Speeding, reckless driving, and P-Plater drivers are all more commonly associated with crashes that kill people under the age of 25. There is also a skew towards driving at night / in dark conditions for crashes involving younger fatalities.

Road trauma victims under the age of 25 frequently leave behind grieving parents, for whom it is unfathomable to comprehend how a driver could repeatedly decide to break the law – resulting in the death of their child.

## Factors involved in fatal road crimes in NSW, by age of victim





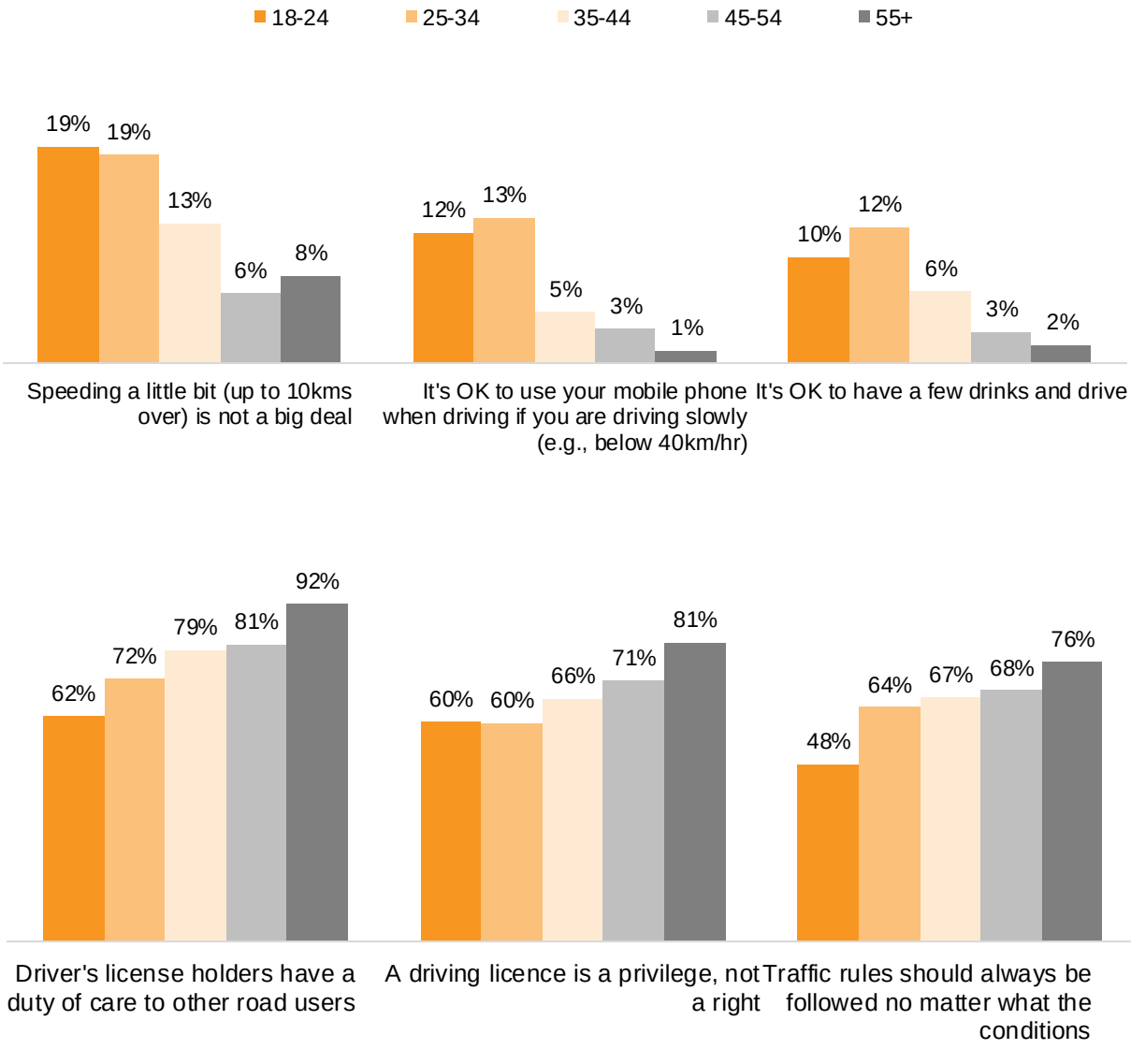
# Driving attitudes by age

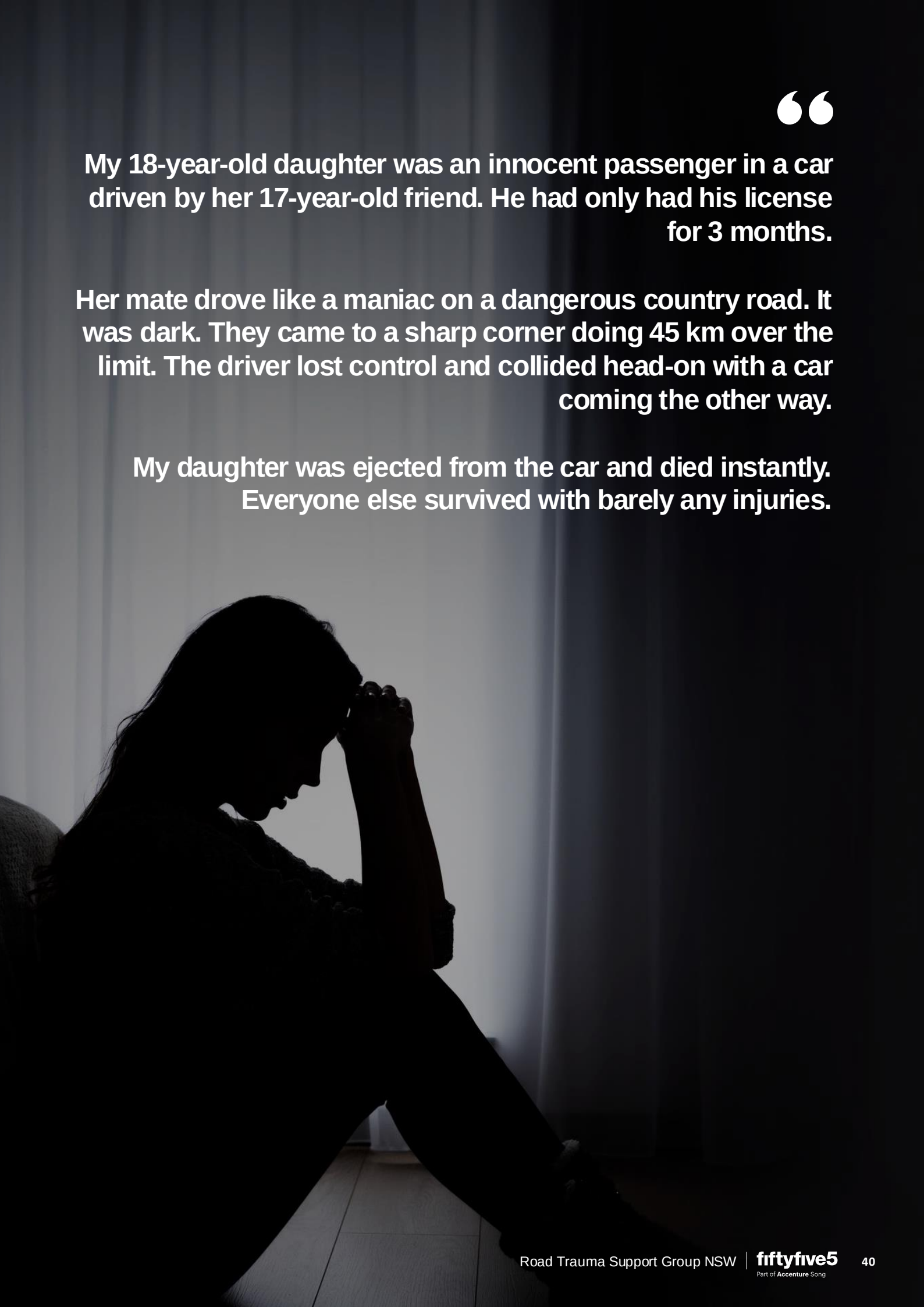
Young drivers have the greatest tolerance of illegal behaviours and are least likely to acknowledge that drivers have a duty of care to other road users.

Acceptance of risk on the road persists, even among drivers who are new to the road at a time when cars and road infrastructure have never been safer. There is no need to accept an ongoing level of risk of injury or death – but a mindset shift is required to eliminate the human (behavioural) risks on the road.

## Driving attitudes among NSW license holders by age

*(% of driver's license holders who agree or strongly agree with each statement)*





**My 18-year-old daughter was an innocent passenger in a car driven by her 17-year-old friend. He had only had his license for 3 months.**

**Her mate drove like a maniac on a dangerous country road. It was dark. They came to a sharp corner doing 45 km over the limit. The driver lost control and collided head-on with a car coming the other way.**

**My daughter was ejected from the car and died instantly. Everyone else survived with barely any injuries.**

# 04

# Human impact of fatal road crimes





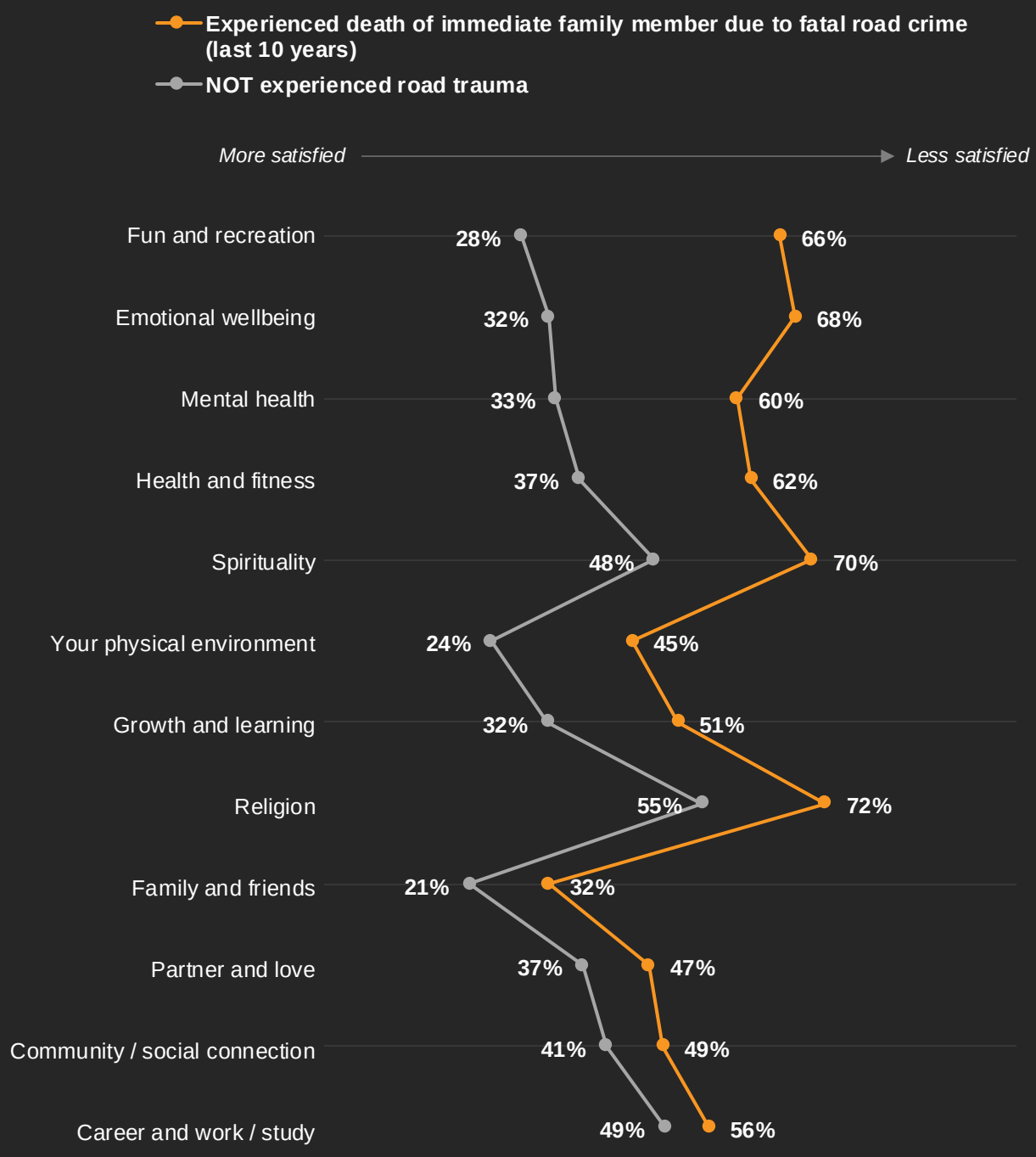


# Life satisfaction

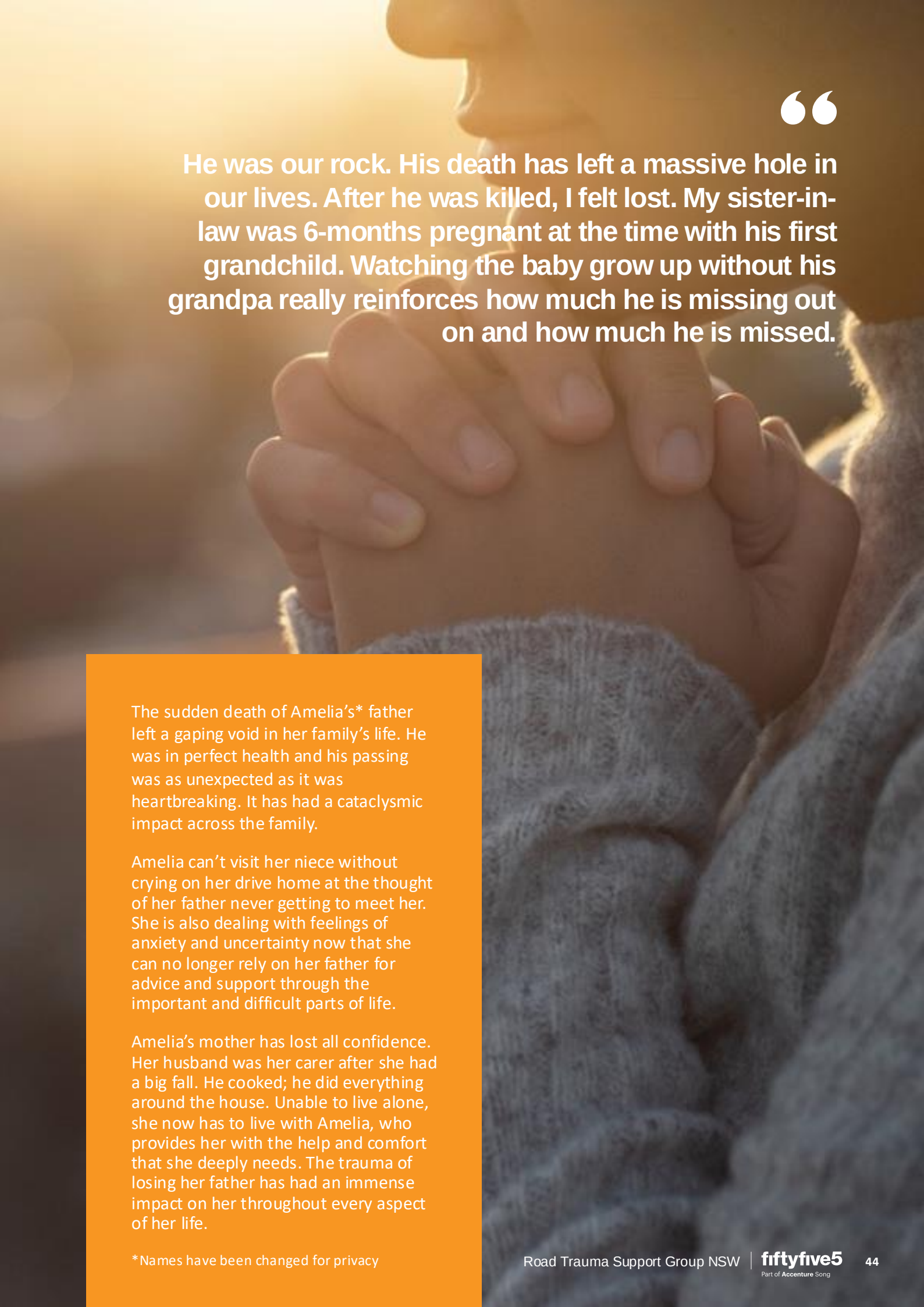
Fatal road crimes have wide-reaching, cataclysmic impacts on families left grieving. For those who have experienced the death of an immediate family member due to a fatal road crime, life satisfaction is significantly lower, particularly for aspects such as fun / recreation, emotional / mental wellbeing, health, spirituality, and growth / learning.

## Life dissatisfaction for immediate family of road trauma victims

*(% dissatisfied / neutral with each aspect of life)*




SOURCE:
Fiftyfive5 primary research. Q: To what extent are you satisfied or dissatisfied with the following aspects of your life? Base: n=2,088



**He was our rock. His death has left a massive hole in our lives. After he was killed, I felt lost. My sister-in-law was 6-months pregnant at the time with his first grandchild. Watching the baby grow up without his grandpa really reinforces how much he is missing out on and how much he is missed.**

The sudden death of Amelia's* father left a gaping void in her family's life. He was in perfect health and his passing was as unexpected as it was heartbreaking. It has had a cataclysmic impact across the family.

Amelia can't visit her niece without crying on her drive home at the thought of her father never getting to meet her. She is also dealing with feelings of anxiety and uncertainty now that she can no longer rely on her father for advice and support through the important and difficult parts of life.

Amelia's mother has lost all confidence. Her husband was her carer after she had a big fall. He cooked; he did everything around the house. Unable to live alone, she now has to live with Amelia, who provides her with the help and comfort that she deeply needs. The trauma of losing her father has had an immense impact on her throughout every aspect of her life.

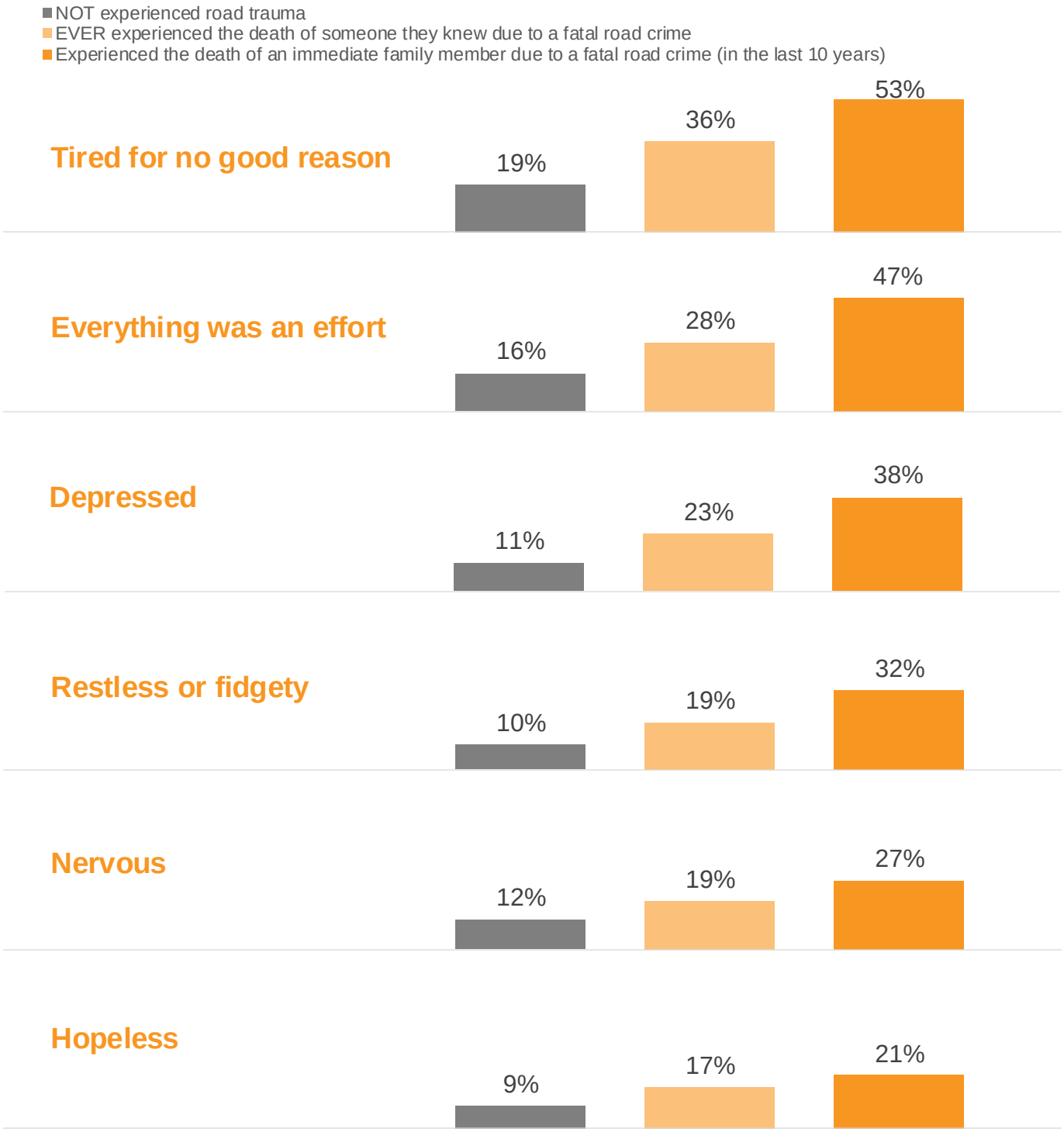
*Names have been changed for privacy

# Enduring psychological distress

Psychological distress endures long after a fatal road crash, with adverse impacts greatest for immediate family members.

## Psychological distress indicators by experience of road trauma

*(% experienced <u>most</u> of the time or <u>all</u> of the time in the last four weeks)*

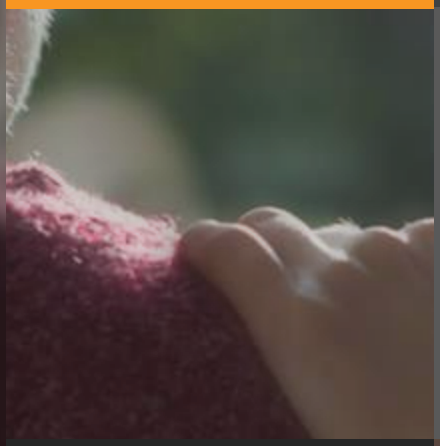



'Immediate family member' includes those who experienced the death of a child, parent, partner, or sibling.
Graph source: Fiftyfive5 primary research. Q: Below is a list of statements that people might say in response to life experiences. In the last four weeks, about how often did you feel... Base: n=2,088

For those who have lost an immediate family member due to a fatal road crime in NSW in the last 10 years:

**2 in 5**
(43%)
experienced a loss of friendships

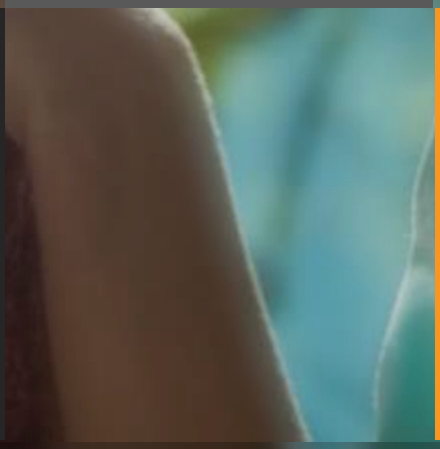
**89%**
experienced mental health challenges, such as depression, anxiety or PTSD



**43%**
have thought about committing suicide

**45%**
experienced a decrease in performance at work or study

**1 in 4**
(24%)
experienced family breakdown



**1 in 3**
(36%)
experienced a loss of faith

> **I don't see my friends as often anymore. There are things I used to do like play soccer, but I don't anymore. Or in my husband's instance, his friends come to our house to see him because he can't leave the house.**



“

**I was working on a job site and had a feeling something had happened to my son. It turns out he had been killed that afternoon.**

**Ever since, it’s been one hell of a nightmare. Even today, it’s almost 4 years since he was killed but I still break down in tears. Missing him is the most terrible pain any parent could go through.**

**I get by with the thought that someday we will be together again, I just have to hold on until that time comes.**

# 47% of parents have thought about committing suicide

among those who lost a child due to fatal road crimes in NSW

Source: Fiftyfive5 primary research. Q: Have you ever experienced any of the following? Base: Parents who lost a child n=27

# The impact of losing a child or immediate family member

Experiencing the death of a child or immediate family member is associated with the highest prevalence of adverse life impacts. This specific form of grief is unique, distinct from even other losses due to fatal road crimes.

Those grieving the loss of an **immediate family member** (child, partner, parent or sibling) due to a fatal road crime are…

**5.7 times**
more likely to not be able to **return to work** after the crash

**5.0 times**
more likely to have a child **drop out of school** after the crash

**4.8 times**
more likely to have thought about **committing suicide**

**3.4 times**
more likely to not be able to **pay rent / mortgage**

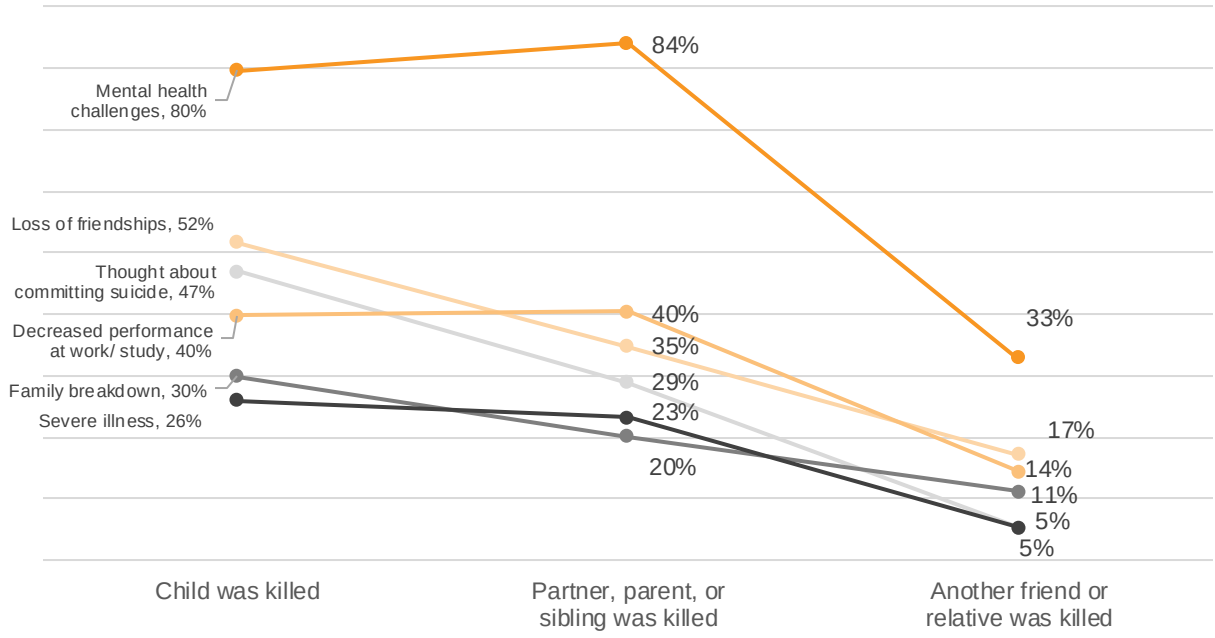
**3.6 times**
more likely to experience **severe illness** (e.g., cancer, stroke, heart attack)

**2.4 times**
more likely to experience **mental health challenges**, e.g., depression, anxiety, PTSD

…compared to those who have experienced the death of someone else (another friend or relative) due to criminal road trauma.

## Adverse life events by relationship to fatal road crime victim

*(% ever experienced each adverse life event by their relationship to those killed in a criminal road trauma crash)*




Graph source: Fiftyfive5 primary research. Q: Have you ever experienced any of the following? Base: n=175





# CTP Spotlight



# Introduction to this section

This section of this report provides a deep dive into the nuances of the Compulsory Third Party (CTP) insurance scheme in NSW.

We will start with a brief introduction into CTP – what it is, how the scheme is set up, who is eligible to lodge a claim, the benefits available etc.

We will then provide a summary of what the experience is like for families navigating the CTP claims process when they have lost a loved one to a fatal road crime.

We will explore the factors that contribute to a positive experience. But, as the reader will see, much of the CTP scheme is ill-suited to the specifics of claims resulting from fatal road crimes. As such, most of this section will focus on detailing the limitations of the scheme. We will describe the ways in which the scheme, which is intended to help support people back to 'normal' life (before the crash), actually serves the opposite purpose by re-traumatising those left grieving.

Our intention is to provide constructive feedback by highlighting the areas of the scheme that require reform to be suitable for the specific nuances of fatal road crime claims.

# Definition and Purpose of CTP

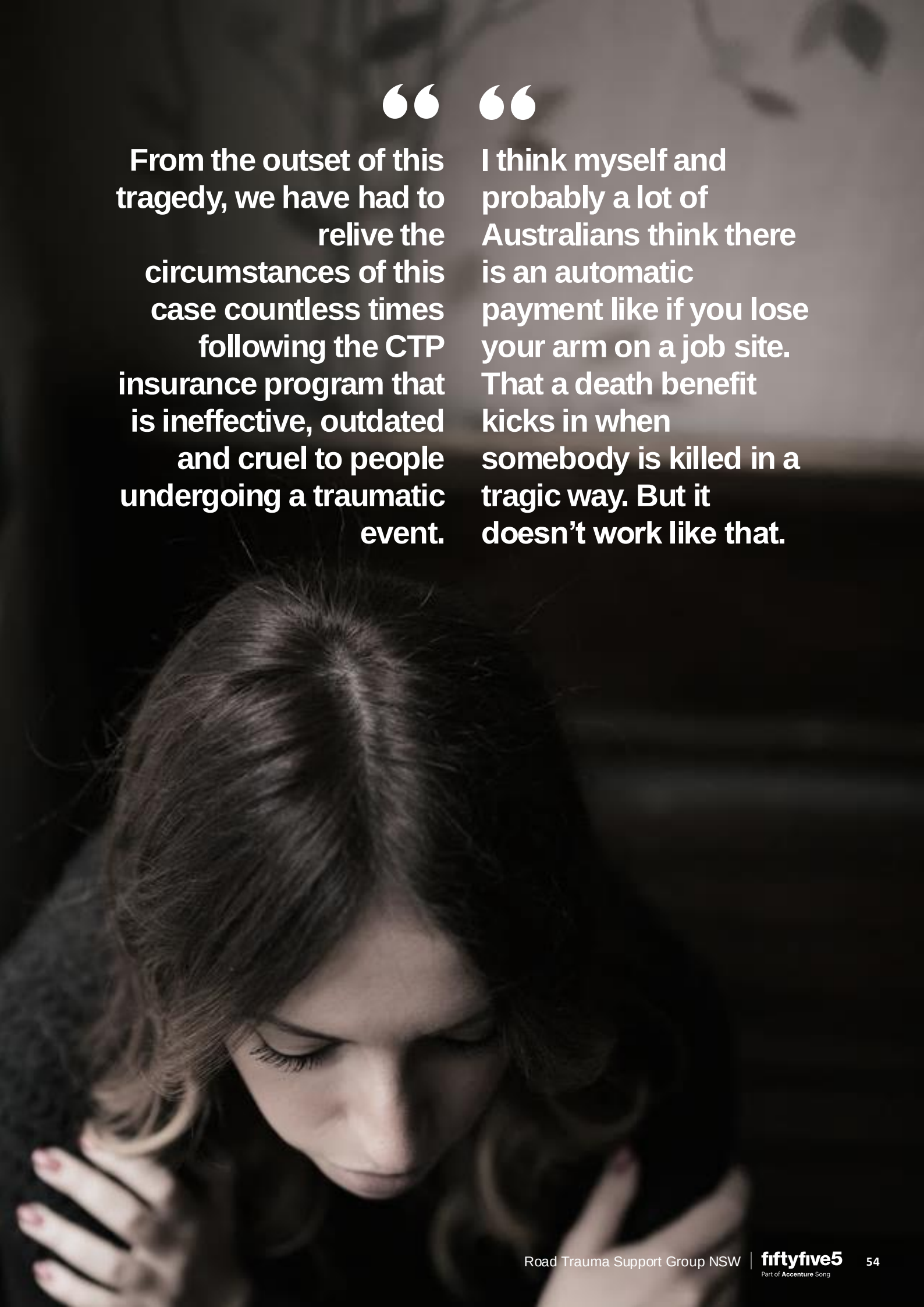
## Comprehensive Third Party Insurance – a compulsory requirement to register a vehicle in NSW

The Comprehensive Third Party (CTP) insurance scheme is set up to 'protect the driver of the motor vehicle from liability if they were to injure or cause the death of a person or people in a motor "accident"[1].

Unless they have been involved in a CTP insurance claim, most people know little about CTP. The insurance is compulsory when registering a vehicle in NSW. Drivers buy their CTP 'green slip' from one of six insurers in NSW, and then, until it's time for renewal, most do not give any more consideration to the purpose, usage, or impact of this insurance.

That is, until the need to file a claim arises.

SOURCE:
[1] SIRA. https://www.sira.nsw.gov.au/

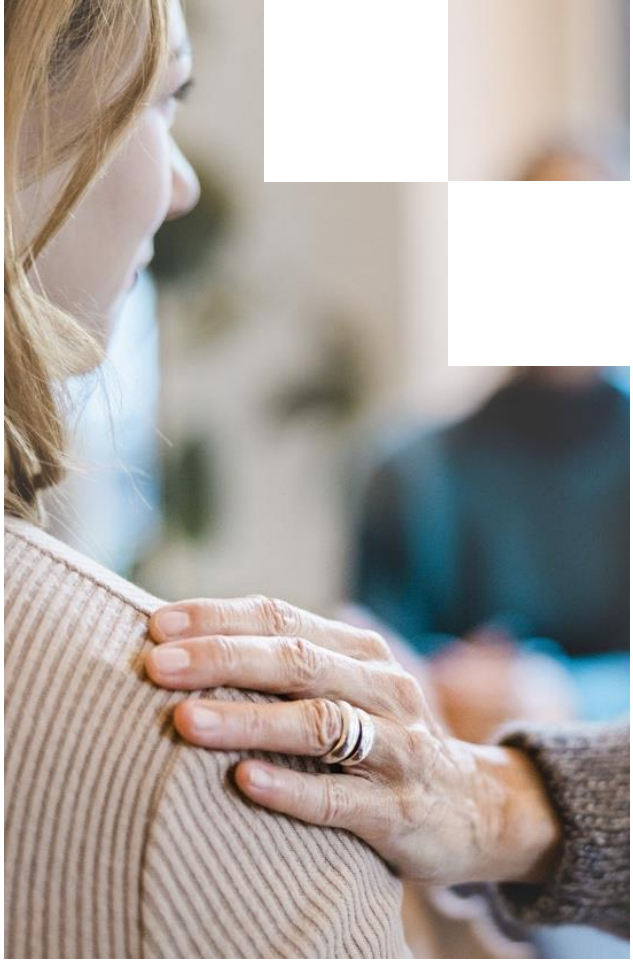


**From the outset of this tragedy, we have had to relive the circumstances of this case countless times following the CTP insurance program that is ineffective, outdated and cruel to people undergoing a traumatic event.**

**I think myself and probably a lot of Australians think there is an automatic payment like if you lose your arm on a job site. That a death benefit kicks in when somebody is killed in a tragic way. But it doesn't work like that.**

# Compensation available through CTP

There are multiple types of compensation available through CTP to people who are injured in a motor vehicle crash in NSW.



## 1. Ongoing support for injuries sustained

A range of support mechanisms are available when 'injuries' have been sustained:

- Weekly income support, if the injured party is unable to work
- Medical and treatment expenses, if treatment is required
- Domestic and personal care expenses, if the injured party needs help with tasks at home

Differing levels of benefit apply, based on how the 'injuries' experienced are categorised - as either Threshold or Non-Threshold Injuries (further details on these definitions is provided later in this section).

The duration of support provided also depends on how the injury is categorised and is based on a set of eligibility requirements as dictated by the relevant legislation.

## 2. Lump sum compensation, awarded as damages

In the event of a Non-Threshold Injury, a claim for damages can be filed. This would result in a lump sum being paid out to the claimant. Two types of damages are available:

- **Economic loss:** calculated based on past and future loss of earnings, or reduced ability to earn due to injuries - including impact on Superannuation
- **Non-economic loss:** covering pain & suffering, loss of amenities of life. This can only be claimed if the degree of impairment of the injured person is calculated to be greater than 10%.

## 3. Funeral costs

Where someone has been killed on NSW roads, regardless of the nature of the event, financial reimbursement is available for funeral costs. 'Reasonable funeral expenses' can be claimed within 3 months of the crash - covering expenses such as the funeral service, coffin, flowers, burial costs at the cemetery, etc.

# Onus is on the individual to access support

To access support through the CTP scheme, the responsibility is on the individual who has been injured to pursue any potential entitlements.

Filing a claim involves multiple steps and multiple parties:

- Those submitting a claim must fill in a range of application forms (different forms are required for each type of compensation, and sometimes multiple forms are necessary), detailing high levels of information about the crash itself and their personal circumstances.
- Insurers must be contacted to initiate and manage the claim.
- Medical diagnoses are required to determine the injury type, severity, and impact.
- Police are often needed to provide information relating to the crash - especially in regard to determining who was at fault.
- For lump sum compensation claims, families often prefer to navigate this claim with the support of a legal representative (as the insurance company that is liable will have legal representation during these negotiations).



The CTP claims process is complex, with many moving parts. Claimants must invest a great deal of time, effort and - in the case of claims for damages – money (for legal fees) as they move through the claims process.



# Spotlight on the CTP experience for victims of fatal road crimes

Eliza* lost her mother two weeks out from Christmas after a bus driver failed to give way at a pedestrian crossing. Eliza was so overwhelmed with grief that she was barely able to function, and neither were her children.

Eliza had migrated to Australia; her mother and two sons were the only family that she had. Eliza is a single parent and her mother stepped up as a caregiver for her sons so that she could work. In her culture, parents raise children and grandchildren, and when they themselves grow old the family takes care of them in return.

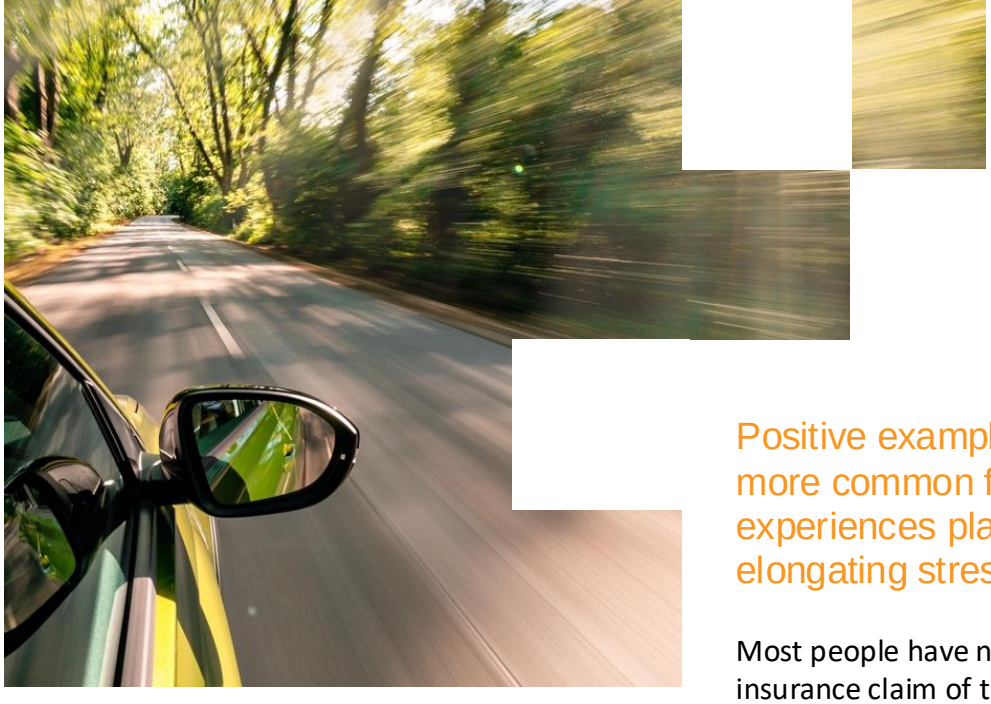
This relationship dynamic meant that when her mother was killed, not only was Eliza grieving the loss of a parent, but in many ways so were her sons who were despairing over the loss of a mother-like figure.

However, the CTP scheme does not recognise the reality of non-nuclear family structures, and benefits are only extended to those who are deemed close family members. This meant that although Eliza's mother played a significant caregiving role to Eliza's sons, they were not recognised as dependants and therefore not eligible for support after the tragedy.

Eliza's sons sought out medical confirmation of their grief and the impact of the incident on their wellbeing to support their insurance claim. A referral from a GP would have helped to validate their pleas for much needed psychiatric support. However, they were met with resistance from medical professionals who deterred them from even trying to file a claim under the CTP scheme.

Only one of Eliza's sons was granted approval by the insurer for psychological support. He was identified as an emergency case due to how devastated he was after the death of his grandmother but was only provided with funding for a handful of sessions with a psychologist.

> **"My older son looked ok for the first few weeks but then after a month he began crying to me and saying, 'My Grandma is my Mum. My Mum died…**



## Factors which contribute to a positive CTP claims experience

In the best cases, families are proactively contacted by SIRA (the NSW State Insurance Regulatory Authority) or the insurer. They are made aware of their entitlements and how to access them in a timely and compassionate manner. There is no penalty or reduction in benefits because of lack of understanding of CTP. Note that proactive contact of this nature is rare and requires a third party to initiate.

A large determinant of a positive experience is support offered by a third party who provides advice and plays an intermediary role. Families feel more supported as someone else is fighting for the help they desperately need, freeing them up to focus on healing.

Other factors that contribute to positive experiences include:

- Empathetic case managers - or ideally one case manager with oversight of the entire claim. This limits the need to re-tell the traumatising story of their loved one's death.
- Early access to appropriate financial help, alleviating economic burden and providing much needed headspace to focus on areas of life outside of work.
- An integrated team of healthcare specialists who understand road trauma and are aligned in what's best for the individual.

## Positive examples are rare. It is far more common for families to have experiences plagued with issues, elongating stress and trauma.

Most people have never had to deal with an insurance claim of this magnitude. Trying to understand and work through CTP can be incredibly difficult and overwhelming - especially given the circumstances of fatal road crimes.

Whilst no two fatal road crimes are the same, there are some overarching elements of the CTP scheme and claimant experience that can be addressed to make a profound change, and more positively support those who have been affected by these tragedies. These elements are outlined in further detail in coming pages.

> **"A million pieces of paper handed to you to read, click this and that link. It's too hard to understand what to do, and it's facing the reality every moment that your loved one is gone. You'd give anything not to have to be burdened by trying to work out the steps of a system that was supposed to help you, but does nothing but mostly hurt you.**

# Two critical limitations are at the core of why so many families are traumatised by the CTP scheme

## 1. CTP is oriented to rehabilitation of physical injuries

Similar to Workers Compensation, CTP is designed to categorise **physical** injuries sustained in a road crash and provide benefits based on the nature of injury.

However, the **emotional** injuries inflicted upon families of those killed in a road crash do not, by nature, fit in the existing categorisations.

The pain and suffering caused by losing a loved one because someone else broke the law is a fundamentally different type of 'injury' from breaking an arm or spraining an ankle.

The treatment and timeframe for recovery from mental health trauma is unpredictable, non-linear, different for each individual, and difficult to measure. This is in stark contrast to physical injury where there is generally an understanding of time taken to heal, treatment required for rehabilitation, and assessments which easily determine the status of the injury.

Among those navigating the CTP process after their loved one was killed in a fatal road crime:

**48%**

often or always felt that they were battling against a system not designed to help people in their situation

> **Victims are just treated as a number. Our worlds have been turned upside down over the unexpected death of someone we love. We will never return to 'normal'. We fill out so many forms, like 'how much did your loved one contribute to the house'? How do you measure that? This is the most horrific journey I've ever had to take.**

## 2. Lack of a dedicated pathway for road trauma victims means families are left alone to fight a system that is not fit for purpose

Fatal road crimes are unique cases, distinct from other road crashes in terms of the person(s) affected and the nature of the injuries sustained.

Fatal road crimes are substantially different from more minor motor “accidents”, the cases are more complicated, and the ‘injuries’ tremendously more complex.

As a result, the actions and expectations of insurers, and the support that is provided, need to reflect the unique nature of these claims.

However, CTP claims involving fatal road crimes are treated in a generalised way, akin to any other road traffic incident. There is no customised pathway for these unique claims, meaning many people who have filed a CTP claim due to a fatal road crime have a negative experience throughout the CTP claims process.

Among those navigating CTP after their loved one was killed in a fatal road crime:

**20%**

said the professionals they dealt with made their experience a **little or much worse**

**18%**

said it was a **mixed experience,** with some of the professionals they dealt with making it better, but some making it worse

**The CTP scheme is ignorant to the reality of fatal road crimes, and not equipped to support people experiencing complex psychological trauma.**

The following pages go into detail about the ways in which the CTP system is not fit for purpose. This has a myriad of negative implications for those grieving fatal road crimes. Ultimately, the scheme increases the emotional distress experienced by families and contributes to secondary trauma, which is the opposite of its intended purpose.

# CTP offers a critical lifeline – but it needs to be proactively shared

There is little awareness of CTP support for victims of fatal road crimes.

Even those who are aware that support is available report a high level of misunderstanding of how the CTP scheme works and who is eligible for support.

In the case of fatal road crimes, filing an insurance claim is not a priority amid devastating grief. Compounding this, there is no consistent pathway to inform victims' families that there is help available, refer them into the system, nor help them understand what help they can receive. For many, awareness that they may be entitled to CTP benefits only comes about via a third party - a friend, relative, or even a professional such as a police officer.

Those most severely affected by the loss of their loved one can find themselves unable to do the simplest of day-to-day tasks or care for themselves or those around them. These are often the people who need support the most, but with no clear avenues to inform them of the role CTP can play, they often fall through the cracks. The delayed access (or complete lack of access) to this support can lead to even greater issues in the future.

CTP support can be a critical lifeline – but victims need to know that support is available. The reality is that many people are not made aware that they are entitled to support, and there is often mixed advice from professionals on whether they would be eligible. This creates confusion and, in some cases, will completely prevent people from getting the help they need.

Among those navigating the CTP process after their loved one was killed in a fatal road crime:

**54%**

were **dissatisfied** with how easy it was **to work out who they could contact** for information

**52%**

**often** or **always** felt **lost** or **unsure** of what to do next

**In other jurisdictions, such as the UK, it is mandatory for the insurer to proactively contact injured parties in the event of a crash.**

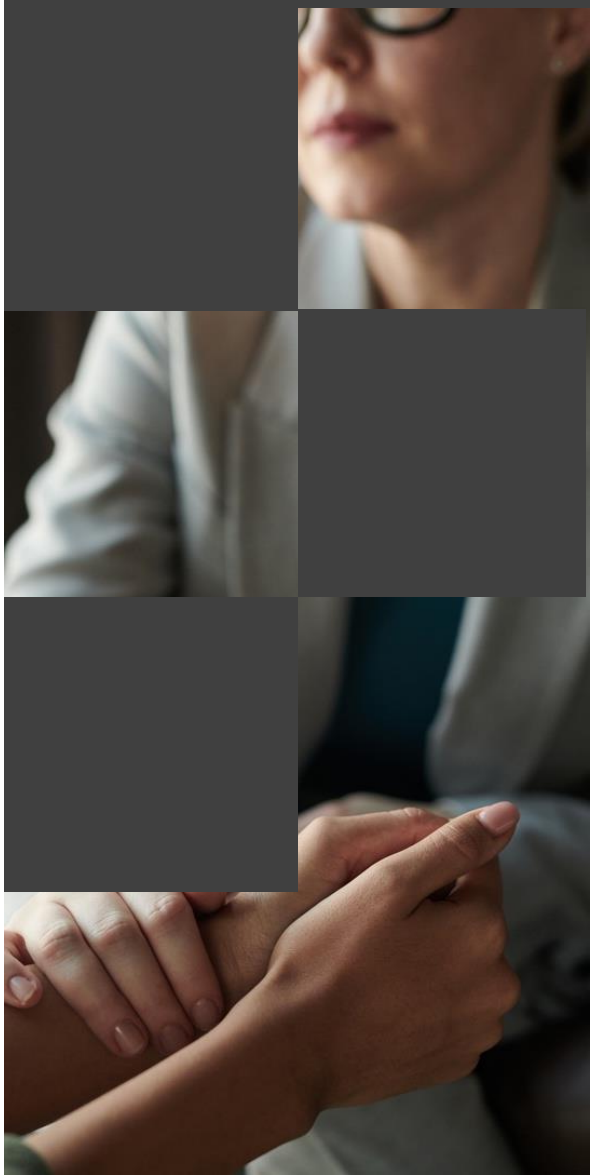
**There is clear precedent for this requirement, which could be implemented in NSW to avoid grieving families unnecessarily missing out on support they are entitled to through the scheme.**

# Early access to support from CTP unlocks a range of benefits

Among those navigating the CTP process after their loved one was killed in a fatal road crime:

**52%**

were **dissatisfied** with how easy it was to access information about what was happening or what they should be doing



Early economic support has the potential to relieve significant pressure for victims of fatal road crimes:

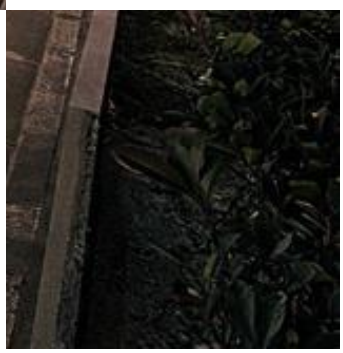
- It can remove (or at least reduce) the pressure to return to work. Many feel forced to do so far too early to meet pressing financial responsibilities or to appease employers.
- It can help to pay for unexpected, substantial costs. For example, funeral costs easily mount into the thousands and most have never had to think about this (especially if the victim is young) - let alone be financially ready to pay for these expenses.
- It can create a much-needed safety net. This provides the mental space that families need to process their grief and start the healing process, without having to focus on the worries of meeting day-to-day living expenses.

Beyond the obvious economic impact, early access to counselling and psychological support can have a profound impact.

> **I had no idea I was eligible for compensation. It was only later that someone suggested I should look into it. It would have made such an unbelievable difference to have had financial support. We could barely stay afloat.**







# Claim eligibility definitions do not reflect the full impact of fatal road crimes

Under current definitions, only close family members of the person killed in the road crime are eligible for compensation under CTP. This definition excludes a wide range of people experiencing unimaginable grief and difficulty as a result of their loss, and who desperately need support.

## Non-nuclear family relationships

CTP eligibility criteria falls short at recognising how modern relationships are structured. Partners of victims are only eligible for support if they were in a de facto relationship or married – an outdated definition that leaves a huge range of relationships unaccounted for.

## Extended family members

Extended family members are also excluded as they are not considered 'close' family members. As an example, a person who was raised in a household with their cousin, sharing a sibling-type relationship, would not be eligible to bring a CTP claim if their cousin was killed, even though their need for financial and mental support would be no different than if they were biological siblings.

In Australia today, multi-generational households are common: one in five Australians and one in four Sydneysiders live with multiple generations of relatives[1]. The definition of 'close' family members should take into account living arrangements such as these. The disqualification of extended family members from receiving critical CTP support is outdated and does not reflect modern-day society.

SOURCE:
[1] https://www.unsw.edu.au/newsroom/news/2020/01/moving-back-in--the-rise-of-multigenerational-households#:~:text=Research%20from%20the%20UNSW%20City,with%20multiple%20generations%20of%20relatives.



**When your loved one is killed, you are forced to endure months if not years of interrogation over how the loss has affected you. In some instances like mine, my surviving son according to the insurance company is not affected by the loss of his brother and they are not liable for his pain & suffering.**

# Deadline to initiate CTP claim is unsuitable for road trauma claims

Until very recently there was a 28-day window from the date of the crash in which individuals could file a CTP claim for ongoing support for injuries sustained (e.g., weekly income support, medical and treatment expenses, domestic and personal care expenses).

This allowed very little time for someone who is going through sudden, unimaginable grief to find the time, mental space and physical energy to learn about what is available to them and take action – and this assumes people are aware that support exists at the time of the crash. Many became aware after the deadline passed.

From 1 April 2023, the deadline to file an initial claim for ongoing support for injuries sustained was expanded to 90 days. This is a positive step forward but still places a huge burden of pressure, and a ticking clock, on those affected to complete the necessary steps to submit a claim in time.

Among those navigating the CTP process after their loved one was killed in a fatal road crime:

**45%**

were **dissatisfied** with how clearly the insurer explained their rights, and the insurer's obligations to them

Note, those who are victims of a crime defined under the Victims Right and Support Act 2013 have up to two years to lodge a CTP claim, so there is clear precedent for a longer time period for claim lodgement.

If a claim is not submitted by the deadline, the process becomes more difficult with additional barriers to accessing critical support. For example, individuals must provide a reason for the delayed claim lodgement, and the insurer can refuse to back-date support to the day following the crash (meaning they receive reduced financial support).

> **"People aren't thinking about insurance. They don't have the headspace to fill in forms. There's the funeral, making sure everyone is ok, balancing finances, and you're only experiencing the very tip of the iceberg of grief… If there was no deadline it would remove so much pressure.**

# Claims involve high admin burden at a time of emotional devastation and limited mental capacity

Completing the initial claim application comes with an array of requirements which many find difficult to finalise in the time allowed:

- Families must complete confusing forms, with unfamiliar language and definitions that do not relate to their situation.
- Evidence of income is required - which can be difficult to obtain if they have recently changed working hours or work casually.
- They must acquire a certificate of capacity from a GP (which can be difficult to achieve by the deadline, compounded by lack of training for GP's in diagnosing mental disorders).

All of this is happening against the backdrop of immeasurable grief and trauma - the administrative burden can feel big, even if they appear to be basic, straightforward tasks.

Among those navigating the CTP process after their loved one was killed in a fatal road crime:

**4 in 10**

(39%)

were dissatisfied with the level of **documentation / evidence** required to lodge the initial claim

**16%**

thought about **cancelling** their claim entirely because the process was too difficult

## Multiple claims create additional stress and avoidable burden

Currently, every person who requires support must submit a separate individual claim. For example, where a father is killed through a fatal road crime, his partner and each of his children need to submit individual claims, with no way of centralising the common information.

This means each individual claim application must repeat information that is consistent across the claims, such as details about the crash and the person(s) killed. Each family member must unnecessarily repeat the process of describing what has happened, which in itself is incredibly traumatic especially in the early time-frame in which it is currently required (before the deadline to file a claim).

## Diagnosis before the trauma has fully presented is premature

CTP claims must be substantiated with evidence of the impact (or 'injury'). Within the first 90 days of losing a loved one, many are still in an initial period of shock and by definition they are not yet exhibiting symptoms of significant, prolonged trauma.

The true extent of the impact on their mental health is not measurable during this time - yet to lodge a claim, family members are required to be assessed for eligibility based on how they are presenting in that moment. The requirement for a mental health assessment (the evidence) within the immediate weeks following the death is not clinically appropriate nor accurate.

This results in a range of complications for those affected by fatal road crimes, compounding the administrative burden associated with CTP claims.

# ‘Injury’ definitions are not applicable to fatal road crimes

One of the most critical components of the current CTP system is the definition of injury type. There is an initial diagnosis to determine the extent of the ‘injury’ sustained by the person making a claim, and this diagnosis determines eligibility for ongoing compensation, support, and for any damages claims.

There are two types of injury classification, and the support available differs for each:

## Threshold Injury

- Defined as a soft-tissue injury (such as whiplash), AND/OR ‘threshold psychological or psychiatric injury’. This encompasses ‘injuries’ which are not formally recognised as a psychiatric illness (generally seen as acute changes to mood that only last a short while) - apart from adjustment disorder and acute stress disorder. People are expected to recover from threshold injuries within a short period of time after which they return to their normal activities.
- Benefits are available for up to 52 weeks, which may include:
    - Weekly income support
    - Medical and treatment expenses
    - Domestic and personal care expenses

## Non-Threshold Injury

- Defined as a serious physical injury outside of the ‘Threshold’ classification, such as fractures, nerve damage, complete or partial ruptures to tendons, cartilage or ligaments, spinal nerve damage that meets the criteria for radiculopathy; AND/OR formally diagnosed psychological injuries such as PTSD or depression.
- Benefits are available for up to two years, with the potential to extend to five years and even lifelong support, if:
    - A person has made a common law claim for damages
    - The person is not at fault
    - The degree of injury is determined to be over 10%

## These definitions and specifications are not suitable for those affected by fatal road crimes.

The CTP scheme assumes that the victim (the recipient of the claim) has sustained **physical** injuries and needs to be compensated for them until their injuries are healed. In cases of fatal road crimes, the victim is not the individual who has been killed - but the loved ones left behind. Their injuries are not easily defined nor healed. The unfathomable grief of sudden and traumatic loss leads to a complicated ecosystem of emotional and psychological damage, which is often hard to diagnose - but in reality should not require a formal diagnosis at all.



Among those navigating the CTP process after their loved one was killed in a fatal road crime:

**48%**

often or always felt that the CTP system is unfair to victims

**41%**

often or always felt that the insurer was doing everything they could to reduce the amount of benefits paid

The injury definitions are particularly unsuitable for Lump Sum Compensation claims which require proof that the degree of injury is over 10%. The “injury” being referred to in the case of fatal road crimes is emotional – not physical.

Unlike losing a limb in a workplace accident, it is impossible to quantify the proportionality of impact when someone has died. Grief and loss are such variable experiences, and the mental and emotional trauma is not readily quantified like a physical injury.

**“There's all this absurd business with having to prove 10% loss. My son is dead, it’s 100% loss. It is a complete loss when your child has been killed due to the unlawful actions of another.**

# Initial assessments are not effective in determining required support

Even once victims' families are made aware that they are eligible for CTP benefits, further hurdles are evident because the scheme does not differentiate psychological from physical injury.

A significant issue is the need to prove that an 'injury' has been sustained. In the case of fatal road crimes, this necessitates having a medical professional diagnose the family member's mental state at a time of significant upheaval, grief, distress, and suffering.

A certificate of capacity is required from a GP. This requirement is plagued with challenges as it is not fit for purpose for criminal road trauma victims.

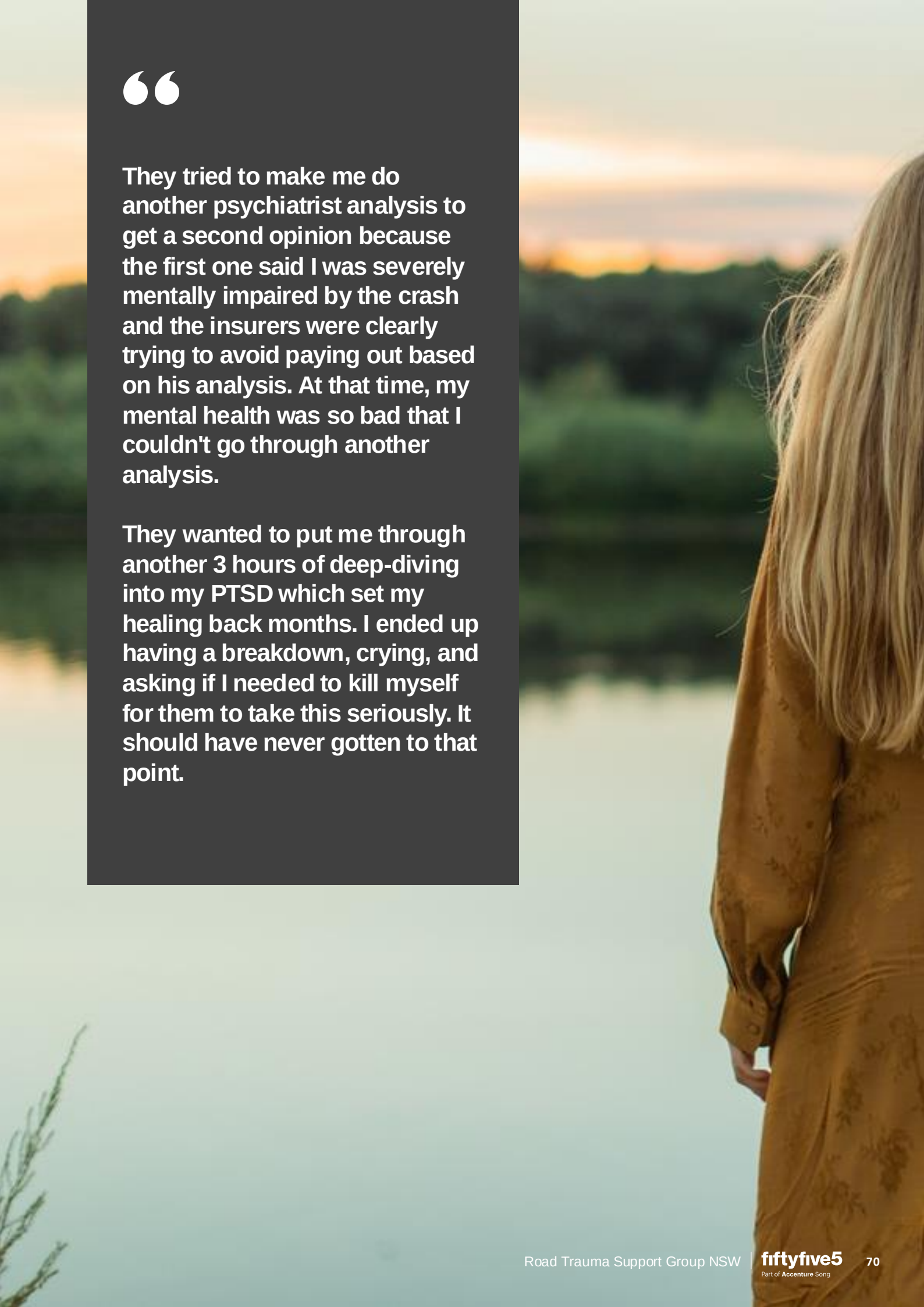
## Making the initial diagnosis

- A GP is required to make an initial mental health diagnosis – however most GPs are not specifically trained to make this type of diagnosis, nor appropriately qualified or experienced in traumatic grief to be able to do this accurately and sensitively.
- For this reason, finding a GP who will make a mental health diagnosis is challenging. GPs can be reluctant to be involved due to the fear of push-back from insurers who question their diagnosis. Many report continuous contact and pressure from insurers to justify their diagnosis, so are inclined to avoid putting their name on any paperwork that is going to the insurance company.
- Within the existing timeframe of 90 days in which a mental health diagnosis must be determined, the mental health of families experiencing the aftermath of fatal road crimes hasn't yet stabilised. Further, by definition, within 90 days their mental health has not been impacted for sufficient duration for the most serious diagnoses (nervous shock, major depressive disorder, PTSD) to be able to be diagnosed.

## Justifying the diagnosis

- There is pressure to get the diagnosis 'right' the first time, as GPs can be challenged by insurers when their diagnosis changes over time in line with the non-linear grieving process. This puts pressure on GPs to either be more conservative with their initial diagnosis or refuse to issue a diagnosis at all.
- Most GP's won't put the cost of the certificate of capacity through Medicare, and the family can't yet claim the cost back from the insurer because they don't yet have a live claim. This creates a catch 22 which means the family will have to pay for the certificate and wait for reimbursement, if they can afford the cost upfront.

> **"The first few months are a mess. Victims are on autopilot. They still expect their child to walk through the front door. This is not the time to be making a definitive mental health diagnosis.**
>
> **-Professional**



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They tried to make me do another psychiatrist analysis to get a second opinion because the first one said I was severely mentally impaired by the crash and the insurers were clearly trying to avoid paying out based on his analysis. At that time, my mental health was so bad that I couldn't go through another analysis.

They wanted to put me through another 3 hours of deep-diving into my PTSD which set my healing back months. I ended up having a breakdown, crying, and asking if I needed to kill myself for them to take this seriously. It should have never gotten to that point.

# Ongoing assessments create secondary traumatisation

## Ongoing assessments are mandatory for ongoing benefits

Under the current scheme, family members are required to go through regular assessments (every 28 days) to report their capacity for work and ongoing need for treatment. This information is reported back to the insurer and is used to determine when benefits should cease.

If the insurer disputes the findings of an assessment, further assessments from other assessors may be required.

Family members report feeling great pressure to attend assessments as missing one can have a severe impact on the support provided by the insurer. Instead of focussing on their grief and recovery, families are continually forced to 'prove' their need for support.

The ongoing and frequent nature of assessments creates a feeling that families are needing to continually prove their grief and trauma. Every time they are assessed they can feel they are being judged, with increasing expectations for them to be 'better' with every month that passes. The need to have assessments so frequently also creates an additional administrative burden for these individuals who are already having to deal with so much.

The stress of attending regular assessments is compounded by pressure to 'return to normal', which in this context is harmful and causes secondary traumatisation of grieving families.

Among those navigating the CTP process after their loved one was killed in a fatal road crime:

Over

**1 in 4**

(27%)

said they felt guilty or blamed for making a CTP claim

> **They make you feel bad, like you are scamming the system by not being 'back to normal' after a few months. Every time you prepare yourself to justify why you're not ok, when it's bloody obvious. I shouldn't have to prove every month that my son being killed by a drink driver affected my life.**

## Increasing pressure and expectations to be 'better'

Because the CTP scheme has been designed with physical injury as the core principle, there's an onus on rehabilitation which supports the return to normal life (especially work) as soon as possible.

However for families who have lost a loved one to fatal road crimes, the journey to recovery is long and complicated. They do not have physical injuries that have an expected timeframe to heal and straightforward steps to rehabilitation, they have deep emotional trauma which can embed itself for prolonged periods of time.

## Recovering from traumatic loss is not a linear process

Traumatic grief is not a linear phenomenon. It's not unusual for psychological recovery to take dramatic leaps backwards when faced with triggering events such as:

- Judicial proceedings regarding their loved one's case
- Birthdays, Christmases, the anniversary of their loved one's death
- Specific triggers - e.g. seeing something that relates to their loved one, or the events that unfolded
- Media retrospectively reporting on the events and hounding family members for comments / interviews.

The family member's mental state and ability to live daily life will fluctuate regularly. Yet with the current scheme, insurers expect to see improvement with each monthly assessment. When this doesn't happen, there is an implicit guilt as families are made to feel as if they are taking advantage of their loved one's death for their own financial gain.



**"The constant need to prove you are experiencing grief is ridiculous. It is a lifetime burden, not something you ever 'get over'. Having funding based on assessments over a limited time is ludicrous and does not reflect the real experience of loss and devastation. When dealing with grief of such an enormous magnitude, the extra burden of constantly justifying your need for support is completely unacceptable.**

## Lack of a holistic, or appropriate, assessment approach

It can be difficult to find appropriate local professionals to complete assessments face to face, so for many family members these interactions happen via a video conference which brings with it some clear challenges.

A video call is far less human and more clinical than a face-to-face setting where important behavioural cues such as body language are more easily observed. This is especially important against the backdrop of emotional trauma and grief which is complex in its presentation, unlike physical injuries.

The types of questions asked during assessments are rigid and removed from context. Families report being asked shallow, binary questions without any further probing into their greater circumstances - so that on the surface, the response may seem positive, when in fact their reality is very negative. Further to this, assessment questions tend to be standardised, applicable to physical injury and not relevant to the specificities of grief and trauma.

Some family members feel they are forced to 'play a game'. They have to offer up information greater than what is being asked to demonstrate the extent to which day-to-day life is affected by their grief, because if they don't, the shallow nature of the assessment means the true extent of their pain and suffering will not be seen.

There is a clear need to create a more tailored set of assessment criteria that accurately reflects the nature of the injuries that have been sustained (i.e. severe traumatic grief), and better takes into consideration the broader context of what is happening in victims' lives.

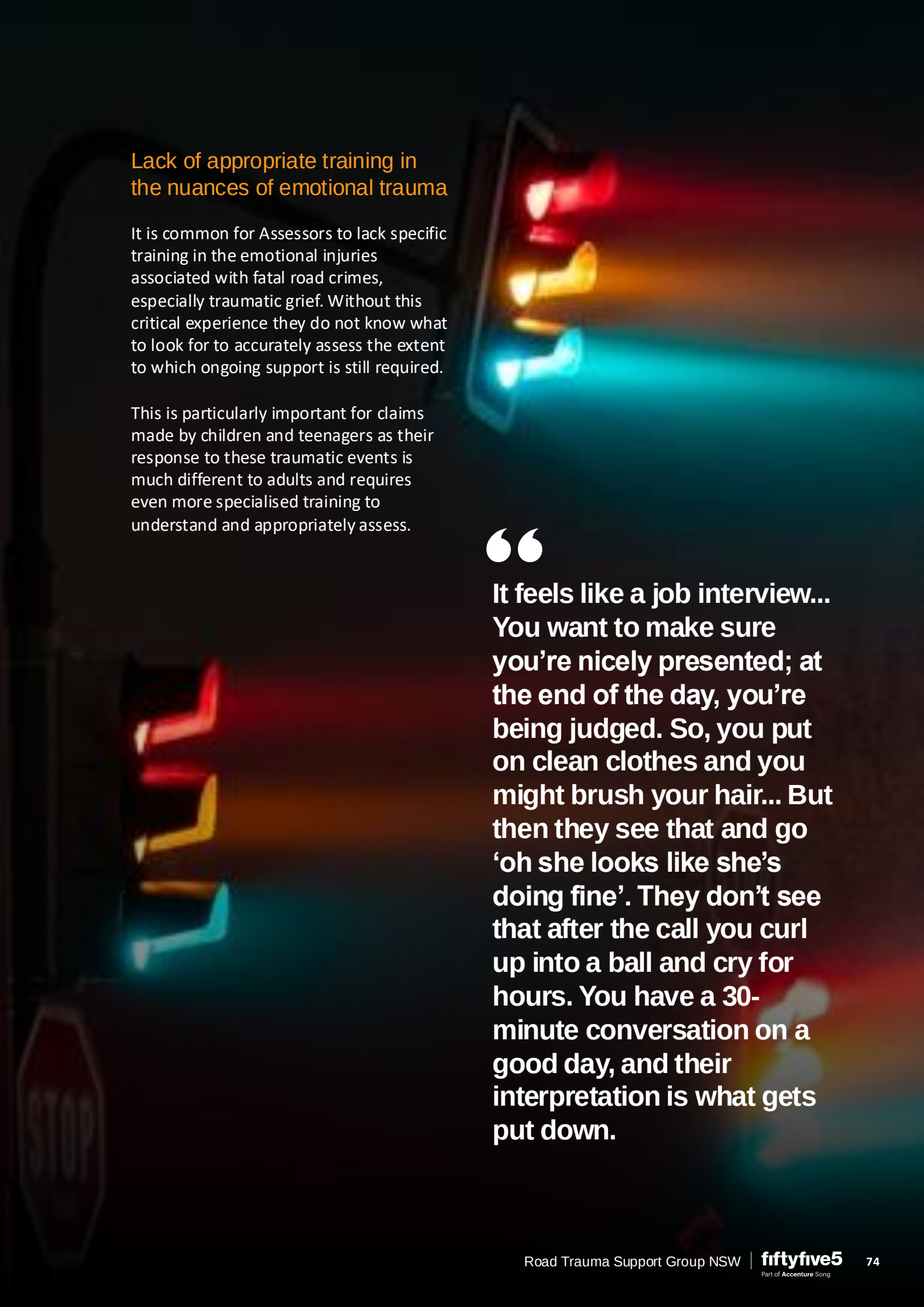


> **"The questions they ask are ridiculous... It's like a game, designed to get you to say 'yes' so they can tick that off and say you're ok. 'Do you shower?' Well yes, but that doesn't mean anything. 'Have you left the house this week?' Well yes, but only once to check the mail. 'Do you see friends?' Yes, but people have to come to my house, because I can't go to places like I used to.**

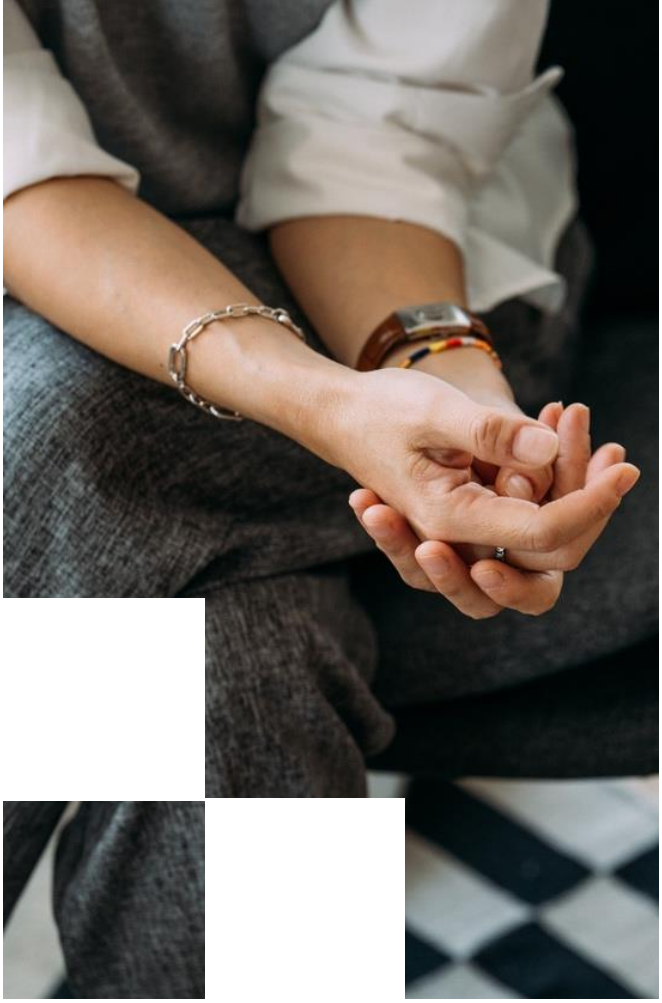
## Lack of appropriate training in the nuances of emotional trauma

It is common for Assessors to lack specific training in the emotional injuries associated with fatal road crimes, especially traumatic grief. Without this critical experience they do not know what to look for to accurately assess the extent to which ongoing support is still required.

This is particularly important for claims made by children and teenagers as their response to these traumatic events is much different to adults and requires even more specialised training to understand and appropriately assess.



> **“It feels like a job interview... You want to make sure you’re nicely presented; at the end of the day, you’re being judged. So, you put on clean clothes and you might brush your hair... But then they see that and go ‘oh she looks like she’s doing fine’. They don’t see that after the call you curl up into a ball and cry for hours. You have a 30-minute conversation on a good day, and their interpretation is what gets put down.**



# Appropriate psychological support is hard to access

People who are experiencing the grief and trauma due to fatal road crimes need early access to **specific, specialised help**. Not only are they having to navigate the complex grief of a loved one dying, but they are doing that within the context of it being a violent, criminal act - which could have been avoided had it not been for the illegal actions of another.

The emotional and psychological impacts, and the vortex that they are suddenly forced into is unimaginable. The psychological support required is unique and specific.

One of the biggest issues that families face is not having appropriate access **to the right type of support**, in particular help from trained and experienced psychiatrists, psychologists, and grief and trauma counsellors.

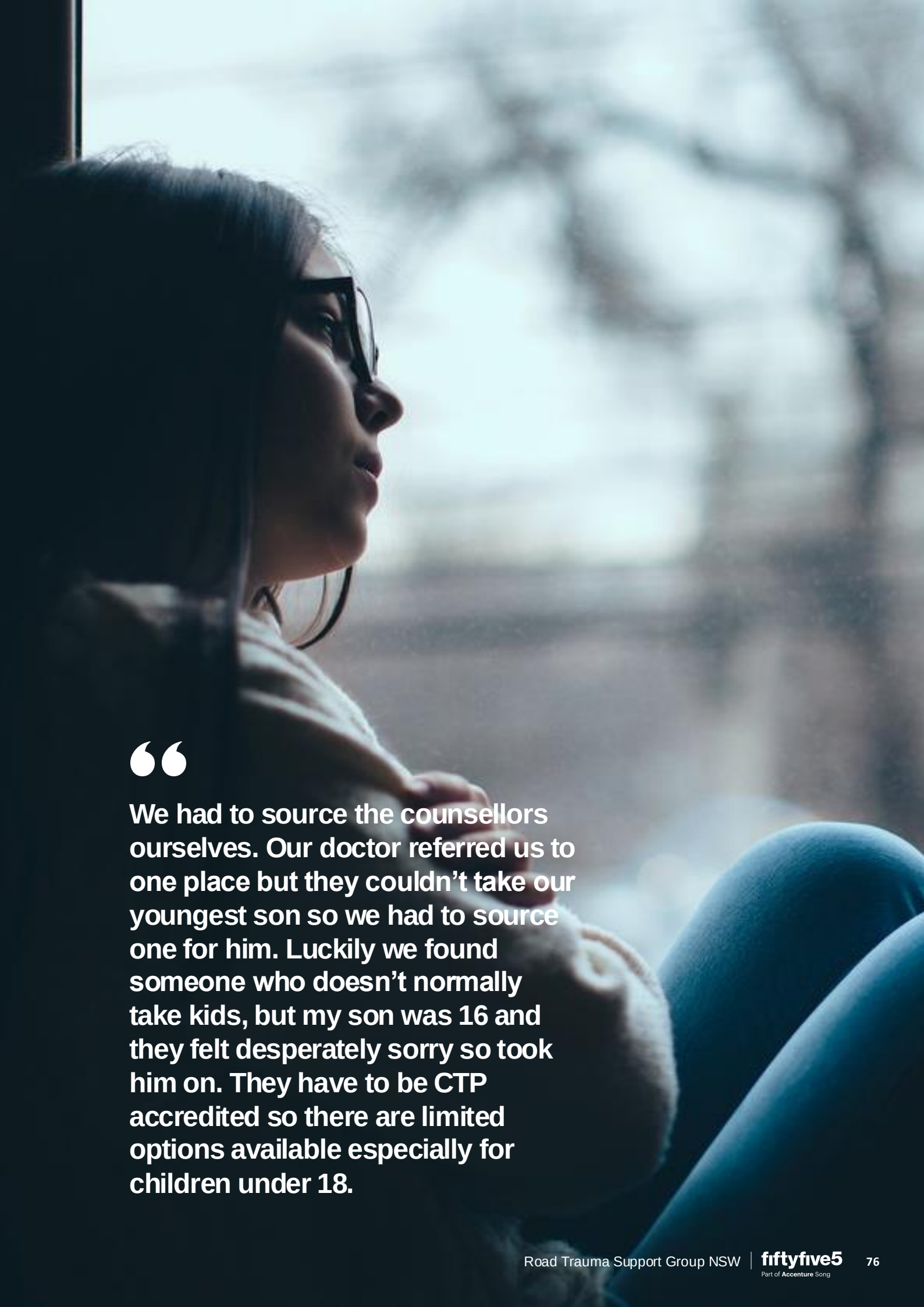
Families are appointed psychological support services by insurers which may not take into consideration their unique needs, hindering the healing process and leading to ineffective "solutions".

Common issues faced by families when forced to use designated support by insurers include:

- Appointed medical professionals are unlikely to have appropriate training / specialised understanding of road trauma and the associated psychological injuries. This experience is unique and requires specialised support from experienced counsellors. This is particularly evident where children / teenagers require support - it is of critical priority that paediatric specialists are engaged, but this is not always possible.

- Lack of local support may require counselling sessions to be held virtually, especially if family members live outside of Sydney.

- Where psychological support is provided, the relationship between the patient and the medical professional is crucial to making progress, and it's not uncommon for multiple professionals to be seen before the 'right' one is found. However, in these instances, a poor fit results in months of delay to much-needed treatment whilst family members try to justify the change in counsellor to the insurer.



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**We had to source the counsellors ourselves. Our doctor referred us to one place but they couldn’t take our youngest son so we had to source one for him. Luckily we found someone who doesn’t normally take kids, but my son was 16 and they felt desperately sorry so took him on. They have to be CTP accredited so there are limited options available especially for children under 18.**

# Pressure to return to work is detrimental

A core principle of the CTP scheme is supporting people back to their pre-injury life. For those who were working at the time their loved one was killed, this means returning to work as quickly as possible.

Insurers expect regular and consistent progress towards getting back to work. But, returning to work quickly is not in the best interest of family members because:

- Employers and colleagues are not usually equipped to support those grieving a loss of a close loved one.
- Those grieving are often not able to perform their duties to their usual standard due to the mental impacts of their loss.
- Individuals may prefer to work reduced hours while navigating a new life without their loved one, which may not suit the employer.
- Individuals are not in the right head-space to find alternative employment, so there is inherent pressure to make it work with their current employer.
- Employers need to know if / when the employee will return to regular working hours, putting pressure on victims to agree to a timeline before they are ready.

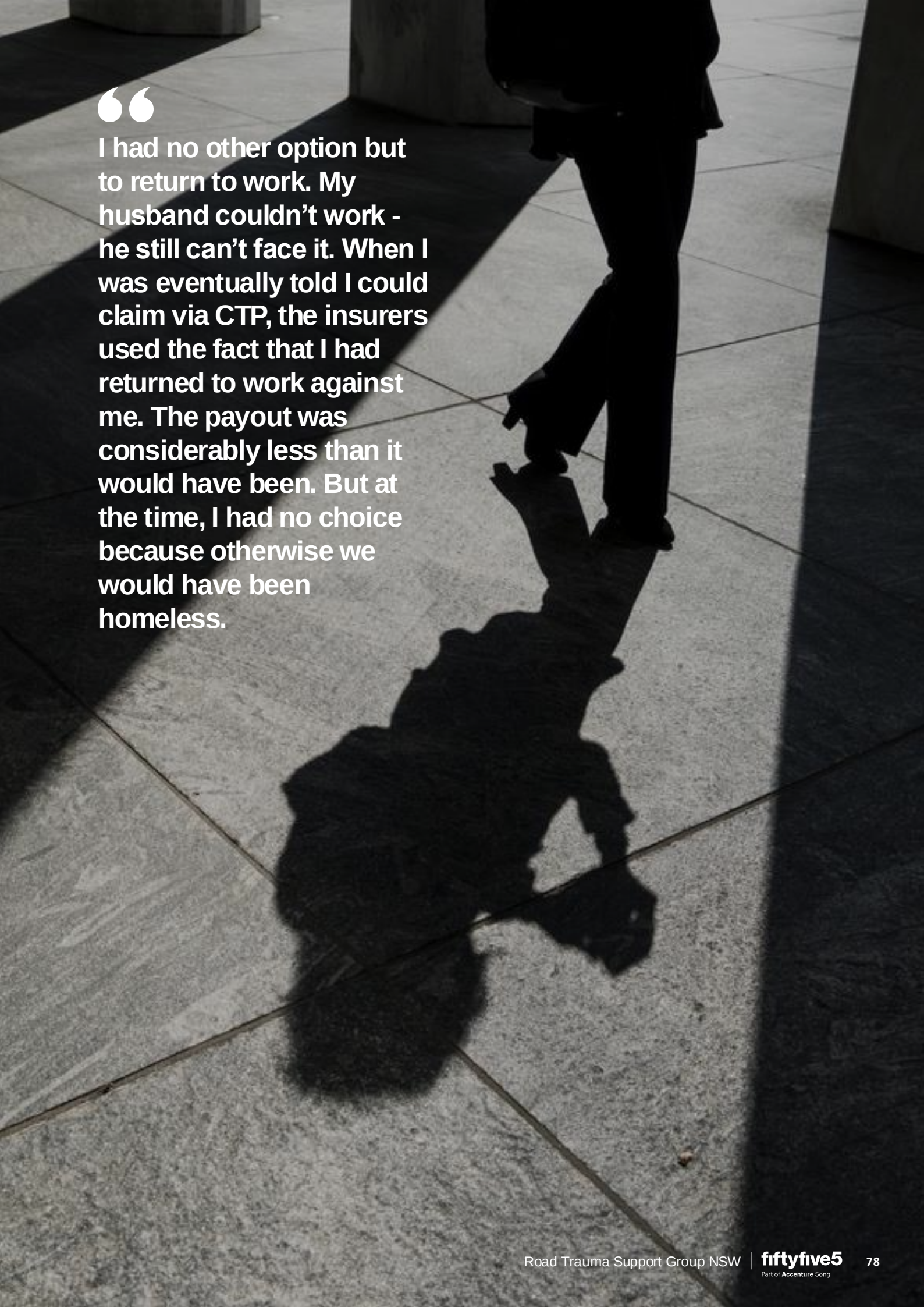
Returning to work can also impact future claims, as it is treated as evidence that the family member has recovered. Insurers use this information to reduce the compensation offered to families.

Among those navigating the CTP process after their loved one was killed in a fatal road crime:

**40%**

often or always felt pressured to return to work before they were ready





**“I had no other option but to return to work. My husband couldn’t work - he still can’t face it. When I was eventually told I could claim via CTP, the insurers used the fact that I had returned to work against me. The payout was considerably less than it would have been. But at the time, I had no choice because otherwise we would have been homeless.**

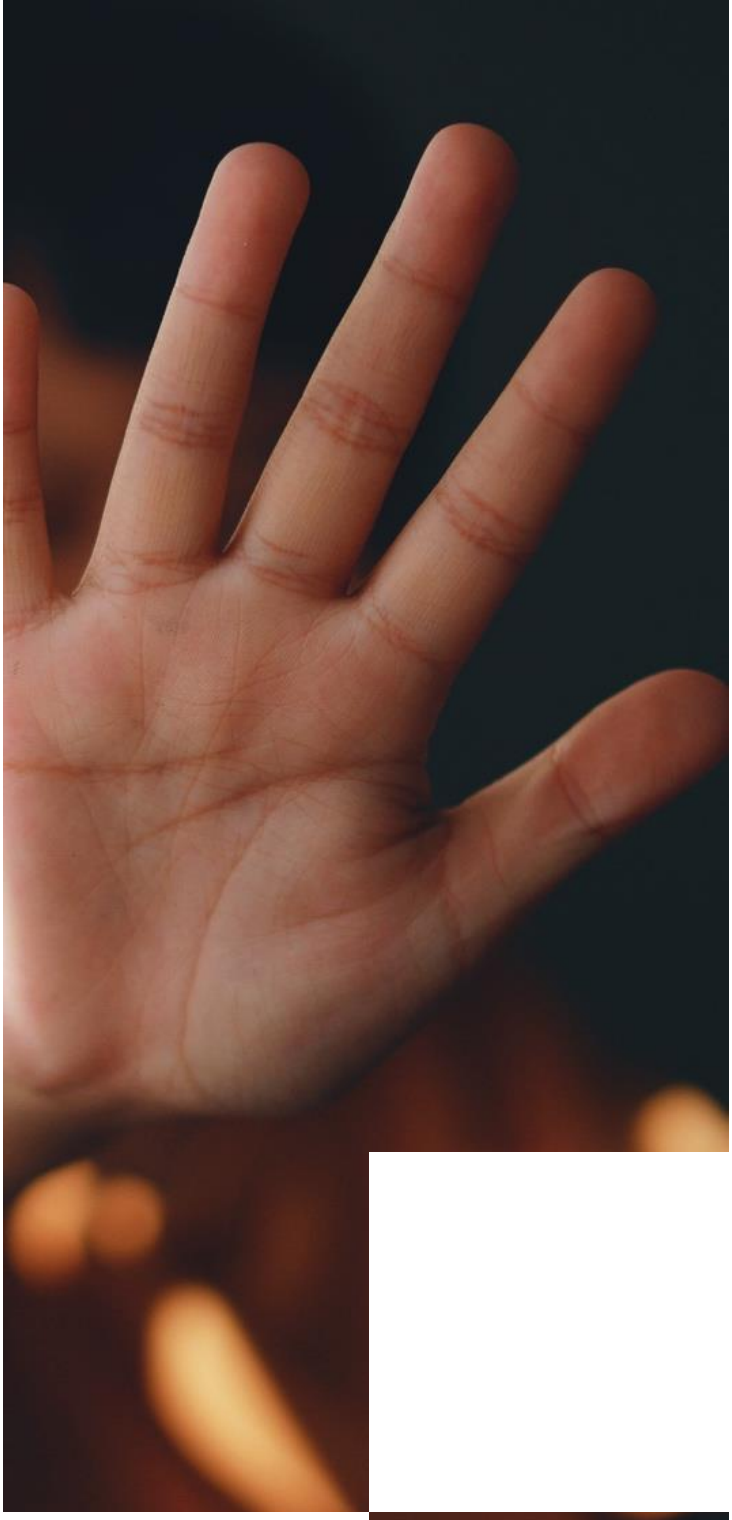
# Calculating the value of a life is offensive, impossible, inadequate

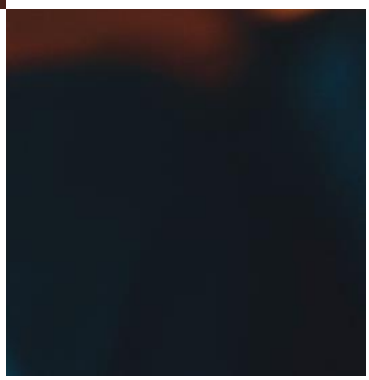
Throughout the CTP process, families are required to provide evidence to substantiate their loss. The system is designed to measure the degree of loss and tailor benefits accordingly. As such, the more that has been lost, the greater the compensation and support.

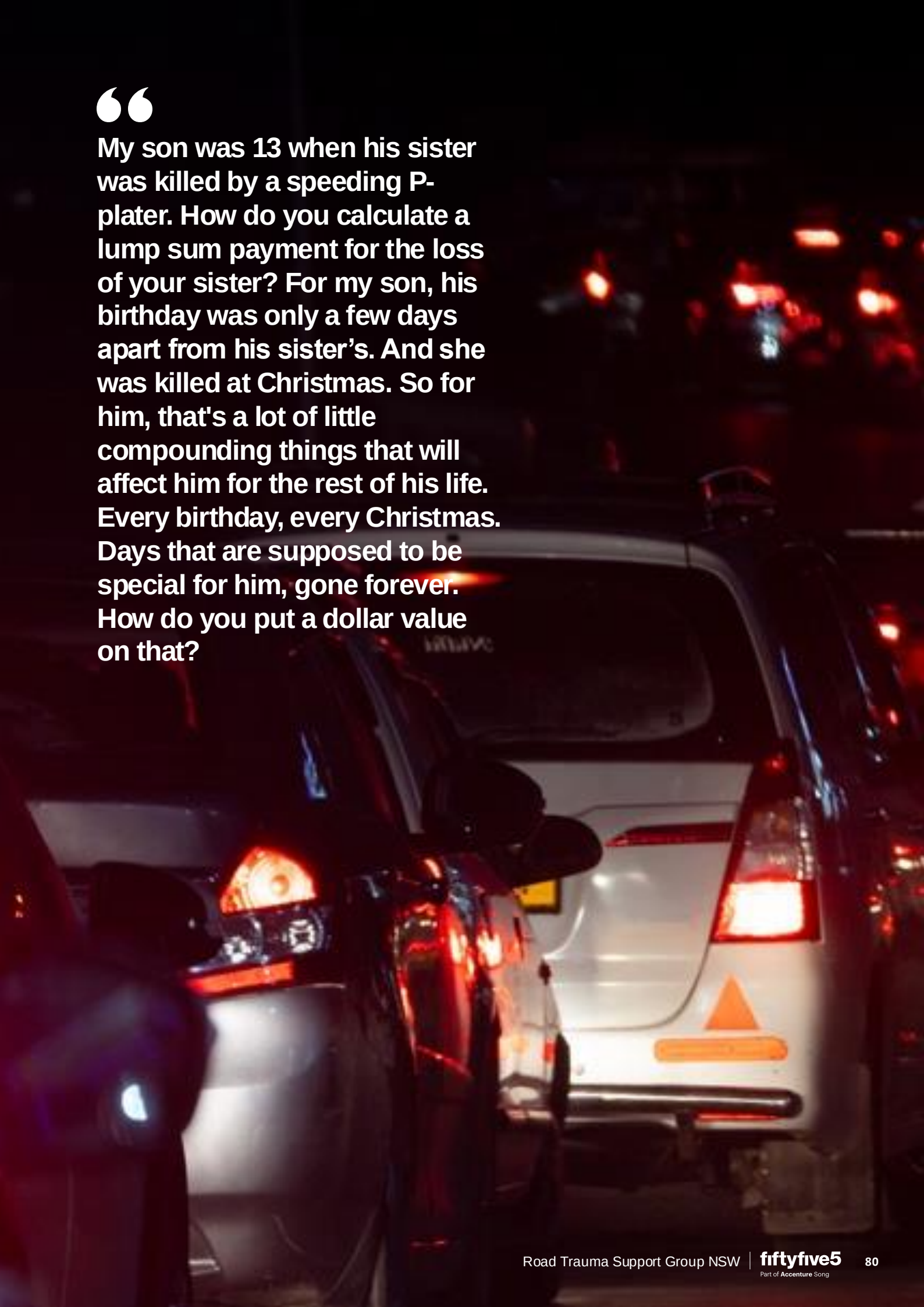
However, for families of fatal road crime victims the loss is immeasurable. A person they loved is no longer in their life through no fault of their own. The impact of the death is profound and causes continuous ripple effects throughout their life.

For some, whilst access to CTP support is critical, the very idea that they might in some way benefit financially from their loved one being killed is an incredibly difficult concept to grapple with.

This is compounded by the fact that, in pursuit of lump sum damages, the process involves legal teams arguing over the final claim amount - the amount that both parties can agree the 'loss' is worth. Trying to put a dollar value on the life of their loved one is inherently impossible, and the process of negotiating over the final amount is extremely traumatising to families.







**My son was 13 when his sister was killed by a speeding P-plater. How do you calculate a lump sum payment for the loss of your sister? For my son, his birthday was only a few days apart from his sister's. And she was killed at Christmas. So for him, that's a lot of little compounding things that will affect him for the rest of his life. Every birthday, every Christmas. Days that are supposed to be special for him, gone forever. How do you put a dollar value on that?**

# Contributory Negligence places blame on the victim who was killed

Currently families can have their CTP claim benefits reduced based on their loved one's actions - or alleged actions.

For example, questions around whether the person killed was wearing a seatbelt, or accusations that they in some way contributed to the events (e.g. encouraging the driver of the vehicle, or poor driving behaviour on their own part) are considered grounds for contributory negligence.

This is confronting for families, as not only does a reduction in benefit have a serious financial implication, but it also creates additional emotional distress through the suggestion that their loved one can be blamed for their own death.

Contributory negligence is designed to penalise people **for their own role** in acquiring an injury. By definition, this does not apply to fatal road crimes as the family members are the ones 'injured' and they did not play a role in the events that brought about the death of their loved one.

There is an inherent contradiction in the scheme, as it requires family members to demonstrate that their loss had a significant impact on their life, but then they can be penalised because someone else (their loved one) might have made a mistake. The trail of devastation that arises from these events was not caused by the family members, so it is inappropriate to penalise families in this manner.

Accusations of contributory negligence are even more horrendous for families to hear when the driver who killed their loved one is granted leniency due to factors such as:

- Age, e.g., young (under 18) or elderly (70+) drivers.
- Lack of prior offenses.
- Health issues and medication usage.
- Fatigue at the time of the crash.

All of the above factors, among others, have been used to diminish the culpability of the driver who broke the law and killed someone. When these drivers are routinely given leniency, it is only fair to extend that same leniency to the victims and their families.

> **"They speculated if she was wearing a seat belt as she was ejected from the vehicle. They ran tests, but they were inconclusive. She was hit by 8 g-force, she's going to fly out of the vehicle no matter what. Thankfully her dashcam was on, otherwise they would have tried to blame her.**

# Generalised terminology and language creates repetitive stress

## Incorrect language & terminology

As highlighted in "The Unheard Trauma of Fatal Road Crimes in NSW" report, language often used to describe and categorise fatal road crimes is inappropriate and insensitive to the reality of the circumstances.

So often crashes resulting in death are referred to as "accidents". This has a devastating effect for family members who see the death of their loved one as the result of someone else's **intentional, not accidental,** decision to engage in a criminal activity.

Among those navigating the CTP process after their loved one was killed in a fatal road crime:

**50%**

were dissatisfied with the **appropriateness of the language** used throughout the process (e.g., referring to the crash as an "accident")



The language used in the primary definition of CTP is entirely incongruent with fatal road crimes. In these events a driver has been charged with a criminal offence, intentionally breaking the law and killing someone as a result. These are not "accidents". Labelling them as such creates issues with how those affected are treated from the start of the CTP process.

- The initial claim form, claim categorisation and descriptions consistently refer to 'Motor **Accident** Injury'.
- Forms request information about the "accident", e.g. Funeral Expenses, Ongoing support claims.
- Insurer call centre staff & claims managers rely on defined terminology & descriptions as outlined both in legislation and insurance policy. As such, they are often required to refer to the "accident" in discussions with family which is incredibly offensive.

Not only is the term "accident" not appropriate given the nature of these events, but research has shown that repeated use of this term has a profoundly damaging effect on the loved ones of those killed. Every time they hear it, especially when used in formal settings such as dealing with insurers, it maximises the trauma experienced by families.

# Insurers who pay CTP claims are not set up for the unique nature of this claim

## Claims relating to fatal road crimes are treated the same as claims for physical injuries

As described earlier, the CTP scheme does not differentiate physical and psychological injuries. Claims follow the same eligibility criteria, receive the same benefits, have the same administrative burden, and the same burden of proof regardless of the nature of the 'injuries' sustained.

This flows through to the insurers that provide the coverage and pay out in the event of a claim. Insurers treat claims the same whether the claimant has received physical injuries in a crash, or lost a loved one to a fatal road crime. This lack of distinction contributes to re-traumatisation for families grieving fatal road crimes in the following ways:

- Customer service representatives are not trained in the nuances of fatal road crimes, nor how to interact with grieving families. This leads to interactions that are at best inappropriate, and at worst extremely offensive. Families report having interactions with blasé staff who do not realise they are speaking to someone who has recently lost a close loved one, instead treating them as if they had a minor injury like a sprained wrist. These experiences are disrespectful and cause preventable traumatisation of grieving families.

> **We settled our claim for damages. My husband was the breadwinner. They calculate lost income, take off super, some for personal use, 15% for vicissitudes, 15% because you get a lump sum. Then, you have to pay the lawyers! The insurer pushes for less, so you have to negotiate like the stock exchange. Watching them say 'his life is only worth $X' is insulting. I want the money for my kids. It didn't come close to what he would have earned if he wasn't killed.**

- Insurers have the same expectations regarding the claimant's contribution to their own recovery, and the timing and nature of that recovery. They expect linear and regular progress to recovery, as would be expected of physical injury. This expectation is fundamentally flawed in cases of extreme emotional distress, which do not follow the same path to recovery as physical injuries. Families feel blamed, guilted, and bullied by insurers for not making progress in the expected way or at the expected rate.

- Claims are handled by multiple claims managers. This means the family member making the claim has to continuously repeat the minute details of their situation including intimate details of the crash that took the life of their loved one, and the myriad of ways this impacts their day-to-day life. The need to repeat these details over and over again to strangers is traumatising.

## Commercial orientation of insurers means minimum payouts are prioritised

Ultimately, insurers who pay out CTP claims are commercial organisations that prioritise minimising their financial liability. This leads to tension with family members who have filed a CTP claim in several notable ways:

- Insurers prioritise speed of recovery. The quicker a claimant recovers from their injuries, the quicker the insurer can cease paying ongoing benefits. However, severe psychological trauma by definition cannot be healed quickly, and in fact pressure to be "back to normal" can set back recovery, further frustrating insurance companies that seek a speedy recovery. Families report receiving regular 'check-in' phone calls from insurers that feel like a thinly veiled attempt to put pressure on them to 'return to normal' as soon as possible.

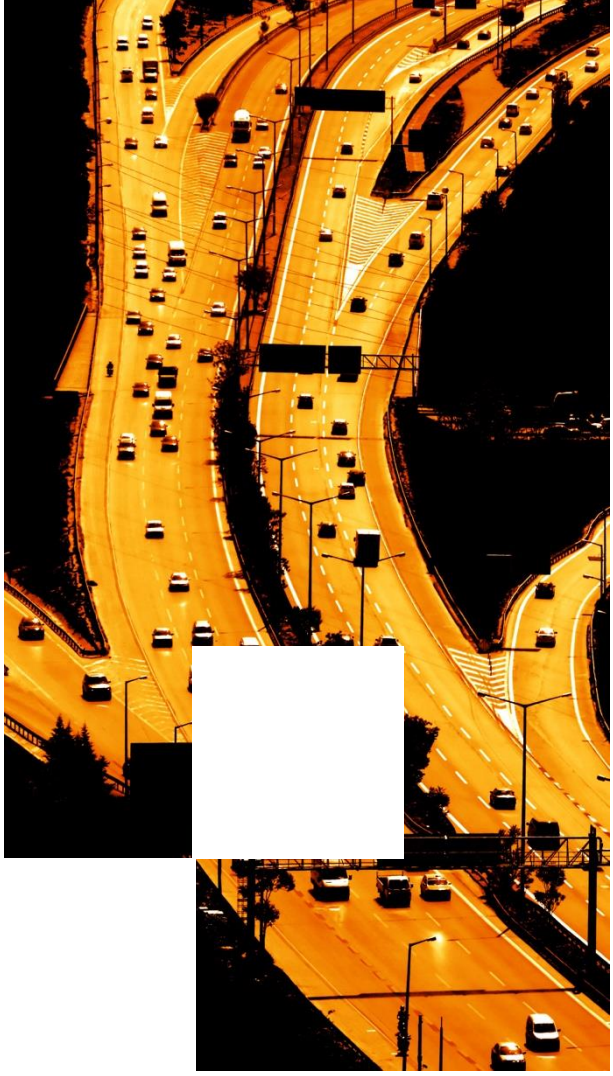
> **This scheme is in the hands of profit-making insurance companies which immediately puts the victim at a disadvantage at the most traumatic time of their lives. Having to 'fight' a system when they are experiencing intense grief, loss, and stress is unimaginably painful and often unbearable. It is a significant cause of more trauma.**



- Insurers can challenge the conclusions reached in medical assessments. Medical professionals who conduct these assessments report being contacted by insurers who query details of assessment outcomes and push for more positive results (to minimise the claim payout). This can lead to family members being put through repeat assessments to gather more evidence – causing further secondary trauma. Or, it can lead to medical professionals downplaying their conclusions, reluctant to determine the more severe outcomes for fear of pushback. In these instances, the support that is so desperately needed by family members is reduced, insufficient to cover the true nature of their psychological needs.

- Insurers will negotiate for a reduced payout in the case of claims for lump sum compensation. Families report feeling traumatised by these negotiations, in which the insurer aims to minimise the amount of compensation. To the family, this feels like the insurer is de-valuing the life of their loved one who was killed.

# Challenges with CTP are exacerbated for minors



The challenges with the current CTP scheme are compounded for minors for two key reasons.

## Firstly, minors have even more acute support needs, which if ignored, can have a lifelong impact.

Family members who are children or teenagers when they lose a loved one are especially at risk of developing lifelong impacts if they are not well supported – and particularly soon after the death has occurred. The ripple effects of grief among children and teenagers can permeate through to:

- Their ability to go to school, and therefore impact their educational outcomes, and potentially their ability to work in the future.
- Their social circles & relationships with other family members - which can often become dysfunctional, leading to relationship breakdowns / greater strain on the family.
- Their immediate & long-term psychological and emotional health - impacting their behaviours, values and mindsets.

As described previously, the grief and trauma associated with losing a loved one to a violent and preventable death is unique and requires specialised support that is difficult to access. Barriers to access are compounded for children and teenagers who require support from paediatric specialists who are few and far between. They are already at an emotionally vulnerable point in life, and the experience of losing a close family member has deep, wide ranging impacts.

It is particularly critical that young people are provided with appropriate care and specialist support, especially in the form of ongoing psychological support. This is not currently available through the CTP scheme.

## Secondly, children and minors need specific provisions to safeguard their rights and interests.

Although minors can navigate the CTP claims process with the support of adults, there are specific aspects of the claims process which cause trauma to children who are not yet emotionally prepared or mature enough to handle them. These include:

- Hearing horrific details of the crash that killed their loved one
- Hearing insurance companies blame their loved one for their own role in their death (contributory negligence)
- Being forced to see a counsellor who is not trained in the nuances of paediatric counselling. This can cause further distress and may lead the minor to reject all counselling support in future.

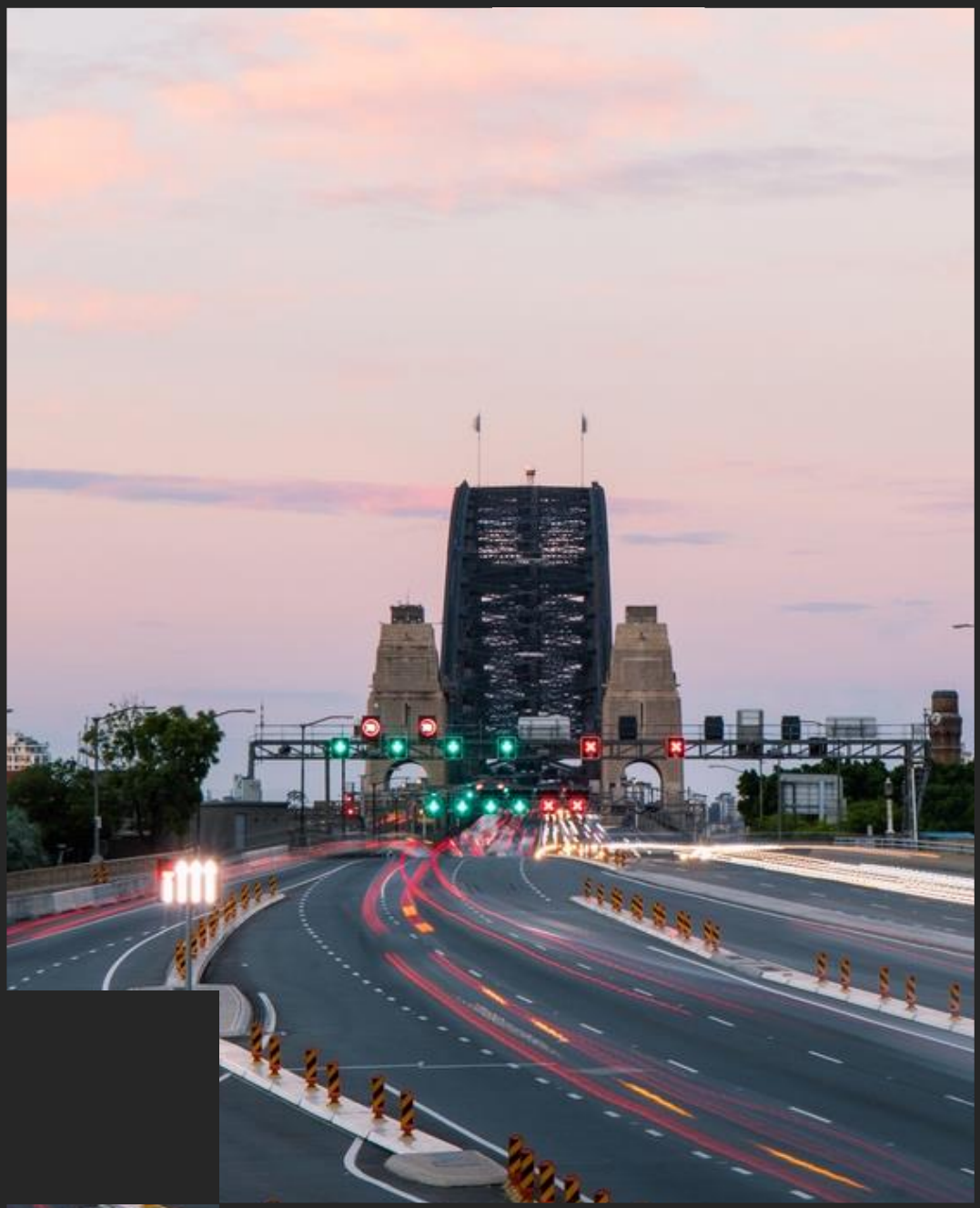


- Having to provide all medical records to the insurer – including notes taken by a counsellor during treatment. This is a violation of privacy, at odds with the 'safe space' notion of private counselling sessions. Some minors will reject counselling for fear that anything they discuss will be disclosed to the insurer and potentially their parents.
- Inconsistent benefits provided to different family members. For example, siblings receiving different lump sum damages payouts after losing one of their siblings. This in effect means the insurance company has decided that the sibling's death has a different level of impact depending on the age and relationship of the siblings left behind. When some siblings receive a higher payout, this causes significant distress and friction on the family relationship dynamics which are already in significant upheaval.

There should be a dedicated pathway for minors to navigate the CTP systems with additional safeguards. The current CTP claims process causes secondary trauma for adults, which is exacerbated for minors who are even more vulnerable due to their emotional and mental immaturity.

> **My children have been directly impacted by the insurance company's inappropriate handling of the claim. They made inappropriate intrusions into our privacy and highly sensitive matters were communicated without care or empathy. Often we felt criminalised by the process.**

# Key Findings and Considerations for CTP



## Key finding

**Awareness:** Many victims of fatal road crimes are unaware they are entitled to CTP support, and insurers are not required to make proactive contact. As a result, families miss out on critical help that could significantly improve their experience and provide essential support in a time of crisis.

## Consideration

There is a clear need to implement a proactive approach that places the onus on the insurer/ SIRA to make contact with victims of fatal road crimes in an appropriate manner (similar to other jurisdictions such as the UK). This will ensure they are made aware they are entitled to CTP support as early as possible and provided with the appropriate guidance and mechanisms to initiate that support.



## Key finding

**Lack Of Specificity:** The existing CTP scheme & specifics within it do not delineate or account for key differences in the needs of fatal road crime victims vs generalised road traffic incidents or physical injuries. The psychological trauma of fatal road crimes is exceedingly different from physical injury.

## Consideration

There is clear evidence to support the need for a separate victim-centred approach for victims of fatal road crimes, customised to the nature of these claims:

- Automatic placement of individuals in a specific CTP pathway. A separate pathway with safeguards for minors is also required.
- Immediate access to psychological support without the need to prove impact via a medical diagnosis.
- Change of language and terminology used in definitions, key documentation and contact touchpoints (e.g. removal of word “accident”).
- Specific training & support for insurer teams (including customer support/ call centre and claims managers) to equip them to deal with the specifics of these events.
- A single point of contact throughout the claim process to eliminate misinformation and reduce the risk of compound trauma to the claimant caused by needlessly repeating traumatic details of their experience.
- Wider eligibility definitions for CTP support to ensure that all those who need support are provided with it.

# Key Findings & Considerations for CTP (continued)

## Key finding

**"Injury" Definitions:**
Current CTP 'injury' definitions are grounded in the notion of physical injury and the need for rehabilitation. They do not take into consideration the immense psychological and emotional impacts of fatal road crimes - which are far harder to diagnose, greater in their complexity and more enduring in their nature.

## Consideration

The way 'injuries' are classified needs to be revised for fatal road crimes. When there is a death, victims should automatically be classified with 'non-threshold injuries' instead of having to justify this via a medical diagnosis. There should not be a requirement for families to prove nor justify their grief.

For damages claims (non-economic loss), there should not be a requirement to satisfy the 10% threshold for injury. Instead, there should be a set amount of entitlements in these circumstances.

Contributory Negligence should not apply in the event of fatal road crimes. It is illogical in these instances, as the life-changing trauma experienced by family members was not caused by the family themselves. Therefore, it does not make sense to penalise families in this manner.

## Key finding

**Claim Lodgement:**
The current claims lodgement process is onerous to complete, and overly strict eligibility criteria mean that fatal road crime victims miss out on support they are entitled to and critically need.

## Consideration

In the case of fatal road crimes, the lodgement process can be corrected to better reflect the nature of the circumstances and needs of the victims:

- Removal of 90 day deadline to submit a claim.
- Introduction of a family claim / umbrella document that removes the need for multiple, repetitive claims related to the same case. This may also prove valuable in an ongoing capacity, by creating a more connected support system that takes into consideration everyone involved.
- There is a clear need to educate and support GPs in making more appropriate diagnoses that reflect the nature of the psychological trauma victims are experiencing. Or, remove the need for evidence to support the traumatic grief experienced due to the loss of a family member.

## Key finding

**Ongoing Claims Process:**
The ongoing claims process places a heavy burden upon victims, does not adequately or appropriately provide a holistic view of the victim's needs, and causes ongoing secondary trauma.



## Consideration

Remove need for medical assessments every 28 days. Promoting use of joint medical assessments could also alleviate secondary trauma from repeated assessments.

Greater engagement with specialised medical professionals.

Creation of a tailored set of metrics and assessment criteria that more accurately reflects the nature of the injuries sustained (i.e. severe traumatic grief) and takes into consideration the broader context of what is happening in victims' lives.

Improved access to face-to-face specialist psychological help and counselling, with experts trained in traumatic grief.

It should not be acceptable for insurers to harass either victims, victim's family members or medical professionals. There should be severe repercussions for those who do.





# Judicial Spotlight



# Introduction to this section

This section of the report provides a deep dive into the experiences of fatal road crime victims with the Australian judicial system. For most families, this involves four key milestones:

- **A bail hearing**, which usually takes place within one day after the offender has been charged. In this hearing, it is determined whether the offender will be remanded into custody (jailed) or released into the community on bail.

- **A court trial**, which plays out over several years. Trials occur if the offender has pleaded not guilty to the crime(s). During the trial, evidence is presented so a jury can decide whether the accused is innocent or guilty of the crime(s).

- **A sentence hearing**, which takes place if the accused has been found guilty or has pleaded guilty. The presiding judge will determine which sentence (or punishment) to hand down. During this hearing, the people affected by the crime are allowed to present a Victim Impact Statement if they wish.

- **An appeal process** that allows parties dissatisfied with a court decision to seek a review of the outcome by a higher court. Drivers who are convicted can appeal the sentence and the verdict of the court. An appeal is not a retrial but a review of the lower court's application of the law.

Each individual experience with the judicial system is unique, based on the nature of the crime(s) alleged to have been committed, evidence available, which court hears the case, whether the accused pleads guilty or not, etc. In this section of the report we focus on highlighting the areas of the system that negatively impact the families of people killed due to fatal road crimes and cause secondary trauma.

As with our section on CTP, our intention is to provide constructive feedback by bringing attention to the aspects of the judicial system that require reform to be suitable for the specific nuances of fatal road crimes.

# Fatal road crimes are not seen in the same light as other criminal activity

"It can be argued that while most people who break the law are considered deviant and are socially ostracised, those convicted of motoring offences are more often still regarded as law abiding citizens and their behaviour is tolerated and even excused."[1]

While this observation is from the late 1970's, the same sentiment exists today. This sentiment is most evident in how these crimes, and those who commit them, are defined, treated and described.

> **These aren't accidents. An accident is someone who has a medical episode. "Accident" implies innocence. The crash that killed my dad wasn't an accident. All the driver had to do was slow down, stop at an intersection and give way at a give way sign! No matter how you spin it, these are the facts, three things the driver did that caused someone's death. That is NOT an accident.**

## Fatal road crimes are described as "accidents", freeing the criminal driver from culpability

One of the biggest hallmarks which demonstrates how road crimes are treated differently from other crimes resulting in death is in the language used to describe them. These events are often described and reported as "accidents", which is categorically incorrect.

Language is incredibly powerful. Using the term "accident" minimises the reality and seriousness of the situation. It perceptually reduces the culpability of the offender and softens how the driver's actions are interpreted by people.

For families whose loved ones have been killed by criminal behaviour, describing what has happened as an "accident" is an immense insult. Yet, consistently throughout many aspects of their experience (including judicial proceedings, insurer correspondence and media commentary), this is what they hear.

Fatal road crimes are the result of a choice made by the offender to break the law. It is an active decision to engage in criminal conduct, not an "accident".

SOURCE:
[1]https://www.aic.gov.au/sites/default/files/2020-05/road-safety-crime.pdf



## Limitations of local courts mean punishments are minimal relative to the significance of the crime

In NSW, Local Courts deal with most criminal matters including summary offences, which are crimes such as stealing, assault and possession of drugs. More serious offences are referred to the District or Supreme Court after a committal hearing in the Local Court.

In the case of traffic offences, which fatal road crimes currently fall within, Local Courts are usually the start point. This is problematic especially with regard to potential sentencing outcomes, as the Local Court can only impose a maximum sentence of 2 years to any single office, or 5 years for multiple offences[1].

Families report that it is difficult to understand why their cases are often confined to lower-level courts, given the severity of the crimes and impact they have, not just on individuals but also on the community. Legal professionals suggest that a reason for this a desire to avoid 'weighing down' the higher courts with lengthy matters (which these trials often are), as well as a general reluctance to push for stronger sentencing in relation to crimes committed on the road.

## High frequency of recidivist behaviours highlights an ineffective cycle that needs to be broken

One of the most startling aspects of fatal road crimes is the high prevalence of offenders who have a history of criminal convictions, often repeat serious traffic offences.

Evidence suggests that repeat offenders are up to six times more likely to be in a serious or fatal road crash than first-time offenders[2].

Families can be dismayed to discover that the person responsible for the death of their loved one had previously committed crimes such as drink or drug driving, or speeding, or that they were driving with a suspended license. This raises serious questions about the effectiveness of current punishments and rehabilitation, and clearly demonstrates that more needs to be done to prevent recidivism.

> **"It is not acceptable that a driver can constantly lose their licence on numerous occasions and simply sit out their suspension and re-apply, only to lose it again.**

SOURCES:
[1]https://www.odpp.nsw.gov.au/preparing-for-court/local-court-prosecution
[2]Meyer et al. 2021. Modelling the relationship of driver license and offence history with fatal and serious injury (FSI) crashinvolvement

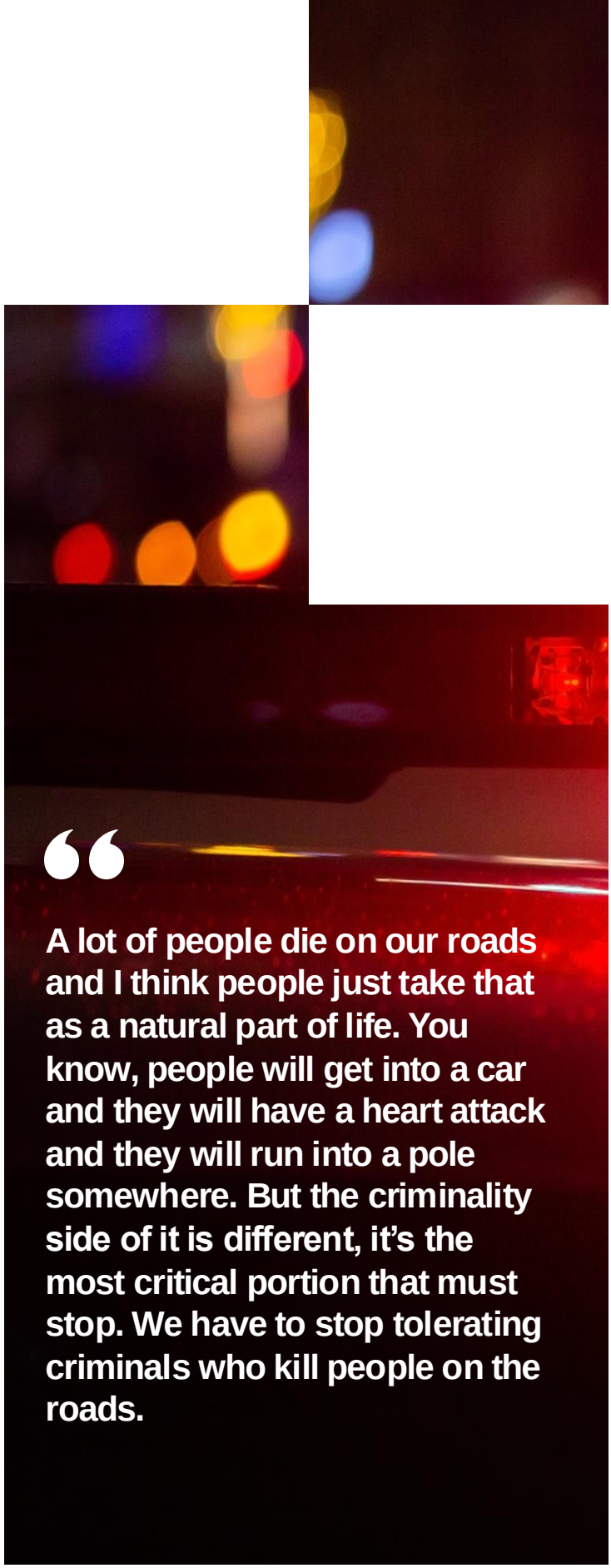
# Australia takes a softer stance on fatal road crimes

## Other jurisdictions have more severe charges, and more severe penalties, available to prosecutors

In the USA 'Vehicular Manslaughter' (sometimes referred to as Vehicular Homicide) is defined as "a crime in which the defendant's unlawful or negligent operation of a motor vehicle results in the death of another person"[1]. Vehicular Manslaughter statutes classify a vehicle as a potentially deadly weapon and allow for easier conviction and more severe penalties where this crime is committed.

Similarly in the UK, 'Death by Dangerous Driving' is a statutory offence under Section 1 of the Road Traffic Act 1988[2]. This charge was specifically introduced due to the reluctance of juries to convict road crimes on the charge of manslaughter. This change to the legislation has enabled more appropriate penalties to be implemented that better reflect the impact of the crimes committed.

There is clearly a need for Australia to adopt a stronger and more uniform approach to sentencing. Fatal road crimes should be treated with the same culpability as other homicide cases.



**"A lot of people die on our roads and I think people just take that as a natural part of life. You know, people will get into a car and they will have a heart attack and they will run into a pole somewhere. But the criminality side of it is different, it's the most critical portion that must stop. We have to stop tolerating criminals who kill people on the roads.**

SOURCES:
[1]https://www.law.cornell.edu/wex/vehicular_manslaughter
[2]https://www.legislation.gov.uk/ukpga/1988/52/part/I/crossheading/driving-offences/1991-02-01

## The softer stance on fatal road crimes is echoed in commentary from judicial experts

There is a perception from some judicial experts that an Intensive Corrections Order is a "significant penalty"[1]. An Intensive Correction Order allows the person convicted to remain in the community throughout the sentence (e.g., they are not jailed) [2]. While serving an Intensive Correction Order, the person who has been found guilty of committing a crime resulting in death is free to move about the community and live their lives. In some instances, home detention is mandated, which is very similar to the restrictions placed on the NSW community during COVID-19 lockdowns. There are differing opinions as to whether that is a sufficient punishment for committing a crime and killing someone.

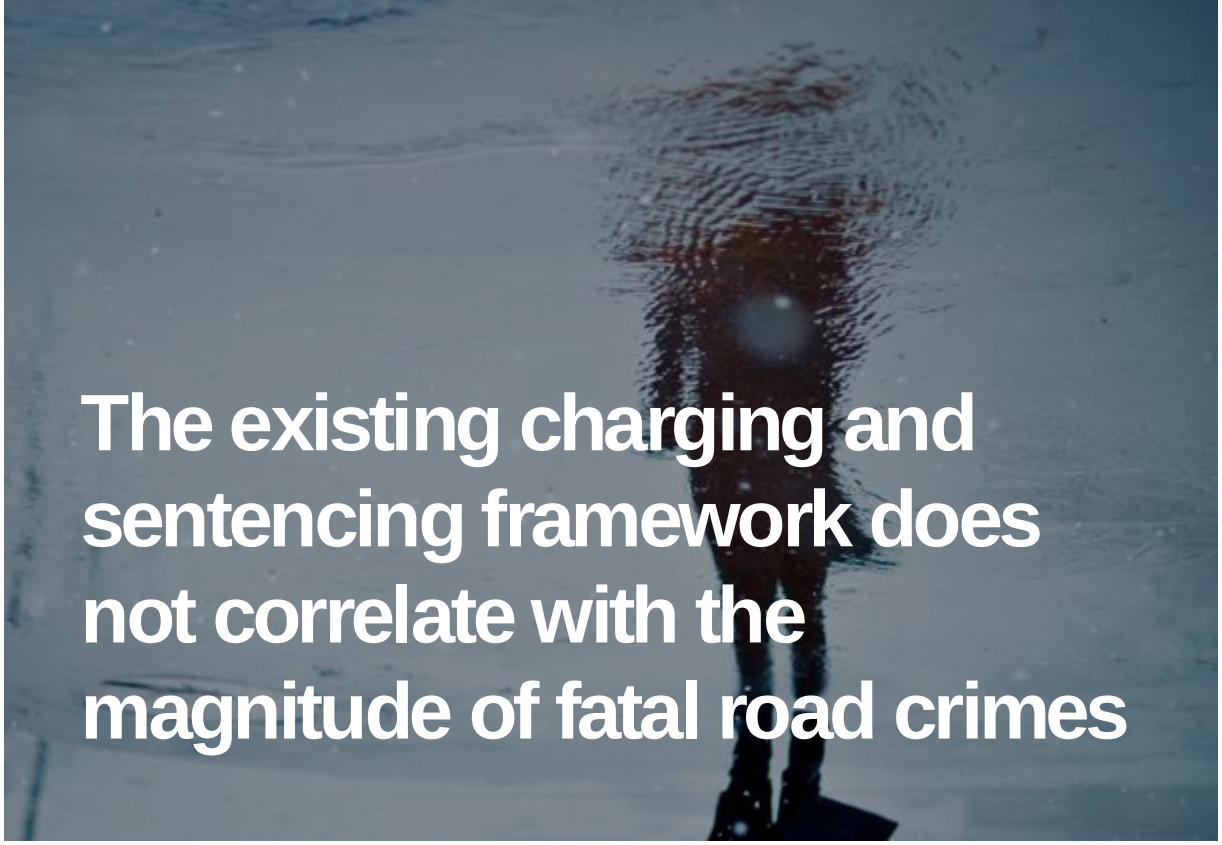
It is worth noting that Intensive Correction Orders are not available to offenders who have been convicted of murder or manslaughter (among other offenses) yet are routinely applied to persons convicted of road crimes that resulted in death.

It is very clear that the judicial system in Australia does not view fatal road crimes in the same manner as other crimes resulting in death. These are not genuine accidents, these are fatal crashes that occurred because someone wilfully and intentionally broke the law. As such, it is unclear why these crimes are viewed with such leniency even among judicial experts who are intimately familiar with the crime legislation.



**A car, or any vehicle, is a deadly weapon. But we don't think about it in the same way as a baseball bat or a gun. In reality, if someone misuses any other object that results in someone dying, that object becomes a weapon, and their crime is murder or manslaughter. Why then, when the weapon is a car, and the behaviour intentional, are these crimes not considered homicide also?**

SOURCES:
[1]https://lsj.com.au/articles/crossing-the-line/
[2]https://correctiveservices.dcj.nsw.gov.au/community-corrections/community-based-order/intensive-correction-orders.html



# The existing charging and sentencing framework does not correlate with the magnitude of fatal road crimes

In other crimes where loss of life occurs, severe charges and corresponding sentences are applied. In NSW, murder carries with it a maximum sentence of life imprisonment; for manslaughter it is 25 years imprisonment.

Within the existing framework of applicable charges for Road Crimes in NSW there are currently four levels available to prosecutors[1]:

- **Negligent Driving occasioning Gross Bodily Harm / Death:** Causes death or serious injury without speeding or being under the influence of alcohol or drugs.
- **Dangerous Driving occasioning Gross Bodily Harm / Death:** Causes death or serious injury because of speeding or being under the influence or alcohol or drugs.
- **Aggravated Dangerous Driving occasioning Gross Bodily Harm / Death:** as per Dangerous Driving, with additional aggravating factors such as >0.15 grammes of alcohol/ 210 litres of breath or 100ml of blood; driving >45km over the speed limit, driving a vehicle to escape police pursuit.
- **Manslaughter:** The Crimes Act 1900 (NSW) does not define manslaughter, except to provide that it comprises all unlawful homicides other than murder[2].

Based on interviews with legal and judicial professionals, it is very rare for a Manslaughter charge to be laid in the case of fatal road crimes. There is hesitancy from prosecutors to pursue this charge.

SOURCES:
[1]https://www.nsw.gov.au/driving-boating-and-transport/demerits-penalties-and-offences/offences/serious-driving-offences-and-penalties
[2]https://www.judcom.nsw.gov.au/publications/benchbks/sentencing/manslaughter.html#p40-000

Guideline judgements exist to help sentencing officials determine the appropriate sentence based on the nature of the crime[1]. For crimes resulting in loss of life, there are significant differences in sentencing guidelines based on the charge:

- **Negligent Driving occasioning Gross Bodily Harm / Death:** Maximum 18 months (first offence) or 24 months (subsequent offence) imprisonment
- **Dangerous Driving occasioning Gross Bodily Harm / Death:** Maximum 10 years imprisonment
- **Aggravated Dangerous Driving occasioning Gross Bodily Harm / Death:** Maximum 14 years imprisonment
- **Manslaughter:** Maximum of 25 years imprisonment

The above guidelines illustrate that the sentencing outcomes of illegal behaviour resulting in death on the roads are critically linked to the charge which is laid. A more minor charge will incur a more minor sentence if convicted.

It is worth noting that under all four of these charges, a person is killed because of the illegal actions of a driver on NSW roads. However, the value of life taken is not seen as equal through a sentencing lens.

Beyond prison sentences, there are a range of other penalties which may applied. In the case of Negligent Driving occasioning Gross Bodily Harm / Death, possible outcomes are:

| Penalty | First Offence | Second or subsequent offence |
|---|---|---|
| Maximum court-imposed fine | $3300 | $5500 |
| Maximum prison term | 18 months | 2 years |
| Minimum disqualification | 12 months | 2 years |
| Maximum disqualification | Unlimited | Unlimited |
| Disqualification in the absence of a specific court order | 3 years | 5 years |

The above table illustrates that it is possible for a person who has broken the law and killed someone on NSW roads to only be sentenced to a maximum fine of $3300, or a license disqualification of only 12 months.

The loss of life that occurs due to fatal road crimes is viewed very differently in terms of penalty than other crimes resulting in death, such as Manslaughter.

> **“In my mind it would be fairly straightforward. This person made a decision to break several laws and as a result killed my son. There was no question of whether they did it, the evidence was overwhelming, and they pleaded guilty. But then the case took years to come to an end… And the sentence they got was laughable. Home detention - for killing someone?!**

SOURCES:
[1]https://www.nsw.gov.au/driving-boating-and-transport/demerits-penalties-and-offences/offences/serious-driving-offences-and-penalties

# Sentencing is inadequate relative to the crime committed

While other crimes resulting in death (such as murder or manslaughter) will result in jail time for the convicted offender, those convicted of fatal driving-related offenses receive much lesser penalties[1]. This is a direct flow-on effect of offenders being charged with lesser crimes such as Negligent Driving or Dangerous Driving, which carry lesser penalties.

When a person drives illegally and kills someone, and does not receive a jail sentence, it is a profound insult to the person who was killed and to their family. Inadequate sentencing that does not reflect the severity of the illegal actions sends a message that killing someone with a vehicle is a much lesser crime than killing them with another weapon, and that road crimes are tolerated in our community.

Currently, there is minimal consequence for people who deliberately break the law and kill someone through a road crime. Jail time is rare, and sentences which allow the convicted criminal to live at home in their community are common. In sum, the current sentencing is profoundly inadequate.

It is not clear why this is the case.

> **My daughter was on her way home from work. The other driver was on his mobile phone, sped through a red light and killed my daughter. That's manslaughter, isn't it? But the judge gave him an Intensive Corrections Order. No jail time, he just had to be in home detention. And this was during COVID, so we were all on home detention. How is that a fair sentence for someone who's broken the law and killed somebody?**

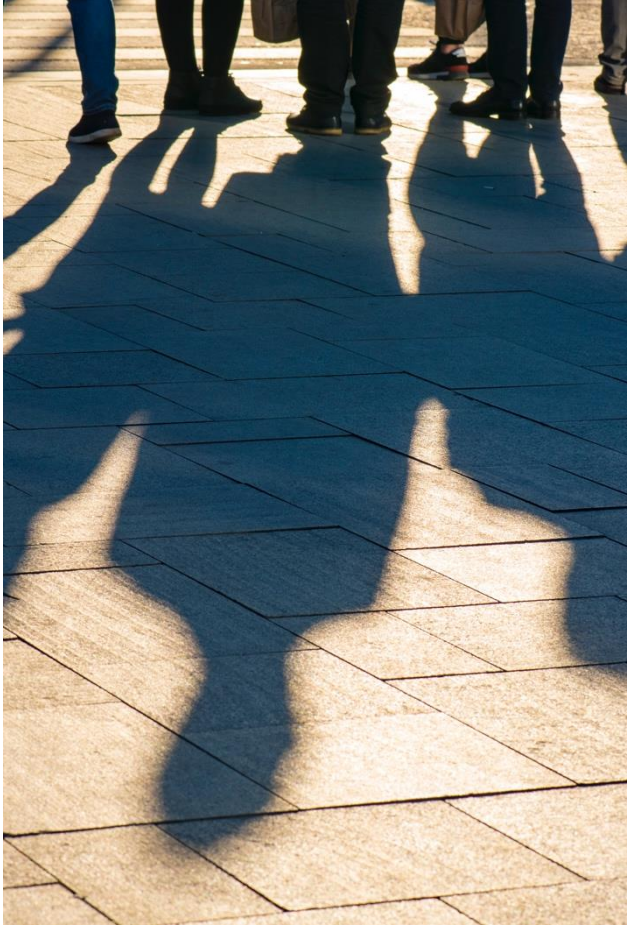
Fatal road crimes are not genuine "accidents" that could happen to anyone. They are intentional acts, made by people who knowingly took illegal risks on the road, and someone else has paid the price with their life. The sentences handed down to convinced offenders should be commensurate to their illegal behaviour and catastrophic impact of their actions.

SOURCES:
[1]https://www.nsw.gov.au/driving-boating-and-transport/demerits-penalties-and-offences/offences/serious-driving-offences-and-penalties

# Current punishments are not an effective deterrent

The current approach for charging offenders in relation to fatal road crimes (lesser charges that receive lesser sentences) means that:

- There is little deterrence for the offender to repeat the same behaviour again, and
- There is little deterrence for others, who see the minimal consequences of breaking the law.



Outside of a custodial sentence (jail time), a range of other deterrents could be implemented to reduce illegal driving behaviour. These could include:

- Higher penalties for repeat offenders.
- Mandatory alcohol interlocks and effective monitoring of their use.
- Disqualification of driver's license, and monitoring drivers who have had their license suspended.
- Mandatory attendance at Victim Impact Panels for those convicted of road crimes. In this setting, people affected by illegal driving present their own personal stories of how impaired drivers have forever changed their lives by the crime they have committed.

> **"You don't see harsher sentences applied to people who are repeat offenders. It's like the previous crimes do not matter. A lot of them have had long histories, suspended licenses and still got into a car and killed someone.**

# At every stage of the judicial process, families are let down by the system

It is critical to note that when a driver is charged with a fatal road crime, the legal team that prosecutes the crime(s) works on behalf of the State of NSW – not the victim's family. The offender can employ a legal defence to represent their interests in court, but the victim's family does not have the same representation. Ultimately, the system is set up to protect the rights and interests of people on trial for a crime(s) – not the interests of victims and their families. This means that families, who are the victims, are systematically let down from the start of the process to the very end.

## Despite having killed someone, offenders are usually granted bail

Whilst offenders may be initially refused bail on the night of the crash, many are released the morning after. Bail is only refused if it is believed the offender poses a genuine risk to society or the community, or if there is a significant risk that they will not attend further proceedings.

This means that for families whose loved ones have been killed, whilst they are in the initial stages of utter shock and devastation, they are informed that the person who broke the law and killed their loved one is free to go about their life as per normal. This is traumatic – and compounded when the offending driver is known to the family and lives nearby.

The emotional impact of the offender being released on bail is huge and varied. Whilst many are angry at the seeming injustice, others are terrified at the prospect of seeing the offender out in their local community.

## Once charges are laid, families enter a protracted process that draws out pain and suffering

Most people expect the criminal trial for people who commit fatal road crimes to be relatively quick and straightforward. This assumption is born of the understanding that a significant crime has been committed, one or more people have been killed as a direct result of that crime, and a guilty party has been arrested, often based on clear and irrefutable evidence.

However, the reality is that the Australian judicial system requires multiple, time-consuming processes to be followed, often with large amounts of time elapsing in between each stage as a case is built, for example:

- **First Mention (Initial court appearance)** can take weeks to occur, especially if the offender requests an adjournment. Multiple mentions may take place, and, frustratingly for families, the offender is not obliged to appear.

- **Hearings** can take anywhere between 6 months to several years to occur. A case may require multiple hearings which extends the duration of the trial, not to mention any other actions that elongate proceedings. For example, if cases are transferred from Local Courts to higher courts, they must first go through a Committal process, which itself entails a series of lengthy stages.

- **Final sentencing** is often delayed, sometimes taking several months before confirmed.

- After sentencing there can be **appeals** made by the Defence to reduce the sentence or appeal a jury verdict.

Whilst no set or specific timeframe exists for these matters, it's not unusual for cases to take years to come to fruition.

The completion of the court process and (if applicable) sentencing of the offender is a critical milestone for family members of the person killed. Families desperately want to see justice prevail on behalf of their loved one. The conclusion of the judicial process marks a key stage in the healing journey. For many, healing cannot start until they know the person responsible for breaking the law and killing their loved one has been held accountable. When cases take years to resolve, the family is left in a state of perpetual limbo, not able to move forward with their lives, constantly dragged back into the depths of trauma as the case unfolds.

Among those navigating the judicial system after their loved one was killed in a fatal road crime:

**67%**

said that access to an independent legal expert who explains what to expect would have been very or extremely beneficial.
Note that this expert would not provide specific legal advice about individual cases, but rather general advice and guidance.



## The penalties handed down are unfair and inadequate

One of the most common and devastating themes heard from families is that court cases end with penalties for the offender which feel miniscule in light of the severity and impact of their crimes.

In some cases, despite being found guilty of killing a person through illegal road activity, offenders are handed out monetary fines or community corrections orders as punishment.

For families, this is impossible to comprehend and places a very real question in their minds - in the eyes of the NSW law, what value is placed on their loved one's lives in these situations? Why is the outcome of these crimes, and the corresponding punishment, so small in comparison to other crimes where a person is killed?

Families endure the long and arduous court process, braving every court appearance because they believe it's the right thing to do to honour their loved one and ensure justice is served - all to be left feeling utterly betrayed by the outcome.

## And those penalties can still be appealed by the convicted driver

Once sentenced, if one of the parties is dissatisfied with the court's decision, they can appeal the verdict. This means the convicted driver can appeal to another court to review the sentence they have received. When this occurs, it prolongs the agonising judicial experience for families as it delays the closure of the judicial process. After waiting years for a sentence to be handed down, families must endure further uncertainty as they await the outcome of the appeal.

The trauma for families is exacerbated even further if the convicted driver receives a reduction in sentence (e.g. punishment). Sentences for fatal road crimes are already manifestly inadequate, so it is even more insulting and distressing to families when an already low sentence is reduced further.

# Spotlight on the judicial process

Sophie's* daughter was killed walking home after work. The driver had a disqualified license and was drug affected when he mounted the footpath.

The Crash Investigation Officer was one of the first professionals Sophie had contact with after the incident. They notified Sophie that the driver had tested positive for drugs. The officer also let her know that the driver might have only received two years imprisonment without confirmation that he was driving under the influence. He was now looking at a four-year sentence. Sophie recalled thinking "Is that all you get for taking an innocent life? You get more for committing fraud".

Sophie can remember feeling disappointed when the driver was charged with a minor crime (that would only receive a minor punishment). Thankfully she had been in contact with a support group that encouraged her to argue for manslaughter. Sophie felt it was her duty to argue for a stronger charge, to prove to the system that her daughter was not a statistic, she was a human being who was robbed of her life. Even though she was at one point pressured by the prosecutor to agree to a lesser plea, Sophie contacted the DPP and they agreed to push for manslaughter.

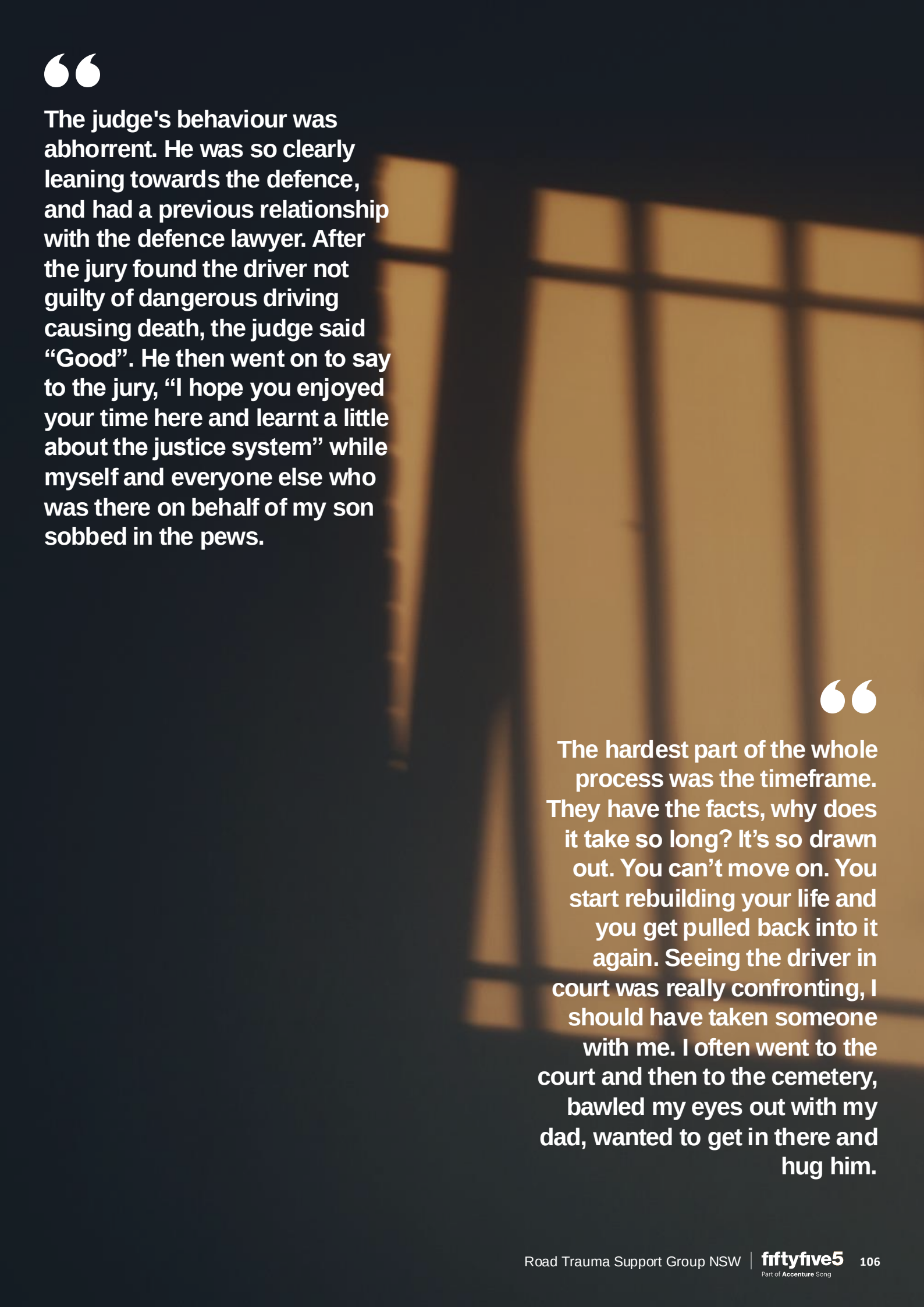
Sophie felt she was watching a game unfold while going through the proceedings. The driver dragged out the process by deferring hearings, declining interviews, and changing legal teams. The driver repeatedly changed his plea from guilty to not guilty and back again, delaying the trial further. The judge also challenged the manslaughter charge, arguing that a lesser charge should apply despite the driver's long history of illegal road behaviour (he had previously served jail time for driving on a suspended license).

It took over two years for the driver that killed Sophie's daughter to be convicted. During this time Sophie was desperately waiting for justice to be served on behalf of her only daughter.

Ultimately, the driver was sentenced to nine years jail. Sophie is proud that she was able to advocate on behalf of her daughter for the manslaughter charge. While this sentence is still manifestly inadequate relative to her daughter's life, Sophie knows that it is relatively good compared to other families who have seen the person who killed their loved one walk free with a minimal fine.

> **"The judicial system is extremely unfair to the victims and very lenient to offenders. The sentence for killing multiple people was a complete joke. The system needs a complete overhaul. There should be mandatory sentencing to deter crimes, not maximum sentencing which is never enforced.**





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The judge's behaviour was abhorrent. He was so clearly leaning towards the defence, and had a previous relationship with the defence lawyer. After the jury found the driver not guilty of dangerous driving causing death, the judge said “Good”. He then went on to say to the jury, “I hope you enjoyed your time here and learnt a little about the justice system” while myself and everyone else who was there on behalf of my son sobbed in the pews.

“

The hardest part of the whole process was the timeframe. They have the facts, why does it take so long? It’s so drawn out. You can’t move on. You start rebuilding your life and you get pulled back into it again. Seeing the driver in court was really confronting, I should have taken someone with me. I often went to the court and then to the cemetery, bawled my eyes out with my dad, wanted to get in there and hug him.

# The justice system prioritises the rights of people accused of breaking the law - to the detriment of victims of the crime

Families of victims of fatal road crimes often speak of feeling that throughout the judicial pathway, the needs of the offender who killed their loved one are given precedence over not just their own experience, but often over-shadowing the life of the person who has been killed.

Among those navigating the judicial system after their loved one was killed in a fatal road crime:

**67%**

often or always felt that they were battling against a system not designed to help people in their situation.



## Undeniable evidence of violent crimes committed, yet innocence is still presumed

In many road trauma crimes there is overwhelming, undeniable evidence of the crime. Dashcam and CCTV footage, positive blood tests for alcohol and drug levels way over the limit, multiple witness accounts and crash investigation results which irrefutably show the offender is guilty of a crime are commonplace.

However, offenders can still plead not guilty, forcing an elongated court process and dragging victims through this painful experience. For many families this is hard to understand. Where a crime has so clearly been committed, and someone has been killed as a result, how it is possible for the person who broke the law to be allowed to claim they are not guilty?

> **It blows my mind that we had to go through all of this. Years of stop-start court dates, changes to their plea, heartache for our whole family, when it was acknowledged by everyone from the start that this crime was committed by this person. How is it even possible that someone can plead not guilty to killing someone, when it is so blatantly clear that they did?**

## The right to remain silent and withhold key information

The right to silence has been codified in the NSW Evidence Act 1995, and permits a person accused of a crime to refuse to answer any questions both during investigative interviews and during a criminal trial.

In cases of fatal road crimes, this can mean that critical information regarding what happened to a loved one can be withheld from their families, and for some they are never given the opportunity to find answers to important questions.

One of the first questions that police are asked when they deliver the news that someone has been killed is 'what happened?', and under current legislation, some families may never know the full and true extent of the events that lead to their loved one being killed. This lack of knowledge can torment families, who are left to imagine the worst in the absence of true understanding of what took place.

> **There is so much that we still don't know about what happened, because the driver refused to talk. The police tried to interview them after the crash, and they wouldn't talk - and apparently that's fine… So our family will never know the true extent of what happened that night.**

## Ability to protract court proceedings

A significant complaint raised by families of road trauma victims is that the process is enormously slow and takes far longer than anticipated.

A common reason for proceedings to be protracted stems from the offender firing their legal team, which causes the case to be placed on hold until a new team is appointed. This disrupts the continuity of the legal process and often necessitates a lengthy refresh of proceedings.

From the family's point of view, this is a tactic used by offenders to elongate the time they have to live free in the community before the inevitable sentencing - especially if a jail sentence is likely. The offender can manipulate the system to extend their freedom, whilst families remain trapped in the system, desperately waiting for resolution and closure.

> **Especially where jail time is a likely outcome, it's not uncommon for a legal team to be dismissed… Then the whole process has to start again, and it buys the offender a few more months - and likely even more - of freedom to live their life.**

## Incentives for pleading guilty

When charging an offender with a crime, standard practice is to offer offenders up to a 25% reduction on their sentence if they plead guilty. This applies across all criminal cases within NSW, and is intended to be a demonstration of remorse, acceptance of responsibility and willingness to cooperate with the legal system.

In many road trauma cases, the guilt of the offender is established from the very beginning through the volume and irrefutable nature of the evidence.

As such, families perceive the offering of a sentence reduction as illogical. There should not be an incentive for pleading guilty when guilt is, in many instances, irrefutable.

If an offender pleads guilty, this brings with it a sense of relief for families, as there is clear admission of guilt and the offender is being accountable for their actions. But if a plea is changed mid-way through a trial, this brings frustration that so much time and energy has been wasted on the trial to date. It is also often seen as a way of the offender manipulating the system to ensure a reduced sentence, not as true admission of guilt or remorse.

**“It seems that everything's in the rights of the offender. We had to pay for flights to Sydney for the court cases while the offender had his covered by legal aid. The offender’s family were given a little room to themselves to observe the trial, so they had privacy and could be together. But what about us? We had nothing like that… And we’re the victims here… I felt so let down.**

## Treatment in court

Court proceedings are highly emotional and difficult for families. It can take a great deal of bravery for individuals to attend and come face to face with the person who killed their loved one. Many do so in pursuit of justice for their loved one and to ensure they have the best understanding of what is happening.

However, families find the court experience distressing because they are made to feel as if they are inferior to the offender in many ways. ‘Special’ treatment is routinely offered to offenders and their families, such as being given additional support or allowances / exemptions, leaving families wondering why they are not being prioritised for help given that they are the victims of the crime – not the perpetrator.

Among those navigating the judicial system after their loved one was killed in a fatal road crime:

**69%**

often or always felt that the offender and/or the offender’s family received better treatment than them or their family.



## Unbalanced summing-up

During final sentencing, judges will summarise key points of the case before delivering the sentence. For families, these comments often feel heavily skewed towards the offender – touching on positive aspects of their life and citizenship and the impact that the crash has had on them.

Insufficient time is spent relaying the impact that the offender's actions had on the families, or in adequately humanising the person killed - including describing who they were, the positive presence they had and the potential that has now been taken away by a life being cut short.

For families, focussing on the impact on the life of the person who broke the law is blatantly unfair and misguided – as the offender is to blame for the negative impacts their actions have had on their own life. The offender wouldn't have been affected, and the loved one wouldn't have been killed, if the offender had not wilfully and intentionally broken the law.



> **When handing down his sentence, the judge spent a good 20 minutes talking about the offender, how much their life had been affected, how they were a good citizen and really sorry about what happened, their first offence etc… But then only 2 minutes talking about my Dad - who this person killed. How is that right? What about the fact that my Dad was an asset to his community and this person ripped him away from us? What about how this person's actions have affected our entire family?**



## Watered-down and ineffective Victim Impact Statements

Victim Impact Statements should be an important opportunity for close loved ones to share how the offender's actions have impacted them. Victim Impact Statements are, for many, a critical tool to express the impact that the offender's actions had on them and their lives.

Victim Impact Statements can be traumatic to write, and incredibly intimidating to read aloud in a court as it requires the family to come face to face with the person who has been charged with committing crimes that led to the death of their loved one. But, they enable close loved ones to give the victim a voice, feel a sense of autonomy and ensure that the devastation they have experienced as a result of the offender's crimes is heard and acknowledged - especially by the offender, and the judge in charge of sentencing decisions. The hope is that by giving a Victim Impact Statement and going through what is often a process of re-traumatisation in doing so, families can humanise their loved one, fully demonstrate the impact of the offender's actions on them and ensure a fair and just response in terms of the final verdict.

This is a very important opportunity for families to share their experience in a system which is otherwise so centred on the offender.

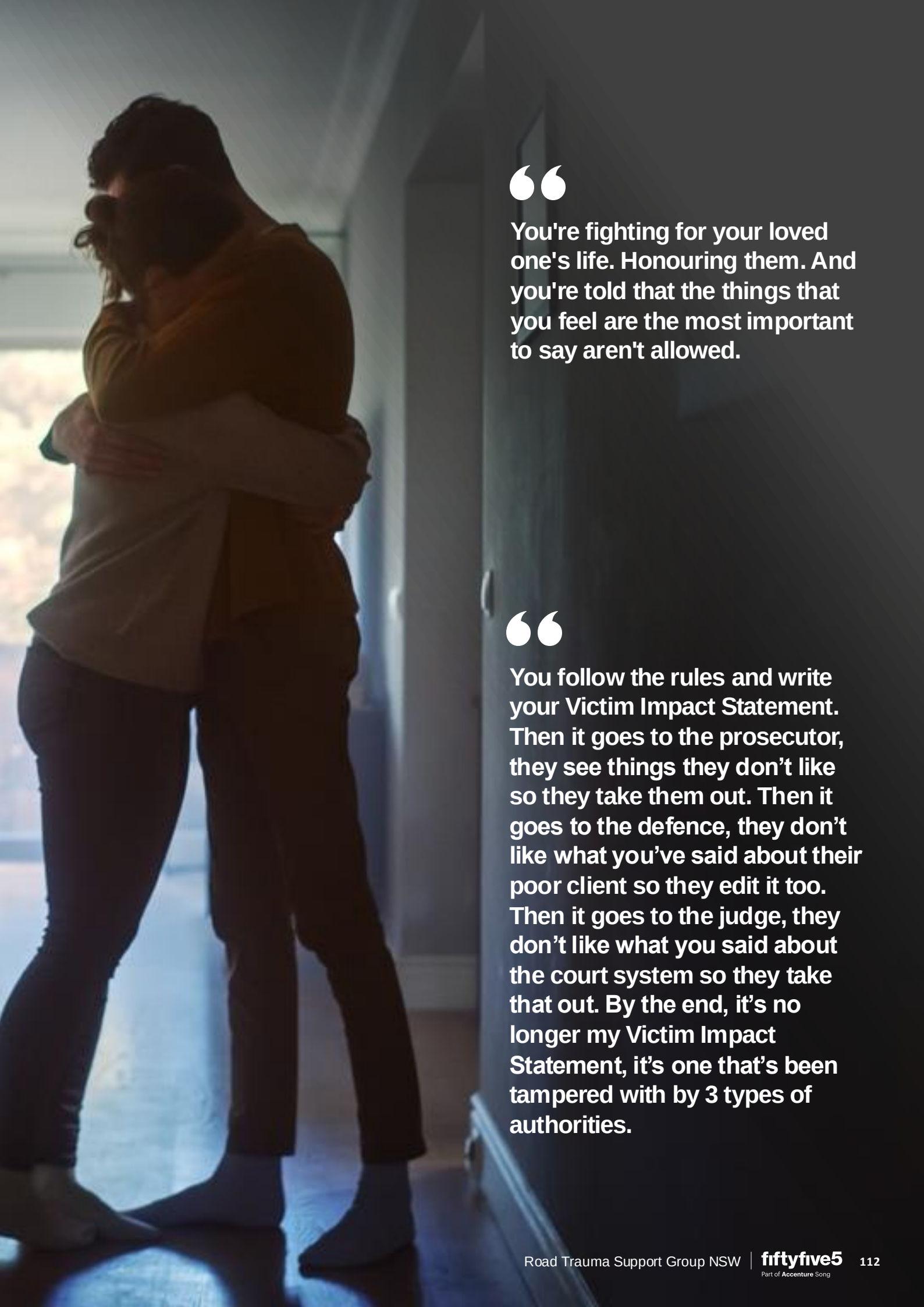
In reality, Victim Impact Statements are often heavily edited or blocked by the Defence. There are limits[1] on what is allowed to be included, and families cannot include anything which relates to:

- The offender's past offences (even if there are multiple previous offences related to illegal driving matters).
- Personal opinions about the offender, the sentence they should receive or what the court should take into account when sentencing.
- Anything perceived as even mildly threatening, offensive of intimidating.

Many report that the things they really want to say are not permitted. And even with careful consideration and guidance from the prosecution, families can find that the statements they pour their hearts into writing are cut, edited and heavily redacted by Defence teams - often at the last minute. There have even been instances where the Judicial Officer has edited the Victim Impact Statement from the Bench. This creates additional stress as families try to piece together a statement that fits the strict criteria, whilst accurately communicating the full devastation that they have suffered.

This is another critical aspect where families feel they are being let down by a biased judicial system that gives preferential treatment to offenders at the expense of victims.

SOURCE:
[1]https://www.odpp.nsw.gov.au/victims-witnesses/victim-impact-statement



**You're fighting for your loved one's life. Honouring them. And you're told that the things that you feel are the most important to say aren't allowed.**

**You follow the rules and write your Victim Impact Statement. Then it goes to the prosecutor, they see things they don't like so they take them out. Then it goes to the defence, they don't like what you've said about their poor client so they edit it too. Then it goes to the judge, they don't like what you said about the court system so they take that out. By the end, it's no longer my Victim Impact Statement, it's one that's been tampered with by 3 types of authorities.**

# Consistent support plays a crucial role as families navigate a complex, unfamiliar system

Among those navigating the judicial system after their loved one was killed in a fatal road crime:

**50%**

rated the Witness Assistance Service as **ineffective** in providing support.



And,

**60%**

often or always felt lost or unsure of what to do next

The Australian judicial system is complex and difficult to understand and navigate, especially the first time when every stage of the process is unknown and unfamiliar.

One of the biggest contributors to whether families feel able to cope with the judicial proceedings is whether they are provided adequate support.

In the most positive examples, families are walked through the various stages (e.g. bail, hearings, sentencing) by an empathetic and understanding team (including the DPP and Witness Support Officers).

In these instances, families are more confident and comfortable with proceedings, feel more in control, and are better able to cope with the highly emotional toll of a criminal trial.

Other factors contributing to a positive experience include:

- Early access to clear and simple explanations of the judicial pathway.
- Regular check-ins and contact with the DPP.
- An assigned Prosecutor who remains on the case from start to finish.

However, examples of positive experiences with the DPP are few and far between.



# Support is inconsistently offered

At present, there are inconsistencies in the support given to families as they navigate the judicial process, leading to situations where families feel lost and abandoned by a system that is supposed to protect them.

With no previous exposure to the intricacies of how it works, this leaves them exposed to a very confronting and overwhelming set of situations which they are unprepared for. Families are often horrified at what they see as a grossly inadequate and unfair system.

In addition to this, there is a high degree of re-traumatisation that happens throughout every stage of the judicial experience, as the circumstances of the crash are re-traced and re-told, as new evidence is shared, as families come face to face with the person who is responsible for killing their loved one, and as they come to terms with what is so often an inadequate sentence that does not reflect the crime(s) committed.

> **“I’ve been left questioning what just happened or why did that happen. We weren’t informed and we are in an unprepared mental state. As parents of the deceased minor we should have more information than we are getting. We shouldn’t have to be finding out who to ask questions to or searching online what the legal terminology meant so the average mum and dad who’s still in grief understands what’s going on.**

# Key Findings & Considerations for the Judicial Process

## Key finding

**Lack of Dedicated Pathway:**
There is no distinction between broader traffic offences and fatal road crimes. This does not adequately reflect the significance of the crimes committed, a critical factor which permeates through many layers of the judicial system.

## Consideration

There is a clear need for more specific and focused legislation and judicial pathways relating to fatal road crimes and the intricacies of these matters, including:

- New hierarchy of offences which better reflect the nature of the crimes committed, and the impact they cause, such as Vehicular Homicide.
- Sentencing which recognises the magnitude of the offences, and is consistent with sentencing outcomes for other crimes resulting in death.
- Specific review of penalties and rehabilitation requirements for repeat traffic offenders to better protect the community against the effects of recidivist behaviours.
- Appropriate jurisdiction of Higher Courts, removing the automatic placement of fatal road crimes in Local Courts to enable appropriate sentencing.
- Review of language used to more accurately reflect the events - e.g. “accident” is not accurate.

## Key finding

**Inadequate Support:**
There is a lack of consistent and appropriate support in place for families of victims of fatal road crimes to help them navigate the judicial system.

## Consideration

All individuals who are victims of fatal road crimes should have equal access to people, tools and support mechanisms that can aid them through the judicial proceedings, this could include:

- Assigned a dedicated support person, with specific expertise in road trauma cases.
- Provision of clear and detailed information on what to expect from judicial proceedings and when.
- Access to regular, proactive updates on their case.
- In-person support during all court appearances where a member of the victim’s family / community is in attendance.

## Key finding

**Bias to the Person who Broke the Law:**
Families feel as if the rights and needs of the offender are given precedence over their own, and those of their loved one who has been killed.

## Consideration

There is a clear need to design a more victim-centric approach in the judicial system, to provide greater recognition of the impact of fatal road crimes, including:

- Addressing the current imbalance which favours offenders, for example option to avoid attending court, ability to delay trial (and sentencing) through tactics such as firing defence team, changing pleas, etc.

- Revisions to what information can be included in Victim Impact Statements to allow family members to fully express the impact on their lives, and removing the current level of editing power held by the defence.

- Requirement for final summaries to include a balanced amount of time reflecting on the victim & impact that the crimes have had on their families, similar to how much time is spent reflecting on the perpetrator.

- Mandatory attendance at a Victim Impact Panel for all those who are convicted of fatal road crimes, in which people affected by illegal driving present their own personal stories of how impaired drivers have forever changed their lives by the crime they have committed.



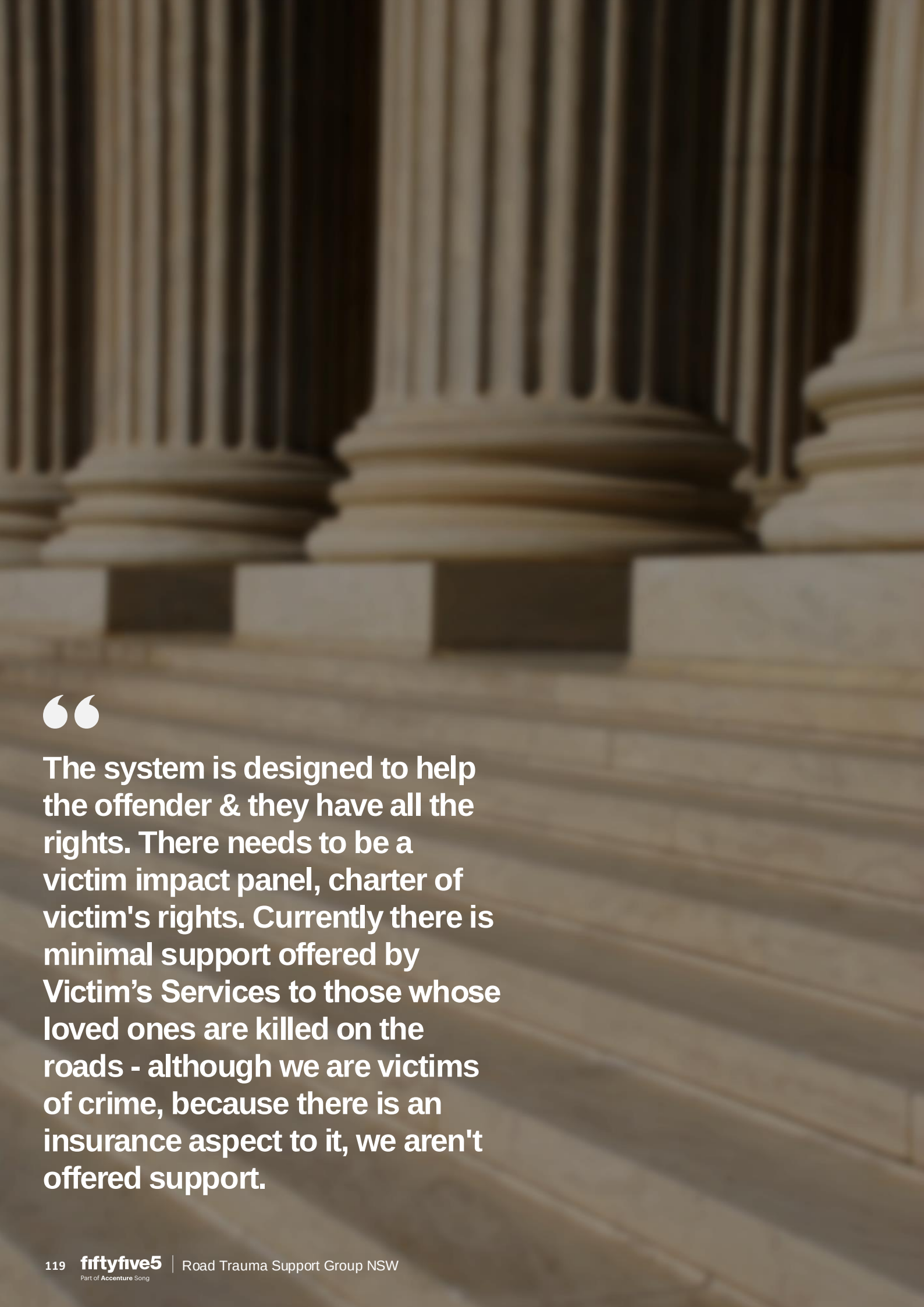
# 05

# Community support for legislative reform









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**The system is designed to help the offender & they have all the rights. There needs to be a victim impact panel, charter of victim's rights. Currently there is minimal support offered by Victim’s Services to those whose loved ones are killed on the roads - although we are victims of crime, because there is an insurance aspect to it, we aren't offered support.**

# Introduction to this section

It is impossible to fully alleviate the mental, emotional, and physical impacts of road trauma. However, there are clear opportunities to minimise the secondary trauma that bereaved families experience, and to better support families as they navigate the myriad of unfamiliar, complex processes imposed upon them.

On the following pages we explore a range of potential reform initiatives: some legislative, some relating to the media that cover fatal road crashes, and some relevant to the broader NSW community.

Reform opportunities were presented to the NSW community in the quantitative survey. For each, we outlined the current situation and why this reform is needed, along with the percentage of the community that is supportive of the reform initiative (e.g. the percentage who believe each reform is an essential or high priority change).

Overall, there is widespread support for reform among the NSW community when it comes to criminal road activity that causes the death of another.

# Education reform

## Driver education reform to improve safe driving practices

Someone is killed or hospitalised every 46 minutes because of a crash on NSW roads[1]. Road crimes are substantially more likely to kill young novice drivers and passengers, as this cohort continues to be over-represented vs. their incidence in the NSW population[2].

Education is vital for improving safe driving practices and equipping drivers with the information and tools to make safe decisions on our roads. Currently, there is no universal driver education program in NSW schools[1]. Further, learner drivers are not required to learn about the impact of road trauma before getting their driver's license.

> **I feel that the crash occurred because the P plater had left school early and had missed out on any road safety sessions at school. The driver was aged 17 and only had his license for 3 months and should not have been allowed to have any passengers.**

**70%**

are supportive of requiring learner drivers to learn about the impact of road trauma.

This rises to **82%** among criminal road trauma victims

**67%**

are supportive of requiring drivers charged with a crime to learn about the impact of road trauma before getting their license back.

This rises to **83%** among criminal road trauma victims

**36%**

are supportive of testing drivers on their education and driving skills each time their license is renewed (every 5 years).

This rises to **51%** among criminal road trauma victims

SOURCES:
[1]https://towardszero.nsw.gov.au/sites/default/files/2024-07/TNSW10046-Road-Safety-Action-Plan-2026_1_0.pdf
[2]Fiftyfive5 Road Trauma Quantitative Survey 2024
Graph source: Fiftyfive5 primary research. Q: How much of a priority do you give each of the following changes? Base: n=2,019

# Reform to help reduce deaths on our roads

## Post-crash police investigations

Currently in NSW, an investigation takes place following every fatal road crash however the results are not made public.

There is an opportunity to publicise the causes and factors that contribute to fatal crashes in NSW, to highlight where there may need to be changes in government policy, driver behaviour, or education to prevent future crashes. This would be similar to how workplace deaths and injuries are currently investigated and reported publicly, along with aviation deaths.

By not publicising this information, there is no opportunity to learn from the causes of fatal road crashes and modify infrastructure, legislation etc. to help reduce future fatalities. This could be done at a summary level, rather than individual level (to ensure privacy), a few times per year.

## Among the NSW community…

**56%**

are supportive of publicising investigations following a fatal road crash

This rises to **75%** among criminal road trauma victims

**55%**

are supportive of drivers being required to commit to a duty of care to protect other road users when they receive their driver's license.

This rises to **65%** among criminal road trauma victims



# Sentencing reform

## New charges and sentencing that reflects the severity of fatal road crimes

Currently, drivers who commit a crime and kill someone on the roads in NSW often are only charged with 'dangerous driving' and only punished with a suspended driver's license or community service.

These charges and subsequent sentencing are far more lenient than other crimes resulting in death such as murder or manslaughter. They are also far more lenient than in other countries such as the USA and the UK which punish this illegal behaviour more severely.

When a person breaks the law and kills someone, and is not punished with jail time, it is an injustice to the family and person killed. It sends a message that killing someone with a vehicle is a much lesser crime than killing them with another weapon, and that road crimes are more tolerable in our community.

## New charges for inciting criminal behaviour on the roads

Currently, the law in NSW does not allow people who indirectly contribute to dangerous road behaviour to be charged or sentenced for their conduct. For example, a passenger encouraging a driver to speed or drive dangerously cannot be charged for the consequences of those actions.

When someone encourages illegal behaviour that compromises road safety and contributes to death, their behaviour should be punished accordingly. For example, inciting street racing, hooning, doing 'donuts' or burn-outs are all acts which increase the risk to road users. When these actions result in death, all of those involved should be held accountable.

## Among the NSW community…

**65%**
are supportive of charging drivers with 'vehicular homicide' and implement harsher minimum sentences for drivers who kill someone else on the road in NSW due to a criminal act

This rises to **90%**
among criminal road trauma victims

## Among the NSW community…

**55%**
are supportive of changing the legislation to hold a person responsible for contributing to road crimes or encouraging others to break the road laws

This rises to **78%**
among criminal road trauma victims

# Reforming the experience for victims of fatal road crimes

## Correcting the language used so it accurately portrays these crimes

As described in this report, the word "accident" is used routinely to describe all road crashes, even if illegal behaviour caused the crash.

This word is extremely insensitive and offensive to families who have had a loved one killed due to the criminal act of another. It is also manifestly incorrect. Language is powerful, and this word unnecessarily contributes to a wealth of secondary trauma for families of victims of fatal road crimes.

A simple change, to more accurately refer to fatal road crime events as 'crashes', is essential.

## Revamping the CTP scheme to be fit for purpose for claims arising from fatal road crimes

As described earlier in this report, a range of reforms are required to update the CTP scheme to truly serve the needs of family members who are traumatised by the sudden, violent, and unexpected loss of a loved one due to someone else's criminal behaviour.

There is widespread support for this reform, especially among those who have navigated the CTP system where there is nearly universal support for reform.

Among the NSW community…

**52%**
are supportive of changing the word "accident" to 'crash' in the media

This rises to **81%**
among criminal road trauma victims

Among the NSW community…

**57%**
are supportive of reforming the CTP scheme to be more tailored / sensitive to fatal road crime victims

This rises to **79%**
among criminal road trauma victims

And **92%**
among those who have been involved with CTP

# 06

# Summary and conclusions







# Summary and conclusions

## Road trauma impact on the NSW community

One in five (22.5%) adults in NSW has experienced the death of someone they knew on the roads in NSW (1.47M people). This has increased by a sizeable 10.8% since 2022.

One in twenty-three (4.4%) adults in NSW have experienced the death of a friend or relative due to the criminal act of another road user (288K people). This has also increased markedly since 2022, by 11.8%.

Underpinning the substantial size of this growing problem is the often-preventable nature of these deaths. Driver behaviour is a key contributing factor – including decisions related to speed, alcohol consumption, and reckless driving. Compounding these behaviours is a relaxed attitude towards road safety, which highlights the need to shift the mindset among Australians who tolerate risky driving behaviours.

As the number of deaths on NSW roads increases, so too does the number of families left grieving the senseless loss of their loved one.

## The lived experience of criminal road trauma

The sudden, violent, and criminal nature of road trauma deaths brings a tidal wave of mental, emotional and physical damage to the victims' families, friends and the community.

The consequences of fatal road offences extend far beyond the initial incident. The impacts of road trauma are profound, catastrophic, and enduring.

When thrust into this situation, families are confronted by a myriad of unfamiliar systems and processes that inhibit the ability to grieve. Two systems that especially require reform are the CTP scheme and judicial system.

## Improving the CTP claims experience

The CTP scheme contributes to ongoing re-traumatisation for many families filing a claim due to a fatal road crime. This is the opposite intention of a scheme designed to help people return to what life was like before the crash. Several key reforms are required to rectify this situation.

**Tailor the CTP scheme and develop a dedicated pathway to suit the unique experiences of fatal road crimes.** The psychological trauma experienced as a result of the preventable and violent death of a loved one is not consistent with physical injury. The claims process should be tailored to reflect psychological trauma and the prolonged effects of this experience. Tailoring the legislation (and insurer's processes) to treat road trauma fatalities differently from physical injuries is a vital reform.

**Update the injury definitions, burden of proof, and recovery expectations.** The current injury definitions are based on physical injuries, which are more readily assessed than psychological trauma. New definitions tailored to the impacts of fatal road crimes are required, along with customised / streamlined evidence requirements and recovery expectations that are grounded in the reality of mental trauma and grief.

**Alleviate the administrative burden by appointing a support person.** This person should be tasked with providing guidance to the family, helping them navigate the process, and playing an intermediary role with the insurer.

**Correct the language – remove the word "accident".** The term "accident" is not accurate and is psychologically damaging to the families of victims of road crimes. The word "crash" should be used instead throughout the CTP claims process – as well as in the legislation, in the media, and amongst the NSW community when describing fatal road crashes. The NSW community is supportive of this change too.

## Improving the experience with the judicial system

The judicial system is complex and difficult to navigate, especially when the process is unfamiliar. The system is heavily weighted to the rights of the person accused of a crime, which causes ongoing re-traumatisation among family members who are the victims of these crimes. Reforms are required to reduce the secondary trauma experienced by victims' families.

**Update the offences (and sentencing) and refine the judicial process to be suited to fatal road crimes.** A new hierarchy of offences and associated sentencing is required to bring fatal road crimes in line with other crimes resulting in death. There is widespread community support for charging drivers with vehicular homicide in these instances. Further, these crimes should be tried in an appropriate jurisdiction relative to the severity of the crime (e.g., not a Local Court).

**Provide equal support mechanisms for victims' families, akin to those offered to the person accused of a crime resulting in death.** This includes a dedicated support person who understands road trauma cases, a clear and detailed briefing on what to expect throughout the proceedings, access to regular updates as the case progresses, and in-person support during court appearances. This is essential for helping family members cope with the emotional toll of a lengthy criminal trial.

**Refine the process to be more victim-centric.** This includes addressing the current power imbalance which favours offenders, revising the approach to Victim Impact Statements to allow victims to truly and fully explain the impact of the crime on their lives, balancing the final summary issued by the judge to include equal reflection on the impact on the victims of the crime, and mandatory attendance at a Victim Impact Panel for those convicted of offences for driving under the influence of alcohol, drugs or speeding.

## Community support for reform relating to fatal road crimes

**New charges for inciting criminal behaviour on the roads.** People who encourage illegal behaviour that compromises road safety and contributes to death should be punished accordingly. For example, inciting street racing, hooning, doing 'donuts' or burn-outs. When these actions result in death, all of those involved should be held accountable.

**Publicise the outcomes of crash investigations.** Much is learned through the crash investigations carried out following each fatal crash, however the learnings are lost and cannot contribute to a reduction in fatal crashes when not made public. The NSW government is encouraged to consider publicising the results of crash investigations so authorities and the general public can learn from these crashes and adapt their behaviour, processes, or attitudes accordingly. This could be done at a summary level, rather than individual level (to ensure privacy), a few times per year.

**Driver education reform to improve safe driving practices.** Education is vital for improving safe driving practices and equipping drivers with the information and tools to make safe decisions on our roads. There should be a universal driver education program in NSW schools, and learner drivers should be required to learn about the impact of road trauma before getting their driver's license.

Taken together, these reform opportunities have the potential to make substantial improvements in the experiences of those who suffer the impacts of criminal road trauma, and ultimately may reduce the frequency of fatal criminal road crashes on NSW roads.

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Road Trauma
Support Group
NSW