



SENTENCING GUIDELINES

CAUSING DEATH BY DRIVING (4(h)(i))

TRAFFIC LAW, 2011 – sections 75, 79, 80 and 83

Causing death by dangerous or reckless driving

75. (1) A person who drives a vehicle on a road dangerously or recklessly, having regard to the manner of driving or to the defective condition of the vehicle, and by so doing causes the death of another person commits an offence.

(2) A constable may arrest without warrant a person whom he has reasonable grounds to believe has committed an offence under subsection (1).

(3) An offence under subsection (1) is triable on indictment, and upon conviction the offender is liable to imprisonment for ten years and, in addition, shall, without an order by the court, automatically be disqualified from holding or obtaining a driver's licence for a term of five years or such longer period as the court may order.

(4) The period of disqualification runs from the date of conviction or the expiration of a sentence of imprisonment, as the court may direct, and the particulars of the offence shall be endorsed on the driver's driving record.

Causing death by careless driving or inconsiderate driving

79. (1) A person who drives a vehicle or animal on a road without care and attention, or without reasonable consideration for other persons, and by so doing causes the death of another person commits an offence.

(2) A constable may arrest without warrant a person whom he has reasonable grounds to believe has committed an offence under subsection (1).

(3) An offence under subsection (1) is triable only on indictment and upon conviction the offender is liable to a fine of ten thousand dollars or to imprisonment for a term of seven years or, to both, and, in addition -

(a) shall, without an order by a court, automatically be disqualified from holding or obtaining a driver's licence for at least three years, the period of disqualification to run from the expiration of a sentence of imprisonment [NOTE: Presumably the omission of "the date of conviction or" is an error], as the court may order; and

(b) the particulars of the offence shall be endorsed on his driving record.

Causing death by driving: unlicensed, disqualified or uninsured drivers

80. (1) A person commits an offence under this section if he causes the death of another person by driving a vehicle on a road and, at the time when he is driving, the circumstances are such that he is committing -

- (a) an offence relating to driving other than in accordance with a licence issued under this Law;
 - (b) an offence relating to driving while disqualified by or under this Law; or
 - (c) an offence relating to driving a vehicle while uninsured or unsecured against third party risks as may be required by this or any other Law.
- (2) A constable may arrest without warrant a person whom he has reasonable grounds to believe has committed an offence under subsection (1).
- (3) An offence under subsection (1) is triable only on indictment and upon conviction the offender is liable to a fine of ten thousand dollars or to imprisonment for seven years, or to both, and, in addition -
- (a) shall, without an order by a court, be automatically disqualified holding or obtaining a driver's licence for at least three years, the period of disqualification to run from the expiration of a sentence of imprisonment, as the court may order; and
 - (b) the particulars of the offence shall be endorsed on his driving record.

Driving or being in charge of a vehicle while under the influence of alcohol or drugs and causing death

83. (1) A person who -

- (a) has consumed alcohol in such a quantity that the proportion of alcohol in that person's breath, blood or urine exceeds the prescribed limit; or
- (b) is unfit to drive through the consumption of alcohol or drugs, whether or not he has consumed alcohol in excess of the prescribed limit,

and who drives or attempts to drive a vehicle on a road, or is in charge of a vehicle on a road, and by so doing causes the death of another person, commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction on indictment to imprisonment for a term of ten years and shall be disqualified from driving for a period of five years or such longer period as the court may order [**NOTE:** no provision for commencement on release from custody as with the other causing death offences] or to a fine of five thousand dollars or both.

(3) Where a constable has reasonable cause to suspect that a person is or has been committing an offence under this section, he may arrest that person without warrant.

(4) The particulars of a conviction under this section shall be endorsed on the driving record of the convicted person.

GUIDELINE

Introduction

1. This guideline applies to the four offences of *causing death by dangerous driving, causing death by driving under the influence of alcohol or drugs, causing death by careless driving and causing death by driving: unlicensed, disqualified or uninsured drivers*.
2. Because the principal harm done by these offences (the death of a person) is an element of the offence, the factor that primarily determines the starting point for sentence is the culpability of the offender. Accordingly, for all offences the central feature should be an evaluation of the quality of the driving involved and the degree of danger that it foreseeably created. These guidelines draw a distinction between those factors of an offence that are intrinsic to the quality of driving (referred to as “determinants of seriousness”) and those which, while they aggravate the offence, are not.
3. The levels of seriousness in the guidelines for those offences based on dangerous or careless driving alone have been determined by reference only to determinants of seriousness. Aggravating factors will have the effect of either increasing the starting point within the sentencing range provided or, in certain circumstances, of moving the offence up to the next sentencing range. The outcome will depend on both the number of aggravating factors present and the potency of those factors. Thus, the same outcome could follow from the presence of one particularly bad aggravating factor or two or more less serious factors.
4. The determinants of seriousness likely to be relevant in relation to *causing death by driving under the influence* are level of intoxication though the degree of fault in driving will also be relevant as a result of the need for there to be a causative link between the driving and the death. The guideline sets out an approach to assessing both those aspects but giving greater weight to the degree of intoxication since the Traffic Law has provided for a maximum of 10 years imprisonment rather than the maximum of 7 years where the death is caused by careless driving only.
5. The guideline for *causing death by driving; unlicensed, disqualified or uninsured drivers* links the assessment of offender culpability to the nature of the prohibition on the offender’s driving and includes a list of factors that may aggravate an offence though the degree of fault in driving will also be relevant as a result of the need for there to be a causative link between the driving and the death.
6. The degree to which an aggravating factor is present (and its interaction with any other aggravating and mitigating factors) will be immensely variable and the court is best placed to judge the appropriate impact on sentence. Clear identification of those factors relating to the standard of driving as the initial determinants of offence seriousness is intended to assist the adoption of a common approach.

A. Assessing seriousness

(i) Determinants of seriousness

7. There are four factors that may be regarded as determinants of offence seriousness, each of which can be demonstrated in a number of ways. Common examples of each of the determinants are set out below and key issues are discussed in the text that follows in paragraph 9.

Examples of the determinants are:

- **Effect of alcohol or drugs**

- (a) consumption of alcohol above the legal limit
- (b) consumption of alcohol at or below the legal limit where this impaired the offender's ability to drive
- (c) failure to supply a specimen for analysis
- (d) consumption of illegal drugs, where this impaired the offender's ability to drive
- (e) consumption of legal drugs or medication where this impaired the offender's ability to drive (including legal medication known to cause drowsiness) where the driver knew, or should have known, about the likelihood of impairment

- **Inappropriate speed of vehicle**

- (f) greatly excessive speed; racing; competitive driving against another vehicle
- (g) driving above the speed limit
- (h) driving at a speed that is inappropriate for the prevailing road or weather conditions
- (i) driving a PSV, HGV or other goods vehicle at a speed that is inappropriate either because of the nature of the vehicle or its load, especially when carrying passengers

- **Seriously culpable behaviour of offender**

- (j) a prolonged, persistent or deliberate course of very bad driving
- (k) aggressive driving (such as driving much too close to the vehicle in front, persistent inappropriate attempts to overtake, or cutting in after overtaking)
- (l) driving while using a hand-held mobile phone
- (m) driving whilst the driver's attention is avoidably distracted, for example by reading or adjusting the controls of electronic equipment such as a radio, hands-free mobile phone or satellite navigation equipment
- (n) driving when knowingly suffering from a medical or physical condition that significantly impairs the offender's driving skills, including failure to take prescribed medication
- (o) driving when knowingly deprived of adequate sleep or rest, especially where commercial concerns had a bearing on the commission of the offence
- (p) driving a poorly maintained or dangerously loaded vehicle, especially where commercial concerns had a bearing on the commission of the offence
- (q) driving an illegal vehicle (e.g. a vehicle authorised only for off road use)
- (r) stunt driving

- **Victim**

- (q) failing to have proper regard to vulnerable road users or to the risk arising from the location where there may be vulnerable road users. (*see para. 9(c)(i) below for a description of who are vulnerable road users*).

9. Issues relating to the determinants of seriousness are considered below.

(a) Alcohol/drugs

1. For those offences where the presence of alcohol or drugs is not an element of the offence, where there is sufficient evidence of driving impairment attributable to alcohol or drugs, the

consumption of alcohol or drugs prior to driving will make an offence more serious. Where the drugs were legally purchased or prescribed, the offence will only be regarded as more serious if the offender knew or should have known that the drugs were likely to impair driving ability.

2. Unless inherent in the offence or charged separately, failure to provide a specimen for analysis (or to allow a blood specimen taken without consent to be analysed) should be regarded as a determinant of offence seriousness.
3. Where it is established to the satisfaction of the court that an offender had consumed alcohol or drugs unwittingly before driving, that may be regarded as a mitigating factor. However, consideration should be given to the circumstances in which the offender decided to drive or continue to drive when driving ability was impaired.

(b) Avoidable distractions

1. A distinction has been drawn between **ordinary** avoidable distractions and those that are more significant because they divert the attention of the driver for longer periods or to a greater extent; in this guideline these are referred to as a **gross** avoidable distraction. The guideline for *causing death by dangerous driving* provides for a gross avoidable distraction to place the offence in a higher level of seriousness.
2. Any avoidable distraction will make an offence more serious but the degree to which an offender's driving will be impaired will vary. Where the reaction to the distraction is significant, it may be the factor that determines whether the offence is based on *dangerous* driving or on *careless* driving; in those circumstances, care must be taken to avoid "double counting".
3. Using a hand-held mobile phone when driving is, in itself, an unlawful act; the fact that an offender was avoidably distracted by using a hand-held mobile phone when causing death by driving offence was committed will always make an offence more serious. Reading or composing text messages *over a period of time* will be a *gross* avoidable distraction and is likely to result in an offence of causing death by dangerous driving being in a higher level of seriousness.

(c) Vulnerable road and vehicle users

1. Cyclists, motorbike riders, horse riders, pedestrians and those working in the road are vulnerable road users and a driver is expected to take extra care when driving near them. Driving too close to a bike or horse; allowing a vehicle to mount the pavement; driving into a cycle lane; and driving without the care needed in the vicinity of a pedestrian crossing, hospital, airport, school or residential home, are all examples of factors that should be taken into account when determining the seriousness of an offence. See paragraph (c) in **Aggravating and mitigating factors** below for the approach where the actions of another person contributed to the collision.
2. Similarly, where passengers are carried on a vehicle in a way that is dangerous and are killed following dangerous driving, this will increase the assessment of culpability. Examples are where babies or young children are carried by the driver or by a passenger in a front seat and so without seat belts or where passengers are carried on the bed of a truck.

Aggravating and mitigating factors

(a) More than one person killed

1. The seriousness of any offence included in these guidelines will generally be greater where more than one person is killed since it is inevitable that the degree of harm will be greater. In relation to the assessment of culpability, whilst there will be circumstances in which a driver could reasonably anticipate the possible death of more than one person (for example, the driver of a vehicle with passengers (whether that is a bus, taxi or private car) or a person driving badly in an area where there are many people), there will be many circumstances where the driver could not anticipate the number of people who would be killed.
2. The greater obligation on those responsible for driving other people is not an element essential to the quality of the driving and so has not been included amongst the determinants of seriousness that affect the choice of sentencing range. In practical terms, separate charges are likely to be brought in relation to each death caused. Although concurrent sentences are likely to be imposed (in recognition of the fact that the charges relate to one episode of offending behaviour), each individual sentence is likely to be higher because the offence is aggravated by the fact that more than one death has been caused.
3. Where more than one person is killed, that will aggravate the seriousness of the offence because of the increase in harm. Where the number of people killed is high and that was reasonably foreseeable, the number of deaths is likely to provide sufficient justification for moving an offence into the next highest sentencing band.

(b) Effect on offender

1. Injury to the offender may be a mitigating factor when the offender has suffered very serious injuries. In most circumstances, the weighting it is given will be dictated by the circumstances of the offence and the effect should bear a direct relationship to the extent to which the offender's driving was at fault – the greater the fault, the less the effect on mitigation; this distinction will be of particular relevance where an offence did not involve any fault in the offender's standard of driving.
2. Where one or more of the victims was in a close personal or family relationship with the offender, this may be a mitigating factor. In line with the approach where the offender is very seriously injured, the degree to which the relationship influences the sentence should be linked to offender culpability in relation to the commission of the offence; mitigation for this reason is likely to have less effect where the culpability of the driver is particularly high.

(c) Actions of others

Where the actions of the victim or a third party contributed to the commission of an offence, this should be acknowledged and taken into account as a mitigating factor.

(d) Offender's age/lack of driving experience

There is a great deal of difference between recklessness or irresponsibility – which may be due to youth – and inexperience in dealing with prevailing conditions or an unexpected or unusual situation that presents itself – which may be present regardless of the age of the offender. The fact that an offender's clear lack of driving experience contributed to the commission of an offence may be treated as a mitigating factor; in this regard, the age of the offender is not relevant.

Personal mitigation

(a) Good driving record

This may be treated as a mitigating factor especially where there is evidence to show that an offender has previously been an exemplary driver, for example where an offender has driven an ambulance, police vehicle, bus, taxi or similar vehicle conscientiously and without incident for many years. This is likely to have even greater effect where the offender is driving on public duty (for example, on ambulance, fire services or police duties) and was responding to an emergency.

(b) Conduct after the offence

– Giving assistance at the scene

There may be many reasons why an offender does not offer help to the victims at the scene – the offender may be injured, traumatised by shock, afraid of causing further injury or simply have no idea what action to take – and it would be inappropriate to assess the offence as more serious on this ground (and so increase the level of sentence). However, where an offender gave direct, positive, assistance to victim(s) at the scene of a collision, this should be regarded as personal mitigation.

– Remorse

Whilst it can be expected that anyone who has caused death by driving would be expected to feel remorseful, this cannot undermine its importance for sentencing purposes. Remorse is identified as personal mitigation in the general principles of these guidelines and there is no reason for it to be treated differently for this group of offences. It is for the court to determine whether an expression of remorse is genuine; where it is, this should be taken into account as personal mitigation.

B. Ancillary orders

(i) Disqualification for driving

For each offence, disqualification is a mandatory part of the sentence, and therefore an important element of the overall punishment for the offence. The disqualification commences either immediately or on release from prison where a custodial sentence is imposed as the Court directs. Since disqualification is primarily part of the punishment for the offence, generally, where a Court imposes an immediate custodial sentence, it will direct that the disqualification starts on release. In determining the length of the disqualification, the Court will take into account the importance of encouraging the rehabilitation of the offender following release and the potential significance of being able to drive in connection with securing employment.

(ii) Deprivation order

A general sentencing power exists which enables courts to deprive an offender of property used for the purposes of committing an offence. A vehicle used to commit an offence included in this guideline can be regarded as being used for the purposes of committing the offence.

STEP ONE – Determining the offence category

Culpability

A – High culpability

The most serious offences encompassing driving that involved a deliberate decision to ignore (or a flagrant disregard for) the rules of the road and an apparent disregard for the great danger being caused to others. Such offences are likely to be characterised by:

- A prolonged, persistent or deliberate course of very bad driving **AND/OR**
- Consumption of alcohol or drugs leading to gross impairment **AND/OR**
- A group of determinants of seriousness which in isolation or smaller number would place the offence in level 2

Where an offence involves both of the determinants of seriousness identified, particularly if accompanied by aggravating factors such as multiple deaths or injuries, or a very bad driving record, this may move an offence towards the top of the sentencing range.

B – Medium culpability

Driving that created a *substantial* risk of danger; it is likely to be characterised by:

- Greatly excessive speed, racing, stunt driving or competitive driving against another driver **OR**
- Gross avoidable distraction such as reading or composing text messages over a period of time **OR**
- Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs, failing to take prescribed medication or as a result of a known medical condition **OR**
- A group of determinants of seriousness which in isolation or smaller number would place the offence in level 3

C – Lesser culpability

Driving that created a *significant* risk of danger; it is likely to be characterised by:

- Driving above the speed limit/at a speed that is inappropriate for the prevailing conditions **OR**
- Driving when knowingly deprived of adequate sleep or rest or knowing that the vehicle has a dangerous defect or is poorly maintained or is dangerously loaded **OR**
- A brief but obvious danger arising from a seriously dangerous manoeuvre **OR**
- Driving whilst avoidably distracted **OR**
- Failing to have proper regard to vulnerable road users

The starting point and range overlap within Level 2 is to allow the breadth of discretion necessary to accommodate circumstances where there are significant aggravating factors.

HARM

The level of harm is not separated into categories since all offences have resulted in death as an essential element of the offence. Therefore all have the highest level of harm.

Aggravating factors likely to increase the degree of harm include:

- Where more than one person was killed as a result of the offence
- Serious injury to one or more victims in addition to the death(s)

CAUSING DEATH BY DANGEROUS OR RECKLESS DRIVING

Traffic Law, 2011 (section 75)

Maximum penalty: 10 years imprisonment
minimum disqualification of 5 years

STEP TWO – Starting point and category range

Nature of offence	Starting point	Sentencing range
Level 1 The most serious offences encompassing driving that involved a deliberate decision to ignore (or a flagrant disregard for) the rules of the road and an apparent disregard for the great danger being caused to others	7 years custody	6–10 years custody
Level 2 Driving that created a <i>substantial</i> risk of danger	4 years custody	3–6 years custody
Level 3 Driving that created a <i>significant</i> risk of danger [<i>Where the driving is markedly less culpable than for this level, reference should be made to the starting point and range for the most serious level of causing death by careless driving</i>]	3 years custody	2–4 years custody

Additional aggravating factors

- Disregard of warnings
- The offender's irresponsible behaviour such as failing to stop, falsely claiming that one of the victims was responsible for the collision, or trying to throw the victim off the car by swerving in order to escape
- Driving off in an attempt to avoid detection or apprehension
- Previous convictions for driving offences

Additional mitigating factors

- Offender was seriously injured in the collision.
- The victim was a close friend or relative
- Actions of the victim or a third party contributed significantly to the likelihood of a collision occurring and/or death resulting
- The offender's lack of driving experience contributed to the commission of the offence
- The driving was in response to a proven and genuine emergency
- Unwitting intoxication

Causing death by driving under the influence of alcohol or drugs

Factors to take into consideration

1. The fact that the offender was under the influence of drink or drugs is an inherent element of this offence. For discussion on the significance of driving after having consumed drink or drugs, see *paragraph 9* above.
2. The guideline is based both on the level of alcohol or drug consumption and the degree of fault in the driving that related to the death being caused. Since the maximum penalty has been set as the same as causing death by dangerous driving, it appears that the intention of the Law is that the decision to drive whilst under the influence equates to the degree of fault in driving dangerously.
3. Accordingly, the increase in sentence is more marked where there is an increase in the level of intoxication than where there is an increase in the degree of fault.

Causing death by driving or being in charge under the influence of alcohol or drugs

Traffic Law, 2011 (section 83)

Maximum penalty: 10 years imprisonment;
minimum disqualification of 5 years

The legal limit of alcohol is .1% breath, 100mg in 100ml blood and 134mg in 100ml urine

	Low fault in driving	Other cases	Driving falling not far short of dangerousness
Twice the legal limit or above of alcohol/ high level of consumption of drugs	Starting point: 6 years custody Sentencing range: 5–8 years custody	Starting point: 7 years custody Sentencing range: 6–9 years custody	Starting point: 8 years custody Sentencing range: 7–10 years custody
Fifty percent to just below twice the limit of alcohol/moderate level of consumption of drugs	Starting point: 4 years custody Sentencing range: 3–6 years custody	Starting point: 5 years custody Sentencing range: 4–7 years custody	Starting point: 6 years custody Sentencing range: 5–8 years custody
Up to fifty percent above the legal limit of alcohol/ minimal level of consumption of drugs.	Starting point: 18 months custody Sentencing range: 26 weeks-3 years custody	Starting point: 3 years custody Sentencing range: 3 years custody	Starting point: 4 years custody Sentencing range: 3-5 years custody

Additional aggravating factors

- Disregard of warnings
- The offender's irresponsible behaviour such as failing to stop or falsely claiming that one of the victims was responsible for the collision
- Driving off in an attempt to avoid detection or apprehension

Additional mitigating factors

- Offender was seriously injured in the collision.
- The victim was a close friend or relative
- Actions of the victim or a third party contributed significantly to the likelihood of a collision occurring and/or death resulting
- The offender's lack of driving experience contributed to the commission of the offence
- The driving was in response to a proven and genuine emergency

Causing death by careless driving or inconsiderate driving

STEP ONE – Determining the offence category

Culpability

A – High culpability

The most serious offences encompass driving that was not far short of being dangerous.

Where an offence is accompanied by aggravating factors such as multiple deaths or injuries, or a very bad driving record, this may move an offence towards the top of the sentencing range.

B – Medium culpability

Other offences not falling within the high or lesser levels

C – Lesser culpability

Driving that arose from momentary inattention with no aggravating factors

The starting point and range overlap within Level 2 is to allow the breadth of discretion necessary to accommodate circumstances where there are significant aggravating factors.

HARM

The level of harm is not separated into categories since all offences have resulted in death as an essential element of the offence. Therefore all have the highest level of harm.

Aggravating factors likely to increase the degree of harm include:

- Where more than one person was killed as a result of the offence
- Serious injury to one or more victims in addition to the death(s)

Factors to take into consideration

1. Since the maximum sentence has been set at 7 years imprisonment, the sentence ranges are generally lower for this offence than for the offences of *causing death by dangerous driving* or *causing death by driving under the influence*, for which the maximum sentence is 10 years imprisonment. However, it is unavoidable that some cases will be on the borderline between *dangerous* and *careless* driving, or may involve a number of factors that significantly increase the seriousness of an offence. As a result, the guideline for this offence identifies three levels of seriousness, the range for the highest of which overlaps with ranges for the lowest level of seriousness for *causing death by dangerous driving*.
2. Where the level of carelessness is low and there are no aggravating factors, even the fact that death was caused is not sufficient to justify a prison sentence.
3. A fine is unlikely to be an appropriate sentence for this offence; where a non-custodial sentence is considered appropriate, this should be a community order. The nature of the requirements will be determined by the purpose identified by the court as of primary importance. Requirements most likely to be relevant include unpaid work requirement, activity requirement, programme requirement and curfew requirement.

Causing death by careless or inconsiderate driving

Traffic Law, 2011 (section 79)

Maximum penalty: 7 years imprisonment
minimum disqualification of 3 years from end of imprisonment

STEP TWO – Starting point and category range

Nature of offence	Starting Point	Sentencing range
Careless or inconsiderate driving falling not far short of dangerous driving	30 months custody	18 months–4 years custody
Other cases of careless or inconsiderate driving	15 months custody	Community order –3 years custody
Careless or inconsiderate driving arising from momentary inattention with no aggravating factors	12 weeks custody	Community order –2 years custody

Additional aggravating factors

- The offender’s irresponsible behaviour such as failing to stop, falsely claiming that one of the victims was responsible for the collision
- Driving off in an attempt to avoid detection or apprehension

Additional mitigating factors

- Offender was seriously injured in the collision.
- The victim was a close friend or death(s) relative
- Actions of the victim or a third party contributed significantly to the likelihood of a collision occurring and/or death resulting
- The offender’s lack of driving experience contributed to the commission of the offence
- The driving was in response to a proven and genuine emergency

Causing death by driving: unlicensed, disqualified or uninsured drivers

Factors to take into consideration

1. This offence has a maximum penalty of 7 years imprisonment, the same as for causing death by careless driving or by driving without reasonable consideration.
2. Culpability arises from the offender driving a vehicle on a road or other public place when, by law, not allowed to do so; the offence does not require proof of any fault in the standard of driving though that may be implicit as a result of the need for there to be a causative link between the driving and the death.
3. Accordingly the starting points and ranges are higher than for causing death by careless driving etc. since the fact of disqualification or absence of insurance or licence is an aggravating factor.
4. A fine is unlikely to be an appropriate sentence for this offence; where a noncustodial sentence is considered appropriate, this should be a community order.
5. Since driving whilst disqualified is more culpable than driving whilst unlicensed or uninsured, a higher starting point is proposed when the offender was disqualified from driving at the time of the offence.
6. Being uninsured, unlicensed or disqualified are the only determinants of seriousness for this offence, as there are no factors relating to the standard of driving. The list of aggravating factors identified is slightly different as the emphasis is on the decision to drive by an offender who is not permitted by law to do so. For example, a driver may hold a reasonable belief in relation to the validity of insurance (perhaps having just missed a renewal date or relied on a third party to make an application) or the validity of a licence (for example incorrectly believing that a licence covered a particular category of vehicle). In light of this, an additional mitigating factor covers those situations where an offender genuinely believed that there was valid insurance or a valid licence.
7. In some cases, the extreme circumstances that led an offender to drive whilst unlicensed, disqualified or uninsured may result in a successful defence of 'duress of circumstances.' In less extreme circumstances, where the *decision to drive was brought about by a genuine and proven emergency*, that may mitigate offence seriousness and so it is included as an additional mitigating factor.

Causing death by driving: unlicensed, disqualified or uninsured drivers

Traffic Law, 2011 (section 80)

Maximum penalty: 7 years imprisonment
minimum disqualification of 3 years from end of imprisonment

Nature of offence	Starting point	Sentencing range
The offender was disqualified from driving OR The offender was unlicensed or uninsured plus 2 or more aggravating factors from the list below	3 years custody	2 - 5 years custody
The offender was unlicensed or uninsured plus at least 1 aggravating factor from the list below	18 months custody	26 weeks–3 years custody
The offender was unlicensed or uninsured – no aggravating factors	26 weeks custody	Community order (HIGH)– 18 months custody

Additional aggravating factors

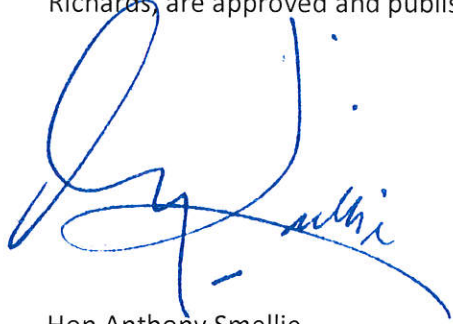
- Previous convictions for motoring offences, whether involving bad driving or involving offence of the same kind that forms part of the present conviction (i.e. unlicensed, disqualified or uninsured driving)
- More than one person was killed as a result of the offence
- Serious injury to one or more persons in addition to the death(s)
- Irresponsible behaviour such as failing to stop or falsely claiming that someone else was driving

Additional mitigating factors

- The decision to drive was brought about by a proven and genuine emergency falling short of a defence
- The offender genuinely believed that he or she was insured or licensed to drive
- The offender was seriously injured as a result of the collision
- The victim was a close friend or relative

These Guidelines prepared by the Criminal Justice Reform Committee chaired by Justice Cheryl Richards, are approved and published for reference by the Courts.

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A handwritten signature in blue ink, appearing to read 'Anthony Smellie', is written over a large, stylized blue scribble.

Hon Anthony Smellie
Chief Justice

8 April 2020