



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: CrimLaw:JDhm745995

26 June 2013

The Hon. Greg Smith SC MP
Attorney General and Minister for Justice
Level 31
Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Attorney General,

“Driving” under the Crimes Act 1900

Thank you for your letter dated 30 May 2013 seeking submissions from the Law Society of NSW on a proposal to provide for the meaning of “driving” under the *Crimes Act 1900*. The Law Society’s Criminal Law Committee considered your letter at its recent meeting and asked me to provide the following comments on its behalf.

This issue arises from the case of *Williams v R* [2012] NSWCCA 286 where RA Hulme J commented (at 60) that:

‘Drive’ is defined in s 3(1) of the *Road Transport (General) Act 2005* (NSW) as including being ‘in control of the steering, movement or propulsion of a vehicle’, but there is nothing that extends the operation of that definition beyond that Act. ‘Drive’ is not defined in the *Crimes Act*. Perhaps the legislature could consider including such a definition to avoid uncertainty and to promote legislative consistency. As the point was not raised in the submissions for either party I will say no more about it.

However, His Honour goes on to add (at 61) that: “There is a wealth of cases in which the concept of ‘driving’ has been examined and the factual permutations are almost infinite.”

In the Committee’s view, whether a particular activity constitutes “driving” under the *Crimes Act* should remain a question for the common law. The concept of driving continues to evolve and it is inevitable that any attempt to define it will exclude novel situations of fact which may not currently be in contemplation. In the Committee’s view, the common law is better suited to dealing with such evolving areas.

Your Department may find it convenient to direct any queries to Heather Moore, Director, Policy and Practice on 9926 0256 or at heather.moore@lawsociety.com.au.

Yours sincerely,

John Dobson
President

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