



National Motor Vehicle  
Theft Reduction  
Council

# Organised Vehicle Theft Offences in New South Wales

## Follow-up Review

November 2019

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**Informing Australia  
on vehicle crime.**

## Report outline

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<b>Title</b>	Organised Motor Vehicle Theft Offences in New South Wales - Follow-up Review
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<b>Type of report</b>	Discussion Paper
<b>Objectives</b>	<p>To assess the application of the offence of <i>knowingly facilitating an organised car or boat rebirthing activity</i> (at section 154G of the Crimes Act 1900 (NSW) to determine–</p> <ul style="list-style-type: none"><li>• its impact on securing appropriate convictions for profit-motivated vehicle theft activity; and</li><li>• the overall impact on the incidence of organised vehicle theft in NSW since its introduction.</li></ul>
<b>TRC program</b>	Build Stakeholder/Community Capacity and Encourage Innovation
<b>Key milestones</b>	Final Report
<b>Abstract</b>	<p>This report reviews the effectiveness of the offence of <i>knowingly facilitating an organised car or boat rebirthing activity</i> (at section 154G of the <i>Crimes Act 1900</i> (NSW)). The report notes that the offence is one of several legislative and non-legislative measures taken in New South Wales over the last two decades which have demonstrably been effective in reducing the incidence of organised vehicle theft and rebirthing.</p> <p>While it is not possible to isolate the impact of 154G from that of the other measures, the report concludes, based on analysis of reported court decisions and interviews with police and prosecutors, that section 154G is nevertheless a useful weapon in the fight against organised vehicle theft, that it is being used to secure convictions and reasonable sentences in vehicle rebirthing cases, and that it has been effective in achieving its stated purpose.</p>
<b>Purpose</b>	The purpose of this report is to evaluate the effectiveness of section 154G of the <i>Crimes Act 1900</i> in achieving its stated purpose.
<b>Key words</b>	Vehicle rebirthing, written-off vehicle, stolen vehicle, organised motor vehicle theft.

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## Executive Summary

### The rebirthing offence

The offence of knowingly facilitating organised car or boat rebirthing activities in section 154G of the *Crimes Act 1900* (NSW) was enacted in 2006 for the express purpose of combating organised motor vehicle theft.

Section 154G is intended to catch a wide range of conduct. It applies to any person who takes or participates in any part of a vehicle rebirthing activity, including providing finance or premises for the activity, knowing that the activity is a vehicle rebirthing activity and that the activity is carried out on an organised basis. The offence carries a maximum penalty of 14 years. A standard non-parole period of 4 years is specified under sentencing guidelines.

New offences targeting the unlawful use of vehicle identifiers, which were enacted with section 154G (in sections 154H, 154I and 154J), carry maximum sentences of 5 and 7 years.

### This Review

The purpose of this report is to evaluate the effectiveness of section 154G in achieving its stated purpose. The starting point for this evaluation is the assumption that the new laws will have been effective if it can be shown:

- that there has been a significant reduction in the incidence of organised vehicle theft since their introduction, and
- that the section 154G materially contributed to that reduction.

In undertaking the evaluation, we have:

- conducted a desktop review of relevant New South Wales legislation and other materials dealing with the investigation and prosecution of organised vehicle theft;
- analysed a range of data relating to vehicle theft, and to the prosecution and disposition of vehicle theft-related offences, between 2000 and 2018;
- reviewed decisions of the New South Wales District Court and Court of Criminal Appeal, and some decisions from other jurisdictions, in cases involving organised vehicle theft and/or vehicle rebirthing; and
- spoken with officers from New South Wales Police Force and the Office of the Director of Public Prosecutions who have had been involved in investigating or prosecuting rebirthing cases.

Section 154G and the associated identifier offences complement a number of existing provisions of the *Crimes Act 1900* which were previously, and continue to be, used to deal with offenders involved in organised vehicle theft activities. Those offences include stealing a motor vehicle, unlawful possession of property and offences of knowingly or recklessly dealing with the proceeds of crime. Some of those offences carry similar or higher maximum penalties to section 154G.

In addition to the array of criminal offences available to deal with vehicle rebirthing activities, several other legislative initiatives directed at commercially-motivated vehicle theft, including regulation of written off-vehicles and scrap metal dealers, have been taken by New South Wales governments over the past two decades.

### Incidence and court data

National data for reported vehicle thefts provided to us by the NMVTRC indicates:

- There has been a steady and significant decline in the overall number of vehicle thefts between 2000 and 2018. The trend in NSW is aligned with the trend in other the Australian jurisdictions.
- Profit motivated thefts have also declined nationally during the same period. However, the trends in New South Wales and in the other Australian jurisdictions are not aligned, with the decrease in New South Wales (64.2 per cent) being significantly greater than the decrease in other Australian jurisdictions (20.6 per cent).
- Between 2007 and 2018, profit motivated thefts reported to police in New South Wales decreased by 56.4 per cent but increased by 6.9 per cent in all other jurisdictions.

It appears from this data that measures taken in New South Wales between 2000 and 2018 have been more effective in reducing the incidence of organised vehicle theft than measures (if any) taken in other jurisdictions. However, it is not possible to establish from that data which of those measures has had the greatest impact.

Data from New South Wales Police Force and Bureau of Crime Statistics and Research is indicative of trends in the policing, prosecution and disposition of organised vehicle theft offences in New South Wales. It shows:

- A relatively small portion of reported thefts classified as 'profit motivated' result in charges being laid or offenders being convicted.
- Overall, relatively few section 154G charges are being laid or prosecuted.
- Sentences for the organised vehicle theft offence are materially longer than sentences for ordinary theft offences.

### Court decisions and prosecution experience

A review of sentencing decisions of the District Court and Court of Criminal Appeal in section 154G cases indicates that courts are cognisant of the serious nature of vehicle rebirthing when fixing sentences. The deterrent purpose of section 154G is referred to in sentencing guidelines and invariably mentioned by courts when sentencing offenders.

The length of sentence imposed for section 154G offences (in some as an aggregate sentence) ranges from a 2 year intensive corrections order to a total sentence of imprisonment of 6 years (with a non-parole period of 3 years). Most sentences are for between 2 and 4 years imprisonment, with non-parole periods between 1 and 3 years. This falls well short of the 14 year maximum specified in the Act.

Anecdotal information obtained from discussions with police and lawyers involved in the investigation and prosecution of vehicle rebirthing offences indicates:

- While section 154G and the associated offences have led to longer sentences being imposed on people involved in organised vehicle theft activities, there is evident frustration that sentences are still not reflecting the seriousness of those activities. The 4 year standard non-parole period is seen by some as an inappropriate limitation on Courts' ability to impose appropriate sentences.
- Section 154G cases are complex to prepare and prosecute. Presenting evidence to a jury about the organised basis on which an activity is conducted can also be challenging. The complexity and length of rebirthing cases, and the fact that many other types of cases get priority in Court lists, means that there can be long delays in bringing a rebirthing case to trial.
- The key challenge with section 154G cases is proving knowledge. Proving that a participant knew that the activity was carried out on an organised basis will usually - in the absence of admissions - require documentary and/or surveillance evidence, in order to convince a jury that the participant must have known.
- Prosecutors will take a matter to trial where the evidence appears to be sufficient to secure a section 154G conviction, but in cases where the evidence does not support section 154G it will usually be sufficient to secure a plea of guilty on an alternative charge, such as stealing or a proceeds of crime or handling offence. While lower maximum penalties are prescribed for these offences, they nevertheless attract significant sentences where aggravating circumstances of organisation or financial gain are present.
- Section 154G appears to be the only offence available to deal with a person who agrees to have a rebirthed vehicle registered in his or her name, but the activities of most other participants in an organised vehicle rebirthing activity are likely to be covered by other offences.

### Conclusions

Legislative measures taken in New South Wales, as well as changes in law enforcement priorities and strategies, have been effective in reducing the incidence of organised vehicle theft and rebirthing. However, it is not possible to isolate the particular impact of 154G from all the other measures.

Section 154G is nevertheless a useful tool to have available, not only because it catches some offenders who knowingly participate in a vehicle rebirthing activity but who may not be guilty of any other offence, but also because the investigation and prosecution of a rebirthing entity with the aim of bringing charges under section 154G requires extensive evidence gathering and robust case preparation which is likely to secure guilty pleas, if not to section 154G, to a range of other offences.

While sentences being imposed in section 154G cases may appear - given the 14 year maximum penalty - not to reflect the seriousness with which the New South Wales Parliament has repeatedly stated that it views vehicle rebirthing, it is clear from their sentencing decisions that the Court of Criminal Appeal and the District Court clearly do regard such conduct as serious, and conscientiously assess the gravity of the offending when applying the standard non-parole period of four years (which is generally in line with standard non-parole periods prescribed for other offences carrying a maximum penalty of 14 years imprisonment).

We conclude that section 154G is a useful weapon in the fight against organised motor vehicle theft, that it is being used to secure convictions and reasonable sentences in vehicle rebirthing cases, and that it has been effective in achieving its stated purpose.

We have considered whether further legislative change should be made to address the two concerns raised with us about the operation of section 154, that is, the difficulty of proving knowledge and the length of sentences being imposed as a consequence of the standard non-parole period. However, we make no recommendations for amendment or further offences (save to note the anomalous exclusion of trailers, caravans and other unpowered vehicles from the scope of section 154G).

## 1. Introduction

### 1.1 Background

In 2006, the New South Wales Parliament passed legislation to create a number of new offences targeting car and boat rebirthing.

New section 154G of the *Crimes Act 1900* created an offence of *knowingly facilitating an organised car or boat rebirthing activity*. The offence carries a maximum penalty of 14 years imprisonment. The new laws also included, in sections 154H, 154I and 154J, new offences relating to unauthorised possession and use of vehicle identifiers.

The creation of the new offences followed work undertaken by the National Motor Vehicle Theft Reduction Council (NMVTRC) over a number of years. The NMVTRC had been, and remains, active in identifying and highlighting challenges for the effective detection and prosecution of organised motor vehicle theft and in advocating for law reform and other measures to meet those challenges.

Section 154G and the associated offences came into force on 1 June 2006.

In 2010, the NMVTRC engaged this Consultant to undertake a review of section 154G in order to determine whether it might provide a useful model for national laws dealing with organised motor vehicle theft. The review considered the few court decisions on section 154G that had been decided at the time, and compared the legislative approach taken in framing the new "knowingly facilitate" offence with offences targeting other types of organised criminal activity.

The report of that review concluded that section 154G appeared to be appropriately targeted at the diverse roles played by participants in a rebirthing enterprise while avoiding the pitfalls of some other legislative responses to organised criminal activity.

However, because very few prosecutions had come to trial when that review was conducted, there was only limited material available from which to draw conclusions about the effectiveness of section 154G, and the review recommended that the NMVTRC continue to monitor how the new offences were being used and dealt with by the courts.

In late 2018 the NMVTRC engaged the Consultant to conduct a further review of the effectiveness of the organised vehicle rebirthing offence. For that purpose, this Review has:

- examined section 154G and associated offences, as well as other New South Wales legislation targeting organised vehicle theft;
- analysed a range of data relating to vehicle theft and the prosecution and disposition of vehicle theft offences;
- reviewed District Court and Court of Criminal Appeal sentencing decisions in organised vehicle theft cases; and
- consulted with representatives from New South Wales Police Force and the Office of the Director of Public Prosecutions about their experience with investigation and prosecution vehicle rebirthing cases and their views as to the effectiveness of section 154G.

### 1.2 The need for an organised vehicle theft offence

Section 154G of the *Crimes Act 1900* was enacted for the express purpose of combatting vehicle rebirthing and organised motor vehicle theft.

At the time section 154G was enacted, organised vehicle theft was widely seen as imposing significant economic and social costs on the community.

The Independent Commission Against Corruption (ICAC) had identified some of those costs in its report of November 2000 into corruption among motor registry staff in New South Wales. ICAC noted that car rebirthing enabled the reselling of stolen cars to unsuspecting buyers, provided incentives for organisation of vehicle theft at a commercial level and created scope for corruption of public officials in areas of vehicle inspection and registration.<sup>1</sup>

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<sup>1</sup> Independent Commission against Corruption *Rebirthing Motor Vehicles: Investigation Into the Conduct of Staff of the Roads and Traffic Authority and Others* (November 2000), page

It is clear from the IBAC report and other material available in the early 2000s<sup>2</sup> that:

- vehicle rebirthing involves complex processes and relationships and requires both a high degree of organisation and significant financial investment in order to obtain the necessary expertise, facilities and equipment to rebirth a vehicle and have it re-registered;
- organisations involved in rebirthing are unlikely to use conventional business structures, but more commonly are loosely organised networks, often based around criminal gangs, extended family or ethnic groups, and
- individuals play a diverse range of roles in a rebirthing enterprise, and these vary in their place in the hierarchy, ranging from stealing, dismantling or reassembling vehicles, providing certification and obtaining registration, re-selling vehicles and parts, providing premises and equipment and providing finance.

The offences introduced by the *Crimes Amendment (Organised Car and Boat Theft) Bill* sought to address what were considered to be significant impediments to bringing all participants in an organised vehicle rebirthing enterprise to justice.

In the second reading of the Bill, the Parliament was told that car and boat rebirthing activities cost the New South Wales community \$100 million annually:

“Firstly, rebirthing means that the stolen vehicle will not be recovered, in contrast to ‘joyriding’-style car theft, where the vehicle is usually recovered. This results in true owners being deprived of their cars permanently, and higher insurance premiums for us all. In addition, if a rebirthed car that has been on-sold is subsequently identified, seized and taken back to its true owner, the honest buyer who paid market price for the car may be left with nothing.

Secondly, rebirthing is dangerous. It may involve serious physical alterations to the car, such as grafting the front end of one car to the back end of another. This creates a structural flaw which in an accident could mean that the car disintegrates with its innocent new owners inside.

Thirdly, because rebirthing is potentially lucrative, it entices young people into becoming involved with organised criminal gangs. It can corrupt legitimate tradespeople who work with vehicles, because rebirthing gangs actively seek to ‘recruit’ professionals working in the industries of motor vehicle repair, wrecking, sale and registration. These people can provide the paperwork to give the rebirthers’ illegal activities the veneer of legitimacy.”<sup>3</sup>

The Minister also noted that the new laws had a specific deterrent purpose:

“These new offences provide deterrence against being involved in rebirthing, and send a clear message to those thinking of being involved in rebirthing activity that the punishment will far outweigh any illegal benefits.

Even though rebirthers may commit a range of existing offences, the law is not currently structured to deal effectively with the methods that rebirthing gangs use. The bill addresses the challenge of creating an offence that covers all behaviour that constitutes rebirthing. It imposes strict penalties for rebirthing and closes any loopholes in the criminal law that rebirthers might try to exploit.”<sup>4</sup>

### 1.3 Assessing effectiveness

As the stated purpose of section 154G was to combat organised vehicle theft and vehicle rebirthing, a key measure of its effectiveness will be whether there has been a significant reduction in the incidence of organised vehicle theft and vehicle rebirthing in the period since it came into force.

Also, having regard to the stated objective of deterrence, section 154G would also be considered effective if it has enabled:

- successful prosecution of persons involved in rebirthing activities in a range of roles; and
- the imposition by courts of appropriate sentences that reflect the gravity of the offending at different levels of involvement.

<sup>2</sup> See also: Drugs and Crime Prevention Committee of the Victorian Parliament, *Inquiry into Motor Vehicle Theft, Final Report*, October 2002

<sup>3</sup> *Crimes Amendment (Organised Car and Boat Theft) Bill 2006*, Second Reading, Legislative Assembly, 26 March 2006

<sup>4</sup> *ibid.*

Further, having regard to the broader financial and social drivers for its enactment, indicators of effectiveness might also include reduction in financial losses sustained as a result of vehicle rebirthing, fewer consumers being 'ripped off', fewer defective vehicles being on the road and lower levels of corruption.

As will be seen, the available data indicates that there has been a reduction, in New South Wales, of the incidence of motor vehicle theft generally, and organised motor vehicle theft in particular, during the period for which the new laws have been in force.

It is difficult, however, to assess whether section 154G has materially contributed to this reduction. Numerous other factors are likely to have had an impact, including developments in anti-theft technology, greater vigilance on the part of owners and the strategies adopted by, and resources available to, law enforcement agencies. There have also been several legislative initiatives targeting organised vehicle theft in New South Wales since 1999, which makes it difficult to evaluate the effectiveness of any one of those measures.

However, it may be possible to draw conclusions about the effectiveness of section 154G if there is evidence to indicate that the availability of that offence is deterring persons from being involved in vehicle rebirthing activities, or taking potential re-offenders out of circulation by enabling more successful prosecutions and the imposition of longer prison terms.

## 2. Rebirthing, vehicle theft and related offences

The offence of *knowingly facilitate organised car or boat rebirthing activity* is one of several offences that may be used to prosecute persons involved in organised vehicle theft activities in New South Wales. Our review indicates that a number of general offences, including offences relating to receipt of stolen property, dealing with proceeds of crime and conspiracy, are used for this purpose. Section 154G, and the other relevant criminal offences are outlined in this section of the report.

### 2.1 Knowingly facilitating organised car or boat rebirthing activities

Section 154G(1) of the *Crimes Act 1900*, which was inserted by the *Crimes Amendment (Organised Car and Boat Theft) Act 2006*, provides that a person is guilty of an offence if the person facilitates a car or boat rebirthing activity "that is carried out on an organised basis knowing that the activity (a) is a car or boat rebirthing activity, and (b) is carried out on an organised basis.<sup>5</sup> A maximum penalty of 14 years imprisonment applies.

Note that section 154G applies only to the rebirthing of motor vehicles and boats. It does not apply to unpowered vehicles such as caravans and trailers, which seems to be an anomalous gap in coverage.<sup>6</sup>

Subsections (2) to (4) of section 154G provide:

- "*car or boat rebirthing activity*" means an activity involving any one or more of:
  - (a) stealing a vehicle or the receiving of the stolen motor vehicle or stolen vessel;
  - (b) the interference with a motor vehicle or vessel or a part of a motor vehicle or vessel, or a unique identifier, for the purpose of concealing the fact that the motor vehicle or vessel, or any part of the motor vehicle or vessel is stolen;
  - (c) the affixing of stolen parts to a motor vehicle or vessel;
  - (d) the interference with a unique identifier, being a unique identifier that wholly or partly identifies a motor vehicle or vessel for registration under a law of any jurisdiction, for the purpose of disguising or misrepresenting the identity of a motor vehicle or vessel;
  - (e) the registering, in NSW or any other jurisdiction, of a stolen motor vehicle or vessel or a motor vehicle or vessel that has stolen parts affixed to it; or
  - (f) the supply of, or offering to supply, a stolen motor vehicle or vessel.
- a person is taken to "*facilitate*" a car or boat rebirthing activity if the person:
  - (a) takes, or participates in, any step, causes any step to be taken, that is part of the activity;
  - (b) provides or arranges finance for any step that is part of the activity;
  - (c) provides the premises in which any step that is part of the activity is taken, or allows any step that is part of the activity to be taken in premises of which the person is the owner, lessee or occupier or of which the person has the care, control or management.<sup>7</sup>
- a car or boat rebirthing activity is taken to be carried out on an "*organised basis*" if:

<sup>5</sup> Section 154G-154I of the *Crimes Act 1900* apply to vehicles and vessels. For brevity, further references to boats and vessels have been omitted, except where a provision is quoted.

<sup>6</sup> The recent Victorian decision of *DPP v Donnelley* [2019] VCC 152 arose out of the theft and re-registration and sale of boats and caravans.

- (a) it is planned, organised structured or otherwise carried out in such a manner as to indicate that the activity is carried out on more than one occasion and involves more than one participant, and
- (b) it is carried out for profit or gain.

Section 154G(5) provides that, in proceedings for an offence where it is necessary to prove that an activity was carried out on an organised basis or that the accused knew it was carried out on an organised basis, it is not necessary for the prosecution to prove:

- that the accused knew any of the participants or that any of the participants knew each other;
- that the activity was planned, organised, structured or otherwise carried out under the direction of any particular person or persons or any hierarchical manner; or
- that the same participants were involved on each occasion on which the activity was carried out.

Section 154G is clearly intended to cover a broad range of conduct. The Parliament was told that the definition of the term "organised basis" had been constructed to reflect the reality of car rebirthing in Australia:

"New section 154G (5) makes it clear that it does not matter whether the activity is carried out under the direction of any particular person or whether the same people were always involved in the rebirthing. It does not even matter that the accused did not know any of the other participants in the rebirthing ring. If the person has knowingly participated in a car or boat rebirthing activity, also knowing that the activity as a whole is carried out on an organised basis, the person is guilty of the offence created by new section 154G and is liable to 14 years imprisonment."<sup>7</sup>

Not only does the offence target persons who perform a wide range of different roles in a rebirthing enterprise, it also applies to individuals with widely differing levels of culpability. For example, a person involved over a short period in the rebirthing of a couple of vehicles and a person who directs, controls and profits from an industrial scale operation involving numerous vehicles over an extended period are each guilty of the same offence.

Moreover, while section 154G(5) assists the prosecution to prove the offence by specifying certain factual matters that do not need to be proven, the burden of proof is not reversed. It remains for the prosecution to prove that the offender knew that he or she was facilitating a car or boat rebirthing activity and that that the activity was being carried out on an organised basis.

Section 154G is distinguished from other offences by the broad range of conduct and culpability which it covers and the need for the prosecution to prove only that the defendant knew the activity he/she engaged in was an organised rebirthing activity. These features of the *knowingly facilitate* offence were trumpeted as its major strength. However, as will be seen, they are also at the heart of what some see as weaknesses.

## 2.2 Identifier offences

The *Crimes Amendment (Organised Car and Boat Theft) Act 2006* also introduced several offences specifically directed at the misuse of vehicle identifiers.<sup>8</sup>

The identifier offences set out in sections 154H - 154J of the *Crimes Act 1900* directly target interference with, or removal or possession of a vehicle identification number (VIN) and compliance plates on the basis that:

"Those plates are only valid for the vehicle they are attached to, and should only be removed by those having authority to do so. Removing them, or possessing fabricated or altered plates that are unattached to a vehicle, and so can be added to a stolen vehicle when one becomes available, is a crucial step in rebirthing; it is highly unlikely there will be a legitimate reason for an owner or vehicle repairer to remove these plates."<sup>9</sup>

"Unique identifier" is defined to include numbers, letters, symbols or other identification information marked on or attached to a vehicle or vehicle part, or on a thing designed to be attached to the vehicle or part or stored in electronic form in part of a vehicle, for the primary purpose of enabling a particular vehicle or part to be distinguished from other vehicles or parts or identifying different vehicle production batches.<sup>11</sup>

<sup>7</sup> *Crimes Amendment (Organised Car and Boat Theft) Bill 2006*, Minister's Second Reading, Legislative Council, 23 May 2006

<sup>8</sup> These identifier offences together with a new offence for stealing a vehicle (section 154F) replaced section 154AA. Section 154AA was the previous "steal motor vehicle" offence which also dealt with identifiers in that it provided that stealing a motor vehicle included stealing part of a vehicle containing an identification plate.

<sup>9</sup> *Crimes Amendment (Organised Car and Boat Theft) Bill 2006*, Minister's Second Reading, Legislative Council, 23 May 2006

The identifier offences address a number of specific activities associated with vehicle rebirthing:

- **Making, using and interfering with unique identifiers.** Section 154H sets out a number of offences involving dishonestly making, using, copying or interfering with a unique identifier, and knowingly inducing another person to accept any information attached to a vehicle or part as a genuine unique identifier when it is not. A maximum penalty of 7 years imprisonment applies.
- **Possession of vehicle where unique identifier interfered with.** A person commits an offence under section 154I if the person "dishonestly has possession of a motor vehicle or vessel, or a part of a motor vehicle or vessel, a unique identifier of which has been interfered with". A maximum penalty of 5 years imprisonment applies.
- **Possession of vehicle information plate not attached to a vehicle.** A person commits an offence under section 154J if the person without reasonable excuse knowingly has possession of a vehicle identification plate not attached to a vehicle to which it relates. The defendant has the onus of proving the absence of reasonable excuse. A maximum penalty of 5 years imprisonment applies.

### 2.3 Other vehicle theft offences

A number of other vehicle theft offences may be committed in connection with vehicle rebirthing. Persons involved in the taking of a vehicle for the purpose of rebirthing may be charged with one or more of these offences as an alternative, or in addition, to an offence under section 154G.

- **Stealing a motor vehicle or vessel.** Section 154F makes it an offence to steal a motor vehicle or vessel.<sup>10</sup> Stealing a motor vehicle is a serious indictable offence,<sup>11</sup> to which a maximum penalty of 10 years imprisonment applies. To prove the offence, the prosecution must establish that the offender appropriated property for his or her own use with intention of permanently depriving the owner of it.
- **'Joy-riding' - taking a conveyance without consent.** Section 154AA provides that a person who, without the consent of the owner or person in lawful possession of a conveyance, takes and drives it, or takes it for the purposes of driving it, or secreting it, or obtaining a reward for its restoration or pretended restoration or any other fraudulent person is guilty of larceny. A maximum penalty of 5 years applies.
- **Car-jacking - aggravated taking of a vehicle.** A person commits an offence under section 154C(1) if he or she assaults another person with intent to take a motor vehicle without consent or takes a vehicle without while a person is in it. A maximum penalty of 10 years imprisonment applies. Where the offence is committed in aggravated circumstances (that is: where the offender commits the offence in company or armed with a weapon, or intentionally or recklessly causes actual bodily harm) a maximum penalty of 14 years applies.

### 2.4 Receiving / proceeds of crime offences

A number of *Crimes Act 1901* offences relating to possession of stolen property and dealing with proceeds of crime can be and are used to deal with vehicle rebirthing. Persons found working on or in possession of vehicles or vehicle parts may be charged with one or more of these offences as an alternative, or in addition, to the offence under section 154G.

- **Receiving stolen property.** Section 188(1) makes it a serious indictable offence for a person to receive, dispose of, or attempt to dispose of, any property knowing the property to have been stolen. A person who commits the offence is liable, if the property is a motor vehicle or a motor vehicle part, or a vessel or a vessel part, to imprisonment for 12 years. In the case of any other property, the maximum penalty is 10 years imprisonment.

The maximum penalty for receiving offences involving vehicles or vessels was increased from 10 to 12 years from 14 December 2001 by legislation targeted at criminal gangs involved in vehicle rebirthing.<sup>12</sup>

- **Unlawful possession.** A person commits an offence under section 527C if the person has anything, in his or her custody, in the custody of another person or on premises which he or she owns or occupied, which may be reasonably suspected of being stolen or otherwise unlawfully obtained.

<sup>10</sup> Section 154F replaced the stealing offence previously at section 154AA.

<sup>11</sup> "Serious indictable offence" means an indictable offence that is punishable by imprisonment for life or for a term of 5 years or more. Stealing a motor vehicle is serious indictable offence.

<sup>12</sup> *Crimes Amendment (Gang and Vehicle Related Offences) Act 2001*, schedule 2 item 11

This is a summary offence<sup>13</sup> and an offence of strict liability. The prosecution is not required to prove that the defendant knew or believed the property to be stolen. The offender has a defence if they satisfy the court that they had no reasonable grounds for suspecting that the thing found in their possession was stolen or unlawfully obtained.

The maximum penalty for unlawful possession of a motor vehicle or motor vehicle part was doubled in 2001, also by the 2000 amendments targeting criminal gangs involved in organised motor vehicle theft, from 6 months imprisonment or a fine of 5 penalty units to 12 months imprisonment or fine of 10 penalty units.<sup>14</sup>

- **Proceeds of crime offences.** Section 193B creates a number of serious offences relating to knowingly or recklessly dealing with the proceeds of crime.

A person who deals with proceeds of crime knowing that it is proceeds of crime and intending to conceal that it is proceeds of crime is liable to a maximum penalty of 20 years imprisonment (section 193B(1)).

A person who deals with proceeds of crime knowing that it is proceeds of crime is liable to a maximum penalty of 15 years imprisonment (s. 193B(2)).

A person who deals with proceeds of crime being reckless as to whether it is proceeds of crime is liable to a maximum penalty of 15 years imprisonment (s. 193B(3)).

- **Dealing with property suspected of being proceeds of crime.** Section 193C creates a strict liability offence in relation to property suspected of being the proceeds of crime. A person is guilty of the offence if they deal with property and there are reasonable grounds to suspect that the property is proceeds of crime. If the value of the property is \$100,000 or more, the maximum penalty is imprisonment for 5 years. If the value of the property is less than \$100,000, the maximum penalty is imprisonment for 3 years.

Reasonable grounds to suspect that property is proceeds of crime will arise in specified circumstances, including where the value of the property is found to be grossly out of proportion to the defendant's income and expenditure over the period within which the dealing occurs.

It is a defence to a prosecution for an offence under section 193C if the defendant satisfies the court that he or she had no reasonable grounds for suspecting that the property was substantially derived, directly or indirectly, from the commission of an offence (s. 193C(4)).

### 3. Legislative initiatives targeting organised vehicle theft

In addition to the amendments to the *Crimes Act 1900* which, in 1999, increased penalties for receiving offences, and in 2006, created new offences targeting organised rebirthing, there have been several other legislative initiatives in New South Wales aimed at vehicle rebirthing.

#### 3.1 Written-off vehicles legislation

Legislation aimed at curtailing vehicle rebirthing by limiting re-registration of wrecked and written-off vehicles has been in force in New South Wales for 20 years, undergoing two major modifications during that time.

- **Written-off and wrecked vehicles register.** Amendments to the *Traffic Act 1909* which came into force on 1 July 1999<sup>15</sup> established a register of written-off and wrecked motor vehicles and conferred discretionary power on the Roads and Traffic Authority (RTA) to refuse to register a vehicle if an identifier on the vehicle was the same as the identifier of a vehicle on the register.

A stated objective of the amendments was "to assist in preventing the registration of stolen motor vehicles and detecting motor vehicle theft".<sup>16</sup>

- **Alignment with the national written-off vehicle scheme.** Legislation establishing a national written-off vehicle (WOVR) scheme was progressively enacted in each Australian jurisdiction after 2002. Under the national scheme:

<sup>13</sup> Summary offences are generally heard in Local Courts.

<sup>14</sup> *Crimes Amendment (Gang and Vehicle Related Offences) Act 2001*, schedule 2 item 17. The current value of a penalty unit in NSW is \$110.

<sup>15</sup> Part 3E of the *Traffic Act 1909*, as amended by Schedule 4 of the *Road Transport Legislation Amendment Act 1999*. Legislation substantially in the same form remained in force until 2007.

<sup>16</sup> *Traffic Act 1909*, s. 107C.

- vehicles more than 15 years old that are damaged and have been assessed (usually by an insurer) as 'written-off' must be recorded on a register of written off vehicles;
- vehicles are categorised either as statutory or repairable write-offs, depending on the extent and nature of the damage; and
- a statutory write-off can never be re-registered, whereas a repairable write off can be re-registered if it is established that it is the vehicle to which the original vehicle identifiers were assigned.<sup>17</sup>

The New South Wales wrecked and written-off scheme was substantially revised to align with the national WOVV scheme in 2007. A stated purpose of the amending legislation was to assist in preventing vehicle identifiers of **written-off vehicles being used to register stolen vehicles and assist in detecting vehicle theft.**<sup>18</sup>

The new provisions, which came into force on 7 December 2007, changed what had previously been a discretionary *power* of the RTA to refuse to register a vehicle if its identifier was the same as an identifier recorded on the wrecked and written-off vehicles register to a mandatory *obligation* to refuse to register a statutory write-off, or in the case of a repairable write-off, to refuse registration unless the vehicle's identifiers had been certified as matching the original identifiers.

- **Ban on re-registration of repairable write-offs.** In 2010, the NSW Parliament enacted legislation to prohibit the RTA from re-registering repairable write-offs. The ban came into force on 31 January 2011.<sup>19</sup>

In second reading the Bill, the Minister described the legislation as "a major reform to protect New South Wales consumers from profiteers and criminals who trade in written-off vehicles that are dangerously repaired, often with stolen parts". The Minister told Parliament:

"The Bill will build on legislation considered by the Parliament in 2007, which highlighted significant additional issues to be addressed to further improve consumer protection and road safety, and to reduce criminal activities linked to written-off vehicles in New South Wales."<sup>20</sup>

The most significant changes made were to eliminate the class of repairable write-off and to require that all written-off vehicles be recorded as statutory write-offs, thereby preventing all written-off vehicles from being re-registered (subject to limited exemptions for vehicles written off because of hail damage and for some classic cars).

One of the prosecutors we spoke to expressed the opinion that the ban on re-registration of repairable write offs was likely to have a chilling effect on rebirthing activity with the consequence that there are likely to be few rebirthing cases brought before the courts in future.

### 3.2 Scrap metal industry regulation

The *Scrap Metal Industry Act 2016* was enacted to "help prevent property crime across New South Wales, whether it be organised or opportunistic". The legislation was targeted at cash dealings by scrap dealers, and sought to eliminate what was known to be an attractive avenue for rebirthing gangs to dispose of surplus vehicle shells and parts. Parliament was told:

"The regulatory model proposed by the bill will significantly prevent property crime in three major ways. First, it will close off scrap metal dealers as a source of quick cash. Secondly, it will ensure that the sales of stolen scrap metal to dealers are able to be traced through the keeping of clear records. Thirdly, it will provide powers of entry and inspection for police officers."<sup>21</sup>

The legislation came into force on 21 September 2016.

## 4. Trends in vehicle theft and enforcement

It will be seen the succession of legislative initiatives targeting vehicle rebirthing introduced by New South Wales governments over the past 20 years has been matched by a corresponding reduction in vehicle theft, including profit-motivated vehicle theft.

<sup>17</sup> In some jurisdictions a safety inspection is also required.

<sup>18</sup> *Road Transport (General) Act 2005*, s. 249

<sup>19</sup> *Road Transport (Vehicle Registration) Amendment (Written-off vehicles) Act 2010*.

<sup>20</sup> *Road Transport (Vehicle Registration) Amendment (Written-off vehicles) Bill 2010*, second reading, Legislative Assembly, 24 September 2010

<sup>21</sup> *Scrap Metal Bill 2016*, Second Reading, Legislative Assembly, 24 August 2016

A key Question for this review is whether a causal link can be established between the downward trend in vehicle theft and any one of those initiatives, section 154G in particular.

The following table sets out the dates on which each of those measures came into force:

Commencement date	Legislative Measure
1 July 1999	Establishment of register of wrecked and written off vehicles giving RTA discretion to refuse to re-register vehicles recorded on that register
14 December 2001	Increase in penalties for receiving and unlawful possession offences which involve motor vehicles or motor vehicle parts
1 June 2006	Commencement of the <i>knowingly facilitate organised vehicle theft</i> offence and associated identifier offences
7 December 2007	Alignment with national written-off vehicles scheme, including mandatory obligation on RTA to refuse to register statutory write-offs
31 January 2011	Ban on re-registration of repairable write-offs and extension of obligations to notify written off vehicles
21 September 2016	Regulation of scrap metal dealers to ban cash payments and establish record keeping requirements

### 4.1 Motor vehicle theft data

Data compiled by the NMVTRC indicates that the number of reported motor vehicle thefts in Australia fell from over 138,000 in 2000 to slightly under 53,000 in 2018. New South Wales experienced a similar decline - from just over 53,000 to around 12,000 - over the same period.

The NMVTRC's data differentiates between 'short term theft' and 'profit motivated' vehicle theft. 'Short term vehicle theft' includes section 154A of the *Crimes Act 1900* and corresponding offences in other jurisdictions (referred to variously as *unlawful use of a motor vehicle, taking without consent or joy-riding*) and generally involved a person taking a vehicle without intending to permanently deprive the owner of their property.

'Profit motivated theft' offences include not only offences committed by organised gangs for commercial purposes but also vehicle theft offences, such as *stealing a motor vehicle* under section 154F of the *Crimes Act 1900* (and its precursor section 154AA), where an intention to permanently deprive is an element of the offence.

The incidence of 'short term' motor vehicle theft is significantly higher in all jurisdictions than the incidence of 'profit motivated' theft, and it appears from Figure 1 (below) that the reduction in overall vehicle theft is largely attributable to the fall in 'short term' thefts. 'Profit motivated' theft levels have remained, by comparison, relatively stable.

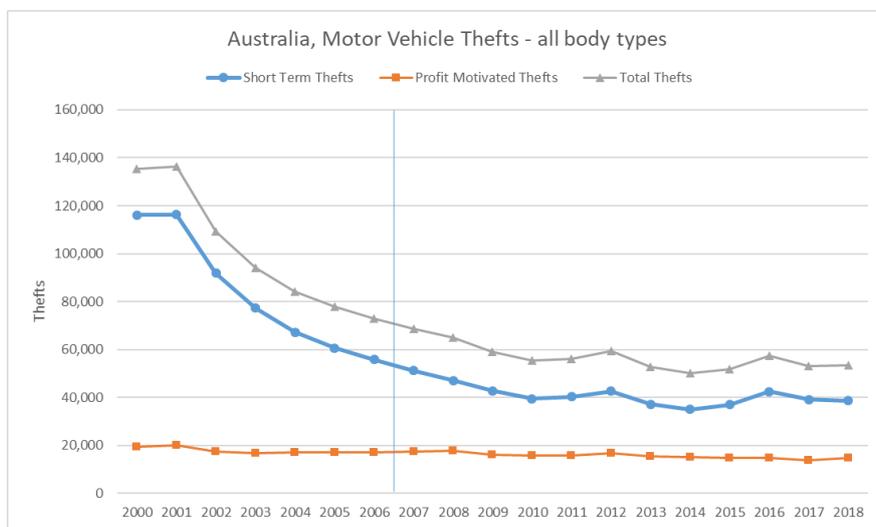


Figure 1. Australian Motor Vehicle Theft 2000-2018 (Source: NMVTRC)

However, as it appears from Figures 2 and 3, the downward trend for 'short term' thefts in New South Wales has been broadly aligned to the overall trend in other Australian jurisdictions, while the trends with respect to profit-motivated thefts have diverged.

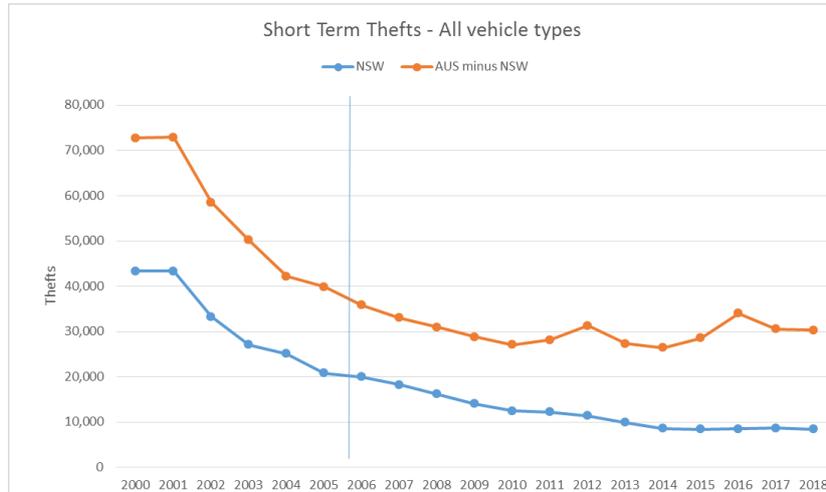


Figure 2. Short term vehicle theft NSW and rest of Australia 2000-2018 (Source: NMVTRC)

Figure 3 shows a clear divergence between New South Wales and the other Australian jurisdictions in the incidence of profit motivated vehicle theft since 2007. While there was a fall in all jurisdictions between 2000 and 2007, profit motivated vehicle theft in New South Wales has continued to decline since then, whereas the downward trend reversed in other jurisdictions.

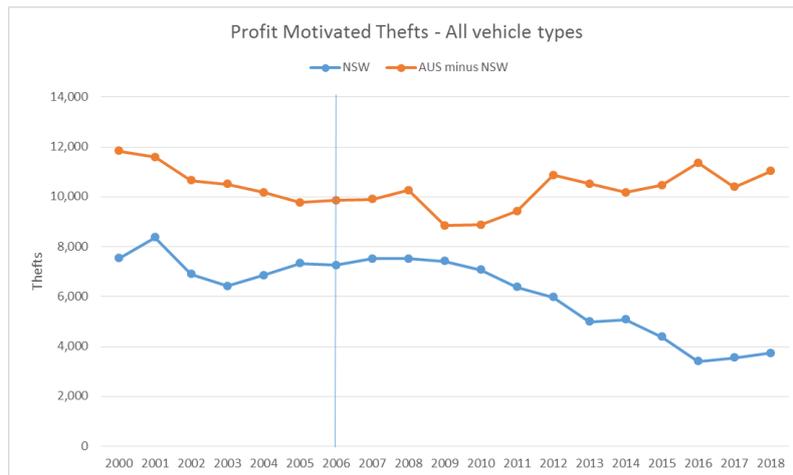


Figure 3. Profit motivated vehicle theft: NSW and rest of Australia 2000-2018 (Source: NMVTRC)

The NMVTRC's data indicates that there were 6,911 reports of profit motivated theft in New South Wales 2000-2001<sup>22</sup> and 2473 in 2017-218, a decrease overall of 64.2 per cent. In the same period, reported profit motivated theft in all other jurisdictions fell by only 20.6 per cent (from 8,602 to 6,825) during that period. Between 2006-2007 and 2017-2018, profit motivated thefts reported in New South Wales decreased by 56.4 per cent but increased by 6.9 per cent in all other jurisdictions.

This general picture is supported by Australian Bureau of Statistics (ABS) data released in 2016, which showed that profit motivated vehicle thefts outside New South Wales peaked in 2016 at their highest level since 2000. While motor vehicle thefts in 2016 had increased by 9 per cent Australia wide over the previous year, that increase was driven entirely by three states: Victoria (up 25 per cent), Queensland (up 19 per cent) and South Australia (up 10 per cent).<sup>23</sup>

The data strongly suggests that New South Wales legislative initiatives to combat organised vehicle theft have had a material impact on the incidence profit motivated vehicle theft. In particular, the data shows an upward trend in all jurisdictions from 2003 starting to reverse in New South Wales in 2007 while continuing to increase elsewhere. This

<sup>22</sup> Figures in this paragraph are for the year from 1 September to 31 August.

<sup>23</sup> Australian Bureau of Statistics, Media Release, 6 July 2017

suggests that the New South Wales initiatives may have had a displacement effect, forcing vehicle theft gangs to relocate their operations to other jurisdictions.

Given that section 154G commenced on 1 June 2006, it is tempting to infer that the new offence had, as was intended, a material impact on profit motivated vehicle theft in the following years. However, a range of other legislative, operational and strategic measures are also likely to have had an impact.<sup>24</sup> It is also apparent that the decline in the number of reported profit motivated vehicle thefts in New South Wales began to accelerate from 2011, when the ban on re-registration of repairable write-offs took effect.

Without further evidence, it is not possible to draw any conclusion about the contribution of section 154G, relative to any of the other legislative (or non-legislative measures), to the downward trend in profit motivated vehicle thefts. The most that can be said is that section 154G is one among several measures that appear, overall, to have had a positive impact.

## 4.2 Enforcement and prosecution

The reduction in the overall number of vehicle thefts, and commercially motivated vehicle thefts in particular, is reflected in a corresponding reduction in prosecutions commenced and offenders found guilty over the same period.

Table 1 compares the NMVTRC's profit motivated theft data for New South Wales with charge data from New South Wales Police Force and court disposition data from BOCSAR. While differences in classification of offences precludes close comparison, the downward trend is apparent at each stage of the process. In particular, for the period 2001 to 2017, it appears that:

- reported profit motivated thefts fell by 55 per cent (from 7,532 to 3,398);
- court actions commenced for vehicle theft offences fell by 78 per cent (from 963 to 212); and
- persons found guilty of vehicle theft fell by 77 per cent (300 to 68).<sup>25</sup>

	<b>Reported profit motivated vehicle theft reported to police</b>	<b>Court actions - vehicle theft (154AA(1), 154F)</b>	<b>Court actions s. 1564G</b>	<b>Persons found guilty - vehicle theft principal offence</b>	<b>Persons found guilty - s. 154G principal offence</b>
<b>2001</b>	7,532	963	-	300	-
<b>2002</b>	8,377	791	-	314	-
<b>2003</b>	6,892	416	-	194	-
<b>2004</b>	6,420	361	-	140	-
<b>2005</b>	6,854	318	-	117	-
<b>2006</b>	7,336	327	-	133	-
<b>2007</b>	7,260	241	22	83	-
<b>2008</b>	7,516	230	18	80	1
<b>2009</b>	7,521	248	25	79	5
<b>2010</b>	7,411	196	24	75	5
<b>2011</b>	7,076	192	10	73	2
<b>2012</b>	6,375	220	8	59	7
<b>2013</b>	5,975	244	2	72	5

<sup>24</sup> Other measures include the establishment of the WOV in January 2007 and the later requirement for registration of introduction of the written-off vehicle register for vehicles under 15 years of age, as well as changes in enforcements strategies and the establishment of a dedicated, proactive motor unit at New South Wales Police Force.

<sup>25</sup> 2018 figures disregarded for comparison purposes because only 9 months of BOCSAR data was obtained for that year

<b>2014</b>	4,986	215	12	59	1
<b>2015</b>	5,077	204	11	68	1
<b>2016</b>	4,378	227	12	65	2
<b>2017</b>	3,398	212	12	68	7
<b>2018</b>	3,539	252	1	81**	3**
<b>Source</b>	NMVTRC	New South Wales Police Force		BOCSAR **1 January - 30 September	

Table 1: Comparison reported profit motivated vehicle theft, charges and findings of guilty, NSW 2000-2018

It is clear from this comparison that very few profit motivated vehicle thefts result in charges being laid under section 154G. Further, Figure 5 indicates that the number of persons found guilty under 154G is very small relative to the number of persons found guilty of vehicle theft.

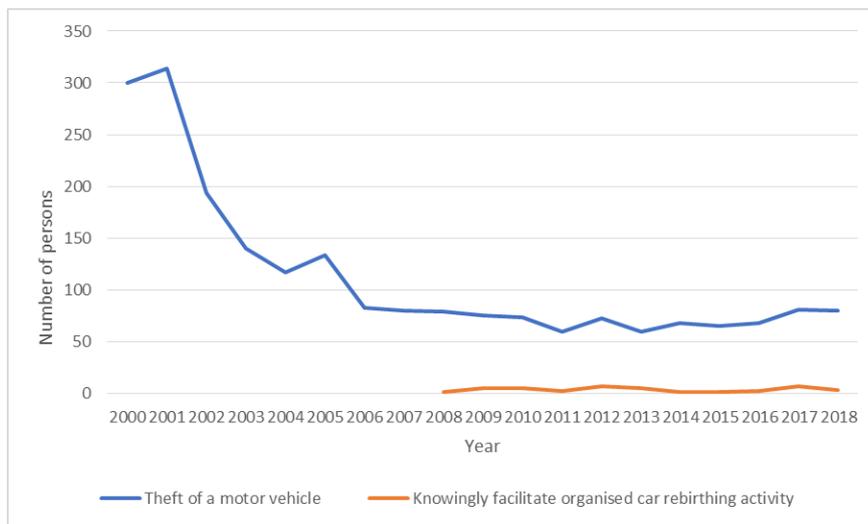


Figure 4. Persons found guilty whose principal offence was theft of a motor vehicle or knowingly facilitate, 2000-2018. (Source: BOCSAR data, NMVTRC chart.)

The data indicates that very few section 154G charges are prosecuted, and even fewer result in conviction for that offence. Indeed, it appears that only 39 offenders have been found guilty of section 154G offences since the legislation commenced. This is likely to be due to the fact that, as we were told by prosecutors, charges under section 154G often lead to offenders pleading guilty to alternative offences such as stealing a motor vehicle, receiving stolen property or proceeds of crime offences.

In any case, the fact that relatively few section 154G offences are prosecuted or result in findings of guilt should not be taken to indicate that the offence is of little utility.

On the contrary, our analysis of the reported cases and consultation with police and prosecutors indicates that section 154G is an important and largely effective weapon in the fight against organised vehicle theft.

### 5. Section 154G in operation

As noted, section 154G was enacted with the specific purpose of sending "a clear, message to those thinking of being involved in rebirthing activity that the punishment will far outweigh any illegal benefits".<sup>26</sup>

While the decline in the number of reported profit-motivated theft offences in New South Wales since 2007 would tend to indicate that fewer people are becoming involved in rebirthing activities in that State, it is not possible to determine the extent to which section 154G has been a contributing factor.

<sup>26</sup> Crimes Amendment (Organised Car and Boat Theft) Bill 2996, Second Reading, Legislative Assembly 26 March 2006

However, some conclusions may be drawn about the effectiveness of section 154G in achieving its deterrent purposes from the experience of investigators, prosecutors and the courts in dealing with vehicle rebirthing cases, in particular because the evidence tends to suggest that section 154G has led to:

- a wider range of persons involved in rebirthing activities being brought before the courts;
- guilty pleas being more readily obtained; and
- longer sentences being imposed on those who plead or are found guilty.

In seeking to understand the operational impact of section 154G on the investigation and prosecution of rebirthing cases, we spoke with a representative from New South Wales Police Force and senior lawyers from the Office of the Director of Public Prosecutions with experience in rebirthing cases.

We also reviewed reported decisions of the New South Wales District Court and Court of Criminal Appeal in section 154G cases.

A list of those decisions and the sentences imposed for section 154G offences is set out in the Appendix.

### 5.1 Bringing more offenders before the courts

As noted, section 154G is designed to catch a wide range of conduct typically involved in a rebirthing operation. The offence targets people whose role in the rebirthing activity involves:

- stealing or receiving a stolen vehicle;
- interfering with a vehicle or identifier in order to conceal the fact that the vehicle or a part of the vehicle is stolen;
- registering a stolen vehicle or vehicle that has stolen parts affixed to it;
- offering a stolen vehicle for sale;
- providing or arranging finance; and
- providing premises.

The decisions listed in the Appendix involved offenders charged in relation to many of these roles, and police and prosecutors we spoke to were of the view that section 154G provided a basis for charging some participants where none had existed previously.

In particular, we were told by a prosecutor that section 154G is the only offence available to deal with a person whose role in the rebirthing operation is to have rebirthed vehicles registered in their name. We presume this is because unless it can be shown that such a person knowingly made false representations to the RTA for the purpose of obtaining registration, it is unlikely that they could be charged with any other offence.

We were also told that section 154G enables some offenders to be charged with more serious offences than were previously available for the same conduct. It was suggested to us that prior to the introduction of section 154G, it was often the case that a person actually carrying out work on a vehicle, or providing premises for that purpose, could only be charged with the summary offence of unlawful possession. Unlawful possession offences are generally dealt with in Local Courts and attract relatively low penalties. Section 154G is an indictable offence which requires a trial in the District Court.

However, we were told by prosecutors that investigation and trial preparation in section 154G cases is complex and resource intensive. While section 154G(5) facilitates proof of offences by limiting the matters about which the prosecution must prove the defendant had knowledge, the prosecution is still required to prove that the defendant knew that the activity was a car rebirthing activity and that it was carried out on an organised basis. This usually requires evidence to be gathered through CCTV surveillance, telephone intercepts and inspection of business records and communications between participants. Such evidence is usually needed to satisfy the court that premises are being used for rebirthing (for example, by showing vehicles going in and out, or where the premises operate from a legitimate business premises, that activity is occurring outside business hours), or that particular individuals had discussions from which it is clear they knew the nature of the activities being carried on.

New South Wales Police Force has established a dedicated Motor Vehicle Theft Squad to undertake the extensive monitoring, surveillance and investigative work needed to uncover and prosecute vehicle rebirthing activity, and we understand that the Squad has developed a high degree of expertise in gathering and collation of documentary and surveillance evidence required in section 154G cases.

However, while section 154G appears to have enabled more persons involved in rebirthing activities to be brought before the courts, prosecutors noted that there are often long delays in bringing rebirthing cases for trial. Because of the complexity of the evidence, section 154G trials are generally expected to be lengthy, making it difficult to windows in crowded court calendars. Further, such cases are given low priority relative to cases, such as sexual assault and other crimes against the person, where there is a clear victim whose interests in achieving closure are best served by speedy disposition. It was suggested that car rebirthing, like other property crimes, does not rate highly in terms of objective seriousness. Some rebirthing cases have taken more than three years to come to trial. In at least one of the reported cases, delay in bringing the matter to trial was linked to the offender's prospects for rehabilitation as a mitigating factor to be taken into account in sentencing.

## 5.2 Findings of guilt and guilty pleas

As noted, proving the requisite knowledge is considered to be the biggest challenge in prosecuting section 154G cases.

We understand that there have been many cases where, although it was obvious that a significant rebirthing operation was being conducted, the evidence against any particular participant has not been sufficient for prosecutors to be confident of securing a conviction.

We were told that prosecutors will always take a matter to trial where the evidence appears to be sufficient to secure a section 154G conviction, but in cases where the evidence does not support section 154G it will usually be sufficient to secure a plea of guilty on an alternative charge. In these circumstances, the aggravating factors are likely to lead to the imposition of a sentence that is close to what would have been imposed if the offender were convicted under section 154G.

Section 21A of the *Crimes (Sentencing Procedure) Act 1999* NSW requires courts to take into account a range of range of aggravating and mitigating factors when sentencing offenders. Aggravating factors in the context of rebirthing are likely to be present where:

- the offence was committed without regard for public safety;
- the offence was part of a planned or organised criminal activity;
- the offence was committed for financial gain.

A court must not have regard to an aggravating factor in sentencing where the factor is an element of an offence. Organisation and financial gain are elements of the offence under section 154G. However, where a person is found guilty of another offence (such as, an identifier offence, stealing a motor vehicle, receiving stolen property or a proceeds of crime offence) the court is required to take into account the planning, organisation and profit motivation as aggravating factors. The sentences imposed for such offences in the rebirthing context are likely to be at the higher end of the scale.

Our review of reported cases indicates that the majority of section 154G convictions follow a guilty plea. Because a range of alternative charges are available to deal with most (but not all) of the conduct which is caught by section 154G, rebirthing cases are often resolved by pleas of guilty to alternative charges and achieve sentencing outcomes that are regarded as satisfactory by prosecutors.

## 5.3 Sentencing outcomes - section 154G

It appears from our consultations that there is a degree of disappointment, particularly among police involved in the investigation of rebirthing cases, that the sentences imposed in section 154G cases are not meeting the expectations that have been created, perhaps, by the specification of a 14 year maximum term.

We were told that police are generally of the view that where a section 154G conviction is secured, custodial sentences are not high enough to have a deterrent effect and/or curb the activity of the syndicate. Prosecutors also said that sentences in section 154G cases often seem to not justify the amount of work involved.

There is some frustration on the part of law enforcement officers that sentences are still not reflecting the seriousness of those activities. The 4 year standard non-parole period is seen by some as an inappropriate limitation on Courts' ability to impose appropriate sentences.

Our review of sentencing decisions of the District Court and Court of Criminal Appeal indicates that sentences in section 154G offences ranges from a 2 year intensive corrections order to imprisonment of 6 years with a non-parole period of 3 years. Most sentences are for between 2 and 4 years imprisonment, with non-parole periods between 1 and 3 years.

This is broadly consistent with the following sentencing data, which indicates that the average length of prison terms for offenders sentences for the offence of knowingly facilitating vehicle rebirthing ranges from 1 year and 6 months and 3 years.

		2009	2010	2011	2012	2013	2014	2015	2016	2017	2018*
<b>Knowingly facilitate rebirthing (s. 154G)</b>	<b>Number of offenders - custodial sentences</b>	5	3	1	3	5	1	1	1	7	2
	<b>Average length of prison term (months)</b>	27.2	15.7	30	22.7	18.2	22	30	20	18.1	18.5
<b>Motor vehicle theft offences excluding section 154G</b>	<b>Number of offenders - custodial sentences</b>	33	36	29	39	40	27	39	40	40	41
	<b>Average length of prison term (months)</b>	15.2	13.9	15.1	9.6	14.7	14.9	9.3	10.1	12.1	9.2

Table 2: Number of persons receiving custodial sentences and average length of prison term - facilitating rebirthing and other motor vehicle theft offences (\*2008 = 9 months from January to September): Source NSW Bureau of Crime Statistics and Research

#### 5.4 The attitude of the courts

It is clear that the sentences and non-parole periods fixed by courts, and the sentences actually served are materially below the 14 years maximum specified.

Nevertheless, our review of the reported section 154G decisions suggests that sentencing courts are cognisant of the purpose of the legislature in enacting section 154G and treat involvement in organised vehicle rebirthing as a very serious offence.

This was clearly articulated by the Court of Criminal Appeal in *R v Hamieh*:

"The 2006 amendments involve a specific legislative response to [car rebirthing] with particular emphasis upon the need for deterrence and the imposition of appropriately severe penalties.

The seriousness with which the legislature viewed the new s.154G offence is also apparent from the maximum penalty of 14 years imprisonment as compared with the offence of stealing a motor vehicle, which carries a maximum penalty of 10 years: see s 154F. It should also be noted that the new section provides for a maximum penalty of 14 years for participation in any one step in the process of car rebirthing, thus giving effect to the legislative recognition that each step in the rebirthing process is a requisite and profitable one."<sup>27</sup>

The principles set out in *Hamieh* with respect to section 154G are incorporated into the Criminal Trial Courts Sentencing Bench Book published by the Judicial Commission of New South Wales (**Sentencing Principles**).

Courts are required to apply the Sentencing Principles when fixing sentences and non-parole periods for car rebirthing offences. The Sentencing Principles provide:

- General deterrence is a factor which must be given weight. The intention of creating the offence was to deter involvement in car rebirthing and to "send a clear message to those thinking of being involved in rebirthing activity that the punishment will far outweigh any illegal benefits".
- The creation of a new offence with a maximum penalty greater than the offences which previously caught this type of criminal activity (car stealing under s 154A *Crimes Act 1900*) requires that the sentences imposed for such criminal activity "reflect the legislature's purpose and concerns" resulting in higher sentences.
- Section 154G encompasses a wide range of criminal activity. A court's task is to punish an offender for the actual offending conduct engaged in.

<sup>27</sup> *Regina v Hamieh* [2010] NSWCCA 189 (25 August 2010) at [45] - [46]

- An offender's knowledge of how to source repairable write-off vehicles, how to register those vehicles and then how to substantially rebuild those vehicles with parts from stolen vehicles are all relevant to the assessment of the objective seriousness of the offence. Every step in the rebirthing industry is necessary and interrelated.

It should be noted, however, that the seriousness of vehicle rebirthing was recognised in New South Wales before section 154G cases started to come before the courts. For example, in *Mason v R*, McLellan CJ stated:

"Regrettably this type of illegal enterprise is not uncommon. It inflicts considerable loss on those members of the community whose vehicles are stolen, as well as inflicting loss on any insurer who may have obligations to provide compensation. Being part of a deliberate and organised criminal enterprise, in my view a fulltime custodial sentence was appropriate. Although the applicant was entitled to consideration for his plea of guilty, his prior good character and favourable references, these matters did not displace the need for a sentence which provided both adequate punishment and effective deterrence of others."<sup>28</sup>

In *Sullivan v R* and *Skillin v R*, Howie J stated:

"In my opinion, in light of the seriousness of the criminal conduct of the applicant in being engaged in, what was to all intent and purposes, a business of re-birthing motor vehicles for profit over a significant period of time, the sentences had to be sufficiently severe to reflect denunciation and general deterrence to a very significant degree. Those matters had to take priority in the determination of the sentence over any acknowledgment of the applicant's efforts at reform and his attempt, limited as it was, to compensating the victims of his crimes."<sup>29</sup>

Moreover, courts in jurisdictions where there is no offence specifically directed at vehicle rebirthing still view vehicle rebirthing as a serious offence. In *DPP v Reid*, the Victorian Court of Criminal Appeal confirmed a 4 year sentence and doubled the non-parole period two 3 years for handling and conspiracy offences committed as part of a 'sophisticated professional operation involving the "rebirthing" or 'stripping of cars'.<sup>30</sup> More recently, the Victorian County Court imposed a sentence of 4 years and 6 months on an offender who, over a period of 8 months, operated and organised a criminal racket involving the theft, re-registration and sale of boats and caravans.<sup>31</sup>

## 5.5 Assessing objective seriousness

The Court of Criminal Appeal in *Hamieh* noted that section 156G encompasses a wide range of conduct, and that the High Court has stated: "[w]hen an offence is defined to include any of several categories of conduct, the heinousness of the conduct in a particular case depends not on the statute defining the offence but on the facts of the case."<sup>32</sup> It was therefore necessary for the Court to determine "where in the range of objective seriousness, the respondent's offending lay".

The Court stated:

"Given the use of parts from three stolen vehicles and the resale of one of the vehicles that the respondent rebuilt at a significantly increased price to a person who, presumably, has lost the vehicle due to the respondent's criminal activity and, having regard to the wide range of activities that are caught by the section, we are of the opinion that the objective seriousness of the respondent's offending conduct lies about halfway between the lowest end and the mid-range of objective seriousness."<sup>33</sup>

In its 2012 decision in the appeals of *Tannous*, *Fahda* and *Dib*, the Court of Criminal Appeal identified a number factors of to assist in assessing the varying degrees of responsibility of those involved in car rebirthing activities.

"First, the fact of involvement will, frequently, allow an inference that those involved were cognizant of the overall scope and purpose of the activities, even if their own roles were limited to a particular stage in the process. Secondly, the profit obtained from the activities will be a relevant consideration, if it is capable of being identified. However, as there are likely to be various individuals who will share in the profits, an understanding of how the profits were in fact shared may well not be forthcoming. Thirdly, the time over which the activities were conducted will be a relevant consideration. A brief period of involvement with a small number of vehicles is likely to be less reprehensible than an involvement over a significantly longer period with a larger number of vehicles."<sup>34</sup>

<sup>28</sup> *Mason v R* [2007] NSWCCA 32 at [19]

<sup>29</sup> [2008] NSWCCA 269; 51 MVR 572 at [29]

<sup>30</sup> *DPP v Reid* [2004] VSCA 105

<sup>31</sup> *DPP v Donnelly* [2019] VCC 152

<sup>32</sup> *Ibbs v R* [1987] HCA 46 at [4]

<sup>33</sup> *Hamieh*, at [57]

<sup>34</sup> *R v Tannous; R v Fahda; R v Dib* [2012] NSWCCA 243 (21 November 2012) at [40]

## 5.6 Standard non-parole period

Section 54B(1) and (2) of the *Crimes (Sentencing Procedures) Act 1999* (NSW) requires that, when a court imposes a sentence of imprisonment for certain offences, or an aggregate sentence of imprisonment with respect to one or more such offence, **the standard non-parole period** for an offence is to be taken into account in determining the appropriate sentence (without limiting the matters that are otherwise required or permitted to be taken into account in determining the appropriate sentence).

A standard non-parole period of 4 years is prescribed for the offence in section 154G of the *Crimes Act 1900*. A court must set a non-parole period when sentencing any offender found guilty of the offence under section 154G.<sup>35</sup>

It was suggested to us that the standard non-parole period for knowingly facilitating vehicle rebirthing is too low relative to the maximum sentence of 14 years, and that this may be a factor in offenders receiving what some consider to be unduly light sentences.

The *Sentencing Principles* state that courts must approach the determination of the appropriate sentence both by reference to the maximum penalty of 14 years and to the 4-year standard non-parole period, acknowledging that "it is difficult to reconcile a standard non-parole period of 4 years with the maximum penalty of 14 years imprisonment".

However, a standard non-parole period of 4 years of an offence with a maximum penalty of 14 years is not atypical. For the other offences for which a standard non parole period of 4 years is prescribed, two carry a maximum of 14 years<sup>36</sup>, one a maximum of 10 years<sup>37</sup> and one a maximum of 15 years<sup>38</sup>.

The court must make a record of its reasons for setting a non-parole period that is longer or shorter than the standard non-parole period and must identify in the record of its reasons each factor that it took into account.<sup>39</sup> In sentencing offenders for the section 154G, courts have referred to following factors in their reasons for setting a non-standard non-parole period:

- the number of vehicles involved and the regularity of the activity over a period of time;<sup>40</sup>
- the predatory nature of the behaviour;
- the offender's history of disrespect for lawful authority;<sup>41</sup>
- the consequences for people injured by this sort of behaviour (including the owner who loses their car, the insurers who pay out, the public who indirectly suffer by the increase in premiums);
- the element of risk to the public from the amateur re-assembling of vehicles;<sup>42</sup>
- the considerable planning, enterprise and purpose of conduct engaged in for financial gain; and<sup>43</sup>
- involvement limited to ordering and arranging reregistration of two vehicle, which was at a lower level than that of co-offenders more deeply involved in the organisation of the activities.<sup>44</sup>

## 6. Conclusion

It is clear that legislative measures taken in New South Wales, as well as changes in law enforcement priorities and strategies, have been effective in reducing the incidence of organised vehicle theft and rebirthing.

However, it is not possible to isolate the particular impact of 154G from all the other measures.

Section 154G is nevertheless a useful tool to have available, not only because it catches some offenders who knowingly participate in a vehicle rebirthing activity but who may not be guilty of an any other offence, but also because the investigation and prosecution of a rebirthing entity with the aim of bringing charges under section 154G requires extensive evidence gathering and robust case preparation which is likely to secure guilty pleas, if not to section 154G, to a range of other offences.

<sup>35</sup> *Daniel Forbes v R* [2009] NSWCCA 292, per Hidden J at [4]

<sup>36</sup> *Crimes Act 1900*, s. 35 (2)(reckless causing of grievous bodily harm); *Firearms Act 1996* s. 7 (unauthorised possession or use of firearms)

<sup>37</sup> *Crimes Act 1900*, s. 35(3) (reckless wounding in company)

<sup>38</sup> *Crimes Act 1900* s. 66EB(3) (groom a child 14–16 years for unlawful sexual activity)

<sup>39</sup> *Crimes (Sentencing Procedures) Act 1999*, s. 54B(3)

<sup>40</sup> *Bakkour, Javelosa, El-Skaf and Hello* [2009] NSWDC 405, per Cogswell SC DCJ at [18]

<sup>41</sup> *Regina v Hammieh* [2010] NSWCCA 189, per Beazley JA, Kirby J, Johnson at [37]

<sup>42</sup> *Bakkour, Javelosa, El-Skaf and Hello* [2009] NSWDC 405, per Cogswell SC DCJ at [14] to [16]

<sup>43</sup> *Regina v Hammieh* [2010] NSWCCA 189, per Beazley JA, Kirby J, Johnson at [37]

<sup>44</sup> *Hello v R, El-Skaf v R, Bakkour v R, Hosainy v R* [2010] NSWCCA 211, per Latham j at [57]

While sentences being imposed in section 154G cases may appear, given the 14 year maximum penalty, not to reflect the seriousness with which the New South Wales Parliament has repeatedly stated that it views vehicle rebirthing, the Court of Criminal Appeal and the District Court clearly do regard such conduct as serious, and conscientiously assess the gravity of the offending when applying the standard non-parole period of four years.

We have considered whether further legislative change should be made to address the two concerns raised with us about the operation of section 154, that is, the difficulty of proving knowledge and the length of sentences being imposed as a consequence of the standard non-parole period. However, we make no recommendations for amendment or further offences.

We conclude that section 154G is a useful weapon in the fight against organised motor vehicle theft, that it is being used to secure convictions and reasonable sentences in vehicle rebirthing cases, and that it has been effective in achieving its stated purpose.

## Acknowledgements

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## Appendix - Summary of sentencing decisions (trial and appellate) in section 154 cases

Offender	Reference	Proceeding / charge	Considerations / circumstances	Sentence
Forbes	R v Forbes 7 November 2008	Guilty plea 1 x rebirthing - boat (s. 154G). Also aggravated break and enter, larceny, malicious damage, receiving	Aggregate sentence for all offences 6 years 11 months (NPP 3 years 7 months)	2 years imprisonment  No Non parole period ( <b>NPP</b> )
	Daniel Forbes v R [2009] NSWCCA 292	Appeal against sentence	CCA said trial judge should have set NPP. Appeal on other counts dismissed.	NPP fixed at 18 months, with 6 months balance of term ( <b>BoT</b> )
Bakkour Javelosa / Hosainy El-Skaf Hello	R v Bakkour 20 November 2009 [2009] NSWDC 405	Guilty plea 1 x rebirthing (s. 154G)	Evidence showed organised theft and rebirthing of 20 vehicles over several months. Conduct above the mid-range.	4 years 6 months (NPP 2 years 6 months)
	R v Javelosa 20 November 2009 [2009] NSWDC 405	Guilty plea 1 x rebirthing (s. 154G)	Evidence showed organised theft of 18 vehicles over several months. Conduct above the mid-range	5 years (NPP 3 years 6 months)
	R v El-Skaf 24 November 2009 [2009] NSWDC 406	Guilty plea 1 x rebirthing (s. 154G)	Evidence showed dismantled 7 cars. Number of cars involved put the conduct at the lower end of the mid-range of seriousness	5 years (NPP 2 years 6 months) BoT 2 years 6 months
	R v Hello 24 November 2009 [2009] NSWDC 406	Guilty plea 1 x rebirthing (s. 154G)	Involved in ordering and registration of 2 vehicles. Number of cars at the lower-mid range	4 years and 6 months (NPP 2 years 6 months)
	Bakkour v R, Hosainy v R El-Skaf v R, Hello v R 15 December 2010 [2010] NSWCCA 311	Appeal against sentence	Objective gravity of conduct Hello's conduct could not be reconciled with the assessment of gravity of the other defendants.	Bakkour, Hosainy, El Skaf - appeals dismissed. Hello: sentence quashed, new NPP of 2 years fixed (BoT 17 months)
Hammieh	R v Hammieh 6 May 2010	Guilty plea 1 x rebirthing (s. 154G)		2 years imprisonment NPP 12 months, to be served by periodic detention.
	R v Hammieh [2010] NSWCCA 189 5 July 2010	Crown appeal against sentence	Evidence showed offender rebirthed two stolen vehicles, but not that he stole them or sourced or paid for parts. The conduct involved planning, enterprise and purpose, and was done deliberately for financial	Sentence quashed. New sentence of 3 years New NPP of 2 years fixed, to be served by imprisonment.

Offender	Reference	Proceeding / charge	Considerations / circumstances	Sentence
			gain.	
Tannous Fahda Dib	R v Tannous 27 January 2012	Guilty plea 1 x rebirthing (s. 154G) 1 x participation in criminal group		19 months, to be served by intensive correction order
	R v Fahda 27 January 2012	Guilty plea 1 x rebirthing (s. 154G)		20 months, to be served by intensive correction order
	R v Dib 23 Feb 2012	Guilty plea 1 x rebirthing (s. 154G)		20 months, to be served by intensive correction order
	Rv Tannous, R v Fahda, R v Dib 21 November 2012 [2012] NSWCCA 243	Crown appeal against sentence		Tannous - increased to two years 3 months (NPP 18 months) Fahda - increased to 2 years 8 months (NPP 20 months) Dib - increased to 2 years 8 months (NPP 20 months)
R v Haouchar (Trial)	R v Haouchar 11 October 2013	Guilty plea 1 x rebirthing (s. 154G) 2 x deal with proceeds of crime taken into account		2 years 6 months imprisonment (NPP 1 year 3 months)
	Haouchar v R 3 October 2014 Court of Criminal Appeal [2014] NSWCCA 227	Appeal against sentence		Leave to appeal refused
El-Afchal	R v El-Afchal 21 November 2014	Guilty plea 1 x rebirthing (s. 154G) (also 1 x receiving and 1 x possession of prohibited weapon)	Offender on bail when offences committed	Indicative sentence for rebirthing offence 3 years and 2 months
	El-Afchal v R 25 May 2015 [2015] NSWCCA 112	Appeal against sentence and in relation to date for commencement of sentence		Appeal allowed in relation to date of commencement of sentence, but otherwise dismissed
Eid	R v Zacharigh Eid 7 April 2017 [2017] NSWDC 76	Guilty plea 1 x Rebirthing (s. 154G)		2 years 3 months imprisonment (NPP 1 year 2 months)
Shivneil	R v Shivneil Reddy 7 April 2017	Guilty plea 1 x rebirthing (s. 154G)		2 years 3 months imprisonment (NPP 1 year 2 months)

Offender	Reference	Proceeding / charge	Considerations / circumstances	Sentence
	[2017] NSWDC 75			
Salameh	R v Shadi Salameh 8 June 2017 [2017] NSWDC 138	Guilty plea 2 x rebirthing (s. 154G) 1 x recklessly deal with proceeds of crime		Aggregate sentence of 6 years NPP 3 years 3 months BoT 2 years 9 months
Alfar	R v Attallah Alfar 4 August 2017 [2017] NSWDC 280	Guilty plea 1 x conspiracy (to disposal of property stolen for the purpose of rebirthing)		Imprisonment for 5 years 11 months NPP 3 years BoT 2 years 11 months
El-Khoury	12 October 2018 [2018] NSWDC 455	Guilty plea 1 x rebirthing (s. 154G) 2 x Dealing with proceeds of crime	Offender did not engage in car rebirthing activities in the sense of sourcing, stealing, altering or on-selling, but facilitated by allowing such steps to undertaken in premises provided by her	Aggregate sentence of 2 years, served by way of intensive correction order
Mohammed Ghazzaoui Ahmed Ghazzaoui Obeid	R v Obeid 30 April 2019 [2019] NSWDC 204	Guilty plea 1 x rebirthing (s. 154G, boat) and other offences	Facilitated rebirthing of one jet ski and attempted to facilitate rebirthing of two. Offence less serious than that of co-offenders, falling someway along the scale between the low end and mid- range of objective gravity,	Aggregate sentence of 2 years 4 months, served by way of intensive correction order

