

2023

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
REPORT 13**

**INQUIRY INTO ROAD SAFETY AND CRIMES LEGISLATION
AMENDMENT BILLS 2022
GOVERNMENT RESPONSE**

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Introduction

Road Safety Legislation Amendment Bill 2022

The ACT Government is committed to reducing serious and fatal crashes on ACT roads and progressing towards 'Vision Zero', by targeting zero deaths and serious injuries on our roads.

In 2022, the ACT tragically lost 18 lives on Canberra roads, which was the highest death toll recorded in the ACT in over a decade. Dangerous driving contributed to this increased road toll in the ACT last year. The purpose of the *Road Safety Legislation Amendment Bill 2022* (the Road Safety Bill) is to amend road transport legislation to improve road safety by providing enhanced penalties to deter dangerous driving behaviours and strengthen the reporting and monitoring of driver licence holders' fitness to drive.

The Road Safety Bill enhances the penalty framework in the road transport legislation to target dangerous driving in four main areas, being:

1. high-range speeding;
2. street racing, attempts on speed records, speed trials and other hooning behaviours;
3. furious, reckless, and dangerous driving; and,
4. drug driving.

The Road Safety Bill seeks to address these behaviours by strengthening Police and Court sanctions. It does this by expanding the list of serious road transport offences which are subject to licence suspensions and disqualification, vehicle seizure and impoundment, and increased penalties.

The Road Safety Bill also introducing a regulation making power which may require health practitioners to report information relating to a person's fitness to drive to the road transport authority (RTA), and allows the RTA to share information relating to an interstate licence holder's fitness to drive with the issuing interstate licensing authority. This amendment addresses recommendations from the Coronial Inquiry into the death of Blake Corney.

The Government thanks the Committee for its inquiry and for recommending the Road Safety Bill be passed by the Assembly.

Crimes Legislation Amendment Bill 2022

The Crimes Legislation Amendment Bill 2022 (Crimes Bill) makes changes to various Acts to improve the operation of the criminal justice system in the ACT, including the creation of a new offence of unauthorised entry of a motor vehicle. A person commits the offence if: they enter a motor vehicle; and the vehicle belongs to some else; and the person does not have consent to enter the vehicle from a person to whom the vehicle belongs. The maximum penalty for the offence is 10 penalty units. The offence will not capture unauthorised entry of a motor vehicle where the person has a legitimate reason for entering, for example, where they are breaking into the vehicle to assist a child or animal that is trapped in the vehicle.

The offence was proposed after it was determined that DNA evidence of a person having been in a stolen car was insufficient to establish that the person had in fact stolen the car. It was evident that there was still a need to recognise the criminal culpability of entering a car without authorisation. This is a lower-level offence intended to address conduct which in and of itself is a violation of

another' person's property and in many cases, their private and personal space. It is important that ACT Policing are able to respond to the conduct of unauthorised entry.

On 23 November 2022, the Attorney-General introduced the Crimes Bill into the Legislative Assembly. On 29 November 2022, the Standing Committee on Justice and Community Safety announced its inquiry into the Crimes Legislation Amendment Bill 2022 and the Road Safety Legislation Amendment Bill 2022.

The Crimes Bill makes several amendments including creating a new offence of unauthorised entry of a motor vehicle. The Committee inquired only into this aspect of the Crimes Bill. The Committee published their report on 22 February 2022, making two recommendations with respect to the Crimes Bill (recommendations 6 and 7).

Recommendations and Government Response

Recommendation 1: *The Committee recommends that the ACT Government explore information sharing arrangements to the ACT road transport authority (RTA) from interstate governments of heavy vehicle drivers on disclosures of medical problems.*

Government Response: **Agreed**

The ACT Government agrees to the recommendation and will explore information sharing arrangements to the ACT road transport authority (RTA) from interstate governments of heavy vehicle drivers on disclosures of medical conditions which affect their fitness to drive. Transport Canberra and City Services will write to the respective jurisdictional road transport authorities and investigate if notifications concerning a known medical condition affecting an ACT heavy vehicle licence holder's fitness to drive can be shared with the ACT road transport authority, where this is not already being provided. The Committee's recommendation seeks to strengthen the existing proposal for mandatory reporting by health practitioners in the interests of road safety.

Exchanging relevant driver and vehicle licensing information between jurisdictions is a well-established initiative to benefit road safety, to prevent fraud and theft and to achieve cross border efficiencies. However, sharing health related information by driver licensing authorities is not as standardised, particularly as the information is subject to more stringent commonwealth and state privacy laws and policies, and the risk to public safety may not be sufficiently evident in each case.

While reporting by health practitioners to the road transport authority is not mandatory in all Australian jurisdictions, including NSW, concerned health practitioners may voluntarily report in some circumstances. For example, a report can be made online by a NSW's health practitioner to the NSW road transport authority using their practice management system or the HealthLink portal. Health practitioners that make a notification without the patient's consent, but in good faith, are protected from civil and criminal liability.¹ NSW health practitioners can also voluntary report concerns about a patient's fitness to drive to the ACT RTA.

No matter where in Australia the registered health practitioner is located, they must uphold similar professional standards and will have an obligation to public safety². The Health Practitioner Regulation National Law seeks to uphold professional standards uniformly across Australia. Further, part of the primary purpose of the nationally endorsed *Assessing Fitness to Drive*, is to assist health professionals to 'assess the fitness to drive of their patients in a consistent and appropriate manner based on current medical evidence'³.

The holder of an ACT driver licence who suffers any permanent or long-term illness, injury or incapacity that may impair his or her ability to drive safely must tell the ACT RTA as soon as practicable (but within 7 days). A driver that does not comply commits an offence under the *Road Transport (Driver Licensing) Regulation 2000* that has a \$208 infringement penalty or maximum

¹ *Road Transport Act 2013 No 18* (NSW) s 275; see also Transport for NSW, *Assessing fitness to drive (for medical professionals)* (Web page) <<https://www.nsw.gov.au/driving-boating-and-transport/driver-and-rider-licences/health-conditions-and-disability/health-professionals/fitness-to-drive>>.

² Austroads. *Frequently Asked Questions, see Will your doctor notify the Driver Licensing Authority if you are not well enough to drive?* (Web page) <<https://austroads.com.au/drivers-and-vehicles/assessing-fitness-to-drive/for-private-vehicle-drivers/frequently-asked-questions>>.

³ Austroads. *Assessing fitness to drive for commercial and private vehicle drivers (2022 edition)* 2 (Report) <https://austroads.com.au/data/assets/pdf_file/0037/498691/AP-G56-22_Assessing_Fitness_Drive.pdf>

penalty of \$3200.⁴ Further, applicants for an ACT licence must declare any relevant medical conditions at the time of application, it is an offence to knowingly make a false or misleading statement.⁵

The proposal for mandatory reporting by health practitioners will also be supported by other heavy vehicle road safety initiatives in the ACT. Since February 2022, all applicants applying for an ACT heavy vehicle licence (medium rigid and above) must complete a commercial health assessment to ensure they meet the required medical standards to drive safely. This means all applicants transferring from interstate, and existing ACT licence holders upgrading to a high licence class (for example, upgrading from a medium rigid licence to a heavy vehicle licence), are required to complete a commercial health assessment.

The ACT Government is also considering introducing regular periodic commercial medical assessments for heavy vehicle licence holders (medium rigid and above) in the second half of 2023. If introduced, it will complement the proposed amendment in the Bill to identify medical conditions that may impact safe driving ability and ensure medical conditions can be appropriately managed.

Recommendation 2: *The Committee recommends that the ACT Government continue to explore how oral fluid drug testing can be improved so as to correctly demonstrate driving incapacity.*

Government Response: **Agreed**

The *ACT Road Safety Action Plan 2020-2023* commits to exploring measures that are appropriate to the ACT which will deter drink and drug driving and a robust enforcement framework that applies penalties commensurate with the associated road safety risks being addressed and supports behavioural change. Under this plan, the ACT Government is committed to:

- Review and assess the effectiveness of the Territory's drink and drug driving scheme against best practice models including to consult with experts and the community on the effectiveness of the scheme and potential reforms.
- Explore measures that are appropriate for the ACT, which will deter drink and drug driving.

To date, no major international or technological developments have been able to categorically establish a direct causal link between specific levels of drugs and impairment which can be consistently applied across the population. This is different than alcohol, where there has long been an agreed position on the levels at which alcohol impairs one's driving ability and significant education exists about standard drinks and alcohol concentration levels.

While international research into the linkages between driving impairment, specific drugs and usage levels, is currently limited, there is research that demonstrates that consumption generally impairs cognitive abilities, and therefore impacts road safety. While no suitable technology is currently available that measures different levels of impairment for various substances, the ACT Government is committed to continuing to monitor best practice research, explore opportunities for specific research projects to be undertaken on this work, and ensure that relevant regulations are reviewed against international best practice.

In October 2018, the Transport and Infrastructure Senior Officials' Committee endorsed the National Drug Driving Working Group report - *Australia's Second Generational Approach to Roadside Drug Testing*. The report found that Australia is the world leader in drug driving enforcement and

⁴ *Road Transport (Driver Licensing) Regulation 2000* s 77(2).

⁵ *Criminal Code 2002* s 337.

deterrence. The report considers strategies to guide our future approach to reducing drug driving on Australian roads and proposes recommendations for jurisdictions to consider in working towards a national best practice model of roadside drug testing and general deterrence. The ACT Government will continue to monitor developments in this space and represent the ACT on the National Road Safety Drug Driving Working Group, in our commitment to a best practice drink and drug driving regulatory regime.

Recommendation 3: *The Committee recommends that the ACT Government explore additional provision of the Karralika drink and drug driving program (REVERSED) both in the Alexander Maconachie Centre and in the community.*

Government Response: Agree in Principle

In November 2010, the ACT Legislative Assembly passed the *Road Transport (Alcohol and Drugs) Legislation Amendment Act 2010*, which included a range of drink and drug driving reforms. As part of these reforms, from 25 November 2011, completion of an Alcohol and Drug Awareness Course (ADAC) became mandatory for people convicted of a drink or drug driving offence, who wished to apply to the Road Transport Authority (RTA) for a restricted or probationary licence.

To cater for the needs of different offenders, two types of course were approved by the RTA for offenders in the ACT:

- an educational awareness course (the ‘standard course’) for low range first time drink driving offenders (2 hours over one session) and for all first time drug driving offenders; and
- a combined educational and therapeutic awareness course (the ‘extended course’) for mid to high range DUI offenders and repeat offenders (6 hours over two sessions).

The primary objectives of the ADAC are:

1. to raise awareness of the effects of alcohol and drugs on driving and health; and
2. to reduce the rates of drink and/or drug driving in the ACT.

Providers are approved via the Road Transport (Driver Licensing) Alcohol and Drug Awareness Course Approval 2018 (No 1) NI2018-613. There are currently two approved providers of the ADAC program: Ascent Training Services is approved to provide both the standard and extended courses; Karralika is only approved to provide the extended course.

The ADAC program was evaluated in 2017 by the University of Adelaide, Centre for Automotive Safety Research, and recommendations for content and delivery approaches were shared with the providers. This evaluation produced two reports, report one focussed on the effect of the courses on knowledge, attitudes, and drink/drug driving offences. The second report focussed on the performance of the course providers, and adaptations were made by the providers in response to the recommendations.

Both providers were found to deliver varying content though each address the mandatory requirements of:

- For a low range and first time offender (standard) course:
 - An education component that raises participants awareness about:
 - Myths and facts about alcohol and other drugs;
 - How alcohol and other drugs affect driving performance and safety;
 - How alcohol and other drugs affect health;

- Legal and personal consequences of an impaired driving conviction; and
 - Strategies to avoid drinking and driving.
- For a mid-high range and repeat offender (extended) course:
 - An education component, as in the standard course; and
 - A therapeutic component that assists participants in:
 - Learning about why people drink or use drugs and how it can affect a person's life;
 - Learning about their alcohol and drug use and its consequences;
 - Taking responsibility for their alcohol and drug use and its consequences;
 - Committing to reducing or stopping problem use of alcohol and drugs; and,
 - Planning to avoid relapses and how to access additional support.

Transport Canberra and City Services intend to review the ADAC program in 2023/24 to ensure it continues to deliver on its intended objectives and meets the needs of the community. As part of this review, TCCS will explore options to increase awareness of the program and consideration will be given to the targeted delivery of the program to higher risk drivers, including in settings such as correctional facilities.

Recommendation 4: *The Committee recommends that the Assembly pass the Road Safety Legislation Amendment Bill 2022.*

Government response: **Noted**

The Government welcomes the Committee's recommendation to pass the Road Safety Legislation Amendment Bill 2022 and thanks the Committee for their consideration of the Road Safety Bill.

Recommendation 5: *The Committee recommends that the ACT Government collect adequate data on the implementation of the measures in the Road Safety Legislation Amendment Bill 2022 and conduct an independent review after two years from commencement to ensure that vulnerable groups are not being adversely impacted by the reform.*

Government Response: **Agree in Principle**

The Government agrees in principle to this recommendation. Routine monitoring of the implementation of new offences is a part of the ordinary course of law reform in the ACT. The Government will consider and address any concerns about unintended impacts raised by stakeholders in relation to new offences as these offences are implemented. However, without evidence to support the need for a specific review at a specific time (such as evidence that the offence is likely to adversely impact vulnerable groups) it is difficult to justify such a focus on this new offence as is proposed in Recommendation 5.

The ACT Government has a number of processes in place to ensure that unintended consequences (such as disproportionate impact on vulnerable people) are brought to the attention of the Government.

- a) When developing a new offence or any legislative amendment proposal, the Government consults extensively with all relevant stakeholders. In developing the proposed new dangerous driving offences and mandatory reporting of medical conditions, the Government

consulted with (among others): the ACT Human Rights Commission, ACT Policing, Australian Federal Police Association, Director of Public Prosecutions, and a variety of other ACT Government agencies.

- b) The Government fosters ongoing dialogue with these and other stakeholders, welcoming feedback from them at any time on a range of issues. The Government considers all such feedback carefully and where appropriate, addresses issues in a timely way.
- c) The Government has established structures and entities whose role it is, among other things, to bring concerns with the operation of ACT legislation to the attention of the Government. Entities that may be particularly relevant to identify any unintended impacts of a new offence include the ACT Human Rights Commission, ACT Policing, professional legal bodies such as the Law Society and ACT Bar Association, Legal Aid ACT, the ACT Children and Young People Commissioner, and the ACT Ombudsman.
- d) Data is collected about offender and alleged offender characteristics through ACT Policing, the ACT Courts and Tribunal and the ACT Sentencing Database. Data collected includes the number of people charged/sentenced for a particular offence and the age and gender of these people and whether or not they are Aboriginal or Torres Strait Islander people. This data is used, together with information provided by stakeholders and relevant ACT entities, to determine whether disproportionate impacts flow from a new offence or other legislative amendment.

The above approach ensures that resources are allocated toward an examination of the impacts of new legislation where there is evidence that such an examination is needed, rather than reviewing all new legislation as a matter of course, which is resource intensive and may not be necessary.

It is worth noting still that the Road Safety Bill considered means to not unduly impact vulnerable groups and acknowledges that certain penalties such as imprisonment, immediate suspension notices and licence disqualifications can have less favourable outcomes for vulnerable groups. Any limitations on a person's human rights is considered reasonable, justified and there are no other less restrictive means to achieve the Road Safety Bill's purpose to protect the public and improve road safety.

The amendments in the Road Safety Bill were designed to deter dangerous driving offenders. Dangerous driving offences are often committed by a small sub-section of high-risk, often recidivist, offenders. The penalties in the Road Safety Bill were introduced to deter other people in the community from committing similar offences and ensure that offenders are adequately punished for the offence in a way that is just and appropriate.

Due to the severity of some of these offences the 2-year timeframe may not be long enough to capture meaningful data as it takes time for matters to be heard in court. However, the ACT Government will continue to monitor these impacts and work with relevant entities to understand the impacts the increased penalties may have, and to address any inequalities that may arise as a result.

Recommendation 6: *The Committee recommends that the Assembly pass the Crimes Legislation Amendment Bill 2022.*

Government Response: **Noted**

The Government welcomes the Committee's recommendation to pass the Crimes Legislation Amendment Bill 2022 and thanks the Committee for their consideration of the Crimes Bill.

Recommendation 7: *The Committee recommends that the ACT Government collect adequate data on the implementation of the offence in the Crimes Legislation Amendment Bill 2022 in relation to a person entering a vehicle belonging to someone else without consent of the owner of the vehicle and consult and conduct a review after two years after commencement to ensure vulnerable groups are not being adversely impacted by the reform.*

Government Response: Agree in Principle

The Government agrees in principle to this recommendation. Routine monitoring of the implementation of new offences is a part of the ordinary course of law reform in the ACT. The Government will consider and address any concerns about unintended impacts raised by stakeholders in relation to new offences as these offences are implemented. However, without evidence to support the need for a specific review at a specific time (such as evidence that the offence is likely to adversely impact vulnerable groups) it is difficult to justify such a focus on this new offence as is proposed in Recommendation 7.

The ACT Government has a number of processes in place to ensure that unintended consequences (such as disproportionate impact on vulnerable people) are brought to the attention of the Government.

- a) When developing a new offence or any legislative amendment proposal, the Government consults extensively with all relevant stakeholders. In developing the proposed new offence of unauthorised entry of a motor vehicle, the Government consulted with (among others): Legal Aid ACT, the ACT Human Rights Commission, the Aboriginal Legal Service NSW/ACT, Civil Liberties Australia, the Office for Children Youth and Family Support, Winnunga Nimmityjah Aboriginal Health Service and the ACT Ombudsman.
- b) The Government fosters ongoing dialogue with these and other stakeholders, welcoming feedback from them at any time on a range of issues. The Government considers all such feedback carefully and where appropriate, addresses issues in a timely way.
- c) The ACT Government has established structures and entities whose role it is, among other things, to bring concerns with the operation of ACT legislation to the attention of the Government. Entities that may be particularly relevant to identify any unintended impacts of a new offence include the ACT Human Rights Commission, ACT Policing, professional legal bodies such as the Law Society and ACT Bar Association, Legal Aid ACT, the ACT Children and Young People Commissioner, and the ACT Ombudsman.
- d) Data is collected about offender and alleged offender characteristics through ACT Policing, the ACT Courts and Tribunal and the ACT Sentencing Database. Data collected includes the number of people charged/sentenced for a particular offence and the age and gender of these people and whether or not they are Indigenous or Torres Strait Islander people. This data is used, together with information provided by stakeholders and relevant ACT entities, to determine whether disproportionate impacts flow from a new offence or other legislative amendment.
- e) The above approach ensures that resources are allocated toward an examination of the impacts of new legislation where there is evidence that such an examination is needed, rather than reviewing all new legislation as a matter of course, which is resource intensive and may not be necessary.

Prompted by the Committee recommendation and the comments provided by Legal Aid ACT as part of the Inquiry, the Government has considered available data on the apprehension of offenders for

similar offences to the new trespass offence, to interrogate whether the data does point to a likely disproportionate impact for children and young people. The data obtained indicates that since 2013 (last 10 years), significantly less young people than adults have been charged with the offences of trespass and motor vehicle theft. For example, in 2022, 23 juveniles and 107 adults were charged with trespass. Also in 2022, 61 juveniles and 167 adults were charged with stealing a motor vehicle.

These 2 offences are the most comparable to the proposed new minor offence of unauthorised entry of a motor vehicle, indicating that it is very unlikely that this new offence will disproportionately affect young people as it will very likely be predominantly adults who are charged with this new offence. The results are similar in respect of the offences of minor theft (79 juveniles; 250 adults) and minor property damage (42 juveniles; 297 adults). These statistics do not tend to indicate a high likelihood that children and young people will be disproportionately charged or prosecuted with the new offence of trespass in a motor vehicle, although the Government will monitor for any unexpected impacts on children and young people in the ordinary course of implementing the introduction of the offence.