



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

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Submission Cover Sheet

Inquiry into Dangerous Driving

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AFPA

Australian Federal
Police Association

Inquiry into Dangerous Driving

Standing Committee on Justice and Community Safety

Submission by the Australian Federal Police Association

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Acknowledgments

The Australian Federal Police Association (**AFPA**) welcomes the opportunity to make a submission to the *Inquiry into Dangerous Driving*, announced on 4 August 2022.

We thank the Standing Committee on Justice and Community Safety for their time in reviewing this submission, and for the opportunity to furnish our views and the views of the AFPA membership.

The AFPA provides permission for Standing Committee on Justice and Community Safety to republish this submission in full and without redactions.

Overview of the AFPA

The AFPA is a registered organisation and an autonomous sub-branch of the Police Federation of Australia. The AFPA represents the industrial, political, and professional interests of members of the Australian Federal Police (**AFP**) and ACT Policing (**ACTP**), law enforcement officials in the Australian Criminal Intelligence Commission, and members of the Department of Parliamentary Services.

Our members provide an essential service to Australia and the Australian Capital Territory (**ACT**). They are the backbone of the ACT and the Commonwealth's principal law enforcement agency, performing crucial investigative, intelligence and national security functions.

The AFP is responsible for:

- providing community policing services to the Australian Capital Territory and other territories, including Christmas Island, Cocos (Keeling) Islands, Norfolk Island and Jervis Bay,
- enforcing Commonwealth laws that combat complex, transnational, serious and organised crime, child exploitation, fraud, corruption, and cybercrime,
- protecting Australians and Australian interests from terrorism and violent extremism,
- removing illegally obtained assets and property from criminals,
- protecting Commonwealth infrastructures such as designated airports, Parliament House, and embassies,
- protecting domestic and foreign dignitaries, including the Governor-General, Prime Minister, and ambassadors,
- protecting at-risk individuals,
- representing Australian policing and law enforcement at an international level, and
- developing unique capabilities and employing advanced technology to support Australia's national interests.

Recommendations

- That the ACT Government introduce road transport legislation to allow police to immediately suspend the licence of a person who has been taken into custody for a drug-detecting blood test. The suspension is to remain in place until the test results are known.
- That consideration is given to a dedicated and funded position within ACT Health for taking blood samples at The Canberra Hospital, alleviating the requirement for on-duty doctors, nurses, or on-call Forensic Medical Officers to perform these duties to the detriment of other patients.
- That the *Road Transport (Alcohol and Drugs) Act 1977*'s maximum penalty of 30 penalty units is amended to include a court-determined licence suspension upon conviction if the person fails to provide a blood sample.
- That the ACT Government expand the Karralika REVERSED Driver Education Program and implement additional funding for this program.
- Explore a payment model for the Karralika REVERSED Driver Education Program where disadvantaged participants may receive a subsidy to ensure participation and compliance.
- That the Standing Committee on Justice and Community Safety and ACT Government scope and explore the Road Safety Education, RYDA program, and the Karralika REVERSED program for possible implementation in ACT schools. This scope should include additional funding and resources for partner agencies.
- That the ACT Government develop an intensive and extensive public education program focusing on dangerous driving behaviours. This campaign should be built into long-term strategies such as the ACT Road Safety Plan 2020-2023.
- That legislation is implemented to allow police to seize a vehicle for excessive speed (45+km/h), along with a discretionary power issuing an immediate suspension notice to the vehicle's driver at the time of the offence.
- That *section 5A - Races, attempts on speed records, speed trials etc* of the *Road Transport (Safety and Traffic Management) Act 1999* is amended to include a term of imprisonment for the courts to consider upon conviction of the offence.
- That additional penalties be introduced for recidivist offenders committing offences against *section 5A - Races, attempts on speed records, speed trials etc* of the *Road Transport (Safety and Traffic Management) Act 1999* in alignment with other states and territories.
- That the merging of *section 5* and *section 7* of the *Road Transport (Safety and Traffic Management) Act 1999* is considered, in order to create one offence covering street racing and furious, reckless, or dangerous driving.

Recommendations

- That the *Road Transport (Safety and Traffic Management) Act 1999*, sections 10B, 10BA and 10C is amended to allow the courts and police to seize a motor vehicle for excessive speeding and furious, reckless, or dangerous driving.
- That legislation is introduced to allow the ACT Government to request that police locate and seize a vehicle for up to 90 days, for multiple offences of excessive speeding detected by ACT Government speed detection devices and mobile speed detection vans.
- That funding arrangements be made via the ACT Government for re-introducing the Trauma Support and Counselling Service provided by SupportLink.
- That an independent review is undertaken into sentencing and bail in the ACT.
- That legislation is introduced allowing the courts to impound a vehicle for any offence that used the vehicle in the commission of the offence.



Image attributed to ACT Policing

Introduction

The AFPA supports an inquiry into dangerous driving in the Australian Capital Territory (ACT) and believes that it would contribute to road safety in the ACT, along with providing direction and information for essential policies such as the ACT Road Safety Plan 2020-2023¹ and the ACT Road Safety Strategy 2020-2025².

Dangerous driving behaviour is one of the most common contributors to road traffic collisions. This submission will focus on several triggers leading to dangerous driving.

Drug Driving

Drug driving in the ACT significantly impacts road safety and contributes to dangerous driving behaviour. While the AFPA acknowledges that drug driving is a traffic offence in the ACT and will remain so, we envisage that the movement towards decriminalisation of illicit substances such as heroin, magic mushroom, and cocaine will make the roads in the ACT more dangerous.

Under the current testing regime, ACT Policing cannot roadside test drivers who may be driving under the influence of illicit substances described in the *Drugs of Dependence (Personal Use) Amendment Bill*. ACT Policing can only test for methylenedioxymethamphetamine (MDMA), cannabis and methamphetamine (ice). There seems to be little consideration from the ACT Government to the impact these behaviours will have on dangerous driving, and how drug-testing drivers will actually be managed in the ACT after the bill is passed.

At present, and with the introduction of the *Drugs of Dependence (Personal Use) Amendment Bill*, ACT Policing does not and will not have the authority to remove people driving on ACT roads if they suspect the person to be driving under the influence of heroin or cocaine. Police will and do have the power to take the person into custody for a blood test but cannot stop the person from driving once released from custody.

The AFPA believes that legislation needs to be introduced to allow a police officer to temporarily and immediately suspend a driver's licence if that person is taken into custody for the purposes of a blood test. The licence suspension would be in place until the blood test analysis was completed.

Of significance, with respect to this legislative need, is that the drug-driving blood testing regime will impact an already overburdened health system.

Under current legislation, if the driver of a motor vehicle is involved in a collision and conveyed to a hospital, or a police officer otherwise randomly pulls a driver over for testing; the driver may be required to participate in an oral fluid (saliva) test to check whether they have driven a motor vehicle under the influence of a prohibited drug.

If the roadside test conducted by the police officer yields a positive result, the person is taken into custody and required to take a further test in the form of an oral fluid analysis to test for drugs. It is considered an offence to refuse to undergo testing.

¹ https://justice.act.gov.au/sites/default/files/2020-09/ACT%20Road%20Safety%20Action%20Plan%202020-2023_New.pdf

² https://www.cityservices.act.gov.au/__data/assets/pdf_file/0004/1686307/ACT-Road-Safety-Strategy-2020-2025_New.pdf

Alternatively, the police officer may require a driver to undergo a blood test in the ACT by giving a blood sample for analysis. A police officer can direct the driver to provide a blood sample for analysis in the following circumstances:

- if the driver cannot provide oral fluid because they have suffered an injury, or it would otherwise be dangerous to their health;
- if an oral fluid analysis device is not available or not working; or
- if the driver cannot give a sufficient sample for oral fluid analysis.

The *Road Transport (Alcohol and Drugs) Act 1977* has stringent legislation for how a blood sample can be taken. The police officer must organise for the driver to be taken to a hospital or sampling facility for the sample to be taken unless the person is already in a hospital. A blood sample must not be taken if two (2) hours have elapsed:

- since the accident, or
- since the person drove the car, or
- since the person arrived at the hospital.

A doctor or a nurse must take the blood sample within two hours of the person arriving in the hospital, or 6 hours if the person is conveyed to the hospital by ambulance in the presence of a police officer.

This places pressure on the doctor or nurse to obtain the sample, especially during peak times when the hospital is servicing sick patients. An on-call Forensic Medical Officer (FMO) can be utilised for a blood sample, but this can be restrictive due to time, cost and the priorities of the FMO.

The sample is taken and then analysed by the ACT Government Analytical Laboratory (ACTGAL), and the driver may immediately return to their vehicle and continue driving. This is problematic as the ACTGAL analysis may take days

As per the *Road Transport (Alcohol and Drugs) Act 1977*, it is an offence if someone refuses to undergo a blood test in the ACT. The maximum penalty for this offence is a fine of 30 penalty units (\$4800). However, someone can refuse to give a blood sample for moral, medical, or religious reasons. The AFPA would recommend that anyone that fails to produce a blood sample has their driver's licence immediately suspended until the matter is determined in court – where the matter would be prosecuted as a suspected 'positive' analysis (with the onus on the alleged offender to prove otherwise).

Recommendations

- That the ACT Government introduce road transport legislation to allow police to immediately suspend the licence of a person who has been taken into custody for a drug-detecting blood test. The suspension is to remain in place until the test results are known.
- That consideration is given to a dedicated and funded position within ACT Health for taking blood samples at The Canberra Hospital, alleviating the requirement for on-duty doctors, nurses, or on-call Forensic Medical Officers to perform these duties to the detriment of other patients.
- That the *Road Transport (Alcohol and Drugs) Act 1977*'s maximum penalty of 30 penalty units is amended to include a court-determined licence suspension upon conviction if the person fails to provide a blood sample.
- That the ACT Government expand the Karralika REVERSED Driver Education Program and implement additional funding for this program.
- Explore a payment model for the Karralika REVERSED Driver Education Program where disadvantaged participants may receive a subsidy to ensure participation and compliance.

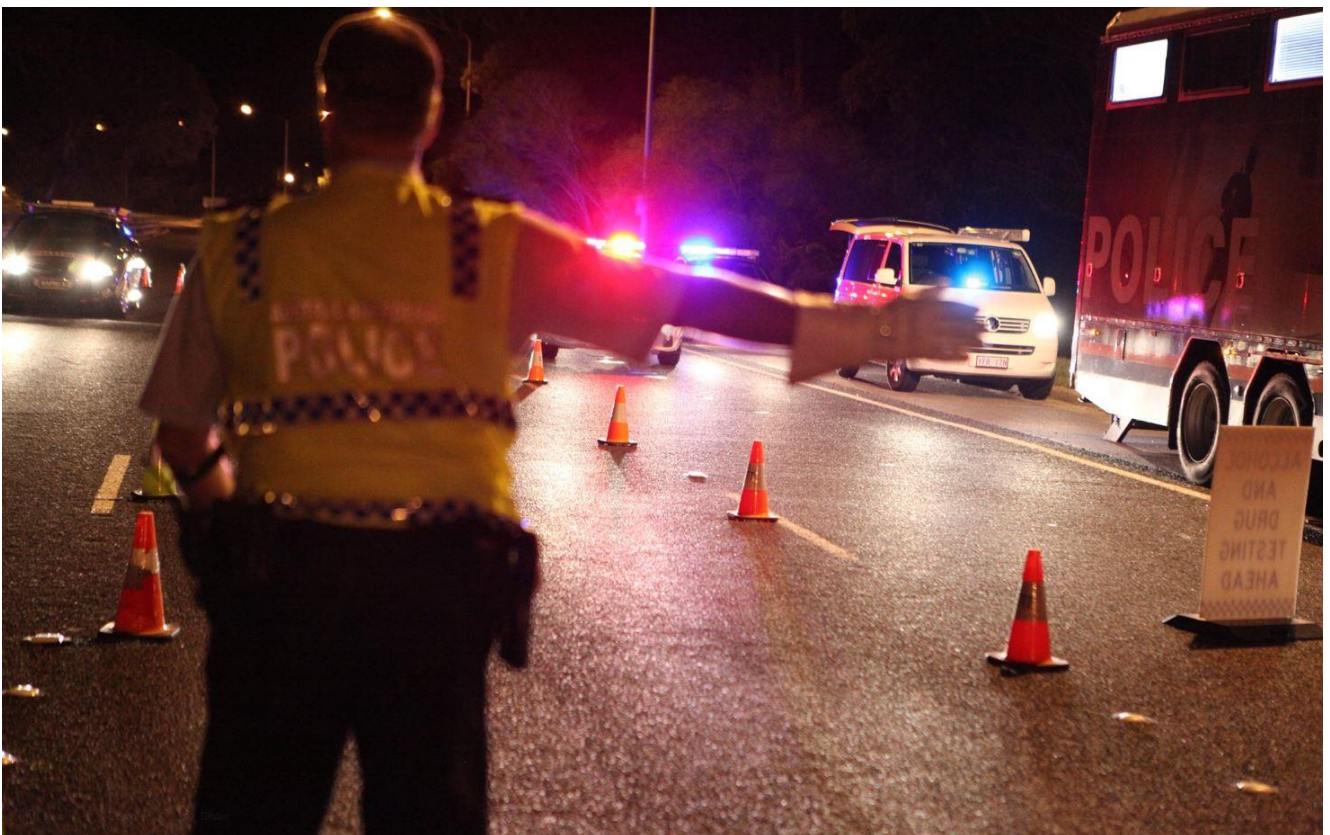


Image attributed to ACT Policing

Education

The AFPA believes that in order for the ACT Government to properly address dangerous driving, an intensive and extensive education campaign must accompany any enforcement. We believe education should commence in schools and focus on young people who hold a licence or are eligible to have a licence.

Currently, the ACT Government offers a Vulnerable Road User Program and Safer Driver Course to assist learner drivers to become safer drivers, with education and practice specific to the ACT roads. The AFPA believes this program is a valuable hands-on program for people who have already obtained their licence. However, the AFPA notes there appears to be little to no education in the lead-up to someone obtaining their licence.

The AFPA would support a multi-partisan approach to education in schools by utilising first responders from ACT Fire and Rescue, ACT Policing, and the ACT Ambulance Service.

The AFPA has also consulted with the Road Safety Education (RSE)³ and their RYDA⁴ program. During the RYDA program, students work with their peers to develop strategies to be better prepared and make good decisions as drivers and highly influential passengers. The AFPA would support the Committee and ACT Government engaging with RSE and evaluating their RYDA program for possible inclusion into ACT schools' curriculums.

The AFPA supports the ACT Government's Alcohol and Drug Awareness Course, a requirement for people convicted of drink or drug driving to complete before a restricted or probationary licence can be issued. However, the AFPA believes this course, or the Karrlinka-led Reversed Driver Education Program (REVERSED)⁵, teaching the dangers of drug and drunk driving, should also be incorporated into classroom teachings for students at ACT schools.

The REVERSED program is an interactive, informative program in a safe learning environment where issues related to drinking and drug driving under the influence are explored. The extended course is run over two three-hourly sessions (face-to-face).

Recommendations

- That the ACT Government expand the Karralika REVERSED Driver Education Program and implement additional funding for this program.
- That a payment model is explored for the Karralika REVERSED Driver Education Program where disadvantaged participants may receive a subsidy to ensure participation and compliance.
- That the ACT Government develop an intensive and extensive public education program focusing on dangerous driving behaviours. This campaign should be built into long-term strategies such as the ACT Road Safety Plan 2020-2023.

³ <https://rse.org.au/>

⁴ <https://rse.org.au/about-ryda/>

⁵ https://karralika.org.au/avada_portfolio/reversed-driver-education-program/#:~:text=REVERSED%20is%20an%20interactive%2C%20informative,sessions%20face%2Dto%2Dface.

Speeding, anti-social and hoon driving and the seizure of motor vehicles

The AFPA believes that anti-social and hoon-driving behaviour significantly contributes to dangerous driving in the ACT. Anti-social and hoon driving is a form of intimidatory driving behaviour and may include speeding, burnouts, tailgating, menacing driving, road rage, and street racing.

ACT Policing officers currently have the power to seize the vehicles of drivers accused of street racing, speed trials, burnouts, or menacing driving for up to 90 days for a first offence. After that, if a driver is caught again, their vehicle can be seized and forfeited when ordered by the court.

Under ACT legislation, ACT Policing officers can seize a motor vehicle for burnouts and street racing, but not for excessive speeding if that speeding isn't undertaken during a street race or speed trial.

The AFPA would strongly support and recommend the implementation of legislation that allows police to seize a vehicle for excessive speed (45+km/h), along with issuing an immediate suspension notice to the vehicle's driver at the time of the offence. However, this should be a discretionary power and an option for the police officer to consider at the time of the offence.

The AFPA acknowledges that the proposed legislation must be human rights compliant and allow an appeal process. The AFPA would recommend utilising the same appeal process for vehicles seized for conducting burnouts. The licence suspension would be a fixed term determined by the ACT Government, with an appeal process similar to a disputed traffic infringement notice requiring a judicial process.



Under *Section 5A of the Road Transport (Safety and Traffic Management) Act 1999*, the offence of 'street racing' doesn't have a provision for imprisonment. The AFPA would strongly support and recommend that a provision be available during sentencing, given the seriousness of this offence.

The AFPA believes street racing is a serious road safety and dangerous driving issue, and that a punishment of 20 penalty units (\$3,200) does not reflect the seriousness of the offence nor act as a deterrent.

In comparison to other state and territory legislation, the maximum penalties imposable in the ACT legislation are markedly lower and demonstrably lacking in effect. Please refer to the table on page 10 for an analysis of street racing offences.

JURISDICTION	PENALTY
Australian Capital Territory	Maximum of 20 penalty units (\$3,200)
New South Wales	Maximum \$3,300 fine for the first offence For a second offence, a \$3,300 fine, maximum of nine months imprisonment and a 12-month licence disqualification period.
Victoria	Maximum \$3,300 fine and an immediate and automatic 12-month licence disqualification for the first offence. For a second offence, a maximum of two years of imprisonment, and the vehicle may be confiscated permanently.
South Australia	Maximum of three years imprisonment and a 12-month licence disqualification period for the first offence. For a second offence, a maximum of five years imprisonment and a maximum of 36-year licence disqualification period.
Tasmania	Maximum of 20 penalty units (\$2,800) and/or three months imprisonment and/or 24-month licence disqualification.
Western Australia	Maximum fine of \$6,000, and/or nine months imprisonment, and/or a 6-month licence disqualification period for the first offence. For a second offence, a maximum fine of \$9,000 and/or nine months imprisonment and/or a 12-month licence disqualification period. For a third offence, a maximum fine of \$12,000 and/or 12 months imprisonment, and/or a life-time licence disqualification period.
Northern Territory	Maximum fine of \$200 and the loss of three demerit points and/or vehicle seized for a period of 48 hours. For a second offence within two years of the original offence, a fine of \$200 and the loss of three demerit points and the court can seize the vehicle for a further period of between three to six months. Additional fines and periods of imprisonment may also apply. For a third offence, a fine of \$200 and the court can forfeit and dispose of the vehicle. Additional fines or periods of imprisonment may also apply.
Queensland	Maximum penalty of 40 penalty units (\$4,000) and/or six-months imprisonment, and/or a six-month licence disqualification period.

The AFPA recommends the following changes be made to *section 5A* of the *Road Transport (Safety and Traffic Management) Act 1999* (Blue text is current legislation, red text is AFPA recommendation):

5A Races, attempts on speed records, speed trials etc

(1) A person must not, without the road transport authority's written approval, organise, promote, or take part in—

(a) a race between vehicles on a road or road-related area; or

(b) an attempt to break a vehicle speed record on a road or road-related area; or

(c) a trial of the maximum speed or acceleration of a vehicle on a road or road-related area; or

(d) a competitive trial designed to test the skill of a driver or the reliability or mechanical condition of a vehicle, on a road or road-related area.

Maximum penalty:

20 penalty units

(a) If first offence – 30 penalty units, licence, disqualification for up to 12 months, imprisonment for up to 6 months

(b) If second offence, 100 penalty units, licence disqualification for up to 60 months, imprisonment for up to 24 months

(c) If third or subsequent offence, 300 penalty units and/or licence disqualification for up to 60 months and/or imprisonment for up to 5 years

That the offence of *furiously, reckless, or dangerous driving* as per *section 7* of the *Road Transport (Safety and Traffic Management) Act 1999* is also applied to dangerous driving. The section is well crafted and supported by the AFPA.

An option that the Standing Committee on Justice and Community Safety and the ACT Government may consider would be to better define street racing offences within *section 7* by merging *sections 5A* and *7*.

Ultimately, police officers can charge drivers with both offences, but this is sometimes frowned upon by the Director of Public Prosecution (DPP) or the judiciary. There is a benefit to maintaining two separate offences. Police can charge someone with both offences; if necessary, negotiation between the DPP and the person's legal representative can occur with the possibility of an early guilty plea for one of the offences while the other offence is dismissed.

The AFPA would also recommend amendments to the *Road Transport (Safety and Traffic Management) Act 1999*, *sections 10B, 10BA and 10C*.

Section 10B legislates the impounding or forfeiture of vehicles on convictions for certain offences.

Section 10BA legislates the powers for a police officer to issue surrender notices for vehicles, and *section 10C* legislates the powers for a police officer to seize and impound vehicles used in committing certain offences.

The AFPA's recommendation (refer below – red text is recommendations to existing legislation in blue) would include *section 7* (furious, reckless, or dangerous driving) and excessive speeding offences in these sections, allowing the courts and police officers to seize (including forfeiture of) vehicles.

10B Impounding or forfeiture of vehicles on conviction etc for certain offences

(1) This section applies if a court convicts a person, or finds a person guilty, of an offence against—

- (a) section 5A (Races, attempts on speed records, speed trials etc); or
- (b) section 5B (Improper use of motor vehicle); or
- (c) section 5C (Failing to stop motor vehicle for police); or
- (d) section 7 (furious, reckless, or dangerous driving)
- (e) excessive speeding offences greater than 45km/h

(2) The motor vehicle used by the person in committing the offence is— (a) for a first offender—to be impounded for 3 months, unless the court otherwise orders under subsection (3); or (b) for a repeat offender—forfeited to the Territory, unless the court otherwise orders under subsection (3).

10BA Powers of police officers to issue surrender notices for motor vehicles

(1) This section applies to a motor vehicle if a police officer believes on reasonable grounds that the vehicle is being or has been used by a person in committing an offence against—

- (a) section 5A (Races, attempts on speed records, speed trials etc); or
- (b) section 5B (Improper use of motor vehicle); or
- (c) section 5C (Failing to stop motor vehicle for police).
- (d) section 7 (furious, reckless, or dangerous driving)
- (e) excessive speeding offences greater than 45km/h

10C Powers of police officers to seize and impound vehicles used in committing certain offences

(1) A police officer may seize a motor vehicle if—

(a) the police officer believes, on reasonable grounds, that the vehicle is being or has been used by a person in committing an offence against—

- (i) section 5A (Races, attempts on speed records, speed trials etc); or
- (ii) section 5B (Improper use of motor vehicle); or
- (iii) section 5C (Failing to stop motor vehicle for police); or
- (iv) section 7 (furious, reckless, or dangerous driving)
- (v) excessive speeding offences greater than 45km/h

The AFPA would welcome and support legislation that gave police officers the power to seize vehicles caught excessively speeding by ACT Government speed detection devices and mobile speed detection vans.

Under the current system, if a speeding driver is detected by ACT Government devices or mobile speed detection vans, the vehicle's registered owner is sent a traffic infringement notice for the offence, even if the offence is for excessive speeding. This can occur multiple times with the same vehicle.

The AFPA propose legislation allowing the ACT Government to request police to locate the vehicle and seize it for up to 90 days for multiple offences of excessive speeding. The current issue is determining who the vehicle's driver was at the time of the offences; quite often, the driver cannot be identified. This proposed legislation would allow police to seize a vehicle without identifying the driver and take the re-offending vehicle off the road.

Recommendations

- That legislation is implemented to allow police to seize a vehicle for excessive speed (45+km/h), along with a discretionary power issuing an immediate suspension notice to the vehicle's driver at the time of the offence.
- That *section 5A - Races, attempts on speed records, speed trials etc of the Road Transport (Safety and Traffic Management) Act 1999* is amended to include a term of imprisonment for the courts to consider upon conviction of the offence.
- That additional penalties be introduced for recidivist offenders committing offences against *section 5A - Races, attempts on speed records, speed trials etc of the Road Transport (Safety and Traffic Management) Act 1999* in alignment with other states and territories.

- That the merging of *section 5* and *section 7* of the *Road Transport (Safety and Traffic Management) Act 1999* is considered, in order to create one offence covering street racing and furious, reckless, or dangerous driving.
- That the *Road Transport (Safety and Traffic Management) Act 1999*, sections 10B, 10BA and 10C is amended to allow the courts and police to seize a motor vehicle for excessive speeding and furious, reckless, or dangerous driving.
- That legislation is introduced to allow the ACT Government to request that police locate and seize a vehicle for up to 90 days, for multiple offences of excessive speeding detected by ACT Government speed detection devices and mobile speed detection vans.

Road Trauma and Support

The AFPA believes there is a severe shortfall in road trauma support and counselling in the ACT for victims, families, and witnesses of dangerous driving.

Previously, SupportLink, through ACT Policing, offered road trauma counselling services to victims, families, and witnesses. This service would be engaged early and would continue throughout the court or coronial process, providing support to victims, families, witnesses, and even offenders and their families.

Unfortunately, due to funding, these services are no longer available.

The service worked by SupportLink staff attending the incident after being called out by ACT Policing and immediately engaged with the vulnerable people at the scene. This early intervention allowed for immediate trauma support and welfare while allowing ACT Policing officers to do their work investigating the incident.



Recommendation

- That funding arrangements be made via the ACT Government for re-introducing the Trauma Support and Counselling Service provided by SupportLink.

Sentencing

Sentencing and bail arrangements in the ACT are in dire need of attention. The AFPA has been vocal by advocating for an independent review into sentencing and bail in the ACT, with the ACT Attorney-General rejecting this request.

The AFPA acknowledges that a 'study' is being conducted by the Justice and Community Safety Directorate relating to dangerous driving behaviours and bail decisions. However, this 'study' is not independent, nor have terms of reference been published. Consequently, the AFPA has little faith that the 'study' will be comprehensive enough to alleviate our and the community's concerns. The reality is that the study is nothing more than a public relations stunt by the ACT Attorney-General - with little actually being done.

In recent times, the ACT has weathered poor sentencing and bail outcomes that endanger the community and police officers from dangerous driving.

A recent example⁶ was where a recidivist offender deliberately rammed a police vehicle with a stolen vehicle, committed further offences, yet was still granted bail by the court. The DPP opposed bail, with the special magistrate hearing the case agreeing that there were 'real and significant public safety concerns. Despite all of this, the offender, who has an extensive criminal record, including matters for serious traffic offences, was granted bail.

The AFPA would also support legislative amendments that allowed the judiciary to impound a vehicle for any offences that used a vehicle in the commission of the offence.

Recommendations

- That an independent review is undertaken into sentencing and bail in the ACT.
- That legislation is introduced allowing the courts to impound a vehicle for any offence that used the vehicle in the commission of the offence.

⁶ <https://www.canberratimes.com.au/story/7857226/criminal-with-contemptuous-history-allegedly-crashed-into-police-car/?cs=14329>



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