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THE LEGISLATIVE ASSEMBLY FOR THE

AUSTRALIAN CAPITAL TERRITORY

TENTH ASSEMBLY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY REPORT NO. 16 INQUIRY INTO DANGEROUS DRIVING – GOVERNMENT RESPONSE

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Introduction

The Standing Committee on Justice and Community Safety (the Committee) resolved to conduct an inquiry into dangerous driving (the Inquiry) on 27 July 2022. The Inquiry started on 4 August 2022. The Committee inquired and reported on dangerous driving, with particular reference to:

a. criminal justice response to dangerous driver offending in the ACT;
b. police response to dangerous driving in the ACT (both in prevention and post-crash response);
c. capacity of trauma services and support services to respond to the post-crash event;
d. prison sentences, fines and vehicle sanctions legislated for dangerous driver offences in the ACT;
e. support for victims of dangerous driving offences through the justice system;
f. corrections responses and the sentencing regime for dangerous driving in the ACT;
g. the effectiveness of rehabilitation and driver re-education at reducing recidivism;
h. police and other related technological advances to identify and prevent dangerous driving; and
i. any other related measure with respect to the administration of corrections, courts and sentences in the ACT with respect to dangerous driving.

Submissions closed on 30 September 2022. The Committee received 50 submissions to the inquiry from members of the public, and Government and non-Government sectors.

The Committee released Report No. 16, *Inquiry into Dangerous Driving* (the Report), on 20 April 2023. The Report contains 28 recommendations. The 28 recommendations span a broad range of issues, including proposals for law reform, increasing public awareness of aspects of the justice system, providing information and increased support to victims of crime, and increasing the scope of power of the Sentence Administration Board (SAB).

The Government Response will discuss the Government's position on each of the Report's recommendations.

Background to Government Response

The ACT Government recognises the ongoing concern in the community regarding dangerous driving, which has tragically claimed lives in 2022-2023. Dangerous driving continues to provide a risk to the community and the ACT Government is committed to finding ways to reduce this serious offending.

Road safety

The ACT Government is committed to Vision Zero – that means no deaths or serious injuries on the ACT road transport network. Vision Zero acknowledges that deaths and serious injuries on ACT roads are preventable; they are not an inevitability. It is a bold target, but by working together, it is possible to reduce road deaths and serious injuries to zero, and for the community to avoid the terrible heartbreak and costs associated with them. Vision Zero is the central philosophy guiding the ACT Government's approach to road safety.

The *ACT Road Safety Strategy 2020-2025* comprises four key goals including changing road user attitudes and behaviour through education and compliance activities and strengthening collaboration across Government and with stakeholders to improve road safety in the ACT. The *ACT Road Safety Action Plan 2020-2023* includes a number of key focus areas, including speeding, drink and drug driving, and vulnerable road users. The ACT Road Safety Action Plan 2020-2023 also includes the following commitments:

- Review the road transport penalties framework to ensure that the penalties within that framework are commensurate with the road safety risk associated with the unsafe behaviour and support behavioural change.
- Expand and evaluate innovative approaches and measures to reduce speeding and change road user behaviour, including possible reforms to the ACT's penalties for exceeding the speed limit, and education programs.
- Review and assess the effectiveness of the Territory's drink and drug driving scheme against best practice models and explore measures which will deter drink and drug driving and are appropriate for the ACT.

Penalties and sentencing

Effectively reducing crime is a complex issue, as there are often many factors contributing to a person committing crime. Increases in penalties and sentencing are intended to discourage people from committing dangerous driving offences. However, research suggests that increasing penalties is not always an effective deterrent to offending. This was flagged in ACT Government's statutory review of, assault on frontline worker offences (sections 26A, 26B, 29A and 29B of the *Crimes Act 1900)*, which was tabled in the ACT Legislative Assembly on 6 June 2023.[1] A review is currently being undertaken by the Transport Canberra and City Services Directorate (TCCS) within the ACT Government into the existing penalties for all road transport offences, including dangerous driving offences.

While appropriate penalties and sentences are important, consideration must also be given to other evidence-based methods that may address underlying behaviours contributing to a person's offending. This may involve ensuring there are appropriate programs in place which are aimed at addressing and changing offending behaviour. The Government

[1] ACT Government, 'Statutory Review – Crimes Act 1900 (ACT) – Section 26A, Section 26B, Section 29A, Section 29B', 11

recognises the importance of this inquiry and is committed to implementing those recommendations that are firmly supported by evidence.

Reducing recidivism and justice reinvestment

The ACT remains one of the safest communities to live in across the country. The ACT Government is committed to ensuring our community is safe and has a particular focus on recidivism and recidivist offenders, including through the *Reducing Recidivism in the ACT by 25% by 2025 – 2020 to 2023* (the RR25by25 Plan). In the 2021-2022 financial year, the ACT saw a decrease in the number of known and reported criminal offences against individuals and property. Additionally, the majority of Canberrans feel safe or very safe at night, exceeding the targets set for that financial year.[2]

The Government has acknowledged that the RR25by25 Plan's recidivism target reducing recidivism by 25 per cent by 2025 is ambitious. Nevertheless, there has been an overall reduction in reoffending from the 2018/2019 benchmark, although the contribution of COVID-19 to this trend is not entirely clear.

The ACT Government continues to invest in a number of important initiatives which demonstrate the ACT Government's focus on ensuring the Territory maintains some of the lowest crimes rates in the country and remains a safe place to live. These programs, including the Strong Connected Neighbourhood program, are multi-agency initiatives which are contributing to reducing the number of crimes being committed in the ACT.

The RR25by25 Plan identifies that a multi-component response is required to meet the diverse needs of people involved in the criminal justice system and the initiatives included in the plan have been designed to operate in a mutually enabling manner, working across the government and community sector.

One of the key principles which underpins this multi-component response is the need to address the underlying causes of offending and reoffending. As part of the Government's Justice Reinvestment agenda, the focus areas for addressing these causes have included work and initiatives regarding justice accommodation (Housing Justice Program), responding to the impacts of drug and alcohol dependence (Drug and Alcohol Sentencing List), early support for people living with a mental illness or disability (Disability Justice Strategy) and pathways for safe and sustainable bail (Ngurrambai Bail Support Program).

[2] ACT Budget 2022-23, Budget Statements D – Justice and Community Safety Directorate, p. 7

ACT Government Response to Recommendations

Recommendation 1

The Committee recommends that the ACT Government review dangerous driving sentences to determine if there is a downward trend towards lighter sentences and if so consider if guideline judgments are appropriate, with an update on progress to be tabled in the Assembly at the same time as the government response to this report.

Agreed and completed

The currently available data does not support a downward trend towards lighter sentences in dangerous driving matters.

As stated in the ACT Government submission to the Inquiry, the ACT Government has previously compared ACT sentencing outcomes with outcomes in other jurisdictions for all offences during the 2020-2021 financial year and the ACT is not the most lenient jurisdiction for sentencing.[3] Australian Bureau of Statistics data for the 2021-2022 financial year indicates the ACT is not the most lenient jurisdiction for sentencing. New South Wales (NSW), Western Australia, and Victoria had a lower proportion of defendants sentenced to custodial orders than the ACT, while South Australia, Queensland and the Northern Territory were higher than the ACT for all offences. Tasmania had the same proportion of defendants sentenced to custodial orders as the ACT.[4] However, the ACT Government cautions against the reliability of this data as it is difficult to generalise across jurisdictions.

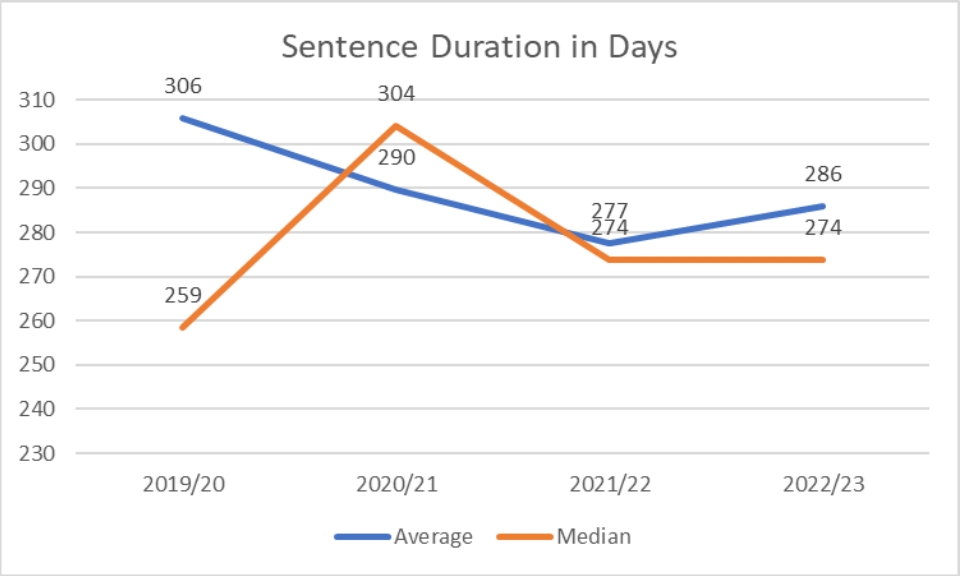
There is no single uniform 'dangerous driving' offence. Dangerous driving is a category of offences.[5] This presents difficulties when analysing the data to determine sentencing trends. Trying to observe a 'trend' in sentencing is built on an implicit assumption that the cases are of the same nature across years. The range of dangerous driving offences however makes 'like for like' comparison over time challenging. The size of the ACT jurisdiction also presents issues for statistical analysis. The small statistical sample size has meant that a small increase in numbers can lead to radical changes to the average and median results.

Considering the above caveats, the preliminary data analysis of ACT Courts data below has been compiled. The data has used the assumption of sentences being heavy or light as represented by two variables: the number of days of sentence duration and the amount of any fine excluding levies.

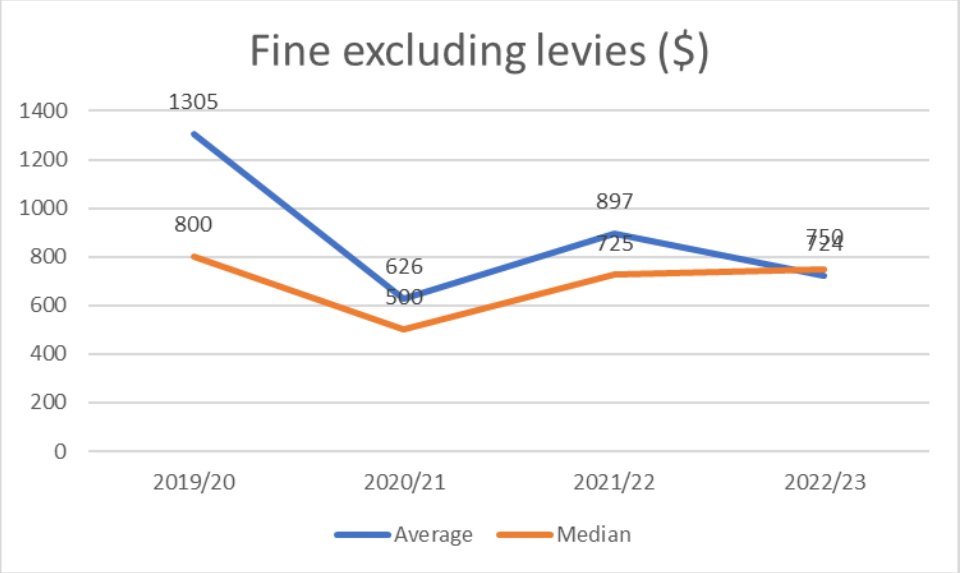
Note 2022-2023 data is only year to date (that is, early June) and does not represent a full-year result.

Sentences measured in duration (days)

[3] Criminal Courts, Australia, 2020-21 financial year | Australian Bureau of Statistics (abs.gov.au)
[4] Criminal Courts, Australia, 2021-22 financial year | Australian Bureau of Statistics (abs.gov.au)
[5] Offences categorised as 'dangerous driving offences' for this analysis are: Culpable Drive grievous bodily harm Drug; Negligent Driving - occasioning grievous bodily harm; Aggravated furious, reckless, dangerous driving; Culpable drive/neg/grievous bodily harm; Culpable driving of motor vehicle causing death; Drive with intent to menace; Driving motor vehicle at police; Furious, reckless or dangerous driving; Menacing driving; Negligent Driving; Negligent driving occasioning actual bodily harm; Negligent Driving occasioning grievous bodily harm; Negligent driving other than death/injury; Organise/promote/take part in race.



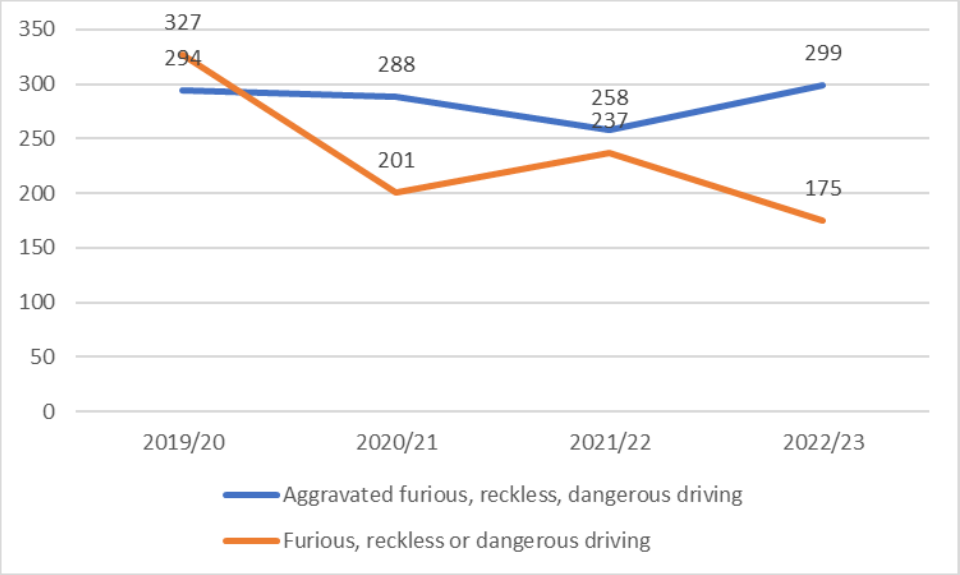
Sentences measured in fines excluding levies



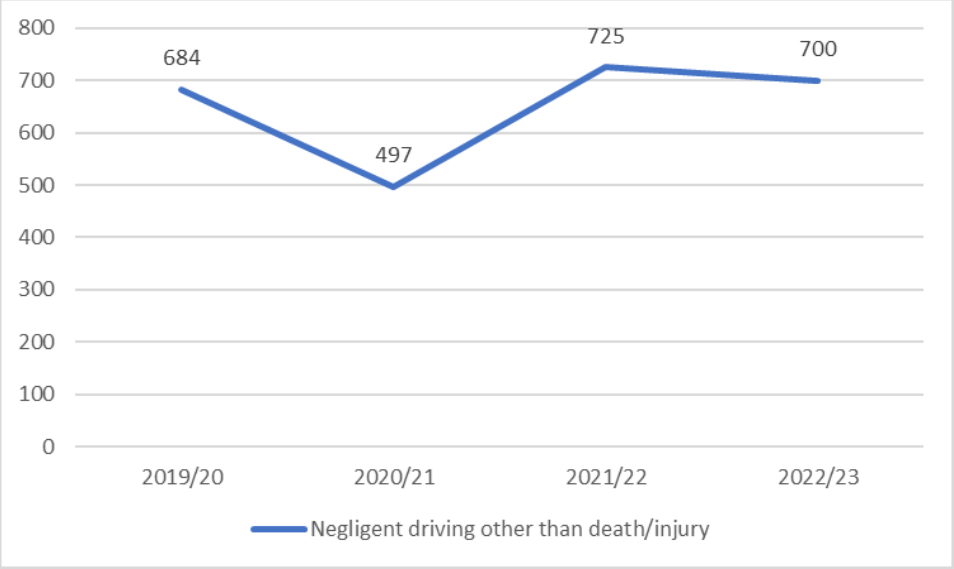
The analysis above indicates that there is not a straightforward trend in relation to dangerous driving sentences, however the statistical evidence does not suggest a clear downward trend towards lighter sentences. The ACT Government notes that the low number of counts in many of the offences has caused the average to fluctuate significantly from year to year.

Sentencing trends for offences of aggravated furious, reckless or dangerous driving and furious, reckless or dangerous driving

Due to the data limitations discussed above, the only two offences which may be analysed meaningfully are the offences of 'Aggravated furious, reckless, dangerous driving' and 'Furious, reckless or dangerous driving'. For these two offences, the latter is showing a decreasing trend when measured using average sentence duration in days, while the former does not show any trend.



A similar observation can be made on the data for average fines due to the small sample size. When measured using the average fine (excluding levies), the only offence for which a meaningful trend in the average might be observed is 'Negligent driving other than death/injury'. For this offence, the line chart below does not show a definitive trend of increasing or decreasing in average fines.



Guideline judgements

Engagement with justice stakeholders to date, including ACT Courts and Tribunal (ACTCT), indicates that guideline judgements are not necessary in the ACT context for sentencing

consistency given the small size of the jurisdiction, the number of courts and the number of judicial officers.

The ACT Government has conducted a preliminary review of literature and case law concerning guideline judgments as they operate in other jurisdictions. This highlights the arguments made for and against guideline judgements. In 2002 the Judicial Commission of NSW found that the use of guideline judgements had resulted in greater consistency and an increase in penalties.[6] In 2013 the NSW Law Reform Commission described guideline judgements as 'valuable in encouraging greater consistency in sentencing, in correcting inappropriate levels of sentencing and in giving guidance to courts, both in providing numerical ranges and in stating overarching principles'.[7]

Guideline judgements have also been criticised for fettering judicial discretion. For example, in the Victorian case of *R v Ngui*, Winneke P commented, 'Experience in other areas of the law has shown that judicially expressed guidelines can have a tendency, with the passage of time, to fetter judicial discretion by assuming the status of rules of universal application which they were never intended to have'.[8] Other research into guideline judgements has raised concerns that they may result in undue emphasis on consistency over individualised justice. [9]

Legislation provides for the making of guideline judgements in NSW, Victoria, Queensland and Western Australia. The most recent guideline judgement in NSW was made in 2004. In Victoria only one guideline judgment has been made (*Boulton v The Queen* [2014] VSCA 342). There are no guideline judgements to date in Queensland and Western Australia.

The NSW guideline judgement for dangerous driving was last re-formulated by the Court in 2002.[10] Sentencing courts are required to take into account the factors it sets out relevant to assessing moral culpability and objective seriousness when sentencing for such offences.[11] The NSW guideline judgement itself highlights that it should be used as an 'indicator', to be taken into account as a 'check' or 'guide' but not a presumption, and care should be taken to ensure it doesn't confine the exercise of discretion.[12]

On 31 January 2023, the Attorney-General convened a roundtable of key justice stakeholders to discuss sentencing in the ACT. Attendees included the Director of Public Prosecutions (DPP), ACTCT, ACT Legal Aid and the ACT Bar Association. Roundtable attendees expressed the view that guideline judgements were not necessary for the ACT, given the size of the jurisdiction and the small number and size of ACT courts. The ACT court system consists of the ACT Magistrates Court and a small ACT Supreme Court bench who also constitute the Court of Appeal. Other larger jurisdictions use guideline judgements to forge consistency across a network of District Courts and larger Supreme Courts. The ACT does not have the same need for guideline judgements to achieve consistency in sentencing.

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[6] Judicial Commission of New South Wales *Sentencing dangerous drivers in New South Wales impact of the Jurisic guidelines on sentencing practice* July 2002 https://www.judcom.nsw.gov.au/wp-content/uploads/2016/07/research-monograph-21.pdf

[7] New South Wales Law Reform Commission, Sentencing, Report No 139 (2013) 390.

[8] *R v Ngui* (2000) 1 VR 579 at [12-13].

[9] Dr Sara Golru 'Controlling Judicial Sentencing Discretion', The University of Sydney – Faculty of Law, September 2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3905646.

[10] *R v Jurisic* (1998) 45 NSWLR 209; reformulated in *R v Whyte* (2002) 55 NSWLR 252; [2002] NSWCCA 343

[11] *Moodie v R* [2020] NSWCCA 160 at [47-48]; NSW Judicial Commission Sentencing Bench Book – particular offences – Dangerous Driving and Navigation

[12] *R v Whyte* [2002] NSWCCA 343 at [113]

Noting the different views and practices outlined above, the ACT Government does not propose to provide for guideline judgements at this time. The ACT Government proposes to keep this issue under review for future consideration should further relevant information supporting their use become available.

As stated in the Legislative Assembly motion of 11 October 2022, the ACT Government is undertaking a range of work to ensure sentencing and bail laws are appropriate and in line with community expectations. This work includes establishing an independent Law Reform and Sentencing Advisory Council, which will advise the ACT Government on areas of potential law reform as well as provide expert advice on sentencing. The Law Reform and Sentencing Advisory Council is being established as a matter of priority. As part of its work, it is anticipated the Law Reform and Sentencing Advisory Council will look at a range of issues relevant to those matters raised by the Committee in this Inquiry, including sentencing and bail trends and practices.

Recommendation 2

The Committee recommends that the ACT Government consider changing the name of the offence 'Culpable driving causing death' to 'Vehicular manslaughter' and examine the appropriate penalty in line with the existing penalty for manslaughter.

Agreed

The ACT Government agrees to this recommendation. This recommendation is based on ACT Policing's proposal for renaming 'Culpable driving causing death' to 'Vehicular Manslaughter'. The ACT Government agrees to consider in more detail the appropriateness of the name of the current offence of 'culpable driving causing death' in section 29 of the *Crimes Act 1900* including considering any benefits of renaming the offence 'vehicular manslaughter'. The ACT Government also agrees to examine the appropriateness of the current penalties for this offence, in the context of the penalties for manslaughter.

Recommendation 3

The Committee recommends that the ACT Government review leniency for discounts to sentences of serious crimes and repeat offenders, including to consider the impact on victims, with an update on progress to be tabled in the Assembly at the same time as the government response to this report.

Agreed

As discussed above, the ACT Government has undertaken analysis of sentencing trends and has not found evidence of a trend towards leniency in sentences in general. The ACT Government undertakes a range of work to understand sentencing practice in the ACT and ensure legislation is fit for purpose. The Law Reform and Sentencing Advisory Council, once established, will provide additional independent support to the Government on these issues, through collection, analysis, and publication of data on sentencing trends and practices, and engagement with the community on these issues.

Sentencing considerations are set out in section 33 of the *Crimes (Sentencing) Act 2005* (CS Act). Courts must consider the factors outlined in section 33 when deciding how an offender

should be sentenced for an offence. Section 33(1)(j) of the CS Act provides that the court must consider a plea of guilty by the offender as one of the factors in sentencing. Section 35 of the CS Act outlines the process the court must follow when considering a sentence for an offender who pleads guilty to an offence. This includes considering:

- the fact that the offender pleaded guilty;
- when the offender pleaded guilty, or indicated an intention to plead guilty;
- whether the guilty plea was related to negotiations between the prosecution and defence about the charge to which the offender pleaded guilty;
- the seriousness of the offence; and
- the effect of the offence on the victims of the offence, the victims' families and anyone else who may make a victim impact statement.

The ACT Government does not consider it appropriate to review the leniency for discounts to sentences of serious crimes and repeat offenders, in individual cases. The ACT Courts are independent from government. Where sentencing decisions are considered inconsistent with current law and practice, or manifestly unjust, the appeals process is the appropriate mechanism available to the DPP, or indeed the defence.

As discussed above, as part of its work, it is anticipated the Law Reform and Sentencing Advisory Council will look at a range of issues relevant to those matters raised by the Committee in this Inquiry.

The ACT Government recognises the importance of considering the impact on victims of crime, especially in the context of dangerous driving offences. As noted above, section 35 of the CS Act requires the court to consider the effect of the offence on victims, their families and anyone else who may make a victim impact statement when sentencing an offender who has made a guilty plea. Practical support for victims of crime is also available from Victim Support ACT (VSACT) which provides free and confidential support and financial assistance to those who experience crime in the ACT.

Recommendation 4

The Committee recommends that the ACT Government increase public awareness of how the justice system works in the following areas:

a) how sentencing decisions are made under the sentencing regime in the ACT in plain English;

b) what is involved in Intensive Correction Orders (ICOs) in line with its previous recommendation in its Report No. 9 *Inquiry into Community Corrections*; and

c) the process and criteria of judicial appointments.

Agreed

Increasing public awareness of how sentencing decisions are made under the sentencing regime

The ACT Government agrees to increase public awareness of the operation of the justice system. The ACT Courts recently produced a comprehensive information sheet on sentencing which was made available publicly during the ACT Law Week Court Open Day. As part of the ACT Government's response to this recommendation, a copy of this factsheet will be placed on the ACT Courts website to ensure ongoing access to this information for the public.

The ACT Government notes that there are resources and services currently available in the ACT to support victims of crime and their families, as well as the broader community, to understand the sentencing process. For example, the Charter of Rights for Victims of Crime explanatory booklet summarises what someone should expect at the point of sentencing, including what happens and what victim rights should be upheld. The different types of sentences that an offender may receive are also described in the booklet, including what rights to information and participation a victim has.

Where someone has been directly impacted by crime, VSACT provides support and assistance to victims of crime to understand sentencing processes and decisions in a tailored way, mostly on a case-by-case basis. Support is routinely provided to victims who wish to provide a victim impact statement, including explaining what it is, how it is used in court and how it may be presented to the court, and sometimes liaising with the DPP to better understand what is admissible in the victim impact statement. Additionally, support can be provided (by the volunteer program or case coordinators) to attend the sentencing and access the remote witness rooms and facilities which include access to free parking. VSACT staff have also facilitated meetings with other criminal justice agencies – particularly the DPP who would be the primary source of sentencing information – for the purpose of explaining complex sentencing pathways such as Drug and Alcohol Treatment Orders.

The victims register, managed by VSACT, also provides access to timely information about sentence outcomes. VSACT has an obligation to inform all victims of crime of their eligibility to be placed on the register and their rights to information and participation. At the initial point of contact, the registers team will provide information about the offender's sentence over the phone and/or by email. Fact sheets about the different sentences are also provided, depending on the sentence type.

The ACT Courts website (www.courts.act.gov.au) also has resources for people attending the ACT Courts, including information for defendants in the criminal process, witnesses, jurors and legal practitioners. Resources include practical information for people attending court such as what to wear and where to attend, practice directions for legal practitioners, links to the Sentencing Database, ACT Supreme Court judgements and sentences, and links to ACT Magistrates Court decisions. Information about the sentencing process could be included with these resources.

The ACT Government will continue to consider how resources such of these, and their use, can be improved.

Increasing public awareness about Intensive Correction Orders

The ACT Government acknowledges that there is some perception that community-based sentences, including ICOs, are a soft or lighter touch alternative to detention. The ACT Government agrees that it is important to address this perception and increase understanding around ICOs and other community-based sentences.

ICOs are a custodial sentencing option in the ACT and are available as an alternative to full-time imprisonment for eligible offenders serving short sentences (generally up to two years, or in exceptional circumstances up to four years). An ICO features supervision which is generally very intensive and significantly greater than that experienced by offenders on other types of community-based orders. This includes more frequent appointments, more frequent drug testing, field visits to the home and workplace, and curfew provisions.

If obligations under an ICO are breached, the potential consequences for the offender include suspending or cancelling the ICO, and recommittal to full-time detention.

There is currently information on community-based sentencing on the ACT Corrective Services, ACT Courts, Sentence Administration Board (SAB), and Victims Support ACT websites. In line with the Government Response to Recommendation 1 on Report No. 9 *Inquiry into Community Corrections*, the ACT Government is reviewing the publicly available information to support increased awareness of the intensity and effectiveness of community-based sentencing options.

In response to this recommendation, further consideration will be given to how awareness on what is involved in ICOs can be improved.

Increasing public awareness about the process and criteria of judicial appointments

The ACT has a rigorous, robust and transparent legislative framework to facilitate judicial appointments to preserve impartiality and guard against undue influence. However, it is acknowledged that information on the appointment process may not be accessible to the community as it is contained in different pieces of legislation and subordinate legislation.

It is important the ACT community has trust in how our judicial officers are appointed to ensure any appointments are free from bias, and for our community to trust that judicial officers are able to undertake their functions and duties without undue influence.

The ACT Government will consider ways to ensure that information about the framework and appointments process is more coherently presented and accessible.

Recommendation 5

The Committee recommends that the ACT Government introduce legislation for a neutral presumption of bail for serious dangerous driving offences such as driving at police and recidivist serious motor vehicle offenders.

Noted

Ensuring the community is appropriately protected from dangerous driving and those who engage in it is a priority for the ACT Government.

As discussed below, the ACT Government intends to have the Law Reform and Sentencing Advisory Council review the *Bail Act 1992*, and as part of this review, to advise on bail presumptions.

Under the Bail Act, there are three categories of availability of bail depending on the offence: presumption for bail (Division 2.2), no presumption for bail (or 'neutral bail') (Division 2.3) and presumption against bail (Division 2.4).

A presumption for bail applies in relation to certain minor offences and breach of sentence obligations. No presumption for bail applies in relation to offences listed in section 9B(b) and Schedule 1 of the Bail Act, including (but not limited to) manslaughter, intentionally inflicting grievous bodily harm, sexual assault in the first degree, sexual intercourse with a young person under 10 years old, aggravated burglary and aggravated robbery. Where there is no presumption for or against bail, bail applications must be decided on a case-by-case basis, and both the prosecution and defence make submissions as to the suitability of the offender for bail. A presumption against bail applies to murder and certain serious drug

offences. If there is a presumption against bail, a court must not grant bail to the person unless satisfied that special or exceptional circumstances exist favouring the granting of bail.

The presumption for bail reflects the presumption of innocence principle, as outlined in section 22(1) of the *Human Rights Act 2004.* Applying a neutral bail presumption for dangerous driving offences may raise concerns about abrogating this principle, particularly where it is applied to offences with lower penalties than other offences currently attracting a neutral bail presumption.

The ACT Government acknowledges the views of stakeholders within the Report but, at this point, does not support the implementation of a neutral bail presumption across all offences considered to be serious dangerous driving offences. Section 5AB(3) of the *Road Transport (Safety and Traffic Management) Act 1999* designates a number of offences as 'dangerous driving offences', including culpable driving, races, attempts at speed records and speed trials, improper use of motor vehicle, menacing driving, driving with a prescribed concentration of alcohol in blood or breath, failing to stop motor vehicle for police and exceeding the speed limit by more than 45 km/h. These offences have a range of maximum penalties. Many of these offences have lower maximum penalties than offences that are currently subject to a neutral bail presumption. For example, improper use of a motor vehicle (section 5B of the Road Transport (Safety and Traffic Management) Act) carries a maximum penalty of 30 penalty units, meaning an offender charged under section 5C would be entitled to bail as per section 8(1)(a) and 8(2) of the Bail Act.

Private Member's Bill – Bail Amendment Bill 2023

The ACT Government is considering a private member's bill, which proposes amendments to the Bail Act which would provide a neutral bail presumption for the following offences against the Crimes Act: culpable driving of a motor vehicle, driving a motor vehicle at police and for the following offence against the Road Transport (Safety and Traffic Management) Act: furious, reckless or dangerous driving.

These proposed amendments would mean that there was no presumption of bail for these offences. This would be a significant change to the way that bail is dealt with in relation to these offences by the ACT Courts. The ACT Government is considering these issues, and will undertake further stakeholder consultation. The ACT Government notes that the proposed amendments are likely to be contentious among key justice stakeholders. There are a range of factors to consider in determining bail presumptions, and it is also important to consider the consistency and appropriateness of bail presumptions more holistically. The ACT Government will refer the Bail Act to the Law Reform and Sentencing Advisory Council for advice and review.

The ACT Government is considering these proposals, including the respective maximum penalties for the offences of culpable driving, driving a motor vehicle at police and furious, reckless or dangerous driving and whether these penalties align with those for other offences with a neutral presumption. The offence of culpable driving carries a maximum penalty of 14 years imprisonment if the person causes the death of another person, or 16 years imprisonment for an aggravated offence. The offence of driving a motor vehicle at police has a maximum penalty of 15 years. The maximum penalties for these offences are similar to the maximum penalties for other offences which currently attract a neutral presumption of bail under the Bail Act.

The offence of furious, reckless or dangerous driving attracts a maximum penalty of 500 penalty units, or imprisonment for five years, or both. The maximum penalty only applies in circumstances of an aggravated offence committed by a repeat offender. In many cases the offence would attract a maximum penalty of 100 penalty units, imprisonment for 12

months, or both. The maximum penalties for the offence of furious, reckless or dangerous driving are therefore much lower than the maximum penalties for other offences with a neutral presumption of bail. Recklessness is also a relatively low threshold for a mental element in an offence, as compared to other mental elements such as intention or knowledge.]

The ACT Government will give further consideration to these issues to ensure that the ACT's laws strike the right balance with respect to bail in the context of dangerous driving offences. The ACT Government recognises that further consultation may be needed to address whether an adoption of a neutral bail presumption for other dangerous driving offences is appropriate.

Recommendation 6

The Committee recommends that the ACT Government engage with victims of crime to provide more transparency about how the transitional release program works.

Agreed - Existing Government Policy

Keeping victims informed about the status of a relevant offender in the criminal justice system is important. This is reflected in the ACT Charter of Victims Rights (the Charter), which provides that victims have a right to information about the administration of justice processes.

Section 15H of the *Victims of Crime Act 1994* requires that justice agencies provide eligible victims with information about the Victims Register, maintained by VSACT, as soon as practicable after an offender is sentenced for an offence. This includes information about how to register online through the Corrective Services website. By registering, victims of crime in the ACT are updated about the status of relevant offenders' sentences.

The information provided to registered victims includes sentence length, parole eligibility date, earliest release date, correctional centre where the offender is detained, and any leave from custody, including through the Transitional Release Program.

In circumstances in which a registered victim expresses concern about their safety or need for protection from the offender to a relevant justice agency, section 16J of the *Victims of Crime Act 1994* specifically requires justice agencies to inform registered victims about the transfer or release of the relevant detained offender.

In addition, VSACT writes to all registered victims providing information about the operation of the Transitional Release Program and assists registered victims to understand the program and how it impacts on them.

To facilitate this engagement, ACT Corrective Services (ACTCS) notifies VSACT when the offender in relation to a registered victim is afforded the opportunity to engage in the Transitional Release Program. VSACT then informs the registered victim of the offender's transitional release arrangements, and assists the victim to make a submission on request.

The Transitional Release Program is operated by the Alexander Maconochie Centre (AMC). It aims to support the offender's reintegration back into the community after release. As part of this program, case management staff work with detainees to develop case plans and achieve the goals in these plans.

The Transitional Release Program provides support to detainees in addressing their reintegration needs including, accommodation, health, basic needs, family and community connectedness, financial wellbeing, and leisure or recreation. Additionally, the Transitional Release Program allows detainees to access leave to reconnect with family, work or study in the community, and attend appointments outside of the AMC.

VSACT discusses the Transitional Release Program in the initial phone call with registered victims of crime and provides information with respect to Transitional Release Program in the initial letter to client. If the offender applies for the Transitional Release Program, the Transitional Release Program Information Sheet is provided to the victim of crime. This information sheet provides information about the Transitional Release Program including, offender eligibility, the type of leave that can be granted and who makes the decision, notifications to the victim, and that they can make a submission in relation to the offender's application for the Transitional Release Program.

If the Registers team is notified that an offender has made an application for the Transitional Release Program, they can provide more information to the victim at the time of the offender's application. They can also assist the victim to make a submission in relation to the offender's application to the Transitional Release Program.

Victims who are not registered or otherwise not connected with VSACT will not have access to information about the Transitional Release Program unless it is provided by ACTCS.

ACTCS and VSACT will continue to actively engage with each other to ensure that victims, whether registered or not, are provided with relevant and comprehensive information about the Transitional Release Program. ACTCS actively engaged with VSACT when amending the Transitional Release Program policy. The new Transitional Release Program policy involves more extensive involvement from VSACT in the Transitional Release Program process, including liaising with VSACT for every application, and as part of the sponsor and leave process for every detainee in the Transitional Release Program.

Recommendation 7

The Committee recommends that the Sentence Administration Board increase the transparency in their decision making.

Noted

The ACT SAB must seek a victim's view when holding a parole inquiry to determine whether or not to grant parole to a particular offender (section 123, *Crimes (Sentence Administration) Act 2005* (the CSA Act)). The SAB must invite the victim to make a submission, orally or in writing, to the Board about a parole order being made for the offender, including the likely effect on the victim, or on the victim's family, if the order were made; or tell the Board about any concern of the victim or their family about the need to be protected from violence or harassment by the offender. Any such submission is considered in deciding whether a parole order should be made for the offender and if so, the conditions (if any) that will be imposed on the parole order by the Board. In this context, the SAB must also provide information about the offender to assist the victim to make a submission or tell the Board about any concern (such as information about the offender's conduct while serving the sentence) (section 124(1), CSA Act).

The SAB is required to give victims written information about (i) the Board's decision; and (ii) if the Board decided to make a parole order for the offender – the offender's parole,

release date and the offender's parole obligations. The SAB may also tell a victim the general area where the offender will live while on parole (section 133, CSA Act).

The approach in a number of other Australian jurisdictions is broadly similar to that taken in the ACT although there are some variations. For example, in Victoria a victim can only access information about whether an offender has applied for parole, whether the Board has granted the offender parole, and whether the Board has made any victim-specific conditions (section 30A, *Corrections Act 1986* (Vic)).

There is a public interest in maintaining a level of privacy around a parole board's hearings and decisions, which is reflected in the approach taken across a number of jurisdictions, to avoid a 're-trial' of an offender, to allow the privacy required for effective rehabilitation, and to avoid vigilantism against them.

Currently the ACT SAB exercises its power to provide details of the outcome of a parole inquiry or hearing, where there is a request for such information (for example, by a victim, journalist or Parliamentary Committee) and there is significant public/media interest. Online information provided by the SAB (The Parole Process and Considerations by the Board) outlines the operations and processes of the Board and what it considers when making decisions. This online information is reviewed and updated regularly. Further, in 2022, the Board invited legal and victim agencies to a mock hearing and accompanying information session to provide awareness of its operations and the factors it considers in making a decision about a sentenced offender.

Recommendation 8

The Committee recommends that the ACT Government allow for greater information sharing between ACT Corrective Services and the Sentence Administration Board.

Noted

The ACT Government agrees that it is important to address the underlying issues informing this recommendation, but it is not in agreement with the Committee's recommended approach to addressing these issues, namely, to increase information sharing between ACTCS and SAB.

The ACT Government strongly agrees that it is important that victims are supported to understand criminal justice processes and the decisions made about an offender, including in a post-sentence context, and that victims are supported to provide input to such processes and decisions.

The ACT Government notes that the issues which this recommendation seeks to address are (as outlined at paragraph 2.111 of the Report):

a) a suggestion that a victim should be able to make one submission in relation to both an offender's application for the Transitional Release Program and the offender's application for parole; and
b) the fact that Ms Jago, a victim and witness at the Inquiry, found the provision of information to her about the offender's acceptance into the Transitional Release Program and separately, the provision of information to her about the offender's parole application being rejected, to be confusing and misaligned.

At the end of 2022, the ACT Government made the decision to transfer the responsibility for administering the Victims Register from ACTCS to VSACT. This decision ensures that victims have one point of contact for information about post-sentence processes and decisions about an offender. Specifically, if a victim wishes to use the same submission for both an

offender application for entry into the Transitional Release Program and for that offender application for parole, then VSACT can and will support victims to do so.

VSACT, as the body responsible for administering the Victims Register makes itself available to explain the different schemes and processes in the criminal justice system (such as the Transitional Release Program and parole) to victims. VSACT would initially contact a victim about a Transitional Release Program and/or parole decision by phone and discuss what the decision means before providing the victim with written information about such a decision. This ensures that victims are supported to understand what is happening with respect to an offender. In particular, victims are given guidance about post-sentence processes and schemes, how the victim may provide input to decisions made about an offender, and what certain decisions mean in practice.

The ACT Government notes that in all matters considered by the SAB, it is provided with relevant offender information by ACTCS, which is responsible for the supervision of offenders both in custody and those subject to community-based orders. This information is generally provided by way of written report (for example, a Pre-Release Report or Breach Report) but it may also be provided verbally during hearings.

Recommendation 9

The Committee recommends that the ACT Government implement changes so that the Sentence Administration Board has the authority to include restrictions on driver licences or suspend the licence as a parole condition.

Not agreed

The decision to disqualify a person from holding or obtaining a driver licence for dangerous driving offences should be made by the courts or the Road Transport Authority (RTA) in accordance with an express power in the road transport legislation. If the court convicts a person, or finds a person guilty, of an offence against the road transport legislation, a licence disqualification is considered at that time.

If a person is convicted or found guilty of an automatic disqualification provision in section 61A of the *Road Transport (General) Act 1999* (the RTG Act), the period of licence disqualification in sections 62 and 63 of the RTG Act are a minimum period that must be imposed. The Court has discretion to impose a longer period of disqualification and where custodial sentences are ordered, the disqualification may exceed the sentence. Further, a court that convicts a person, or finds a person guilty, of an offence against the road transport legislation that does not have an automatic licence disqualification period, may disqualify the person from holding or obtaining a driver licence for the period the court considers appropriate. It is not appropriate for the SAB to determine if a longer period of disqualification from holding or obtaining a driver licence is required at the time of parole, if the Court has not determined that this is required at the time of a finding of guilt or conviction for the relevant offence.

For other forms of dangerous driving involving drugs and alcohol, there are a number of powers under the road transport legislation that provide for restrictions or consideration of a person's fitness to drive and hold a licence. A person who is convicted or found guilty of an alcohol related mandatory interlock disqualification offence under section 73T of the *Road Transport (Driver Licensing) Regulation 2000* must be assessed by the court alcohol and drug assessment service (CADAS). Before the person is sentenced for a mandatory interlock condition, a report must be prepared for the court by the CADAS that assesses whether any

form of therapeutic treatment or program might assist the person and, if so, makes recommendations about an appropriate treatment or program. The RTA may suspend the person's licence until the person has complied with the Court order.

Currently, all drivers must self-report to the RTA if they have a medical condition affecting their ability to drive. A person must meet the required medical standards and must not drive a motor vehicle on a road or road related area if the person's ability to drive safely is impaired. The required medical standards are set out in the publication *Assessing Fitness to Drive*, and amended from time to time, published by Austroads.

Voluntary notifications about a person's fitness to drive can also be made by any person, such as the SAB, concerned health practitioners or family members. To reduce road trauma by identifying at risk drivers on ACT roads, the RTA may require a person to undergo medical examinations under section 78 of the Road Transport (Driver Licensing) Regulation. If a person is not suitable to hold an unrestricted licence, the RTA may vary licences to impose appropriate conditions or restrictions, or suspend or cancel licences where required, considering the Assessing Fitness to Drive.

Recommendation 10

The Committee recommends that the ACT Government provide additional funding to the Sentence Administration Board to put in place appropriate guidelines on how a requirement to receive medical treatment can be applied as part of a parole condition or be part of the decision to grant or revoke parole.

Not Agreed

The Government acknowledges the concern raised by the Committee and notes that it has a system of alternative arrangements in place to respond to medical issues that may affect a drivers' capacity to drive safely, including amendments already made in response to a Coroner's report.

In some other Australian jurisdictions, parole boards can order medical assessment and treatment as a condition of parole. In the ACT, other bodies and mechanisms exist to provide an expert and informed response to the medical requirements of offenders, including parole applicants and parolees.

Mental Health

The Director-General responsible for Corrective Services can currently apply to the ACT Civil and Administrative Tribunal (ACAT) for a mental health assessment where the SAB has concerns about substantial risk to health and safety as a result of a parolee or parole applicant's mental disorder or mental illness.[13] Following assessment pursuant to an assessment order, the ACAT may order that the parolee or parole applicant be subject to a mental health order.

The SAB does not have expertise in determining whether a particular person should be subject to an assessment order or a mental health order, whereas the ACAT does. The ACAT

[13] A person may apply to the ACAT for an assessment order if they believe on reasonable grounds that (a) the health or safety of a person is substantially at risk because that person is unable to make reasonable judgments or do something necessary for that person's health or safety because of mental disorder or mental illness; or (b) another person is likely to do serious harm to others because of mental disorder or mental illness (s 34, *Mental Health Act 2016*).

includes a specialist mental health tribunal, with experts (such as the Chief Psychiatrist) closely informing decisions about whether to make a mental health order for a person, including a forensic mental health order.

Such orders can range from requiring a person to submit to a mental health assessment to requiring a person to undergo psychiatric treatment and be detained for a certain period at an approved mental health facility.

The ACT Government notes that this response does not intend to imply any connection between mental illness and dangerous driving as such a connection is not supported by evidence.

Physical Health

(a) Assessing fitness to drive

Access Canberra is delegated as the RTA regulator for transport regulation and licencing. Access Canberra reviews a person's Fitness to Drive based on the nationally approved medical standards in Austroads' Assessing Fitness to Drive. The standards in Assessing Fitness to Drive provide evidence-based guidelines on how medical conditions can affect a person's ability to drive and identifies suitable and consistent measures to control the risk. Assessing Fitness to Drive sets two medical standards, with more stringent commercial standards applicable to drivers of heavy vehicles (class MR and above), drivers of public passenger vehicles and drivers of dangerous goods vehicles. While Access Canberra utilises the advice of medical professionals as part of the fitness to drive assessment, any decision affecting a person's driver licence will remain with Access Canberra. Regulation 77 of the Road Transport (Driver Licensing) Regulation places an obligation on a driver licence holder to report conditions that affect their fitness to drive. It is an offence to not report such a condition.

(b) Drug and alcohol substance misuse

Chapter 9 of Assessing Fitness to Drive addresses alcohol and substance misuse disorders, stating, 'A person is not fit to hold an unconditional licence: • if there is an alcohol use disorder such as alcohol dependence or heavy frequent alcohol use; or • if there is a substance use disorder such as substance dependence or other substance use that is likely to impair safe driving'.

Additionally, the *Road Transport (Alcohol and Drugs) Act 1977* (the RT(AD) Act) provides for the detection of people who drive motor vehicles after consuming alcohol or drugs and outlines offences and measures for the treatment and rehabilitation of offenders. ACTCT and the RTA are responsible for administering and making determinations under the RT(AD) Act and have the required expertise and information to do so.

Section 73U of the Road Transport (Driver Licensing) Regulation provides the Courts with the power to order that a person participate in a drug and alcohol treatment program, as necessary. Additionally, several offences under the RT(AD) Act require the offender to attend a drug and alcohol awareness course prior to their right to drive being reinstated.

(c) Mandatory reporting of medical conditions

The *Road Safety Legislation Amendment Act 2022* was passed in the Legislative Assembly on 7 June 2023. The Road Safety Legislation Amendment Act implements important recommendations from the Coronial Inquiry into the death of Blake Corney, by introducing a regulation making power to require medical practitioners to report information relating to a person's fitness to drive to the RTA. The power to make regulations about mandatory

reporting will commence from June 2024. Notifications from medical practitioners will integrate into the existing fitness to drive regime under the Road Transport (Driver Licensing) Regulation. The regime will require that a person is assessed against nationally adopted medical standards within Assessing Fitness to Drive.

Currently, the RTA may receive reports voluntarily from concerned health practitioners, family members or friends as well as ACT Policing. Driver licence holders must tell the RTA if they suffer any permanent or long-term illness, injury or incapacity that may impair their ability to drive safely. The RTA may also be informed of a medical condition affecting a person's driving ability through regular medical assessment requirements imposed on certain licence holders, such as drivers of public passenger vehicles.

Current law provides that the RTA will change a person's driving authorisation to the extent necessary to maintain public safety. The RTA may impose conditions on a licence in accordance with the required medical standards or may not consider any changes necessary to the driver licence. The RTA may suspend, cancel or vary a driver licence in the interests of road safety. These decisions consider the evidence available and are reviewable decisions.

The mandatory reporting of medical conditions by medical practitioners will come into effect following detailed consultation with the industry and the establishment of necessary system and process requirements.

The approaches taken in the ACT and outlined above allow for an offender's mental health and physical medical conditions to be addressed on an ongoing basis. The assessment and treatment are not tied to parole (which may only last for a short period) or the duration of the sentence of imprisonment. As such, the current approach allows for long-term solutions which lead to better treatment outcomes for offenders and better support community safety.

Recommendation 11

The Committee recommends that the Sentence Administration Board have the power to inquire into offenders who have been charged (even if not convicted) with breaching conditions of their Intensive Corrections Order, in the same way that applies in respect of parole under section 153 of the *Crimes (Sentencing Administration) Act 2005.*

Noted

The ACT Government is currently considering this legislative proposal, together with the views of relevant stakeholders.

Recommendation 12

The Committee recommends that the ACT Government overhaul its data collection on corrections orders for improved analysis.

Agreed in principle

With a focus on continuous improvement, ACTCS established the Data & Innovation Working Group (the Working Group). Among its responsibilities, the Working Group is

engaged in a review of ACTCS Strategic and Accountability indicators, Key Performance Indicators and reporting for individual ACTCS business units.

As part of the 2023–2024 workplan, the Working Group will consider how ACTCS business areas can improve the data quality from entry to extraction, analysis, and reporting, including how the agency can improve the information on corrections orders. The Data Quality and Improvement project, which is coordinated through the Working Group, is in the process of reviewing governance mechanisms which oversee the consistency and quality of data collection in CORIS (ACTCS's offender record management system).

ACTCS makes data on corrections orders publicly available for analysis in the Corrective Services chapter of the Report on Government Services. In addition, the Justice and Community Safety's Annual Report publishes data on community corrections orders. All data published are approved by the ACTCS Commissioner as data custodian, according to ACTCS data release policies.

Recommendation 13

The Committee recommends that the ACT Government implement penalties for leaving the scene of an accident to include passengers, not just drivers.

Not Agreed

Recommendation 13 was proposed by the Committee in response to the experiences of one victim's family. The family recounted delays in an investigation and the challenges faced due to the offender and passenger leaving the scene of collision. Currently, the maximum penalty for a driver leaving the scene of an accident is 200 penalty units, two years imprisonment or both (section 16, Road Transport (Safety and Traffic Management) Act).

The legislative and operational considerations in relation to this recommendation are extensive as it would fundamentally change the default nature and role of a passenger's responsibility under the existing road transport legislation.

In the ACT, like all Australian jurisdictions, the focus of the road transport legislation is on the driver's obligations by mandating that drivers, not passengers, must stay at the scene of a vehicular accident. This is specified under section 16 of the Road Transport (Safety and Traffic Management) Act, which makes it an offence for a driver to leave the scene of an accident. The penalties for violating this law include a fine equal to 200 penalty units and/or imprisonment for up to two years.

Relevant considerations include, but are not limited to:

- Due to the legislated focus on drivers, extreme care should be taken before imposing similar penalties on passengers. This is because passengers are not the active or licensed operators of the vehicle involved in the collision and do not have the same legislative and regulatory obligations or responsibilities as drivers.
- Passengers may have reasons for leaving the scene such as stress, trauma, or health-related issues caused by the accident. Enforcing a requirement for all passengers to remain at the scene, regardless of the potentially adverse and traumatic conditions, could contribute to further distress and negatively impact wellbeing.

- Further to above, imposing this obligation on minors or other vulnerable persons presents a greater concern. The experience of being kept at the scene of a serious accident may prove additionally traumatic and inappropriate for such individuals.

- Appropriate defences would need to be incorporated to protect passengers, considering their different role in a traffic accident and the intent behind a provision requiring them to remain at the scene. The formulation of such policy and defences would require comprehensive and careful deliberation, would be complex to implement and administer, and may not achieve overall benefits.

- If this offence were to be established, police officers would need to consider the circumstances of a passenger's departure when assessing whether an offence had intentionally occurred. To mitigate this risk, significant safeguards should be imposed on officers to ensure fair and accurate assessment of the situation.

The ACT Government notes that under Australian law, passengers in a vehicular accident are generally not legally obliged to assist those in need at the scene of the accident. However, passengers can choose to offer assistance voluntarily, and when doing so, they can be protected by Good Samaritan laws, which differ across states and territories. Some examples of these laws can be found in the *Civil Law (Wrongs) Act 2002* (ACT) under Chapter 2, Part 2.1 (Good Samaritans), and in the *Civil Liability Act 2002* (NSW) under Part 8 (Good Samaritans). Mandating passengers to remain at the scene may have unintended interactions and consequences with other existing laws like these.

The ACT Government position to this recommendation is consistent with views of ACT Policing, which also does not support extending the offence of leaving a scene of an accident to include passengers. ACT Policing has particular concerns regarding the utility of Recommendation 13 noting that:

- ACT Policing believes that there are many reasonable circumstances for which a passenger may leave the scene of an accident that are not criminal by nature. For example, a passenger may leave due to trauma, or there may be a minor in the car and it may be more appropriate that they are removed from the accident scene – particularly in serious collisions.

- Police cannot compel a witness to provide a statement even if that witness remains at the accident scene.

Given these considerations the ACT Government does not support the recommendation.

Recommendation 14

The Committee recommends that the ACT Government review and streamline ACT legislation governing road safety and dangerous driving.

Agreed in principle

The ACT Government is currently reviewing the road transport penalties framework, with a focus on addressing immediate concerns around dangerous driving. The ACT Road Safety Action Plan 2020-2023 includes two relevant and aligned commitments which are being actively worked on under the Road Transport Penalties Review:

- Review the road transport penalties framework to ensure that the penalties within that framework are commensurate with the road safety risk associated with the unsafe behaviour and support behavioural change; and

- Review and assess the effectiveness of the ACT Government's drink and drug driving scheme against best practice models and to explore measures that are appropriate for the ACT, which will deter drink and drug driving.

The Road Transport Penalties Review will result in significant reforms, with the first tranche having already been implemented through the Road Safety Legislation Amendment Bill 2022 in June 2023. This Bill enhanced penalties to deter dangerous driving behaviours with stronger police and court sanctions, targeting repeat and severe offending, and strengthen the reporting and monitoring of driver licence holders' fitness to drive. The next tranche of road transport legislation reforms will focus on road transport penalties for drug and alcohol related offences. This is expected to be introduced in late 2023, with additional tranches of road transport penalty reforms to follow.

The ACT Government supports the Committee's recommendation for a full review and streamlined rewrite of the ACT road transport legislation. This has been recognised widely by a broad range of stakeholders. The ACT's current legislative framework, as noted by witnesses and submissions to the Inquiry into Dangerous Driving, is both fragmented and complex. There are nearly 1,900 road transport offences that are spread across six separate Acts.

The challenge goes beyond just the six transport Acts themselves. There are numerous regulations and instruments that intersect with road safety outcomes, in addition to explicit road transport legislation, and case law considerations. Adding to this complexity is the fact that the responsibility and authority to make legislative changes, on-road enforcement, and sentencing are split across different agencies. This means that any significant changes to the legislation must involve collaboration across multiple agencies.

Due to the scope and complexity, significant time and resources would be required to undertake a broader review of the entire ACT Road Transport Legislation Framework. Lessons learnt from other jurisdictions suggest that TCCS would need a specially resourced team to conduct this review, which could potentially operate over several years, if not longer.

As such, the ACT Government will be prioritising completion of the current Road Transport Penalties Review, and associated reforms, which will provide significant and immediate road safety benefits for Canberrans. Following completion of the Road Transport Penalties Review, further work will be undertaken to refine the scope and resources required to undertake a comprehensive review and streamlining of the ACT Road Transport Legislation Framework, as recommended by the Committee.

Recommendation 15

The Committee recommends that the ACT Government provide police with the power to confiscate mobile phones on the spot in serious collisions.

Not Agreed

Evidence collection and the admissibility of that evidence in Court is regulated under the Crimes Act and the *Evidence Act 2011*. Within the evidence collection framework, there is an existing power that allows mobile phones to be confiscated or a warrant obtained where

police have reasonable grounds to suspect an offence has been committed and the item (for example, a phone) was involved in or held evidence of the offence. This is standard policing practice. Specifically:

- section 210G(2)(c) of the Crimes Act provides that where a crime scene has been established, a police officer may control the movement of people or things at the place (if it is reasonably necessary to immediately exercise the power to protect or preserve evidence relating to the offence). The legislation provides (at Examples – par (c), examples 2 and 3) that section 210G(2)(c) includes removing a thing from the place, or directing another person to remove the thing and also includes preventing a person from interfering with or removing evidence from the place.

- section 209 of the Crimes Act provides that where a police officer suspects on reasonable grounds that a thing relevant to a serious offence is in a conveyance, the officer can seize a thing where it is necessary to do so to prevent it from being concealed, lost or destroyed, and it is necessary to seize the thing without the authority of a search warrant because the circumstances are serious and urgent.

The primary purpose of the additional power proposed under recommendation 15 would be to further aid in collecting evidence to support a charge or prove that an offence has occurred where it is not immediately clear to police that an offence has been committed. As a power exists and is utilised by police, increasing this power to collect evidence without reasonable necessity and prior to charging someone does not appear justified.

Recommendation 16

The Committee recommends that the ACT Government develop a plan on how to improve driver education and intervention programs on dangerous driving, especially in relation to speeding and drink and/or drug driving with an update on progress to be tabled in the Assembly at the same time as the government response to this report.

Agreed in principle

The ACT Government recognises the crucial and ongoing need for a plan targeted at driver education. This will be reflected in the forthcoming *Road Safety Action Plan 2024-2025*, currently under development, in which driver training and education is a key focus. Actions in the Road Safety Action Plan proposed to improve both driver education and intervention programs focusing on dangerous driving include, but are not limited to:

- **A Learner Driver Mentor Program for Disadvantaged Youth:** TCCS has recently entered into a contract with the Salvation Army for a four-year funding agreement. This contract is set to provide 30 participants per annum with mentorship through the licensing process, including access to 10 hours of lessons with an ACT Accredited Driving Instructor, learner driver training and education programs, and supervised driving hours. An additional 100 participants per annum will gain free access to the Safer Driver Course, which provides theory and practical driving with an ACT Accredited Driving Instructor.

- **Review of the Pre-Learner Licence Course (PLLC):** The PLLC was updated in 2020 to align with the reforms as part of the Graduated Licensing Scheme, including integrating recommendations from previous evaluations and aligning with best practice. The PLLC is being reviewed in 2023 and into 2024 to assess the design and delivery of the course material against student outcomes and road safety best

practices. This includes review and update of dangerous driving content to continue ensuring our drivers are well educated and prepared to be safe on our roads.

- **Review of the Alcohol and Drug Awareness Course (ADAC):** ADAC was designed as a mandatory program for drivers convicted of a drink or drug driving offence. The course aims to increase awareness about the effects of alcohol and drugs, including their effects on driving and health. To ensure that the rehabilitation and therapeutic needs of different offenders are accommodated, there are two types of courses available. TCCS intends to review the ADAC program in 2023-2024 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.

- **Intervention to target unsafe driving related behaviour by vulnerable young people:** The ACT Road Safety Fund provided funding to Community Services Directorate to develop and deliver a program. This program specifically targets unsafe driving related behaviour by vulnerable young people involved in either youth justice, care and protection contexts, or both. The three components of the project are: Values and Peer Pressure; Understanding the Impact of Unsafe Road Use; and Recreational Activity, which is a high adrenaline and/or art/music program. The program design and content will consider relevant literature, including research on effective interventions for young people involved in the justice and care systems.

- **ACT Government communications/engagement project:** The goal of the project is to ensure continuous education, awareness and behaviour change in the community. A 12-month communications and engagement strategy is currently under development. This strategy will give particular attention to focus areas such as speeding, distracted driving and impairment.

Recommendation 17

The Committee recommends that the ACT Government examine how Intelligent Speed Adaptation can assist in the reduction of speeding in the ACT.

Agreed in principle

The ACT Government is committed to the reduction of speeding in the ACT. However, the Commonwealth Government has responsibility for the Australian Design Rules (ADR).

At the Commonwealth level currently, there is no ADR for Intelligent Speed Adaption. Nonetheless, the Minister for Transport and City Services is actively advocating at the national level for the implementation of proven technological solutions that improve road safety and is committed to ongoing advocacy for these technological solutions to the Commonwealth.

It is essential to note that the Commonwealth uses the ADRs as a foundation for granting approvals to supply types of road vehicles to the market. This is managed under the Road Vehicle Standards Rules 2019. Similarly, states and territories use these ADRs as the primary criteria by which vehicles are assessed for road worthiness.

Recommendation 18

The Committee recommends that the ACT Government provide a status update on their scoping and feasibility work on electronic monitoring options to the Assembly and include consideration of using electronic monitoring to observe and check speeding drivers, with an update on progress to be tabled in the Assembly at the same time as the government response to this report.

Agreed

The ACT Government has undertaken preliminary work to inform the development of a feasibility and scoping project for adopting electronic monitoring in the ACT, including research and discussions with other Australian jurisdictions, discussions with key ACT Government stakeholders and desk-based research on the technical capabilities and practical application of electronic monitoring.

This is informing detailed project planning underway for the feasibility and scoping project which will consider the identification of suitable points in the justice system to adopt electronic monitoring, costs and operational implementation including data governance and system security.

Consideration is also being given to developing a small-scale trial of electronic monitoring to support the feasibility and scoping project to provide a better understanding of the complexities of a larger scale introduction should this prove viable for the ACT.

The ACT Government has committed $377,000 over two years in the 2023-2024 budget to undertake the feasibility and scoping work.

Recommendation 19

The Committee recommends that the ACT Government introduce a high risk offender scheme, which includes requiring recidivist offenders to demonstrate to a court their fitness to drive.

Noted

The ACT Government notes the Committee's recommendation to introduce a high-risk offender scheme, which includes requiring recidivist offenders to demonstrate to a court their fitness to drive, and is investigating options for such a scheme.

Recommendation 19 is based on ACT Policing's proposal to introduce a 'high-risk' offender scheme which will require an offender to demonstrate their fitness to drive before re-obtaining their driver licence. This may include proven abstinence from problematic drug or alcohol use and the scheme will be tailored to welfare support. ACT Policing submitted that the United Kingdom (UK) currently adopts a similar scheme. Currently, the UK defines a high-risk offender in a number of ways including the number of drink driving convictions within a period of time, the blood alcohol concentrate in blood, urine or breath, or refusal to undergo police testing. The ACT currently has an alcohol interlock program and drug and alcohol awareness courses which are mandatory for high-risk offenders.

The ACT Government has committed to reducing criminal recidivism and recognises the alignment of this recommendation with the ACT's policy direction as outlined in the

Reducing Recidivism Plan. As noted in the response to Recommendation 16, the ACT Government is committed to improving driver education and intervention programs on dangerous driving.

The Government wishes to ensure that any such scheme is carefully designed to ensure it is efficacious, and to take account of the range of complex factors that contribute to repeat offending, and will initially consult with road safety and justice experts to explore program options further.

Recommendation 20

The Committee recommends that the ACT Government monitor the evidence base for driver impairment following drug intake and update the assembly when it becomes available.

Agreed

The ACT Government welcomes the Committee's recommendation to monitor the evidence base for driver impairment following drug intake and update the Assembly when it becomes available.

An Austroads report in 2018 indicated Australia is the global leader for roadside drug driving testing. Australia is noted as having one of the most established processes and highest frequency of random roadside drug testing.

This extensive testing regime stresses the importance of ensuring that the legislation, processes, and technologies put into practice are accurate, equitable, and focused on reducing road safety risk, rather than simply identifying drivers with trace elements of specific drugs in their systems.

This distinction becomes increasingly relevant in the ACT, as the legislation to decriminalise possession and use of small quantities of illicit drugs comes into effect in October 2023. With the impending change in the law and the growing prescriptions and use of medicinal cannabis, it is vital that the ACT adopt a fair and evidence-based approach to the identification and management of these offences.

There is a growing body of evidence showing a strong association between the level of a prohibited drug found in oral fluid or blood and increases in crash risk, with many studies being conducted both internationally and locally in Australia. Studies at both the Swinburne University in Victoria and University of NSW (the Lambert initiative) are focussed specifically on identifying in detail the effect on driving ability of drugs, particularly cannabis, in a person's system.

While the body of research is not yet extensive enough, it is anticipated that these studies will eventually facilitate the establishment of threshold levels for more accurately charging drivers with impaired drug driving, as opposed to merely having trace elements of the drug in their system. This approach is already being seen in many European jurisdictions, where legal offences are defined based on threshold levels rather than the mere presence of drugs, with these thresholds varying depending on the type of drug being tested for.

Moreover, the evidence base showing that different drugs have different levels of associated safety risk is also expanding. TCCS, with the support of the ACT Health Directorate, continues to monitor this growing base of evidence. The current work within the Road Transport Penalties Review is conducting an extensive desktop review and developing a discussion paper for cross-directorate consultation in the upcoming years.

Recommendation 21

The Committee recommends that the ACT Government introduce additional trauma training for health practitioners to improve support to victims of dangerous driving and their families.

Agreed in principle

The ACT Government acknowledges the importance of providing trauma-informed care. Trauma-informed care is a strengths-based, evidence-based approach that is based on understanding the impact of trauma. Trauma-informed services can support people to feel safe, build trust, and overcome their fear.

Implementation of this recommendation will be considered in conjunction with the implementation of early action 10 from the *ACT Health Workforce Strategy 2023-2032*, which is to, 'Work with education and training partners to embed a trauma-informed, domestic, family and sexual violence informed, and disability confident approach into education and training pathways'. Embedding training into education pathways will ensure the entire health workforce across public and private sectors are well equipped to deliver trauma-informed care.

If funding is required for training it will be considered through business cases in future budget bids.

Recommendation 22

The Committee recommends that the ACT Government urgently fund a trauma service that is available at the scene of an accident and a 24 hour hotline to help victims and their families.

Noted

The period following a road accident is extremely traumatic for victims and their families. Noting that funding to Support Link ceased in 2016, the Committee found that ACT had a number of long-term support services, however, there was a gap in the availability of immediate support services at the time of the accident. ACT Policing submitted that it was extremely difficult for police to offer trauma support at the scene of an accident due to their primary role to investigate.

Victims' rights of access to support, services, and legal and financial assistance are fundamental to the ACT justice system and are recognised in the ACT Charter of Victims' Rights.

The ACT Government has committed to amending Regulation 24 of the *Victims of Crime Regulation 2000* to ensure that individuals who suffer harm as a result of the death of a family member caused by a driving offence are eligible for assistance under the Victim Support Scheme in the ACT.

The ACT Government monitors demand for support and services for victims of motor vehicle incidents, and has provided additional funding to VSACT to provide counselling support to

these family members of a person killed in a motor vehicle incident involving a serious driving offence from an early stage.

Coronial Counselling (https://racr.org.au/services/coronial-counselling/), a service funded by the ACT Health Directorate, provides 24/7 free telephone (1300 364 277) counselling and support services to bereaved families, friends and community members following a death under investigation by the ACT Coroners Court.

There are other options for counselling and support. For example, the ACT Government funds Access Mental Health (https://www.canberrahealthservices.act.gov.au/services-and-clinics/services/access-mental-health), a 24/7 telephone counselling service (1800 629 354 free call). Other services are available through charitable organisations. For example, Lifeline (https://www.lifeline.org.au/) provides all Australians experiencing emotional distress with access to 24 hour crisis support (13 11 14).

ACT Policing also has a dedicated Victims of Crime Team (02 5126 9113) who offer support to victims, including access to counselling and support services.

JACS will work with ACT Policing to facilitate access to existing services, including ensuring front line police can refer victims, as required, to Coronial Counselling or the Access Mental Health Line for 24-hour crisis support and to the ACT Policing Victims of Crime Team.

Recommendation 23

The Committee recommends that the ACT Government provide funding for the Victims of Crime Commission to:

a) provide a wrap around service families of victims as a result of dangerous driving;

b) support people with non-fatal injuries as a result of dangerous driving; and

c) extend support for victims of 'negligent driving'.

Noted

Victims' rights of access to support, services, and legal and financial assistance are fundamental to the ACT justice system and are recognised in the ACT Charter of Victims' Rights.

Anyone injured as a result of a motor vehicle incident in the ACT can make a Personal Injuries Application under the Motor Accident Injuries (MAI) Scheme. Benefits include treatment, care, and lost income for up to five years, as well as a quality of life payment if the injury sustained is significant and permanent. These benefits are available to all individuals injured, regardless of fault.

In addition, as noted in response to Recommendation 22, the ACT Government recently provided additional funding to VSACT to provide counselling services for individuals harmed because of the death of a family member as a result of a driving offence such as negligent and dangerous driving. This funding will facilitate early counselling support to those individuals.

The ACT Government is dedicated to supporting and assisting all people harmed as a result of motor vehicle accidents and will continue to monitor demand for support and services for victims who sustain non-fatal injuries as a result of a motor vehicle incident in the ACT to determine whether additional support and services are required.

Recommendation 24

The Committee recommends that the ACT Government provide extra funding to cover the gap on the coronial support list.

Agreed - Existing Government Policy

Additional funding of $80,000 per annum was provided for the coronial counselling service delivered by Relationships Australia as part of the 2022-2023 ACT Budget.

An independent review of the coronial process in the ACT is underway. The ACT Government will consider any relevant proposals made by the independent review in the context of broader coronial reform measures.

Recommendation 25

The Committee recommends that the ACT Government ensure that subpoenas issued to victims are trauma informed (for example, avoiding them falling on anniversaries).

Agreed

The Victims Advisory Board (VAB), which includes both Government and non-Government members, supports the Minister and the Victims of Crime Commissioner in their work to promote the interests of, and achieve better outcomes for, victims of crime in the ACT justice system. The VAB has identified the importance of identifying significant dates for victims in the criminal justice process, such as the anniversary of the relevant offence or the birthday of the victim. The VAB is exploring options for collecting and sharing this information from victims to allow justice agencies to implement operational changes that would avoid scheduling court dates or otherwise engaging with victims on dates identified as significant to them.

Recommendation 26

The Committee recommends that the ACT Government introduce trauma training for all court staff and judiciary and ensure that there are physical arrangements (such as a family room) to minimise the likelihood of interactions between defendants and families and victims at the courts.

Agreed in principle

In the ACT, the Charter protects and promotes the rights of victims of crime when they engage with justice agencies in the criminal justice system. The Charter recognises the central role that victims of crime play in the criminal justice system and upholds their rights to safety, privacy, dignity and participation.

The Charter includes specific rights for victims of crime in the following areas:

- Respectful engagement and protections related to safety and privacy
- Access to support services and other forms of assistance
- Provision of information about general administration of justice processes
- Provision of information in regards to investigations, proceedings and decisions
- Participation in proceedings

ACTCT upholds the Charter, including specific rights that the court's administrative officers must uphold. Further information on the Charter can be found on the ACT Government's VSACT website.

Victim Liaison Officer

The ACTCT has a Victim Liaison Officer who provides assistance to victims or families of victims. The Victim Liaison Officer provides support including, pre-hearing tours, considering any special needs or assistance required, and addressing concerns about the need for protection from violence and harassment in a court or tribunal building. The Victim Liaison Officer can escort victims and their families to or from court or tribunal buildings and sit with them during their court visit. Support from the Victim Liaison Officer can be requested in advance of attending a court or tribunal, or on the day. The services of the Victim Liaison Officer have been communicated to key agencies so they can provide this information to their clients.

Dedicated spaces for victims and families

The ACTCT is committed to providing court and tribunal users a safe and supportive environment to better enable their participation in court and tribunal matters.

The Heritage Building within the courts has three dedicated rooms for victims support services. These rooms are not near the main foyer or public areas of the main courts building. The rooms have been set up to provide a calm, comfortable environment, and safe space for victims and their families to wait for their hearing. There is a room adjacent where Sheriffs can sit and provide support as needed.

Further, there are two secure rooms near the victim support rooms with video conferencing facilities where victims and families can link in remotely to hearings if required. The ACAT building also has a remote witness room that can be used for hearings for victims and families if required.

In addition, there is a room off the main foyer that can be accessed by families visiting the courts if required.

The Ngilimadadun room provides a culturally safe space for clients from the Aboriginal and Torres Strait Islander community to meet in whilst awaiting proceedings. The Ngilimadadun room was opened in February 2022 and consists of a general waiting area, two conference rooms, video conferencing capability, a kitchenette and accessible bathroom.

Family Liaison Officer – Coroners Court

The ACT Coroners Court has a dedicated Family Liaison Officer to provide frontline engagement and support to families who become involved in the coronial process. The Family Liaison Officer spends time with families, provides ongoing communication and information on the coronial process, and liaises in relation to counselling services available to families.

Trauma training for court staff and judiciary

The ACTCT is currently exploring options for training in trauma-informed practice and principles for relevant court staff, to enable them to better understand the impacts of stress and trauma on court users, strategies to manage these within a court setting, and ensure fair process and access to justice. The Chief Justice and Chief Magistrate anticipate including access to training in trauma-informed practice as part of the judicial education program.

Information for victims is available on the ACT Courts website, including information on victims' rights.

Recommendation 27

The Committee recommends that the ACT Government requires the Motor Accident Insurance Commission improve their customer service delivery by being trauma informed.

Agreed

The ACT Government will work with the MAI Commission, and through the Commission with the MAI Insurers, to improve customer service delivery to provide better trauma-informed support. The MAI Commission's primary function is to be the regulator for the MAI Scheme and maintains a website for people on how to access the scheme. The MAI Commission does not manage applications or claims.

The MAI Commission continues to explore with agencies and MAI Insurers ways to reduce the administration associated with navigating the scheme. The form for funeral benefits has been recently amended to reflect feedback.

Recommendation 28

The Committee recommends that Access Canberra improve their information sharing with the Motor Accident Insurance Commission.

Agreed

Access Canberra and the MAI Commission will continue to work together to ensure open dialogue and to maximise information sharing.

Conclusion

The ACT Government thanks the Committee for its Report on the Inquiry into Dangerous Driving. The ACT Government recognises the ongoing concern in the community regarding dangerous driving, which has tragically claimed lives in 2022-2023. Dangerous driving is unacceptable and continues to provide a risk to the community. The ACT Government is committed to finding ways to reduce this serious offending and where it occurs, provide an appropriate response to support those affected.

The ACT Government has progressed a number of initiatives and work programs to respond to dangerous driving in the community as detailed above, and looks forward to continuing to progress this program of work in line with recommendations above in collaboration with agencies both within and outside the ACT Government.