



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
Mr Peter Cain MLA (Chair), Dr Marisa Paterson (Deputy Chair),
Mr Andrew Braddock MLA

Submission Cover Sheet

Inquiry into Dangerous Driving

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VICTIMS OF CRIME
COMMISSIONER

ACT Human Rights Commission

Standing Committee on Justice and Community Safety

Office of the Legislative Assembly

Via LACommitteeJCS@parliament.act.gov.au

5 October 2022

Dear Standing Committee on Justice and Community Safety,

Submission to the Inquiry into Dangerous Driving

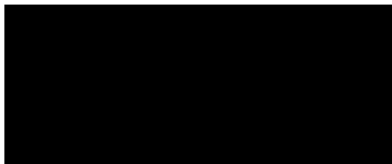
Thank you for the opportunity to make a submission in relation to the Standing Committee's Inquiry into Dangerous Driving (the 'Inquiry').

I note the enclosed submission addresses the following Terms of Reference:

- Criminal justice response to dangerous driver offending in the ACT
- Capacity of trauma services and support services to respond to the post-crash event
- Support of victims of dangerous driving offences through the justice system

I request that this submission be published in full and would welcome an invitation to the Public Hearings to discuss the contents of this submission with the Standing Committee. Should I be invited to attend, my preference would be to appear on the afternoon of Wednesday 26 October (if possible).

Yours sincerely



Heidi Yates

Victims of Crime Commissioner

About Victim Support ACT

1. The Victims of Crime Commissioner (VOCC) is an independent statutory advocate and the head of Victim Support ACT (VSACT). VSACT is situated within the ACT Human Rights Commission. The VOCC's functions are set out in the *Victims of Crime Act 1994*, the *Victims of Crime (Financial Assistance) Act 2016* and the *Victims of Crime Regulation 2000*.
2. The function of the VOCC is to advocate for the interests of victims of crime in the ACT. Particularly relevant to the subject of this Inquiry, the VOCC's responsibilities include:
 - a. ensuring the provision of efficient and effective services for victims
 - b. consulting on and promoting reforms to meet the interests of victims
 - c. ensuring victims receive the information, support, assistance and advocacy they need
 - d. delivering frontline support services to victims via the Victim Services Scheme (VSS) and the Financial Assistance Scheme (FAS), which operate under the umbrella of 'Victim Support ACT'

Victim Services Scheme (VSS)

3. The VSS provides a broad range of supports to people affected by crime in the ACT. For example, case coordinators working in the client services team (CST):
 - a. provide crisis counselling and information about what to expect after a crime, including what to expect from the justice system.
 - b. provide support to people when they are deciding whether to report a crime to police, and assist them to make such a report if they choose to do so.
 - c. connect people with free counselling and other therapeutic supports under the Victims of Crime Regulation 2000.
 - d. Provide advocacy and support to people as they navigate the criminal justice system, including assisting victims to resolve concerns about breach of their rights to information, consultation and participation under the Charter of Rights for Victims of Crime.
 - e. assist people to make applications under the Victims of Crime Financial Assistance Scheme.
 - f. provide information about, and referrals to, other services relevant to people's needs including legal and family support services.

Financial Assistance Scheme (FAS)

4. On 8 March 2016 the ACT Legislative Assembly passed the *Victims of Crime (Financial Assistance) Act 2016*. The new scheme commenced on 1 July 2016. The purpose of the scheme is:
 - a. to assist victims of crime to recover from acts of violence;

- b. to contribute to the safety of victims of crime and the prevention of future acts of violence;
 - c. to acknowledge the harmful effects of acts of violence; and
 - d. to complement other services provided for victims of crime.
5. This scheme replaced the Financial Assistance Scheme that operated under the repealed *Victims of Crime (Financial Assistance) Act 1983*.

Improving eligibility for therapeutic and case coordination support

Eligibility limitations under the VSS

6. At present, families who have suffered loss through a motor vehicle accident (MVA) causing death are not eligible for VSACT services under the VSS. This is because Regulation 24 of the *Victims of Crime Regulation 2000* excludes a person's eligibility for the VSS where a victim has suffered 'harm caused by, or arising out of the use of, a motor vehicle'.¹
7. While the initial policy consideration for precluding victims of MVA from the VSS aimed to limit government liability for the provision of therapeutic services and support in circumstances where such services could and should be paid for via a relevant insurance claim, our experience is that the current framework:
- a. fragments and delays the supports available to families bereaved by MVA death,
 - b. has resulted in further gaps in key support required to respond to such cases, and
 - c. limits rights to equal recognition before the law under s 8 of the *Human Rights Act 2004* of individuals and families impacted by criminal offending that results in an MVA causing death.
8. Notwithstanding the unavailability of VSS services to families impacted by MVA causing death, VSACT has recently and increasingly been called upon to provide support to several families who have experienced loss arising from a criminal offence involving a MVA causing death. VSACT has provided this support out of necessity, noting the gaps in timely service provision through regulatory bodies and insurance claims. This reflects the need for impacted families to have access to a front-line service that can provide timely therapeutic support, crisis counselling, wraparound case coordination and advocacy through criminal justice processes, and to directly related civil proceedings such as protection orders and insurance claims.
9. These are the types of supports and functions that do not fall within the ambit of service provision available through the relevant regulatory and insurance bodies. While the MAI scheme does allow for access to counselling and therapeutic supports once a claim has been processed, the families who have been assisted by VSS have needed immediate crisis counselling and support, along with assistance to complete all the steps required to make an MAI claim.

¹ Regulation 24(2)(a).

The need for wraparound support and adequate resourcing

10. As noted above, VSACT has been recently called upon to provide wraparound case coordination and support to families directly impacted by MVA causing death. The work undertaken in relation to these matters has highlighted the complexities of service responses that are distinctive to MVAs causing death. We have identified the following matters which uniquely define the service response to such cases:
 - a. **Large number of people directly impacted:** A death caused by a MVA often results in harm to multiple family members, which necessarily increases the complexity and resourcing costs of service provision.
 - b. **Victim agency and confidentiality where multiple people are impacted:** Family members wishing to access support services may require, for one or more reasons, access to their *own* support person. This especially arises in matters where family members are in conflict with one another and do not want, nor would it be therapeutically appropriate, to have the same support person as other members of the family.
 - c. **Timely service responses:** Service responses must be equipped to respond immediately to provide therapeutic care and support when requested, as well as to assist navigating imminent needs that follow the crash event. This includes needs for crisis grief counselling, support in a justice investigation in the aftermath of loss, commencing funeral arrangements, and tending to other immediate financial needs including assistance with accessing the MAI Scheme if appropriate.
 - d. **Intensive and long-term support:** Criminal charges arising in MVAs causing death often lead to protracted criminal and coronial investigations, in addition to related civil proceedings. This reality can often lead to a need for case coordination, support and justice advocacy over many months, or even years.
 - e. **Complex financial assistance entitlements:** Family members may require support to seek advice and apply for the VSACT Financial Assistance Scheme, the Motor Accidents Injuries Scheme, other personal and vehicle insurances, worker's compensation and civil claims.
11. The requirement for service provision outlined above exists in the broader context of a family member experiencing significant grief and trauma following a post-crash event. We have observed the impact of existing gaps and inefficiencies in service responses, leading to increased system frustration and compounding the distress of people impacted by MVAs causing death.
12. This highlights the vital need for additional service provision, which could readily be met by VSACT with additional resourcing. In summary VSACT would be well positioned to provide crisis counselling, wraparound case coordination, court support, and access to ongoing therapeutic care within the parameters and objectives of the VSS.
13. It is important to note that at present there are generally significant delays—approximately two to three months—for individuals in the Canberra community to access private counselling or psychological services. In contrast, VSACT has the capacity to draw on in-house counsellors with expertise in grief and trauma who can provide immediate support to family members. At present,

the VSACT in-house counsellors who are experts at providing such support are providing services to many other victims of crime and their families, and do not have the capacity to absorb the additional work associated with the needs of MVA families without additional resourcing.

14. Should Government decide to expand VSACT's capacity to work with families affected by MVAs causing death, VSACT anticipates its primary trauma counselling and case coordination to operate as a first point of call in the crisis period immediately following a death. Where a family is found eligible to access ongoing counselling and therapeutic supports through the MAI, this type of VSACT support would no longer be required. However, if there is no entitlement under the MAI Scheme, or if the family require ongoing justice advocacy and court support that is not available under the MAI, VSACT would continue to provide services under the VSS. By way of example, VSACT has previously coordinated with the MAI Scheme to facilitate applications to that scheme by grieving family members, who have also required practical and other assistance to complete forms and provide information, largely because of the impact on them of trauma and grief.

PAVER Review Recommendation

15. The *Projects Assisting Victims' Experience and Recovery (PAVER) Review* identifies the gaps in VSACT service provision discussed above. The PAVAR Review notes that, in practical terms, excluding victims who suffer harm caused by, or arising out of, the use of a motor vehicle can create a significant gap in access to therapeutic support for affected individuals and families.
16. Among other things, recommendation 11 of the PAVAR Review provides that the VOCC should have discretion to allow victims to access services in a broader range of circumstances, and for this discretion to extend to what level and type of service should be available to a person.² This recommendation goes directly to the terms of reference of this Inquiry which seeks to review the supports available to victims and those relatedly impacted by serious driving offences through the justice system.
17. Given the gap in service provision identified in the PAVAR Review, VSACT commends the PAVAR recommendation to the Standing Committee in considering the limited availability of supports available to victims impacted by MVAs causing death.

Extending special measures to all motor-vehicle death related offences

18. The *Evidence (Miscellaneous Provisions) Act 1991* legislates 'special requirements' for particular witnesses in certain proceedings, to provide protections in relation to a witnesses' participation in a justice process (referred to as 'special measures'). Under this Act, a matter involving *culpable driving causing death* is regarded as a *serious violent offence proceeding*.³ This entitles a witness who is a close friend or family member of the person who died in the proceeding to access special measures in relation to how the Court receives their evidence, and how they otherwise participate in the proceeding.⁴

² PAVAR Review (Final Report), xxiii-xxiv.

³ Evidence (Miscellaneous Provisions) Act 1991, s 40.

⁴ Ibid, s 42, definition 'special relationship witness'. See also s 43, Table 43.3 for special requirements.

19. We note the special measures under the *Evidence (Miscellaneous Provisions) Act 1991* do not extend to the offence of *negligent driving causing death*. This means that should a matter be brought before the Courts where the primary charge is one of negligence (as opposed to culpability), a close friend or family member of the deceased person would not be automatically entitled to the special measures under the legislation, including:

- a. preventing examination of the witness by a self-represented accused person,
- b. permitting the audiovisual recording of police interview,
- c. giving evidence at pre-trial hearing, and
- d. giving evidence by audiovisual link.

This is a gap in access to procedural special measures for witnesses based on the gravity of the fault element in the criminal charge.

20. We submit that criminal justice responses to driving offences causing death should afford witnesses with the same protections under the *Evidence (Miscellaneous Provisions) Act 1991*, regardless of whether the primary charge is one of culpability or negligence. The intent of the legislation when these protections were introduced for serious violent offences was to ensure that a witness in a homicide proceeding could access special measures if they had a close relationship with the deceased.⁵

21. We consider the need for accessing such special measures should be based on the impact of bereavement through death characterised by the close relationship noted above, as opposed to the degree of fault alleged through a criminal charge. Accordingly, we recommend extending the protections contained in the *Evidence (Miscellaneous Provisions) Act 1991* to all driving related matters that cause death.

Submissions of Camille Jago and Andrew Corney

22. We have had the benefit of reviewing the separate submissions of Ms Camille Jago and Mr Andrew Corney in relation to their experiences following a MVA that claimed the life of their young son. We commend their submissions to the Inquiry, as their commentary, insights and recommendations truly give a unique and important perspective on the matters before the Inquiry, though sadly drawing on their lived experience to do so.

23. We note, with support, Ms Jago's remarks pertaining to the term of reference examining supports for victims of dangerous driving offences through the justice system (at pages 7 – 10 of Ms Jago's submission). In addition, we note Mr Corney's submission supports additional resourcing to the VOCC for MVAs causing death.

24. With respect to the availability of supports, one of the positives for Ms Jago and Mr Corney was their access to appropriate counselling services in the aftermath of the accident. At that time, both Ms Jago and Mr Corney were able to access counselling through Red Nose (for the death of

⁵ Royal Commission Criminal Justice Legislation Amendment Bill 2018, Explanatory Statement.

children) and the coronial counselling service. We understand the latter service is now heavily oversubscribed with significant delays in appointments.

25. Ms Jago also made the following comment:

We were not made aware of the Victims of Crime Commission until the coronial inquest had begun. The Victims of Crime Commission has been a wonderful resource since, but I feel that something slipped through the cracks that it took almost 2 years for us to be made aware of the Victims of Crime Commission.

Consideration for Improvement – ACT Police Family Liaison Officer provides information about the Victims of Crime Commission.

26. In conclusion, we submit the current Regulation should be amended and discretion given to the VOCC to provide assistance under the VSS to families affected by MVAs causing death. The need for such an approach reflects the views of families VSACT has worked with in such circumstances and is consistent with the recommendation of the PAVER Review noted above. Should the regulation be amended, and VSACT be resourced to undertake this work, VSACT would continue to work closely with the MAI Scheme to ensure that families maximise their entitlements under that scheme, only drawing on VSACT services where gaps arise, particularly in the crisis period immediately following the death of a family member.