



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
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Submission Cover Sheet

Inquiry into Dangerous Driving

Submission Number: 026

Date Authorised for Publication: 10 October 2022

30 September 2022

Standing Committee on Justice & Community Safety
ACT Legislative Assembly
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Dear Committee,

Inquiry into Dangerous Driving

The ACT Law Society (the Society) welcomes the opportunity to comment on the Standing Committee's Inquiry into Dangerous Driving (the Inquiry). We consulted the Society's Criminal Law Committee and Access to Justice and Inclusion Committee, and make the following comments in response to the Inquiry's terms of reference.

The Society acknowledges that any death or serious injury on our roads is a tragedy. The Society further acknowledges that such tragedies have a significant ripple effect upon many in the community, beyond the primary victims and their families.

We are supportive of measures that have a reasonable prospect of reducing the incidence of dangerous driving in the ACT, and allow for the rehabilitation of offenders where appropriate. However, the Society respectfully suggests that there is no legislative 'quick fix' for the issues raised in the Inquiry.

Background

Motor vehicles are inherently dangerous objects and the consequences of one vehicle colliding with another or an individual (referred to in ACT legislation as a "vulnerable road user") can be catastrophic, even when the criminality involved may be no more than momentary inattention. This disparity between criminality and consequence makes sentencing for dangerous driving offences almost uniquely complex and challenging for the courts.

However, clearly not all dangerous driving offences are solely the result of momentary inattention. Many involve a higher level of culpability and criminality. In circumstances where there is a combination of low culpability and grave harm, however, there is a distinct challenge for a sentencing Court, firstly, to craft a just and appropriate sentence that deals with the circumstances of both the offence and the offender, and secondly to explain to victims and the community the reasons for the sentence imposed.

Prison sentences, fines and vehicle sanctions legislated for dangerous driver offences in the ACT

Motor vehicle use is heavily regulated in the ACT and is the area in which Canberrans are most likely to interact with the criminal justice system. Road users are subject to laws, regulations and road rules, all of which carry varying penalties. Despite this level of regulation, most road users are unaware of the precise penalties that apply to individual transgressions of the legal regime. Accordingly, their level of compliance is less likely to be related to the severity of the potential penalty they face and more due to risk factors such as age, substance abuse and mental illness.

There are numerous offences in the ACT that regulate conduct which may colloquially be referred to as dangerous driving. Some deal with the offence simpliciter and have increased penalties when grievous bodily harm or death results. There are also additional circumstances of aggravation that further increase the maximum penalties. In the ACT, such offences include:

- Aggravated culpable driving causing death contrary to s 29(3) of the *Crimes Act 1900* (ACT)
- Culpable driving causing death contrary to s 29(2) of the *Crimes Act 1900* (ACT);
- Aggravated culpable driving causing grievous bodily harm contrary to s 29(5) of the *Crimes Act 1900* (ACT);
- Culpable driving causing grievous bodily harm contrary to s 29(4) of the *Crimes Act 1900* (ACT);
- Furious Reckless or Dangerous Driving contrary to ss 7(1)(a)-(d) of the *Road Transport (Safety and Traffic Management) Act 1999* (ACT);
- Negligent driving causing death contrary to s 6(1)(a) of the *Road Transport (Safety and Traffic Management) Act 1999* (ACT); and
- Negligent driving occasioning grievous bodily harm contrary to s 6(1)(b) of the *Road Transport (Safety and Traffic Management) Act 1999* (ACT).

The maximum penalties available are broadly consistent with other jurisdictions. For a convenient summary, see Annexure A of the Final Report of the 2017 Tasmanian Sentencing Advisory Council 'Sentencing of Driving Offences that result in death or injury' (**attached** for reference).

Across Australia, and within the ACT, increasing the maximum penalties has frequently been advanced on the basis of their purported deterrent value as well as in recognition of the harm caused by dangerous driving. However, the Society observes that despite the focus of the courts on the deterrent effect of sentencing, the empirical evidence in relation to the utility of increasing maximum penalties and, in turn, endeavouring to increase sentence lengths as a general deterrent, has consistently been called into question.¹ While a case could potentially be made for attempting to deter an individual who drives while intoxicated or in a dangerous manner, it is unclear to the Society how general deterrence can operate in relation to unintentional or unplanned conduct, such as in cases of death or injury that result from inadvertence or momentary inattention.

While the Society accepts that sentencing clearly has some deterrent effect, research indicates that increasing sentence severity does not generally translate to a greater level of deterrence or reduce crime rates.² The Full Bench of the Supreme Court of South Australia recognised this in *R v Payne* (2004) 89 SASR 49 [49], where the Court held:

¹ Sentencing Matters: Does Imprisonment Deter? A Review of the Evidence (Sentencing Advisory Council, Victoria, 2011).

² Donald Ritchie, *Does Imprisonment Deter? A Review of the Evidence* (VSAC, 2011); Adrian Hoel and Karen Gelb, *Sentencing Matters: Mandatory Sentencing* (Sentencing Advisory Council, Victoria, 2008) 14; Mirko Bagaric and Theo Alexander, 'The Fallacy of Punishing

When one considers the range of factors that contribute to fatal accidents, one becomes all the more conscious of the fact that the punishment of offenders through the courts is only one of a range of appropriate responses to the problem of road fatalities. The courts must play their part, but it is a mistake to assume that increasing the severity of sentences is the answer to the problem. In light of the information before us we are not satisfied that increasing the level of sentences would further reduce the incidence of this offence. Driver performance and driver behaviour are obviously significant factors, but whether an increased level of sentences would have any significant effect is doubtful.

The Society points to evidence that increasing maximum penalties does not necessarily work to deter a particular offender from re-offending, including research that increasing the severity of sentencing has little to no impact on recidivism rates for drink driving, or on the rates of people committing that offence.³

Accordingly, it is respectfully suggested that the focus of any reform, if it is considered necessary, ought to be on educative and road user programs rather than simply increasing penalties. Such programs should be accessible to all members of the community.

Further, the Society cautions against reform to increase maximum penalties in response to perceived public dissatisfaction with sentencing, given that there is a dearth of evidence that the public is more satisfied with sentencing in jurisdictions that are more punitive.

Recent sentencing practice

The Society notes that there are relatively few offenders who are convicted of these offences in the ACT Courts, with the ACT Sentencing Database showing that there are five reported sentences in the ACT Supreme Court of culpable driving causing death and one reported case of aggravated culpable driving causing death. However, the Society also notes that the one reported case of aggravated culpable driving causing death is the case of *R v Michael Wayne Clark* (SCC No 434A of 2009) which is in fact a case in which Mr Clark pleaded guilty to an offence of culpable driving by negligence causing grievous bodily harm.

Of the seven reported cases in the ACT Sentencing Database, five were sentenced to a full-time term of imprisonment and two were sentenced to a partially suspended term of imprisonment. Of the two cases in which the offender was sentenced to a partially suspended term of imprisonment, one was a case of momentary inattention or misjudgement in which the offender was speeding by approximately 10 km/h over the speed limit of 70 km/h and misjudged the circumstances ahead of him. The other was a case in which an offender had previously been sentenced to imprisonment and periodic detention; however, was referred back to the Supreme Court because he was unable to complete the balance of his periodic detention because of his alcohol abuse.

While it is acknowledged that an inter-jurisdictional comparison is one method of assessing the appropriateness of sentencing practices for dangerous driving offences, definitions for dangerous driving offences vary between the jurisdictions, as do the types of offences dealt with summarily or

Offenders for the Deeds of Others: An Argument for Abolishing Offence Prevalence as a Sentencing Aggravated Consideration' (2016) 16 *Sydney Law Review* 22, 39.

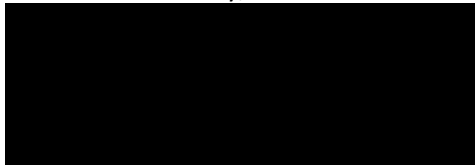
³ Kiptoo Terer and Rick Brown, 'Effective Drink Driving Prevention and Enforcements Strategies: Approaches to Improving Practice' (Trends and Issues in Crime and Criminal Justice No 472, Australian Institute of Criminology, 2014) 5; Ross Homel, 'Penalties and the Drink-Driver: A Study of One Thousand Offenders' (1981) 14 *Australian and New Zealand Journal of Criminology* 225, 237.

on indictment. These differences often make direct comparison by reference to offence name misleading.

Any reform in the ACT ought to be viewed in the ACT context rather than simply copying the approach of other jurisdictions where different forms of mandatory sentencing apply.

The Society welcomes the opportunity to offer further comment, should that be of assistance. Noting the broad nature of the Inquiry's terms of reference, the Society's Criminal Law Committee is willing to offer a representative to attend the upcoming inquiry hearings to answer any specific questions the Standing Committee might have.

Yours Sincerely,



Simone Carton
Chief Executive Officer