



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

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STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

Mr Peter Cain MLA (Chair), Dr Marisa Paterson (Deputy Chair),  
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## Submission Cover Sheet

### Inquiry into Dangerous Driving

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**SUBMISSION TO THE  
STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY:  
INQUIRY INTO DANGEROUS DRIVING**

## INTRODUCTION

The ACT Government welcomes the opportunity to make a submission to the Inquiry into Dangerous Driving that is being conducted by the Standing Committee on Justice and Community Safety.

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

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.

Effectively reducing crime is a complex issue, as there are often many factors contributing to an individual's decision to commit crimes. Increasing penalties and sentencing is only one approach to modify the behaviour of offenders committing dangerous driving offences and there is not sufficient evidence to suggest that increasing penalties works as a means of deterrence.

A review is currently being undertaken by the Transport Canberra and City Services Directorate 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 to addressing and changing offending behaviour.

As a recent example, the NSW Sentencing Council released a report reviewing the sentencing of recidivist traffic offenders who may pose an ongoing risk to the community and made recommendations for reform to promote road safety.<sup>1</sup> The NSW Sentencing Council concluded that the penalty system for traffic offences in NSW works well and concluded that interventions and programs were necessary for serious repeat traffic offenders, aimed at changing offending behaviour. The Council noted that sentencing is only one approach to modifying the behaviour of drivers, including repeat driving offenders, and there are other approaches that would also address this behaviour. The Council made recommendations on addressing the underlying offending behaviour, noting this is preferable to simply increasing levels of punishment, which has limited evidence to suggest is effective in reducing crime. The NSW Government indicated support in principle for the recommendations aimed at addressing the underlying behaviour.<sup>2</sup>

The ACT Government recognises the importance of this inquiry and encourages the Committee to proceed in an evidence-based manner. The ACT Government looks forward to the Committee's reports and recommendations on how the Government and community may address the issue of dangerous driving in the Territory.

## **OVERVIEW**

This submission provides information in relation to the terms of reference from the Justice and Community Safety Directorate (JACS) and Transport Canberra and City Services (TCCS).

The JACS Directorate is responsible for criminal justice policy and legislation, including bail and sentencing legislation. ACT Corrective Services is part of the JACS Directorate and is responsible for corrections responses. The TCCS Directorate is responsible for transport policy and legislation and the majority of dangerous driving offences and penalties.

The ACT Government notes that ACT Policing will provide a separate submission to the inquiry and has not provided input to this Government submission. The ACT Government welcomes ACT Policing's submission to the inquiry and is committed to working with ACT Policing to address concerns around dangerous driving to reduce the number of offenders committing these serious offences on our roads.

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<sup>1</sup> [https://www.sentencingcouncil.justice.nsw.gov.au/Documents/Current-projects/Traffic-offenders/Report\\_repeat\\_traffic.pdf](https://www.sentencingcouncil.justice.nsw.gov.au/Documents/Current-projects/Traffic-offenders/Report_repeat_traffic.pdf).

<sup>2</sup> <https://www.sentencingcouncil.justice.nsw.gov.au/Documents/Current-projects/Traffic-offenders/Government%20Response.pdf>.

## **TERMS OF REFERENCE FOCUS AREAS**

### **Dangerous driving**

Dangerous driving is unacceptable, and the issue of dangerous driving and 'hooning' is a primary concern for the Government and the Community.

Dangerous driving as a road safety concept covers a broad range of behaviours that are prohibited under the Territory's road transport legislation and other Territory legislation. Dangerous driving offences include culpable driving, furious reckless or dangerous driving, offences related to hooning, and negligent driving. Other dangerous driving behaviours include driving under the influence of alcohol or drugs.

Hooning refers to the act of using a vehicle in an irresponsible and dangerous manner in public places. It encompasses a broad range of behaviours, including illegal street racing, burnouts, donuts, drifting, speed trials and failing to stop a motor vehicle for police.

### **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 Plan 2020 to 2023 (RR25by25 Plan). In the 2021-22 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.<sup>3</sup>

The Government has acknowledged that the RR25by25's recidivism target reducing recidivism by 25 per cent by 2025 is ambitious. Nevertheless, there has been an overall reduction in reoffending from the 2018/19 benchmark, although the impact of COVID-19 contributing 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 ACT Government is committed to rehabilitation and reintegration of detainees through the RR25by25 Plan and Justice Reinvestment, such as the Building Communities not Prisons initiative. These commitments include a range of initiatives, both infrastructure solutions and program solutions, with these components necessarily being developed and implemented at the right time and in the right combination for most effective outcomes.

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<sup>3</sup> ACT Budget 2022-23, *Budget Statements D – Justice and Community Safety Directorate*, p. 7

The RR 25by25 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.

In a similar vein to the recommendations of the NSW Sentencing Council outlined above, one of the key principles which underpins this multi-component response to reducing recidivism 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, responding to the impacts of drug and alcohol dependence, early support for people living with a mental illness or disability and pathways for safe and sustainable bail.

The Government looks forward to the Committee's consideration of the opportunities for better addressing the underlying factors impacting the likelihood of offending and reoffending of dangerous drivers in our community.

### Corrections responses

#### *Integrated Offender Management Framework*

ACT Corrective Services released its Integrated Offender Management Framework in April this year ([Attachment 2](#)). This framework provides an efficient, effective, and integrated model for the delivery of programs and services to offenders. The framework outlines an individualised approach to sentence management that responds to gender, complex trauma and other issues of disadvantage or behaviour and plans support for the detainee from entry and through to their return to the community.

Offenders are assessed for and encouraged to engage with various programs, including those which respond to risks of reoffending, throughout their journey. The ultimate aim of these programs and supports is to assist with their successful reintegration into the community.

#### *Transitional release centre and transitional release program*

The Transitional Release Centre (TRC) at the Alexander Maconochie Centre (AMC) provides 15-20 beds to support reintegration. The TRC has recently recommenced operations (April 2022) after temporary closure due to the COVID-19 pandemic and is expected to continue operations with a focus on effectively preparing eligible detainees for a successful reintegration back into community post release.

Participants in the TRC participate in a range of activities including accessing leave to connect with family, undertake study and to re-establish life basics (like arrange bank accounts and identity documents).

To optimise the use of the TRC, there has been a focus on enhancing reintegration and rehabilitation programs, which position detainees to transition into this facility in readiness for return to the community.

For many detainees, the move from custody to the community can be challenging. The Transitional Release Program (TRP) is available to sentenced detainees (both male and female) to help during this time.

As part of this program, TRP and AMC Case Management staff work with detainees to develop case plans and to achieve the goals in these plans. TRP aims to support detainees in address their reintegration needs, including accommodation, health, basic needs, family and community connectedness, financial wellbeing, and leisure/recreations.

Through TRP, detainees can access leave to re-connect with family, work or study in the community and go to appointments outside of the AMC.

Male detainees who are approved to take part in the TRP, may be considered for a move to the TRC. Detainees do not need to be moved to the TRC to be part of the TRP.

Female detainees are not able to be housed in the TRC but are still able to engage in all leaves as part of the TRP.

### **Rehabilitation and driver re-education**

A goal of the ACT Road Safety Strategy 2020-2025 is to change road user attitudes and behaviour through education and compliance activities. The ACT Government is committed to the lifelong learning approach to road safety: education for road users of all ages throughout their life. A lifelong learning approach to road safety education means that all road users, from birth to old age need to be provided with opportunities to learn to be a safe road user and for this learning to be delivered in a wide range of ways to prevent dangerous driving from occurring in the first place.

In January 2020, the ACT Government introduced a number of changes to further enhance the graduated licensing scheme (GLS). GLS involves a staged approach to driver licensing with restrictions and sanctions that are reduced as drivers gain experience. Targeted and evidence-based restrictions on young drivers support the ACT's commitment to Vision Zero, by reducing the exposure of young drivers to high risk driving scenarios and encourage safe driving practices from an early age. The process to obtaining a licence also includes mandatory pre-learner training and hazard perception testing, as well as other incentivised education opportunities.

The road transport legislation recognises that some people continue to engage in dangerous driving and includes a number of measures to re-educate repeat offenders, including additional requirements before they can be issued another licence.

Recent research has found that the use of interlock devices<sup>4</sup> significantly reduce drink driving while they are installed and (to a modest extent) following their removal.<sup>5</sup> For high-risk drink driving offenders, participation in the alcohol interlock program is mandatory and may include a court ordered therapeutic component as well as a requirement to drive only a vehicle fitted with an interlock device. High-risk repeat offenders must undergo a pre-sentence assessment by the Court Alcohol and Drug Assessment Service and the Court is required to have regard to the report when sentencing the offender. High risk and repeat drink driving offenders are also required to complete an extended alcohol awareness course that is both therapeutic and educational.

As part of the road transport penalties review, the ACT Government will consider road transport behavioural change programs in other jurisdictions, including evidence of their effectiveness at reducing recidivism.

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

A range of penalties apply to dangerous driving offences, including prison sentences, infringement notices, demerit points, immediate licence suspensions, and the power for police to seize and impound vehicles prior to the matter being heard in court, if they believe on reasonable grounds that the vehicle has been used to commit certain hooning offences.

Other penalties for hooning and dangerous driving include mandatory minimum licence disqualifications that must be issued by the court and the power for the court to impound and order the forfeiture of vehicles following a conviction. The road transport legislation also includes other sanctions, including the requirement for mandatory alcohol interlock devices to be fitted to vehicles following a disqualification for certain alcohol related offences and the requirement to complete certain alcohol and drug awareness courses.

An overview of the most serious dangerous driving offences (which includes aggravated drink and drug driving offences) is at [Attachment 1](#).

As committed to in the ACT Road Safety Action Plan 2020-2023, the Government has commenced a review of road transport penalties with a view to implementing changes that are based on evidence that improves safety for all road users. Transport Canberra and City Services is conducting the review on behalf of the Minister for Transport and City Services.

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<sup>4</sup> Alcohol ignition interlock devices are electronic breath testing devices wired into the ignition of a vehicle. These devices require drivers to provide an alcohol-free breath sample by blowing into the device before the vehicle will start. For more information, visit <https://www.accesscanberra.act.gov.au/s/article/alcohol-and-drug-awareness-courses-and-alcohol-ignition-interlock-program-tab-overview>.

<sup>5</sup> Sarah Rahman, 'The effectiveness of alcohol interlocks in reducing repeat drink driving and improving road safety' (2022) No. CJB251 *Crime and Justice Bulletin*



In addition to prison sentences, fines and vehicle sanctions, the review will consider the whole hierarchy of penalties that might apply for dangerous driving, including licence suspensions and disqualifications, and recommend whether the penalties are appropriate or if a broader range of penalties is needed.

This will include a thorough examination of the offences and penalties that relate to racing and speeding, including but not limited to the existing racing, furious reckless or dangerous driving and menacing driving. It will consider the current aggravated driving penalties (which already includes driving at a speed that exceeding the speed limit by more than 30%) and if higher penalties should apply for more excessive speeds (e.g., over 45km/h over the limit).

The review will look at laws on the seizure, impounding and forfeiture of vehicles and whether the ACT's current penalties should be extended or include new powers for certain driving offences as a deterrent to dangerous driving, including crushing or selling a vehicle used in the commission of a crime.

The review will take into consideration any enforcement issues with the existing hierarchy of offences and any operational implications to ensure the offences are workable and can operate as intended. TCCS will work closely with stakeholders, including the Justice and Community Safety Directorate and ACT Policing as the review progresses.

The ACT Government is committed to improving road safety and will consider any recommendations from the Committee's report.

### **Police response to dangerous driving**

The ACT Government notes there are two terms of reference relating to the police response to dangerous driving and refers the Committee to the submission from ACT Policing as it falls under their responsibilities.

#### **Potential legislative amendments to respond to dangerous driving**

The JACS Directorate and ACT Policing continue to collaborate and work closely to ensure police have appropriate powers available to them to identify, prevent and respond to crimes. ACT Policing has recently shared proposals for legislative amendments with JACS regarding dangerous driving behaviours and made suggestions for how to improve road safety on ACT roads and these are now under active consideration.

These include proposed amendments to change the title of the culpable driving causing death offence in the *Crimes Act 1900* to 'vehicular homicide' and increase the penalty to be in line with manslaughter, introduce a separate charge of culpable driving causing actual bodily harm and culpable driving to be in line with negligent driving charges, the introduction of Skye's Law from New South Wales regarding dangerous driving in response to police pursuits and the introduction of a vehicular trespass offence. JACS is currently exploring these options and will continue to work closely with ACT Policing on developing these proposals further.

### ACT Policing funding

The ACT Policing Purchase Agreement (Purchase Agreement) provides funding to the Australian Federal Police for community policing services in the ACT, which includes the protection of persons and property, crime prevention and detection, maintaining peace and good order and the enforcement of ACT laws.

The current Performance Measure Framework of the Purchase Agreement reflects the policy aspirations of the ACT Road Safety Strategy 2020-2025 and the National Road Safety Strategy 2021-2030.

ACT Policing have established 'Operation Toric' (or Targeting Of Recidivists In Canberra) to address the issue of motor vehicle thefts and associated dangerous driving and other crimes. The ACT Government welcomes the establishment of this taskforce. Improving road safety is a priority and focus area of the current Ministerial Direction, a complement to the Purchase Agreement. The Ministerial Direction has an emphasis on reducing road trauma experienced by vulnerable road users and combating anti-social and dangerous behaviours including speeding, driving while impaired or distracted.

### Technological advancements

In 2019-20 the ACT Government committed \$33.9 million in investment in ACT Policing over four years to support the service to embark on a significant reform program to transform into an intelligence-led, mobility driven and evidence-based workforce, using a systematic approach to prevent crime. This has allowed ACT Policing to target resources where they are most effective, conduct focussed crime prevention activities and focus on addressing the root causes of crime.

The ACT Government is committed to working with ACT Policing on the introduction of potential technological advances that could assist police to identify, prevent and respond to dangerous driving and welcomes evidence-based suggestions on how this may be achieved. The ACT Government will work with ACT Policing to understand the effectiveness of investment in these technologies.

### **Criminal justice response to dangerous driving, including bail**

The ACT Government acknowledges however that recent dangerous driving incidents are concerning to the community and the Government is committed to reducing the number of people committing dangerous driving offences. This involves examining how the criminal justice system responds to dangerous driving offending.

### Bail legislation

Following an initial police response to a dangerous driving incident, an offender will usually apply for bail from custody. The *Bail Act 1992* (Bail Act) contains a framework which allows either the police or the courts to grant bail.

Bail considerations for adults are those found in [section 22](#) of the Bail Act. Protection of the community is a key issue, with the likelihood of the person released on bail committing a further offence being a fundamental consideration. Further, as part of the decision-making process, police officers and the courts may have regard to a person's "character, background or community ties", as well as whether there have been any previous grants of bail to the person. When determining a person's character, it is settled law that the police officer or a court can take into account past criminal convictions that may be relevant to the assessment of determining a bail application.<sup>6</sup> The court may also have regard to any information it considers relevant and reliable in deciding to make a bail order.

Additionally, there may be presumption in favour of bail, no presumption for bail or a presumption against bail depending on the offence and other factors for an offender, according to the offence committed, which police officers and the court are required to apply when determining a bail application. The presumption against bail is for the most serious offences that can be committed (for example, murder and certain drug offences including trafficking or manufacturing drugs) as these offenders pose a risk to community safety. For all other offences, police officers and the court are required to weigh certain factors when making a determination of bail, including the likelihood of the offending endangering the safety or welfare of any person in the community.

#### Bail considerations

The ACT Government understands the concern in the community as there have been instances of an offender being charged with committing a dangerous driving offence, while on bail for other offences.

The Government respects the independence of the judiciary in weighing all the facts and circumstances of each case. By nature of their particular experience and independence, the judiciary are more appropriately placed than legislators to make judgements on bail on a case-by-case basis noting the circumstances and risks of each situation. However, it is important that the legislative framework which guides our Courts in making these complex decisions is robust. We have asked the JACS Directorate to undertake work to consider whether the existing bail legislation is meeting community expectations and remains fit for purpose. Particular attention is being given to whether the laws appropriately reflect when an offender's prior history is taken into account when a bail determination is being considered by a police officer or the court.

This will also include reviewing section 44 of the Bail Act which allows the Director of Public Prosecutions to apply to the Supreme Court for a review of a bail decision for an accused person charged with a family violence offence or a serious offence.

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<sup>6</sup> *Weininger v The Queen* [2003] HCA 14.

While the Government notes the evidence from the ACT Director of Public Prosecutions in the 2022/23 Estimates Hearings that his Office has never had cause to use the power in s 44,<sup>7</sup> the Government agrees it is important to give consideration to these provisions to ensure that they continue to be fit for purpose.

## **Sentencing regime and corrections responses**

### Sentencing framework for dangerous driving

The *Crimes (Sentencing) Act 2005* (the Sentencing Act) sets out sentencing procedures, including matters a court must take into account when sentencing for any offence. Sentencing is also informed by the common law, which is derived from judicial decisions, including decisions which interpret the legislation. Common law can be informed by principles established from other jurisdictions, such as other states and territories in Australia, including Commonwealth sentencing principles, but in some cases, other common law countries such as the United Kingdom and Canada.

In sentencing an offender, the judicial officer must have regard to general sentencing principles (such as the rule against double punishment and totality), the purposes of sentencing (section 7 of the Sentencing Act) and the sentencing considerations set out in section 33 of the Sentencing Act.

Weighing up all the relevant matters to determine an appropriate sentence is a complex task. Judicial officers are assisted by the prosecution and defence in establishing the objective seriousness of the offence (by reference to the culpability of the offender and the harm caused, together with the maximum penalty available for the offence), relevant considerations and any relevant case law.

Victim impact statements are an important aspect in sentencing, and when an offender has been found, or plead guilty, to offences, victims, including family members, have the right to make a victim impact statement at the time of sentencing. These statements provide an opportunity for victims to tell the Court how the offence has affected them and their families and can include details on how their lives may have been changed due to the crime and the impact this has had on their lives. The Court will consider the victim impact statements in determining an appropriate sentence.

The purposes of sentencing (such as deterrence, punishment and rehabilitation) are potentially conflicting, yet are of equal importance. However, it is important that any sentence handed down is proportional. The overall punishment that is given to an offender must be proportionate to the seriousness of the offending behaviour.

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<sup>7</sup> Select Committee on Estimates 2022-2023, [Proof Transcript of evidence – Wednesday 24 August 2022](#), page 277.

While 'repeat offending' is not referenced in the Sentencing Act, section 33(1)(m) of the Sentencing Act requires the court to consider 'the cultural background, character and antecedents, age and physical or mental condition of the offender'. This sub-section is modelled on the Commonwealth *Crimes Act 1914*. The term 'antecedents' has been held to be broad and encompasses all aspects of an offender's background (*R v Vallett* [1951] 1 All ER 231 at p232], including previous criminal convictions (*Veen v The Queen (No 2)* [1988] HCA 14).

When the court is assessing criminal convictions for the purposes of sentencing it will look at a range of matters including the number and type of previous offences, whether there is a pattern in that offending and the length of time between offences. For example, offences of a minor nature committed years prior, may well have little or no impact on sentencing for an offence of a different nature and seriousness. In contrast, repeated serious offences of a similar nature are likely to have a significant impact on sentencing considerations.

The ACT Government understands that there is concern in the community that an offender's prior criminal history is not being taken into consideration in sentencing. However, the ACT Government also notes comments made by the ACT Law Society that there is no current need for a review of sentencing in the ACT and the current framework strikes an appropriate balance.<sup>8</sup>

The JACS Directorate is currently exploring options for whether any legislative amendments are required to the Sentencing Act to ensure that prior criminal history is appropriately taken into account in sentencing.

#### Petition for sentencing guidelines

A petition is currently open for signature with the Legislative Assembly calling for the introduction of "minimum sentencing guidelines" to enforce appropriate penalties and deterrence to repeat offenders.

The petition calls for the Legislative Assembly to consider implementing "Matthew's Law" sentencing guidelines which list minimum sentences for certain motor vehicle crimes, such as two to five years for purposefully driving on the wrong side of a thoroughfare or public footpath.

The ACT Government notes that sentencing guidelines and minimum mandatory sentences are two distinct issues.

The ACT Government is not aware of sentencing guidelines in use in any jurisdiction in Australia. Sentencing guidelines are in place in England and Wales and they provide a 'starting point' sentence for offences based on an assessment of objective seriousness.

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<sup>8</sup> <https://www.abc.net.au/news/2022-08-24/sue-salthouse-sentence-mitchell-laidlaw-community-expectations/101365928>.

Judicial officers are required to follow these guidelines and must provide reasons for departing from them in their judgments.

These guidelines are developed by the Sentencing Council for England and Wales as an advisory body to the Ministry of Justice and are informed by research and consultation.

The ACT Government understands that Victoria introduced a similar approach, known as baseline sentencing in 2014, which set baseline prison sentences for the most serious offences, which included culpable driving causing death with a baseline sentence of 9 years<sup>9</sup>. Minimum non-parole periods were also introduced as part of the baseline sentencing scheme.

However, the ACT Government cautions against this approach without appropriate evidence to support that minimum sentencing guidelines can effectively contribute to reducing these offences being committed.

Furthermore, baseline sentences in Victoria were abolished after only two years of operation following a Court of Appeal ruling that denounced baseline sentencing provisions as unworkable. The scheme was also heavily criticised by the legal profession and was criticised for removing a judge's discretion. Any recommendation to explore a similar scheme in the ACT would need to involve extensive consultation with the community, a range of experts, the legal profession and judicial officers.

### *Guideline judgments*

An alternative to sentencing guidelines may be guideline judgements. These are Court of Appeal decisions which give guidance to judicial officers in relation to how they should sentence offenders. Legislation is in place in New South Wales<sup>10</sup>, Queensland<sup>11</sup> and Victoria<sup>12</sup> to allow for the issuing of guideline judgments. This legislation permits the Court of Appeal in that jurisdiction to issue guideline judgments of its own motion, and also permits the Attorney-General to apply for guideline judgments.

Only the Court of Appeal in NSW has made guideline judgments and there are 8 judgments currently in place and one of these relates to dangerous driving.<sup>13</sup> The objective of guideline judgments is to reduce inconsistency in sentencing for certain offences.

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<sup>9</sup> <https://www.sentencingcouncil.vic.gov.au/news-media/news/baseline-sentencing-introduced>.

<sup>10</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW), div 4.

<sup>11</sup> *Penalties and Sentences Act 1992* (Qld), part 2A.

<sup>12</sup> *Sentencing Act 1991* (Vic), part 2AA.

<sup>13</sup> Supreme Court of New South Wales, *Sentencing Guideline Judgements*, [https://www.supremecourt.justice.nsw.gov.au/Pages/sco2\\_practiceprocedure/sco2\\_sentencingguidelinejudgments.aspx](https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_practiceprocedure/sco2_sentencingguidelinejudgments.aspx).

The guideline judgments provide a useful starting point for legal practitioners to use on sentence, however they do not operate as a “rule” or “presumption”, instead they are intended to be taken into account only as a “check, sounding board or guide.”<sup>14</sup>

The government is undertaking preliminary work to understand how these guideline judgments operate. Similarly to the point made earlier, the ACT Government notes consultation would need to occur with the community, a range of experts, ACT Courts and Tribunal, as well as the legal profession and legal community, prior to any recommendation being made on introducing guideline judgments.

### *Mandatory minimum sentences*

Mandatory sentencing requires judicial officers to deliver a minimum or fixed penalty upon conviction of certain offences. As noted by the Australian Law Reform Commission (ALRC), evidence suggest that mandatory minimum sentences are not an effective crime deterrent and result in increased incarceration and increased costs. The ALRC has recommended previously that Australian governments should repeal sentencing provisions which impose mandatory sentences, noting that these have a disproportionate impact on Aboriginal and Torres Strait Islander peoples.<sup>15</sup>

It is a longstanding position of the ACT Government that it does not support the introduction of mandatory minimum sentencing. Mandatory minimum sentencing and mandatory minimum non-parole periods fetter judicial discretion, impeding the delivery of individualised justice. The ACT Government remains committed that sentencing should be based on the particular circumstances of an offence and offender, including the degree of harm caused and the culpability of the offender.

### Petition for sentencing review

An online petition has been lodged with the Legislative Assembly calling for an independent review of the judgments and decisions of the ACT judiciary regarding sentencing, for the past 5 years, and focusing on the purposes of sentencing under the *Crimes (Sentencing) Act 2005*, to ensure that equal consideration and weight is being given to all seven purposes.

This petition seems to have arisen due to concern among the community that sentencing is not meeting community expectation and that sentences received are lenient, and that the judiciary is not applying the intent of the Sentencing Act or common law.

Incarceration is the most severe penalty that can be given to an offender, and data indicates that the ACT is not the most lenient jurisdiction in Australia, based on custodial sentences data available for all offences in the ACT. This data indicates that 19% of defendants with a guilty outcome were sentenced to a custodial order, with 62% of these offenders incarcerated.

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<sup>14</sup> *R v Whyte* [2002] NSWCCA 343 at 113.

<sup>15</sup> Australian Law Reform Commission, [\*Pathways to Justice – An inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples\*](#), page 273.

Only South Australia, Tasmania and the Northern Territory had higher percentages of defendants sentenced to custodial orders.<sup>16</sup> NSW, Queensland and Victoria all had a lower proportion.

The JACS Directorate is currently undertaking work to understand, based on available data, how the sentencing outcomes for certain dangerous driving offences compare with other jurisdictions.

However, the ACT Government cautions against the reliability of such a comparison to determine whether sentences being given in the ACT are lenient. These types of comparisons may not provide an accurate snapshot of sentencing outcomes due to the differences in offences, maximum penalties and judicial systems that are unique to each jurisdiction. However, as the data above on incarceration rates indicates, the sentencing outcomes for all offences in the ACT suggest that the Territory is not the most lenient jurisdiction.

Furthermore, the ACT Government notes that it is the decision of the prosecution to launch an appeal where they believe a sentence that has been handed down is inadequate. This is an inherent and important aspect of any judicial system which allows the prosecution and the defendant to appeal a judicial decision, including in relation to sentence.

The ACT Government recognises that there may be an expectation in the community that where an offender has caused or contributed to the death of a person, they should receive a penalty that is commensurate to the maximum penalty for that offence. It is very rare for an offender to receive the maximum sentence for an offence and is usually only handed down where the offence committed is particularly severe and warrants the maximum penalty.

## **Supports for victims and families**

### Trauma services

The ACT Government acknowledges that any sudden death in our community has a devastating impact on family and friends. This period can be especially traumatic if the death is subject to a coronial investigation and inquiry.

The ACT Government, through the ACT Health Directorate, provides funding to Relationships Australia Canberra Region for the operation of the ACT Coronial Counselling Service. This service is available for people who are affected by deaths that are subject to a coronial process and ACT residents who are affected by a traumatic death and are impacted by the coronial process. The ACT Coronial Counselling Service provides the following specialised services and supports:

- (a) intensive therapeutic counselling and family therapy including trauma, grief and bereavement counselling services;

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<sup>16</sup> <https://www.abs.gov.au/statistics/people/crime-and-justice/criminal-courts-australia/2020-21>.



- (b) liaison with the coronial office and staff;
- (c) support at coronial hearings;
- (d) information about the impact of grief, bereavement and trauma; and
- (e) referrals and links to appropriate support and services.

Clients of this service may receive ongoing counselling services at no cost during the coronial process and for up to three months after the coronial process has concluded. Grieving family and friends are advised of this service by ACT Policing and the ACT Coroner's Court after the death of their loved one.

In addition to referral to the ACT Coronial Counselling Services, the Coroners Court is currently referring people to "Griefline", a phone and web-based grief counselling service open from 8am to midnight, where they can access immediate over the phone support <https://griefline.org.au/>. There is not a specific referral or support service available for motor vehicle related deaths.

The court employs a Family Liaison Officer who, while not a counsellor or social worker, can provide families with information on the Coronial processes. The Family Liaison Officer is the Court's point of contact for families and provides updates on the progress of the coronial investigation and inquests and practical support during the conduct of a Coronial hearing.

Deaths involving suspected criminal behaviour are referred to the Director of Public Prosecutions and may be prosecuted through the Magistrates and Supreme Courts. Families may be able to access assistance via victim support services within the Australian Federal Police and from the Victims of Crime Commission.

There are a range of other non-government organisations that provide support services to people interacting with the Magistrates and Coronial Court, which are listed at Support Services - ACT Magistrates Court.

### Support Services

Supports for victims of crime can include victims of dangerous driving offences. Victim Support ACT (VSACT) provides a range of free and confidential support and financial assistance to people and their families, who experience crime in the ACT.

VSACT provides victim services support and assists people in recovering from an experience of crime. This may include linking victims with a free counsellor or other support service. It can also include helping to guide victims through the criminal justice process. The service can provide victims with information, and answer questions about the impacts of crime and provide options to assist victims recover.

The VSACT Court Support Program assists victims in navigating the court system. Court Support volunteers provide practical information and assistance to individuals attending the ACT Magistrates Court and the ACT Supreme Court.

The Financial Assistance Scheme for Victims of Crime assists victims of violent crimes to recover from and acknowledge the harmful effects of violence. Further information on eligibility, relevant crimes, relevant injuries, amounts of financial assistance, timeframes, and the application process, can be obtained at:

[https://canberracomunitylaw.org.au/fact\\_sheet/street-law-18/](https://canberracomunitylaw.org.au/fact_sheet/street-law-18/).

### **Additional information**

#### Petition for review of judicial appointments

The ACT Government acknowledges that there is a current petition open for signature until 30 September 2022 which calls for an independent review to investigate concerns of undue influence from non-elected bodies and persons, and political directions and influence in judicial appointments. The petition expresses concern about lack of transparency and due process in judicial appointments and the inappropriate representation of unelected groups in consultation.

The ACT Government notes that the ACT already has a rigorous, robust and transparent legislative framework to facilitate judicial appointments to preserve impartiality and guard against undue influence. The process and selection criteria for appointments to the ACT Supreme Court, ACT Magistrates Court and ACT Civil and Administrative Tribunal are set out in publicly available determinations under the relevant Acts, including the *Supreme Court (Resident Judges Appointment Requirements) Determination 2015 (No 1)*, the *Magistrates Court (Magistrates Appointment Requirements) Determination 2009* and the *ACT Civil and Administrative Tribunal (Presidential Appointment Requirements) Determination 2016*.

Each of these provide that the Attorney-General must publicly seek expressions of interest for the position by public notice and also write to key ACT stakeholders, inviting them to suggest or nominate people who are suitably qualified for appointment. Before recommending an appointment of a judge or magistrate to the Executive, the Attorney-General must consult with the relevant head of jurisdiction (such as the Chief Justice). The selection process must be based on a consideration of possible candidates having regard to the selection criteria set out in the relevant determination. The detailed selection criteria include intellectual capacity; personal qualities; an ability to understand and deal fairly; authority and communication skills; efficiency and leadership and management skills. An explicit part of the selection criteria under personal qualities is integrity and independence of mind and objectivity.

There are also several policies in place to protect the transparency of the appointment process. The *Governance Principles - Appointments, Boards and Committees - Cabinet and the Assembly* (act.gov.au) is a publicly available document that details the process for appointments in the ACT and includes a requirement to consult with the ACT Diversity Register. Where there are permanent vacancies in the judiciary, these will be filled through a public selection process, involving a selection panel that usually includes representatives from the public service and the judiciary who will make an assessment and recommendations in light of the selection criteria outlined in the Determinations.

It is important the ACT community has trust that our judicial officers are able to undertake their functions and duties without undue influence. It is a fundamental principle of the Australian democracy that there is separation of powers between the Executive, Legislature and Judiciary. The ACT Government has confidence in the ACT Courts and Tribunal and its members and is committed to ensuring the judiciary remains independent and is not subject to real or perceived undue influence.

There is also a strong framework for dealing with complaints about judicial officers. Complaints about judicial officers (including Coroners) are undertaken in accordance with the *Judicial Commissions Act 1994*. A person may make a complaint to the Judicial Council or the Attorney-General about a matter which relates to the behaviour or capacity of a judicial officer. When a complaint is made, the Judicial Council is required to follow the process outlined in the Judicial Commissions Act for investigating this complaint. The Attorney-General is required to refer any complaints about judicial officers to the ACT Judicial Council for investigation. The Attorney-General cannot remove a magistrate or judge from office, as judicial officers in the ACT can only be removed from office in accordance with the Judicial Commissions Act.

The ACT Government is confident the existing processes for appointing judicial officers and overseeing any complaints regarding judicial officers are robust and ensure that there is no undue influence, political or otherwise, being placed on the ACT's judicial officers.

## **CONCLUSION**

The ACT Government is strongly committed to addressing the number of individuals who are committing dangerous driving offences to ensure the community continues to feel safe on Canberra roads. The report and recommendations of this Inquiry will contribute to addressing this concerning behaviour and contribute to an improvement in road safety for the Territory.

## **ATTACHMENTS**

Attachment 1 – Dangerous driving penalties

Attachment 2 – Integrated Offender Management Framework