



**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),  
Mr Andrew Braddock MLA

## Submission Cover Sheet

### Inquiry into Dangerous Driving

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Standing Committee on Justice and Community Safety  
ACT Legislative Assembly  
LACommitteeJCS@parliament.act.gov.au

Dear Sir / Madam,

**RE: ACT Inquiry Into Dangerous Driving**

I have a long standing interest in road safety and have been involved with a number of organisations dedicated to addressing the issue of road trauma. These include the Amy Gillett Foundation and the Australian College of Road Safety. I am also on the ACT Road Safety Board as a community member. However, I am writing this submission as a concerned individual.

The inquiry seeks feedback on a number of aspects of the ACT treatment of Dangerous Driving.

**Introduction**

Defining "Dangerous Driving" is not straightforward. Courts have attempted to define it but there is no satisfactory comprehensive objective test. Arguably, any use of the road involves some element of risk and danger and therefore is, at some level, "Dangerous Driving". The magnitude of the risk created by driving clearly increases in relation to the kinetic energy involved (mass and speed) and the attention and safeguards with which that energy is managed.

Implicit in the terms of reference is the occurrence of a crash. This creates the presumption that there has been a failure to manage the risks and the fault for that crash can be attributed to a driver's failure. The offence of Dangerous Driving in Section 7 of the Road Transport (Safety and Traffic Management) Act 1999 has the purpose of criminalising that failure.

There is room for the view that criminal action is not the best way to deal with most crashes. Indeed, the current framework adopted by leading road safety

authorities would de-emphasise the attribution of personal fault and instead look to a system wide approach (for example Welle B et al. 2018). This is partly based on the understanding that we all make mistakes and that a system needs to be sufficiently forgiving for mistakes not to result in death or serious injury. A whole system approach is therefore needed to prevent road trauma. Attributing fault through the criminal process might even slow progress in addressing other failures in the system. We might be tempted to think that road trauma is always the fault of the really bad, or even evil, drivers without recognising that our marginal infringements all contribute to making the system unsafe.

A recent conference paper from the Centre for Automobile Safety Research in Adelaide (Wundersitz 2022) addresses this point. It identifies the proportion of fatal and serious injury crashes that can be attributed to "extreme" behaviour using extensive samples of fatal and serious injury (FSI) from the Adelaide area. The paper suggests that "extreme" behaviour is not the major contributor to road trauma. Further, it has reduced over the last ten years in its relative contribution to FSIs. This is attributed to lower rates of high level drink driving. The paper notes that extreme behaviour is more likely to be involved in fatal crashes than serious injury crashes but still the majority of fatal crashes are classified as "system failures" rather than the result of "extreme" driving.

Even accepting that extreme behaviour is not the biggest contributor to road trauma, there will be examples of driving that appear to be so reckless, furious, or otherwise in conflict with society and the welfare of other road users that the community will expect the criminal justice system to do something about it. This is completely understandable even though sociological analysis might suggest that the root-cause of the problem is not susceptible to being fixed by actions of the police, judiciary or penal systems. The grief of a dead young man's family, as in the case of Matthew McLuckie <sup>1</sup>, cannot be ignored. Victims of road crashes suffer enormously. The families of these victims may suffer even more; their suffering deserves to be acknowledged and respected. It will change their lives forever.

The challenge for road safety policy is to ensure that the criminal justice system is understood to be part of a wider system shaping our roads, our attitudes, the vehicles, and the regulations that govern how we use our roads.

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<sup>1</sup> <https://www.abc.net.au/news/2022-07-06/family-of-matthew-mcluckie-calls-for-tougher-road-safety/101212252> and <https://the-riotact.com/whole-system-is-broken-tom-mcluckies-campaign-for-harsher-road-penalties-following-sons-death/573481>

### **a) Criminal justice response to dangerous driver offending in the ACT**

Principles of jurisprudence suggest that justice should be fair, timely and efficient.

Fairness requires the facts of a case to be well established. It is a reasonable assumption that the best understanding of a case is by a court getting to hear all the evidence and understanding all the circumstances of those involved. This is as opposed to reports presented in the press, or social media, which tend to favour one interpretation of the event.

Unfortunately, the best evidence available to a court may be inadequate or ambiguous. Memory is particularly fallible and may be biased by extraneous factors. One way to address this is through increased use of automatically generated evidence. This is increasingly captured through "dash-cam" video footage and "black box" data logging installed on newer vehicles.

Registration requirements for new vehicles should mandate these safety technologies and allow and enhance production and availability of electronic data. Australian standards have typically been years behind the leading Euro NCAP standards.

### **b) Police response to dangerous driving in the ACT (both in prevention and post-crash response)**

As discussed in point a), presentation of evidence is a key factor for effective prosecution and sentencing of dangerous driving.

Police tactics can be designed to prevent repeat offenders from illegal driving, associated with dangerous driving convictions. The ACT police are acting pre-emptively through Operation Toric <sup>2</sup>. There is a lot of scope for expanding on these efforts. The police are currently investigating the implementation of "Operation Snap"<sup>3</sup> (a program from Wales that supports information collection from the public about dangerous driving observed principally via Dash-cams). They are also increasingly using Automatic Number Plate Recognition (ANPR) systems to identify unregistered or stolen

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<sup>2</sup> [https://the-riotact.com/pilot-specialist-taskforce-curbs-canberras-alarming-recidivist-crime-rate/595568?utm\\_source=newsletter&utm\\_medium=daily&utm\\_campaign=2022-09-25](https://the-riotact.com/pilot-specialist-taskforce-curbs-canberras-alarming-recidivist-crime-rate/595568?utm_source=newsletter&utm_medium=daily&utm_campaign=2022-09-25)

<sup>3</sup> <https://gosafesnap.wales/>

vehicles. Police efforts should be supported in these areas and independent evaluation programs funded to determine the effectiveness of these specialist operations and variations thereon.

Harnessing the public in support of police efforts to identify and address dangerous driving is very valuable. However, the traditional policing approach of general deterrence through obvious enforcement activities should not be ignored in efforts to address dangerous driving (Coster 2022).

Post-crash police work is essential for preventing consequential crashes (a stark example occurred in Victoria recently<sup>4</sup>). Alongside this heavy primary responsibility, the police are also required to gather evidence and produce a report. Assistance through the use of systematic templates in effective and efficient production of these reports is essential to allowing the system to improve.

Reporting templates need to reflect a safe-system framework to ensure that all relevant government entities be involved. It is generally the case that there are multiple causal or contributory factors to a crash (see for example Hole 2007) including infrastructure, vehicle, and driver related factors. It is appropriate to review the crash reporting templates used by the ACT police and to involve specialists in safe-system oriented crash analysis.

### **c) Capacity of trauma services and support services to respond to the post-crash event**

Rapid response to road trauma is essential to ensure the best outcomes for crash victims. The ACT is a relatively small jurisdiction. It is also a relatively well-off jurisdiction with a health service that receives 30% of the ACT Government's budget. We should be able to ensure that road trauma is attended to promptly.

We also need to be aware of the impact of attending crash scenes on police, ambulance and emergency services. These scenes can be truly gruesome and have a lasting impact on witnesses.

Increasing use of automatic crash alert systems included in some vehicles may offer some gains in improving post-crash responses. The use of dash-cam technology may also assist to apprehend absconding parties.

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<sup>4</sup> <https://www.abc.net.au/news/2022-09-21/school-bus-and-truck-crash-west-of-melbourne-dozens-in-hospital/101460396>



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

The policy challenges for sentencing include: to achieve effective deterrence, to satisfy the demands of the community for justice towards victims, fairness to offenders, and to reduce recidivism. There are many myths about how this is done (see Queensland Sentencing Advisory Council 2021).

It is quite possible that there is little direct relationship between severity of sentences and propensity to drive more dangerously. (Chen and Sloan 2014). By contrast, the prospect of shame might be a factor in deterrence (Fleiter, Lennon, & Watson, 2010). The messaging about sentencing could reflect these behavioural findings using similar logic to the “little finger” ad<sup>5</sup> i.e. we should ensure that the societal shame is a salient feature for those knowingly participating in dangerous driving.

The expectations of the community in relation to sentencing are a factor influencing the setting of sentencing standards. The problem is to gauge what are those expectations when there are disparate voices in the community (see Bushnell 2022). Politicians may well weight some voices more highly to signal their position on a swathe of popular issues. It is probably wise to treat arguments purporting to be backed by community expectations with considerable caution without rigorous research backing it up.

#### **e) Support for victims of dangerous driving offences through the justice system**

The tragedy of road trauma cannot be overstated. In the past there was an implied belief that there is an inevitable road toll that must be paid in exchange for motorised mobility. The concept of Vision Zero has partly evolved in reaction to that acceptance (Tingvall and Haworth 2022).

Victims of dangerous driving should be allowed to participate in improving the system to prevent future similar tragedies. We should explore innovative ways for victims to participate that suits them. This may include; telling their stories, recording their grief, seeing remorse from those with accountability or responsibility (this may be widely interpreted), or other means. Ideally these options should contribute to improving the system.

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<sup>5</sup> <https://www.smh.com.au/national/nsw/road-safety-ad-shows-size-does-matter-when-engaging-young-male-egos-20140110-30mjz.html>

A forum on how victim options could be structured may be a useful exercise for the ACT Government. Participants in the forum could include; victims, relevant government Directorates (including Roads, Justice, Police), and community organisations with an interest in road safety.

#### **f) Corrections responses and the sentencing regime for dangerous driving in the ACT**

For certain sections of the community no amount of incarceration would be enough to make up for the consequences of some offences. Against that position, we need to recognise the community interest in minimising periods of incarceration and maximising the opportunity for offenders to lead socially useful and personally fulfilling lives. These considerations suggest all options for diversionary sentencing should be explored with a view to the considerations discussed below.

#### **g) The effectiveness of rehabilitation and driver re-education at reducing recidivism**

The ACT is already dedicating substantial resources to rehabilitation through its Reducing Recidivism Plan (JACS 2020). This program has an emphasis on reducing levels of incarceration. It is important to ensure that its performance measures, that clearly focus on rates of incarceration, do not gloss over the key metric of crime rates and rates of recidivism.

If alternatives to incarceration are put in place, it should be an objective to reduce the likelihood of harm to the community through dangerous driving. Options that include provision of free or subsidised public transport or active transport should be in the mix along with technological adaptations - see below.

#### **h) Police and other related technological advances to identify and prevent dangerous driving**

As discussed earlier, the police have new tools at their disposal (Operations Toric and Snap) to address dangerous driving. They need to be assisted to use these tools effectively and it is recommended that specialist researchers be tasked with analysing the roll out of these tools and ensuring that they are used fairly, efficiently and effectively. Engaging road safety specialists in such an evaluation is recommended to ensure the potential for such tools is optimised and the effects understood across the whole system.

Other technological developments that need to be explored are increased use of the interlock program to prevent people from using vehicles when they are alcohol or drug affected (see NSW Government 2022 and

AccessCanberra 2022). Ideally interlocks would be fitted to all vehicles thereby preventing some, seriously dangerous, impaired driving (Strandroth et al. 2012).

Intelligent Speed Adaption (ISA) is another technology that should be mandated for all vehicles over time and is being introduced in Euro NCAP. Australian design rules have traditionally been slow to include key lifesaving technologies such as Autonomous Emergency Braking (AEB) (BITRE 2014).

Other developing technology includes driver monitoring such as that provided by locally based company Seeing Machines. The existence of driver monitoring systems (DMS) is likely to reduce dangerous driving and is being introduced as a key feature under Euro NCAP from 2023 (Seeing Machines 2022, Smart Eye 2022). At this point in their evolution, DMS is primarily targeting drowsiness and inattention. In the future the AI forming part of DMS may be able to capture other emotional states such as extreme anger or other states possibly associated with convictions for dangerous driving.

## **Conclusions**

This submission makes a number of recommendations for ACT government:

- Commit to the Safe-System and Vision Zero by 2050 with ambitious interim targets. The ACT is currently behind the world by not having targets aligned with dates.
- Respect the grief of those affected by road trauma and explore how victims can contribute to system improvements
- Ensure best evidence is captured through technology such as Dash-Cams and data loggers
- Support innovative policing e.g. through thorough analysis and refinement of Operations Toric and Snap
- Understand the competing pressures on sentencing, rehabilitation and deterrence
- Balance incarceration rates against rehabilitation and crime reduction
- Ensure that rehabilitation includes non-driving support for those convicted of dangerous driving



- Extend use of Interlock and Driver Monitoring Systems as well as AEB and other vehicle safety technologies that prevent or reduce the impact of dangerous driving

Sincerely yours,

Rod Katz

## References

AccessCanberra 2022 *Alcohol and drug awareness courses and Alcohol Ignition Interlock Program* <https://www.accesscanberra.act.gov.au/s/article/alcohol-and-drug-awareness-courses-and-alcohol-ignition-interlock-program-tab-overview>

BITRE (2014) *Report 140: Impact of road trauma and measures to improve outcomes* Department of Infrastructure and Regional Development

Bushnell, I. (2022). *Judges should heed the DPP's message on sentencing* [https://the-riotact.com/judges-should-heed-dpps-message-on-sentencing/596623?utm\\_source=newsletter&utm\\_medium=daily&utm\\_campaign=2022-09-26](https://the-riotact.com/judges-should-heed-dpps-message-on-sentencing/596623?utm_source=newsletter&utm_medium=daily&utm_campaign=2022-09-26)

Chen, Y. & Sloan, F., (2014). *Subjective Beliefs, Deterrence, and the Propensity to Drive While Intoxicated*, NBER: National Bureau of Economic Research. Retrieved from <https://policycommons.net/artifacts/1394133/subjective-beliefs-deterrence-and-the-propensity-to-drive-while-intoxicated/2008396/> on 25 Sep 2022. CID: 20.500.12592/cgcxwp.

Coster A (2022) *Policing our Road to Zero* Australasian Road Safety Conference Christchurch

Fleiter, J. J., Lennon, A. J., & Watson, B. (2010). *How do other people influence your driving speed? Exploring the 'who' and 'how' of social influences on speeding from a qualitative perspective*. Transportation Research. Part F. Traffic Psychology and Behaviour, 13(1), 49- 62.

Justice and Community Services (2020) *REDUCING RECIDIVISM IN THE ACT BY 25% BY 2025* <https://justice.act.gov.au/sites/default/files/2020-08/>

Plan%20-%20RR25by25%20-%20Plan%20for%20printing%20-%20web-%20%20Final\_0.PDF

Hole, G. (2007). The Psychology of Driving, Psychology Press.

NSW Government 2022. *Alcohol Interlock Program* <https://www.nsw.gov.au/driving-boating-and-transport/demerits-penalties-and-offences/offences/alcohol-and-drug-offences/alcohol-interlock-program>

Queensland Sentencing Council (2021) *Sentencing myths* <https://www.sentencingcouncil.qld.gov.au/about-sentencing/sentencing-myths>

Seeing Machines (2022) *Seeing Machines Makes the Case for Safety* <https://seeingmachines.com/seeing-machines-makes-the-case-for-safety/>

SmartEye (2022) *A New Era of Road Safety: How Euro NCAP will make Driver Monitoring Systems the New Safety Standard E-Book*

Strandroth J, Rizzi M, Sternlund S, Johansson R, Kullgren A, Tingvall C. (2012) A new method to evaluate future impact of vehicle safety technology in Sweden. *Stapp Car Crash Journal*, volume 56, 2012.

Tingvall, C. Haworth, N. (2022). *Vision Zero - An ethical approach to safety and mobility*.

Welle, B. et al., (2018) *Sustainable and Safe: A Vision and Guidance for Zero Road Deaths*, WRI: World Resources Institute. Retrieved from <https://policycommons.net/artifacts/1360185/sustainable-and-safe/1973485/> on 25 Sep 2022. CID: 20.500.12592/76zfk8.

Wundersitz L. (2022) *System Failures and Extreme Behaviour in Fatal and Injury Crashes*. Paper presented to the Australasian Road Safety Conference, Christchurch, September 2022