



**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 the Road Safety and Crimes  
Legislation Amendment Bill 2022

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**AFPA**

Australian Federal  
Police Association

***Inquiry into the Road Safety and Crimes  
Legislation Amendment Bills 2022***

***Standing Committee on Justice and Community Safety***

**Submission by the Australian Federal Police Association**

**Email: [afpa@afpa.org.au](mailto:afpa@afpa.org.au)**

## Acknowledgments

The AFPA welcomes and thanks the Standing Committee on Justice and Community Safety (**the Committee**) for the opportunity to provide a submission to inform the *Inquiry into the Road Safety and Crimes Legislation Amendment Bills (2022)*.

As part of the inquiry into the *Crimes Legislation Amendment Bill 2022*, the AFPA acknowledges that the Committee is chiefly concerned with the new offence of 'unauthorised entry of a motor vehicle'.

Concerning the *Road Safety Legislation Amendment Bill 2022*, the AFPA is grateful for the excellent work already undertaken by the Committee as part of their ongoing *Inquiry into Dangerous Driving*.

## Overview of the AFPA

The AFPA is a registered organisation and an autonomous sub-branch of the Police Federation of Australia. The AFPA represents the industrial, political, and professional interests of members of the Australian Federal Police (**AFP**) and ACT Policing (**ACTP**), law enforcement officials in the Australian Criminal Intelligence Commission, and members of the Department of Parliamentary Services.

Our members provide an essential service to Australia and the Australian Capital Territory (**ACT**). They are the backbone of the ACT and the Commonwealth's principal law enforcement agency, performing crucial investigative, intelligence and national security functions.

The AFP is responsible for:

- providing community policing services to the Australian Capital Territory and other territories, including Christmas Island, Cocos (Keeling) Islands, Norfolk Island and Jervis Bay,
- enforcing Commonwealth laws that combat complex, transnational, serious and organised crime, child exploitation, fraud, corruption, and cybercrime,
- protecting Australians and Australian interests from terrorism and violent extremism,
- removing illegally obtained assets and property from criminals,
- protecting Commonwealth infrastructures such as designated airports, Parliament House, and embassies,
- protecting domestic and foreign dignitaries, including the Governor-General, Prime Minister, and ambassadors,
- protecting at-risk individuals,
- representing Australian policing and law enforcement at an international level, and
- developing unique capabilities and employing advanced technology to support Australia's national interests.

## Crimes Legislation Amendment Bill 2022 – unauthorised entry of a motor vehicle

The AFPA has reviewed the *Crimes Legislation Amendment Bill 2022, Part 7A.3 – Other Offences*, which includes the newly created offence of ‘unauthorised motor vehicle entry’.

The AFPA supports the creation of this new offence and believes the legislation is sensible and well-grounded overall. However, the AFPA recommends that the offence of ‘enter a motor vehicle’ only be considered to have occurred **if a tool, item or device was used to do so**. The draft definition as per the *Crimes Legislation Amendment Bill 2022* is currently:

***Enter a motor vehicle—*****a person enters a motor vehicle if the person puts any part of their body into any part of the motor vehicle.**

The AFPA would recommend revised wording such as:

***Enter a motor vehicle—*****a person enters a motor vehicle if the person puts any part of their body, or manipulates a tool, item or device into any part of the motor vehicle.**

***Tool, item or device – any object that a person can manipulate to assist them physically entering a motor vehicle or something that assists the person in removing property from a motor vehicle.***

This amended wording would eliminate a defence of someone utilising a tool, item or device to remove something from a vehicle without physically entering the vehicle to remove that item. This amendment would also include incidents where people attempt to break into a vehicle by inserting a tool, object or device into the door lock and trying to break the lock mechanism to enter the vehicle (without necessarily being successful in entering the car).

The AFPA also holds significant concerns about the maximum penalty of ten penalty units (\$1600)<sup>1</sup> for the offence of ‘unauthorised motor vehicle entry’ and believes this relatively lenient penalty lets down the legislation.

Forensic evidence is some of the most compelling evidence that can be used in a judicial process. The probability of two people having the same fingerprints is one in 64 million<sup>2</sup>. The deoxyribonucleic acid (DNA) in people's blood is the same as in their saliva, skin tissue, hair, and bone. Significantly, DNA does not change throughout a person's life. DNA is a powerful investigative tool because, except for identical twins, no two people have the same DNA.

As is often the case, a stolen motor vehicle (SMV) offender or an offender who breaks into vehicles to steal items won't break into only one car, or steal one car. The SMV offenders and offenders who most frequently break into vehicles are recidivist offenders who then commit further crimes while in possession of the SMV. These crimes can include petrol drive-offs, theft, burglaries and aggravated robberies.

In most cases, police will locate the SMV without locating an offender within the SMV and require forensic evidence, such as fingerprints and DNA, to assist in identifying people who may have been inside the SMV. If forensic evidence is obtained, the material is processed through a database, and forensic matches are detected if a previous sample is stored within the database.

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<sup>1</sup> [http://classic.austlii.edu.au/au/legis/act/consol\\_act/la2001133/s133.html](http://classic.austlii.edu.au/au/legis/act/consol_act/la2001133/s133.html)

<sup>2</sup> <https://www.scientificamerican.com/article/the-chance-of-identical-fingerprints-1-in-64-trillion/#:~:text=The%20Chance%20of%20Identical%20Fingerprints%3A%201%20in%2064%20trillion%20%2D%20Scientific%20American>

A common crime in the ACT sees several vehicles broken into at once in secure underground car parks<sup>345</sup>; the offender/s may leave a SMV nearby and then steal another vehicle while breaking into and breaking into other vehicles. The offender(s) then leaves in the new SMV to commit further crimes.

The AFPA believes that the current maximum penalty of ten penalty units does not reflect the seriousness of the offence nor serves as a deterrent for recidivist offending. A mere financial penalty also precludes the judiciary from deterring recidivism offending through (custodial) sentencing or diversion strategies. The AFPA's proposed penalty could also result in a recidivist offender being denied bail for multiple offences if their forensic material is found inside an SMV or a vehicle that has been broken into.

## Comparison of penalties across Australia for unauthorised entry of a motor vehicle

Jurisdiction	Offence	Penalty
New South Wales	<i>Section 6A Unauthorised entry of vehicle or boat</i> <i>Summary Offences Act 1988</i> <sup>6</sup>	Four penalty units (\$440)
Tasmania	<i>Section 244 Burglary</i> <i>Criminal Code Act 1924</i> <sup>7</sup>	Maximum penalty of 21 years' imprisonment
South Australia	<i>Section 86A Illegal use of a Motor Vehicle</i> <i>Criminal Law Consolidation Act 1935</i> <sup>8</sup>	Maximum penalty of imprisonment for two years  For subsequent offences – imprisonment for not less than three months and not more than four years.
Northern Territory	<i>Section 5 Trespass on Premises</i> <i>Trespass Act 1987</i> <sup>9</sup>  <i>Note: The Northern Territory definition for 'premise' includes a vehicle.</i>	Maximum of six months' imprisonment and/or 20 penalty units (\$3240)
Queensland	<i>Section 25 Unlawful entry, use, or possession of a vehicle</i> <i>Summary Offences Act 2005</i> <sup>10</sup>	Maximum of 12 months' imprisonment and/or 20 penalty units (\$2875)

\*Note: unable to locate appropriate and specific legislation in Victoria or Western Australia. Officers may use property damage and theft offences as trespass laws in these jurisdictions only mention private premises or buildings as the prerequisites for burglary and trespass.

<sup>3</sup> <https://www.canberratimes.com.au/story/6033587/more-than-50-cars-in-canberras-south-broken-into-overnight/>

<sup>4</sup> <https://www.canberratimes.com.au/story/6071438/spate-of-car-break-ins-in-belconnen/>

<sup>5</sup> <https://www.canberratimes.com.au/story/6063554/80-per-cent-increase-in-thefts-from-motor-vehicles-canberra-with-belconnen-braddon-and-calwell-all-hotspots-say-act-policing/>

<sup>6</sup> [http://classic.austlii.edu.au/au/legis/nsw/consol\\_act/soa1988189/s6a.html](http://classic.austlii.edu.au/au/legis/nsw/consol_act/soa1988189/s6a.html)

<sup>7</sup> <https://www.legislation.tas.gov.au/view/whole/html/inforce/current/act-1924-069>

<sup>8</sup> [http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol\\_act/clca1935262/s86a.html](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/clca1935262/s86a.html)

<sup>9</sup> <https://legislation.nt.gov.au/en/Legislation/TRESPASS-ACT-1987>

<sup>10</sup> [http://classic.austlii.edu.au/au/legis/qld/consol\\_act/soa2005189/s25.html](http://classic.austlii.edu.au/au/legis/qld/consol_act/soa2005189/s25.html)

## Road Safety Legislation Amendment Bill 2022

The AFPA has reviewed the *Road Safety Legislation Amendment Bill 2022* and supports the bill in its entirety.

The AFPA would strongly encourage the ACT Legislative Assembly to pass the *Road Safety Legislation Amendment Bill 2022* without unnecessary delay.

To date, 18 people have died on ACT roads in 2022, and the AFPA believes this bill will assist ACT Policing in removing dangerous drivers and their vehicles from the road.

Recent media coverage has shown that Canberra drivers continue to speed excessively and drive dangerously, despite public education campaigns undertaken by ACT Policing and other first responder agencies: Recent examples include:

- 2 December 2022 - Motorist detected at 110km/h in a 60km/h zone<sup>11</sup>
- 5 December 2022 – Two suspended motorists driving dangerously<sup>12</sup>
- 29 November 2022 – Two motorists caught speeding at over 162km/h<sup>13</sup>
- 20 November 2022 – Police stop four high-range speeders<sup>14</sup>
- 17 November 2022 – Police detect motorist travelling at 148km/h in a 100km/h zone<sup>15</sup>

In all of these incidents, attending police did not have the power to stop the offending driver from driving (apart from the intoxicated driver on bail at the time of the dangerous driving).

### Conclusion

The AFPA supports the newly created offence of ‘*unauthorised entry of a motor vehicle*’ and thanks the ACT Attorney-General for its development. However, the AFPA would recommend an expansion of the definition of ‘enter a motor vehicle’ to include using a tool, item or device to gain entry to a vehicle and strongly suggests increasing the maximum fine to more than ten penalty units, alongside an option for the judiciary to imprison an offender for up to six months if convicted of the offence.

The AFPA wants to thank Minister Steel and Minister Gentleman for their consultation and collaborative approach to ensuring the *Road Safety Legislation Amendment Bill 2022*, which the AFPA supports, captured the concerns of the AFPA and its members.

The AFPA also thanks the Committee and their *Inquiry into Dangerous Driving*, which through public hearings, provided further consultation on this topic. The AFPA believes that the *Road Safety Legislation Amendment Bill 2022* may have taken longer to draft and possibly pass without the work undertaken by the Committee.

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<sup>11</sup> <https://www.policenews.act.gov.au/news/media-releases/speeding-drug-driver-defective-vehicle>

<sup>12</sup> <https://www.policenews.act.gov.au/news/media-releases/two-suspended-drivers-face-court>

<sup>13</sup> <https://www.policenews.act.gov.au/news/media-releases/high-range-speeders-caught-overnight>

<sup>14</sup> <https://www.policenews.act.gov.au/news/media-releases/police-stop-four-high-range-speeders>

<sup>15</sup> <https://www.policenews.act.gov.au/news/media-releases/police-continue-detect-dangerous-driving>



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