



**ACT
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Mr Peter Cain MLA
Chair of the Standing Committee on Justice and Community Safety
The Legislative Assembly of the ACT
GPO Box 1020
CANBERRA ACT 2601

By email:
LACommitteeJCS@parliament.act.gov.au

Dear Mr Cain

INQUIRY INTO DANGEROUS DRIVING – SKYE'S LAW AND SECTION 60 DEMAND

Thank you for your letter dated 15 March 2023 following my response clarifying what ACT Policing believe are the changes required to implement an equivalent of Skye's Law within the ACT. I thank you for providing me with another opportunity to expand further and to clarify amendments that ACT Policing believes that are required to section 60 Demands in the *Road Transport (General) Act 1999*.

Skye's Law

The Committee has noted that in addition to section 5C of the *Road Transport (Safety and Traffic Management) Act 1999*, sub section 7(1) and paragraph 7A(1)(i) also contains penalties for aggravated offences for a person who fails to comply, as soon as practicable, with a request or signal given by a police officer to stop the vehicle of three years imprisonment for a first offender and five years for a repeat offender. Advice on whether this falls short of Skye's law in NSW or difficulties in applying this law would be appreciated.

ACT Policing notes that penalties for offenders driving in the same manner in the ACT and NSW differ.

Skye's Law refers to section 51B police pursuits of the *Crimes Act 1900 (NSW)* making it an offence for a driver of a vehicle who knows, or has reasonable grounds to suspect that police officers are in pursuit of the vehicle and the driver is required to stop the vehicle, and who does not stop the vehicle and who then drives recklessly or at a speed or in a manner dangerous to others. For a first offender the punishment is imprisonment for three years or for a repeated offender five years.

ACT Policing is seeking to make failing to stop and evading police and or engaging in a police pursuit a specific offence which includes **mandated** prison sentences of maximum of three years for a first offender and a maximum of five years for a repeat offender in a five-year period.

The implementation of Skye's Law in NSW has seen a marked reduction of pursuit activity, including being observed by ACT Policing when offenders cross from the ACT into NSW.

Currently, section 5C failing to stop motor vehicle for police of the *Road Transport (Safety and Traffic Management) Act 1999 (ACT)* makes it an offence for persons who fails to stop and comply for police which is punishable by up to 100 penalty units, imprisonment for up to 12 months or both (first offender) and up to 300 penalty units, imprisonment for up to three years or both (repeat offender).

The Committee would appreciate if there was any further information to support this recommendation including clarifying if the key change is the new liability for the original offence committed to be transferred to the authorised person (such as the vehicle owner) rather than or in addition to the existing penalties of 100 penalty units/12 months imprisonment for a first offender and 300 penalty units/three years imprisonment for a repeat offender.

ACT Policing sought an amendment to section 60 Demand in *Road Transport (General) Act 1999* to introduce an onus on the responsible driver of a vehicle to nominate the driver if requested by police. This currently occurs with camera detected speeding offences.

The main issue raised by ACT Policing is there is no definition of what defines a reasonable attempt to identify the driver. The intention of ACT Policing was to place the onus on the owner of the vehicle and if they failed to comply with a section 60 request, they would be taken to having driven the vehicle at the time of the original offence (except where they provide evidence to the contrary). Data shows Queensland's approach to imposing a reverse onus on owner to prove their innocence resulted in a more proactive approach for owners identifying drivers.

The Committee notes that during the public hearing on 14 November 2022, you advised the Committee that there are many instances where it is not possible to determine who was driving the car, however in QTON 005, you told the Committee that there is no data on section 60 demands without a significant workload in manually checking section 60 demands. However, advice on if there are any difficulties in applying existing section 60 would be appreciated.

As stated in a Question Taken on Notice after ACT Policing's appearance in 2022, there is no automatic way of collecting data on Section 60 Demands. Demands can be made orally and may be recorded on body worn cameras where possible, so they aren't always reflected in a document as there is currently no requirement to collect this data.

To be definite about the number of demands issued a manual search of all traffic incidents would need to be undertaken. For instance on fail to stop offences alone that would require a manual interrogation of more than 700 offences in 2022.

To do this on all traffic incidents would be an onerous task that would unreasonably divert police resources. ACT Policing is continuing to consider how to better capture Section 60 demands to assist in highlighting this gap in road safety enforcement.

Again, I wish to thank you for the opportunity to provide further advice to the Committee. I continue to look forward to our work together to ensure the successes of ACT Policing are continued into the future and discussing the outcomes of the JACS Inquiry into Dangerous Driving.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'NG', written over the printed name.

Deputy Commissioner Neil Gaughan APM
Chief Police Officer for the ACT