



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

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Standing Committee on Justice and Community Safety
Legislative Assembly for the ACT
GPO Box 1020
Canberra ACT 2601

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

Dear Committee,

RE: Inquiry into Dangerous Driving

Thank you for the opportunity to contribute to the inquiry into dangerous driving.

Legal Aid ACT ('the Commission') provides services to the ACT community's most vulnerable and disadvantaged individuals as they navigate the criminal justice system. We assist many clients who have been charged with driving offences with different degree of seriousness.

The Commission acknowledges public concern about several recent dangerous driving episodes that resulted in the death of people, and appreciates the institution of a public inquiry to investigate ways to tackle and prevent these tragedies from occurring in the future.

We are also aware of the ACT Policing having recently established Operation Toric taskforce to address motor vehicle thefts, associated dangerous driving and other crimes, which resulted in the arrest of 18 offenders and more than 70 charges laid only in the first three weeks from the operation's establishment.¹ These figures are concerning and reflect a serious problem that requires a holistic approach inclusive of preventative and educative measures, combined with appropriate legal responses.

Firstly, we note that the legislative framework in relation to driving offences classifiable as dangerous driving provides for several offences prescribed in different Acts, other than the *Crimes Act 1900* (ACT). The several provisions can be confusing in the way they interact with each other, and suggest that it is opportune that the current framework would benefit from reforms aimed at making it more agile, consistent and clearer.

¹ Australian Federal Police, 'Stolen vehicles and dangerous driving targeted by new taskforce' (Media Release, 19 August 2022) <<https://www.policenews.act.gov.au/news/media-releases/stolen-vehicles-and-dangerous-driving-targeted-new-taskforce>>.

Secondly, the Commission suggests that the current sentencing regime's flexibility allows to adequately respond to dangerous driving offences by imposing punishments that take into account every relevant factor in relation to both the offence committed and the subjective circumstances of the offender.

Below we further discuss the offences and penalties for dangerous driving, and sentencing regime currently in place.

Penalties legislated for dangerous driving offences in the ACT

The ACT has a range of traffic and driving offence legislation.

In this context 'Dangerous driving' is a term that encompasses different offences and may have different meanings depending on particular piece of legislation and the nature of the particular matter. Dangerous driving is often understood to refer to those driving offences that most seriously put the community's safety in danger. Some examples of dangerous driving offences are:

Culpable Driving

Under the *Crimes Act 1900* (ACT), a person who is charged with culpable driving of motor vehicle is punishable with:

- 14 to 16 years of imprisonment² if the driving causes the death of another person; or
- 10 to 12 years if the driving causes grievous bodily harm to another person.³

Culpable driving 'is the middle offence in a three-tier hierarchy of offences that applies to negligent driving causing personal injury',⁴ sitting between manslaughter and negligent driving causing someone's death or causing grievous bodily harm under the *Road Transport (Safety and Traffic Management) Act 1999*.⁵

While culpable driving includes driving a vehicle negligently, this element has been described as 'the sort of driving that, if you saw it, you would condemn it out of hand [...] It's exposing other people on the road to a risk which is greater than the law can categorise as merely driving carelessly. It is, therefore, an unjustifiable and gross breach of the standards required of a careful driver'.⁶

Improper Use of Motor Vehicle

The offence of improper use of motor vehicle includes different driving behaviours, including burnouts, hand break turns and drifting. This offence is punishable with a fine between \$3,200 and \$4,800.⁷

Failing to Stop Motor Vehicle for Police

² See *Crimes Act 1900* (ACT) ss 29(2) - (3).

³ Ibid ss 29(4) - (5).

⁴ See *Director of Public Prosecutions (ACT) v Spong* [2018] ACTCA 37 [63] ('DPP v Spong').

⁵ See ss 6(1)(a)-(b).

⁶ See *DPP v Spong* (n 4) [58] (citing *R v Wolter (No 2)* [2015] ACTSC 277).

⁷ *Road Transport (Safety and Traffic Management) Act 1999* (ACT) s 5B.

This offence is punishable with a fine between \$1,600 and \$48,000 and/or 12 months to 3 years of imprisonment.⁸

Negligent Driving

As mentioned above, the offence of negligent driving is the least serious offence among the ones that punish driving negligently, after manslaughter and culpable driving. This offence is punishable with a fine between \$3,200 and \$32,000, and/or 1 to 2 years imprisonment if the driving occasioned grievous bodily harm or death respectively,⁹ and it can be an alternative offence to culpable driving.¹⁰ Differently from culpable driving, Courts stated that the requisite negligence for this offence 'is a departure from the standard of care to be expected of the ordinary prudent driver in the circumstances'.¹¹

Furious, Reckless and Dangerous Driving

This offence is punishable with a fine between \$16,000 and \$80,000 and/or 12 months to 5 years imprisonment.¹²

Menacing Driving

Menacing driving is punishable with a fine of \$16,000 and/or 1 year imprisonment.¹³

Driving under the Influence of alcohol or a drug

Another conduct that may also be considered dangerous driving is driving under the influence of alcohol and/or drugs. Under section 19 of the *Road Transport (Alcohol and Drugs) Act 1977*, it is an offence to drive a motor vehicle with a prescribed concentration of alcohol in the person's blood or breath. The penalties vary depending on the concentration, which is classified in four levels. Sections 26, 32 and 33 prescribe the following penalties and driver licence disqualification:

alcohol concentration	maximum penalty—first offender	maximum penalty—repeat offender
level 1	5 penalty units (\$800) and a minimum 1-month disqualification and 3 months default disqualification.	10 penalty units (\$1,600) and a minimum 3-month disqualification and 12 months default disqualification.
level 2	5 penalty units (\$800) and a minimum 2-month disqualification and 6 months default disqualification.	10 penalty units (\$1,600) and a minimum 3-month disqualification and 12 months default disqualification.
level 3	10 penalty units (\$1,600), imprisonment for 6 months or both, and a minimum 3-month disqualification and 12 months default disqualification.	10 penalty units (\$1,600), imprisonment for 6 months or both, and a minimum 6-month disqualification and 3 years default disqualification.
level 4	15 penalty units (\$2,400),	20 penalty units (\$3,200), imprisonment

⁸ Ibid s 5C.

⁹ Ibid s 6.

¹⁰ See *Crimes Act 1900* (ACT) s 49, items 14 and 15.

¹¹ *Wilkins v Hague* [2011] ACTSC 189; 258 FLR 355 [68] (citing Johnson J in *DPP (NSW) v Yeo* [2008] NSWSC 953; 188 A Crim R 82 at [27]).

¹² See *Road Transport (Safety and Traffic Management) Act 1999* (ACT) s 7.

¹³ See Ibid s 8.

alcohol concentration	maximum penalty— first offender	maximum penalty— repeat offender
	imprisonment for 9 months or both, and a minimum 6-month disqualification and 3 years default disqualification.	for 12 months or both, and a minimum 12-month disqualification and 5 years default disqualification.

Other offences related to driving under the influence of alcohol and drug are:

- Driving under the influence of intoxicating liquor or a drug;¹⁴
- Use vehicle or animal on road or road related area under influence of alcohol or drug;¹⁵
- Consuming alcohol while driving.¹⁶

An automatic disqualification from obtaining a driver licence for a certain period applies to the offences of:

- culpable driving (12-month disqualification for first offenders and 24-month for repeat offender, or longer);¹⁷
- improper use of motor vehicle (3-month disqualification for first offenders and 12-month for repeat offender, or longer);¹⁸
- failing to stop motor vehicle for police (3-month disqualification for first offenders and 12-month for repeat offender, or longer);¹⁹
- negligent driving occasioning death (9-month disqualification for first offenders and 18-month for repeat offender, or longer) or grievous bodily harm (6-month disqualification for first offenders and 12-month for repeat offender, or longer);²⁰
- furious, reckless and dangerous driving (3-month disqualification for first offenders and 12-month for repeat offender, or longer - If aggravated, 12-month or longer);²¹ and
- menacing driving (3-month disqualification for first offenders and 12-month for repeat offender, or longer).²²

It should also be noted that Courts have a general discretion to disqualify an offender from holding or obtaining a driver licence for any period they consider appropriate.²³

Therefore, depending on the circumstances of the case, there are several charges under which a person who engaged in dangerous driving behaviour can be prosecuted. The maximum penalties for these offences can be stern depending on the circumstances, up to 16 years of imprisonment for aggravated culpable driving causing death and disqualification from obtaining a driver licence for an indefinite period.

¹⁴ See *Road Transport (Safety and Traffic Management) Act 1999* (ACT) ss 24, 27, 34.

¹⁵ *Ibid* ss 24A, 34.

¹⁶ *Ibid* ss 25, 34.

¹⁷ *Road Transport (General) Act 1999* (ACT) s 62.

¹⁸ *Ibid* s 63.

¹⁹ *Ibid*.

²⁰ *Ibid* s 63(3).

²¹ *Ibid* ss 63(2)-(4).

²² *Ibid* s 63.

²³ See *Road Transport (General) Act 1999* (ACT) s 64(1).

As shown above, these offences are legislated in various Acts, with provisions from these different Acts interacting with each other, at times creating complexities and confusion.

Sentencing Regime in the ACT

The ACT has a well-established judicial regime. Sentencing offenders for criminal behaviour is governed by statute, code and the common law; precedent and parity of sentencing play a crucial role in ensuring that the punishment of an individual is consistent with an informed community expectation. The availability of an appellate court is integral to ensuring justice is administered appropriately in individual circumstances.

A court will impose a sentence for one or more purposes listed under section 7 of the *Crimes (Sentencing) Act 2005*. The purposes that a court may consider include to ensure that the offender is adequately punished in a just and appropriate way, to protect the community from the offender, to promote the offender's rehabilitation, or to recognise the harm done to a victim and the community.²⁴

Further, Courts need to consider several matters when sentencing an offender. These matters are listed at section 33 of the *Crimes (Sentencing) Act 2005* and include but are not limited to:

- the nature and circumstances of the offence;
- if the offence forms part of a course of conduct consisting of a series of criminal acts of the same or similar character;
- if the personal circumstances of any victim were known to the offender at the time of the offence;
- any injury, loss or damage resulting from the offence;
- the effect of the offence on the victims, victims families or anyone else who may make a victim impact statement.

The above are only some of the considerations that a court must take into account. Overall, a court will have to consider all the specific circumstances of the case that may speak in favour or against the offender at the sentencing stage.

In particular, consideration must be given when there are victims. Victims or people on the victim's behalf²⁵ can make a victim impact statement to inform the court of the harm the victim has suffered and/or is suffering because of the offence. When a victim impact statement is made, the court *must* consider it and, on the other hand, when no statement is made the court *must not* make any inference about the harm suffered by a victim who did not make the statement.²⁶

The framework around sentencing is, therefore, structured in a way that allows courts to sentence accused people in ways that adequately reflect the specific circumstances of the individual offender. In achieving this, judicial discretion is crucial as it represents an aspect of 'the administration of the criminal law [which] involves individualised justice'²⁷ and 'is

²⁴ See full list at s 7 *Crimes (Sentencing) Act 2005* (ACT).

²⁵ See *Crimes (Sentencing) Act 2005* (ACT) s 49.

²⁶ *Ibid* s 53(1).

²⁷ *Elias v The Queen* (2013) 248 CLR 483 [27] (French CJ, Hayne, Kiefel, Bell and Keane JJ).

essential to ensure that all of the wide variations of circumstances of the offence and the offender are taken into account'.²⁸ Sentencing discretion does not, however, mean arbitrariness. Sentencing discretion is bounded by 'statutory requirements and applicable judge-made principles' and 'must always be undertaken according to law'.²⁹

Therefore, in our view, courts do possess adequate tools to sentence offenders of dangerous driving to punishments that fit the crimes committed. Indeed, judicial discretion allows to impose stern punishments when the circumstances require that, and courts are not afraid to impose harsher penalties when necessary.

In *Monfries*, for instance, the ACT Supreme Court dismissed an appeal seeking to set aside a sentence for culpable driving which the appellant argued to be 'significantly higher than any of those in the table of comparative sentences provided to the Court by the Crown'.³⁰ The court dismissed the appeal, considering the harsh sentence to be appropriate in the circumstances and also noted that 'sentencing judges [do] have regard to what has been done in other cases' but 'care must be taken in using what has been done in [those] cases', and that while 'past sentences provide guidance to sentencing judges and [...] can establish a range of sentences that have in fact been imposed, that history does not establish that the range is the correct range'.³¹

Conclusion

To conclude we appreciate the spirit behind this inquiry, and we will closely follow developments, participating to any future consultation or legislative reform that may derive from it.

A helicopter perspective shows that there are numerous different provisions under which dangerous driving can be prosecuted, that arguably lead to unnecessary complexity. The different provisions prescribing dangerous driving offences are scattered in different Acts, being the *Crimes Act 1900*, *Road Transport (Safety and Traffic Management) Act 1999*, *Road Transport (General) Act 1999* and *Road Transport (Alcohol and Drugs) Act 1977*. The existence of several different provisions in different Acts creates confusion and, consequently, legal uncertainty. This also affects the ability to adequately prosecute the matters that should be prosecuted, with the risk of creating injustices.

We, therefore, believe it may be worthwhile considering whether reforming the current system may assist with creating a more agile and consistent framework to reduce ambiguities and improve the administration of justice.

In our submission the checks and balances already provided in our courts sentencing process, and in the appellate system offer the necessary safeguards to ensure the most just result in the circumstances of the matter are achieved. We note that sentences imposed by the courts are often the subject of newspaper publications. Such publications do not assist members of the public to understand the relevant principles of law. In this context it may be of assistance

²⁸ *R v Whyte* (2002) 55 NSWLR 252 [147].

²⁹ See *Magaming v The Queen* (2013) 87 ALJR 1060; [2013] HCA 40 [47] (French CJ, Hayne, Crennan, Kiefel and Bell JJ).

³⁰ *Monfries v R* [2014] ACTCA 46 [194] (Ross J).

³¹ *Ibid* [192].

to the public for decisions of court, especially the Magistrates Court, to be published to ensure accessibility and transparency.

Should you have any questions in relation to the above submissions, please do not hesitate to contact me on (02) 6243 3496 or at 

