



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
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Submission Cover Sheet

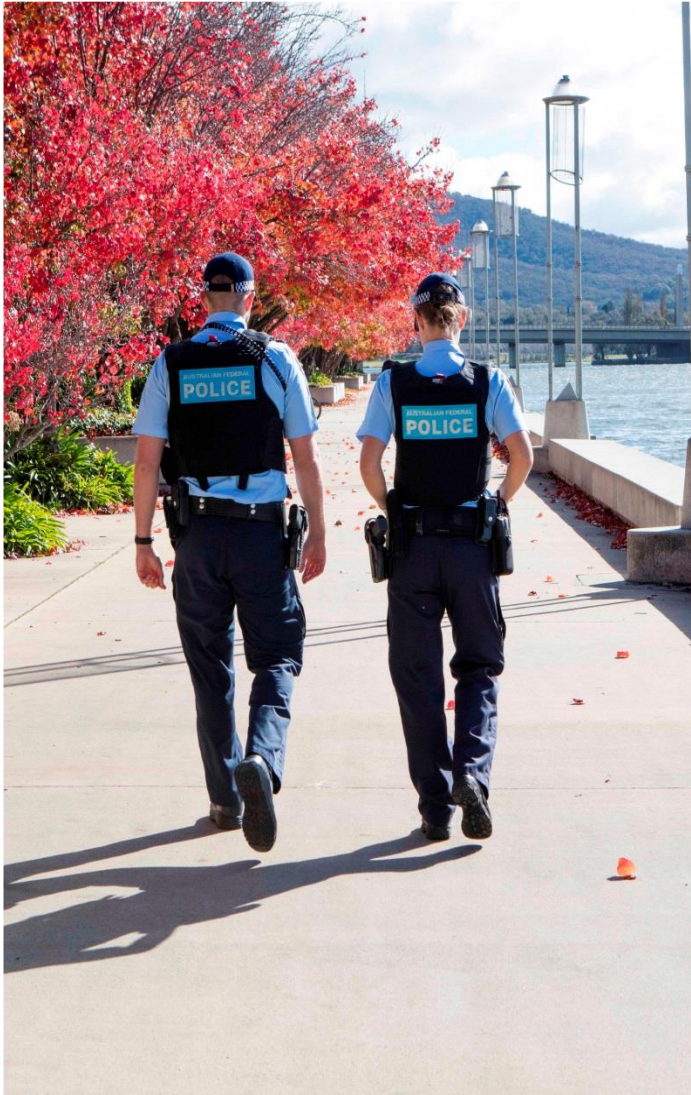
Inquiry into the Road Safety and Crimes Legislation Amendment Bills 2022

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Inquiry into Road Safety
Amendment Bill 2022 and
Crimes Legislation
Amendment Bill 2022

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Submission by ACT Policing

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Introduction

ACT Policing is committed to initiatives that support and increase the safety of all road users on the Territory's roads and welcomes the opportunity to provide this submission to the Standing Committee on Justice and Community Safety in response to the Inquiry into the Road Safety Legislation Amendment Bill 2022 and Crimes Legislation Amendment Bill 2022.

In collaboration with the Roads Transport Authority, Transport Canberra and City Services and community partners, the ACT Government and ACT Policing undertake numerous strategies to improve road safety and reduce anti-social driving behaviours. It is an ACT Government and ACT Policing priority to maintain Canberra as a safe city in which to live, however, as also experienced in other cities around Australia, we are not immune to those who choose to engage in unacceptable anti-social, dangerous and criminal behaviour.

At the date of this submission, 18 people have lost their lives on ACT roads in 2022. This is significantly higher than the average road toll over the last five calendar years (the average road toll from 2017-2021 was 7.6). As a community this is a statistic that cannot be accepted nor attributed to an inevitable consequence of a road transport system. Contributing factors to the road toll continue to include elements of the 'Fatal Five', including speeding, impaired and distracted driving.

On 30 September 2022, ACT Policing provided a submission to the Inquiry into Dangerous Driving. That submission outlined the challenges ACT Policing is experiencing in addressing the issue of dangerous driving in the Territory and outlined current strategies employed to target individuals involved. Further the submission included proposals to amend or introduce legislation to increase safety on Canberra's roads.

ACT Policing has worked closely with Transport Canberra and City Services and Justice and Community Safety in the production of The Road Safety Legislation Amendment Bill 2022 and sections of the Crimes Legislation Amendment Bill 2022. ACT Policing believes these Bills are important steps to provide better legislation for vehicle thefts and to address the 'Fatal Five', the top five contributing factors of serious and fatal collisions in the ACT;

- Alcohol or drug impaired driving
- Speeding
- Not wearing a seatbelt
- Intersections; and
- Driving whilst distracted

ACT Policing looks forward to the continued work with ACT Government, partners, and key community stakeholders to improve responses to dangerous driving behaviours and to reduce road trauma in the ACT.

Road Safety Amendment Bill 2022

ACT Policing welcomes the introduction of the Road Safety Amendment Bill 2022, and in this submission will address the amendments most relevant to ACT Policing.

Introduce a mandatory requirement for ACT Policing to issue an immediate licence suspension notice for speeding 45km/h or more over the posted speed limit, for an aggravated offence of furious, reckless or dangerous driving or for refusing to provide an oral fluid sample;

Immediate Suspension Notices (ISNs) are currently available to police for a number of offences relating to the *Road Transport (Alcohol and Drugs) Act 1977*. By expanding the offences available, police will be able to take immediate action to protect road users from these dangerous driving behaviours.

Speeding is a major contributor to injury and death on ACT roads. It reduces the ability to control the vehicle and lengthens stopping distances, increasing the likelihood and severity of a collision. Any level of speeding presents a road safety risk for a driver and other road users, however high levels of speed create an unacceptable risk to the community.

It is disappointing that speed continues to be an issue on Canberra's roads. A total of 19,448 drivers were identified exceeding the speed limit over the last five financial years. These figures are unacceptable and in a bid to address high level speed, ACT Policing believes that the introduction of the new penalties will assist police in addressing significantly dangerous speeds.

Dangerous driving encompasses a variety of behaviours that create a risk of injury or death to drivers, passengers and other road users, including pedestrians, and risk of damaging property. In addition to speeding, reckless, negligent driving and general dangerous driving are factors associated with road trauma.

Each year ACT Policing and Transport Canberra and City Services create the ACT Road Safety Calendar. This calendar nominates specific issues for each month of the year based on research and evidence. While ACT Policing actively targets these issues on a daily basis, the Calendar provides targeted messaging, campaigns and operations each month.

Over the last five financial years, a total of 826 charges have been put before the ACT Magistrates Court relating to dangerous driving offences. A further 925 infringements were issued during this period. These include offences such as aggravated, furious and reckless driving, burnouts, street racing and culpable drive causing death or grievous bodily harm.

Introduce automatic licence disqualification where a court convicts a person for speeding 45km/h or more over the posted speed limit;

ACT Policing believes the introduction of an automatic licence disqualification in circumstances where a court convicts a person for speeding 45km/h or more over the posted speed limit to be a good deterrent and is complimentary to the immediate suspension notice, reinforcing dangerous speeds will not be tolerated by police or the judicial system.

Increase the maximum time allowable for a police officer to seize a vehicle after an offence under section 10C of the Road Transport (Safety and Traffic Management) Act 1999 from 10 to 30 days;

Currently s10C(2) of the *Road Transport (Safety and Traffic Management) Act 1999* authorises a police officer to seize a motor vehicle within 10 days after the commission of an offence.

ACT Policing has found in some circumstances this is insufficient time to conduct enquiries and complete investigations to locate vehicles which have been used in the commission of an offence, including street racing, attempts on speed records, speed trials; improper use of motor vehicle; and failing to stop motor vehicle for police.

Expanding this timeframe to 30 days will allow police adequate time to conduct thorough investigations to locate suspect vehicles, often stolen, and offenders involved in these offences. This will result in police removing dangerous drivers and vehicles off the road that may not have been located within the current 10-day period.

Inserts a new aggravated offence at section 5AA of the Road Transport (Safety and Traffic Management) Act 1999 for races, attempts on speed records, speed trials etc;

Racing, attempts on speed records or speed trials is extremely dangerous behaviour which can result in serious injury or death, both for the offender and other road users.

From 2017-18 to 2021-22 a total of 721 drivers were charged with section 5 offences of the *Road Transport (Safety and Traffic Management) Act 1999* (Races, attempts on speed records, speed trials, Improper use of motor vehicle, and failing to stop motor vehicle for police). A total of 870 vehicles have been seized by ACT Policing since 2017 under existing police powers to seize for offences under section 5A, 5B and 5C of the *Road Transport (Safety and Traffic Management) Act 1999*.

ACT Policing believes that creating aggravated offences is an important step in deterring street racing offences, and recognising factors such as failing to stop a motor vehicle for police; driving under the influence of intoxicating liquor or a drug; driving at a speed that exceeds the speed limit by more than 30%; or commits the offence with a person younger

than 17 years old in the vehicle, makes street racing offences significantly more dangerous and will aid in the deterrence of these offences.

Amends the penalty for vehicle street races, attempts on speed records, speed trials, etc. to introduce an imprisonment penalty for repeat or aggravated offenders, increase the applicable penalty units for committing an offence and infringement notice penalty amount for non-repeat or aggravated offenders;

The introduction of an imprisonment penalty and increasing the maximum financial penalty for street racing offences is proportionate to the seriousness of the offence and ACT Policing supports these harsher penalties. Street races, attempts on speed records and speed trials are extremely dangerous and unnecessarily put innocent road users at risk of serious injury or death.

This amendment will also bring the ACT in line with offences in other jurisdictions such as Victoria, New South Wales and Queensland where similar matters would proceed to court.

Increase the range of offences that would result in an offender being classified as a repeat or aggravated offender when a person is charged with offence under s5A of the Road Transport (Safety and Traffic Management) Act 1999; and

Increasing the range of offences that would result in an offender being classified as a repeat offender is beneficial when considering sentencing, as drivers who take part in dangerous driving behaviours are often repeat offenders and commit a range of other road transport offences. Over the last five years, approximately half of the drivers charged with negligent or dangerous driving were driving whilst their licence was disqualified or under the influence of drugs and/or alcohol, and a third driving in an unregistered vehicle. Increasing the offences will assist in keeping dangerous drivers off the road, creating a safer environment for all Canberrans.

ACT Policing's Operation TORIC, formed to address an increase in motor vehicle thefts and associated dangerous driving and other crimes in the ACT, has resulted in the arrest of 122 people who have been charged with 310 offences including aggravated and dangerous driving, driving at police, taking a motor vehicle without consent, drug driving and firearms offences. Of those charged, 39 were on bail for other offences, 16 were on good behaviour orders, five were on intensive corrections orders and eight were on parole.

Amendments to legislation addressing recidivism are valuable to all areas of criminal behaviour including road safety.

Introduce a discretionary power for ACT Policing to seize and impound vehicles for speeding 45km/h or more over the posted speed limit or for an aggravated offence of furious, reckless and/or dangerous driving.

The introduction of a discretionary power for police to seize and impound a vehicle for speeding 45km/h or more over the posted speed limit will allow police to create safer roads immediately. Currently, a driver detected travelling above 45km/h will receive a

traffic infringement notice or a summons to appear before the court, continuing to drive and create risk to the community until the court date. This amendment will allow police to remove a vehicle from the road, in addition to the immediate suspension of a driver's licence, preventing that driver to continue their dangerous behaviour and creating safer conditions for all road users.

ACT Policing looks forward to continued work with Transport Canberra and Community Safety to work towards creating safer roads and achieving Vision Zero.

Crimes Legislation Amendment Bill 2022

Unauthorised entry/Trespass in a motor vehicle

At present, ACT Legislation has two offences relating to stolen motor vehicles (both offences attract 500 penalty units/5 years in prison):

- *Criminal Code 2002 s 318(1) Taking a Motor Vehicle Without Consent; and*
- *Criminal Code 2002 s 318(2) Ride/Drive Stolen Motor Vehicle.*

In 2019, the ACT Supreme Court made a decision in relation to current ride or drive stolen motor vehicle offences. In the decision by Elkaim J, in *R v Carpenter* [2019] ACTSC 169, evidence of DNA on the driving surfaces of a vehicle (steering wheel, mirror and gear lever) was not proof of the offender's culpability for the offence of drives or rides in or on a motor vehicle belonging to someone else, because while the DNA puts a person in the vehicle, there was no evidence of the alleged offender driving or riding in the vehicle.

Arguably, the alleged offender would have committed the offence of "*trespassing in a vehicle, by entering or remaining within a vehicle with intent to commit theft of any property in the vehicle, or of the vehicle itself*". Elkaim J, relied on the fact that the charge related to the driving of a vehicle, and there must be other evidence that the accused moved the vehicle; "*The movement might be very slight, but nevertheless there must more than only being in the vehicle*".

At present in the ACT, vehicles are stolen, driven and then dumped by offenders who are aware that without evidence of them driving the vehicle, they are relatively safe from prosecution. As a result, ACT Policing advocated for a new offence of trespass, or unauthorised entry into a motor vehicle, as there is currently no offence for entering or remaining within a vehicle, as a trespasser with the intent to commit either theft or damage to that vehicle.

ACT Policing has worked with Justice and Community Safety (JACS) and the Director of Public Prosecutions (DPP) to create the new offence of vehicular trespass in two parts, due to the complexity of a higher level offence. The first part of the offence, which has been included in the Crimes Legislation Amendment Bill 2022, is to introduce a lower level offence of unauthorised entry into a motor vehicle without reasonable excuse. This offence will cover offences such as carpark break-ins and person entering unlocked vehicles to commit theft of the content of a vehicle.

ACT Policing will continue to work with JACS and the DPP to create a higher-level offence of trespass in a motor vehicle for the Crimes Legislation Amendment Bill 2023. The higher level offence will address incidents where motor vehicle has been stolen or a vehicle has been used in an offence and will address the gap between the s318(1) and 318(2) of the Criminal Code 2002.