



**LEGISLATIVE ASSEMBLY**  
**FOR THE AUSTRALIAN CAPITAL TERRITORY**

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STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY  
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## Submission Cover Sheet

### Inquiry into Dangerous Driving

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## **Response to Dangerous Driving Inquiry: Thomas McLuckie on behalf of ACTNOWForSaferRoads**

### **Inquiry into Dangerous Driving**

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

##### **Response:**

From the very first morning when the Police arrived at our door to advise of us of the death of our son, we were set an expectation to “not expect too much” from the Criminal Justice system. The police could only share minimum information of the event and advised us Matthew has not been at fault. This was repeated several times. Unfortunately, due to the events over that weekend (3 motor vehicle fatalities) and the shift arrangements of the officers involved we found out the details of the accident that resulted in Matthew’s death through social media and the news. The Senior Constable was able to get us access to the Coroners in Woden on the Friday to identify and see Matthew’s body – as it was a public holiday weekend if she had not been able to get our viewing that Friday (20<sup>th</sup> May), we had been advised we may not get to see our son until the Tuesday (24<sup>th</sup> May). Matthew was still intubated when we saw his body. As the events of Matthew’s death became clear over time, we had to request confirmation through a family friend in the AFP to have the details of the crash confirmed. I did ask several questions in regard to possible charges, clarification of the event as known and so forth. When I suggested as per the Crimes Act the definition of murder is 12 Murder

(1) A person commits murder if he or she causes the death of another person—

(b) with reckless indifference to the probability of causing the death of any person;

When we spoke to a senior officer involved, we were advised, based on their experience it was highly unlikely anyone in the ACT would ever face a murder charge for a homicide due to driving, and unlikely to

face a manslaughter charge and more than likely a culpable driving charge causing death, with a discount applied if a guilty plea was entered. This became even more evident as other victims of motor vehicle crimes reached out to us to pass on their condolences [REDACTED]

There were multiple failures we experienced in regard to Matthew's death from Criminal Justice response. There was very limited support available to the family over the initial 60 days with a huge administrative burden placed on the family for the over complicated forms that accompany the MAI Act. [REDACTED]

[REDACTED]

Between the ACT Police, Coroners, and Insurers I was left chasing for Police Incident Numbers, other car details and other driver details for the Funeral Benefit forms. No information was forthcoming without me as the victim's father having to request it. I received a few phone calls from various support groups – FLO at the Coroners and a meeting to see the autopsy report, a letter explaining the Coronial process as I had to request this information, a couple of appointments to a counsellor through Family Relationships Australia, and a call from the MAI Commission to advise of the assistance helpline and free phone number along with a follow up email after several emails to the Chief Ministers offices. No single part of the Justice system seemed to understand the full picture of support available, the processes or support options. Our VLO from the Police was lovely, contacted us during her own time and was doing research into Victims Support options. I understand she had to argue with Victims Support that their services and financial assistance were applicable to our family even though charges had not yet been brought.

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

**Response**

The police officers involved in the crash, and the new officer just recently assigned have been hugely supportive. They are limited at the information they can provide during an ongoing criminal investigation. I have regular contact with agreed updates from the investigating officers, and also meet every 4-6 weeks with the Assistant Commissioner who has been hugely engaged and explained the whole investigative process to us. I am fully aware from the ongoing reporting of arrests through the ACT Policing media releases that the dangerous and reckless driving that killed Matthew (driving up the incorrect side of a major thoroughfare) is a very common occurrence and that Matthew's death was an accident waiting to happen. The response through Operation TORIC is a great start, but Policing can only be part of the solution. The whole "system" needs to address the root causes of the criminal elements.

I shared with [REDACTED] the studies in addressing knife crime in Glasgow and in reading the approach of TORIC from a Policing perspective they are taking a similar approach, However, without the justice system working together, I fear only limited success will be achieved.

<https://www.theguardian.com/membership/2017/dec/03/how-scotland-reduced-knife-deaths-among-young-people>

I have been tracking the reporting on Traffic Offences and in particular motor vehicle crime and believe this evidence clearly indicates a problem in the ACT with Recidivism, furious and reckless driving, and a wanton disregard by many of these repeat offenders for the safety and lives of those they endanger. It also clearly highlights failings around Bail and Community sentencing when many of the offenders are on bail, good behaviour order, intensive correction orders and parole. There appears to be a wilful and serious contempt shown making a mockery of the leniency and best intentions of our justice system.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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

##### **Response**

There is a disjointed and limited approach to support service for families after a traumatic event. This is compounded by the complexities of the MAI Act and no guidelines as to how families engage support services. It appears the onus is on the victim to navigate the system, understand what they should be entitled to or what support, fill in forms and so forth. Between the four families who have lost a loved one through a criminal motor vehicle incident with whom we have close friendships [REDACTED] [REDACTED] who took their case to the ACTAT as per limitations of the MAI Act and ourselves) the advice, benefits and support arrangements have not been the same. We received a recognition payment for Matthew's death – [REDACTED] have never heard of this. The [REDACTED] insurance to cover income replacement etc even though he was not the at fault driver, we are having to go through Nominal Defendants. The biggest upset is the capped limited on the Defined Benefits scheme which means regardless of my mental state, regardless of my health, regardless of whether I even feel capable of getting out of bed in the morning, because I am a high-income earner I am not entitled to a benefit. There is limited grief and trauma support. Through my own GP I have had a referral but to date I

have not had any form of appointment. There have been challenges with access through Victim Support (and issues gaining access to the building for appointments) and conflicts highlighted with the services provided by Family Services Australia. The [REDACTED] received counselling via [REDACTED] at Family Relationships Services Australia, only to find out on the appearance of [REDACTED] at Court the same counsellor was providing services to the offender and his family. This has made me hesitant to continue using this service in the future.

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

**Response**

The common law precedents and options for Community based "custodial" arrangements has removed any form of general deterrence being applied through our Judiciary and the other principals of sentencing being equitably applied. When we have inappropriate sentencing (considering we count deferred sentences, time served while awaiting trial, and intensive corrections orders, drug and alcohol sentencing lists as custodial sentences), then we are adding to the revolving door evident here in the ACT, with minimal regards to the impacts to the victims of the Crime.

As per our Director of Public Prosecution, "So our job is to make sure that the ... precedents are correct and reflect community values." He also states, "that rehabilitation, while an important factor in sentencing, was only one of many considerations". However, our this is contrary to the current precedent in the ACT where under *Samani v The Queen* [2016] ACTCA A sentence of imprisonment is effectively the last resort when a court considers what sentence to impose: s 10 of the Sentencing Act; See the judgement from <https://www.courts.act.gov.au/supreme/judgments/r-v-pooi-no-3>

When you consider the actual prison time served in the following cases, and compared to other jurisdictions, we are exceptionally lenient. Motor vehicle theft is often the "means" for offenders to carry out other criminal activities. See:

<https://courts.act.gov.au/supreme/judgments/r-v-laidlaw> - 3 months served in prison

<https://courts.act.gov.au/supreme/judgments/r-v-smith12> - 4 years non-parole for a litany of convictions

<https://courts.act.gov.au/supreme/judgments/r-v-gordon3> - 3 years but to be served under terms of an

ICO

<https://courts.act.gov.au/supreme/judgments/r-v-loeschauer> - 5 years with parole available after 2 years 11 months. Note the judgement "The sentences I impose should not, in any way, be seen as reflecting on

the value of the [life] of [the deceased victim]” – this is contrary to Sentencing Act 7.g to recognise the harm done to the victim of the crime and the community.

<https://courts.act.gov.au/supreme/judgments/r-v-goolagong-no-2> - 5 years with a non-parole period of 2 years 7 month

<https://courts.act.gov.au/supreme/judgments/r-v-judge> - imprisonment for a period of 21 months commencing on 2 June 2021 and ending on 1 March 2023 which sentence is to be suspended after he has **served five months**’ full-time detention upon him giving an undertaking to be of good behaviour for a period of 16 months.

<https://courts.act.gov.au/supreme/judgments/r-v-higgins> - imprisonment is 34 months to be served in the community by way of an **Intensive Correction Order**.

<https://courts.act.gov.au/supreme/judgments/r-v-livas-no-2> - imprisonment for 39 months, but parole available after 2 years 2 months.

It is not only Culpable driving offences the ACT Courts are falling short on in terms of sentencing, it is across all crime types.

[REDACTED]

[REDACTED] of ACT

Supreme Court rulings. Compare to actual imprisonment and parole terms from other jurisdictions and we are falling short of meeting community expectations.

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

##### **Response**

The support is practically non-existent, there is no single source to engage, no single point of support and limited availability to counselling services. The debacle of the MAI Act 2019 only compounds the challenges of the victims dealing with bureaucracy.

[REDACTED]

[REDACTED]

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

##### **Response**

As per FOI requests I am still awaiting information into the programs and rehabilitation services offered to sentenced offenders through our Corrective Services. I have a commitment from the Ministers Office to have some further information soon. [REDACTED]

[REDACTED] we have a disconnected system, where even a repeat offender is granted an ICO with no rehabilitation services arranged.

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

**Response**

I had an FOI request to Corrective Services, and this was not answered. I am awaiting further information coming from the Minister Office as per meeting earlier this month.

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

**Response**

I would consider a review of the use of electronic tagging for community-based sentences, and allowing the use of DNA in identification of motor vehicle thieves (contrary to precedent in R v Carpenter) and HD Imaging for identification of offenders being review.

**i) Any other related measure with respect to the administration of corrections, courts and sentences in the ACT with respect to dangerous driving.**

**Response**

The Human Rights consideration through our sentencing, courts and corrections service are the to serve the needs of the Perpetrator, and do not factor in the Victim. Multiple victims I've spoken to have referenced our Charter of Rights for Victims of Crimes and think it falls way short of actually delivering support services to the victims, which should be rights in themselves.