



**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 Dangerous Driving

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Submission to the LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

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STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY Mr Peter Cain MLA (Chair), Dr Marisa Paterson MLA (Deputy Chair), Mr Andrew Braddock MLA

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## **Inquiry into Dangerous Driving**

The Committee will inquire and report on dangerous driving, with particular reference to:

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

It is obvious that the major impetus for this enquiry is the perceived leniency of the ACT criminal justice response by the public to recent appalling offenses arising from dangerous driving by repeat offenders, some of whom have killed innocent victims. The Canberra Times says "dangerous drivers are clearly not being deterred to an adequate degree" (Canberra Times Editorial, August 14 2022). There is anger in the community that the ACT Government has long refused to deal with this issue and frustration that a weak ACT Opposition is failing to hold the government to account. The prime target must be the Government which continues to turn a blind eye to the problem, and the person responsible is ACT Attorney-General Shane Rattenbury.

Mr Rattenbury's view is that government policy must reduce and prevent crime and no doubt everyone would agree with this goal. The problem is that this goal is far from being achieved. For example, there was community outrage against a drug-driving teenager who avoided a jail sentence after crashing a stolen Mercedes-Benz into a police car (Canberra Times, July 14 2022). The reason appears to be that the ACT substance abuse program was already full and so the offender was given a corrections order to be served in the community. The public does not care whether the cause of the offender's outrageous behaviour was the result of illicit drugs, alcohol, a combination of these or other factors. *Justice must be served*. But Mr Rattenbury claimed that there was insufficient evidence to warrant "a wholesale review" (presumably of the ACT drug rehabilitation program) even though the offender could not be enrolled in the program. He further stated that the government was "committed to evidence-based justice policy that effectively reduces and prevents crime", even going so far as to dismiss suggestions the teenager's sentence was "soft". Mr Rattenbury apparently believes there is no evidence that imprisonment "effectively reduces and prevents crime" but that there is evidence supporting his justice policy to do the same. This statement further tells criminals and others that the offender's behaviour was not considered outrageous even though he recklessly threatened the lives of others on public roads.



Mr Rattenbury's response contrasts with the Australian Federal Police and respected barrister John Purnell SC who both called for a simple practical solution for a drug offender: increased funding for substance abuse programs that were already full, to enable all offenders to be rehabilitated (Canberra Times May 15 2022). While it may be laudable for the ACT government to be committed to evidence-based justice policy that effectively reduces and prevents crime, the public is telling the government their evidence-based justice policy is not working to reduce or prevent crime which continues unabated. After recidivist offender 29-year-old Jackson Allred, who was on bail, stole a car and tried to run down police officers (August 2022), the Australian Federal Police Association launched a stinging rebuke of Attorney General Shane Rattenbury, calling on him to "stop pursuing political ideologies" and describing the territory's sentencing and bail processes as "fundamentally flawed and dangerously inadequate" (Canberra Times August 16 2022). Mr Rattenbury must take these criticisms from the police onboard or resign.

Mr Rattenbury should remind himself of Clea Rose who was killed in 2005 *in East Row Civic* by a 15-year old speeding driver. Her shocking death was completely avoidable and has left a significant scar on the memories of Canberrans even today. This offender, who was later described as a "profoundly dishonest person" by Justice Burns has, incredibly, been released from jail into the Canberra community where he continues to threaten innocent people's lives. This includes crashing into a car driven by a young mother with her two children at 8am near Ainslie Primary School after he crossed on the wrong side of the road to avoid a police pursuit (Canberra Times April 18 2018). Yet this offender is but one of dozens, perhaps more, who have escaped proper punishment time and again. How many more chances will this person be given?

One must also question the responses of other politicians and some magistrates in the ACT who from their statements clearly give the offender the benefit of the doubt but fail to understand the impact of the offender's crime on the victim (e.g. Blake's legacy, Canberra Times May 16 2022). While there is no doubt that every recommendation from this coronial inquest of Blake Corney's preventable death must be implemented, *much more needs to be done*. First, in the Blake Corney case, Minister Steel must ensure these recommendations are put in place at the Federal level because heavy vehicles frequently travel interstate. However, putting the onus on medical practitioners to report conditions that may affect the ability of people to drive is simply buck-passing. The driver who killed Blake Corney knew he suffered from sleep apnoea and yet still drove. *This is the person who should be punished, and punished severely, not someone who may or may not have a medical condition that impairs their driving ability*. Of course, most medical practitioners will also have to report the aged who will bear the brunt of this legislation, yet they are the very people who mostly drive only short distances to the shops or their doctor, at low speeds and outside of peak traffic hours. Akis Livas, the man who killed Blake



Corney, reportedly knew of his sleep apnoea for five years before the crash but failed to stop or curtail driving heavy vehicles at highway speeds. Why is this man soon to be eligible for parole after committing such a heinous crime? Why was the sentence for only two years in prison? Why did Chief Coroner Lorraine Walker not hold Akis Livas to account for his actions instead of giving him a slap on the wrist? This is what the public are angry about. As Blake's father pointed out, the NSW driver who killed four children was given a sentence of 28 years, 21 of which are non-parole. He said, "...the difference between three years and nine months (Akis Livas' sentence) and 28 is an absolute gulf when I would think some of the factors are not that dissimilar". The simple message that Chief Coroner Lorraine Walker is sending to all drivers (but especially dangerous drivers) is that you can kill someone or permanently incapacitate them and it's not such a serious offence *because it was an accident*. This sort of mentality has to stop or our roads will continue to have these problems.

Lenient sentencing, however, is not restricted to repeat offenders, speeding and drink/drug drivers and the like. A second recent and disturbing case is the failure to punish the "model citizen" Jennifer June Hutchison, who killed a man *at a raised pedestrian crossing in inner Canberra*, and received only a suspended jail sentence (Canberra Times August 4 2022). Police pointed out that this driver was clearly exceeding the speed limit by driving in a 50km/h zone at 64km/h five seconds before the accident, at 5pm in fading light and in drizzle on a wet road, BEFORE she killed a pedestrian on a raised crossing. This is clearly reckless driving and is deserving of a significant fine on its own, let alone punishment for causing death. Why was this evidence not considered seriously by the magistrate? The driver we are told worked nearby at Brindabella Christian College and so had to be well aware of this often-used pedestrian crossing, which is raised to force cars to slow down. Most cars travel slowly here *all day* because the section from the College to the raised pedestrian crossing is 40 km/h during school hours (the collision occurred just outside of these hours). None of this seemed to be relevant information to the magistrate and incredibly, the perpetrator was not punished.

We are also told the deceased was 84 years old. The only reason for this information must be that at 84 years old, one's life is expected soon to be over with the implication that the loss of this person isn't a big deal. But everyone's life is important to them and their family, whatever their age. Further, the court heard that the deceased was partially blind. The associated assumption is that he was responsible, at least in part, for the collision. NONSENSE! Even a *fully* blind pedestrian or otherwise disabled person is entitled to assume they can cross safely at all times AT A RAISED PEDESTRIAN CROSSING!

After the collision we are told the driver said "I didn't see him". Since when has this been a valid excuse for speeding on a wet road with poor visibility and running into and killing a highly vulnerable



pedestrian? As a cyclist and motorcycle rider I have heard this feeble excuse plenty of times. Drivers in Canberra who speed are only on the lookout for other cars and not motorcyclists, cyclists or pedestrians and must be punished if this is their excuse. What these perpetrators mean to say, but don't, is that they weren't concentrating on the traffic, and were distracted or were adjusting the heater controls or radio volume or even texting. THIS IS NOT A VALID EXCUSE FOR WHAT JENNIFER JUNE HUTCHISON DID THAT NIGHT BUT IT WAS NOT CHALLENGED BY THE MAGISTRATE.

Further, Magistrate Robert Cook spoke of his experiences related to that specific road and crossing, appearing to support the perpetrator. He says when driving through the up ramp of the crossing, the headlights of another vehicle "are raised up into your line of vision" and one "can very easily lose any capacity of seeing anything", as if sympathising with the offender. I'm sorry, but I drive through this crossing regularly and I have absolutely no problem with this at any time of day, and I'm older than the criminal driver by almost a decade. However, the worst comes from the magistrate who is quoted as saying that deterring Hutchison was "not an entirely relevant consideration in sentencing" due to a number of features in her favour. How can this statement hold when surely a major reason for any sentencing is deterrence for other drivers? We are told that the driver had no criminal history, accepted the facts of the case, took full responsibility for the offending, and expressed shame and guilt. Just because the perpetrator accepted the facts of the case and expressed shame and guilt in no way absolves her from significantly more severe punishment. If she were such a model citizen then how could she possibly drive so recklessly and kill someone exercising their legitimate right to cross the road safely at a raised pedestrian crossing in inner Canberra? The magistrate further notes "You're assessed as low risk of general re-offending and I form the same view." So now we have a magistrate who not only ignores the severity of a driver's complete disregard for human life, but then goes on to imply that this was some unexplained event that likely will never happen again. In his sentence, there is no recognition of the egregious nature of the offence by the driver: THIS RESPONSE ENCAPSULATES THE VERY PROBLEM CANBERRA RESIDENTS ARE UP-IN-ARMS ABOUT. Magistrate Cook chose to ignore the facts and effectively absolved this reckless driver just because she appeared to be an otherwise law-abiding citizen. This is not good enough! Further, it is staggering that the magistrate even mentions *that he was also required in sentencing to consider the hardship and disruption* "that may possibly fall on you as a consequence of any sentencing". This included the impact on Hutchison's employment and her providing care to her elderly mother. What about the victim and *his* family? Oh, he's dead and can't defend himself so let's forget about him, and the magistrate's responsibility to the deceased's family and friends, which he surely must have. Or does this obvious responsibility need to be legislated in the ACT for the magistrate to be forced to act? The Canberra Times also notes that "Hutchison had supporters in court". One can't help but wonder if this biased the magistrate's decision. No doubt an



84-year-old man who is deceased thanks to Hutchison's completely unacceptable actions had few supporters to express their outrage at the offender and the magistrates' grossly unfair decision.

I have touched on just two recent events that have upset the Canberra community because of the obvious failure to serve justice, the latter not involving alcohol or drugs or a recidivist offender. Unfortunately, there are many other cases similar to these that have occurred over the years but nothing seems to be done about them.

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

I have had personal experience of police inaction caused presumably by gross underfunding of ACT Policing. Over the past 12-24 months we have had a particularly dangerous driver who regularly speeds on a 50 km/h street at 90-100 km/h or more. I have REPEATEDLY contacted the Belconnen Police Station to report the offense together with his license plate when this happens. Some 6-12 months ago I was put on hold for 40 minutes every time I tried to contact the police, whereafter I hung up. This must have occurred at least five times. I note a letter to the Canberra Times earlier this year also complained about being unable to get through to Belconnen Police by phone. Over the past 6 months police response time has markedly improved, and I have made roughly 6 complaints to the police who took down the details. I don't know what has happened to these complaints because the intermittent nature of the speeding likely makes it difficult to catch the offender. But when you give the police the offender's license number plate, residential address (this was confirmed as correct for that car by the police on one call) and even offer a 6 second video of the car doing about 100 km/h on the wrong side of the road, there is not much more a concerned citizen can do (I am happy to supply this video to the committee). Perhaps the worst aspect of this driver's behaviour is that he travels at lethal speeds just metres from a footpath used heavily by school children, parents and mothers with a pram. *It should not be that one has to persist continually over about 12 months before anything gets done to stop such a driver.*

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

No comment

#### **d) Prison sentences, fines and for dangerous driver offences in the ACT**

A critical area the committee must address is suitable punishment for dangerous driver offences in the ACT. This area has been ignored in the past.

##### **Prison sentences:**

Dangerous driver offences that result in loss of life or injuries with no prospect of the victims' full recovery must be dealt with by a prison sentence. **EVEN FOR "MODEL CITIZENS"!** The punishment decision can no longer be left to magistrates or other judges who have proved time and again to be incapable of balance and fairness in assessing fines to be paid to the victims and their families. **It must be legislated.**

##### **Fines:**

Current fines are often laughable with serious offences being minimised and many offenders not being deterred from committing further offences. **Fines need to hit the hip pocket of offenders severely.** The fact that many offenders might not have sizable assets should not stop seizure of any assets of offenders. *All assets (obviously including cars) should be impounded.* There also needs to be a complete assessment of all the offenders' assets, including all vehicles, property and bank, superannuation and other accounts. There is no reason why any of these assets should not be accessed to pay fines or victims. *Severe financial punishment is the best tool the ACT Government has to stop dangerous driving but it is not being used at present.*

##### **Legislated vehicle sanctions:**

Vehicles observed by police being driven in a dangerous manner must be impounded *immediately*. Such vehicles need to be held in a secure storage until the outcomes of prosecutions are known. Police must provide video evidence of the offences for presentation in court. It should be up to the magistrate to decide the severity of the punishment, that is whether the vehicle is released back to the offender after the court case or sold off on the open market to raise cash and whether punishment includes a considerable length of time the vehicle is impounded (e.g. up to 12 months). Time and again we hear of offenders who successfully challenge suitable orders because of their "circumstances". For example, there should be no exceptions for offenders who claim they need their impounded car to earn a living. If the car was so important to them then why did they hoon around and endanger lives?



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

This area has been neglected because it is often said that motor vehicle insurance is there to pay claims to support victims. As a result, no deterrence exists against further reckless driving by perpetrators. The justice system must attribute damages to victims of dangerous driving offenses to be source from the offenders, least of all the proceeds from selling the vehicle involved in the dangerous driving or a significant financial penalty. This provides a strong incentive for better behaviour from offenders, an incentive that is currently lacking.

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

I have pointed out the gross deficiencies in the corrections responses and the sentencing regime for dangerous driving above.

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

I accept Mr Rattenbury's position that rehabilitation and driver re-education is desirable and could be effective at reducing recidivism. However, this should not mean that ALL offenders must be treated equally. If such rehabilitation is 100% effective then why are there continued problems by so many repeat offenders? People who want to flout the law and challenge police authority will do just that. They may never change their ways and must be hit in the hip pocket with fines or lose their car to impounding. Being nice to them and asking them to now behave, as the ACT judicial system always does, does not work. What the government should be doing is first, to make sure there is appropriate funding for mental health and drug and alcohol treatment programs for the entire community, not just for dangerous drivers, as asked for by ACTnowforsaferroads. Second, it needs to accept that there are only so many chances for people like Clea Rose's killer to reform. *They cannot be continually freed only to repeat the same offences time and again in a never-ending cycle.*

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

There has always been a conspicuous absence of police cars on ACT roads. Highly visible police cars do deter dangerous driving, speeding and other poor driving habits. The ACT Government needs to increase the size of its car and motorcycle police units on patrol *urgently*.

The ACT also lags other jurisdictions in using technological advances to identify and prevent dangerous driving. When is the ACT going to install cameras to detect mobile phone usage while driving, or failure to use a seatbelt, as now occurs in SE Queensland? Policing these two behaviours with automated devices is cost effective, the technology is proven and it significantly reduces dangerous driving. By ignoring these technical advances, the ACT is showing itself incapable of keeping up with the rest of the nation. *Adding such cameras on major ACT roads must be high on the priority list for the ACT Government.*

Speed cameras have not been used effectively in the ACT for some time and this program needs to be updated. The deterrence of fixed -placed speed cameras is minimised by the warning signs that precede them. Everyone slows down when notified they are about to pass through a speed camera and after passing it they speed up again, making them next to useless. Isn't it about time these warning signs were removed, and the cameras repositioned? The better point-to-point speed cameras work well but are only used in a few select places in the ACT over short distances so speeding elsewhere (for example on the GDE) is common. Mobile speed vans are easily visible well before cars pass them by but again only slow traffic in the near vicinity of the van.

Our roads would be much safer if there was less dangerous driving *everywhere*. For example, in Canberra so many people still try to beat changing traffic lights by speeding up. This is dangerous driving. Why can't mobile red light and speed cameras be located at different intersections and then relocated to another intersection after some time?

Finally, at last the ACT Government has initiated the conversation of reducing the residential speed limit from 50 km/h to 40 km/h. But because ACT people have little faith in the government to prosecute dangerous drivers, why would they countenance speed restrictions which they perceive as a unnecessary hindrance? It is time to have the courage to implement this change, especially as the number of cars on Canberra roads has increased dramatically since the 50 km/h residential speed limit was introduced about 20 years ago. Of course there will be outrage from the petrol heads who will have to slow down a bit but it is widely acknowledged that lower speed limits result in safer and quieter residential streets. In the USA, in those states I have lived in, a 25 mph (approx. 40 km/h) speed limit is accepted and widely supported in all communities. No-one there complains about driving at 25 mph in a residential street, and the speed limit is rigidly enforced by local police. Streets there are much safer and dangerous driving at high speeds is immediately obvious. *The 50 km/h residential speed limit in Canberra must be replaced with a 40 km/h speed limit as soon as possible.*



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

No further measures