



Legislative Assembly for the Australian Capital Territory

Standing Committee on Justice and
Community Safety

Inquiry into Dangerous Driving

Legislative Assembly for the Australian Capital Territory
Standing Committee on Justice and Community Safety

Approved for publication

Report 16
10th Assembly
April 2023

About the Committee

Establishing resolution

The Assembly established the Standing Committee on Justice and Community Safety on 2 December 2020.

The Committee's areas of responsibility are:

- ACT Electoral Commission
- ACT Integrity Commission
- Gaming
- Minister of State (JACS reporting areas)
- Emergency management and the Emergency Services Agency
- Policing and ACT Policing
- ACT Ombudsman
- Corrective services
- Attorney-General
- Consumer affairs
- Human rights
- Victims of crime
- Access to justice and restorative practice
- Public Trustee and Guardian

You can read the full establishing resolution [on our website](#).

Committee members

Mr Peter Cain MLA, Chair

Dr Marisa Paterson MLA, Deputy Chair

Mr Andrew Braddock MLA

Secretariat

Ms Kathleen de Kleuver, Committee Secretary

Ms Emma Weaver, Assistant Secretary (until 3 February 2023)

Mr Alex Hildyard, Administrative Assistant (until 21 February 2023)

Contact us

Mail Standing Committee on Justice and Community Safety
Legislative Assembly for the Australian Capital Territory
GPO Box 1020
CANBERRA ACT 2601

Phone (02) 6207 0524

Email LACommitteeJCS@parliament.act.gov.au

Website parliament.act.gov.au/parliamentary-business/in-committees

About this inquiry

Under Standing Order 216, a Standing Committee can self-initiate an inquiry into any subject area for which it is given responsibility by the establishing resolution. The Standing Committee on Justice and Community Safety resolved to conduct the *Inquiry into Dangerous Driving* on 27 July 2022.

The Committee informed the Assembly of its intention to conduct this Inquiry on 4 August 2022.¹

Terms of Reference

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

- a) Criminal justice response to dangerous driver offending in the ACT;
- b) Police response to dangerous driving in the ACT (both in prevention and post-crash response);
- c) Capacity of trauma services and support services to respond to the post-crash event;
- d) Prison sentences, fines and vehicle sanctions legislated for dangerous driver offences in the ACT;
- e) Support for victims of dangerous driving offences through the justice system;
- f) Corrections responses and the sentencing regime for dangerous driving in the ACT;
- g) The effectiveness of rehabilitation and driver re-education at reducing recidivism;
- h) Police and other related technological advances to identify and prevent dangerous driving;
and
- i) Any other related measure with respect to the administration of corrections, courts and sentences in the ACT with respect to dangerous driving.

¹ Minutes of Proceedings no 56, 4 August 2022, p 772.

Contents

About the Committee	i
Establishing resolution	i
Committee members	i
Secretariat	i
Contact us	i
About this inquiry	iii
Terms of Reference	iii
Acronyms	vii
Recommendations	viii
1. Introduction	1
Conduct of the inquiry	1
Petitions considered	1
Inquiry into the Road Safety and Crimes Legislation Amendment Bills 2022	2
Inquiry into the Annual and Financial Reports 2021-2022	2
An increase in dangerous driving	3
2. Criminal justice response to dangerous driver offending	5
Sentences for dangerous driving	5
Concerns that sentences are too lenient	5
Concerns with increasing sentences	7
Existing offences and penalties	9
Court’s role in decisions on sentencing	9
Sentencing data for the ACT and other jurisdictions	12
Penalty for manslaughter	13
Sentencing guidelines and guideline judgments	14
Discounts to sentences	18
Community education on the justice system	21
Transparency of sentencing considerations	21
Community education on Intensive Corrections Orders	22
Process of judicial appointments	23
Bail	27
Transparency on decisions relating to the Transitional Release Program and the Sentence Administration Board	30
Information sharing between ACT Corrective Services and the Sentence Administration Board	31
Sentence Administration Board – conditions regarding drivers’ licences	32

Sentence Administration Board – medical/mental health treatment powers	33
Aligning Sentence Administration Board Intensive Correction Orders powers with parole powers	34
Data collection on correction orders	35
3. Police response	37
Leaving the scene of an accident	37
Complexity of law	37
Confiscation of mobile phones	39
4. Preventative measures	41
Driver education and intervention programs	41
Use of technology	43
Electronic bracelets	45
High Risk offender scheme for repeat drink and drug drivers	46
24 hour suspension from driving for drivers testing positive to drugs	48
5. Support for victims of dangerous driving	50
Hospital support	50
The need for immediate trauma support at the scene	51
Victims of Crime Commissioner reforms	53
Wrap around service for families impacted by motor vehicle accidents	53
Support for people with non-fatal injuries	54
Support for victims of negligent driving	55
Coronial support	56
Trauma informed subpoenas	59
Trauma training for court staff and judiciary	60
Motor Accident Injury Scheme	61
7. Conclusion	64
Appendix A: Submissions	66
Appendix B: Witnesses	68
26 October 2022	68
27 October 2022	68
14 November 2022	69
18 November 2022	69
18 November 2022	70
Appendix C: Questions Taken on Notice	71
Questions Taken on Notice	71

Recommendations

Recommendation 1

The Committee recommends that the ACT Government review dangerous driving sentences to determine if there is a downward trend towards lighter sentences and if so consider if guideline judgments are appropriate, with an update on progress to be tabled in the Assembly at the same time as the government response to this report.

Recommendation 2

The Committee recommends that the ACT Government consider changing the name of the offence 'Culpable driving causing death' to 'Vehicular manslaughter' and examine the appropriate penalty in line with the existing penalty for manslaughter.

Recommendation 3

The Committee recommends that the ACT Government review leniency for discounts to sentences of serious crimes and repeat offenders, including to consider the impact on victims, with an update on progress to be tabled in the Assembly at the same time as the government response to this report.

Recommendation 4

The Committee recommends that the ACT Government increase public awareness of how the justice system works in the following areas:

- a) how sentencing decisions are made under the sentencing regime in the ACT in plain English;
- b) what is involved in Intensive Correction Orders (ICOs) in line with its previous recommendation in its *Report No. 9 Inquiry into Community Corrections*; and
- c) The process and criteria of judicial appointments.

Recommendation 5

The Committee recommends that the ACT Government introduce legislation for a neutral presumption of bail for serious dangerous driving offences such as driving at police and recidivist serious motor vehicle offenders.

Recommendation 6

The Committee recommends that the ACT Government engage with victims of crime to provide more transparency about how the transitional release program works.

Recommendation 7

The Committee recommends that the Sentence Administration Board increase the transparency in their decision making.

Recommendation 8

The Committee recommends that the ACT Government allow for greater information sharing between ACT Corrective Services and the Sentence Administration Board.

Recommendation 9

The Committee recommends that the ACT Government implement changes so that the Sentence Administration Board has the authority to include restrictions on driver's licences or suspend the licence as a parole condition.

Recommendation 10

The Committee recommends that the ACT Government provide additional funding to the Sentence Administration Board to put in place appropriate guidelines on how a requirement to receive medical treatment can be applied as part of a parole condition or be part of the decision to grant or revoke parole.

Recommendation 11

The Committee recommends that the Sentence Administration Board have the power to inquire into offenders who have been charged (even if not convicted) with breaching conditions of their Intensive Corrections Order, in the same way that applies in respect of parole under section 153 of the *Crimes (Sentencing Administration) Act 2005*.

Recommendation 12

The Committee recommends that the ACT Government overhaul its data collection on corrections orders for improved analysis.

Recommendation 13

The Committee recommends that the ACT Government implement penalties for leaving the scene of an accident to include passengers, not just drivers.

Recommendation 14

The Committee recommends that the ACT Government review and streamline ACT legislation governing road safety and dangerous driving.

Recommendation 15

The Committee recommends that the ACT Government provide police with the power to confiscate mobile phones on the spot in serious collisions.

Recommendation 16

The Committee recommends that the ACT Government develop a plan on how to improve driver education and intervention programs on dangerous driving, especially in relation to speeding and drink and/or drug driving with an update on progress to be tabled in the Assembly at the same time as the government response to this report.

Recommendation 17

The Committee recommends that the ACT Government examine how Intelligent Speed Adaptation can assist in the reduction of speeding in the ACT.

Recommendation 18

The Committee recommends that the ACT Government provide a status update on their scoping and feasibility work on electronic monitoring options to the Assembly and include

consideration of using electronic monitoring to observe and check speeding drivers, with an update on progress to be tabled in the Assembly at the same time as the government response to this report.

Recommendation 19

The Committee recommends that the ACT Government introduce a high risk offender scheme, which includes requiring recidivist offenders to demonstrate to a court their fitness to drive.

Recommendation 20

The Committee recommends that the ACT Government monitor the evidence base for driver impairment following drug intake and update the assembly when it becomes available.

Recommendation 21

The Committee recommends that the ACT Government introduce additional trauma training for health practitioners to improve support to victims of dangerous driving and their families.

Recommendation 22

The Committee recommends that the ACT Government urgently fund a trauma service that is available at the scene of an accident and a 24 hour hotline to help victims and their families.

Recommendation 23

The Committee recommends that the ACT Government provide funding for the Victims of Crime Commission to:

- a) provide a wrap around service families of victims as a result of dangerous driving;
- b) support people with non-fatal injuries as a result of dangerous driving; and
- c) extend support for victims of 'negligent driving'.

Recommendation 24

The Committee recommends that the ACT Government provide extra funding to cover the gap on the coronial support list.

Recommendation 25

The Committee recommends that the ACT Government ensure that subpoenas issued to victims are trauma informed (for example, avoiding them falling on anniversaries).

Recommendation 26

The Committee recommends that the ACT Government introduce trauma training for all court staff and judiciary and ensure that there are physical arrangements (such as a family room) to minimise the likelihood of interactions between defendants and families and victims at the courts.

Recommendation 27

The Committee recommends that the ACT Government requires the Motor Accident Insurance Commission improve their customer service delivery by being trauma informed.

Recommendation 28

The Committee recommends that Access Canberra improve their information sharing with the Motor Accident Insurance Commission.

1. Introduction

Conduct of the inquiry

- 1.1. On 27 July 2022, the committee agreed to conduct a self-referred *Inquiry into Dangerous Driving* and issued a media release on 4 August 2022 inviting the community to participate in the inquiry by making a submission. The media release was provided by direct emails and post to stakeholders.
- 1.2. Submissions closed on 30 September 2022. The Committee received 50 submissions to the inquiry. These are listed in **Appendix A** and published on the website.
- 1.3. The Committee held five public hearings on 26 October, 27 October, 14 November, 18 November and 7 December 2022. Witnesses who appeared at these hearings are listed in **Appendix B**.
- 1.4. The Committee had 14 Questions Taken on Notice from the public hearings. These are listed in **Appendix C**.

Petitions considered

- 1.5. The Committee also considered the following petitions from petitioner Mr Thomas McLuckie, sponsored by Mr Jeremy Hanson MLA under its terms of reference for this inquiry:
 - EPET 22-023: Review the process of appointments to the ACT Judiciary to allow transparency and for nominees to meet community expectations (2194 signatures)
 - EPET 22-024: Request independent review on the performance at the ACT Judiciary in regards to sentencing in line with the common and statutory laws (2446 signatures)
 - EPET 22-025: To implement sentencing guidelines for grievous and purposefully reckless motor vehicle crimes and addressing re-offending (recidivism) (3093 signatures).
- 1.6. These petitions were referred to the Committee on 11 October 2022 under Standing Order no. 99A of the Legislative Assembly for consideration. The Committee considered that the issues raised in the petitions were already being considered as part of its *Inquiry on Dangerous Driving*, and therefore decided not to conduct a separate inquiry into the petitions.²

² Legislative Assembly for the ACT, *Minutes of Proceedings*, 20 October 2022, p 889.

Inquiry into the Road Safety and Crimes Legislation Amendment Bills 2022

- 1.7. During the course of this *Inquiry into Dangerous Driving*, the Road Safety Legislation Amendment Bill 2022 and Crimes Legislation Amendment Bill 2022 were presented in the Assembly on 23 November 2022, and referred to the Committee. The Committee resolved to undertake an inquiry into the Bills on 28 November 2022 as a single inquiry. There is considerable overlap with the issues considered by the Committee in its *Inquiry into Dangerous Driving*.
- 1.8. The Road Safety Legislation Amendment Bill makes changes to amend the road safety legislation to improve road safety by strengthening the reporting and monitoring of driver licence holders' fitness to drive and provide enhanced penalties to deter dangerous driving behaviours. In respect of the Crimes Legislation Amendment Bill 2022, the Committee decided to only inquire into the aspect concerning a new offence of unauthorised entry to a motor vehicle.
- 1.9. The Committee reported on this Inquiry on 22 February 2023.

Inquiry into the Annual and Financial Reports 2021-2022

- 1.10. During the course of this *Inquiry into Dangerous Driving*, the Committee also made several relevant recommendations in its Report No 15 *Inquiry into Annual and Financial Reports 2021-2022*:
 - a) Recommendation 2 - that the ACT Government ensure ACT Police are adequately funded to support Operation TORIC on an ongoing basis;
 - b) Recommendation 3 - that the ACT Government look at evidence-based targeted programs to address the recidivism identified through Operation TORIC;
 - c) Recommendation 4 – that the ACT Government look at evidence-based technological advances (particularly cameras on roads) to support police pursuits;
 - d) Recommendation 5 - that the ACT Government introduce evidence-based advances in drug testing in the ACT as soon as the technology for the testing is available; and
 - e) Recommendation 7 - that while the ACT Government considers options for electronic monitoring, it includes such monitoring for family violence and dangerous driving offenders who are on bail or parole in this consideration.

An increase in dangerous driving

- 1.11. ACT Policing advised the committee that there were 18 road deaths in 2022 as of 14 November 2022.³ The ACT road toll for 2021 was 11 (this includes collisions of ACT residents outside the ACT).⁴ Data for past years is shown in the following table:⁵

ACT 'On Road' Crashes Trends 2011-2020

Year	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Injury crashes	674	712	655	676	638	611	579	587	582	534
Fatal crashes	6	12	7	10	14	11	5	9	6	6

- 1.12. ACT Policing told the Committee that they are concerned about increased dangerous driving in the ACT:

ACT Policing unfortunately is experiencing an escalation in drivers failing to stop for police and related criminal behaviour involving motor vehicles. Where the driver of a vehicle fails to stop and engages police in a pursuit, that elevates the risk of serious injury and possible loss of life... There are multiple examples of police officers and police vehicles being driven at by offenders in an attempt to evade police, with serious injury inflicted upon officers. ACT Policing has a genuine concern that it is only a matter of time before a police fatality is realised. This is an unacceptable risk to frontline officers and policing as a profession, and does not align with what I believe are the community expectations of safety.⁶

- 1.13. In addition, dangerous driving is often committed by repeat offenders:

I have spoken to the committee, as well, about Operation TORIC. As of Friday 11 November, we have made 137 apprehensions and laid in excess of 336 charges. Of those 137 persons, only eight were first-time offenders; 74 were on bail or other court conditions.⁷

- 1.14. There are concerns that the trends towards an increase in dangerous driving could be linked to a change in community behaviour:

I think behaviour in the community has changed, not just on roads... We have definitely seen an increase in speed—absolutely. Some of the speeds we have seen

³ Deputy Commissioner Neil Gaughan, Chief Police Officer, ACT Policing, *Committee Hansard*, 14 November 2022, p 115.

⁴ ACT Policing, *Online news: Road toll*, [Road toll | ACT Policing Online News](#) (accessed 20 January 2023).

⁵ ACT Government, *2020 ACT Crash Report*, Table 1.1

⁶ Deputy Commissioner Gaughan, ACT Policing, *Committee Hansard*, 14 November 2022, p 115.

⁷ Deputy Commissioner Gaughan, ACT Policing, *Committee Hansard*, 14 November 2022, p 116.

on roads like Majura Parkway—they are treating it like Majura raceway. It is horrific.⁸

⁸ Deputy Commissioner Gaughan, ACT Policing, *Committee Hansard*, 14 November 2022, pp 126-127.

2. Criminal justice response to dangerous driver offending

Sentences for dangerous driving

Concerns that sentences are too lenient

- 2.1. Petition [EPET- 22- 024](#) ‘Request independent review on the performance at the ACT Judiciary in regards to sentencing in line with the common and statutory laws’ lodged by Mr McLuckie on 11 August 2022 received 2446 signatures. The petition stated that:

... there are significant public concerns that our judiciary are unable to unwilling to apply the intent of the *Crimes (Sentencing) Act 2005* and the Common Law precedence.⁹

- 2.2. The petition asked for an independent review of judgments and decisions of the ACT Judiciary regarding sentencing.

- 2.3. The Committee heard from several witnesses that sentence lengths for dangerous driving were too lenient. ACTNowForSaferRoads submitted that actual prison time served in a number of ACT cases was exceptionally lenient compared to other jurisdictions:

Compare to actual imprisonment and parole terms from other jurisdictions and we are falling short of meeting community expectations.¹⁰

- 2.4. Mr Bill Stefaniak, whose son Jozef Stefaniak died on 2 January 2018 in a dangerous driving incident told the Committee that the responsible driver received a sentence of five years (three years non-parole)¹¹ and made the following comment:

The sentence was certainly not outside the ballpark in Canberra. It was very much on the light side. I was talking to some other victims who have lost kids who wondered why on earth I said afterwards that we did not have huge qualms with it. That was probably me being the lawyer in that I thought five years and serve three was actually, for an ACT sort of sentence, not all that bad. In my view, though, it should have been something like about eight years and serve five—and I think a lot of that should have been particularly for leaving the scene of an accident. But in terms of the way of driving, the speed and the fact that Angela was on the drug ice, something like eight years and serve five—for a crime that has a penalty of up to 14 years—would have been better.¹²

⁹ Legislative Assembly for the Australian Capital Territory, *EPET -22-024*, [Request independent review on the performance at the ACT Judiciary in regards to sentencing in line with the common and statutory laws ACT Legislative Assembly](#) (accessed 16 March 2023)

¹⁰ ACTNOWForSaferRoads, *Submission 16*, p 4.

¹¹ Mr Bill Stefaniak, *Submission 6*, p 1.

¹² Mr Bill Stefaniak, *Committee Hansard*, 26 October 2022, p 3.

- 2.5. Ms Camille Jago, mother of Blake Corney who died on 28 July 2018 in a motor vehicle accident, also expressed concern that this sentence and other sentences fell well short of the maximum:

I can not imagine that an offender would ever be given anything remotely near the maximum, given the sentences offenders charged with culpable driving causing death are currently receiving... They create frustration, bewilderment and anger for victims due to the seeming disconnect between the maximum sentence and the average sentence.¹³

- 2.6. Mr Andrew Corney, father of Blake Corney told the Committee that the responsible driver received a sentence of three years and three months (two years and three months non-parole) despite being a repeat offender who did not assist police¹⁴ and also expressed a concern that sentences fall well short of maximum sentences in the legislation:

I am interested in serious offences particularly where someone is a repeat offender. I think some of this is born out of the frustration that I do not think judges are coming anywhere near the maximums. It is hard to see, as my wife previously had stated, how you would get close to a maximum sentence, so what else can an ordinary citizen do to say sentencing is not working.¹⁵

- 2.7. Ms Negar Barjestehmanesh who suffered extensive injuries in a non-fatal accident in 2019 told the Committee that her injuries have had a substantial impact on her especially when compared to the responsible driver:

... that I know that there was the 18 months suspended jail... I think that we need a little bit stronger consequence for them, ... I would like to know what the government can do in terms of putting a more serious consequence in place to make sure that other people are not repeating it. ... He was driving after six months suspended licence. That is all. Clearly, I was the one at fault, not him, because I have been jailed in the house for two years not being able to drive. My licence got suspended because I was not able to do any kind of driving because of my legs and hips and lots of other stuff in my arms. It looks like I was doing something wrong, not him. I went through a lot more than him.¹⁶

- 2.8. The Australian Federal Police Association also called for a review of sentencing and bail arrangements in the ACT:

In recent times, the ACT has weathered poor sentencing and bail outcomes that endanger the community and police officers from dangerous driving.¹⁷

¹³ Ms Camille Jago, *Submission 21*, p 2.

¹⁴ Mr Andrew Corney, *Submission 4*, p 6.

¹⁵ Mr Corney, *Committee Hansard*, 26 October 2022, p 21.

¹⁶ Ms Negar Barjestehmanesh, *Committee Hansard*, 18 November 2022, p 161.

¹⁷ Australian Federal Police Association, *Submission 25*, p 15.

- 2.9. ACT Policing told the Committee that while they considered current penalties are sufficient and may act as a deterrent, the sentences that ended up being applied were on the lower scale of what is available.¹⁸

Concerns with increasing sentences

- 2.10. The Australian College of Road Safety cited studies in Victoria and Canada where increased penalties had led to reduced crashes, however, they noted that harsher sentences are not the only answer, and there should be a whole of system approach.¹⁹

- 2.11. The ACT Law Society told the Committee that community expectations on what is an appropriate sentence length may differ in different parts of the community noting that in determining the length of sentence the courts consider the factors in section 33 of the *Crimes (Sentencing) Act 2005*. The ACT Law Society went on to say:

The expectations of families of persons who have tragically died as a result of a motor vehicle accident will obviously have a particular expectation as to what the appropriate sentence should be. But that may well be very different to the expectations held by other parts of the community—and how would that be measured?²⁰

- 2.12. Justice Action warned against increasing the length of sentences because it's important that sentencing decisions take into account a range of factors that include consideration of how to reduce recidivism in the offender noting the risks that imprisonment has on future recidivism:

I understand you are discussing that often currently sentences fall far short from the maximum penalties. We think that is important and good because we think court discretion takes that into account. We note that perhaps one of the reasons why those penalties fall short of the maximum is because they are often perpetrated by young offenders, particularly young men. Youth is considered a sentencing factor so magistrates tend to sentence a little bit more leniently for those offenders. We think that any programs that divert offenders away from prison and incarceration are far preferable.²¹

In terms of recidivism, we think that recidivism is obviously a complex issue but we know two things. First, we know that after going to prison there is a far higher chance of recidivism. We have talked about how prisons entrench that. Second, we think there are a lot of programs that are available, or could be available, to prevent recidivism.²²

¹⁸ ACT Policing, *Submission 19*, p 20.

¹⁹ Australian College of Road Safety, *Submission 42*, pp 5-6.

²⁰ Mr Paul Edmonds, Vice Chair, Criminal Law Committee, ACT Law Society, *Committee Hansard*, 26 October 2022, p 62.

²¹ Ms Kira Trahana, Team Member, Justice Action, *Committee Hansard*, 27 October 2022, p 106.

²² Ms Trahana, *Committee Hansard*, 27 October 2022, p 107.

2.13. Justice Action and ACTCOSS also raised the importance of restorative justice processes in making sure that victims are being heard is more effective than imprisonment.²³

2.14. ACTCOSS told the Committee that sentencing decisions should also consider the impact on recidivism:

What we would say is that sentencing has to match up with culpability and that we cannot put a blanket statement that a certain offence should always be met with a custodial sentence, especially when we do not have an evidence base that suggests that a custodial sentence will reduce reoffending or make driving safer in the future.²⁴

2.15. The Justice Reform Initiative told the Committee that they are seeking to reduce over incarceration but agreed that it was an appropriate strategy for high-risk offenders, noting that there is a small amount of people who are recidivist dangerous drivers.²⁵

2.16. ATODA told the Committee that it is important to consider if sentencing should be proportionate to the outcome or the intent behind dangerous driving:

As I understand it the point of sentencing is often around deterrence. There are a couple of complexities with dangerous driving charges. One being that a person charged with dangerous driving who has harmed or killed someone rarely intends that outcome. So then there is the question of should proportionate sentencing be proportionate to the outcome or the intent. In most crimes those two are fairly similar. In most dangerous driving crimes they may not be. Beyond that philosophy I think dangerous driving is one of the dangers that people face in society and that our sentencing along with other approaches to our roads should be focused on reducing the amount of dangerous driving as our primary objective. So where there is a potential for a conflict between proportionality and reducing dangerous driving, we should favour reducing dangerous driving.²⁶

2.17. The ACT Government told the Committee that consideration must be given to other evidence-based methods that may address underlying behaviours contributing to a person's offending and cited a report by the NSW Sentencing Council saying sentences were only one approach to modifying behaviour of offenders including repeat driving offenders.²⁷ Alternative examples offered by that report were: road safety education, situational responses, use of technology and availability of public transport. The Council recommended increasing public awareness of existing penalties for traffic offences, including the fact that some are punishable by imprisonment.²⁸

²³ Mr Brett Collins, Co-ordinator, Justice Action, *Committee Hansard*, 27 October 2022, p 109, ACTCOSS *Submission 33*, p 4.

²⁴ Dr Gemma Killen, Head of Policy and Acting Chief Executive Officer, ACTCOSS, *Committee Hansard*, 26 October 2022, p 26.

²⁵ Professor Lorana Bartels, Justice Reform Initiative, *Committee Hansard*, 14 November 2022, p 135.

²⁶ Dr Devin Bowles, CEO, Alcohol Tobacco and Other Drug Association Act, *Committee Hansard*, 26 October 2022, p 40.

²⁷ ACT Government, *Submission 13*, p 3.

²⁸ NSW Sentencing Council, *Report: Repeat traffic offenders*, September 2020, p 19.

- 2.18. Examples of penalties apart from sentences already available in the ACT are court issued licence disqualifications, court ordered vehicle impounding and forfeiture of vehicles following a conviction, mandatory alcohol interlock devices and requirements to complete certain alcohol and drug awareness courses. The ACT Government is also undertaking a review of road transport penalties, including prison sentences.²⁹

Existing offences and penalties

- 2.19. The sentence for culpable driving of a motor vehicle causing death to another person in the ACT is generally a maximum of 14 years imprisonment (or 16 years for an aggravated offence against a pregnant woman). The sentence for culpable driving of a motor vehicle causing grievous bodily harm to another person is a maximum of 10 years.³⁰ Culpable driving means:
- a) driving negligently³¹ (i.e., unjustifiably and to a gross degree to fail to observe the standard of care that a reasonable person would have observed)³² or
 - b) driving under the influence of alcohol or a drug, to such an extent as to be incapable of having proper control of the vehicle.³³
- 2.20. A summary of penalties for dangerous driving offences is available in Attachment A of Submission 13 from the ACT Government and Submission 11 from Legal Aid ACT.

Court's role in decisions on sentencing

- 2.21. Under the ACT legislative framework, the purpose of sentencing is prescribed in section 7 of the *Crimes (Sentencing) Act 2005* as follows (noting the order does not imply that any of the purposes has greater weighting than the others):
- (a) to ensure that the offender is adequately punished for the offence in a way that is just and appropriate;
 - (b) to prevent crime by deterring the offender and other people from committing the same or similar offences;
 - (c) to protect the community from the offender;
 - (d) to promote the rehabilitation of the offender;
 - (e) to make the offender accountable for his or her actions;
 - (f) to denounce the conduct of the offender;
 - (g) to recognise the harm done to the victim of the crime and the community.
- 2.22. Under section 33 of the *Crimes (Sentencing) Act 2005*, the courts will take a number of factors into account in determining the actual length of the sentence, including: the nature and circumstances of the offence, criminal history, any action the offender has taken to make reparation for the injury, loss or damage from the offence, whether there has been a guilty plea, any assistance provided to the administration of justice, assistance to law

²⁹ ACT Government, *Submission 13*, p 7-8.

³⁰ Subsection 29(2) and 29(4) of the *Crimes Act 1900*.

³¹ Paragraph 29(6)(a) of the *Crimes Act 1900*.

³² Subsection 29(7) of the *Crimes Act 1900*.

³³ Paragraph 29(6)(b) of the *Crimes Act 1900*.

enforcement authorities, the background and circumstances of the offender, remorse, and whether the offender is voluntarily seeking treatment for the condition that may have contributed to the offence.

- 2.23. The courts must also take into account any injury, loss or damage from the offence and the effect that the offence has had on the victims and their families and anyone who has made an impact statement.³⁴
- 2.24. When the courts work out the actual sentence, each case is worked out based on its own facts in line with the legislation and past cases. It is described as a complex task weighing up all the relevant matters including the seriousness of the offence, victim impact statements, and other matters.³⁵
- 2.25. The ACT Government said in their submission that the courts take into account the offenders background including criminal history:

While 'repeat offending' is not referenced in the Sentencing Act, section 33(1)(m) of the Sentencing Act requires the court to consider 'the cultural background, character and antecedents, age and physical or mental condition of the offender'. This sub-section is modelled on the Commonwealth Crimes Act 1914. The term 'antecedents' has been held to be broad and encompasses all aspects of an offender's background (*R v Vallett* [1951] 1 All ER 231 at p232), including previous criminal convictions (*Veen v The Queen (No 2)* [1988] HCA 14).

When the court is assessing criminal convictions for the purposes of sentencing it will look at a range of matters including the number and type of previous offences, whether there is a pattern in that offending and the length of time between offences. For example, offences of a minor nature committed years prior, may well have little or no impact on sentencing for an offence of a different nature and seriousness. In contrast, repeated serious offences of a similar nature are likely to have a significant impact on sentencing considerations.³⁶

- 2.26. The role of the courts in determining the sentence is described by the ACT Law Society as difficult especially when the impact to the victim is high but the culpability by the offender is lower:

Motor vehicles are inherently dangerous objects and the consequences of one vehicle colliding with another or an individual (referred to in ACT legislation as a "vulnerable road user") can be catastrophic, even when the criminality involved may be no more than momentary inattention. This disparity between criminality and consequence makes sentencing for dangerous driving offences almost uniquely complex and challenging for the courts.

However, clearly not all dangerous driving offences are solely the result of momentary inattention. Many involve a higher level of culpability and criminality. In

³⁴ Paragraph 33(1) (f), *Crimes (Sentencing) Act 2005*

³⁵ ACT Government, *Submission 13*, p 12.

³⁶ ACT Government, *Submission 13*, p 12.

circumstances where there is a combination of low culpability and grave harm, however, there is a distinct challenge for a sentencing Court, firstly, to craft a just and appropriate sentence that deals with the circumstances of both the offence and the offender, and secondly to explain to victims and the community the reasons for the sentence imposed.³⁷

- 2.27. Legal Aid ACT told the Committee that the sentencing framework is ‘individualised’ around the offender, and stressed the importance of judicial discretion and noted that it is not arbitrary:

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’ and ‘is essential to ensure that all of the wide variations of circumstances of the offence and the offender are taken into account’. 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’.³⁸

- 2.28. When the Committee asked the Director of Public Prosecutions (DPP) if there would ever be an argument for seeking the maximum penalty – he said it would depend on the individual circumstances for each case:

Well, if it had all of the elements that warranted the highest maximum penalty. They are the circumstances that we would do it. I am being very careful with my words because sentencing is not a mathematical equation. We are not applying an algorithm. We are applying a judicial discretion that looks at the objective circumstances of the offence, and also it considers the subjective circumstances of the offender. All of that goes into a mix that assists the judiciary to ultimately arrive at the correct penalty.³⁹

- 2.29. Legal Aid ACT also offered views on how the justice system currently works to protect the community against recidivism:

The sentencing exercise takes that [the seriousness of the behaviour and the impact] into account but it also needs to take into account how best to protect the community in the future and how best to respond to what has happened. That is where, as Dr Boersig was saying, the principles of the sentencing legislation come into play. How do we best protect the community? Is it by a lengthy term of imprisonment or is it by—picking up on some of the things that were said by ACTCOSS—justice reinvestment? Is it ensuring that this offender will not be making those same decisions again?⁴⁰

³⁷ ACT Law Society, *Submission 5*, p 1.

³⁸ Legal Aid ACT, *Submission 11*, p 6.

³⁹ Mr Shane Drumgold, Director of Public Prosecutions, *Committee Hansard*, 18 November 2022, p 185.

⁴⁰ Ms Tamzin Lee, Head of Criminal Practice, Legal Aid ACT, *Committee Hansard*, 26 October 2022, p 29-30.

- 2.30. The ACT Law Society told the Committee that in their view the system was ‘fundamentally sound.’⁴¹ Legal Aid ACT also told the Committee that the system was working well:

If you are asking me whether the system works, I think the system works. But your side of the bench sets the penalties and the standards that must be abided by as representatives of the community. What can we do is apply those standards in court, and indeed that is what the court should be doing. There will be differences of view, I agree, about the individual circumstances. But, if you are asking whether the system is broken, we are clearly saying that we do not think the system is broken. We think that the appellant system and the criteria that is used, both in the Magistrates Court and higher up, is robust.⁴²

Sentencing data for the ACT and other jurisdictions

- 2.31. The ACT Government provided details of nine offenders convicted and sentenced for culpable driving causing death in the ACT in the ten years between 1 July 2012 and 30 August 2022, all receiving a sentence for imprisonment, with:

- a) two receiving suspended sentences;
- b) the minimum sentence being two years and three months in 2022;
- c) the maximum sentence being ten years and nine months in 2012; and
- d) the average sentence being approximately 4.6 years.⁴³

- 2.32. The Attorney-General told the Committee that sentences in the ACT are commensurate with other jurisdictions:⁴⁴

The ACT sits fourth out of eight jurisdictions in both of those categories, in terms of looking from the highest number to the lowest. The ACT sits fourth in both of those categories—mid-table out of eight jurisdictions.⁴⁵

...where we have looked across jurisdictions, and acknowledging the caveats of comparison, because it always comes down to individual cases in some of those matters, with the ACT’s comparable offences of culpable driving, it appears that the ACT is in line with sentences being received in other jurisdictions. The reason I indicate that is that, across the board, it is very rare to see sentences close to the maximum penalty being applied. The reasons that apply are because of the way the judiciary weighs up the relative culpability compared to the maximum penalty.⁴⁶

⁴¹ Mr Edmonds, *Committee Hansard*, 26 October 2022, p 64.

⁴² Dr John Boersig, Chief Executive Officer, Legal Aid ACT, *Committee Hansard*, 26 October 2022, p 29.

⁴³ Mr Shane Rattenbury, MLA, *answer to QTON 6*: Data on sentencing outcomes compared to other jurisdictions, Attachment A p 1, 29 November 2022 (received 30 November 2022)

⁴⁴ Mr Shane Rattenbury, Attorney-General, *Committee Hansard*, 14 November 2022, p 135.

⁴⁵ Mr Rattenbury MLA, *Committee Hansard*, 14 November 2022, p 148.

⁴⁶ Mr Rattenbury MLA, *Committee Hansard*, 14 November 2022, p 149.

- 2.33. Data on decisions in some other jurisdictions are summarised below (note - care needs to be taken when comparing data on penalties and sentences across jurisdictions because of different regimes applying in each jurisdiction and the nuances in the data):
- a) Imprisonment sentences in NSW have ranged between a minimum of 18 months to a maximum of nine years and six months for aggregated offences (noting the maximum penalty in NSW is 10 years imprisonment or 14 years imprisonment for aggravated offences);
 - b) In Queensland, 99.4 percent of sentenced offenders received a custodial offence (either full time imprisonment, a partially suspended sentence, or a wholly suspended sentence) between 2005-06 and 2016-17. Of these, the average imprisonment sentence was 6.2 years where there were aggravating circumstances, or 3.5 years where there were none;
 - c) In Tasmania, the average sentence for a single count of dangerous driving was two years and five months, and the maximum sentence was four years and the minimum six months; and
 - d) In Victoria the maximum penalty for culpable driving causing death is 20 years imprisonment and/or 2400 penalty units with a standard sentence of eight years unless certain circumstances exist (average total effective sentence is eight years and ten months). However, for non-culpable driving causing death, the maximum penalty is ten years imprisonment.⁴⁷ Additional data from the Victorian Sentencing Council states that the average length of imprisonment for culpable driving causing death was seven years.⁴⁸
- 2.34. The DPP told the Committee that there was a review of maximum penalties across Australian jurisdictions in 2011 with a view to achieve consistency, and in his view, there was little required in terms of further reforms.⁴⁹

Penalty for manslaughter

- 2.35. ACT Policing supported higher penalties to act as a deterrent and apply accountability to result in behavioural change.⁵⁰ They also proposed that the offence for culpable driving causing death (14 years or 16 for an aggravated offence) be changed to 'Vehicular Homicide' and increasing the penalty in line with the offence for manslaughter (20 years or 28 for an aggravated offence or a maximum penalty or possible imprisonment of up to 20 years for individuals for industrial manslaughter under section 34A of the *Work Health and Safety Act 2011*). This is based on their view that culpable driving causing death is

⁴⁷ Mr Shane Rattenbury, MLA, *answer to QTON 6*: Data on sentencing outcomes compared to other jurisdictions, Attachment A, 29 November 2022 (received 30 November 2022)

⁴⁸ Sentencing Council of Victoria, *Sentencing Snapshot 250: Sentencing Trends for Culpable Driving Causing Death in the Higher Courts of Victoria 2015-16 to 2019-20*, [Sentencing Snapshot 250: Sentencing Trends for Culpable Driving Causing Death in the Higher Courts of Victoria 2015-16 to 2019-20 | Sentencing Council](#), (accessed 19 January 2023) Table 4.

⁴⁹ Mr Drumgold, *Committee Hansard*, 18 November 2022, p 183.

⁵⁰ ACT Policing, *Submission 19*, p 21.

manslaughter and will bring the penalty in line with the level of offending and the impact on the victim and families.⁵¹

- 2.36. Culpable driving is defined as driving a vehicle ‘negligently or while under the influence of alcohol or a drug to such an extent as to be incapable of having proper control of the vehicle.’⁵²
- 2.37. The penalty for culpable driving of a motor explicitly states that nothing in that section affects the liability of a person to be convicted of murder or manslaughter. However, Mr McLuckie, from ACTNOWForSafeRoads told the Committee that manslaughter charges for dangerous driving are unlikely:

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.⁵³

- 2.38. Legal Aid ACT describe culpable driving as a ‘middle offence in a three-tier hierarchy of offences sitting between manslaughter and negligent driving under the *Road Transport (Safety and Traffic Management Act) Act 1999*’ with reference to the judgement in the [Director of Public Prosecutions v Spong \[2018\] ACTA 37](#) at paragraph 62. Legal Aid ACT note that culpable driving including negligent driving is considered under the law to be an ‘unjustifiable and gross breach of the standards required of a careful driver.’⁵⁴

Sentencing guidelines and guideline judgments

- 2.39. Petition EPET22-025⁵⁵ lodged by Mr McLuckie proposed sentencing guidelines for grievous and purposefully reckless motor vehicle crimes and addressing re-offending (recidivism). The petition called for minimum sentencing guidelines as follows:
- purposeful driving on the wrong side of a thoroughfare or public footpath (2-5 years);
 - aggravated accumulated sentence;
 - repeat offence (1-3 years);
 - drug/drink driving (1-2 years);
 - excessive speed (3 months to 12 months);
 - cause collision including injury (1-3 years);
 - cause collision resulting in death (3-10 years); and

⁵¹ ACT Policing, *Submission 19*, p 15.

⁵² Subsection 29(6) of the *Crimes Act 1900*.

⁵³ ACTNOWForSaferRoads, *Submission 16*, p 2.

⁵⁴ Legal Aid ACT, *Submission 11*, p 2.

⁵⁵ Legislative Assembly for the Australian Capital Territory, *EPET -22-025*, <https://epetitions.parliament.act.gov.au/details/epet-22-025>(accessed 16 March 2023)

- The above sentencing will also apply to 1) furious driving including driving at or near police (2-5 years) and 2) high grade reckless and culpable driving.

2.40. Mr McLuckie told the Committee that there was a need to establish guidelines to ensure due consideration of recidivism and rehabilitation:

The reason I am asking for legislated sentencing guidelines, not minimum sentencing, is to address the manifestly inadequate application of the law, giving predominant weighting to rehabilitation over all other purposes of sentencing. Our recidivism rate is at 83 per cent and our Aboriginal and Torres Strait recidivism rate is even higher— in the area of 90 per cent. Police-generated data has revealed over 940 breaches of bail by offenders in the ACT for the first half of the year, placing the territory on target to record the highest number of breaches ever.⁵⁶

2.41. When determining an appropriate sentence length by the courts, precedent cases are considered. Concerns were raised that this means that sentences are likely to stay well below the maximum:

Where I sit, I cannot even really imagine a set of circumstances that would mean that anyone would get even 10 of the 14 years for culpable driving causing death. While I do not have a law background, I do appreciate that precedent becomes involved and that then makes it difficult to ever get much movement, particularly on the upside, on what has previously been given in sentences.⁵⁷

2.42. Judgments with low sentences being used as a precedent for future cases was also a concern felt by Mr Corney:

As it currently stood, because it was by a single judge, it is only persuasive on other judges. But if a Court of Appeal has made a decision it would then be binding on single judges. So they [the DPP] were concerned, which is to your point that it may make it more difficult to run other cases and get potentially higher penalties if it were knocked back.⁵⁸

2.43. Mr McLuckie told the Committee that the case of *R v Richardson* was used as a precedent in the case of *R v Livas*, which was then used as a precedent in the case of *R v Loeschauer*. He described these precedents for culpable driving causing death as ‘truly appalling’.⁵⁹

2.44. The ACT Government told the Committee that they are not aware of sentencing guidelines in use in any jurisdiction in Australia.⁶⁰ They raised guideline judgments as an alternative to sentencing guidelines:

An alternative to sentencing guidelines may be guideline judgements. These are Court of Appeal decisions which give guidance to judicial officers in relation to how they should sentence offenders. Legislation is in place in New South Wales,

⁵⁶ ACTNowForSafeRoads, *Committee Hansard*, 27 October 2022, p 80.

⁵⁷ Ms Jago, *Committee Hansard*, 26 October 2022, p 13.

⁵⁸ Mr Corney, *Committee Hansard*, 26 October 2022, p 20.

⁵⁹ Mr McLuckie, *Committee Hansard*, 27 October 2022, p 81.

⁶⁰ ACT Government, *Submission 13*, p 12.

Queensland and Victoria to allow for the issuing of guideline judgments. This legislation permits the Court of Appeal in that jurisdiction to issue guideline judgments of its own motion, and also permits the Attorney-General to apply for guideline judgments. Only the Court of Appeal in NSW has made guideline judgments and there are 8 judgments currently in place and one of these relates to dangerous driving. The objective of guideline judgments is to reduce inconsistency in sentencing for certain offences.⁶¹

- 2.45. The NSW guideline judgement in place for dangerous driving is *Jurisc* [1988] NSWSC 597 which was reformulated in *R v Whyte* [2002] NSWCCA 343⁶² and sets out a list of factors which inform objective seriousness in offences of aggravated dangerous driving causing death or bodily harm. Although it is not binding in the ACT, ACT courts have referred to this list:

While not binding on this Court, the list has been accepted as relevant to the offence of culpable driving causing death in this jurisdiction: see *Monfries v The Queen* [2014] ACTCA 46 (*Monfries*) at [89] per Murrell CJ, at [126]-[129] per Burns J, and at [196]-[199] per Ross J.⁶³

- 2.46. The DPP told the Committee that the objective of sentencing judgement guidelines in NSW was to achieve some consistency in guidelines given the large number of judges in different parts of NSW. However, he said this purpose was not relevant in the ACT given the small number of judges in the ACT who are very experienced and the operation of the appellant system.⁶⁴
- 2.47. A similar view was expressed by Professor Bartels of the Justice Reform Initiative, who said there was not much value for guideline judgments in the ACT being a small jurisdiction, and limited use in other jurisdictions:

The New South Wales Court of Criminal Appeal set down a sentencing guideline judgement in relation to dangerous driving causing death in, I think, 2005. Other jurisdictions have the power for guideline judgments. They have not ever really taken them up, and they have sort of fallen from favour a little bit in Australia. In a small jurisdiction like the ACT I am not sure how much value there really is in a guideline judgment. The genesis for guideline judgments in New South Wales was that there was a sense of disparity across a very large jurisdiction. So we are talking about 20 years ago. They were a bit of a flash-in-the-pan and never really took off. I am not really sure that they necessarily would achieve the objective here in the ACT. They can achieve two things—one, setting the benchmark; and, two, addressing issues of disparity.⁶⁵

⁶¹ ACT Government, *Submission 13*, p 13.

⁶² NSW Sentencing Council, *Guideline judgments*, [Guideline judgments \(nsw.gov.au\)](https://www.nsw.gov.au/guideline-judgments) (accessed 18 January 2023)

⁶³ *R v Loeschauer* [2022] ACTSC 30 [27].

⁶⁴ Mr Drumgold, *Committee Hansard*, 18 November 2022, p 182.

⁶⁵ Professor Lorana Bartels, Justice Reform Initiative, *Committee Hansard*, 14 November 2022, pp 155-156.

Committee comment

- 2.48. The Committee notes that sentences are unlikely to reach the maximum penalty level even for deaths caused by the most serious dangerous driving and that no amount of sentencing will undo the suffering for victims. Nevertheless, the Committee noted that recent sentencing decisions used as precedents for dangerous driving causing death are significantly below the maximum penalty of 14 years leaving victims and families feeling like their loss has not been taken into account in determining the actual sentence. The death of a loved one is a permanent loss, and non-fatal injuries can take a long time to heal or be permanent.
- 2.49. The impact to victims suffered from dangerous driving particularly in the event of a death should never be understated or discounted when taking into account the length of a sentence. However, it is acknowledged that when determining lengths of sentences, it is fair and just that the courts take into account other factors prescribed in the legislation (section 33 of the *Crimes (Sentencing) Act 1900*) that might lower the actual sentence for example assistance provided by the offender to police, and at the scene of the accident, remorse by the offender, and likelihood of not re-offending.
- 2.50. While the Committee acknowledges the processes applied by the courts in ensuring that judgments are consistent. However, views expressed by victims and other stakeholders are that recent sentences have not reflected the seriousness of the crime and or are of sufficient deterrent.
- 2.51. Given these concerns that past sentences substantially below the maximum are being used as precedents, coupled with concerns that there is an increasing rate of dangerous driving in the ACT, the Committee considers that there is a need to review past sentences for dangerous driving to determine if there is in fact a downward trend.
- 2.52. In addition, the Committee considers that culpable driving causing death is effectively the same thing as manslaughter. Therefore, consideration should be given to bringing the penalty for culpable driving causing death (maximum 14 years or 16 years for an aggravated offence) to the penalty for manslaughter (20 years or 28 for an aggravated offence) which will fall into line with the nature of the offence and the impact of the victim and families. The name of the offence should be then changed to 'Vehicular manslaughter' to better reflect what it is.

Recommendation 1

The Committee recommends that the ACT Government review dangerous driving sentences to determine if there is a downward trend towards lighter sentences and if so consider if guideline judgments are appropriate, with an update on progress to be tabled in the Assembly at the same time as the government response to this report.

Recommendation 2

The Committee recommends that the ACT Government consider changing the name of the offence ‘Culpable driving causing death’ to ‘Vehicular manslaughter’ and examine the appropriate penalty in line with the existing penalty for manslaughter.

Discounts to sentences

- 2.53. The sentencing court must take into account a guilty plea under section 33(1)(j) of the *Crimes (Sentencing) Act 2005* when determining the sentence. The decision of how much to reduce the sentence is at the discretion of the court, taking into account factors in section 35 including the timing of when the offender pleaded guilty or indicated an intention to plead guilty, the seriousness of the offence and the impact on victims. The DPP told the Committee that while ultimate responsibility for coming up with the discount is up to the court, the DPP will bring up factors that are relevant to the discount.⁶⁶ Generally, the earlier the guilty plea, the lesser the penalty.⁶⁷
- 2.54. However, the Committee heard from Mr Corney and Ms Jago that discounts offered on sentences were too lenient given the lateness of the guilty plea:

The discount applied to the sentence was 12% (maximum 25%) with Mossop J noting precedent in paragraph 50 of his sentencing remarks. However, Akis Livas pled guilty some 15 months after being charged, 19 months after Blake died, did not assist police, ran a defence which ultimately his lawyers advised him they could not use, I was already subpoenaed for the trial and witness proofed and Akis Livas had no defence to the charge. This percentage is obscene and should be no more than 5%.⁶⁸

The discount the offender received in my case, 12%, was given due to pleading guilty a few weeks prior to the trial date. In my opinion, the discount given was too lenient. At the point at which the offender changed his plea, we had been subpoenaed to appear before the court as witnesses, which takes up court and police time and therefore money. We had been briefed by the DPP, which takes up resources (time and money). Added to the consumption of public resources is the effect of this process on victims/witnesses.⁶⁹

- 2.55. ACT Policing also commented on the case of *R v Laidlaw* [2022] ACTSC 215 involving culpable driving causing death which attracted a 10 percent discount. They described the two-year, three-month sentence, suspended for two years after serving three months and a good behaviour order for two years as too lenient:

⁶⁶ Mr Drumgold, *Committee Hansard*, 18 November 2022, p 189.

⁶⁷ *Crimes (Sentencing) Act 2005*, subsection 35(5).

⁶⁸ Mr Corney, *Submission 35*, p 3.

⁶⁹ Ms Jago, *Submission 21*, p 2.

ACT Policing believes the sentence for the above matter [*R v Laidlaw* [2022] ACTSC 215] is lenient noting this is a recidivist offender and an innocent person has lost their life.⁷⁰

- 2.56. A guilty plea, especially an early one, can benefit victims in terms of reducing the need to prepare for a trial and the emotional pressure involved:

A lot of trauma comes back as you are thinking about the collision that occurred and there is frustration that there has not been a guilty verdict. This was fairly close to two years—certainly more than 18 months—after the collision, and by that time we were trying to manage normal life as well as looking after our younger son ... So when the guilty plea did come in there was certainly relief that we did not need to go through a trial process. There was also frustration at how long it had taken to get to that point because it was clear that there was guilt and that should have happened 18 months earlier.⁷¹

- 2.57. In the judgments for recent cases⁷² of culpable driving causing death, the courts have referenced the ACT Court of Appeal in *Cranfield v The Queen* [2018] ACTCA 3 when considering discount amounts:

37. The discount is a question of discretion. This Court has, however, generally applied predictable discounts in different circumstances. This was said by Murrell CJ in *Monfries v The Queen* [2014] ACTCA 46; 245 A Crim R 80 at [47]:

The bare fact of a plea of guilty entered in the Supreme Court will usually attract a s 35 discount of 10–15%. A common sense approach to “utilitarian value”, the case law and the terms of s 35(2)(b) and s 35(5) of the *Sentencing Act* all support the importance of the timing of a plea to the assessment of an appropriate discount. A last-minute plea commonly attracts a discount of 10%. A plea entered (or firmly indicated) after committal and before a trial date has been set will usually result in a discount of more than 10% and, commonly, leads to a discount of 15%. Occasionally, a plea in the Supreme Court attracts a higher discount; it is always a matter in the discretion of the sentencing judge.⁷³

- 2.58. In that case, the court also considered the incentive that a discount offers in encouraging an early plea, depending on the circumstances:

38. The context and terms of s 35 (2) of the *Crimes (Sentencing) Act 2005* (ACT) support the proposition that the primary policy consideration that determines the degree of discount for a plea of guilty is the utilitarian value of the plea, which will be largely determined by the timing of the plea. If offenders are to have the incentive to enter a plea of guilty, carrying with it all of the benefits that flow to victims, witnesses and court resources, they should have a reasonable expectation that a plea will be productive of a meaningful reduction in their sentence. However,

⁷⁰ ACT Policing, *Submission 29*, p 21.

⁷¹ Ms Jago, *Committee Hansard*, 26 October 2022, p 12.

⁷² *R v Loeschnauer* [2022] ACTSC 30; *R v Livas* (No 2) [2020] ACTSC 116; and *R v Smith* [2019] ACTSC 65

⁷³ *Cranfield v The Queen* [2018] ACTCA 3

a 'normal' discount may be inappropriate having regard to the other considerations in s 35 (2) or other circumstances, including those identified by Howie J in *Borkowski*.⁷⁴

- 2.59. The Committee heard that there were views that a sliding scale for applying discounts to sentences was appropriate particularly for repeat offenders:

I think for repeat offenders, those who have consistently shown a disregard—this is not just for the one offence and this is not even for just driving—. In this particular case Akis Livas had a variety of offences and had at one point fled from the jurisdiction before being sentenced. I think the community should have the ability to say that is not acceptable.⁷⁵

- 2.60. It was also suggested that there should be a loading for repeat offenders:

Repeat offenders should have a clearly defined % loading, rather than it being an undefined consideration. The definition of repeat offender does not need to be for the same charge. The test should be 'has this person learnt how to be a reasonable member of society, with a reasonable level of care for themselves, others and the environment'.⁷⁶

- 2.61. The ACT Government told the Committee that at this stage, it is not considering a review of discounts to sentencing but acknowledged that families of victims have said the term 'discount' is jarring with the language 'diminishing the emotional weight of the circumstances'. However, they advised changing the terminology is difficult given it is commonly used in the whole of the legal profession.⁷⁷

Committee comment

- 2.62. The Committee notes that discounts for pleading guilty and for assisting with the administration of justice or law enforcement agencies have an important role in encouraging efficient processes that aren't drawn out unnecessarily often causing pain for victims.
- 2.63. The Committee also notes that making decisions on such discounts can be complex requiring the sentencing judge to take into account each nuanced set of circumstances.
- 2.64. However, the Committee has also observed that there are views that discounts appear to be lenient in respect of recent cases of culpable driving causing death involving serious crimes and repeat offenders.

⁷⁴ *Cranfield v The Queen* [2018] ACTCA 3

⁷⁵ Mr Corney, *Committee Hansard*, 26 October 2022, p 18.

⁷⁶ Ms Jago, *Submission 21*, p 6.

⁷⁷ Mr Rattenbury MLA, *Committee Hansard*, 14 November 2022, p 150.

Recommendation 3

The Committee recommends that the ACT Government review leniency for discounts to sentences of serious crimes and repeat offenders, including to consider the impact on victims, with an update on progress to be tabled in the Assembly at the same time as the government response to this report.

Community education on the justice system

Transparency of sentencing considerations

- 2.65. The Committee heard from victims that it was hard to know how the court made their sentencing decisions. It was suggested that it would be beneficial to know what weightings were placed on particular factors taken into account in court decisions, in sentencing for the purposes of considering if there was merit in appealing and for transparency, especially in regards to how much the impact on the victims had been taken into account:

So, with respect to the sentencing remarks and the judge without weightings it is impossible to know how much the judge took that into consideration. Likewise for the Sentence Administration Board. Their inner workings are not revealed about how much consideration they took to the victims and what they might view with respect to the release of someone. In this case, particularly where their first report seemed to say that Akis Livas had not addressed his underlying culpability and then he is released in a timeframe where he could not possibly have added any more having been in jail already for two years. So, I do not think the harm to victims is—it does not seem to be clear how they have addressed it. They may well have addressed it and I may well disagree with it. But it certainly is not transparent.

...The difficulty with the current way sentencing remarks are made is that there are no weightings attached. So as long as a judge refers to the relevant points that they should there is not an easy avenue for the DPP to appeal other than the sentence being manifestly inadequate.⁷⁸

- 2.66. The Committee queried whether there should be greater weighting placed on any particular factors that are taken into account in sentencing, such as those that indicate greater emphasis on the seriousness of the crime.
- 2.67. However, Legal Aid ACT expressed caution on a weighting system as it would take away flexibility when making a judgement on the appropriate sentence that would achieve the right outcome in making an offender responsible for and change their behaviour:

...that would be very prescriptive, and it would really take away the discretion of the judiciary to consider all the circumstances that are before them. ... the court is required to consider material about what has happened about the effect, through victim impact statements, on a family or other people who are involved. They need

⁷⁸ Mr Corney, *Committee Hansard*, 26 October 2022, p 19-20.

to consider the offender themselves. It is an offender-centric system and that is, I think, at the core of it in terms of how we ensure that this person takes responsibility for what has occurred, is held responsible, their behaviour is denounced, and they are not going to do it again. That is a balancing exercise that the judiciary takes into account, and they do that because the legislature has identified the things that they must consider.⁷⁹

- 2.68. ACT Policing supported comprehensive reasoning to explain the sentence, so that there can be better confidence in fair court decisions:

ACT Policing believe that transparency and reasoning behind sentencing would be greatly beneficial, not only to police but it would also provide members of the public peace of mind that matters are being appropriately dealt with through the court system. ACT Policing believes the sentence for the above matter [*R v Laidlaw* [2022] ACTSC 215] is lenient noting this is a recidivist offender and an innocent person has lost their life.⁸⁰

Community education on Intensive Corrections Orders

- 2.69. The Committee examined the issue of Intensive Corrections Orders (ICOs). These are a sentence served while the offender is still in the community and a last resort before incarceration. It allows offenders to remain in employment and maintain community ties which are important in reducing risks of re-offending.⁸¹
- 2.70. The Attorney-General agreed that the ACT Government could be doing more to inform the community about ICOs, and to challenge perceptions that they are a ‘soft option’. He also told the Committee that requirements under ICOs can be challenging and that there is a risk that the offender will not be able to meet all of the conditions.⁸² An ICO is a custodial sentence of up to four years that is served in the community. Offenders with an ICO may have to undergo regular drug testing and home visits, and need to apply for permission to leave the ACT. Conditions relating to community service work, curfews, attendance at rehabilitation programs, or reparation, may also be included in an ICO.⁸³
- 2.71. Minister Rattenbury also highlighted that ICOs may offer ‘swift and certain punishment’, as, if somebody breaches the requirements of an ICO they can be taken into custody immediately (for three or seven days). The Attorney-General stated this draws a direct connection between the breach and its consequence.⁸⁴
- 2.72. The Committee notes they previously recommended in their report No. 9, *Inquiry into Community Corrections* (Recommendation 1) that the ACT Government ensure awareness

⁷⁹ Ms Lee, Legal Aid ACT, *Committee Hansard*, 26 October 2022, p 30.

⁸⁰ ACT Policing, *Submission 29*, p 21.

⁸¹ Justice and Community Safety Directorate, *Intensive Corrections Orders Review Report*, November 2019 (tabled 20 February 2020)

⁸² Mr Rattenbury MLA, *Committee Hansard*, 14 November 2022, p 148.

⁸³ ACT Corrective Services, Intensive Corrections Order (ICO), [Orders - Corrective Services \(act.gov.au\)](https://www.act.gov.au/corrections/Intensive-Corrections-Orders) (accessed 23 January 2023)

⁸⁴ Mr Rattenbury MLA, *Committee Hansard*, 14 November 2022, p 149.

in the community of community sentencing options (including ICOs) and their significance. The Community Corrections report also identified a community perception that ICOs are a 'soft option'.⁸⁵

- 2.73. The ACT Government agreed with this recommendation, noting information is available on the Corrections, Victims Support ACT and Sentence Administration Board (SAB) websites and would review that information saying:

Publicly available information will be reviewed and updated in the first half of 2023 to support increased awareness of the intensity and effectiveness of community based sentencing options.⁸⁶

Process of judicial appointments

- 2.74. The Committee examined the process of judicial appointments. The Committee acknowledges that Petition 22-023 called for an independent review of the judicial appointment process. The Petition had 2194 signatures.⁸⁷

- 2.75. Concerns were raised by Mr McLuckie that the process was politically influenced:

But I do still have a concern, and it has even been alluded to by the ACT Bar Association in an article in 2018, that there is a possibility of political influence, as the appointments are made by the executive and they are interviewed by a politically appointed Attorney-General to influence the political and legal bias of the appointments to the judiciary.⁸⁸

- 2.76. He further said that:

The reason I am requesting an independent review of the judiciary is due to the clear evidence of a failure in our sentencing and bail. The reason I am asking for a review of our appointment process is I believe it to be politically influenced, appointed by the executive and involving current members of a stacked judiciary. If there is no influence from the executive, why would our appointed Chief Justice be of the opinion, when she was sworn in, that a primary purpose of her role was to keep people out of an overcrowded prison system.⁸⁹

- 2.77. The ACT Government stated there is a legislative framework to facilitate judicial appointments that uphold 'impartiality and guard against undue influence'. The ACT Supreme Court, ACT Magistrates Court, and ACT Civil and Administrative Tribunal processes and selection criteria are detailed in the:

⁸⁵ Standing Committee for Justice and Community Safety, Report No 9, July 2022, *Inquiry into Community Correction*, July 2022, pp 3-4.

⁸⁶ ACT Government Response, Report No 9 of the Standing Committee on Justice and Community Safety – *Inquiry into Community Corrections*, p 4.

⁸⁷ EPET-22-024, *Review the process of appointments to the ACT Judiciary to allow transparency and for nominees to meet community expectations*, Mr Thomas McLuckie, 11 October 2022. See <https://epetitions.parliament.act.gov.au/details/epet-22-023>

⁸⁸ Mr McLuckie, *Committee Hansard*, 27 October 2022, p 73.

⁸⁹ Mr McLuckie, *Committee Hansard*, 27 October 2022, p 80.

- a) Supreme Court (Resident Judges Appointment Requirements) Determination 2015 (No 1),⁹⁰
- b) Magistrates Court (Magistrates Appointment Requirements) Determination 2009,⁹¹ and
- c) ACT Civil and Administrative Tribunal (Presidential Appointment Requirements) Determination 2016.⁹²

2.78. The ACT Government provided the following information about the appointment process:

the Attorney-General must publicly seek expressions of interest for the position by public notice and also write to key ACT stakeholders, inviting them to suggest or nominate people who are suitably qualified for appointment. Before recommending an appointment of a judge or magistrate to the Executive, the Attorney-General must consult with the relevant head of jurisdiction (such as the Chief Justice). The selection process must be based on a consideration of possible candidates having regard to the selection criteria set out in the relevant determination. The detailed selection criteria include intellectual capacity; personal qualities; an ability to understand and deal fairly; authority and communication skills; efficiency and leadership and management skills. An explicit part of the selection criteria under personal qualities is integrity and independence of mind and objectivity.⁹³

2.79. The ACT Government also told the Committee that there were several policies in place to ensure transparency:

There are also several policies in place to protect the transparency of the appointment process. The Governance Principles - Appointments, Boards and Committees - Cabinet and the Assembly (act.gov.au) is a publicly available document that details the process for appointments in the ACT and includes a requirement to consult with the ACT Diversity Register. Where there are permanent vacancies in the judiciary, these will be filled through a public selection process, involving a selection panel that usually includes representatives from the public service and the judiciary who will make an assessment and recommendations in light of the selection criteria outlined in the Determinations.⁹⁴

2.80. The ACT Government also stated that there are three members who sit on the selection panel to shortlist applications, interview, and then provide recommendations. The three members consist of the head of the jurisdiction (unless this is the advertised role), an officer from the Justice and Community Safety Directorate, and the last member may be

⁹⁰ See <https://www.legislation.act.gov.au/ni/2015-683/>

⁹¹ See <https://www.legislation.act.gov.au/ni/2009-616/>. The Committee notes this Determination has been repealed by the *Magistrates Court (Special Magistrates Appointment Requirements) Determination 2015 (No 1)*.

⁹² ACT Government, *Submission 13*, p 17.

⁹³ ACT Government, *Submission 13*, p 17.

⁹⁴ ACT Government, *Submission 13*, p 17

either a judicial officer from another jurisdiction, another directorate official, or a representative of the legal profession e.g., the President of the ACT Bar Association.⁹⁵

- 2.81. The SAB outlined how individuals are appointed to the board. Ms Beacroft stated there are three judicial members who have legal qualifications, and there are ordinary members with a diverse range of experience. All members have a three-year term, and at the end of the term, the government seeks expressions of interest through a publicly advertised process. Ms Beacroft also commented that previously, there were requirements for members to have relevant skills, but now there is a wide range of people that are not experts in the criminal justice system or criminology – anyone can apply.⁹⁶
- 2.82. Mr Glenn commented that the ACT Law Society and ACT Bar Association do not have any further engagement with the selection committee (unless they are referees) following correspondence with the Attorney-General regarding nominations.⁹⁷
- 2.83. The ACT Law Society and ACT Bar Association stated that they are both consulted about appointments. They commented that while they do not have a veto power, they could communicate if a particular person on a list was not suitable.⁹⁸ The ACT Law Society articulated their support for the current judiciary and magistracy in the ACT⁹⁹, and made the following comment to the Committee:
- The Law Society does not see any other system or alternative functioning that would justify that radical proposal. There would presumably be a massive cost and presumably massive implications for the system in doing so, and the society does not see a sufficiently different outcome to justify that.¹⁰⁰
- 2.84. The ACT Law Society commented that the ACT has a gender balance judiciary and magistracy, with approximately fifty-fifty in both courts.¹⁰¹
- 2.85. The ACT Government has also announced a Law and Sentencing Advisory Council to advise the Government on areas for potential law reform and provide sentencing advice. As stated in the media release, the Council was developed in response to community calls for sentencing changes and will be a lasting mechanism rather than a single review.¹⁰² Minister Rattenbury commented that as part of the review, he is considering if there is scope to have greater community engagement in the judicial appointment process.¹⁰³
- 2.86. The Attorney-General stated there ‘not had a particular degree’ of lobbying and he has been surprised by how little lobbying there has been.¹⁰⁴ Minister Rattenbury commented

⁹⁵ Mr Glenn, *Committee Hansard*, 14 November 2022, p 142-143.

⁹⁶ Ms Beacroft, *Committee Hansard*, 18 November 2022, p 171.

⁹⁷ Mr Richard Glenn, Director-General, Justice and Community Safety Directorate, *Committee Hansard*, 14 November 2022, p 143.

⁹⁸ Mr Edmonds, *Committee Hansard*, 26 October 2022, p 67.

⁹⁹ Mr Edmonds, *Committee Hansard*, 26 October 2022, p 67.

¹⁰⁰ Mr Kukulies-Smith, *Committee Hansard*, 26 October 2022, p 66.

¹⁰¹ Mr Edmonds, *Committee Hansard*, 26 October 2022, p 67.

¹⁰² Mr Shane Rattenbury MLA, ACT Attorney-General, ‘ACT Government to establish Law & Sentencing Advisory Council’, *Media Release*, 7 October 2022.

¹⁰³ Mr Rattenbury MLA, *Committee Hansard*, 14 November 2022, p 143.

¹⁰⁴ Mr Rattenbury MLA, *Committee Hansard*, 14 November 2022, p 143.

on positive feedback regarding the transparency of the ACT's judicial appointment process, stating it is an open opportunity for people to put themselves forward and be considered on merit.¹⁰⁵

Committee comment

- 2.87. The Committee notes that there needs to be increased public education and awareness of how the justice system works to assist victims, their families and the general public.
- 2.88. While sentencing decisions are accompanied by sentencing remarks that explain the court's decision, these are legalistic in style noting their intended key audience is the offender and their legal representative. They may not contain the information that a victim/victim's family or other members of the public may be seeking and are not written in a plain English format. Victims and families of victims can be frustrated not having an easy-to-understand explanation on how sentences are decided on.
- 2.89. The Committee considers that there would be value in having a plain English explanation to help victims understand how the courts make their decisions and apply the law in cases of dangerous driving more generally. While the Committee are not suggesting that the courts should provide a plain English explanation of each case, a general explanation provided by the ACT Government would go some way to helping victims understand how judgments are made, in particular how the court takes the victim impact statements into account, and why sentences may not end up being the maximum penalty in the legislation.
- 2.90. The Committee also considers that there should be greater education about what ICOs are to change perceptions that they are a 'soft option'. Further, the Committee notes the commitment the ACT Government has made to provide more education on the intensity of the requirements of an ICO and urges action to be taken on this commitment.
- 2.91. The Committee also recognises that judicial appointments are critical to maintaining public confidence in the administration of justice and providing optimal outcomes and experiences. There should be easily accessible information and clarification about the process that can give the public confidence that it is a transparent process that ensures that the judiciary are free from bias.

Recommendation 4

The Committee recommends that the ACT Government increase public awareness of how the justice system works in the following areas:

- a) how sentencing decisions are made under the sentencing regime in the ACT in plain English;
- b) what is involved in Intensive Correction Orders (ICOs) in line with its previous recommendation in its *Report No. 9 Inquiry into Community Corrections*; and
- c) The process and criteria of judicial appointments.

¹⁰⁵ Mr Rattenbury MLA, *Committee Hansard*, 14 November 2022, p 143.

Bail

- 2.92. Witnesses told the Committee that there should be a review of the granting of bail in the ACT. The ACT Chapter of the Australasian College of Road Safety called for a system wide review such as that conducted by the 2015 Victorian Sentencing Advisory Council.¹⁰⁶
- 2.93. Such views were also supported by the Australian Federal Police Association who also noted that it was not uncommon for offenders to have pre-existing convictions or to be on bail and such cases were being uncovered in Operation TORIC.¹⁰⁷ They provided an example of a case involving a deliberate ramming of a police vehicle where bail was granted to a recidivist offender:
- A recent example was where a recidivist offender deliberately rammed a police vehicle with a stolen vehicle, committed further offences, yet was still granted bail by the court. The DPP opposed bail, with the special magistrate hearing the case agreeing that there were 'real and significant public safety concerns. Despite all of this, the offender, who has an extensive criminal record, including matters for serious traffic offences, was granted bail.¹⁰⁸
- 2.94. ACT Police told the Committee in their submission that they felt that the policy around bail and sentencing should be examined¹⁰⁹ and that the majority of cases of dangerous driving are connected to a small group of recidivist drivers, many of whom were on bail:
- As of Friday 11 November, we have made 137 apprehensions and laid in excess of 336 charges. Of those 137 persons, only eight were first-time offenders; 74 were on bail or other court conditions.¹¹⁰
- 2.95. They also told the Committee that the presumption of bail should be considered for serious matters such as assaulting police officers, driving at police and recidivist serious motor vehicle offences¹¹¹ with neutral bail being considered more broadly.¹¹² They said that of the 137 people arrested or charged under Operation TORIC, 59 had gone before the courts and were then out on bail with some then re-arrested.¹¹³
- 2.96. ACT Policing noted the following presumptions in relation to bail:¹¹⁴

¹⁰⁶ Mr Eric Chalmers, Australasian College of Road Safety, *Committee Hansard*, 27 October 2022, p 94.

¹⁰⁷ Mr Alex Caruana, President, Australian Federal Police Association, *Committee Hansard*, 27 October 2022, p 96.

¹⁰⁸ Australian Federal Police Association, Submission 25, p 15 (sourced from [Aubrey Agostino allegedly crashed stolen car into police vehicle in Nicholls | The Canberra Times | Canberra, ACT](#)) *The Canberra Times*, 11 August 2022, p 1).

¹⁰⁹ ACT Policing, *Submission 29*, p 3.

¹¹⁰ Deputy Commissioner Gaughan, ACT Policing, *Committee Hansard*, 14 November 2022, p 116.

¹¹¹ Deputy Commissioner Gaughan, ACT Policing, *Committee Hansard*, 14 November 2022, pp 115-116.

¹¹² Deputy Commissioner Gaughan, ACT Policing, *Committee Hansard*, 14 November 2022, p 123.

¹¹³ Deputy Commissioner Gaughan, ACT Policing, *Committee Hansard*, 14 November 2022, p 124.

¹¹⁴ ACT Policing1992, *Submission 29*, p 12.

- a) For less serious offences (i.e., punishable for imprisonment of six months or less), there is a presumption for bail.
- b) For serious offences (i.e., manslaughter, serious sexual offences, recidivist violent cases), there is a presumption against bail.
- c) A neutral presumption of bail is assumed where a presumption against bail does not exist, therefore bail is granted based on the particular facts of each case.

2.97. The ACT Government told the Committee that they are reviewing the legislative framework governing decision making on bail applications, noting that there has been concern in the community about driving offences being Committed by a person on bail:

The Government respects the independence of the judiciary in weighing all the facts and circumstances of each case. By nature of their particular experience and independence, the judiciary are more appropriately placed than legislators to make judgments on bail on a case-by-case basis noting the circumstances and risks of each situation. However, it is important that the legislative framework which guides our Courts in making these complex decisions is robust. We have asked the JACS Directorate to undertake work to consider whether the existing bail legislation is meeting community expectations and remains fit for purpose. Particular attention is being given to whether the laws appropriately reflect when an offender's prior history is taken into account when a bail determination is being considered by a police officer or the court.¹¹⁵

2.98. In contrast, some witnesses told the Committee that the existing bail arrangements did not need review.

2.99. The DPP told the Committee that in his opinion bail considerations are clear, and based on criteria in section 22 of the *Bail Act 1992* and warned that reform could lead to unintended consequences:

It [bail] is based on the risk of reoffending, the likelihood of appearing and the risk of interference with witnesses. Judicial discretion is brought to that, with the benefit of arguments from both sides, and the judiciary ultimately arrives at the best possible point. Fettering that can often lead to people that the law is not intended to capture being caught by those provisions.¹¹⁶

2.100. He told the Committee that the position should be based on the evidence:

My position on whether or not particular driving offences should fall into a neutral position, or a presumption against, would be based on whatever evidence was brought to my attention, that that would in some way address a particular issue.

Recidivism is a difficult concept to grapple with. If you have a really serious culpable driving causing death, and subsequently you have a low range PCA [prescribed concentration of alcohol], you would technically be a recidivist. So even the term

¹¹⁵ ACT Government, *Submission 13*, p 10.

¹¹⁶ DPP, *Committee Hansard*, 18 November 2022, p 184.

recidivism, needs a judicial mind brought to it to work out the relevance of that for this particular offence.¹¹⁷

- 2.101. Legal Aid ACT told the Committee that they thought the Bail Act was ‘a good tool for managing people at the moment’¹¹⁸. They went on to explain that in considering all the facts in each individual case on whether to grant bail recidivism should be taken into account:

Just generally, the likelihood of a person committing an offence whilst on bail is specifically a criteria that the court must consider when determining whether to grant bail or not. So, arguably, that likelihood for recidivism should already be taken into account under the current bail legislation. As Dr Boersig said, bail is not punitive; it is to ensure that somebody comes before the courts to have their matters dealt with and to ensure that, whilst they are on conditional liberty, they do not reoffend.¹¹⁹

- 2.102. The ACT Law Society warned against increasing the complexity of the Bail Act by listing too many more various types of offences that attract a certain treatment making it more difficult for the courts.¹²⁰ They also shared the anecdotal observation that recidivist drivers tend to be refused bail.¹²¹

Committee comment

- 2.103. The Committee noted that out of 137 apprehensions under Operation TORIC 74 were on bail or other court conditions. In addition, 59 of those 137 apprehensions sought bail and were allowed out again and some of those have been subsequently re-arrested.
- 2.104. This seems to contrast with observations from the DPP, Legal Aid ACT and the ACT Law Society that bail tended not to be available to recidivist serious offender drivers, at least based on anecdotal evidence.
- 2.105. The Committee considers that such offences by recidivist offenders and driving at police such as in the ramming incident described by the Australian Federal Police Association should attract a neutral presumption of bail to ensure Police can safely protect drivers on ACT roads.

Recommendation 5

The Committee recommends that the ACT Government introduce legislation for a neutral presumption of bail for serious dangerous driving offences such as driving at police and recidivist serious motor vehicle offenders.

¹¹⁷ DPP, *Committee Hansard*, 18 November 2022, p 184.

¹¹⁸ Dr Boersig, *Committee Hansard*, 26 October 2022, p 31.

¹¹⁹ Ms Lee, *Committee Hansard*, 26 October 2022, p 32.

¹²⁰ Mr Edmonds, *Committee Hansard*, 26 October 2022, p 68.

¹²¹ Mr Michael Kukulies-Smith, Chair, Criminal Law Committee, ACT Law Society, *Committee Hansard*, 26 October 2022, p 68.

Transparency on decisions relating to the Transitional Release Program and the Sentence Administration Board

- 2.106. The ACT Government explained that the Transitional Release Program (TRP) is designed to help sentenced detainees transition from custody to being in the community as this can be challenging. The TRP assists detainees achieve goals and address their reintegration needs including accommodation, health, family and community connectedness, and financial wellbeing. Through the TRP, detainees can access leave to re-connect with family work or study and go to appointments outside the Alexander Maconochie Centre.¹²²
- 2.107. Ms Jago told the Committee that she was blindsided by the offender's application to the TRP of which she had never heard of before. With assistance from the Victims of Crime Commissioner (VOCC), this program is now mentioned in the initial letters sent to victims on the Victims Register. Ms Jago found the program (as well as decisions made by the SAB) lacks transparency:¹²³

There is no transparency in decisions being made by the Sentence Administration Board. When parole is applied for, people on the Victims Register are notified and able to make a victim submission. The reasons for a rejection at an 'on the papers' review are given, in writing, to victims who provide a submission. The hearing is a different matter. Victims are not able to attend the hearing, nor do they receive any feedback on the reasons for the decision. In our case, the offender was granted parole at the hearing. Given the objections to granting parole 'on the papers' only a few months earlier, it is difficult to understand how the Board came to this decision at the hearing. Victims have no avenue to find out.¹²⁴

- 2.108. Mr Corney also described decisions relating to the TRP as being unclear:

'Akis Livas has been to jail twice, has fled the jurisdiction while awaiting sentencing for rape and has continued to show a disregard for appropriate behaviour in the community. There would not appear to be any sound basis for a decision that allowed him entry into the Transitional Release Program or parole. I don't think that such decisions would meet with the expectations of the majority of the community.'¹²⁵

- 2.109. At the public hearing he told the Committee that he felt frustration and a feeling that the voice of their experience was not being heard or taken into account in decisions relating to the release and parole of offenders:

Then the process through the courts, through the Sentence Administration Board and through the Transitional Release Program are not friendly towards victims. My advice to other victims since would be: do not bother participating in the process.

¹²² ACT Government, *Submission 13*, pp 5-6.

¹²³ Ms Jago, *Submission 21*, pp 10-11.

¹²⁴ Ms Jago, *Submission 21*, p 11.

¹²⁵ Mr Corney, *Submission 35*, pp 8-9.

You will only get pain out of this and your views are not taken into account in any substantive way.¹²⁶

Committee comment

- 2.110. While the offenders right to privacy must be respected, victims and families of victims should be able to access information about how the TRP works more generally, so that they can better understand decisions in relation to the program. In addition, more transparency in decisions made by the SAB would assist victims understand how these decisions are made.

Recommendation 6

The Committee recommends that the ACT Government engage with victims of crime to provide more transparency about how the transitional release program works.

Recommendation 7

The Committee recommends that the Sentence Administration Board increase the transparency in their decision making.

Information sharing between ACT Corrective Services and the Sentence Administration Board

- 2.111. In her submission, Ms Jago told the Committee that in her case, the offender had applied for the Transitional Release Program in July 2022 and was accepted into the program in February or March 2022. She was notified of this only a few weeks after being advised that the offender had parole rejected. She found the two decisions by the different organisations to be misaligned and very confusing. She felt that it would be beneficial if victims needed to only provide a submission once (with the permission of the victim) for use by both organisations to ensure more continuity in decision making.¹²⁷ The Committee considers that victims should be able to provide submissions once, with their consent.

Recommendation 8

The Committee recommends that the ACT Government allow for greater information sharing between ACT Corrective Services and the Sentence Administration Board.

¹²⁶ Mr Corney, *Committee Hansard*, 26 October 2022, p 16.

¹²⁷ Ms Jago, *Submission 21*, p 11.

Sentence Administration Board – conditions regarding drivers’ licences

- 2.112. When the SAB releases an offender on bail they can make the offender subject to certain conditions under the *Crimes (Sentence Administration) Act 2005* and the *Crimes (Sentence Administration) Regulation 2006*. In addition to some core conditions, the Board can impose additional parole conditions provided they are not inconsistent with the core conditions, for example: those aimed at protecting the victim; not to consume alcohol; to be subject to a curfew; to remain in a rehabilitation facility; to complete a program; and/or to attend other specified services for support and treatment. Additional conditions can be imposed by the Board at any time during a parole order, for example as a consequence of a breach or management hearing.¹²⁸
- 2.113. The SAB told the Committee that they cannot make it a condition that a person can lose their licence, although they noted that many who come before the Board have already lost their licence or had it disqualified under their court judgments.¹²⁹
- 2.114. The SAB however takes any history of driving while disqualified into account when considering parole, along with any access they have to a vehicle and their transport needs.¹³⁰ The SAB also told the Committee that they assessed the risk of a dangerous driver reoffending using a best practice actuarial risk tool (an LSI-R) in conjunction with other information provided to the board.¹³¹
- 2.115. The Justice Reform Initiative told the Committee that a driver’s licence can be a requirement of employment (which is associated with reducing recidivism) and to unnecessarily remove a driver’s licence could mean that the offender will be tempted to drive without the licence.¹³²

Committee comment

- 2.116. The Committee considers that in the interests of public safety, it is appropriate for the SAB to have the power to make it a condition of parole that the offender cannot drive, potentially through having their licence suspended. However, this needs to be done taking into account the specific needs of the offender to reduce the risk of driving without a licence.

¹²⁸ ACT Government, Justice and Community Safety Directorate, The parole process and considerations by the Board, <https://www.justice.act.gov.au/safer-communities/the-sentence-administration-board/the-parole-process-and-considerations-by-the-board> (accessed 11 January 2023).

¹²⁹ Ms Laura Beacroft, Chair, Sentence Administration Board, *Committee Hansard*, 18 November 2022, pp 168-169.

¹³⁰ Ms Beacroft, *Committee Hansard*, 18 November 2022, p 169.

¹³¹ Ms Beacroft, *Committee Hansard*, 18 November 2022, p 168.

¹³² Justice Reform Initiative, *Submission 40*, p 11.

Recommendation 9

The Committee recommends that the ACT Government implement changes so that the Sentence Administration Board has the authority to include restrictions on driver's licences or suspend the licence as a parole condition.

Sentence Administration Board – medical/mental health treatment powers

2.117. The SAB advised the Committee that in the case of *R v Livas (no 2) [2020] ACTSC 116* medical issues contributed to the dangerous driving. However, the SAB is not able to mandate that the offender undergo medical treatment without their consent under the *Human Rights Act 2004*. The SAB noted, that in that case Mr Livas was unable to obtain a driver's licence until ordered by a court under the court decision.¹³³ The Board also told the Committee they are unable to mandate that an offender undergo mental health treatment with their consent.¹³⁴ This is due to human rights concerns.

2.118. The Human Rights Commission told the Committee that while generally medical interventions require consent under subsection 10(2) of the *Human Rights Act 2004*, the SAB could make such a decision if it is reasonable, proportionate, and justifiable:

Generally, the right to protection from forced medical treatment in s 10(2) of the *Human Rights Act 2004* reflects existing legal principles that there are very few circumstances where specific medical interventions can be performed on a person without their free consent. Such circumstances are carefully prescribed by law, involve specialist medical or psychosocial input and generally require authorisation by the ACT Civil and Administrative Tribunal or a Court. However, as the SAB is a public authority and required to make decisions consistently with human rights, it is clear that additional conditions requiring medical treatment must be reasonable, proportionate and justifiable. In this sense, s 10(2) does not operate as a blanket prohibition on medical treatment in a parole order with the consent of the offender.¹³⁵

2.119. The Human Rights Commissioner also advised in such cases, the parolee should be appropriately supported through a 'throughcare' model. However, in some cases, it might be more appropriate to provide treatments under mental health law or to disqualify a person from driving.

¹³³ Ms Beacroft, *Committee Hansard*, 18 November 2022, p 166.

¹³⁴ Ms Beacroft, *Committee Hansard*, 18 November 2022, p 167.

¹³⁵ Dr Helen Watchirs, Human Rights Commissioner, answer to QTON 10, HRC – Sentence Administration Board – Directions for medical treatment & human rights, 9 December 2022 (received 12 December 2022)

Committee comment

- 2.120. The Committee considers that the need to obtain medical treatment including mental health treatments may be an important requirement of a successful parole period depending on the circumstances of each case. Given that the Human Rights Commission considers that this power already exists, the SAB should ensure that this requirement should be considered where physical or mental health is a relevant factor. Guidelines should be developed to ensure that this is considered in line with the requirements of the *Human Rights Act 2004*.

Recommendation 10

The Committee recommends that the ACT Government provide additional funding to the Sentence Administration Board to put in place appropriate guidelines on how a requirement to receive medical treatment can be applied as part of a parole condition or be part of the decision to grant or revoke parole.

Aligning Sentence Administration Board Intensive Correction Orders powers with parole powers

- 2.121. The Committee heard from the SAB that a person on parole who was charged but not convicted of driving while disqualified would be likely to be brought back to the SAB (especially if they had a serious traffic history) for a management hearing. The SAB will then investigate and consider if this should be taken into account when re-considering their parole under section 153 of the *Crimes (Sentences Administration) Act 2005*. However, the SAB does not have these powers in relation to a person with a serious traffic history on an ICO.¹³⁶
- 2.122. The SAB explained how section 153 worked in parole cases:
- if someone is on parole and, for example, they were charged but not yet convicted of driving while disqualified, almost in any circumstance, we would see that as a concern. Certainly, if it is a person with a traffic history who is under sentence for a serious traffic matter, they would definitely be brought back for a management hearing before the board, very promptly, for the board to investigate whether they still have the capacity to do that order. However, we cannot do that for a serious traffic offender who is on an intensive corrections order.¹³⁷
- 2.123. Therefore, the SAB stated that there should be some consideration towards aligning intensive correction orders (ICOs) with the Board's powers under section 153 in relation to parole.

When ICOs were first brought in, they were quite a different regime. As time has gone by, which the review shows, you are starting to see similar offenders on both.

¹³⁶ Ms Beacroft, *Committee Hansard*, 18 November 2022, p 169.

¹³⁷ Ms Beacroft, *Committee Hansard*, 18 November 2022, p 169.

As I say, I raised that there are some serious traffic offenders on ICOs. However, the board does not have the power to bring someone on an ICO back before them unless there is an actual breach raised with us. I would like consideration of that.¹³⁸

- 2.124. The SAB told the Committee that according to the November 2019 *Intensive Corrections Orders Review report* by the Justice and Community Safety Directorate, 12 percent of offences for ICOs (or 28 out of 230) were traffic offence orders, and made the point that an ICO for a traffic offence would be unlikely to be minor.¹³⁹ The SAB also told the Committee that use of ICOs is increasing and that there would be advantages if they had the power to bring offenders on ICOs with increased risk of re-offending back before them due to the swift consequence that a suspension of the ICO will have:

At least with intensive corrections orders, if we find that a person is going off the rails, so to speak, and not doing the right thing, we do have a suspension power. Say they started using drugs—and that is a risk factor, particularly for driving—at least we can suspend for seven days, so that, in a sense, they could dry out.¹⁴⁰

Committee comment

- 2.125. The Committee notes that ICOs are being increasingly used as an alternative to imprisonment, including for serious traffic offenders. Therefore, it is important that if there is a risk of the conditions of the ICO being breached, that the SAB are able to respond quickly and efficiently for the safety of the community on the roads and to reduce the risk of the offender from re-offending.

Recommendation 11

The Committee recommends that the Sentence Administration Board have the power to inquire into offenders who have been charged (even if not convicted) with breaching conditions of their Intensive Corrections Order, in the same way that applies in respect of parole under section 153 of the *Crimes (Sentencing Administration) Act 2005*.

Data collection on correction orders

- 2.126. The SAB told the Committee that their data collection was very limited when it comes to across the board analysis.¹⁴¹ In its Annual Report, the SAB reported that it relied on annual reporting by the Productivity Commission in its 'Report on Government Services' to monitor high level outcomes of its work.¹⁴² However, this data is very broad.
- 2.127. At their *Inquiry into Community Corrections*, the Committee heard that data was not currently being collected on recidivism rates around particular orders, i.e., ICOs and good

¹³⁸ Ms Laura Beacroft, Chair, Sentence Administration Board, *Committee Hansard*, 18 November 2022, p 169.

¹³⁹ ACT Government, [Intensive Corrections Orders Review Report](#), November 2019, p 7.

¹⁴⁰ Ms Beacroft, *Committee Hansard*, 18 November 2022, p 172.

¹⁴¹ Ms Beacroft, *Committee Hansard*, 18 November 2022, p 172.

¹⁴² ACT Government, Justice and Community Safety Directorate, Annual Report 2021-2022, p 403.

behaviour orders, although it was noted that there are some complexities in comparing the data and a small data base due to the size of the ACT jurisdiction.¹⁴³

Committee comment

- 2.128. The Committee notes that data availability should be a high priority as it can be very useful to work out root causes, trends and to identify emerging issues for policy development. Currently the data collection is quite limited.

Recommendation 12

The Committee recommends that the ACT Government overhaul its data collection on corrections orders for improved analysis.

¹⁴³ Inquiry into Community Corrections, *Committee Hansard*, 16 February 2022, pp 5-6.

3. Police response

Leaving the scene of an accident

- 3.1. In his evidence Mr Stefaniak explained that in the accident that killed his son, the other two people involved in the accident left the scene. This was the driver (Ms Angela Smith) and other passenger (Mr Kane Kell), although at first Ms Smith had claimed the victim was the driver:

I flag that as something you might look at because that was particularly distressing to us and also quite inefficient because Kane was going to tell the police, and that could have saved a hell of a lot of trouble and a lot of time, angst and effort for everyone. Indeed, had Kane and Angela stayed at the scene of the accident, a lot of trouble would have been saved and I think the police would have probably identified who the driver was and the matter would have been finalised earlier and everyone could get on with their lives.¹⁴⁴

- 3.2. The current penalty for a driver leaving the scene of an accident when someone dies or is injured in the accident without providing assistance is 200 penalty units (\$32,000¹⁴⁵), two years or both.¹⁴⁶ A maximum of 20 penalty units (\$3,200) applies to drivers involved in a crash if they do not stop at the scene of the accident and provide their particulars to other drivers involved, injured parties or owners of damaged property. They must also provide their details to the police.¹⁴⁷

Committee comment

- 3.3. The Committee considers that the penalties for leaving the scene of an accident should extend to passengers in the event of serious accidents. The driver and passengers (unless seriously injured and under medical care) should stay at the scene of the accident until police arrive to ensure that the police are able to more effectively investigate the accident.

Recommendation 13

The Committee recommends that the ACT Government implement penalties for leaving the scene of an accident to include passengers, not just drivers.

Complexity of law

- 3.4. The Committee heard from Legal Aid ACT that the legislative framework for road safety rules is complex with a number of different pieces of legislation:

¹⁴⁴ Mr Stefaniak, *Committee Hansard*, 26 October 2022, pp 2-3.

¹⁴⁵ Section 133, *Legislation Act 2001*

¹⁴⁶ Section 16, *Road Transport (Safety and Traffic Management) Act 1999*.

¹⁴⁷ Section 287, *Road Transport (Road Rules) Regulation 2017*.

I think we have outlined the range of legislation that applies to this area, and we have four or five different ones. I think we can resolve that into a single piece of legislation, or maybe even two but certainly just resolve it so there are not so many aspects in the way we deal with this. It is quite confusing, really, when you look at it. It also would allow more precision for the parliament to work out what the penalties should be in relation to these kinds of offences and what should be the kind of criteria used in relation to how these then are managed.¹⁴⁸

3.5. The ACT Law Society concurred, saying:

The Criminal Law Committee of the Law Society—of which Michael and I are both members and have been for over 10 years—have been advocating for a simplification, codification, a merging, of all these different pieces of legislation and offending for many years. It is something of a hotchpotch, unfortunately. We have at least five or six different pieces of legislation all covering different types of driving offences.¹⁴⁹

3.6. The complexity was also noted by the Minister for Transport and City Services, Mr Chris Steel MLA, who, when discussing the Government’s review of road safety penalties and aggravated driving penalties described the legislation as ‘a very large and complex area of legislation’¹⁵⁰ and a ‘massive body of legislation across multiple different Acts’ acknowledging views by the ACT legal community that the legislation needs a refresh.¹⁵¹ The review will be looking at around 1,900 road transport penalties.¹⁵²

3.7. The Committee noted the complexity in the law when considering a recommendation from ACT Policing that legislation such as ‘Skye’s law’ in NSW apply in the ACT. Under Skye’s law -section 518 of the *Crimes Act 1900* (NSW) - first time fail to stop offenders are sentenced for a maximum of three years and second or subsequent offenders are sentenced for a maximum of five years. This is in addition to a mandatory licence disqualification for a minimum of one year (or two to five years at the Courts discretion for second or subsequent offenders).¹⁵³

3.8. The Attorney-General argued that section 5C of the *Road Transport (Safety and Traffic Management) Act 1999* is similar to Skye’s law.¹⁵⁴ ACT Policing told the Committee that section 5C has lower penalties than in Skye’s law and is not a deterrent.¹⁵⁵

3.9. However, the Committee noted that section 7 of the *Road Transport (Safety and Traffic Management) Act 1999* for furious, reckless or dangerous driving aggravated offences which includes failure to comply as soon as practicable with a request or signal given by a police officer to stop a vehicle has similar penalties to Skye’s Law.

¹⁴⁸ Dr Boersig, *Committee Hansard*, 26 October 2022, p 32.

¹⁴⁹ Mr Edmonds, *Committee Hansard*, 26 October 2022, p 66.

¹⁵⁰ Mr Steel, MLA, *Committee Hansard*, 14 November 2022, pp 130-131.

¹⁵¹ Mr Steel, MLA, *Committee Hansard*, 14 November 2022, p 137.

¹⁵² Ms Cox, *Committee Hansard*, 14 November 2022, p 132.

¹⁵³ Chief Police Officer, [Letter to Committee](#), received 18 January 2023.

¹⁵⁴ Mr Rattenbury MLA, *Committee Hansard*, 14 November 2022, p 134.

¹⁵⁵ Chief Police Officer for the ACT, Letter to committee, 18 January 2023, pp 1-2.

- 3.10. The Committee sought clarification from the Chief Police Officer.¹⁵⁶ However the Committee were not able to confirm that the penalties in the ACT were in fact lower than in Skye’s law.
- 3.11. ACT Policing told the Committee they had recommended to the Government to amend section 60 in the *Road Transport (General) Act 1999* to introduce a liability on the responsible driver of a vehicle. This entails the responsible person being charged with refusing a section 60 demand and being liable for the original offence committed if they refused to nominate the driver of a vehicle at the time of the offence.¹⁵⁷
- 3.12. Section 60 requires a responsible person for a vehicle or a person in possession of a vehicle to provide the name and address of a driver who is alleged to have committed an offence under the road transport legislation. Failure to do this can result in a maximum penalty of 100 penalty units (\$16,000), 12 months’ imprisonment or both for a first offender, and 300 penalty units (\$48,000), imprisonment for three years or both for a repeat offender, or in any other case 20 penalty units (\$3,200).
- 3.13. A responsible person includes a registered operator of the vehicle (unless the vehicle has been disposed of by the operator).¹⁵⁸
- 3.14. No data is available on how many section 60 demands have been made in respect of fail to stop offences.¹⁵⁹ It was also unclear how section 60 was currently being applied.

Committee comment

- 3.15. The Committee noted that the existing legislative framework is complex and spread across multiple pieces of legislation. Experts have described it as confusing, and this was experienced by the Committee when considering Skye’s law.

Recommendation 14

The Committee recommends that the ACT Government review and streamline ACT legislation governing road safety and dangerous driving.

Confiscation of mobile phones

- 3.16. In her submission, Ms Jago told the Committee that in her case the fact that police weren’t able to access the mobile phone of the driver caused her stress and delays to the investigation:

Police should be able to confiscate mobile phones on the spot when a collision has occurred. It took many weeks for the accused to hand over his mobile phone in my

¹⁵⁶ Chief Police Officer, [Letter to Committee](#), received 18 April 2023.

¹⁵⁷ ACT Policing, *Submission 29*, p 16.

¹⁵⁸ Section 10, *Road Transport (General) Act 1999*.

¹⁵⁹ Mr Peter Whowell, Answer to QTON 5, 24 November 2022 (received 30 November 2022)

case. While his mobile phone was not able to be proved as the cause of the collision, it did delay the investigation, therefore adding further distress to victims.¹⁶⁰

- 3.17. In the accident leading to the death of Blake Corney, it took two weeks before the offending driver's mobile phone was handed into police.¹⁶¹

Committee comment

- 3.18. The Committee considers that for serious accidents particularly those resulting in a death, police should be able to access information including that which may be found on a mobile phone that may assist them with their inquiries as soon as possible. The Committee notes that devices should be handled appropriately to ensure that the privacy of the mobile phone owner is respected.

Recommendation 15

The Committee recommends that the ACT Government provide police with the power to confiscate mobile phones on the spot in serious collisions.

¹⁶⁰ Ms Jago, *Submission 21*, p 3.

¹⁶¹ Mr Corney, *Committee Hansard*, 26 October 2022, p 17.

4. Preventative measures

Driver education and intervention programs

- 4.1. The Committee heard that there was general support for more driver education. Ms Barjestehmanesh suggested interactive education in schools that showed the impact that dangerous driving with evidence such as photos of cars that have been in serious accidents.¹⁶² ACT Policing told the Committee that they believed targeted high school and college education seminars facilitated by first responders would be beneficial.¹⁶³ Mr Corney was also supportive of education on dangerous driving in schools:

Some people either cannot, will not take notice of it or are unable to take notice of it. But I think some of that education could stretch even into primary schools with visits from particular people to get in early enough to say, "This is what can happen." Cars might not be designed as weapons; they can certainly act as weapons. I think people need to understand that it is not a right to get out in the car; it is a privilege and it comes with obligations. And if you mess around with that the worst can occur¹⁶⁴

- 4.2. The Justice Reform Initiative told the Committee that there should be a government public education campaign targeted at young males focusing on consequences of dangerous driving and addressing issues around masculinity. This was based on data that shows statistically, young males are more likely to cause fatal accidents and that general education campaigns and improved driver licensing education has a positive impact.¹⁶⁵
- 4.3. Justice Action had similar views supporting driver education as a preventative measure targeting young people.¹⁶⁶ They also proposed peer mentoring from people who have been involved in dangerous driving in the past to talk to other offenders as a more effective means to change behaviour.¹⁶⁷
- 4.4. The Australian College of Road Safety also advised the Committee that research has shown the benefits of education that is personalised and help individuals identify their triggers, negative influences, weaknesses and strengths. Tailored programs have been shown to reduce recidivism.¹⁶⁸
- 4.5. ATODA were also supportive of education, particularly as part of supporting a reduction in drug and alcohol dependence:

The evidence for education alongside engagement with the alcohol, tobacco and other drugs sector is better than for education alone. Many people that engage in dangerous driving due to alcohol or illicit drugs do so because they have a

¹⁶² Ms Barjestehmanesh, Committee Hansard, 18 November 2022, p 163.

¹⁶³ ACT Policing, *Submission 29*, p 11.

¹⁶⁴ Mr Corney, *Committee Hansard*, 26 October 2022, p P19.

¹⁶⁵ Justice Reform Initiative, *Submission 40*, p 5.

¹⁶⁶ Ms Trahana, *Committee Hansard*, 27 October 2022, p 110.

¹⁶⁷ Mr Collins, *Committee Hansard*, 27 October 2022, p 110.

¹⁶⁸ Australian College of Road Safety, *Submission 7*, p 6.

dependence. Merely educating for that cohort is often going to be not enough but supporting them through a process of reducing that dependence is a great way to substantially reduce the risks that are on our roads.¹⁶⁹

- 4.6. Karralika Programs told the Committee that they are one of two providers of the Alcohol and Drug Awareness Courses and has been delivering their drink and drug driving program 'REVERSED' since November 2011.¹⁷⁰ They spoke of the benefits of such interventions in terms of changing behaviours in terms of attitudes, reducing alcohol consumption and recidivism.¹⁷¹ They received positive feedback from participants including:

"As I now have a better understanding of the affects I can now look at the strategies I need to put in place to help"

"Thank you so much for a great program, went well and has definitely convinced me to change my drinking habits"¹⁷²

- 4.7. The 'REVERSED' program was also supported by the Australian Federal Police Association who also said there was a need to make it accessible to disadvantaged participants.¹⁷³ They also supported more education in the lead up to someone getting their licence and in schools.¹⁷⁴

- 4.8. ACTCOSS highlighted that finance was a barrier to drivers accessing education programs that help them drive safely. Dr Gemma Killen stated:

It would be great if we had more education programs like that and things like the REVERSED program that is run by Karralika and we could put people through those programs, especially at no cost or at very low cost, so that, once they can reobtain their licence, they are more likely to drive safely¹⁷⁵

- 4.9. The Justice Reform Initiative also raised concerns that the cost of the ACT Road Ready program could be a barrier for some people, recommending that it be free.¹⁷⁶
- 4.10. ACT Policing told the Committee that they continued to work with the ACT Government on education and enforcement initiatives to reduce speeding in the ACT, but that speed continues to be an issue on Canberra's roads with a total of 19,448 drivers identified as speeding over the last five financial years.¹⁷⁷
- 4.11. The Minister for Transport and City Services told the Committee that there will be a big focus on safe driver behaviours as part of the next road safety action plans with campaigns in the past using vehicle wrecks and showing the impacts to shock people. The Minister also spoke to recent changes in obtaining a driver's licence to require at least 100 hours of

¹⁶⁹ Dr Bowles, *Committee Hansard*, 26 October 2022, p 43.

¹⁷⁰ Karralika Programs, *Submission 8*, p 1.

¹⁷¹ Karralika Programs, *Submission 8*, p 2.

¹⁷² Karralika Programs, *Submission 8*, p 3.

¹⁷³ Australian Federal Police Association, *Submission 25*, p 3.

¹⁷⁴ Australian Federal Police Association, *Submission 25*, p 8.

¹⁷⁵ Dr Killen, *Committee Hansard*, 26 October 2022, p 23.

¹⁷⁶ Justice Reform Initiative, *Submission 40*, p 12.

¹⁷⁷ ACT Policing, *Submission 29*, p 5.

driving experience on the road, noting that at this point it is still too early to see the impact that this new requirement will have.¹⁷⁸

Committee comment

- 4.12. The Committee observed that there was significant support for greater education on safe driving and prevention of dangerous driving noting that views on what was needed ranged from public education campaigns, to school based education, people learning to drive and those who had more serious needs in terms of attitudinal or alcohol and drug driving issues. There was a focus on increasing understanding of the consequences of dangerous driving and changing attitudes and behaviour.
- 4.13. In addition, accessibility and affordability to appropriate education is an issue for some driver cohorts.
- 4.14. While the Committee appreciates that the ACT Government has introduced the requirement for 100 hours of driving experience for new drivers and will be focusing on safe driver behaviour in its next road safety action plan, the Committee considers it is important that a comprehensive plan on what the Government intends to do to improve driver education should be available to the community.

Recommendation 16

The Committee recommends that the ACT Government develop a plan on how to improve driver education and intervention programs on dangerous driving, especially in relation to speeding and drink and/or drug driving with an update on progress to be tabled in the Assembly at the same time as the government response to this report.

Use of technology

- 4.15. Under its terms of reference for the Inquiry, the Committee were interested in technological advances to identify and prevent dangerous driving.
- 4.16. Dr Rod Katz told the Committee that Intelligence Speed Adaption (ISA) may help prevent speeding in the future and advocated use of such technology in the future.¹⁷⁹ ISA involves advanced systems to help drivers stay within speed limits by using global navigation satellite systems such as GPS linked to a speed zone and provides feedback to the driver if the vehicle exceeds the speed limit. In 2010, a NSW trial was conducted involving over 100 vehicles in the Illawarra region and found that the ISA system reduced speeding in 89

¹⁷⁸ Mr Chris Steel, Minister for Transport and City Services, *Committee Hansard*, 14 November 2022, p 145.

¹⁷⁹ Dr Rod Katz, *Committee Hansard*, 26 October 2022, p 52.

percent of trial vehicles and reduced the median probability of speeding by almost 30 percent when the ISA was active.¹⁸⁰

- 4.17. Dr Katz suggested that ISA technology could be made available in fleet vehicles and that the ACT could be advocating for inclusion of such device through its relationships with other states and territories and federally.¹⁸¹ He told the Committee that there had been a number of reviews of ISA over 10 years based on data in Australia and in Europe. European reports have noted three levels of ISA with intervening use appearing to provide the most safety gains:
- a) informative or advisory
 - b) Supportive or warning
 - c) Intervening or mandatory¹⁸²
- 4.18. ACT Policing spoke of technology they are currently exploring from drone use, numberplate recognition, and stop sticks.¹⁸³ They have observed in other jurisdictions the use of signs that tell people what speed they are going at.¹⁸⁴ ACT Policing are also currently investigating the use of telematics (digital information from the car technology, such as GPS) and advised that police in other jurisdictions have advised it has been used for injured drivers and stolen vehicles for recovery.¹⁸⁵
- 4.19. The Minister for Transport and City Services told the Committee that the ACT Government is considering options on interlock devices for those that have committed an offence relating to drink driving such as that used in Victoria and promoting safe vehicles is part of the ACT Governments next road safety action plan, noting that newer vehicles are generally safer.¹⁸⁶ The Minister also told the Committee that the ACT Government was installing mobile device detection cameras in locations where police have identified people using mobile phones while driving and where there have been accidents.¹⁸⁷
- 4.20. In its Report 15 *Inquiry into Annual and Financial Reports 2021-22*, the Committee recommended that the ACT Government look at evidence based technological advances (particularly cameras on roads) to support police pursuits (recommendation 4).

Committee comment

- 4.21. The Committee considers that studies have shown that increased use of ISA would assist in reducing speeding on ACT roads. There are a number of options that could be considered

¹⁸⁰ NSW Government, Transport for NSW, Centre for Road Safety, *Intelligent Speed Adaption*, <https://roadsafety.transport.nsw.gov.au/research/roadsafetytechnology/isa/index.html> (accessed 6 January 2023)

¹⁸¹ Dr Rod Katz, *Committee Hansard*, 26 October 2022, pp 52-53.

¹⁸² Dr Rod Katz, *answer to QTON 14*, 28 October 2022 (received 28 October 2022)

¹⁸³ Commander Linda Champion, ACT Policing, *Committee Hansard*, 14 November 2022, p 119.

¹⁸⁴ Deputy Commissioner Gaughan, ACT Policing, *Committee Hansard*, 14 November 2022, p 120.

¹⁸⁵ Commander Champion, ACT Policing, *Committee Hansard*, 14 November 2022, pp 121-122.

¹⁸⁶ Mr Steel, Minister for Transport and City Services, *Committee Hansard*, 14 November 2022, p 146.

¹⁸⁷ Mr Steel MLA, *Committee Hansard*, 14 November 2022, p 147.

to increase the use of ISA either more broadly or by targeting high risk offenders. These could include:

- a) polices for the use of Intelligent Speed Adaptation for Government fleet vehicles to ensure the safety of ACT Government employees and the community;
- b) advocate for Intelligent Speed Adaptation technologies as part of national vehicle standards, such as automated speed alerts and maximum speed limiters set to 120 kilometres per hour;
- c) examine a reduction in Motor Accident Injuries (MAI) policy premiums for vehicles with Intelligent Speed Adaptation; and
- d) examine the availability and mandatory use of Intelligent Speed Adaptation in high-risk offender' vehicles as grounds upon which bail and parole can be supported.

Recommendation 17

The Committee recommends that the ACT Government examine how Intelligent Speed Adaptation can assist in the reduction of speeding in the ACT.

Electronic bracelets

- 4.22. The Committee examined the issue of electronic monitoring bracelets as part of bail as an option to assist in checking for speeding and breach of other bail conditions. Currently, the ACT is the only jurisdiction in Australia that does not use electronic monitoring to supervise serious offenders and defendants in the community.¹⁸⁸ Electronic monitoring works by geofencing areas, so offenders are not allowed outside an area determined by the courts.¹⁸⁹ The bracelets may also record if a person is speeding (in combination with CCTV and other tools to identify the driver):

Also on the bracelet, it can tell what speed the person is travelling at. So if they are in a vehicle doing a high speed it will map that, so you will know straight away that they have breached.¹⁹⁰

- 4.23. ACT Policing described the electronic monitoring tags as small and not intrusive. ACT Policing commented that electronic monitoring has been implemented in Queensland for high-risk offenders charged with family violence.¹⁹¹
- 4.24. In its Report No. 9 *Inquiry into Community Corrections*, the Committee recommended the introduction of electronic monitoring bracelets (recommendation three). In its response the Government advised that it agreed in principle and will be consulting with stakeholders and undertaking scoping and feasibility work during 2023.¹⁹²

¹⁸⁸ ACT Policing, *Submission 029*, p 15.

¹⁸⁹ Deputy Commissioner Gaughan, ACT Policing, *Committee Hansard*, 14 November 2022, pp 120-121.

¹⁹⁰ Commander Champion, ACT Policing, *Committee Hansard*, 14 November 2022, p 121.

¹⁹¹ ACT Policing, *Submission 029*, p 15.

¹⁹² Mr Shane Rattenbury, Attorney-General, *Report No 9 of the Standing Committee on Justice and Community Safety- Inquiry into Community Corrections – Government Response*, November 2022, p 4 (tabled 24 November 2022),

- 4.25. The Committee also raised the need for electronic monitoring in its Report No. 15 *Inquiry into Annual and Financial Reports 2021-2022* at recommendation 7 in relation to family violence and dangerous driving offenders who are on bail or parole.

Committee comment

- 4.26. The Committee continues to recommend that the ACT Government introduce electronic monitoring bracelets to bring the ACT into alignment with other Australian States and the Northern Territory.

Recommendation 18

The Committee recommends that the ACT Government provide a status update on their scoping and feasibility work on electronic monitoring options to the Assembly and include consideration of using electronic monitoring to observe and check speeding drivers, with an update on progress to be tabled in the Assembly at the same time as the government response to this report.

High Risk offender scheme for repeat drink and drug drivers

- 4.27. In their submission, ACT Policing proposed a ‘high risk’ offender scheme.¹⁹³ The scheme would target repeat drink and drug drivers in the ACT, who would be required to demonstrate their fitness to drive in court. This would include proven abstinence from the problematic or dependent drug or alcohol use, alongside evidence demonstrating they are no longer a persistent user. Individuals under this scheme would receive tailored welfare support.
- 4.28. ACT Policing referenced a similar scheme in the United Kingdom (UK), that has proven to be successful in keeping unsafe drivers off the roads. Under the UK scheme (which applies only in respect of alcohol and not drug problems at this stage), a ‘high risk offender’ will not get a new license until proven they are fit to drive and pass a medical examination¹⁹⁴ with an approved doctor. The UK categorises individuals as a ‘high risk offender’ if they:
- a) were convicted of two drink driving offences within 10 years
 - b) were driving with an alcohol reading of at least 87.5 microgrammes of alcohol per 100 millilitres (ml) of breath, 200 milligrammes (mg) of alcohol per 100 ml of blood, or 267.5 mg of alcohol per 100 ml of urine
 - c) refused to give the police a sample of breath, blood or urine to test for alcohol

¹⁹³ ACT Policing, *Submission 029*, p 15.

¹⁹⁴ High risk offenders are required to complete a questionnaire, take a physical examination, and have a blood test. Offenders must pay for their own examination.

d) refused to allow a sample of ... blood to be tested for alcohol (for example if it was taken when you were unconscious).¹⁹⁵

4.29. The Committee notes the ACT Government currently has an alcohol interlock program, and alcohol and drug awareness courses.¹⁹⁶ The ACT Government advised the Committee that the alcohol interlock program is mandatory for high risk offenders along with therapeutic treatments:

For high risk drink driving offenders, participation in the alcohol interlock program is mandatory and may include a court ordered therapeutic component as well as a requirement to drive only a vehicle fitted with an interlock device. High-risk repeat offenders must undergo a pre-sentence assessment by the Court Alcohol and Drug Assessment Service and the Court is required to have regard to the report when sentencing the offender. High risk and repeat drink driving offenders are also required to complete an extended alcohol awareness course that is both therapeutic and educational.¹⁹⁷

Committee comment

4.30. The Committee is of the view that the ACT Government should consider a 'high risk' offender scheme such as that used in the UK for repeat drink and drug users in the ACT. The Committee considers that the UK scheme appears to offer a structured and rigorous process for assessing the driving ability of high-risk offenders which can help ensure that only those who are fit to drive are allowed back on the road. The scheme may act as a deterrent for individuals who may otherwise be inclined to drive dangerously knowing that their driving ability will be closely monitored and assessed.

4.31. The 'high risk' offender scheme be considered in addition to other programs such as the alcohol interlock program and alcohol and drug awareness courses. The Committee considers that in developing a high-risk offender scheme there should be consideration of how to design tailored interventions that will show fitness to drive. This may involve a more medical approach for drink/drug driving high risks offenders. It may also be possible to use the same strategy for drivers with repeat speeding offences.

Recommendation 19

The Committee recommends that the ACT Government introduce a high risk offender scheme, which includes requiring recidivist offenders to demonstrate to a court their fitness to drive.

¹⁹⁵ UK Government, *Driving disqualifications*, [Driving disqualifications: Disqualification for drink-driving - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/driving-disqualifications) (accessed 9 March 2023)

¹⁹⁶ Access Canberra, *Licensing, Alcohol and drug awareness courses and Alcohol Ignition Interlock Program* ([act.gov.au](https://www.act.gov.au)) (accessed 9 March 2023)

¹⁹⁷ ACT Government, *Submission 13*, p 8.

24 hour suspension from driving for drivers testing positive to drugs

- 4.32. In their submission, ACT Policing told the Committee that they were seeking to increase the current timeframes for banning driving from 12 to 24 hours where a driver has tested positive to an Oral Fluid Analysis (i.e., showing presence of drugs in their system).¹⁹⁸
- 4.33. ACT Policing told the Committee that unlike alcohol, any trace of illicit drugs in a persons system when driving is illegal and that over the last five years, ACT Policing has conducted 14,500 roadside drug tests resulting in 3,839 charges before the court for drug driving, citing research that drugs can impair driving ability:
- Research shows that drug use increases the risk of a being involved in a collision, with drivers with illicit drugs in their system being ten times more likely to be responsible for causing a collision.¹⁹⁹
- 4.34. Police are not required to prove any impairment in relation to drug driving offences.²⁰⁰
- 4.35. ACT Police also advised the Committee that of the 18 road fatalities (15 fatal road collisions) in the ACT as of 21 November 2022, toxicity results have been returned for 10 known drivers and seven were found with cannabis in their system, with five of those drivers with cannabis, and alcohol and/or meth found in their system.²⁰¹
- 4.36. The Road Safety Legislation Amendment Bill 2022 proposes a mandatory requirement for ACT Policing to issue an immediate licence suspension for refusing to take an oral fluid sample.²⁰² The explanatory statement to the Bill states that there are strong links between driver impairment and the presence of drugs:
- Drug driving is a well-established serious road safety issue. There is a range of significant evidence linking drugs to elevated crash risk. Drug use can slow down a person’s reaction time, causing a distorted view of time and distance. Drugs can also stimulate a person’s nervous system which can lead to a reduced attention span, and the sudden onset of fatigue as the stimulant effects wear off. A person who drives or rides with drugs in their system can make dangerous decisions, increasing the chance they’ll harm themselves, their passengers, or other road users. Within the last five years, approximately 41% of Victorian drivers and motorcyclists who died on the roads and were tested had drugs in their system.²⁰³
- 4.37. The Australian Federal Police Association also suggested that the ACT Government should allow police to immediately suspend a licence of a person taken into custody for a drug-detecting blood test, with the suspension to remain until the test results are known.²⁰⁴

¹⁹⁸ ACT Policing, *Submission 29*, p 16.

¹⁹⁹ ACT Policing, *Submission 29*, p 8.

²⁰⁰ ACT Policing, *Submission 29*, p 9.

²⁰¹ Mr Gaughan, Deputy Commissioner, ACT Policing, *answer to QTON 4*, 30 November 2022.

²⁰² Explanatory Statement, Road Safety Legislation Amendment Bill 2022, p 3.

²⁰³ Explanatory Statement, Road Safety Legislation Amendment Bill 2022, p 29.

²⁰⁴ Australian Federal Police Association, *Submission 25*, p 3.

- 4.38. ATODA told the Committee that there were human rights and proportionality concerns with the current zero tolerance approach to drug driving noting that the ability to test for the impact of drugs and driving ability is not clear:

While the evidence regarding efficacy of RBTs in enhancing road safety is extensive, that is not the case for roadside drug testing, as the level of impairment from typical use of some illicit substances is not as high as for alcohol, the link between impairment and detectable amounts is not clear; and the deterrent effect is less well-established.²⁰⁵

- 4.39. The Committee notes that in NSW, a driving ban for 24 hours is imposed if there is a positive result to a saliva test following positive Mobile Drug Testing.²⁰⁶ According to the Alcohol and Drug Foundation, even after the effects of drug wear off, it can still be detected in a person's system for a certain amount of time. Detection times can vary according to the drug strength, size/weight, tolerance to the drug, and if it were mixed with other drugs. For example, the effects of cocaine will last for 30 to 45 minutes but can be detected in a saliva test for up to 24 hours and two to five days in a urine test. The effects of cannabis can last up to 12 hours but can be detected in a saliva test for up to 30 hours and in a urine test for 10 to 30 days or longer.²⁰⁷

Committee comment

- 4.40. The Committee considers that given the risks to the public on the road due to the impact that drugs may have on a person's ability to drive safely, it is important to have greater understanding on how long driver impairment might last after drug intake to consider how long a person should be prevented from driving if they have tested positive to drugs in their system.

Recommendation 20

The Committee recommends that the ACT Government monitor the evidence base for driver impairment following drug intake and update the assembly when it becomes available.

²⁰⁵ ATODA, *Submission 34*, p 5.

²⁰⁶ Transport for NSW, Centre for Road Safety [Drugs and driving - Alcohol and other drugs - Staying safe - NSW Centre for Road Safety](#) (accessed 10 March 2023),

²⁰⁷ Alcohol and Drug Foundation, How long do drugs stay in your system? [How long does a drug stay in your system - infographic 1.pdf \(adf.org.au\)](#) (accessed 6 April 2023)

5. Support for victims of dangerous driving

Hospital support

- 5.1. The Committee examined the experience of victims in the hospital environment. Ms Jago described her experience with a mental health practitioner in the hospital who wanted to take back a second Red Cross trauma teddy given to Ms Jago’s two-year-old son when she discovered that he had already been given one. She stated that this action showed a lack of understanding given the circumstances. She commented:

How could it possibly be ok to try and take back a teddy just given to a two year old who has been in a motor vehicle collision in which his brother died? I put it down to inexperience or lack of training. The guilt I feel that my surviving son got 2 teddies that day, is in part the reason I knit 2 teddies each year for donation to Red Cross.²⁰⁸

- 5.2. Ms Barjestehmanesh told the Committee that about her hospital experience, describing how she was expected to handle referrals, send emails and call people while she was incapacitated due to her injuries:

I do not know what the government can offer in terms of the support for the people who have a car accident, but they need to look at how severe these kinds of accidents are and then just provide this system while they are in the hospital, to engage them. The hospital sent a referral letter to ask them to get in contact with that person and they said, “Send this email,” “Send that email,” “Call this person,” “Talk to this person”—all these kinds of things. It was not possible; both my arms were just in casts, so I could not even move this or this. I could not walk and hold the crutches. I needed help from my kids or my daughter to push my back to just sit up. How am I meant to do all of this, and then being on very strong medication? I was half asleep. I cannot remember a lot of stuff happening at that time while I was taking those medications, because without those medications I was not able to deal with the situation at all.²⁰⁹

Committee comment

- 5.3. The Committee appreciates that hospital staff may lack experience in dealing with people who have experienced trauma or may be busy providing medical care and not able to assist patients with administration involved with their injuries.

Recommendation 21

The Committee recommends that the ACT Government introduce additional trauma training for health practitioners to improve support to victims of dangerous driving and their families.

²⁰⁸ Ms Jago, *Submission 021*, p 4.

²⁰⁹ Ms Barjestehmanesh, *Committee Hansard*, 18 November 2022, p 162.

The need for immediate trauma support at the scene

- 5.4. The Committee heard that the period immediately following an accident is extremely traumatic for victims and families of victims. However, while there was support in the longer term through the Coronial Counselling Service and Red Nose Counselling Service, there was a gap in trauma support at the time of the accident.²¹⁰
- 5.5. Ms Jago told the Committee that at the time of the accident ‘there are some things that I think I possibly may have done differently if a trauma support person had been at the scene’ and that preferably the same trauma person should be available at the scene and then at the hospital.²¹¹
- 5.6. Support Link funding ceased in 2016. The service continues to provide support in cases where there was a sudden death (for example, road fatality, suicide, heart attack) and the Police would seek their assistance. The types of assistance include helping people navigate through the initial trauma, calling people (such as the person’s boss to tell them why they weren’t at work), helping with questions from Police, and keeping people hydrated. The service also assists with information on the process of identifications, how to make funeral arrangements, and back to work issues. The service often assisted those that are outside the criteria for support provided by other services such as Victim Support or where the demand for other services exceeds capacity.²¹²
- 5.7. Clients can include people other than the immediate victims such as witnesses, or people who stopped to help:

We do not always recognise the impact on witnesses. We have been doing a lot of calls lately to people who stopped to help. Their stories are traumatic. Their stories are very sad and very difficult, and their lives have changed because they decided to stop that day. So there are a lot of people that would fall outside of that.²¹³

- 5.8. It is difficult for police to provide this type of support at the scene given their role they play in investigating the accident. The role that SupportLink Australia played took pressure off police:

When I was the Coroner’s Officer, we did not have support there for trauma support. They came in halfway through the system when I was there, and it took so much pressure off the police officers. They could actually concentrate on their job of processing the scene and gathering the evidence, and the families were well looked after. They could deal with all the complications and the issues they may have from the very scene and throughout the post mortem and the identification and through the criminal brief or coronial brief...

²¹⁰ Ms Jago, *Committee Hansard*, 26 October 2022, pp 10-11.

²¹¹ Ms Jago, *Committee Hansard*, 26 October 2022, p 11.

²¹² Mrs Donna Evans, Executive Director, SupportLink Australia, *Committee Hansard*, 26 October 2022, pp 35-36.

²¹³ Mrs Evans, *Committee Hansard*, 26 October 2022, p 39.

That is where SupportLink stepped in. They could take that work off police officers and deal with the family and help them through the whole process. From the police perspective, it was a great service and it assisted us in doing our job and doing it professionally, and the families were not left behind.²¹⁴

5.9. Mr McLuckie told the Committee about the lack of support currently available for victims and their families:

One thing that I think certainly needs to be looked at is the support arrangements, particularly in those very early stages of the process when families are informed of the death of their loved one. We had the police turn up in the morning when Matthew died. They had a very busy weekend that weekend. They had three fatalities over a period of three or four days. They then went off shift. We had minimal information as to the event of the crash, and subsequently found out through social media. We had to engage a family friend, who is a commander in ACT Policing, to actually confirm the details that had been reported.

After the police left the house, there really was no support. There was no reach out. You start working through the logistics of funerals, arranging to get to see the coroner's office to identify the body, and then there's the minefield of paper work from financial assistance to victim support and also the current Motor Accidents Injuries Act. You really are left alone to try and manage your way through them. So, if I could change one thing, it would be that.²¹⁵

5.10. The Australian Federal Police Association also told the Committee that such a service was still needed, as the police are generally unable to fill this role:

I think one of the key recommendations for us is money be spent on SupportLink or a SupportLink-type service for all emergency or first responders and early responders, the public, all the volunteers as well as the families. Just like we are in the ACT Policing, the AFP is also stretched. So the resources for assistance, whilst it is there, having an external service provider is often better.²¹⁶

Committee comment

5.11. The Committee considers that while there are services to assist victims and their families at later stages, the evidence provided by witnesses shows that there is a gap in support provided at the scene that cannot be filled by police and others attending at the scene who are undertaking other important tasks. While this task has been carried out by SupportLink, they are no longer funded to sufficiently fill the gap. This is a gap that needs to be urgently addressed.

²¹⁴ Mr Rick McQualter, Board Member, SupportLink Australia, *Committee Hansard*, 26 October 2022, p 38.

²¹⁵ Mr McLuckie, *Committee Hansard*, 27 October 2022, p 71.

²¹⁶ Mr Caruana, Australian Federal Police Association, *Committee Hansard*, 27 October 2022, p 104.

Recommendation 22

The Committee recommends that the ACT Government urgently fund a trauma service that is available at the scene of an accident and a 24 hour hotline to help victims and their families.

Victims of Crime Commissioner reforms

Wrap around service for families impacted by motor vehicle accidents

5.12. The Committee examined the Victims of Crime Commissioner (VOCC) proposals for funded wraparound services for those impacted by motor vehicle accidents causing death. Currently, families or victims suffering harm due to motor vehicle accidents are ineligible for services from Victims Support ACT (VSACT). The VOCC told the Committee that the original policy reason for this is because such services should be paid for through an insurance claim. However, this has resulted in fragmented and delayed services for victims.²¹⁷

5.13. The VOCC is therefore not funded to provide such services in respect of motor vehicle accidents. However, the VOCC told the Committee that VSACT has been increasingly called on to provide support to families impacted by motor vehicle accidents causing death.²¹⁸ They told the Committee that when they have families who have been impacted by motor vehicle accidents causing death, they help because they 'cannot not help' them.²¹⁹ They told the Committee that they would need funding for at least two additional staff members to assist where there are multiple family members involved and a different support person might be required for family members:

We are advocating for resources. I think we would need at least two people because, as Helen alluded to earlier, there are often multiple family members involved and close friends. So even though there may only be one incident, there might be a number of victims of crime. We also know that sometimes family members can be in conflict, and they may not want the same support person. It may not be appropriate for them to have the same support person. So we would need at least two people, I think. We would be aiming for a small team of people who can develop specialisation in this area, and all of the things I was talking about earlier, in terms of gaining an understanding of all of the entitlements available and the paperwork and the pathway through that.²²⁰

5.14. Dr Watchirs told the Committee that because victims of motor vehicle accidents causing death are not eligible for victim support services, those referrals do not always come

²¹⁷ Victims of Crime Commissioner, *Submission 043*, p 3.

²¹⁸ Victims of Crime Commissioner, *Submission 043*, p 3.

²¹⁹ Ms Alison Munro, *Committee Hansard*, 18 November 2022, p 176.

²²⁰ Ms Munro, Victims of Crime Commission, *Committee Hansard*, 18 November 2022, p 177.

through or people are not aware of the service until later in the process.²²¹ The Justice Reform Initiative also told the Committee they supported more support for families of victims to be available from the VOCC.²²²

- 5.15. Ms Jago told the Committee that her family was not aware of the services provided by the VOCC until after the coronial inquest had begun.²²³ Mr Corney told the Committee that there is a need for a consistent support person throughout the process:²²⁴

[I] also found at each point we have had different support people. We were not engaged with Victims of Crime to start with. I really appreciate their support more recently. One of their members was at the Coroner's Court at the time. She was excellent in her support as well. And earlier, as alluded, to the Victim Police Liaison was excellent at a time when I think we were just in a different space. As were the police who—it is just unbelievable to me how they could remain so calm and helpful after what they happened to see on that day as well. But I guess it was not a consistent person the whole way through. And there was a little bit of, "What is the playbook here? As a victim what happens next? Where does this go?"²²⁵

- 5.16. ACTNOWForSaferRoads told the Committee that there is a disjointed and limited approach to support service for families after a traumatic event, with the onus on the victim to navigate the system.²²⁶

Support for people with non-fatal injuries

- 5.17. Ms Barjestehmanesh told the Committee that she struggled with the administrative side of dealing with the outcomes of her accident:

Imagine being on a hospital bed, and I cannot move at all. I could not move in there, in the first 10 days, at all. I was just in the bed and they were washing me in the bed and things like that. But I did talk to lawyers, but I was not in a court—like going and sitting in a court or anything like that. I just left it with them to deal with it because, first of all, I could not. For six months of my life it was just doctors, physios, surgeries—after the car accident, I am saying—and that is it. And then I tried and tried to be on the phone with people, sending emails and, yes, doing extra stuff that you do not want to go through.²²⁷

[...]

But going through all of the paperwork and emails and getting in touch with the people to say, "What can you do for me?" or "What can you support me with?" All of the organisations that are involved say, "Okay. Send us an email." "Do this." "We put your name down on the list for the physio, for this or that," But the person cannot even sit down, lie down properly or breathe properly.²²⁸

²²¹ Dr Watchirs, *Committee Hansard*, 18 November 2022, pp 175-176.

²²² Justice Reform Initiative, *Submission 40*, p 12.

²²³ Ms Jago, *Submission 021*, p 10.

²²⁴ Mr Corney, *Submission 035*, p 8.

²²⁵ Mr Corney, *Committee Hansard*, 26 October 2022, p 22.

²²⁶ ACTNOWForSaferRoads, *Submission 020*, pp 3-4.

²²⁷ Ms Barjestehmanesh, *Committee Hansard*, 18 November 2022, p 159.

²²⁸ Ms Barjestehmanesh, *Committee Hansard*, 18 November 2022, p 162.

- 5.18. The Committee asked the Human Rights Commissioner how the VOCC could support victims of dangerous driving with non-fatal injuries. The VOCC explained they would need to ensure that there was awareness of the service so that the victim could approach them for help. Then they could advise how the Financial Assistance Scheme (FAS) worked, whether they need to approach the MAI first and take some of the administrative burden off the victims.²²⁹
- 5.19. While the VOCC were open to providing this service in the future they noted that their submission only was only to provide the service for dangerous driving causing death. Once it was established and reviewed, then the VOCC could consider expanding the service to injuries.²³⁰
- 5.20. The DPP told the Committee that his office supports victims by providing them with information about court processes, and through a well-trained witness assistance service. They also assist in other ways such as arranging parking, calling for evidence remotely (if the victim is in hospital).²³¹

Support for victims of negligent driving

- 5.21. The VOCC told the Committee that there is a need for reform regarding ‘negligent’ driving in addition to ‘culpable’ driving.²³² Under current legislation²³³ there are ‘special requirements’ (or ‘special measures’) for some witnesses in proceedings that provide protections in relation to their participation in a justice process. These special requirements include:
- a) Preventing examination of the witness by a self-represented accused person;
 - b) permitting the audiovisual recording of police interview;
 - c) giving evidence at pre-trial hearing; and
 - d) giving evidence by audiovisual link.
- 5.22. Therefore, matters involving ‘culpable driving causing death’ are considered a ‘serious violent offence proceeding’ and entitles a witness who is a close friend or family member to access the special requirements (listed above). However, these measures are not extended to ‘negligent driving causing death’.²³⁴
- 5.23. The VOCC told the Committee, that the special requirements should also apply to negligent driving:

In our view, it could extend to negligent driving so that they can be afforded that in providing witness evidence to the court. That will be based on the close relationship

²²⁹ Ms Alison Munroe, Victims of Crime Commission, *Committee Hansard*, 18 November 2022, p 177.

²³⁰ Dr Watchirs, *Committee Hansard*, 18 November 2022, p 177.

²³¹ Mr Drumgold, *Committee Hansard*, 18 November 2022, pp 191-192.

²³² Victims of Crime Commissioner, *Submission 043*, pp 5-6.

²³³ Section 40, *Evidence (Miscellaneous Provisions) Act 1991*.

²³⁴ Victims of Crime Commissioner, *Submission 043*, pp 5-6.

with the loved one who has passed away in the collision, not because of the nature of the charge. We think this small, good change could provide much more consistent support for families in that regard.²³⁵

Committee comment

- 5.24. The Committee considers that families of victims who have died through driving offences are in need of better support that is consistent through out the process with the option of this starting at the coronial stage. The current system is fragmented and difficult for bereaved families to navigate.
- 5.25. The Committee found that victims with non-fatal injuries were often in a difficult position to navigate through the court and other processes such as making MAI claims due to their injuries and needed more assistance.
- 5.26. The Committee is also of the view that the ACT Government should support and introduce legislative reform so witnesses are provided with the same protections regardless of whether the charge is culpable or negligent driving to reflect the needs of families with a close relationship to the deceased victim.

Recommendation 23

The Committee recommends that the ACT Government provide funding for the Victims of Crime Commission to:

- a) provide a wrap around service families of victims as a result of dangerous driving;
- b) support people with non-fatal injuries as a result of dangerous driving; and
- c) extend support for victims of 'negligent driving'.

Coronial support

- 5.27. The Committee examined the issue of the Coronial Counselling Service²³⁶ in the territory. The ACT Coronial Counselling Service provides free support and counselling to anyone affected by a death being investigated by the ACT Coroners Court.²³⁷
- 5.28. The ACT Government told the Committee that funding is provided to Relationships Australia Canberra Region for the operation of the ACT Coronial Counselling Service:

This service is available for people who are affected by deaths that are subject to a coronial process and ACT residents who are affected by a traumatic death and are impacted by the coronial process. The ACT Coronial Counselling Service provides the following specialised services and supports:

²³⁵ Dr Watchirs, *Committee Hansard*, 18 November 2022, p 175.

²³⁶ See [Coronial Counselling — Relationships Australia Canberra and Region \(racr.org.au\)](https://racr.org.au)

²³⁷ Relationships Australia, Canberra and Region, [Coronial Counselling — Relationships Australia Canberra and Region \(racr.org.au\)](https://racr.org.au) (accessed 21 March 2023).

- (a) intensive therapeutic counselling and family therapy including trauma, grief and bereavement counselling services;
- (b) liaison with the coronial office and staff;
- (c) support at coronial hearings;
- (d) information about the impact of grief, bereavement and trauma; and
- (e) referrals and links to appropriate support and services.²³⁸

5.29. A total of \$262,860.51 was provided to the service in 2022-23 by the ACT Health Directorate. This includes an additional \$80,000 annually provided in the 2022-23 Budget in recognition of the growing demand for the service.²³⁹

5.30. The ACT Government advised of other available services:

- a) 'Griefline' a phone service that operates from 8am to midnight;
- b) A Family Liaison Officer, who is a point of contact for families and can provide updates on coronial investigation and practical support; and
- c) Victims Services from the Australian Federal Police and a range of other non-government organisations listed on the ACT Magistrates Court website.²⁴⁰

5.31. SupportLink told the Committee that the Coronial Counselling Service has not taken a referral from ACT Police since November 2022 because they had reached capacity.²⁴¹ The VOCC also told the Committee that they understood the service to be heavily oversubscribed with significant delays in appointments.²⁴² In addition the Coroner's Court has only one family liaison officer to help bereaved families.²⁴³

5.32. In their submission, SupportLink said that the Coronial Counselling Service cannot meet the needs of all members in the Community who have been impacted by traumatic events. They said that although referrals can be made to the Coronial Counselling Service following sudden death, not all individuals or families are eligible. Since November 2021, the Coronial Counselling Service had not been receiving referrals from ACT Policing, making it more difficult to find alternative and appropriate services and putting unsustainable demand on other ACT services. As a result, SupportLink has received over 200 referrals from ACT Policing or members of the community including witnesses impacted by sudden death and have accepted these referrals. They told the Committee that:

[T]his is not sustainable, as SupportLink do not have the capacity to provide the required support to those in need, without funding to deliver this service.

If/when the CCS [Coronial Counselling Service] reopens to receives referrals for the client group they are funded to support, there will still be a significant service delivery

²³⁸ ACT Government, *Submission 13*, pp 15-16.

²³⁹ Mr Shane Rattenbury, Attorney-General, *answer to QTON 008*, 22 November 2022.

²⁴⁰ ACT Government, *Submission 13*, p 16.

²⁴¹ Mrs Evans, Supportlink, *Committee Hearing*, 26 October 2022, p 36.

²⁴² Victims of Crime Commission, *Submission 43*, p 7; Victims of Crime Commissioner, *Letter dated 23 December 2022*, p 1.

²⁴³ Victims of Crime Commissioner, *Letter dated 23 December 2022*, p 1.

gap as the CCS [Coronial Counselling Service] will offer counselling support following a coronial fatality. This model of service does not support friends, witnesses, emergency responders and this has huge implications on individuals and the entire community.²⁴⁴

- 5.33. Ms Jago commented on her positive experience of the Coronial Counselling Service. She commented that while it took her two to three months to get into the service, it is now oversubscribed.²⁴⁵ Regarding funding for support services in the ACT, Ms Jago commented:

We had access to the counselling service provided by the Coroner's Court, due to our sons' death. We had access to this support from the beginning even though it would take almost two years for the criminal process to conclude so that the coronial process could begin. I am so grateful for this service. Please ensure it is properly funded to continue the much needed support for families going through the coronial process.²⁴⁶

I realise that there is only a certain amount of funding that can go around, but I think there needs to be caution about robbing Peter to pay Paul.²⁴⁷

- 5.34. The VOCC also told the Committee that the Coronial Counselling Service is oversubscribed, and that Victims Support ACT is needed to fill gaps for families who 'are either waiting for MAI recompense to fund therapeutic services, who cannot be seen by the coronial counselling service and/or where the wait times in the private sector (currently two to three months) are too long.'²⁴⁸
- 5.35. The Attorney-General told the Committee that his agency is leading a review of the coronial process with an independent facilitator. The review will look to how the process may be improved, noting that there had been strong feedback that the process was difficult for families.²⁴⁹

Committee comment

- 5.36. Given the pressure on the Coronial Counselling Service with demand outstripping supply, the Committee considers that there is still a gap in such services despite the Budget funding. The Committee heard from victims that the Coronial Counselling Service had provided much needed support which should be available to those who need it.

Recommendation 24

The Committee recommends that the ACT Government provide extra funding to cover the gap on the coronial support list.

²⁴⁴ SupportLink, *Submission 024*, pp 5–6.

²⁴⁵ Ms Jago, *Committee Hansard*, 26 October 2022, p 10.

²⁴⁶ Ms Jago, *Submission 021*, p 9.

²⁴⁷ Ms Jago, *Committee Hansard*, 26 October 2022, p 11.

²⁴⁸ Victims of Crime Commissioner, *Letter dated 23 December 2022*, p 1.

²⁴⁹ Mr Rattenbury MLA, *Committee Hansard*, 14 November 2022, p 139.

Trauma informed subpoenas

- 5.37. The Committee heard that court related events can be even more stressful and upsetting for families of victims when occurring around significant dates such as the deceased victim’s birthday:

I have found it difficult that quite a few of the court dates and, since then, things relating to parole being very close to Blake’s birthday. That is a time of year that is difficult for our family. It should be a time when we are trying to honour the memory of our child, but, instead, across multiple years, while we have been trying to do that, we have also been trying to navigate these court proceedings or administrative procedures relating to parole.²⁵⁰

- 5.38. The Sentence Administration Board told the Committee that it acknowledged that the timing of parole hearings could be stressful for families but explained that their timelines are subject to the legislation – i.e., the *Crimes (Sentence Administration) Act 2005*.²⁵¹

- 5.39. The DPP told the Committee that while subpoenas are technically issued by the court, they are generated by his office. His office therefore made efforts to avoid potentially insensitive timing with subpoenas:

We will have had some engagement before then and we will have told them that a subpoena is coming. We will sometimes ask them, if it is appropriate, “How would you like to receive that? Would you like to come in and pick it up?” We try to facilitate that so that people are not cold-called. We have a lot of witnesses in a lot of matters, so we service the sensitivities higher than we service other people.

People who might be on the periphery of a matter might not get the service and might end up being cold-served by servicing processing from the AFP. But if we have identified a particularly vulnerable complainant or a particularly vulnerable or traumatised witness, we will then put scaffolding around them, and that will include things like serving subpoenas.

We deal with a lot of trials, a lot of hearings, a lot of people and a lot of circumstances. It is almost impossible to get things perfect every time. But we go through a constant review.²⁵²

Committee comment

- 5.40. The Committee observed that witnesses who have lost a loved one are traumatised and unfamiliar with court processes and therefore can be very sensitive when subpoenaed. This can be exacerbated during times such as birthdays and anniversaries, and steps should be taken to ensure that impacts on the victim or their families can be taken into account.

²⁵⁰ Ms Jago, *Committee Hansard*, 26 October 2022, p 11.

²⁵¹ Ms Beacroft, *Committee Hansard*, 18 November 2022, p 166.

²⁵² Mr Drumgold, *Committee Hansard*, 18 November 2022, pp 188-189.

Recommendation 25

The Committee recommends that the ACT Government ensure that subpoenas issued to victims are trauma informed (for example, avoiding them falling on anniversaries).

Trauma training for court staff and judiciary

5.41. The Committee heard that attending court is stressful for victims. Ms Jago spoke of the benefits of family rooms near the Children’s Court as a ‘a safe space, a space where you could sort of get your thoughts together and be calm’.²⁵³ The rooms also allow victims to be separated from the accused. However, the rooms are not available in the Supreme Court: ‘I think for everyone involved it would just be less stressful and less traumatising if it could be coordinated for those rooms to be available in Supreme Court matters as well as Children’s Court matters and coronial matters.’²⁵⁴

5.42. The ACT Government told the Committee that support is provided to assist families via a Family Liaison Officer:

The court employs a Family Liaison Officer who, while not a counsellor or social worker, can provide families with information on the Coronial processes. The Family Liaison Officer is the Court’s point of contact for families and provides updates on the progress of the coronial investigation and inquests and practical support during the conduct of a Coronial hearing.²⁵⁵

5.43. The DPP told the Committee about court procedures to help keep people apart:

We have a range formal measures and informal measures that we use to try to keep people apart. Ultimately, all of the evidence occurs in one court room. The accused is in that court room and the common law says that the accused has a right to hear the witnesses give evidence against them. So ultimately everybody is moved into one location.

We have a witness assistance service that manages witness fears, such as the inadvertent stumbling across somebody else involved in the matter that might trigger them. We have the ability, in certain circumstances, for witnesses to give evidence via AVL [audio-visual link]. Witnesses are very well serviced generally in the ACT. There are witness liaison officers in the AFP. I have the Witness Assistance Service, and of course there is the victims of crime service in the ACT.

It is really difficult, and indeed sometimes dangerous, to adopt a uniform protocol, because it will depend on a witness. For example, one witness might be really fearful of bumping into somebody and might want one of my witness assistance officers to walk over. Another one might be offended by that. They might feel that they are being harassed by my witness assistance officers, who are over-servicing them. It is

²⁵³ Ms Jago, *Committee Hansard*, 26 October 2022, p 10.

²⁵⁴ Ms Jago, *Committee Hansard*, 26 October 2022, p 10.

²⁵⁵ ACT Government, *Submission 13*, p 16.

really a case of tailoring what a particular complainant or victim or witness wants and trying to meet their desires. The system needs enough flexibility to achieve that.²⁵⁶

Committee comment

- 5.44. The Committee found that families navigating the court system can find it very challenging. While the courts provide support to victims it can be very triggering and traumatic for witnesses finding themselves walking into court buildings at the same time as offenders. The Committee considers that there should be arrangements put in place to better facilitate and assist victims in those situations noting that different witnesses will have different needs and a flexible approach is needed.

Recommendation 26

The Committee recommends that the ACT Government introduce trauma training for all court staff and judiciary and ensure that there are physical arrangements (such as a family room) to minimise the likelihood of interactions between defendants and families and victims at the courts.

Motor Accident Injury Scheme

- 5.45. ACTNOWForSaferRoads told the Committee that Mr McLuckie had significant difficulties in dealing with the MAI (Motor Accident Insurance) scheme including over complicated forms involving significant administrative burdens:

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.²⁵⁷

- 5.46. Mr McLuckie said there is little guidance for families of deceased victims and the onus is on the victim to navigate the system.²⁵⁸ He also said that the insurer under the MAI scheme (GIO) advised him that as they were not insurer for the guilty party that they could not help, he needed to find the other insurer and find out the incident number. He also needed to find out the name of the other driver, the registration number the details of the accident and the percentage at fault. He received the invoice from the funeral service with 21 days to pay. He said his son's mother found the forms too complex and her doctor refused to fill in the MAI benefit form because she wasn't involved in the accident.²⁵⁹
- 5.47. The MAI Commission said that the move to the new defined benefits MAI scheme from the old Compulsory Third Party scheme was partly because of community feedback that a claimant had to continually tell their story and prove someone was at fault. They told the

²⁵⁶ Mr Drumgold, *Committee Hansard*, 18 November 2022, p 188.

²⁵⁷ ACTNOWForSaferRoads, Submission 20, p 2.

²⁵⁸ ACTNOWForSaferRoads, Submission 20, p 3.

²⁵⁹ Mr McLuckie, *Committee Hansard*, 27 October 2022, p 72.

Committee that they are trying to streamline the forms as much as possible avoid people having to provide the same information multiple times.²⁶⁰

- 5.48. The funeral benefits form in particular, was being considered on whether it was necessary to provide the details of the at fault vehicle given that when there is a death, it is a coronial matter and the information is quite closely held. They are working on with insurers, on this noting that it is a stressful time for people and there is a pressure for people to pay a large amount for a funeral at short notice.²⁶¹
- 5.49. The Committee explored with the MAI Commission how information was shared between agencies in order to reduce the burden on victims. The MAI Commission noted that they have worked with ACT Police on this issue.²⁶² They also told the Committee that they have liaised with Access Canberra about the stolen vehicle involved in the accident resulting in the death of Mr Matthew McLuckie, regarding the status of the insurance on the vehicle on the date of the accident and a backdating issue that had resulted in serious problems in claiming for Mr Tom McLuckie.
- 5.50. The Committee also heard that the MAI scheme is due under the legislation for a three year review from 1 February 2023 and that the Commission is open to feedback on how the scheme can be improved.²⁶³

Despite best efforts, there will be things which will come up that we will identify as things perhaps that do need to be improved with the scheme. As those things come up, we are working to make changes where we can. I think it is important to note the stage that the scheme is at. There is a lot of detail in the scheme, but, as we have said, that is necessary, given that it is a compulsory scheme which is administered by private sector insurers and that detail is necessary to provide clarity in terms of exactly what the benefits are that people actually are entitled to under the scheme. We are always open to feedback as to ways that the scheme can be improved.²⁶⁴

- 5.51. The VOCC told the Committee that their service includes providing assistance to victims accessing the MAI Scheme where appropriate.²⁶⁵ The Human Rights Commissioner also told the Committee that under the VOCC proposed wrap around service, they could interact with the MAI, by provide initial support and help people access entitlements under the MAI given the stress and trauma people are under at that time.²⁶⁶ The VOCC advised the Committee that the system is complex:

I think it is difficult, looking at the MAI legislative framework. I know that it is also something that is quite new in the last few years. When our office has been assisting

²⁶⁰ Ms Lisa Holmes, Motor Accident Injuries Commissioner, *Committee Hansard*, 7 December 2022, p 196.

²⁶¹ Ms Nicola Clark, Acting Motor Accident Injuries Commissioner, *Committee Hansard*, 7 December 2022, p 196-197.

²⁶² Ms Clark, *Committee Hansard*, 7 December 2022, pp 196-197.

²⁶³ Ms Holmes, *Committee Hansard*, 7 December 2022, p 207.

²⁶⁴ Ms Holmes, *Committee Hansard*, 7 December 2022, p 207.

²⁶⁵ Victims of Crime Commissioner, *Submission 43*, p 4.

²⁶⁶ Dr Watchirs, *Committee Hansard*, 18 November 2022, p 179.

families in this MAI space we have found that it is a highly technical and highly complex area.²⁶⁷

- 5.52. The Minister for Transport and City Services told the Committee that the Victims of Crime Commission is looking to update a guide to provide more information to victims on what support is available including the MAI Insurance Scheme and how people can make a claim, noting that it is very difficult for families to engage with complex systems while organising funerals etc.²⁶⁸
- 5.53. The Attorney-General told the Committee that the Charter of Victims Rights puts obligations on government agencies to better support victims in a range of ways including provision of information and contact points.²⁶⁹

Committee comment

- 5.54. The Committee found that the MAI scheme needs some changes to improve the experience for families of victims during a stressful time. The Committee acknowledges that the MAI Commission has been looking into how forms can be streamlined and how to improve information sharing so that a victim's family is left with an administrative burden in finding information to make a claim.

Recommendation 27

The Committee recommends that the ACT Government requires the Motor Accident Insurance Commission improve their customer service delivery by being trauma informed.

Recommendation 28

The Committee recommends that Access Canberra improve their information sharing with the Motor Accident Insurance Commission.

²⁶⁷ Ms Marie Skalistis, Victims of Crime Commission, *Committee Hansard*, 18 November 2022, p 180.

²⁶⁸ Mr Steel MLA, *Committee Hansard*, 14 November 2022, p 138.

²⁶⁹ Mr Rattenbury MLA, *Committee Hansard*, 14 November 2022, p 139.

7. Conclusion

- 7.1. The Committee has made 28 recommendations in its *Inquiry into Dangerous Driving*.
- 7.2. The Committee notes that as of 27 October 2022 there have been 18 lives lost due to road accidents in 2022:

For the size and population of Canberra, that figure is just way too high. I do not think it would be remiss of me to say that it has been a horror year for Canberra. ACT Policing and all emergency service responders have likely not encountered a year like this before, or certainly for at least a decade.²⁷⁰

- 7.3. The Committee has also noted the success of Operation TORIC but that this also indicates there is a significant dangerous driving problem in the ACT:

From 1 August 2022 to 27 October 2022, Operation Toric had arrested 122 separate offenders and laid 310 charges for offences, including aggravated dangerous driving, driving at police, taking a motor vehicle without consent, drug driving and firearm offences. Of those charged at this stage, 39 are on bail for other offences, 16 were on good behaviour orders, five were on intensive correction orders, and eight were on parole—six in the ACT and two from New South Wales.²⁷¹

- 7.4. The Committee would also like to thank all who participated in this Inquiry, including those who made submissions, appeared at the public hearings, particularly victims and families of victims of dangerous driving. In particular the Committee would like to acknowledge and offer their condolences to the following witnesses:

- a) Mr Bill Stefaniak – father of Mr Jozef Stefaniak who died on 2 January 2018.

‘I think his last words were “love you” and “take care” ...’²⁷²

No parent expects to have to bury their child...my son Joe died because of the criminal behaviour of a so called friend who, along with her then partner (another so called mate) bolted from the scene of the accident leaving Joe dead and alone on Yarra Glen....

He will never be there, as he was so often, what with me working in Sydney, for his mother each day, helping her in so many ways and making her laugh at his quirky sense of humour.²⁷³

- b) Ms Camille Jago and Mr Andrew Corney – parents of Blake Corney: ‘Blake was four when he died. He had these little dimples in his cheeks and, when he had a big smile, you could really see the dimples and his really bright shining eyes. And he was

²⁷⁰ Deputy Commissioner Gaughan, ACT Policing, *Committee Hansard*, 14 November 2022, p 115.

²⁷¹ Deputy Commissioner Gaughan, ACT Policing, *Inquiry into Annual Reports, Committee Hansard*, 01 November 2022, p 2.

²⁷² Mr Bill Stefaniak, *Committee Hansard*, 26 October 2022, p 1.

²⁷³ R v Smith [2019] ACTSC 65, Victim Impact statement by Mr Bill Stefaniak

always running everywhere. He was so busy and so full of life. He loved trains and Lego. He had so much potential and that was taken away'.²⁷⁴

- c) Mr Tom McLuckie – father of Mr Matthew McLuckie – ‘He was a lovely boy. I will be honest: he was a lovely, generous and thoughtful kid. He was hardworking. He was working 30-odd hours a week at the airport and he was studying. He marked it all off—his 34 hours a week. He would take his laptop to the airport. The wi-fi was not great, and there was only one seat where he could actually get his hotspot to work. He was just a really dedicated loving kid, and he was well loved by the family. He loved his family too. That was the biggest thing for him. He loved his extended family in the UK. He still saw himself as actually quite Scottish. Unfortunately, he was taken from us, and there is nothing we can do to bring him back’.²⁷⁵

7.5. The Committee would also like to acknowledge and offer their condolences to other victims of dangerous driving.

Peter Cain MLA
Chair
April 2023

²⁷⁴ Ms Jago, *Committee Hansard*, 26 October 2022, p 15.

²⁷⁵ Mr McLuckie, *Committee Hansard*, 27 October 2022, p 76.

Appendix A: Submissions

No.	Submission by	Received	Published
001	Name Withheld		
002	Name Withheld		
003	Confidential		
004	Marko Pekkarinen		
005	Rod Pitcher		
006	Christopher Budd		
007	Samuel Gordon-Stewart		
008	Name Withheld		
009	Russell Morison		
010	Confidential		
011	Legal Aid ACT		
012	Confidential		
013	ACT Government		
014	Name Withheld		
015	Jen Walton		
016	Confidential		
017	Gregory Moore		
018	Gregory Cornwell		
019	Weston Creek Community Council		
020	ACTNOWForSaferRoads		
021	Camille Jago		
022	Motorcycle Riders Association ACT		
023	Name Withheld		
024	SupportLink Australia Ltd		
025	Australian Federal Police Association		
026	ACT Law Society		
027	Bill Stefanik		
028	Rod Katz		
029	ACT Policing		
030	Confidential		
031	Confidential		

032	Name Withheld
033	ACTCOSS
034	ATODA
035	Andrew Corney
036	Living Streets
037	Justice Action
038	Val Bland
039	Name Withheld
040	Justice Reform Initiative
041	ANU LRSJ Indigenous Reconciliation Project
042	Australian College of Road Safety
043	Victims of Crimes Commissioner
044	Name Withheld
045	Ian McAuley
046	Confidential
047	Karralika
048	Uriarra Village Residents

Appendix B: Witnesses

26 October 2022

- **Mr Bill Stefaniak, AM, RFD**, private capacity
- **Ms Camille Jago**, private capacity
- **Mr Andrew Corney**, private capacity

ACTCOSS

- **Dr Gemma Killen**, Head of Policy and Acting CEO
- **Ms Gabrielle Robertson**, Policy Support Officer

Alcohol Tobacco and Other Drug Association ACT (ATODA)

- **Mr Devin Bowles**, CEO

Legal Aid ACT

- **Dr John Boersig**, CEO

27 October 2022

ActNowForSaferRoads

- **Mr Thomas McLuckie**

Living Streets Canberra

- **Ms Gillian King**, Convenor
- **Mr Kevin Cox**, Treasurer

Uriarra Valley Residents

- **Mr Jeremy Hagan**

Weston Creek Community Council

- **Mr Bill Gemmell**, Chair
- **Ms Louise Hughes**, Committee Member

Australasian College of Road Safety

- **Mr Eric Chalmers**, Chairperson

Australian Federal Police Association

- **Mr Alex Caruana**, President
- **Mr Troy Roberts**, Manager – Media and Government Relations

Justice Action

- **Mr Brett Collins**, Coordinator
- **Ms Kira Trahana**, Team Member

14 November 2022

- **Mr Shane Rattenbury**, Attorney-General, Minister for Consumer Affairs, Minister for Gaming and Minister for Water, Energy and Emissions Reduction
- **Mr Chris Steel**, Minister for Skills, Minister for Transport and City Services and Special Minister of State

Justice Reform Initiative

- **Professor Lorana Bartels**

Transport Canberra and City Services Directorate

- **Ms Kirra Cox**, Acting Executive Branch Manager, Strategic Policy and Programs

ACT Policing

- **Deputy Commissioner Neil Gaughan**, Chief police Officer
- **Commander Linda Champion**, Commander Operations
- **Mr Peter Whowell**, Executive General Manager, Corporate Services

Justice and Community Safety Directorate

- **Mr Richard Glenn**, Director-General
- **Ms Jennifer McNeill**, Deputy Director-General

Courts and Tribunal

- **Ms Amanda Nuttall**, Principal Registrar and Chief Executive Officer

18 November 2022

- **Ms Negar Barjestehmanesh**, private capacity

Sentence Administration Board

- **Ms Laura Beacroft**, Chair

Director of Public Prosecutions

- **Mr Shane Drumgold SC**, Director

ACT Human Rights Commission

- **Dr Helen Watchirs**, President and Human Rights Commissioner
- **Ms Allison Munro**, Manager Victim Support ACT
- **Ms Maree Skalistis**, Legal and Policy Adviser Victim Support ACT

18 November 2022

Motor Accident Injuries Commission

- **Ms Nicola Clarke**, MAI Commissioner
- **Ms Lisa Holmes**, Commissioner

Appendix C: Questions Taken on Notice

Questions Taken on Notice

No.	Date	Asked of	Subject	Response received
1	31/10/2022	Legal Aid ACT	Changing laws - government legislate weighting/ percentage scheme	07/11/2022
2	31/10/2022	ANU LRSJ Indigenous Reconciliation Project	List of indigenous organisations and career law clinics	07/11/2022
3	26/10/2022	ANU LRSJ Indigenous Reconciliation Project	Statistics on mandatory sentencing	Not received
4	14/11/2022	ACT Policing	Drivers in fatalities with cannabis in their blood system.	30/11/2022
5	14/11/2022	ACT Policing	Data on how many times it was not possible to identify the driver of the car.	30/11/2022
6	14/11/2022	Attorney-General	Data on sentencing outcomes compared to other jurisdictions	30/11/2022
7	14/11/2022	Attorney-General	Data on self-reporting - comparison to other jurisdiction	30/11/2022
8	14/11/2022	Attorney-General	Coronial support funding & service gaps	22/11/2022
9	14/11/2022	Justice Reform Initiative	Views on data issues	21/11/2022
10	18/11/2022	Human Rights Commission	Directions for medical treatment & human rights	12/12/2022
11	14/11/2022	TCCS	Data on Serious injuries	30/11/2022
12	13/12/2022	MAI	Current benefit paid under the MAI scheme	19/12/2022
13	13/12/2022	MAI	Informing claimants of their review rights under the MAI scheme	19/12/2022
14	26/10/2022	Rod Katz	Intelligent Speed Adaptation and Social Media promoting 'Hooning'	28/10/2022