



ACRS Submission

ACT Inquiry into Dangerous Driving

About the Australasian College of Road Safety

The Australasian College of Road Safety was established in 1988 and is the region's peak organisation for road safety professionals and members of the public who are focused on saving lives and serious injuries on our roads.

The College Patron is His Excellency General the Honourable David John Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia.

To:

Standing Committee on Justice and Community Safety

ACT Legislative Assembly

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Introduction

The Australasian College of Road Safety is the region's peak membership association for road safety with a vision of eliminating death and serious injury on the road. Our members include experts from all areas of road safety including policy makers, health and transport professionals, academics, community organisations, researchers, federal, state and local government agencies, private companies and members of the public. The purpose of the College is to support our members in their efforts to eliminate serious road trauma through knowledge sharing, professional development, networking and advocacy. Our objectives include the promotion of road safety as a critical organisational objective within government, business and the community; the promotion and advocacy of policies and practices that support harm elimination; the improvement of relative safety outcomes for vulnerable demographic and user groups within the community; the promotion of post-crash policies and practices; and the promotion of a collegiate climate amongst all those with responsibilities for and working in road safety.

The College believes that we should prevent all fatal and serious injury on our roads; that the road traffic system must be made safe for all road users; that system designers should aim to prevent human error and mitigate its consequences; that life and health are not exchangeable for other benefits in society; and that all ACRS policy positions must be evidence based.

The ACRS submits that consideration of dangerous driving needs to be in the context of this systems-based approach. Considering driver behaviour in isolation is likely to result in limited improvements to the overall safety performance of our road transport system.

In responding to this inquiry, the ACRS has considered the meaning of dangerous driving (DD) implicit in the Terms of Reference. Under Section 7 of the Road Transport (Safety and Traffic Management) Act 1999 it is an offence to "drive a motor vehicle furiously, recklessly, or at a speed or in a way that is dangerous to the public".(1) Arguably, whenever one gets behind the wheel there is the potential for danger. The magnitude of that danger increases with the mass and speed of the vehicle as well as many other factors such as the crash performance of the vehicle, the ability of the driver to anticipate and avoid collisions, the characteristics of the road etc.

At some point the law is prepared to say that the driver has crossed a line in their driving behaviour and is exceeding some nebulous danger limit. The courts have addressed the issue in a number of cases(2, 3) but often the reasoning ends up being somewhat circular e.g. The High Court in *King v. The Queen* found that whether the driving was dangerous:

"depends on whether it gave rise to the degree of risk set out by Barwick CJ in McBride and adopted by the plurality in Jiminez ... That is the level of risk which should inform a trial judge's direction to a jury in respect of the offence under s 319."(2)

Possibly in recognition of this imprecision, Section 7A lists aggravating factors:(1)

- failing to comply, as soon as practicable, with a request or signal given by a police officer to stop the motor vehicle;
- driving with the prescribed concentration of alcohol in blood or breath;
- driving with a prescribed drug in oral fluid or blood;

- driving while under the influence of intoxicating liquor or of a drug to such an extent as to be incapable of having proper control of the vehicle;
- driving at a speed that exceeded the speed limit by more than 30%;
- driving in a way that put at risk the safety of a “vulnerable road user”, which includes pedestrians, cyclists, motorcyclists, riders of animals and the users of motorised scooters and Segways;
- driving with a person younger than 17 years old in the vehicle;
- the driver was a repeat offender.

ACRS response to the Terms of Reference

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

The Victorian Sentencing Advisory Council Report(3) provides an overview of Victorian sentencing practices to help understand the characteristics of culpable driving offenders. It is recommended that the ACT carry out an investigation analogous to the Victorian report. This would assess the magnitude of the task facing the ACT criminal justice system, the factors associated with culpable driving in the ACT and whether the approach here is consistent with comparable jurisdictions.

The Victorian study finds that among those most over-represented are males, youth (including underage driving offenders) and young adults, low socio-economic, and unauthorised drivers (including suspended, cancelled, disqualified). Most represent a largely disadvantaged section of the population, lacking on factors long identified as social determinants of health(4, 5). These drivers are likely to have limited education, be unemployed or have menial jobs (limited finances), have poor knowledge, risk perception and attitudes towards driving and other offending, be single / not married and have similar-minded peers and family and potentially also other co-occurring personality, cognitive functioning and/or mental health challenges. Indigeneity and the inter-related factors of remoteness from urban centres, lack of public transport options and reduced exposure to intensive policing operations also exacerbate the likelihood of meeting this profile.

It is important to bear in mind that not all dangerous driving signifies a driver with no regard for safety, or that behaviour at one point in time is representative of typical driving. This particularly relates to the repeat offender, which can include, for example, someone repeatedly fined for unlicensed/under-licensed driving and/or an unroadworthy vehicle. (4)

Dangerous driving is undoubtedly associated with increased risk – drivers with a history of dangerous driving offences are more than three times as likely as other drivers to be themselves killed in a crash.(6)

The increased availability and use of electronically captured data such as data loggers, or “black box” data, and video, would enhance evidence around driver behaviour. Ubiquitous availability of this data should be an objective in the standards for sale of new cars and, as an interim measure, of cars used by drivers with infringement histories.

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

The ACRS sees the engagement of the police in road safety as a crucial part of creating a safe system. The police deserve support in ensuring that dangerous driving is identified. They deserve empathy for their role in having to deal with the consequences of dangerous driving, and indeed all road trauma. In the words of Robert Peel, the founder of the London police, good policing requires “the willing cooperation of the public”.(7)

The ACRS is aware that the ACT Police are investigating systems such as Operation Snap – a system used in Wales for receiving video evidence of dangerous driving from members of the public.(8) This system should be independently evaluated to determine what, if any, benefits there are to road safety. If any scheme such as this were to be implemented in the ACT, the ACRS submits that this should be done with a clearly articulated statement of purpose, scope, and an independent evaluation for the local context. It needs to consider the ability of the ACT Police to manage and analyse incoming data as well as identifying how such data could be used by Directorates responsible for other elements of the road transport system. For example, a video may identify a need to improve road design or vehicle suitability. Allowing access on a limited basis to other Directorates should be investigated.

The ACRS is conscious of the severe impact on police officers attending road crashes. This should be acknowledged, and appropriate counselling, debriefing and peer support made available.(9, 10) It is important that officers be able to share their stories to raise the awareness of the public about the tragedy of road trauma.

Officers need to be given appropriate training to be able to carry out safe-system-based analysis of crashes. Traditional police crash investigation focuses on identifying offences or offenders as a basis for criminal and civil litigation. A safe system based crash investigation seeks to identify why the crash occurred and what can be done to prevent a similar crash, to proactively inform system improvements.(11)

The ACRS notes that there is a need for better information on the AFP website about the dangers of driving and the existence of the dangerous driving as an offence.(12) The website currently does not specify offences, such as dangerous driving, but refers instead to “anti-social driving”. It is not clear whether this is a policy choice or whether the website should be updated to better inform the public about their rights and obligations as road users.

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

No comments.

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

Several studies have been done on the effectiveness of various penalties in reducing casualty crashes. In Victoria, increased demerit points and licence bans up to 12 months resulting from speeding offences reduced subsequent casualty crashes after the ban period ended.(13) In Canada, the introduction of Excessive Speeding Legislation with penalties including immediate licence suspension, higher fines and vehicle impoundment was associated with reductions in fatal crashes.(14)

However, harsher sentencing in itself will not address the issue, as it is a systemic issue, requiring a response to the whole system. For example, ACRS supports the submission by the Alcohol, Tobacco and Other Drug Association of the ACT.

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

No comments.

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

No comments.

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

Proven best practice in reducing recidivism of offenders in other domains is the case management model. Under this model, assessment is undertaken to identify not only the risks but what truly underlies the risky behaviour, and then referring into tailored education, treatment and other intervention plans specific to the individual. This particularly includes recognising and enhancing positive personal strengths to increase resilience and redirect them to alternative ways of living – in this case exposure to a traffic safety culture that they are unlikely yet to encounter or have lived experience.(4)

The term ‘education’ can be narrowly or broadly defined. In a narrow sense, information materials and/or group classroom style programs that aim to increase knowledge of risks and improve attitudes are long identified as ineffective alone in shifting well-established behavioural patterns and social influences. Programs that instead personalise learning, help individuals to identify their triggers, negative influences, weaknesses and strengths to overcome these, including specific strategies within personal capacity, have significant demonstrated benefits. Few tailored programs have been in place long enough to have reliable evaluation outcomes. The Traffic Offender Intervention Program in NSW is long standing but brings together all offenders so is not sufficiently tailored, albeit tailoring is encouraged through personal reflection, journalling and planning.(15)

There is evidence from other countries that driver improvement programs tailored to the offence type and to the individual can substantially reduce reoffending.(4, 16, 17) For example, in the United States, the Wisconsin Safe Streets Treatment Options Program (SSTOP) applies a case management approach to recidivist drink-drivers. Offenders opt into the program to reduce their prison time and are subject to intensive supervision and complete an assessment that directs them into an education program, treatment, or a combination of both. Options are diverse, for example, medical treatment plans, budgeting classes, education or employment assistance (e.g., application or resume writing, job searching), grief counselling, anger management or domestic violence support groups. A high quality 2018 evaluation demonstrated program participants were much less likely to receive a drink-driving related conviction at three years following program completion compared to a non-participant comparison group.(16) Beyond this, they also had statistically fewer convictions, sentences to prison and number of days in prison for any offence type.

Australia generally lacks programs such as these for driving offenders, which are based on best practices for other types of offenders (such as violent and sex offenders). One example was recently introduced in Victoria for drink driving offenders, the Behaviour Change program (April 2018).⁽¹⁸⁾ It is too soon to have independently evaluated outcomes, but it is worthy of follow-up. Recent evaluations are generally lacking on programs for other driving offender types, but in general, European programs commonly also target and tailor programs to speeding offenders. A comprehensive EU review in 2002 (Project ANDREA) concluded that tailored rehabilitation programs reduce reoffending by 50%, with key features being small groups (up to 10), multiple sessions (3 to 10 over 3 to 10 weeks), focus on self-reflection, discussion and psychotherapeutic elements rather than 'pedagogic education'.⁽¹⁷⁾

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

No further comments.

Conclusion and Recommendations

The ACRS supports the current inquiry into dangerous driving in the ACT. We would especially like to note:

- In line with the vision adopted by Governments in Australia, the aim should be zero road deaths and serious injuries;
- A systemic view should be taken, looking across the entirety of the road transport system for improvements and reform to reduce trauma;
- The ACT should consider conducting a review similar to the 2015 Victorian Sentencing Advisory Council report to benchmark dangerous driving and the current sentencing responses;
- A case management approach for repeat offenders should be considered.

The ACRS appreciates the opportunity to contribute to this inquiry and improving road safety in the ACT. Please do not hesitate to contact us should you require any further information.



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