ACT Law Reform and Sentencing Advisory Council

Consultation paper into dangerous driving: sentencing and recidivism

Consultation paper 1/2024

March 2024

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1. About the Law Reform and Sentencing Advisory Council

On 22 November 2023, the ACT Law Reform and Sentencing Advisory Council (the Council) was created by ministerial authority of the ACT Attorney-General.

The Council consists of thirteen members from legal and justice groups as well as the community.

The Council's work and operations are guided by the published Terms of Reference. These are publicly available. The Council's role is to provide the Attorney-General with high-level, independent advice in relation to law reform issues and sentencing matters in the ACT. Notably, it is:

- To support the ACT Government to improve Territory laws by inquiring into and reporting on law reform matters referred to it by the Attorney-General; and
- To provide policy advice on sentencing-related matters at the request of the Attorney-General, including monitoring and reporting on sentencing trends and practices, and engagement with the community on these issues.

In most Australian jurisdictions, law reform and sentencing advisory bodies are creatures of statute with all the protections that this affords their members. They are usually separate from each other although they might share administrative and research staff. This Council has been established with both law reform and sentencing functions.

As is clear from the Terms of Reference, the Council has a duty to act independently and impartially from the Government.

2. Council members

The Council has 13 members. The criteria for membership are set out in the Terms of Reference. The current membership of the Council is as follows:

Lisbeth Campbell – Chairperson and former member of the judiciary

Bruno Aloisi – Acting Commissioner of ACT Corrective Services

Sarah Baker-Goldsmith – ACT Bar Association nominated representative

Dr John Boersig PSM – representative of legal assistance sector
(CEO of ACT Legal Aid Commission)

Assistant Commissioner Doug Boudry – delegate of the ACT Chief Police Officer
(Deputy Chief Police Officer)

Joanne Chivers – First Nations community member representative

Dr Janet Hope – senior law academic (University of Canberra)

Michael Kukulies-Smith – Law Society of the ACT nominated representative

Dr Penelope Mathew – President of the Human Rights Commission

Nadine Miles – expert in juvenile justice-related matters
(Principal Legal Officer at Aboriginal Legal Service NSW/ACT)

Shobha Varkey – community member (Vice President of Prisoner Aid ACT)

Anthony Williamson SC – acting ACT Director of Public Prosecutions

Heidi Yates – representative of a victims of crime advocacy group
(Victims of Crime Commissioner)

The Council may also invite people with a particular knowledge or expertise in a matter to participate in its work.

3. About this consultation paper

The context

Dangerous driving incidents, particularly those resulting in death or serious injury, are of significant public concern. They can have a devasting effect on victims, their families, and on the community. Their consequences highlight the importance of communities prioritising road safety and promoting a culture of responsible driving, as well as holding individuals accountable for their actions when behind the wheel of a potentially lethal vehicle should they not adhere to accepted community standards.

"Road trauma", being the direct and indirect physical and mental injuries resulting from a motor vehicle incident, has a significant impact not only on the individuals concerned but also on the wider community. In 2022, the ACT tragically lost 18 lives on Canberra roads. This was the highest death toll recorded in the ACT in over a decade. In contrast, in 2023, there were four lives lost.

Criminal prosecutions involving death or serious injury caused by driving offences – indeed, any case involving the loss of life – can be among the most serious, complex and distressing cases that come before the courts.

Members of the ACT community have questioned whether the justice system could do more to prevent road trauma and to respond appropriately when it occurs. This raises issues in relation to the laws on 'dangerous driving', sentencing for those offences (it has been argued that "recent sentences have not reflected the seriousness of the crime or are of sufficient deterrence"[1]) and whether the rights and experiences of victims and their families have been given sufficient recognition in the criminal justice system.

[1] ACT Legislative Assembly Standing Committee on Justice and Community Safety, *Report No. 16, Inquiry into Dangerous Driving* at [2.51].

The Inquiry

Family and police concerns in relation to the penalties imposed in cases where driving has caused the death of another person led to the recent ACT Legislative Assembly Standing Committee on Justice and Community Safety (the Committee) Inquiry into Dangerous Driving (the Inquiry).

The Committee had particular reference to:

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

The Committee received 50 submissions from members of the public, government and non-government bodies. Not all submissions are publicly available.

On 20 April 2023, the Committee released *Report No. 16, Inquiry into Dangerous Driving* (the report). The report contained 28 recommendations. In recommendation 3 of the report, the Committee recommended 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.

The ACT Government tabled its response to the report's recommendations on 29 August 2023. As part of this, the Government reaffirmed that it would establish this Council to advise the ACT Government on areas of potential law reform as well as provide expert advice on sentencing.

With regard to recommendation 3 of the report, the Government response stated that the ACT Government had undertaken analysis of sentencing trends and had not found evidence of a trend towards leniency in sentences in general.

The context of the Inquiry, its report, and the Government response, provide the background to the Council's current referral. However, the Council's Terms of Reference differ from, and expand in a number of ways, the matters that the Committee examined. Conversely, some important issues raised by the report are beyond the scope of this referral.

Nevertheless, the Council will have regard to the Inquiry generally, including publicly available submissions made to the Committee as well as its report.

The referral

On 29 November 2023, the Council received a sentencing referral from the ACT Attorney-General on the topic of "dangerous driving: sentencing and recidivism" - which this paper will summarise for convenience as the "referral".

The terms of this referral are available on the Council's website and are as follows:

1. The *Crimes (Sentencing) Act 2005* outlines that a court may impose a sentence for a number of purposes, including ensuring the offender is adequately punished, deterrence, protecting the community, promoting rehabilitation of the offender, making the offender accountable, denouncing the offender's conduct, and recognising harm done to the victim and community. The Act also specifies matters to which a court must have regard in deciding how to sentence an offender.

2. The Council will review and analyse data on the sentencing of dangerous driving offenders, including repeat offenders, having particular regard to Recommendation 3 of the Standing Committee on Justice and Committee Safety *Report No 16 Inquiry into Dangerous Driving*, and the Government's response to this recommendation.

3. The Council will also consider and make recommendations for any procedural, administrative, or legislative changes that could assist in reducing the incidence of repeat offending, particularly in the context of dangerous driving.

4. The Council should undertake consultation with:

    a. experts in First Nations justice, and First Nations people directly affected by and with lived experience relevant to the referral; and

    b. victims of crime and/or their families in relation to the referral.

5. The Council may also undertake any other consultation it considers necessary or appropriate for the purposes of forming its recommendations in relation to this referral.

6. The Council should consider any findings and recommendations of the First Report of the Independent Review into Overrepresentation of First Nations people in the ACT criminal justice system.

7. The Council will report on the above issues and provide its recommendations to the Attorney-General by 30 July 2024.

Responding to this consultation paper

The Council is keen to ensure that all interested members of the community have an opportunity to participate in this referral.

Some of the most valuable insights to the matters canvassed in this consultation paper may come from community members.

The Council also welcomes submissions from institutional organisations and agencies whose work is relevant to the subject matter of the review.

This paper is responsive to the matters in the referral. It contains a series of 16 consultation questions that may assist in preparing your submissions. As noted earlier, the paper will to some extent cover ground already reviewed by the Inquiry, but the Council's work must be independent of Government and the Legislative Assembly.

You can answer some or all of the questions.

There is no specified format for the content of your submissions, but if you are able to provide supporting data and/or evidence that is appreciated.

All submissions will be considered.

Responses to this paper are sought by 4pm Tuesday 7 May 2024.

Documents can be uploaded online to the Council's website, or sent via email to the Council Secretariat at LRSACSecretariat@act.gov.au .

The Council intends to publish the submissions it receives. Please indicate in your submission whether you wish for the whole or part of your submission to be kept confidential. The Council will do its best to keep your information private if you ask us to, but we cannot guarantee that we can do so. Sometimes the law or the public interest says your information must be disclosed to someone else, for example, pursuant to freedom of information legislation.

The Council may hold in-person sessions, in public and/or in private, where people who have made written submissions may speak directly with the Chair, and possibly a few other members of the Council, and provide further information. It is anticipated that these sessions will take place in mid to late May 2024.

The Council Chair has already engaged in direct consultation with some stakeholders and interested parties. Individuals, organisations and government agencies with an interest in meeting with the Council in relation to the issues being canvassed in this paper are encouraged to contact the Council via its Secretariat.

If at any time you have any questions about the consultation process, or have any difficulties with the online response form, please contact the Council Secretariat at LRSACSecretariat@act.gov.au .

4. Definitions

The term “dangerous driving” may mean different things to different people. Fundamental to the Council’s work on this referral is an understanding of how the public, interested people, organisations and agencies understand and interpret the terms at the centre of the referral.

There is only one traffic offence in the ACT that specifically uses the term ‘dangerous driving’. It provides that if a person drives a motor vehicle in a way that is dangerous to the public, they may commit an offence punishable (depending on the circumstances) by a maximum penalty of 3 or 5 years imprisonment.[2] This offence does not require any proof of harm to a person or damage to property.

Notwithstanding this, the Council considers that when people use the term “dangerous driving” colloquially or anecdotally, they often mean to convey something more than the conduct referred to in this specific offence.

For example, the Inquiry into dangerous driving did not expressly define the term “dangerous driving” but focussed much attention upon offences of culpable driving causing death and grievous bodily harm, and not the actual dangerous driving offence referred to above.

The Council considers that part of its role is facilitating a clearer understanding of what is meant by the use of the term “dangerous driving”, promoting a public discussion and ideally reaching a shared understanding of the scope of this term.

Questions

4.1. What is “dangerous driving”?

4.2. What constitutes repeat dangerous driving and/or a “repeat offender”?

[2] *Road Transport (Safety and Traffic Management) Act 1999*, s 7 - A person must not drive a motor vehicle furiously, recklessly, or at a speed or in a way that is dangerous to the public, on a road or road related area.

5. Offences

In its report at Recommendation 14, the Committee recommended:

> that the ACT Government review and streamline ACT legislation governing road safety and dangerous driving.

In its response, the ACT Government agreed in principle with this recommendation and advised that a "Road Transport Penalties Review" was already underway but that a comprehensive review and streamlining of "the ACT Road Transport Legislation Framework" would require more time and resources.

As the ACT Government response to the report suggested, there are nearly 1,900 road transport offences spread across six separate Acts and multiple regulations and rules (legislation). The offences cover a wide range of conduct, with the lower end of the spectrum dealing with offences that can usually be dealt with by way of an infringement notice or fine e.g. speeding or running a red light.

The more serious offences related to driving are contained in three Acts:

- The *Crimes Act 1900* (the *Crimes Act*);
- The *Road Transport (Safety and Traffic Management) Act 1999*; and
- The *Road Transport (General) Act 1999*.

This legislation creates a three-tier hierarchy for serious traffic offending, with manslaughter sitting at the top of that hierarchy, followed by culpable driving causing death or grievous bodily harm, followed by negligent driving.[3] The different degrees of culpability that the prosecution needs to prove with respect to the three offence types can be described as follows:

- In order to be guilty of **manslaughter** pursuant to section 15 of the Crimes Act, the offender's conduct must be so gravely in error and carry with it such a high risk of serious injury that it deserves to be punished as a serious criminal offence.[4]

[3] *DPP v Spong* [2018] ACTCA 37 at [63]; *Wilkins v Hague* [2011] ACTSC 189.
[4] *Burns v The Queen* [2012] HCA 35; 246 CLR 334;
NSW Judicial College Criminal Trial Bench Book, paragraph [5-6260].

- In order to be guilty of a **culpable driving** offence pursuant to section 29 of the Crimes Act, the prosecution must demonstrate that the offender has failed "unjustifiably and to a gross degree" to observe the standard of care that a reasonable person would have upheld in all of the circumstances.[5]

- In contrast, to prove **negligent driving** pursuant to section 6 of the *Road Transport (Safety and Traffic Management) Act 1999*, the prosecution need only prove that the offender has departed from the standard of care that a reasonable person would have observed. The level or degree of that departure does not need to be gross or substantial; indeed it could be relatively minor and fleeting.[6]

The graduation in the level of negligence that needs to be proved corresponds with the increase in maximum penalties available. It gives effect to the general principle of criminal law that the greater the penalty available, the higher the level of moral culpability inherent in the offending the prosecution should have to demonstrate.

Given the breadth of the ACT offending hierarchy, the Council's focus is primarily on cases where danger is realised and actual harm is inflicted on someone – what this paper calls the "serious driving offences". A table comparing the ACT serious driving offence framework against other Australian jurisdictions is included at Annexure A.

As may be seen from Annexure A, other jurisdictions' hierarchies of offences are split into more categories to reflect the graduated culpability of the driver and/or the degree of harm to their victim. For example, most jurisdictions include an offence between culpable driving and negligent driving, such as aggravated careless driving causing death or serious / grievous bodily harm (in South Australia and Western Australia) or dangerous driving occasioning death or grievous bodily harm (in New South Wales, Tasmania, Victoria, Queensland).

[5] *Crimes Act 1900*;, s 29(7); *DPP v Spong* [2018] ACTCA 37 at [63].
[6] *DPP (NSW) v Yeo* [2008] NSWSC 953; 188 A Crim R 82.

Questions

5.1. Having regard to the information in Annexure A, what are your thoughts on the current ACT framework of serious driving offences? Do you believe they adequately address the range of dangerous behaviours on the road?

5.2. Are there any additional serious driving offences you believe should be introduced in the ACT? If so, what specific situations or behaviours do you think are not adequately addressed, and what should the maximum penalty for any new offence be?

6. Penalties

Sentencing is a complex exercise. A court is required by both legislation – parliamentary-made law, which is of general application – and the common law – judge-made law, made on a case-by-case basis – to take into account a wide number of diverse and often competing factors.

What is an appropriate sentence?

An appropriate sentence for an offender is one that is individually just, yet consistent in that like offenders for like offending receive like outcomes. As Gleeson CJ said in *Wong v the Queen*[7]: "[t]he administration of criminal justice works as a system ... It should be systematically fair, and that involves, amongst other things, reasonable consistency." This was further explained by French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ in *Hili v The Queen*[8] as "[t]he consistency that is sought is consistency in the application of the relevant legal principles." These are statements of the High Court and are binding on all courts in Australia.

The instinctive synthesis approach

Based on decisions of the High Court the judiciary is required to determine a sentencing outcome by applying the approach of 'instinctive synthesis' to the task. That is, a judicial officer is to weigh or 'synthesise' all of the considerations in the matter, including aggravating or mitigating features of the offending and the offender's subjective circumstances, and then arrive at a result that they consider to be an appropriate sentence.[9]

Sentencing is not meant to be an arithmetical exercise where sentencing courts add and subtract passages of time, item by item, from some apparently subliminally derived figure in order to fix the time which an offender must serve in prison[10].

[7] (2001) 207 CLR 584 at [6].
[8] [2010] HCA 45; 242 CLR 520 at [18].
[9] *Markarian v The Queen* [2005] HCA 25; 228 CLR 357.
[10] *Markarian v The Queen* per Gleeson CJ, Gummow, Hayne and Callinan JJ at [39].

The task of the sentencer is to “take account of all of the relevant factors and to arrive at a single result which takes due account of them all … [t]hat is what is meant by saying that the task is to arrive at an "instinctive synthesis".[11]

When imposing a sentence under the instinctive synthesis mode of sentencing, it is accepted that there is no ‘single’ or ‘correct’ sentence to be imposed, but rather there is an acceptable ‘range’ of permissible sentences for any given instance of criminal offending.[12] The process requires a consistency of approach rather than a consistency of outcome.

The instinctive synthesis mode of sentencing has been subject to significant criticism for its opaque and untransparent nature.[13]

Relevance of a plea of guilty

The common law or judge made law has been displaced in certain respects by section 37 of the *Crimes (Sentencing) Act 2005* (“the *Crimes (Sentencing) Act*”).

For example, an ACT sentencing court must take into account a guilty plea pursuant to section 33(1)(j) of the *Crimes (Sentencing) Act* when determining the sentence. The decision of how much to reduce the sentence is at the discretion of the court, taking into account factors such as the timing of when the offender pleaded guilty, the seriousness of the offence and the impact on victims.

Section 37 requires the sentencing court to state what the penalty would have been had the offender not, for example, pleaded guilty or cooperated with police. This is often done by a sentencing judge quantifying the reduction in sentence given as a result of the offender's plea of guilty or assistance to the authorities. This reduction is colloquially referred to as a “discount”, although that is not a term preferred in this paper.

[11] *Wong v The Queen* [2001] HCA 64; 207 CLR 584 per Gaudron, Gummow and Hayne JJ at [75].
[12] *R v Nicholas; R v Palmer* [2019] ACTCA 36 at [66]–[67].
[13] *Markarian v The Queen* [2005] HCA 25; (2005) 228 CLR 357 at [128]–[139] per Kirby J.

How relevant is the maximum penalty for an offence?

In *Markarian v R*[14], the High Court of Australia said, that when sentencing:

> … careful attention to maximum penalties will almost always be required, first because the legislature has legislated for them; secondly, because they invite comparison between the worst possible case and the case before the court at the time; and thirdly, because in that regard they do provide, taken and balanced with all of the other relevant factors, a yardstick.

In the ACT, the ACT Justice and Community Service Directorate has published a *Guide for Framing Offences* which provides guidance to parliamentary drafters and government agencies when deciding what maximum penalty should be assigned to an offence. The Guide includes statements of principle that penalties should be in proportion to the seriousness of the offence, particularly relative to offences of a similar nature; but a higher penalty may be considered if the prevalence of particular offending needs to be addressed.

In this regard, the Council notes that in 2012 the maximum penalty for the offence of culpable driving causing death contained in section 29(2) of the *Crimes Act* was increased from 7 to 14 years imprisonment.[15] The increase in penalty was a direct result of the legislature's concern over the inadequate sentencing range in relation to this offence. The Explanatory Statement for the amendments explained that:

> This Bill seeks to outline a clear statement that the ACT Legislative Assembly does not view the prescribed offences as less serious in comparison to other Australian jurisdictions. This will allow ACT courts to take further guidance, where they determine appropriate, from the sentencing decisions in other jurisdictions.

Which court?

The maximum penalty also determines which Court must, or can, deal with a particular matter. In the ACT, criminal cases are heard by the Magistrates Court or the Supreme Court. Matters in the Magistrates Court are presided over by magistrates. Juries are not available in the Magistrates Court. Matters in the Supreme Court are presided over by judges and may also be determined by a jury.

[14] [2005] HCA 25; (2005) 228 CLR 357 at [30].
[15] See the *Crimes (Penalties) Amendment Bill 2011*.

Unlike New South Wales and most other Australian jurisdictions, the ACT does not have a middle tier of courts akin to the County Court in Victoria or the District Court in New South Wales.

Types of offences

Criminal offences in the ACT can be broadly divided into two categories: indictable offences or crimes (more serious offences) and summary offences (less serious offences):

- Summary offences are offences punishable only by a fine or by a maximum of two years imprisonment.[16] They must be heard by the Magistrates Court and are determined by a magistrate, not a judge or jury. Examples of driving offences which are summary offences include drink driving (PCA), racing and competitive driving, negligent driving causing death or grievous bodily harm, and burnouts.

- Indictable offences are offences punishable by more than two years imprisonment.[17]

    - Some of the most serious indictable offences – including murder and manslaughter – can only be dealt with by the Supreme Court.

    - Other indictable offences can be dealt with in either the Magistrates Court or the Supreme Court depending on the circumstances. Whether this can occur depends on the maximum penalty available for the offence as well as the views of the prosecutor, the magistrate and/or the offender, as well as whether the offender is not yet an adult.

For example, the offence of culpable driving causing grievous bodily harm pursuant to section 29(4) of the *Crimes Act* carries a maximum penalty of 10 years imprisonment. This means it is ordinarily an indictable offence, but it can be heard by the Magistrates Court if all of the following apply: [18]

- the offender is an adult and did not commit the offence with a child co-offender;

[16] See s 108A and Part 3B of the *Magistrates Court Act 1930*.
[17] See s 190 of the *Legislation Act 2001*.
[18] See s 375 of the *Crimes Act 1900*.

- the magistrate regards the matter as suitable to be dealt with by the Magistrates Court – that is, it is not so serious that it has to go to the Supreme Court; and

- the offender consents to the case being dealt with in the Magistrates Court.

If such a matter is dealt with in the Magistrates Court, the maximum penalty available on sentence is 5 years' imprisonment (even if the maximum penalty for the offence is greater than 5 years).

Special rules apply in the case of offenders who are young people. These cases go before the ACT Children's Court, which is a special division of the Magistrates Court. The Children's Court deals with most criminal proceedings against a person who was less than 18 years of age at time of the offence.[19] This Court can hear and determine all indictable offences against young people except where the maximum penalty is life imprisonment, but the rules about prosecutor's election and offender's consent to summary jurisdiction still apply.[20]

Question

6.1. Do you believe the current maximum penalties for serious driving offences in the ACT (as set out in Annexure A) are appropriate? Why or why not?

[19] *Magistrates Court Act 1930*, s 287.
[20] See s 288 of the *Magistrates Court Act 1930*.

7. Sentencing practice

In Recommendation 1 of the report, the Committee recommended 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.

The ACT Government response to the report suggested that this work was complete and that the data did not "support a downward trend towards lighter sentences in dangerous driving matters"; moreover, there was no proposal to provide for guideline judgments at this time.

The Committee also recommended, in Recommendation 3 of the report:

> that the ACT Government review leniency for discounts to sentences of serious crimes and repeat offenders, including to consider the impact on victims.

The Council has been expressly tasked in this referral to have specific regard to this Recommendation, and the Government response to it. The ACT Government response to the report agreed with the recommendation and expressly tasked the Council with "look[ing] at a range of issues relevant to those matters raised by the Committee in this Inquiry".

The Council is collecting ACT sentencing data and will report on its analysis in the final report. To assist people in making submissions, and to give some insight into the current sentencing practices in the ACT Supreme Court, Annexure B to this paper includes links to the five most recent ACT Supreme Court sentencing decisions for offenders convicted of culpable driving causing death.

General principles of sentencing

The Council's referral requires it to review sentencing practices in relation to serious driving offences, not sentencing practices generally. However, the starting point for consideration of sentencing practices for serious driving offences must necessarily be principles of general application. Views may differ on whether the general sentencing framework is working well in the context of dangerous driving offences.

In the ACT, the purposes of sentencing an offender are listed in section 7(1) of the *Crimes (Sentencing) Act* and are described as follows:

(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; [and]

(g) to recognise the harm done to the victim of the crime and the community.

No one purpose is to be prioritised over any other purpose[21] – the Court must consider any purpose of sentencing that is relevant to the facts and circumstances of the case.

Certain of the purposes legislated in section 7(1) of the *Crimes (Sentencing) Act* have particular resonance for serious driving offences. For example, serious driving offences can have devastating consequences, such as catastrophic injury or death, and the extent of any pain, injury or suffering caused by the offending (the harm) should be recognised in sentencing[22].

Further, the purpose of adequate punishment[23] in the context of serious driving offences necessitates a full consideration of the offender's manner of driving, the extent to which it involved any traffic law breaches and whether they were driving under the influence of alcohol or drugs.

Two important sentencing concepts are the separate but related concepts of the "objective seriousness" of the offence and the "moral culpability" of the offender. These considerations form part of the instinctive synthesis approach to sentencing. Objective seriousness is a measure of the seriousness of the conduct that made up the offence when viewed objectively together with the consequences of the offending. Moral culpability is the

[21] *Crimes (Sentencing) Act 2005*, s 7(2).
[22] See *Crimes (Sentencing) Act 2005*, s 7(1)(g).
[23] See *Crimes (Sentencing) Act 2005*, s 7(1)(a).

offender's blameworthiness for an offence. This involves consideration of both the objective seriousness, and the offender's subjective and personal circumstances. Some factors personal to an offender are potentially relevant to the weight to be given to both concepts.

The *Crimes (Sentencing) Act* prescribes lists of relevant considerations when sentencing an offender[24] and irrelevant considerations[25]. It does not expressly separate out factors of aggravation or mitigation in the way that New South Wales does in its *Crimes (Sentencing Procedure) Act 1999*[26]. Nevertheless, matters of aggravation tend to increase a sentence; and matters in mitigation will lead to a reduction in a sentence.

Prior criminal history

An offender's background and character are relevant matters on sentence. Offenders often call upon their good character and lack of prior convictions in mitigation of sentence. The High Court in *Veen (No 2)*[27] has made it clear that an offender's criminal history may aggravate a sentence by putting the offending in its appropriate context (whether an uncharacteristic aberration on the part of an otherwise law abiding member of the community or a continuing attitude of disobedience to the law), illuminating the moral culpability of the offender, and highlighting whether greater importance needs to be given to purposes of retribution, deterrence and protection of society.

In sentencing an offender with a bad driving history for a new offence therefore care must be taken on sentence to not punish the offender again for the previous offences, as this would constitute double punishment.[28]

Currently, there are no specific sentencing rules that apply to ACT serious driving offences. Other offence types do have specific sentencing rules, for example section 34A of the *Crimes (Sentencing) Act* modifies the principles around taking into account an offender's good character when sentencing for sexual offences against children.

[24] *Crimes (Sentencing) Act 2005*, s 33.
[25] *Crimes (Sentencing) Act 2005*, s 34.
[26] *Crimes (Sentencing) Act 2005*, s 21A.
[27] [1988] HCA 14; 164 CLR 465 at [14].
[28] *Kelly v Ashby* [2015] ACTSC 346; 73 MVR 360 at [38].

What is a guideline judgment?

Guideline judgments are court decisions that give guidance to judges in relation to how they should sentence offenders, and to support consistency in sentencing. They have been used in a variety of jurisdictions within Australia and in other countries.

Some jurisdictions have introduced legislative frameworks that permit governments to seek guideline judgments from the courts. Victoria[29] and New South Wales[30] both have legislated guideline judgment regimes. New South Wales was active in promulgating guideline judgments from 1999 but has not published a guideline judgment since 2004. Victoria is the jurisdiction in Australia with the most recent guideline judgments; the latest was published in 2014.

Relevant to this referral and ACT sentencing practice, the New South Wales guideline judgment in relation to dangerous driving was first set out in *Jurisic*[31] and reformulated in *R v Whyte*[32] essentially as follows:

> **A Typical Case**
>
> A frequently recurring case of an offence [of culpable driving causing death] has the following characteristics.
>
> (i) Young offender.
> (ii) Of good character with no or limited prior convictions.
> (iii) Death or permanent injury to a single person.
> (iv) The victim is a stranger.
> (v) No or limited injury to the driver or the driver's intimates.
> (vi) Genuine remorse.
> (vii) Plea of guilty of limited utilitarian value.
>
> **Guideline with respect to custodial sentences**
>
> A custodial sentence will usually be appropriate unless the offender has a low level of moral culpability, as in the case of momentary inattention or misjudgement.
>
> **Aggravating Factors**
>
> (i) Extent and nature of the injuries inflicted.
> (ii) Number of people put at risk.
> (iii) Degree of speed.
> (iv) Degree of intoxication or of substance abuse.
> (v) Erratic or aggressive driving.
> (vi) Competitive driving or showing off.
> (vii) Length of the journey during which others were exposed to risk.

[29] Sections 36-42A of the *Crimes (Sentencing Procedure) Act 1999* (NSW).
[30] Part 2AA of the *Sentencing Act 1991* (Vic).
[31] [1998] NSWSC 597.
[32] [2002] NSWCCA 343.

(viii) Ignoring of warnings.
(ix) Escaping police pursuit.
(x) Degree of sleep deprivation.
(xi) Failing to stop.

Items (iii) to (xi) relate to the moral culpability of an offender.

While not having formal status as a guideline judgment in the ACT, *R v Whyte* is accepted and is routinely followed by ACT judges and magistrates sentencing for offences involving driving that resulted in death or serious injury: see for example the ACT Court of Appeal in *Monfries v R*[33].

Dangerous driving while on conditional liberty

It is well recognised that it is an aggravating feature of the commission of a dangerous driving offence (and indeed any offence) that the offence was committed while the offender was on 'conditional liberty' (i.e. subject to bail, parole or a good behaviour order). In the case of *Field v R*[34], the New South Wales Court of Criminal Appeal said this was because this offending affects "considerations of punishment, deterrence and protection of the community".

Generally, where an offender has failed to realise the rehabilitative course made available to them through conditional release orders, the sentencing court in those circumstances cannot proceed on the same expectation of rehabilitation that is open in other circumstances.[35] As the same court said earlier in the case of *R v Tran*[36], "the betrayal of the opportunity for rehabilitation offered through probation, parole and provisional release, is to be regarded very seriously and should weigh against an offender".

[33] [2014] ACTCA 46.
[34] [2020] NSWCCA 105 per Hoeben CJ at CL.at [85]
[35] *R v March* [2023] ACTSC 28 at [84]; *R v Cicekdag* [2004] NSWCCA 357; 150 A Crim R 299 at [52]; *R v Fernando* [2002] NSWCCA 28 at [42].
36 [1999] NSWCCA 109 per Wood CJ at CL at [15].

Questions

7.1. Do current ACT sentencing practices in the context of serious driving offences align with the stated legislative purposes of sentencing?

7.2. Are there any specific aspects of sentencing practices in the ACT in the context of serious driving offences that need improvement or reform? If yes, what are they and why?

7.3. Are there any aggravating or mitigating factors specific to serious driving offences that should be given greater consideration during sentencing?

7.4. Are there ways in which the Court could be better informed about the offender's risk of reoffending at sentencing?

8. Driving programs

The ACT does not offer any publicly funded accessible rehabilitation or intervention programs in community or custodial settings for offenders that focus specifically on addressing dangerous/serious driving/traffic offending behaviour. Nor do many other Australian jurisdictions.

New South Wales Corrective Services do offer an intervention program which was designed specifically to address dangerous or negligent driving behaviour. The TRIP program is described as an evidence-based ten-session group program that targets serious and/or repeat high-risk driving offenders. It reportedly assists offenders to:

- Understand the link between high risk driving and road deaths and injuries (the problem)
- Increase awareness of the decisions and behaviours that contributed to their offence
- Learn skills and strategies to be a safe and legal driver in the future (the solution).

The educational and therapeutic aspects of the program are said to enable the offender to understand the chain of events, decisions and actions that led to their offence and then to implement 'low risk' driving behaviours to reduce the risk of harm to themselves and other road users.

To be eligible for this program, offenders in New South Wales must have a current conviction for a serious traffic offence, separate from and prior to the sentencing event that led to their conviction. Examples of serious traffic offences include for this purpose: a serious or repeat drink or drug driving offence; predatory or menacing driving; excessive speeding; police pursuit; dangerous or negligent driving; any driving offence causing death or grievous bodily harm; furious or reckless driving; failing to stop and assist; and street racing and other 'hoon'-type offences.

Question

8.1. What are the most pressing needs or gaps in existing ACT programs or initiatives aimed at changing dangerous driving behaviour, and how do you think these needs can be addressed?

9. Other programs

In its Recommendation 16 of the report, the Committee recommended:

> 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.

The ACT Government agreed in principle with this recommendation in its response to the report, saying that "driver training and education [was] a key focus" of "the forthcoming R*oad Safety Action Plan 2024-2025*, [then] currently under development".

The Committee also recommended, at Recommendation 19 of the report:

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

The ACT Government response noted this recommendation and said that it was "investigating options for such a scheme".

Licence disqualification

Offenders who are convicted or found guilty of ACT road transport offences may, by automatic operation of law, be subject to mandatory licence disqualification periods. For example, a conviction for culpable driving carries with it a mandatory licence disqualification for a first offender for 12 months; and for a repeat offender 24 months.[37] This is separate and additional to any sentence imposed by the Court. The disqualification period commences on conviction.

Ordinarily no account is taken of whether the offender is serving a custodial sentence and would in any case be prevented from driving. However, courts do have the ability to make additional discretionary orders for licence disqualification.

[37] *Road Transport (General) Act 1999*, s 62.

Currently, offenders convicted or found guilty of certain ACT drink or drug driving offences must complete an approved alcohol and drug awareness course during the period of disqualification and before resuming licensed driving.[38]

Interlock conditions

Further, ACT offenders convicted or found guilty of a level 4 (0.15 blood alcohol concentration (BAC) or higher) drink driving offence, or who have two or more previous drink driving offences on the record in the past five years, will be subject to a mandatory interlock condition on their driver licence, following a period of licence disqualification.[39] New South Wales also runs a similar interlock program.

An interlock condition requires drink driving offenders to have interlock devices (electronic breath-testing devices) linked to the ignition system of their vehicle, which requires the driver to provide a breath sample that does not detect alcohol before allowing the car to start. In cases where an interlock condition is not mandatory, some offenders may also volunteer to have an interlock device fitted to their vehicle, and thus obtain a probationary licence and return to driving after serving half of their disqualification period.

High risk offenders

The United Kingdom adds an additional requirement in some cases, whereby offenders who meet the categorisation as a "high risk offender" (either through repeat offending or serious offending) are required to affirmatively prove their fitness to drive following licence disqualification, instead of the bar to their holding a licence simply expiring.

Until October 2017, New South Wales courts and/or Roads & Maritime Services could impose a "habitual traffic offenders declaration" on offenders which gave rise to indefinite licence disqualification. This was abolished after criticism that the consequences of the declaration were unfair, and that the making of such declarations were seen to contribute to unlicensed driving in the form of offenders continuing to drive while disqualified.

[38] See Divisions 3.13 and 3.14 of the *Road Transport (Driver Licensing) Regulation 2000*.
[39] See Part 3A of the *Road Transport (Driver Licensing) Regulation 2000*.

Therapeutic interventions

All Australian jurisdictions offer therapeutic intervention programs which attempt to address a range of issues associated with the offending behaviour, rather than the offending behaviour itself directly. A factor common to many serious driving offences is that the offender has an alcohol and/or drug problem. Programs that address and assist offenders to overcome such issues are therefore of particular relevance in the serious driving offences context. For example, both ACT and NSW run the EQUIPS suite of programs which provides interventions for aggression and addiction, and alcohol and drug treatment.

All Australian jurisdictions offer some form of drink and/or drug driving program. These programs are typically run in groups over a number of weeks and are designed to modify the attitudes and behaviours of repeat and high-risk drink/drug-drive offenders. The programs' expressed aim is to promote safer driving practices and reduce the risk of re-offending.

Most Australian jurisdictions will also provide driving education programs to support offenders to obtain their licence. This is typically to assist with employment or other transport requirement needs, but in some cases this will be done simply to reduce offending behaviour, such as driving whilst unlicensed. The availability of these programs are of particular importance to indigenous and other disadvantaged people who may face barriers in obtaining and retaining a drivers licence. In the ACT such courses are now commonly run online and attended individually.

Questions

9.1. What should be the key priorities or focus areas for programs aimed at addressing the root causes of dangerous driving, and how can the community, government, courts and the justice system work together to implement effective interventions?

9.2. How might offenders who are unlikely to be deterred by normal legal sanctions, or 'high risk offenders', be identified in the ACT?

- What characteristics does such an offender have?
- What interventions could be targeted towards this cohort with the aim of reducing further offending?

9.3. Is the current ACT licence disqualification framework changing dangerous driving behaviours for early-stage offenders? How might this framework be improved?

10. The impacts on victims and the community

Victim impact statements

Section 7(1)(g) of the *Crimes (Sentencing) Act* requires the sentencing court "to recognise the harm done to the victim of the crime and the community". Similarly, section 33(1)(f) requires the sentencing court to consider "the effect of the offence on the victims of the offence, the victims' families and anyone else who may make a victim impact statement." Accordingly, a court must consider any victim impact statement tendered in the proceedings in deciding how the offender should be sentenced.[40]

Part 4.3 of the *Crimes (Sentencing) Act* deals with victim impact statements. The definition of 'victim' in the legislation encompasses primary victims who directly suffer harm because of an offence, as well as secondary victims who were financially or psychologically dependent upon the primary victim immediately prior to the primary victim's death[41]. However, any victim, parent of a victim, close family member of a victim, carer of a victim or intimate partner may make a victim impact statement.[42]

The devastating impact of serious driving offending may of course be broader than affecting only those directly impacted in a causal sense by the offence. Bystanders, witnesses and first responders to a road traffic incident may also be significantly traumatised from their attendance at the scene; however, they are usually not permitted to make a victim impact statement for any later sentencing proceedings.

Restorative justice

The *Crimes (Restorative Justice) Act 2004* sets up a system of restorative justice in the ACT that brings together victims, offenders and their personal supporters in a carefully managed, safe environment for the purposes of possible restorative justice conferences and restorative justice agreements.[43]

[40] *Crimes (Sentencing) Act 2005*, s 53.
[41] *Crimes (Sentencing) Act 2005*, s 47.
[42] *Crimes (Sentencing) Act 2005*, s 49.
[43] See the Objects of the Act in s 6.

Serious driving offences are eligible for inclusion in a restorative justice process, as long as the ordinary criteria pursuant to the legislation are met, particularly both the offender and the victim must be willing to participate.

Questions

The Council acknowledges the significant input of victims and their families to the Legislative Assembly Committee's Inquiry, and will have regard to those submissions as part of its work.

10.1. How can the justice system improve victims' experience of, and their participation in, sentencing proceedings for serious driving offences?

10.2. Are restorative justice procedures an effective part of the criminal justice system for serious driving offences?

10.3. Should the broader impact of serious driving offences on the community, such as the impact to first responders and witnesses be taken into account on sentence? If so, how?

List of questions

Definitions

4.1 What is “dangerous driving”?

4.2 What constitutes repeat dangerous driving and/or a “repeat offender”?

Offences

5.1 What are your thoughts on the current ACT framework of serious driving offences? Do you believe they adequately address the range of dangerous behaviours on the road?

5.2 Are there any additional serious driving offences you believe should be introduced in the ACT? If so, what specific situations or behaviours do you think are not adequately addressed, and what should the maximum penalty for any new offence be?

Penalties

6.1 Do you believe the current maximum penalties for serious driving offences in the ACT are appropriate? Why or why not?

Sentencing practice

7.1 Do current ACT sentencing practices in the context of serious driving offences align with the stated legislative purposes of sentencing?

7.2 Are there any specific aspects of sentencing practices in the ACT in the context of serious driving offences that need improvement or reform? If yes, what are they and why?

7.3 Are there any aggravating or mitigating factors specific to serious driving offences that should be given greater consideration during sentencing?

7.4 Are there ways in which the Court could be better informed about the offender's risk of reoffending at sentencing?

Driving programs

8.1 What are the most pressing needs or gaps in existing ACT programs or initiatives aimed at changing dangerous driving behaviour, and how do you think these needs can be addressed?

Other programs

9.1 What should be the key priorities or focus areas for programs aimed at addressing the root causes of dangerous driving, and how can the community, government, courts and the justice system work together to implement effective interventions?

9.2 How might offenders who are unlikely to be deterred by normal legal sanctions, or 'high risk offenders', be identified in the ACT?

- What characteristics does such an offender have?
- What interventions could be targeted towards this cohort with the aim of reducing further offending?

9.3 Is the current ACT licence disqualification framework changing dangerous driving behaviours for early-stage offenders? How might this framework be improved?

The impacts on victims and the community

10.1 How can the justice system improve victims' experience of, and their participation in, sentencing proceedings for serious driving offences?

10.2 Are restorative justice procedures an effective part of the criminal justice system for serious driving offences?

10.3 Should the broader impact of serious driving offences on the community, such as the impact to first responders and witnesses, be taken into account on sentence? If so, how?

Annexure A – Comparison of serious motor vehicle driving offences as at March 2024

Note – this table does not include licence disqualification periods; or fines, unless offence is only punishable by a fine

ACT – *Crimes Act 1900* (ACT) [“CA”]; *Road Transport (Safety and Traffic Management) Act 1999* (ACT) [“RTA”]		**NSW - *Crimes Act 1900* (NSW) [“CA”]; *Road Transport Act 2013* [“RTA”]**		**Tasmania – *Criminal Code Act 1924* [“CC”]; *Traffic Act 1925* [“TA”]; *Police Offences Act 1935* [“POA”]**		**Victoria – *Crimes Act 1958* [“CA”]; *Road Safety Act 1986* [“RSA”]**		**Queensland – *Criminal Code 1899* [“CC”]; *Transport Operations (Road Use Management) Act 1995* [“TOA”]**		**South Australia - *Criminal Law Consolidation Act 1935* [“CLCA”]; *Road Traffic Act 1961* [“RTA”]**		**Western Australia - *Criminal Code 1913* [“CC”]; *Road Traffic Act 1974* [“RTA”]**		**Northern Territory - *Criminal Code 1983* [“CC”]; *Traffic Act 1987* [“TA”]**	
offence	maximum penalty	offence	maximum penalty	offence	maximum penalty	offence	maximum penalty	offence	maximum penalty	offence	maximum penalty	offence	maximum penalty	offence	maximum penalty
Manslaughter – CA, s 15	*From 24/11/11:* 20 years – CA, s 15(2) If aggravated[44] – 28 years (s 15(3)) *16/03/06 - 24/11/11:* 20 years – CA, s 15(2) If aggravated[46] – 26 years (s 15(3))	Manslaughter - s 18(1)(b)	25 years (s 24)	Manslaughter – CC, s 159, 156(2)(b) & 150	N/A[45]	Manslaughter – CA, s 5	25 years	Manslaughter – s 303, 310	Life	Manslaughter – CLCA, s 13(1), (2)	Life	Manslaughter – CC, s 280	Life	Manslaughter – CC, s 161	Life
Aggravated[44] culpable[47] driving occasioning death - CA, s 29(3)	*From 24/11/11:* 16 years *16/03/06 - 24/11/11:* 9 years					Culpable[48] driving causing death – CA, s 318(1)	20 years standard sentence – 8 years (ss (1A))	Aggravated[49] dangerous operation of a vehicle causing death or grievous bodily harm – s 328A(4)(b) & (c)	14 years	Aggravated[50] culpable driving causing death – CLCA, s 19A(1)	Life (ss (a)(ii))	Aggravated[51] dangerous driving causing death – RTA, s 59	20 years (ss (3)(a)(i)) Minimum 12 months imprisonment that cannot be suspended (see ss (4A))		
Aggravated[44] culpable[47] driving occasioning grievous bodily harm - CA, s 29(5)	*From 24/11/11:* 12 years *16/03/06 - 24/11/11:* 5 years									Aggravated[50] culpable driving causing serious harm – CLCA, s 19A(3)(a)	Life (ss (ii))	Aggravated[51] dangerous driving causing grievous bodily harm – RTA, s 59	14 years (ss (3)(a)(ii)) Minimum 12 months imprisonment that cannot be suspended (see ss (4A))		

[44] circumstances of aggravation specified in s 48A and 48C as offence against pregnant women or involving family violence
[45] the Tasmanian Criminal Code does not specify maximum penalties for the offences it details
[46] circumstances of aggravation specified in s 48A and 48C as offence against pregnant women or involving family violence
[47] culpable driving defined in s 29(6) as negligent driving or substance impairment
[48] culpable driving defined in s 318(2) as reckless or negligent driving or substance impairment – negligent driving further defined in ss (2A)
[49] circumstances of aggravation specified in offence provision as including substance impairment, excessive speed or unlawful racing, or if the offender knows or reasonably ought to have known that the other person was injured or killed and leaves the scene other than to seek medical assistance or other help before a police officer arrives
[50] circumstances of aggravation specified in s 5AA and include license disqualification, evading police, alcohol or substance impairment, excessive speed or unlawful racing
[51] either excessive alcohol and/or substance impairment, or further circumstances of aggravation specified in s 49AB(1) and include vehicle being stolen, never licensed, license disqualified, excess speed, escaping police pursuit

ACT – *Crimes Act 1900* (ACT) [“CA”]; *Road Transport (Safety and Traffic Management) Act 1999* (ACT) [“RTA”]		**NSW - *Crimes Act 1900* (NSW) [“CA”]; *Road Transport Act 2013* [“RTA”]**		**Tasmania – *Criminal Code Act 1924* [“CC”]; *Traffic Act 1925* [“TA”]; *Police Offences Act 1935* [“POA”]**		**Victoria – *Crimes Act 1958* [“CA”]; *Road Safety Act 1986* [“RSA”]**		**Queensland – *Criminal Code 1899* [“CC”]; *Transport Operations (Road Use Management) Act 1995* [“TOA”]**		**South Australia - *Criminal Law Consolidation Act 1935* [“CLCA”]; *Road Traffic Act 1961* [“RTA”]**		**Western Australia - *Criminal Code 1913* [“CC”]; *Road Traffic Act 1974* [“RTA”]**		**Northern Territory - *Criminal Code 1983* [“CC”]; *Traffic Act 1987* [“TA”]**	
offence	maximum penalty	offence	maximum penalty	offence	maximum penalty	offence	maximum penalty	offence	maximum penalty	offence	maximum penalty	offence	maximum penalty	offence	maximum penalty
Culpable[47] driving occasioning death – CA, s 29(2)	*From 24/11/11:* 14 years *16/03/06 - 24/11/11:* 7 years	Aggravated[52] dangerous driving occasioning death – CA, s 52A(2)	14 years							Culpable driving causing death – CLCA, s 19A(1)	First offence – 15 years (ss (a)(i)) Subsequent offence – life (ss (a)(ii))	Dangerous driving causing death – RTA, s 59	10 years (ss (3)(b)(i))	Dangerous driving causing death – CC, s 174F(1)	10 years
Culpable[47] driving occasioning grievous bodily harm – CA, s 29(4)	*From 24/11/11:* 10 years *16/03/06 - 24/11/11:* 4 years	Aggravated[52] dangerous driving occasioning grievous bodily harm – CA, s 52A(4)	11 years			Negligently causing serious injury – CA, s 24	10 years	Unlawfully cause grievous bodily harm – s 320	14 years	Culpable driving causing serious harm – CLCA, s 19A(3)(a)	First offence – 15 years (ss (i)) Subsequent offence – life (ss (ii))	Dangerous driving causing grievous bodily harm – RTA, s 59	7 years (ss (3)(b)(ii))	Dangerous driving causing serious harm – CC, s 174F(2)	7 years
		Dangerous driving occasioning death – CA, s 52A(1)	10 years	Dangerous driving causing death – CC, s 167A	N/A[45]	Dangerous[53] driving causing death – CA, s 319(1)	10 years	Dangerous operation of a vehicle causing death or grievous bodily harm – s 328A(4)(a)	10 years	Aggravated[50] careless driving causing death – CLCA, s 19ABA(1)	7 years (ss (a)(ii))				
		Dangerous driving occasioning grievous bodily harm – CA, s 52A(3)	7 years	Causing grievous bodily harm by dangerous driving - CC, s 167B	N/A[45]	Dangerous[53] driving causing serious injury – CA, s 319(1A)	5 years			Aggravated[50] careless driving causing serious harm – CLCA, s 19ABA(2)	7 years (ss (a)(ii))	Aggravated[51] dangerous driving causing bodily harm – RTA, s 59A	10 years (ss (3a)) Minimum 6 months imprisonment that cannot be suspended (see ss (4A))	Negligently cause serious harm – CC, s 174E	10 years
Aggravated[54] furious, reckless or dangerous driving (non - fail to stop for police) – RTA, s 7(1)	2 years (ss (c))	Predatory driving - CA, s 51A	5 years	Dangerous driving – CC, s 172A	N/A[45]			Aggravated[55] dangerous operation of a vehicle – s 328A(2)(a) & (b)	5 years	Culpable driving causing harm– CLCA, s 19A(3)(b)	First offence – 5 years (ss (i)) Subsequent offence – 7 years (ss (ii))	Aggravated[51] dangerous driving – RTA, s 61	3 years (ss (3)(b)		
Negligent driving occasioning death – RTA, s 6(1)(a)	2 years	Negligent driving causing death – RTA, s 117(1)(a)	First offence – 18 months Subsequent offence – 2 years	Negligent driving causing death – TA, s 32(2A)	First offence - 2 years Subsequent offence – 3 years			Careless driving causing death or grievous bodily harm and offender unlicensed – TOA, s 83(1)(a)	2 years	Careless driving causing death – CLCA, s 19ABA(1)	First offence – 5 years (ss (i)) Subsequent offence – 7 years (ss (ii))	Careless driving causing death, grievous bodily harm or ABH – RTA, s 59BA	3 years	Careless driving causing death – TA, s 30B(1)	2 years

[52] circumstances of aggravation specified in s 52A(7) and include excess alcohol, excessive speed, escape police pursuit and drug impairment
[53] rebuttable presumption in ss (1B) if knowingly or recklessly driving unlicenced or while disqualified
[54] circumstances of aggravation specified in s 7A and include repeat offending, excessive alcohol, excessive speed, putting others at risk and substance impairment
[55] circumstances of aggravation specified in offence provision as including substance impairment, excessive speed or unlawful racing

ACT – *Crimes Act 1900* (ACT) [“CA”]; *Road Transport (Safety and Traffic Management) Act 1999* (ACT) [“RTA”]		**NSW - *Crimes Act 1900* (NSW) [“CA”]; *Road Transport Act 2013* [“RTA”]**		**Tasmania – *Criminal Code Act 1924* [“CC”]; *Traffic Act 1925* [“TA”]; *Police Offences Act 1935* [“POA”]**		**Victoria – *Crimes Act 1958* [“CA”]; *Road Safety Act 1986* [“RSA”]**		**Queensland – *Criminal Code 1899* [“CC”]; *Transport Operations (Road Use Management) Act 1995* [“TOA”]**		**South Australia - *Criminal Law Consolidation Act 1935* [“CLCA”]; *Road Traffic Act 1961* [“RTA”]**		**Western Australia - *Criminal Code 1913* [“CC”]; *Road Traffic Act 1974* [“RTA”]**		**Northern Territory - *Criminal Code 1983* [“CC”]; *Traffic Act 1987* [“TA”]**	
offence	maximum penalty	offence	maximum penalty	offence	maximum penalty	offence	maximum penalty	offence	maximum penalty	offence	maximum penalty	offence	maximum penalty	offence	maximum penalty
Negligent driving occasioning grievous bodily harm – RTA, s 6(1)(b)	1 year	Negligent driving causing grievous bodily harm – RTA, s 117(1)(b)	First offence – 9 months Subsequent offence – 12 months	Negligent driving causing grievous bodily harm – TA, s 32(2B)	First offence - 1 year Subsequent offence – 18 months			Careless driving causing death or grievous bodily harm – TOA, s 83(1)(b)	1 year	Careless driving causing serious harm – CLCA, s 19ABA(2)	First offence – 5 years (ss (a)(i)) Subsequent offence – 7 years (ss (a)(ii))			Careless driving causing serious harm – TA, s 30B(2)	18 months
Negligent driving occasioning ABH – RTA, s 6(1)(c)	50 penalty units	Causing ABH by wanton or furious driving, racing or other misconduct or by wilful neglect - CA, s 53	2 years	Causing bodily injury by wanton or furious driving, racing or other misconduct or by wilful neglect - POA, s 36	2 years							Dangerous driving causing bodily harm – RTA, s 59A	First offence – 9 months Subsequent offence – 18 months		
Negligent driving – RTA, s 6(1)(d)	20 penalty units	Negligent driving – RTA, s 117(1)(c)	10 penalty units	Negligent driving – TA, s 32(2)	5 penalty units	Careless driving – RSA, s 65	First offence – 12 penalty units Subsequent offences – 25 penalty units	Careless driving – TOA, s 83(1)(c)	6 months imprisonment	Careless driving – RTA, s 45	Aggravated[56] offence – 12 months	Careless driving – RTA, S 62	30 penalty units	Careless driving – TA, s 30B(3)	6 months
Furious, reckless or dangerous driving – RTA, s 7(1)	12 months (ss (d))	Furious or reckless driving – RTA, s 117(2)	First offence – 9 months Subsequent offence – 12 months	Reckless driving – TA, s 32(1)	First offence – 2 years (s 32(1)(a)) Subsequent offence – 4 years (s 32(1)(b))	Dangerous driving – RSA, s 64(1)	2 years	Dangerous operation of a vehicle – s 328A(1)	First offence - 3 years Subsequent offence – 5 years (s 328A(2)(c)	Extreme speed – CLCA, s 19ADA	Basic offence – 3 years Aggravated[50] offence – 5 years	Driving in reckless manner – RTA, s 60	First or second offence – 9 months Subsequent offence - 12 months	Dangerous driving – TA, s 30(1)	2 years
Menacing driving – RTA, s 8	12 months	Menacing driving – possibility of menace– RTA, s 118(1)	First offence – 12 months Subsequent offence – 18 months							Excessive speed – RTA, s 45A	Basic offence – fine between $3k & $5k Subsequent or aggravated[56] offence – 2 years	Dangerous driving – RTA, s 61	First offence – 60 penalty units Subsequent offence – 9 months		
		Menacing driving – intent to menace– RTA, s 118(1)	First offence – 18 months Subsequent offence – 2 years												

[56] circumstances of aggravation specified in offence provision as including substance impairment, license suspension or disqualification, carrying passengers or evading police

ACT – *Crimes Act 1900* (ACT) [“CA”]; *Road Transport (Safety and Traffic Management) Act 1999* (ACT) [“RTA”]		**NSW - *Crimes Act 1900* (NSW) [“CA”]; *Road Transport Act 2013* [“RTA”]**		**Tasmania – *Criminal Code Act 1924* [“CC”]; *Traffic Act 1925* [“TA”]; *Police Offences Act 1935* [“POA”]**		**Victoria – *Crimes Act 1958* [“CA”]; *Road Safety Act 1986* [“RSA”]**		**Queensland – *Criminal Code 1899* [“CC”]; *Transport Operations (Road Use Management) Act 1995* [“TOA”]**		**South Australia - *Criminal Law Consolidation Act 1935* [“CLCA”]; *Road Traffic Act 1961* [“RTA”]**		**Western Australia - *Criminal Code 1913* [“CC”]; *Road Traffic Act 1974* [“RTA”]**		**Northern Territory - *Criminal Code 1983* [“CC”]; *Traffic Act 1987* [“TA”]**	
offence	maximum penalty	offence	maximum penalty	offence	maximum penalty	offence	maximum penalty	offence	maximum penalty	offence	maximum penalty	offence	maximum penalty	offence	maximum penalty
Racing and competitive driving – RTA, s 5A	First offence – 50 penalty units Subsequent or aggravated[57] offence – 12 months	Races, attempts on speed records and other speed trials – RTA, s 115	First offence – 30 penalty units Subsequent offence – 9 months	No motor-vehicle race to be held without a permit – POA, s 48	5 penalty units	Speed trials – RSA, s 68	First offence – 8 penalty units Subsequent offence – 15 penalty units	Racing and speed trials on roads – TOA, s 85	6 months	Street racing – CLCA, s 19AD	First offence – 3 years Subsequent or aggravated[50] offence – 5 years	Driving at reckless speed (45kph over or in excess of 155kph) – RTA, s 60A	First or second offence – 9 months Subsequent offence - 12 months	Driving at dangerous speed – TA, s 30A(1)	2 years
Improper use of motor vehicle (ie. burnouts) – RTA,s 5B	20 penalty units If oil etc. on road – 30 penalty units	Conduct associated with road and drag racing and other activities – RTA, s 116	10 penalty units If oil etc. on road: First offence – 30 penalty units Subsequent offence – 9 months	Excessive noise, smoke etc. from vehicles – POA, s 37J	3 months	Improper use of motor vehicle – RSA, s 65A	5 penalty units	Wilfully causing motor vehicle to lose traction with road – TOA, s 85A	20 penalty units	Misuse of motor vehicle – RTA, s 44B	Aggravated[56] offence – 12 months	Causing excessive noise or smoke from vehicle’s tyres – RTA, s 62A	30 penalty units		

[57] circumstances of aggravation prescribed in s 5AAA, including failing to stop for police, excessive alcohol, excessive speed, putting others at risk and substance impairment

Annexure B – The five most recent ACT Supreme Court sentencing decisions for culpable driving causing death offences

DPP v Jake BARRETT [2023] ACTSC 260

DPP v Micha CALHOUN (a pseudonym) [2023] ACTSC 189

R v Mitchell Ryan LAIDLAW [2022] ACTSC 215

R v Peter James LOESCHNAUER [2022] ACTSC 30

R v Akis Emmanouel LIVAS (No 2) [2020] ACTSC 116