



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

**STANDING COMMITTEE ON JUSTICE
AND COMMUNITY SAFETY**

(Reference: [Inquiry into Dangerous Driving](#))

Members:

**MR P CAIN (Chair)
DR M PATERSON (Deputy Chair)
MR A BRADDOCK**

TRANSCRIPT OF EVIDENCE

CANBERRA

MONDAY, 14 NOVEMBER 2022

**Secretary to the committee:
Ms K de Kleuver (Ph: 620 70524)**

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

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Amended 20 May 2013

The committee met at 1.00 pm.

GAUGHAN, DEPUTY COMMISSIONER NEIL, Chief Police Officer, ACT Policing

CHAMPION, COMMANDER LINDA, Commander Operations, ACT Policing

WHOWELL, MR PETER, Executive General Manager, Corporate Services, ACT Policing

THE CHAIR: Good afternoon, and welcome to the public hearings of the Standing Committee on Justice and Community Safety's inquiry into dangerous driving. The committee is hearing from some individuals and organisations and two ministers over the next few days. The committee wishes to acknowledge the traditional custodians of the land we are meeting on, the Ngunnawal people. We wish to acknowledge and pay our respects to their continuing culture and the contribution they make to the life of the city and this region. We would also like to acknowledge and welcome Aboriginal and Torres Strait Islander people who may be attending today's hearing.

All mobile phones are to be switched off or put into silent mode. COVID safety arrangements are in place. Please respect the stated room limits and physical distancing requirements as part of the Assembly's COVID safe measures. Please allow the cleaner to clean the desk and seat between witnesses. Practice good hand and respiratory hygiene.

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In this first session we will hear from ACT Policing, and we welcome Deputy Commissioner Gaughan and officials. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw their attention to the privilege statement. Could you each confirm for the record that you understand the privilege implications of the statement.

Dep Commissioner Gaughan: I do.

Cmdr Champion: I do.

THE CHAIR: Thank you. I would also like to acknowledge, watching in the public gallery, Mr Andrew Corney and Mr Tom McLuckie, from affected families who have been witnesses before this committee. I also acknowledge Mr Jason Taylor, formerly from ACT Policing. It is my understanding you wish to make a short opening statement.

Dep Commissioner Gaughan: If I may.

THE CHAIR: Thank you.

Dep Commissioner Gaughan: Firstly, Chair, I would like to acknowledge the traditional owners of the land, as well. I would also like to thank the committee for allowing me to make this opening statement. On behalf of ACT Policing I extend my sympathies to the families and the broader Canberra community who have lost loved ones, not just this year, but also in past years, from road trauma. Unfortunately, many of those lives were just beginning. I believe it is the sole outcome wanted by everyone who will appear before this committee or who has made a submission—and, ultimately, those Canberrans who have experienced the effects of Canberra’s road toll—that we need to change driver behaviour.

We have lost 18 lives on our roads in 2022, and there are still a couple of months left. 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. I am extremely proud of the resilience, professionalism and dedication shown by ACT Policing members; however, these incidents have an ongoing significant impact on all our officers’ wellbeing and indeed the broader community.

We will continue to support our officers as best we can by providing services that will allow them to process some of the trauma they have experienced while performing their duties with the community. ACT Policing is committed to initiatives that support and increase the safety of all road users in the territory, and we welcome the opportunity to provide a submission to the Standing Committee on Justice and Community Safety and indeed appear here today.

Our submission seeks to articulate the challenges ACT Policing experience in addressing the issue associated with dangerous driving and outline the current strategies employed to target those involved. The proposal discusses key initiatives ACT Policing views as opportunities to increase the safety on Canberra’s roads. These include legislative changes and the examination of emerging technologies.

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. You probably would have seen a couple of instances of that in New South Wales over the weekend. 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.

It is our view that there is an opportunity to examine policy around bail and appropriate sentencing in regard to the commission of serious offences, which may also impact the rate of recidivism of those contributing to dangerous driving. We are also in discussion with government on possible legislative changes, which I have spoken about a number of times to this committee previously—a new offence for trespass in motor vehicle; options for people convicted of dangerous driving and high range speeding, including seizing of vehicles; and a consideration of the presumption

of bail for serious matters such as assault police officers, driving at police, and recidivist serious motor vehicle offences.

We need to make the repercussions for someone who is caught driving dangerously stronger in order to deter them from considering that behaviour again. Fatalities in 2022 so far have been caused by a range of factors and incidents. Victims have included drivers, passengers, an e-scooter rider and a cyclist. Without pre-empting any coronial processes, anecdotally a common factor in many of these fatalities has been excessive speed. Given the age of victims involved in recent fatalities, ACT Policing's position remains that the cause of these road fatalities is not solely a policing issue, and that behaviours need to be changed with a renewed focus on the youngest, least-experienced drivers.

An example of seeking to address this through multi-age engagement is the ACT Education Directorate's consideration of options to better educate young people in the ACT on safer driving practices. It has resulted in the ACT strengthening its message to have more of an impact on young drivers in the 25-year-old age group. We are now using such words as, "If you're going to speed, which one of your friends do you want to kill today?" "If you're going to drink and drive, the consequences of you doing that could lead to someone dying." "Every time you are operating a motor vehicle you are driving a lethal weapon and if you do not use it responsibly, it can lead to a tragic and unnecessary loss of life."

ACT Policing conducted almost 14,000 random breath tests and 1,760 roadside drug tests in 2021-22. We do, as I have stated previously, have some concerns in relation to the Drugs of Dependence Act being changed, and the effect that could have on driver trauma, but particularly on driver behaviour. 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. It is important to note that while operation TORIC is focused on people who fail to stop for police in stolen vehicles and dangerous driving, it is these vehicles that criminals are using in undertaking of more serious crimes, so getting these people off the street will have an impact on other crimes in the community. We had a ram raid on Friday. Someone used a stolen motor vehicle to take an ATM machine. We had a pretty serious incident, as well, at Belconnen Mall. They evaded police in a stolen car.

Since the introduction of TORIC, compared to the same period last year we are seeing a 52 per cent reduction in stolen motor vehicles compared with the same period and a 31 per cent reduction in residential burglaries. As I have stated to this committee previously, I have made the decision to maintain that as the standing taskforce.

To conclude, I would like to reiterate how proud I am of the work of ACT Policing. Our men and women are constantly faced with the challenge of a dangerous work environment. Our people go towards the difficult; they do not run away from it. It is an inherent feature of policing. This year has undoubtedly tested them in new ways. They have met the challenges they face and at all times have continued to keep our community safe. We remain committed to lowering the number of serious injuries and fatalities on our roads as much as possible. We will continue to explore new mechanisms to reduce incidents of dangerous driving behaviour in the ACT.

We thank you and are happy to take questions.

THE CHAIR: Thank you so much for that. I start on a very sombre note: I think the number of deaths on our roads this year is 18.

Dep Commissioner Gaughan: That is correct.

THE CHAIR: You said that there was a range of factors, excessive speed obviously being amongst them. How many cases were there where cannabis was found in the driver's blood?

Dep Commissioner Gaughan: That is still something for the coroner to determine through the process. I will just provide a bit more context on this question of speed. Out of the 18 fatalities that we have had this year I note that two of those are multiple fatalities—one with unfortunately two people losing their lives and the other one with three. Out of the 18 people that have passed away, we would say that speed is a contributing factor in 11 of those people passing away.

THE CHAIR: To clarify, when you say it is for the coroner to determine, when there is a fatality, are drivers and passengers tested for alcohol and drugs?

Dep Commissioner Gaughan: They are, but with respect to the deceased persons obviously that would be something for the coroner to put through the coronial process. We have charged a number of people with some other offences. I might pass to Acting Deputy Chief Police Officer Champion.

Cmdr Champion: Of those that we could test, seven drivers had cannabis detected on them.

THE CHAIR: Seven out of how many? Did you say there were 10 drivers?

Cmdr Champion: There have been 18 fatalities, seven drivers, but, as CPO said, one or two of the drivers could not be tested due to the circumstances.

THE CHAIR: Right. In those terrible situations how many drivers were there?

Cmdr Champion: Of the 18 deceased?

THE CHAIR: Yes. How many drivers were there, because, as you said, there were multiple deaths in some cases.

Dep Commissioner Gaughan: There were six, seven, eight—we will take it as eight. There were: cyclist, pedestrian, pedestrian, number of passengers. I have seven drivers.

THE CHAIR: Seven drivers. Are you saying that all of them had cannabis in their blood, because you said there were seven with cannabis in their blood? Maybe you could take that on notice.

Dep Commissioner Gaughan: I will take that on notice.

THE CHAIR: I do note that even though the coroner is issuing reports, obviously the blood record is something that is known pretty immediately. Are you able to give similar statistics in either the financial year or the calendar year, going back, say, three years of how many drivers were involved in fatalities and in how many of those cases did the driver have cannabis or other drugs in their system?

Dep Commissioner Gaughan: We will take that on notice, thanks, Chair.

DR PATERSON: My question is around failing to stop. You outlined that in the submission as, “The link between failing to stop for police and other serious offences cannot be over-emphasised.” What do you see as a solution to this issue of people failing to stop, which then escalates a situation quite rapidly, I would imagine?

Dep Commissioner Gaughan: There needs to be recourse for their actions. I can read you the fail-to-stop statistics for the last couple of financial years. For 2018-19 it was 101; for 2019-20 it was 961; for 2020-21 879; and for the last financial year 2021-22, 737. So those are pretty astronomical numbers when you look at it. How many a week did you say it was?

Cmdr Champion: It is 14 a week.

Dep Commissioner Gaughan: Two a day. There is a raft of issues with that, obviously, Dr Paterson. A lot of those are stolen motor vehicles or stolen number plates. The fact is that, as we have said previously, the majority of people that are driving stolen motor vehicles are not going to stop for police regardless of what laws we have in place, because they are running from police and because they know the consequence is that they are certainly likely to face a court and then a court will determine what is the next course of action. So they are not going to stop.

That is why we have introduced things such as road spikes and other things to determine that. Certainly with operation TORIC we are trying not to chase cars; we have actually come up with other strategies so that we can take people into custody in a safe way. What we are seeing interstate, with car chases particularly, is that laws are being put in place so that people who commit that type of crime go to prison.

DR PATERSON: I guess, like you said, if they know they are going to be in trouble, they will run, and maybe run harder and faster.

Dep Commissioner Gaughan: Correct. Yes. Clearly drug use and driving cars is a concern for us, but if people are not incarcerated we need to ensure that they have appropriate rehabilitation processes in place and that when they are released from jail they have housing, they have education to look forward to, and they hopefully have a job, so we can break the cycle of recidivism. We have spoken to this committee about the number of people that we see time and time again, who come before us for these types of offences. That is the way to break the cycle; we have to find something else for them to do when they are released from prison.

DR PATERSON: Practically, though, are there things that police need or resources that police need? You spoke about road spikes; is there anything that you could have that would assist your job?

Dep Commissioner Gaughan: There is no silver bullet for this, but I will get Commander Champion to talk about some of the initiatives we are looking at from a technology perspective. Obviously, we are a little bit cautious about what we can say in an open committee because there are some commercial-in-confidence discussions going on, but this is an issue that is concerning not just the ACT; the issue of pursuits is a cross-jurisdictional issue.

As I said in my opening statement, we had two pursuit situations in New South Wales over the weekend that did not end particularly well, where vehicles were involved in collisions. Car chases are inherently dangerous for everyone involved. They are inherently dangerous for police and the community, who we are trying to protect, so it is a judgment call for us whether or not we chase the vehicle. We are not in a position now where we have car chases that occur only at 2 o'clock in the morning; we have had many instances recently where this has been happening up the middle of Northbourne Avenue on the wrong side of the road at 10 o'clock in the morning—and that is not an exaggeration. I will ask Linda to speak to some of the high-level stuff we are doing in the technology space.

Cmdr Champion: Following on from your question, it is very highly resource intensive and technology intensive. There is a lot we are doing that we will not speak about publicly, but it has dropped the fail-to-stops from average of 14 a week down to two. So word is getting out there, and the offenders are actually saying to us, “Are you from op TORIC?” So they are understanding that, but we need to maintain that. That is the problem; as soon as they know that we are backing off we cannot.

In terms of technology, we are exploring everything from potential drone use. It is very restricted with the airways and with line of sight, so that is something that we want to overcome. CASA are working with us on a potential change there. We are linking CCTV into our ANPR—numberplate recognition—so we can follow through cameras rather than behind in a police car. There are stop sticks, but we are also doing other sorts of interdictions that are highly tactically qualified, so it needs specialists out there on the road with us at the same time.

We have also engaged a forensic psychologist so that we can look at this holistically, because whilst a lot of the offenders will not stop because they know they are in trouble, there are those that are just out there doing bad. We want to understand what makes them tick, and therefore, when we do catch them, hopefully before a tragedy—but either way—we could ask for a tailored program for them, knowing that one day they will walk again and what that is going to look like for us. So we are trying to do the whole spectrum of activities here to wrap around basically every individual rather than looking at them all in one category.

DR PATERSON: Thank you.

MR BRADDOCK: I am interested in how we can utilise technology to address excessive speeding. I am not sure if you are exactly the right people to ask, but I will start because you are in front of me. Would you be examining potential ways we could either limit vehicle speeds or put warning systems in place when people are excessively speeding in order to address this excessive speeding problem?

Dep Commissioner Gaughan: What we have seen trialled in some jurisdictions are not radar cameras but signs that say when you are exceeding the speed limit, particularly around road works. You see that all the time. If you drive to Sydney and back, every time you go through a road works it tells you your speed. I think something like that is actually a really good idea. It is in people's faces. It is actually something that they can see. Put up a red unhappy face when you are speeding and a green smiley face when you are not. That is an observation people will get to, so I think that is certainly something that is worth having a look at.

It is probably not an issue directly for us, it is more for TCCS. Any way, Mr Braddock, that you can change driver behaviour and alert people to the issues is important. That is particularly important for young children when they are learning to drive. A lot of the people we are talking about are probably past that, if I am being honest, but as an education process for all of us, whether we have been driving for 40 years or five minutes, I think it is important to look at it.

MR BRADDOCK: Yes. Are you aware of any jurisdictions that utilise other electronic monitoring or taking data or telematics to assist in tackling that excessive speeding?

Dep Commissioner Gaughan: I will get Linda to talk about telematics in a minute. Are you talking about electronic monitoring of offenders?

MR BRADDOCK: Yes.

Dep Commissioner Gaughan: Every jurisdiction in Australia uses that except us, which I find quite interesting. I think it is certainly something that is worth considering, not only in the context that we are talking about here today, but as another option for bail. For instance, instead of a person continuing to commit and then basically being in AMC, there is potential for middle ground there. I think that is something to look at.

Even in the family violence space, for instance, I think it has really significant application in that environment, mainly to protect the victims, because we will be in a position to know where the alleged perpetrator or the person on bail is. It is something that is definitely worth consideration. We would be very happy to speak to our interstate colleagues around how successful that has been. Certainly, in talking to some of my colleagues in a cop conference in Melbourne last week, I learned that they believe it does change behaviour. It is probably only anecdotal at this stage, but we do not do it, and I certainly think it is something worth considering.

THE CHAIR: I have a supplementary on that. Could you just explain to me exactly how the electronic bracelet would work? Would it mean that they are limited to a certain place or a home, or a 100-metre circle?

Dep Commissioner Gaughan: It can be geofenced. It can be geofenced so that you are not allowed outside a certain area; we want you to stay within the territory; or we want you to do X, Y, Z. The technology has come along in leaps and bounds. I know this was talked about in the ACT government context probably about a decade ago,

but the technology is leaps and bounds ahead of where it was. You have only got to look at your mobile phone; it will tell us we are in this building. A tag does the same thing. It is very precise. It is very small. It is not the same; it does not look intrusive like they used to look. They used to be quite big things. Someone could still go about their daily business, and no-one will even know they have a tag on. So I think it is certainly something worth looking at.

THE CHAIR: What sort of restrictions are put on the person's movements?

Dep Commissioner Gaughan: Whatever restrictions the court wishes to. Ultimately that is a matter for the court. I might get Linda to talk about the issue we are talking about, with respect to cars.

Cmdr Champion: 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.

THE CHAIR: When they breach that, how confident are you that you have the resources to get to that person, knowing they have breached. They are probably heading off, in the worst extremes, to hurt someone. How confident are you that you would be able to get to them within a sufficient time?

Dep Commissioner Gaughan: Mr Cain, it would depend on the offender. If it was a significant family violence matter, for instance, we would go straight to the victim. We would not even be worried about the offender, and we would have things in place that we could deal with that. It would be classified as a priority 1 or priority 2 job. Do you want to talk about the cars?

Cmdr Champion: But if it is a road rage, then we would just do what we would if anyone called in. If someone is doing a high speed, someone would put the appropriate resources straight to it.

Dep Commissioner Gaughan: In that road rage situation, with the speed, it is much safer to interdict them later than to try to do it at the time. And that would give us the evidence that they have been in a car at a high speed. We cannot prove the driver, but certainly with CCTV and other things we could probably start to do that stuff.

THE CHAIR: It is certainly something we have had submitted to us during the community corrections, and it is something we have recommended as—

Dep Commissioner Gaughan: And I have spoken to the Commissioner of Corrections about that. It is certainly something that, potentially, jointly we could look at working on.

Cmdr Champion: So, I will get to your question. If there is someone out there driving at extremely high speeds—not being pursued by police but someone that we know is going to be of danger—we will certainly put appropriate police resources at intersections so that no-one enters them, things like that, and clear the way.

Going back to telematics; yes, we are talking to companies on that. We are talking to

other police forces about that. They mainly use it at the moment for injured drivers, but they also do it for stolen vehicles for recovery. So, we would like to look further down the field of what else we could do for a high-risk driver. Going back to devices in cars for speed, a lot of ours are stolen cars, so that would not particularly work for the offenders that we are looking at right now. So it is about what else we can technically wrap around them.

THE CHAIR: A fresh line of questioning from me. You have made a note in your submission, page 8, that maybe the community does not fully understand that having any drug in your system is an offence. You have actually expressed a bit of concern about the recent bill passed to decriminalise possession of certain quantities of ice, heroin, cocaine, et cetera. At what state of preparedness are you at to test those drugs in a driver's system, given this law commences in under 12 months' time?

Dep Commissioner Gaughan: Certainly we can test now for meth and cannabis. I will throw to Linda in a minute because there is a lot of discussion going on around this issue across all jurisdictions at the moment. Obviously, through blood we can test for all those substances that you have alluded to. The other challenge we have with everything except alcohol, is that it is very difficult at this stage to test for non-obvious impairment. Obvious impairment is clear—a person falls out of a motor vehicle—but the non-obvious impairment is somewhat difficult. I know there has been some frustration levelled by the courts in relation to that issue, but, again, having spoken to many of my colleagues interstate over the last week or so, this is an ongoing issue and I know there is a lot of work being done by the jurisdictions about being able to test for other drugs. I might ask Linda to provide the committee with a bit more information on that.

Cmdr Champion: We are trialling at the moment different roadside drug testing. It is still for the same two products, but it keeps our members on the road rather than taking it back to the station. So we just have to get it over the legal threshold that that is sufficient evidence to then take it to court, as well as the sample that gets sent for analysis out there. There is some technology underway in the future. It is a few years down the track, but there is a possibility of a breathalyser that detects all sorts of drugs. That would be ideal.

Going back to the decriminalisation of these drugs in the next 12 months, it is illegal to have it in your system as a driver. So we actually do not have to do impairment, but it is a good idea to do it, as well. But, no, just having it in your system is sufficient. So that is the path that we are getting ready for.

THE CHAIR: If someone currently has one of those substances that you cannot test in their system, and they get pulled over for something, you test them anyway but then you do not have a result, do you?

Dep Commissioner Gaughan: You might if it is cocaine. If there was impairment, we would still have the option to take that person into custody, and they would have to submit to a blood test.

THE CHAIR: Is it just cocaine?

Dep Commissioner Gaughan: It would be heroin and everything. It would be all of those other substances.

THE CHAIR: Meth and cannabis.

Dep Commissioner Gaughan: Yes, but initially they would have to be taken into custody for driving under the influence. Therefore we would need to observe a level of impairment.

THE CHAIR: What if a small quantity was found in their possession? In under 12 months that will not be a criminal offence? What is your intended strategy there?

Dep Commissioner Gaughan: It would be a fine.

THE CHAIR: It would be a fine, and they may be able to drive off?

Dep Commissioner Gaughan: We cannot prove that they have been driving under the influence of that drug. It gets down to being able to prove it in a court of law. As Linda said, because a number of international jurisdictions are running this same conversation, I think we will progress pretty quickly the technology that she has spoken of. I do not think this will be a five-year conversation. I think this will happen fairly quickly. The ability to test through, for want of a better word, an “alcometer”, which will be a “drugometer” I presume, will be pretty common in law enforcement.

THE CHAIR: Do you reckon that will happen within 12 months?

Dep Commissioner Gaughan: It will not be 12 months. It is going to be longer than that. Plus we would have to get certification and a whole raft of issues. We know it is in “prototype”. I suppose that is the term I would use, but we would have to then get it certified in Australia as well, Mr Cain, so that is going to take a while.

DR PATERSON: Thank you. I have a question about the issue of bail—firstly, this neutral position of bail. Are you looking at it for particular driving offences or just culpable driving. I know the fearless reckless driving has a repeat offender part of the act; is it just recidivist drivers or those offences completely?

Dep Commissioner Gaughan: We think the issue of neutral bail should be one that the territory should adopt more broadly. I think that we need to have faith in our magistrates that they can do the job that they are paid to do. Obviously there will be certain offences that the Legislative Assembly will make a determination that bail is not to be granted unless there are exceptional circumstances. I think certainly for repeat offenders in this territory we are finding that it is causing significant harm to the community. The data in relation to the amount of chases we have had since we have brought TORIC in, the data in relation to the amount of stolen motor vehicles and the data we have had in relation to commercial and residential burglaries show that there is a small number in this community that commit a large amount of the crime. I think the balance needs to be to protect the community instead of protecting those people, because they are not getting the help they need when they are in the community.

We can put them in a place for a period of time—it could be a drug rehabilitation place—but at the moment it is skewed the other way. I feel as if the community’s safety is not being given the primacy that it deserves.

DR PATERSON: Is there any level of driving offence where things are okay, or should all those sorts of driving offences go to a neutral presumption of bail?

Dep Commissioner Gaughan: We usually do not arrest someone unless there is a serious reason. I mean, the majority of people that we deal with in the driving context are given a speeding ticket and told to not do it again. Then there are those that we proceed with by way of summons. That is a more serious offence, and we wish them to go before the court. There are those that we arrest and are bailed through the watch house. But then there are those that we put before the court, and when we strongly oppose bail and the court makes the determination one way, I think that needs to be a neutral position.

DR PATERSON: Given the numbers—I did have them written down—137 people have been arrested or charged over operation TORIC, how many have gone before the courts and sought bail and been allowed out again? Do you have numbers?

Dep Commissioner Gaughan: I have been told the number is 59.

DR PATERSON: So, nearly half are back out.

Dep Commissioner Gaughan: Yes, or some of those have been subsequently re-arrested.

DR PATERSON: Thank you.

MR BRADDOCK: In your submission you are calling for an amendment to section 60 to introduce a liability in a responsible driver. I believe I understand what you are asking for. I am just seeking on further information on why you are asking for that particular amendment.

Dep Commissioner Gaughan: I think the issue is, in many instances, we do not get told who was driving the car and the person says, “It was not me”, and that is the end of the matter. We believe that is not the proper standard that should be met. We believe the community has a right to know, and a person should be held to account for their driving behaviour. I will get Mr Whowell to provide some further context on that.

Mr Whowell: You have already covered the answer. That is the rationale. It is to address that issue where somebody owns a car, somebody else has used it and we cannot identify that person. So, it is putting that onus back on the owner of the vehicle to be responsible for the way it is used.

MR BRADDOCK: Do you have figures currently on how many times this might have occurred over the past year or two?

Mr Whowell: I do not have them in front of me, but would you like me to take that on notice?

MR BRADDOCK: Yes, please.

THE CHAIR: I know you call for a range of reforms of the legislation. Dr Paterson has touched on bail—the neutrality of bail position or even presumption against bail, as per some scheduled items. What kinds of conversations do you have with the minister to impress on them the importance of some of these changes?

I include Skye's Law in that, because you are strongly advocating for that—if someone resists a police order to pull over or to stop. You have given an interesting anecdote from New South Wales where an offender stops straight away for the New South Wales police, when fleeing from ACT. How are you getting your points across?

Dep Commissioner Gaughan: It is through examples. I speak to the minister regularly around these things and, ultimately, he takes them forward through the processes, and that is why we have committees such as this. We get a very good hearing from the Minister of Police and Emergency Services, Mr Gentleman.

I think that whilst we do talk about Skye's Law, and that is the gold-plated standard for us in relation to police pursuits, the reality is that, whilst we have seen that occur here where people do stop running across the border, we have also seen many instances where they do not.

As I said earlier, we saw two chases in Sydney this week that did not end particularly well for that reason. We get very good support from the minister, and I thank him for that. If I need to talk to him about a particular issue, he takes my calls.

THE CHAIR: That is good. You do seem to have a growing list of things that you would like to see changed.

Dep Commissioner Gaughan: Well, I have been in the job now for two and a half years, and I am seeing more things with my eyes wide open. I think you are all seeing it every day as well. The challenges that my officers are facing, and not just my officers—it is the paramedics, it is the fire officers and the people that work in emergency—are becoming more acute.

We are all under-resourced; therefore, legislation reform and the suggestion that Mr Braddock has made in relation to bracelets—all of those sorts of things alleviate the pressure on the workforce, to some extent, and enable us to do things differently, because that is what we need to start looking at.

THE CHAIR: Thank you.

DR PATERSON: In the situation out at Uriarra, and on those more rural roads where you will get 40 or 50 cars going out and doing burnouts, I am imagining they are a different cohort of people, not necessarily with stolen vehicles—they are more organised. In your work, are they different groups of people? Do they need different approaches? And are you not so concerned about what goes on in Uriarra compared to some of the stolen vehicle recidivists?

Dep Commissioner Gaughan: I think you are right. I think it is a different cadre, but we are concerned about them, because it only takes one error for something to go terribly wrong. They are organised groups on Facebook, or whatever it is, and they head out there and they have a car-meet.

We put resources there when we can. I have read the submissions from those groups, and I was somewhat disappointed that they said they no longer bother contacting us because we do not go. If we do not know about something, we clearly cannot attend—and we could have a car around the corner.

We have to prioritise what we attend, and there are thousands and thousands of kilometres of road in the territory, and we cannot be everywhere all the time. We do work with TCCS on some strategies around that—cameras and changing the bitumen, so it becomes no good for your tyres if you want to do that sort of activity.

I think we said in our submission, and we all agree, that this is not just a policing issue. It is something that we need to tackle holistically with other agencies getting involved in assisting us and coming up with different strategies to change behaviour—education is key, TCCS, obviously the justice agencies as well. It is a whole-of-community response.

DR PATERSON: And you would see those groups as different to the recidivist offenders from Operation TORIC?

Dep Commissioner Gaughan: They are still a threat to road users, and I understand that certainly the noise complaints people have from that sort of behaviour are certainly something we need to get on top of. But if you look at it as a hierarchy of concerns, they are below the recidivist car thieves who intentionally drive on the wrong side of the road and put lives at risk.

DR PATERSON: You were giving the data before about the dramatic increase in numbers for fail to stop since 2018-19. We have spoken with you previously in other hearings during COVID around the massive increase in speeding on the roads.

Dep Commissioner Gaughan: Yes.

DR PATERSON: Is there something going on here, generally, since 2018-19—that our roads have changed, and driver behaviour has changed dramatically?

Dep Commissioner Gaughan: I think behaviour in the community has changed, not just on roads. We have certainly seen it in schools, speaking to teachers and the like. We have definitely seen the behaviour of kids in schools change. Talking to the nightclubs, we have seen a change of behaviour in people in the nightclubs.

I think it is because a lot of people have not matured through that normal process. You are in a certain age group, and through peer pressure and other things you moderate your behaviour to act in a certain way. Two years of COVID, and we have not had that moderation or changing.

We have definitely seen an increase in speed—absolutely. Some of the speeds we

have seen on roads like Majura Parkway—they are treating it like Majura raceway. It is horrific. How we have not had more people unfortunately lose their lives through their own stupidity is beyond me.

I think it is a really interesting question because it goes to not just what we are doing in law enforcement. I think we have still got some big issues ahead of us in relation to the two years of lockdown. I think it is going to be a challenge for everyone in this room and everyone in the community in leadership roles as to how can we manage that, because I think the tail is going to be very, very long.

DR PATERSON: Just a final question looking at young people: is this an issue of young people, or should we be considering this dangerous driving as a broad range issue?

Dep Commissioner Gaughan: The dangerous driving, the stolen motor vehicles and that sort of behaviour—it is people probably under 35. I would go as high as 35. The core group is probably in their mid-20s, who have escalated their behaviour to the stage they do residential burglaries, they steal cars and they do not, basically, care.

Where do I start with the young kids? That core group of between 25 and 35-year-olds—their behaviour is not going to change.

Cmdr Champion: I will add that the forensic psychologist is also looking at the passengers, because they are the ones who want to have a bit of the adrenalin but do not actually want to take the risks themselves, and they are the audience that, potentially, makes the person drive that way. So, we are working with a psychologist and media to look at a media campaign targeting the passengers, and then we are looking at a different one targeting the drivers, because they are not the ones who are not going to listen to someone like me on TV. Then we are working our way through—because, you are right that there are different categories of people for different driving behaviours.

THE CHAIR: With this category of drivers, whether you have got figures or anecdotally, how many of them are really doing this illegal activity for gain for drug purchases, for example? They are stealing ATMs or they are repurposing a car—

Dep Commissioner Gaughan: I think, anecdotally, the vast majority of what I call recidivist offenders have an addiction of some type, whether it be gambling, drugs or alcohol. I think it is important to note that some of these are not necessarily drug related. It can be alcohol related and people, unfortunately, put a lot of money through poker machines. Any of those addictions come into it at some stage. Some of them are using their crimes to commit things like family violence as well. They are stealing cars to hide the way they leave a domestic violence issue.

MR BRADDOCK: I want to ask a question on how you are drawing a comparison between culpable driving causing death and manslaughter. In instances where it does not involve a death, should there be similar comparisons in terms of culpable driving causing grievous bodily harm? Should it be treated exactly as if it happened on the footpath?

Dep Commissioner Gaughan: That is a good suggestion as well. Certainly, there is culpable driving causing GBH that does exist in the statute.

MR BRADDOCK: Does it have the same sentence? Sorry, I probably should be asking that of the A-G.

Dep Commissioner Gaughan: I think it is slightly less, as it would be for a grievous bodily harm assault compared to an actual bodily harm assault—manslaughter et cetera. Certainly, it does exist in the statute. Our view is that, broadly speaking, the penalties in the legislation are not too bad. The issue is how they are then interpreted.

MR BRADDOCK: Thank you.

THE CHAIR: We did hear from Uriarra village residents group, and one individual, a few weeks ago, that with the speeding that goes on out there it has got to the point where it is no point ringing police because no-one comes. What kind of resourcing challenge does that pose for you, and what do you need additionally to meet that kind of really obvious need? It is a little bit out of Canberra, we know, but it is, obviously, a very significant problem.

Dep Commissioner Gaughan: It is an issue in that we cannot be everywhere every time. There are thousands of kilometres of road in the territory. I did read that. It disappointed me—the fact they do not ring us. I encourage them to ring us.

THE CHAIR: They did and nothing happened, so they stopped.

Dep Commissioner Gaughan: The reality is we have a priority system in relation to our jobs and, unfortunately, we cannot get to everything. That is just a stark reality of the current resourcing situation we find ourselves in.

THE CHAIR: You would like more resources. Is that what you are saying?

Dep Commissioner Gaughan: When I appear before this committee, I always say I want more resources. The reality is, the population has grown substantially, and as you put to me—or it might have been your colleague, Mr Hanson, in the last hearing—the overall number of sworn police officers in the territory has not grown for a long time. That is the fact of reality.

THE CHAIR: I think I can safely say that the community would love to see more blue shirts around the place.

Dep Commissioner Gaughan: I am sure I can find something for them to do!

THE CHAIR: I am sure. Thank you so much. We have come to the end of our session. I would like to thank ACT Policing for your attendance today. There have been some questions taken on notice. Please provide answers to the committee secretary within five working days of receipt of the uncorrected proof transcript. Thank you again for all you do for our community.

Dep Commissioner Gaughan: Thank you.

Short suspension.

RATTENBURY, MR SHANE, Attorney-General, Minister for Consumer Affairs,
Minister for Gaming and Minister for Water, Energy and Emissions Reduction

STEEL, MR CHRIS, Minister for Skills, Minister for Transport and City Services
and Special Minister of State

GLENN, MR RICHARD, Director-General, Justice and Community Safety
Directorate

McNEILL, MS JENNIFER, Deputy Director-General, Justice, Justice and
Community Safety Directorate

NUTTALL, MS AMANDA, Principal Registrar and Chief Executive Officer, ACT
Courts and Tribunal

COX, MS KIRRA, Acting Executive Branch Manager, Strategic Policy and
Programs, Transport Canberra and City Services Directorate

THE CHAIR: In this session we will hear from the Attorney-General and the Minister for Transport and City Services who are appearing together along with officials. Welcome, Minister Rattenbury and Minister Steel. Can I remind witnesses of the protections and the obligations afforded by parliamentary privilege and draw your attention to the privilege statement? Could you confirm for the record those in attendance that you understand the privilege implications of the statement?

Mr Rattenbury: Yes, thank you.

Mr Steel: Thank you, Chair.

Ms Cox: Yes.

THE CHAIR: Thank you. So, Attorney, I believe you would like to make a short opening statement?

Mr Rattenbury: Yes, thank you, Chair. Just briefly and Mr Steel will have some comments as well. The government's view is that dangerous driving is unacceptable and the events of the past year alone show the reality of such behaviour on our roads with the tragic loss of lives. The effects of losing a loved one to such senseless behaviour are, as we have seen, truly devastating. The government is committed to working to prevent such tragedies on our roads and in our community. It is clear from the number of submissions made to this inquiry that this issue affects many across our community. Submissions have been made by the families that have been personally affected by dangerous driving behaviour, organisations that provide services and support for victims, resident groups who experience dangerous driving behaviour within their neighbourhoods and professional associations that regularly deal with the offenders.

Mine and the government's thoughts are with those families who have lost loved ones on our roads. The pain they feel is very clear for us to see. The sense of loss and the bewilderment of such senseless acts is hard to put into words. The government agrees with community concerns that there is work to be done to address repeat dangerous driving offending.

Effectively reducing crime is a complex issue. Much of crime is attributable to

disadvantage and personal dysfunction and where possible it is far better to turn a person's life around so they do not continue to cause misery in the lives of others. This does not need to be in direct opposition to recognising the harm caused by crime. Of course, the offender is a person deserving the inherent rights we recognise for all people but the victims of a crime are also deserving of those rights. I do not believe these need to be in opposition. Crime prevention is fundamentally victim centric. Targeting the causes of offending recognises the heartbreak and injury caused by crime are unacceptable and we need to focus on that. The reality is that harsher punishments often beget more crime in the future.

I welcome this inquiry as an opportunity to explore in detail these complex issues. Since making the government's submission we have undertaken further analysis comparing the situation in the ACT with other jurisdictions. I would welcome the opportunity to share the information with the committee today, in particular on issues of sentencing. While there are some caveats that need to be considered when comparing across jurisdictions, ACT sentences are being given within the range of sentences that is seen in most other jurisdictions. Maximum penalties and available offences are commensurate with, and in some cases, exceed those in other jurisdictions. In that context I would be interested to explore with the committee how we can reduce dangerous driving offending by engaging directly with proven effective methods. Thank you.

Mr Steel: Following on from what the Attorney-General just stated I would like to acknowledge there are people here with us and viewing who are victims of road trauma, particularly to members of their family.

The ACT government through our commitment to Vision Zero has had a real focus through our road safety strategy and action plans on driver behaviour. We know safe road use is a critical part of making sure we reduce dangerous driving on our roads and we know that human error and risk taking are the major factors in particularly fatal crashes. The ACT government had committed under our *Road safety action plan* to undertake a review of road transport penalties, with a particular focus on speeding which is one of the most significant risk-taking behaviours that contributes to accidents and road deaths.

That review is now underway and we will look at penalties right across the board for both our lower-level road transport offences and also for our higher level road transport offences, including offences like culpable driving in the Crimes Act. We will be looking at the range of penalties that are currently available, what other alternative penalties may be introduced into the ACT for the first time and we will be benchmarking our penalties across different jurisdictions to make sure we have contemporary penalties that will help to reduce and deter this type of risk-taking behaviour. We will be focusing also on aggravated driving penalties. We have heard a number of different suggestions made in submissions to this inquiry from a range of different people about issues which we should be looking at. We will certainly be taking those into consideration as we undertake the review. Of course we are very interested in any recommendations that may be made by this committee into this area and we will consider that as part of the review.

The review is expected to take around a year. We need to very deeply examine the

wide-ranging issues. It is a very large and complex area of legislation. We will be systematically looking through the range of penalties, whether they are proportionate, whether they need to be updated and where there are any gaps in our legislation where new offences may need to be established. That work is being led by Transport Canberra and City Services. It is an action under the *Road safety action plan*. Next year we will also be starting to develop a new road safety action plan as the current one expires in 2023. That will be an opportunity to look right across the board not only at safe road use but safe roads and safe vehicles, being other core parts of the safe systems approach as well. There is an opportunity now I think to engage with the community, including with victims of crime, to be able to establish a new pathway forward in relation to road safety and dangerous driving. I will leave it there and happy to take any questions with officials.

THE CHAIR: Thank you both. I am assuming you both agreed with the ACT government's submission?

Mr Rattenbury: Yes.

Mr Steel: The government's submission, yes.

THE CHAIR: I noticed in the government's submission you referenced the New South Wales Sentencing Council report and recognised the importance of the inquiry. You commended some of the recommendations. You make a note that sentencing is only one approach. The Council says sentencing is only one approach to modifying the behaviour of others. I note the Sentencing Council report also recommended serious and repeat traffic offenders should be subject to program requirements and similar interventions that change their behaviour and also that the New South Wales Sentencing Council report recommended that any programs available to offenders who are in custody or as a condition of a sentencing order may help to ensure they get the full benefit of it. In other words, making a condition on sentencing participating in a program. Do you support some sort of mandatory imposition of a rehabilitation program as part of a sentencing condition?

Mr Rattenbury: I think it is certainly appropriate to consider those issues. We need to make sure that people are held accountable. We need to find effective ways to intervene to change their behaviour. We are seeing that there are some people who appear to be immune to the signals that have been given to them through either punishment or the range of penalties that are being applied because we see they continue to go and offend. A lot of the government's effort is directed towards that sort of intervention. I think there is certainly scope to consider new ways to achieve the outcomes.

THE CHAIR: So, when sentencing options are being presented would you support that a certain sentencing option would be available only if they participated in a rehabilitation program of some sort?

Mr Rattenbury: Well, I think that is consistent with models the government has already put in place. So, things like the drug and alcohol sentencing list require people to agree to go through certain programs. The alternative is they go to jail. So that sort of mechanism has been set up. Certainly the nature of intensive correction orders is

also designed to enable flexibility in the sentencing process for the judicial officer to think carefully about what the most effective intervention would be with a particular individual looking at their background, their offending history and the like. I think you have seen commensurate examples. On the sound of this, it would be consistent with some of the approaches we are taking now, yes.

THE CHAIR: What about something that is tailored to dangerous driving offences?

Mr Rattenbury: I have not seen something specifically on those lines. Minister Steel may have. If there are such programs out there, I think we would really look closely at them.

Mr Steel: I am certainly interested in looking at what has worked in other jurisdictions. In the submission to the inquiry we highlighted a couple of those, including whether interlock devices could be potentially used for those who have committed drink driving offences for example. So, opportunities for a wider range of different options that could be available rather than just simply giving a court ordered penalty of a particular dollar amount or penalty unit amount.

THE CHAIR: Do you each support in principle the idea that say a sentencing option that precludes incarceration would be conditional upon participating in a program?

Mr Rattenbury: I think that is certainly consistent with the principles of the Sentencing Act that are already in the legislation and, as I said, consistent with the work we have already done. So, on the face of it, yes.

Mr Steel: I am of the same view as the Attorney-General but certainly we are interested in what sentencing options are available with the current penalties. The preliminary view is that some of the offences may include a penalty unit amount, so a financial impost but not necessarily any sentencing option or imprisonment that may be available to the court to impose. So, we will certainly be looking at that as well and whether the full range of sentencing options should be made available to consider in a particular circumstance. I might hand over to Kirra Cox to talk a little bit about the sorts of things she has seen thus far as part of the review in Transport Canberra and City Services.

THE CHAIR: The interest is dangerous driving so if we can keep it focused on that.

Ms Cox: Sure. The penalties review is looking at, in total, around 1,900 road transport penalties. When we are talking about dangerous driving in particular and we are talking about this piece of legislation in particular, the offence is already committed. So we are not looking necessarily at deterring somebody in the first place, except for when it comes to recidivism. There are special provisions in the road transport legislation currently where higher penalties exist for people who are recidivist offenders or there are other aggravated circumstances. Part of what we are trying to ascertain is where that is most effective. So the cross-jurisdictional analysis we are undertaking is looking at the jurisdictions that have it right in terms of reducing that behaviour again. So in terms of dangerous driving, it is about it not happening over and over again. When it comes to sentencing, we support more sentencing options to be made available. Again, recidivist behaviour is incredibly difficult to understand

and it is an incredibly complex reason that someone might be committing road transport offences over and over again. So we certainly support that and we are currently doing some jurisdictional analysis on where it is working really well and trying to get that data.

THE CHAIR: Thank you.

DR PATERSON: Attorney, I think this is more a question for you. We just heard from police that through Operation TORIC they have charged 137 people. Only eight of them were first time offenders. So five per cent, or around about. The Chief Police Officer told us that 57 of those people who had been charged have been bailed again and these are recidivist offenders. So clearly, we have a serious recidivism problem with this particular group of people. If we are serious about reducing recidivism, do you agree that targeting this group may actually have broad flow on effects in terms of reducing recidivism in the Territory?

Mr Rattenbury: Yes, Dr Paterson. I did not see the Chief Police Officer's evidence. I will have to review it later. So I cannot comment specifically on those figures. But I think it is well understood in the ACT that there is a relatively small group of people who are responsible for a significant amount of the crime that takes place in the Territory. I think Operation TORIC is going to the very heart of that because we see the link between motor vehicle theft and other offences, which the Chief Police Officer has described, where the vehicles are being used for the committing of subsequent offences. To your question then, yes targeting that group is potentially a really effective pathway. That has been the case for many years in the ACT. So yes, I think there is real potential for success there.

DR PATERSON: The Chief Police Officer said there has been a 51 per cent reduction in car thefts and a 31 per cent reduction in burglary since Operation TORIC started. So it is well and good for police to be bringing these people before the courts, but what happens afterwards? Where is the strategy to stop these people, support these people, so they do not commit further crimes?

Mr Rattenbury: Yes, certainly. I mean obviously once they are charged, they will go before the courts and the courts will make a finding of guilty or otherwise and impose a penalty. The macro answer to your question is, this is why we are continuing to pursue a justice reinvestment strategy of trying to put more of our money into the preventative activities. The reducing recidivism strategy is a key part of that. We have seen success where the ACT's recidivism rates have now declined 15.8 per cent since the base year. The baseline year was 2017-18, where we had a recidivism rate of 44.2 per cent. The figures just published in the JACS annual report for 2021-22 show it is 37.2 per cent. So that is an important reduction. There are a range of ways in which people measure repeat offending. This is the measure that is used to report on government services, which is reoffend within two years of release from custody, just to be really clear about the figure that I am using there.

DR PATERSON: Again though, these are high level conversations when what the police are presenting to us is some really strong evidence that these 137 people in the community are serial offenders. We know what they are doing too.

Mr Rattenbury: Yes.

DR PATERSON: Do you think targeting these people, actually looking at dangerous driving offences more specifically and offenders, that we should have programs and strategies in place that go to a deeper level than the overarching strategy?

Mr Rattenbury: Yes, I think we do need to specialise in this area. I think the points that Ms Cox was just making around those, particularly the work they are doing there. I know the Chief Police Officer has spoken about bringing in a forensic psychologist to try and work through the drivers for this behaviour.

DR PATERSON: Yes.

Mr Rattenbury: There is a degree of human complexity here and we need to think carefully about what the specialised measures are. A number of suggestions have been made around taking people's vehicles, whether that is for crushing or reselling them. Across the submissions to this inquiry there are mixed views on those responses. I think we need to be willing to be very creative. We need to be looking for new options because what we are currently doing is not working on some people. Some of this debate has gone to, are the penalties strong enough? It is evident that the ACT has a range of offences that cover the full gamut. Some submissions are suggesting we need Skye's Law in the ACT. Well we in fact have an identical offence, well near to identical offence as in New South Wales in the ACT, with the same penalties. It does not have a name. It is a less glamorous section number but we have those penalties. Similarly the ACT's maximum penalties for culpable driving causing death are higher than a number of other jurisdictions, including New South Wales and Queensland.

DR PATERSON: I do not think the debate is really about the sentencing level. It is more about the implementation of the sentences and whether those are adequate or strong enough to deter repeat offending. You said you had data. What data do you have on that to basically say—

Mr Rattenbury: Certainly.

DR PATERSON: —in your opening statement?

Mr Rattenbury: When it comes to what the debate is about, there is probably a spectrum. If you look through the submissions to this inquiry there is a full range of views, so I think it is hard to define what the debate is to some extent. In terms of data, what I can inform the committee is that the ACT penalty for culpable driving is higher than New South Wales and Queensland—

DR PATERSON: Not the penalty though.

Mr Rattenbury: Yes, sure—

DR PATERSON: The—

Mr Rattenbury: Sorry, there was a second half to that sentence.

DR PATERSON: Okay.

Mr Rattenbury: The minimum sentence imposed in the ACT was equivalent to three years, with the maximum being 10 years and nine months. The majority of the sentences range between three- and five-years imprisonment. From the available data, for comparable offences of culpable causing death in other jurisdictions, it does appear that the ACT is in line with sentences being received in other jurisdictions. Again there have been comments that the sentencing data we have is quite broad. JACS has endeavoured to go down to more specific offences around dangerous driving, so that is the data that we are bringing to the table here. I am happy to provide some of this subsequently on notice, so we do not have to sit here and go through it line by line. But as I say, we have done this since our submission. So I would be happy to provide it to the committee in due course.

MR BRADDOCK: We also discussed with the CPO electronic monitoring of recidivist offenders. This is something we have recommended as a committee before, in terms of the ACT should examine electronic monitoring both in a family violence and a community corrections context. Is the government going to be considering that in terms of dangerous driving and speeding?

Mr Rattenbury: We are certainly open to views from the committee based on the evidence you have received. This predominantly sits in the field of the Minister for Corrections. I can observe on behalf of the government that it is certainly something we will be willing to look at.

THE CHAIR: Obviously part of that electronic monitoring consideration is that we seem to be the only jurisdiction that does not have it, even though it has been considered for well over a decade. So is that something that is high on the priority of things to look at as an option for sentencing?

Mr Rattenbury: It is not that it is a high or low priority, it sits there in the range of possible options available to the government.

THE CHAIR: Okay. Thank you.

Mr Rattenbury: Sorry, the second half of that thought, Mr Cain, is that it is a question of efficacy. When you look across the submissions, there is a range of views on what the most effective response is. So again, I would welcome the committee's views on where you see electronic tagging in that spectrum of possible solutions.

THE CHAIR: Well, you sort of already have our view but anyway we will obviously take note of that.

Mr Rattenbury: I look forward to seeing it when you publish your report.

THE CHAIR: Meaning in the other inquiry. There is already a view published as a result of the other inquiry is what I meant.

Mr Rattenbury: Sorry, yes.

THE CHAIR: On page 10 you make reference to the JACS Directorate undertaking work to review the existing bail legislation. You have touched on this earlier. One thing you said is whether it is meeting community expectations. I must admit, we have heard in my opinion a range of views, particularly from the legal side of the community, on what community expectations means and how it plays a role in sentencing. So could you explain from a directorate point of view how will you actually explore community expectations, what does that mean and what impact do you think it has on the sentencing regime?

Mr Rattenbury: The context in which that comment was made was particular concerns that have been put to the government around how effectively the bail criteria take into account repeat offending. This is the particular concern that has been expressed to the government. So I have asked the Justice and Community Safety Directorate to look at the legislation and ensure that it is either adequately expressed or whether it needs to be more explicitly expressed, whether that should be considered. At the moment, there are a range of considerations that are set out in section 22 of the Bail Act. There are a number of key considerations and there are a number of criteria that are set out there. One of them goes to a person's antecedence, amongst other things. I think my comment was particularly around the fact I think there is a community expectation that we are more explicit, that where somebody is a repeat offender that weighs more heavily against them receiving bail.

THE CHAIR: How do you ascertain what meeting community expectations means?

Mr Rattenbury: As you all see from the submissions that have been made to your inquiry, that is a difficult task because there is a significant spectrum of community views on these issues. So I guess at the end of the day that is the job we are all elected to do is to try and interpret that spectrum of community views and find a way forward that the community can see a rationale in, even if they do not agree with it they can hopefully at least see the rationale, but that also has a good evidence base and is effective. That is the challenge in our roles.

THE CHAIR: Mr Steel, anything to add?

Mr Steel: No.

THE CHAIR: Obviously one way to find out what the community thinks happens at any election or plebiscite.

Mr Rattenbury: Yes indeed.

THE CHAIR: I mean, are you looking at that scale of testing the community's expectations?

Mr Rattenbury: Certainly issues of a plebiscite at the election are not being considered, no.

DR PATERSON: Attorney, there was an announcement of a Law and Sentencing Advisory Council. It has been a few weeks now since the announcement, can you give the committee an update of where that is at, any scope of what the work will be and if

dangerous driving will be reviewed or what aspects will be, when the council is established?

Mr Rattenbury: Yes, certainly. As I indicated at the time I spoke of it publicly, our intent is that the council have broad membership and so that will include representatives from the community and the justice sector. That may include ACT Policing, the courts, the Bar Association, the Law Society, the legal assistance sector, so Legal Aid or the Community Legal Centres who deal with a range of people in our community, but also to have independent community representatives from people who bring particular perspectives, be that a victim perspective or a range of other views. We want to make sure that there is a breadth of community expression in the council, going back to Mr Cain's earlier question, that enables us to get a sense of what the community expectations are.

In terms of where it is up to, I have asked JACS to conduct a procurement process to select the provider to partner with government to deliver the council. JACS are now preparing the relevant documentation for the process and expect to reach out to potential providers very shortly to gauge interest prior to releasing the tender documentation. I envisage the selected partner would home the secretariat for the council. They will contribute expertise in law reform, criminology, criminal justice and sentencing and provide the government with high quality data analysis related to sentencing in the ACT. That is broadly the remit.

In terms of your question of what it will focus on, as we discussed in the Assembly recently, dangerous driving certainly sits there, certainly in my mind, as potentially one of the early references. I think it will depend on what the recommendations are from this committee and the government response to that. I think by the time we have the council set up this committee will have finished its work and it might be that there are particular things that require more depth that come from this committee. So it might not be a broad reference; it might be something looking at what are, for example, across jurisdictions the most up to date rehabilitation programs when it comes to recidivist driving offences. So there might be a more specific reference rather than a generic one.

MR BRADDOCK: My next question is a philosophical one in terms of comparing traffic offences with other offences that might not involve a vehicle, which may result in the same outcome, whether that be death or grievous bodily harm. Is there a reason why there might be different levels of sentences prescribed in the legislation in terms of depending on whether someone was behind the wheel at the time or not?

Mr Steel: I think we are aware there is already an existing hierarchy under the road transport legislation of offences and penalties which range from very minor offences right through to the most serious traffic offences that may result in death, for example. As we move through the review we will be looking at the proportionality of those offences, not only in the context of road transport with the huge number of road transport penalties that already exist but also other offences that may not actually involve a motor vehicle.

I think it is acknowledged by the legal community in the ACT that our road transport legislation needs a refresh. It is a massive body of legislation across multiple different

Acts. What we are attempting to do is to try and reset where that proportionality is for some of those offences and that is a challenging balance to strike. We will certainly have a view to the broader range of offences that do not necessarily involve driving as we undertake that review to make sure we are not setting penalties too high but at the same time not setting them too low either.

One example I would give, which we actually addressed because we have implemented and brought forward multiple tranches of road transport legislation amendment bills over the past few years, would be the offence which was instituted under the previous government in the ACT, of riding whilst under the influence of drugs or alcohol. This was actually set higher than driving under the influence of alcohol. I do not think it was a mistake. I think it was clearly out of proportion to what the community would expect in terms of the culpability of the offence and the risk riding under the influence has compared to driving under the influence, not only to the rider but to others. So we have to look through and we may come across anomalies like that which we need to address and recalibrate the offences.

I mentioned before there may be some offences where financial penalties are currently available to the court, for example, where there is no imprisonment term that is able to be offered. So we may look at whether adding an imprisonment term may be necessary for those offences. We have to make sure we are calibrating that correctly and we will be looking closely at what other jurisdictions are doing as well. There is something to be said about harmonisation with other jurisdictions. It makes understanding our laws easier in a jurisdiction like the ACT where people are travelling interstate quite a bit in both directions. So we will be looking closely at how we can also harmonise where possible, noting there may be some differences of view from a policy point of view. Certainly, yes, we need to look closely at where all of our laws are structured, which may draw out some future pieces of work that need to be looked at in other pieces of legislation that are not specifically about road transport.

THE CHAIR: One thing we have heard from families affected by dangerous driving and in some cases by the death of a loved one, is perhaps a non-contiguous line of support from the incident right through the court process and the coroner's process. Is your review going to be looking at the continuous line of support to those affected by dangerous driving and in some cases, the death of a loved one?

Mr Steel: The review into road transport penalties will not be specifically looking at that, no. But certainly the Minister for Human Rights has indicated she is working with the Victims of Crime Commission, looking at an update to a guide which was prepared some years ago to support victims of crime who may be involved right across government. It will cover what support is available, including the Motor Accidents Injuries Insurance Scheme and how people can make a claim through the scheme and be supported through that process, and a wide variety of other supports. So they are going to be updating that guide to make sure it is contemporary and it covers the whole range of different supports.

We really understand, and I personally understand this, that when a family member dies as a result of a crash or accident, it is the most difficult time to be dealing with the huge administrative complexity of being an event manager to organise a funeral plus engaging with multiple complex systems, including the courts, royal

commissions, insurance, all of those sorts of things. We have to make it as easy as possible for people to be able to navigate those systems. The Victims of Crime Commission has acknowledged that and undertaken to refresh the guide. They are best placed to do that and to support victims through that journey. We also know that for victims of crime, the circumstances will be different in every case. So while it will cover as much as it can, I think we also have to acknowledge it may be a different path for each person and each family who is involved, so there will be a need to curate that and support them along that individual journey.

Mr Rattenbury: I might just add two other things in that space. The government has two other pieces of work which I think are particularly relevant here and the committee might want to bear in mind. The first is that last term I was the lead minister to introduce the *Charter of victims rights*. This puts obligations on a range of our government agencies to better support victims in a range of ways. It can include the provision of information, having contact points and a range of other matters that are set out. It is still relatively new. I think we legislated it in 2018 or 2019. I think there is potentially areas where it can be further improved or where the implementation is not as we anticipate. If you have received evidence to that effect, it would be useful feedback.

The second is that our agency is now leading a piece of work to significantly examine the coronial process. We are about to start a piece of work where we have an external independent facilitator who is coming to lead a process to look at, having now appointed a dedicated coroner, how might we improve the processes and how might the government working with the courts, improve the coronial experience. As Mr Steel has touched on, people do not expect to end up in the Coroner's Court and we have had strong feedback that it can be quite a difficult process for families. So we are looking to improve the process as well. There will be an opportunity for significant public input through the examination that is coming in the next few months.

DR PATERSON: In the government submission, it talks about an alternative to sentencing guidelines, maybe guideline judgments. Can you speak to what that difference is and what the preliminary work being undertaken by the government in this space is?

Ms McNeill: The idea of offering additional guidance for the judiciary when they are sentencing is not a new one. There are a few different ways it can be given effect. The Attorney was speaking a little earlier about the fact that across the board sentencing for road traffic offences looks pretty similar. An interesting different place is Victoria, where they have a particular approach to sentencing that sees sentencing pitched at a particular level. I am just searching for the word that is used to describe and cannot locate it. But that is one of the ways that you can constrain it. Another one is by having guideline judgements that say this is the way that you should pitch things but it still allows the courts to give justice on an individualised basis, which is really quite important, particularly in the human rights jurisdiction. So there are a few different ways you can constrain it and pitch where sentencing should sit.

DR PATERSON: Do we not think that where things are pitched at the moment is adequate? Is that why we are undertaking this work to look at guideline judgements?

Ms McNeill: It is just reflecting the value that it could bring. Again, the Attorney has spoken about questions around whether bail is reflective of community standards and expectations. The same question can be asked of whether sentencing is reflective of community expectations and standards. So it is just one way of testing that and potentially changing the approach that we adopt in the Territory.

DR PATERSON: So it may be a way of bringing community expectations to the judges' attention?

Mr Rattenbury: We have been asked to look at these matters by a range of community advocates. We are looking at them to see whether they have applicability to the ACT or not, whether they will add value and that is the policy work that is happening at the moment.

DR PATERSON: Is there any timelines on that work?

Mr Rattenbury: I do not have a specific timeline, no.

THE CHAIR: What is actually happening with this review work that is going on? What stage are we at? When do you hope to be at next significant stages for a final issue of the report? You said you do not have a timeline; that is a little unusual to hear, I must admit.

Mr Rattenbury: Well, no, Mr Cain. I think the point is the government has been engaged on a range of fronts and asked to do a number of different threads of work. Those threads of work are proceeding. One of them was to look at the level of sentencing in the ACT. I have offered to provide to the committee the work we have now done where we have sought to compare the ACT's sentencing outcomes to other jurisdictions and I will provide that to the committee in writing subsequent to this session. We have been asked to look at bail and whether it meets the expectations. There is a piece of work going to look at that. We have also been asked to look at sentencing guidelines or sentencing guides. Those take a number of different forms in different jurisdictions and so that is a separate thread of work. This is why there is not a single deadline because different staff in the agencies are working through each of these requests and when that work is done, we will provide that feedback back to the community.

THE CHAIR: Within 12 months?

Mr Rattenbury: Yes. The sentencing review work is now done, for example. So yes.

DR PATERSON: Do you engage with the judiciary on the idea of sentencing guideline judgements or these sentencing guidelines? Do they have a view they are conveying to you about this?

Mr Rattenbury: The judiciary generally do not seek to directly engage in policy making with the government, seeing that as necessary to the separation of powers. Through the Chief Executive of the Courts proposals will be flagged with the courts where they can provide feedback. The judiciary are very specific that they do not seek to influence policy direction but they will provide expertise in terms of whether

something might work or not. They do not come and say, “We want you to do this, or we want to go in this direction.” That is not their role. If a model is prepared and put forward they will say, “Well look, there is technical problem here, or this might not work for this reason.” So that is the way the courts are engaged.

DR PATERSON: If the government presented them with a proposal for guideline judgements, they would then come back with a view on them?

Mr Rattenbury: They may. Their view would be one of many that we will receive.

DR PATERSON: Yes.

Mr Rattenbury: They will put views in, the police will put views in, the Human Rights Commission might offer views. The nature of these exercises is people will put forward a range of perspectives and we will consider them all.

MR BRADDOCK: The Justice Reform Initiative in their submission state traffic offences occupy a disproportionately large part of the ACT courts workload, citing statistics that they account for 62 per cent of defendants with a guilty outcome versus a jurisdictional range of between 29 and 41 per cent. I am hoping the ACT government can help me understand if that is true and offer reflections on why that may be the case?

Mr Steel: Yes, certainly. We are aware that some offences take up a lot of the courts time. Partially because some of the same penalties are not available in the ACT as they are in New South Wales. For example, I think one that has been particularly noted is driving under the influence or being of a blood alcohol level over 0.05. That certainly takes up a lot of the courts time. It is an offence that is serious but it is also an offence where someone has not necessarily been harmed as a result. There is a high potential of harm of course if you were drinking and driving. Certainly in New South Wales we know there are infringement notice penalties available that are not available in the ACT for that. So we are going to consider it very carefully and then consider whether it is something we should be thinking about here in the ACT. It could have the potential benefit of freeing up the courts time and resources and the police’s time, to focus on higher more serious penalties, including serious dangerous driving offences. But we would also need to consider what the implications are for road safety in a lot further detail. So certainly part of the review, and if there are any other instances that are taking up the courts time, we will certainly be considering that as well.

MR BRADDOCK: So it is not an issue of we are disproportionately more likely to be speeding or committing road offences in the ACT or there is an-over policing happening? It is more just a caught up in the terms of how the sentences have been managed.

Mr Steel: I could not say that but other officials may wish to comment on that one?

Mr Rattenbury: I do not think there is clarity on that. We will reflect on it Mr Braddock and if there is anything further, we can provide we will provide it on notice. I certainly have seen data, and Minister Steel may recall, there is self-reported

data of the number of ACT motorists who self-report speeding and breaking the speed limits. That is published on a semi-regular basis. I have seen it a few times. The ACT does tend to have quite a high proportion there. But outside of that, I have not seen anything else that particularly sets the ACT apart.

Ms McNeill: That is the data set, Attorney, in the ROGs data. It reports against seatbelt wearing, speeding and self-reported drink driving as well. It is an interesting data set.

THE CHAIR: Could you outline the process for a judicial appointment from go to woe?

Mr Rattenbury: Yes. There is actually a statutory instrument, Mr Cain, that sets out the process. I am happy to provide that to the committee subsequent to this.

THE CHAIR: Sure. I know you made reference to it. So how is the nominee first identified and by whom?

Mr Rattenbury: Yes. So the ACT has a very transparent process. The Australian Law Reform Commission has done a report on this called, *Without fear or favour: judicial impartiality and the law on bias*. In their report, they say the process should at a minimum require appointment on merit involving a call for expression of interest, publication of criteria for appointment and a commitment to actively promote a diversity in the judiciary without compromising the principle of selection of merit. In attachment H to that report, which breaks down the rules across jurisdictions, it is clear that the ACT has a clear and accountable process and we do actually embody each of these.

If a judge retired today the ACT would publish an advertisement in a range of publications, including national publications. I would write to a series of stakeholders, often up to 60 or 70, in all other jurisdictions across the country, the attorneys of those jurisdictions, the Law Association, the Bar Society as well as a range of community organisations. We try to ensure there is a wide understanding there is a vacancy. There is then a selection panel appointed. That is not a selection panel that I sit on, just for the sake of clarity. The selection panel then provides a recommendation, in fact, they provide two candidates and I take that to Cabinet for a final decision. That is it in a nutshell. There is a bit of detail but that is it in essence.

THE CHAIR: So who is on this selection panel and how are they chosen?

Mr Rattenbury: It varies. Mr Glenn might help me here on the detail.

Mr Glenn: Thank you, Attorney. I acknowledge the privilege statement. Mr Cain, the selection panel would normally consist of the head of the relevant jurisdiction to which the appointment is made, so the Chief Justice or the Chief Magistrate, or potentially the President of the ACT Civil and Administrative Tribunal, the ACAT. Except of course, where the selection is for the chief or head of jurisdiction. It would typically involve an officer of the Justice and Community Safety Directorate. The last several judicial rounds have either been me or Ms McNeill. Then there would be another panel member who could variously be drawn from; a judicial officer from

another jurisdiction, another directorate official or sometimes a representative of another part of the legal profession, for example, the President of the ACT Bar Association. Typically three members on the panel who would shortlist applications, interview and then provide recommendations to the committee.

Mr Rattenbury: I think it is worth drawing out that obviously quite positive feedback about the transparency of the ACTs process because in other jurisdictions often, the anecdotal stories go, the Chief Justice rings up the Attorney and says, “I want this person appointed.” And that is how it happens. So I think the ACTs approach certainly is the sort of approach you would expect. An open opportunity for people to put themselves forward and be considered on merit.

THE CHAIR: Thank you. Just to describe the process, does the alternative approach also happen here, where you get lobbied for a particular selection?

Mr Rattenbury: No. I have now been in my time as Attorney, which is just over two years and we have had a number of appointments and I have not had a particular degree of lobbying, no. I have actually been surprised at how little. It is not as though no one has ever said to me, “This person would be great”, or “You should consider them.” But certainly—

THE CHAIR: Sure. Sure.

Mr Rattenbury: —it is not fierce lobbying in the way you might imagine.

THE CHAIR: Apart from perhaps an appointment onto the selection panel, what role does the Law Society and Bar Association play in this process?

Mr Glenn: Mr Cain, the Law Society and the Bar Association are both written to by the Attorney, as he suggested earlier and invited to nominate people who may be suitable for appointment.

THE CHAIR: Is there another engagement with those two bodies after that point?

Mr Glenn: Not by the selection committee, no. Sorry, I will rephrase that. Unless there are referees, for example, nominated by the applicants.

THE CHAIR: Okay. So is the judicial appointment part of the review you are undertaking at the moment, as one of those threads? Or it is not in scope?

Mr Rattenbury: No, I am considering whether there is scope to have a greater level of community engagement in that selection process.

DR PATERSON: We heard from the police around the use of technology on our roads. They identified failure to stop as a really critical aspect of dangerous driving. It then sparks a whole range of other interventions to try to catch that person. We were talking about CCTV on our roads and using technology where they would not necessarily have to pursue an offender. Is there work being done on this? Is there more work we could do in terms of getting cameras on to particularly main arterials and having the best technology?

Mr Steel: Yes, certainly. We actually are undertaking a review of our road safety cameras which will be looking at what options there are to improve the current prevalence of those cameras around the ACT. We have just announced today we have procured a company to roll out five cameras that will have a focus on driver distraction, mobile device use in the ACT. That technology will involve two fitted cameras and three mobile cameras. They do have the potential to be used for a range of other things. At this stage they will only be detecting mobile phone use while driving but they have the potential to be used for both speeding and for seatbelts. We will be looking through that review about whether we need to do anything further and using the best monitoring technology.

We have also recently increased the number of CCTV cameras across the road traffic network and extended the surveillance times for those cameras into the afternoon/early evening. Those cameras can pick up road traffic offences, if they are occurring, where we may need to alert police if there is an issue on our roads that needs to be dealt with. Those are live streams so we will certainly work with law enforcement authorities through Transport Canberra and City Services if need be. But I think the other matter sort of strays outside of my portfolio in terms of the stopping the vehicle issue.

DR PATERSON: On roads like to Uriarra where there are very clear single roads or couple of roads, why do we not use CCTV more on those roads when there is a clear problem particularly at specific points in the roads?

Mr Steel: ACT Policing has used CCTV on those roads in the western regional area including Brindabella Road. They have been using mobile CCTV out there. It is challenging when people are particularly using stolen vehicles, which we have seen in some unfortunate incidents on ACT roads, to detect who is actually committing the crime because they are using someone else's car and someone else's registration. So, that adds an extra level of complexity. Certainly, those CCTV options are used by police and Transport Canberra and City Services will try and work with police to make sure they are installed in appropriate locations. There are some things we can do in relation to the actual road environment itself but it is fairly limited. There have been some interventions put in place on some of those rural roads to try and deter hooning behaviour. It is challenging in those areas where there is less passive surveillance because there is simply less vehicles on the road seeing that offending.

MR BRADDOCK: The ACT uses restricted licenses in response to those who have had drink driving offences but still require some ability for mobility. Why are those not available for those who have committed speeding or other dangerous driving related offences?

Mr Steel: I think they potentially are and certainly if the court, if someone's licence is suspended—

Mr Rattenbury: Minister Steel, we have Ms Nuttall from the court who might be able to help and assist you with this one.

Mr Steel: We will be looking at licence disqualification as part of penalties review

which may be one penalty which could be considered for offences where it does not currently apply. We will also be looking at the issue of on-the-spot implementation by police. I think that is something they have been raising through this inquiry as well to make sure that, if someone commits a serious offence on the roads, they are stopped from driving immediately. I think it would not be the community's expectation that some people would be able to drive home, especially after committing a serious road traffic offence.

Ms Nuttall: What is called a restricted licence is available for people who are charged with drink driving offences and drug driving offences and it is an application that is put before the court. It is not available to somebody who might be suspended through demerit points or speeding.

MR BRADDOCK: Thank you for clarifying that.

THE CHAIR: My question kind of touches a bit on what Dr Paterson raised about technology. An interesting phrase was used by one of our witnesses a few weeks ago "how to keep the idiot out of the car" so I ask your views on the following as part of your reform. Firstly, getting young drivers as early as possible and inculcating positive and considerate road safety habits. Then secondly, for that category who for whatever reason, are not going to fit into that, how do you prevent them from actually taking control of a vehicle? Something that has come up in some of the other submissions, as you have probably been aware through the AFP Association. So, driver education and preventing dangerous drivers from actually driving the vehicle. Is that part of what you are considering?

Mr Steel: Certainly. As part of the next road safety action plans again there will be a big focus on safe driver behaviours. I want to acknowledge the Attorney-General's work as the previous minister in this portfolio who implemented the graduated licensing scheme for the first time in the ACT. This requires young drivers who are going for their licence for the first time to undertake at least 100 hours of driving experience on the road. That has been a change from when I was learning to drive. Most of us in this room were learning to drive when no driver hours were necessarily required in order to get a licence. I think that will certainly have an impact but it is something we will need to monitor as it rolls out. It is a relatively new scheme and has only been in place for a couple of years. So, I do not think we have seen the impact of that yet on driver behaviour across the board. But all the evidence shows the more experience someone has on the road learning to drive the safer they will be.

I think we are interested in the latest opportunities in education for young drivers. I think there have been campaigns in the past using vehicle wrecks and showing the impacts, literal impacts, of what can occur as a result of a motor accident to shock people in to understanding some of the risks on the roads if they engage in high-risk behaviours like speeding, for example, or drink driving. So we are interested in those opportunities. I do not know if you want to add anything further on one of the driver education activities we are undertaking.

Ms Cox: We are actively looking at young drivers and when people are getting their licenses. The graduated licensing scheme is something we are always accepting feedback on. We are considering as part of what will be the next road safety action

plan for 2023, what programs we could make available. Part of this is also considering young people who may not be able to access lessons or have the funds to, for example, purchase driving lessons from a professional. We are also actively considering how we can make sure these services are available to the entire community and not just those who can afford them so that we are not leaving young people without experience and education.

Mr Steel: I do not think we should just focus on young people, either. If we look at some of the road trauma this year, I do not think it has all been caused by young people on our roads. Certainly, some of it has, but there are also other cohorts that we need to consider.

There is certainly a lot of discussion in the road safety stakeholder community about the level of accidents and road trauma that we are seeing, not only here in the ACT but nationally, as we come out of COVID-19. I do not think we have a clear answer about what is driving some of that risk-taking behaviour at this point amongst certain cohorts, which are not necessarily young people but perhaps middle-aged men, for example.

There is a bit of research that needs to occur regarding what we are seeing this year. Certainly, it has been a particularly horrific year on ACT roads. We are looking very closely at whether there is anything we can draw out of that that might inform behaviour change programs or education into the future.

THE CHAIR: Obviously, you would be planning to be heavily engaged with ACT Policing, who touched on some of the reasons that they suggested for, say, speeding. Obviously, drugs are involved—not uncommonly, sadly. I was very surprised to hear that, for the drivers involved with death on our roads this year, nearly all of them had cannabis in their blood system.

DR PATERSON: They were getting back to us with the data.

THE CHAIR: They gave us the numbers for deaths this year. They are going to confirm the total number. Seven drivers in fatalities this year had cannabis in their system. I might come back to that later. On the education side, thank you for that answer. Of course, we want people to be responsible drivers. What about technological options to keep people from driving a vehicle when they clearly should not be?

Mr Steel: I mentioned that we are interested in looking at options around interlock devices for vehicles, for those who have committed an offence relating to drink driving, for example. That is used in other jurisdictions like Victoria. We are interested in that. We will certainly be looking at the options there.

We know that, more broadly, new vehicles are safe vehicles. Promoting safe vehicles is something that will be a focus in our next road safety action plan. It is indeed a big focus of the national road safety strategy and action plan that is currently being finalised at the moment.

We have recently made a submission to the federal parliamentary inquiry into road

safety, where we also focused on that issue. We know that we get some of the most outdated technology here in Australia, in terms of vehicle technology, because the federal government has not adopted the latest design standards, particularly around zero emissions vehicles and fuel efficiency. That is a real disappointment that does have an impact in terms of safety on our roads, and it also causes a range of health issues that affect thousands of people a year in Australia. That will certainly be a focus.

We have been interested in the heavy vehicle space around driver fatigue issues. We have been talking with the Australian Trucking Association about opportunities around using technology to track driver fatigue. Indeed we have some local companies that are very innovative in this space. Seeing Machines is one of those. We are certainly interested in the possibilities there. A lot of those issues have come out of the coronial inquiry into the death of Blake Corney, which involved a heavy vehicle. They are certainly things that we are progressing as we look to implement some of those recommendations as well.

DR PATERSON: The very obvious focus of this inquiry is on deaths on our roads. I am also interested in knowing what level of data we have around serious injuries on our roads. Do we collect data on that? Are you able to provide the committee, maybe on notice, with some of that data?

Mr Steel: Yes, I am happy to take that one on notice and come back with some information about accidents. It is certainly used to inform a range of different interventions, both in terms of the road environment and in terms of policy. The most recent one is today's announcement about mobile device detection cameras. We will certainly be installing those in locations where there have been issues around people being picked up with those devices by police, and based on the accident and crash data that we have, working with the University of Adelaide. We certainly use that data. We can provide what we have in relation to crash data. If there is any specific breakdown that you would like, let us know.

DR PATERSON: We report road fatalities, but is there any scope to report other injuries on our roads as a deterrent? You say that it is broader than just people dying on our roads; there are people that are injured and that could have lifelong consequences.

Mr Steel: Certainly, Vision Zero, which is our commitment to road safety, means zero deaths and serious injuries on our roads. That continues to be the focus. It is often difficult to get the message out there; I will be honest with you. In Road Safety Week this year, we held an event for the media, to mark the start of the week. I think we got one camera there, from WIN News. No-one else came to that. We had, I think, 11 empty seats there, which represented the number of road fatalities on ACT roads last year. It was quite a powerful reminder about the impacts of dangerous driving on our roads. But in that same week we saw a number of fatalities occur, after that event. It is sometimes difficult to get the message out, with communications. We have to continue to try and work through various channels to do that.

MR BRADDOCK: I come back to the sentencing data that the Attorney-General mentioned earlier, in saying that the ACT, I believe, is middle of the road, basically. It

has been raised before with this committee that custodial sentences do not always mean a sentence of imprisonment. Can you please give us some clarification in terms of why that is the case? Also, how do we ensure that we are comparing apples with apples when we do compare with other jurisdictions?

Mr Rattenbury: Yes, certainly. I will get some assistance from my colleagues on the definitional questions, Mr Braddock. In terms of that particular point, about a custodial sentence not always being incarceration, it can also include intensive corrections orders and similar measures. They have different names in jurisdictions. In all jurisdictions, it is a like measure in the sense that a custodial sentence includes all of those potential penalties. That is the first point that I can draw you to, in terms of the first part of your question. I am hoping that Ms McNeill might assist me.

Ms McNeill: Mr Braddock, I do not know whether this question is about how non-parole periods and suspensions are taken into account. Is that what you are driving at?

MR BRADDOCK: It is based more on the data that you will be providing to us, which shows that we are in the middle of the road. My question is—

Ms McNeill: That has been focused on terms of imprisonment, yes.

MR BRADDOCK: How do we take account of the fact that there might be these intensive corrections orders or other matters, and do they influence the data in any way, when comparing us with other jurisdictions?

Mr Rattenbury: In terms of the breakdowns provided by ABS, there are two different measures. One is the percentage of defendants with a guilty outcome sentenced to a custodial order, which goes to your question. There is a separate category of percentage of custodial sentences ordered to custody in a correctional institution. So that data is drawn out. The first category includes intensive corrections orders and like measures. The second category is purely about people who actually go to jail, to put it in plain English.

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.

DR PATERSON: In the corrections inquiry, one of the recommendations was around the intensive community corrections orders—that the government look to educate the community more broadly about these orders, because they are often viewed as not being a harsh sentence, which was contrary to the evidence that we heard in the inquiry. As attorney, do you think we could be doing more to inform the community about the difference with these orders?

Mr Rattenbury: The inevitable answer to your question is yes, because there is a perception by some in the community that they are what might be colloquially called a soft option. It is clearly not the way they are designed. It goes to some questions that were asked by the committee earlier. You started it, I think, Mr Cain. Some of the requirements that people have to perform under these intensive corrections orders are quite challenging for them and there is a risk that they will not meet all of their

conditions.

Another element that the committee might want to consider is that a key component of this is what is called swift and certain punishment. One of the factors that is identified in criminal justice responses is that often, when someone is charged, they do not come to court for quite some time and there is a big disconnect between the act and the punishment.

Under an intensive corrections order, if somebody breaches, they can be sent to jail or into custody immediately, for a period of three or seven days. It is designed to draw that direct connection between the breach and the consequence. I think that is a feature, in terms of the point that Mr Steel was making earlier around potential immediate suspension of licence. I think there is scope for us to consider those issues there, where there is a more direct connection for people. Certainly, some of the research indicates that, where it is too far apart, people just do not learn the lesson, to use a colloquial expression around it.

THE CHAIR: We had several submissions—again, this is touching on a subset of sentencing, and hopefully it is part of your consideration in your review—that said, while there is a maximum sentence, there seems to be a very significant disparity between the average sentence for an offence, whatever it might be—it could be a serious one, causing harm or even death—and the maximum that is available.

In terms of community expectations, it does appear strange that we have a penalty, say, a death caused by dangerous, negligent driving, at a maximum level, and it never seems to be reached. In terms of your review of sentencing, how does that fit into your thinking?

Mr Rattenbury: Mr Cain, as I indicated earlier, 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.

THE CHAIR: Again, despite what happens in other jurisdictions, it does seem to many in the community to be a rather strange circumstance. Has the maximum ever been reached? I am not aware of any instances, for some of these deaths caused by dangerous driving.

Mr Rattenbury: I am not aware of any.

THE CHAIR: Obviously, there is a range of discounts available—for example, early pleas, even though it may be fairly late in the trial process. I have seen that once. Again, in terms of reviewing sentencing, are you reviewing the role of discounts to a sentence, once given, and reviewing the discounts that are then applied? Again, some of this comes out of legislation, but much of it comes out of judicial discretion.

Mr Rattenbury: It is not a factor that we are looking at in great detail at this point in time. In terms of those threads that I touched on earlier, there are a number of other lines of consideration which we have focused on, first and foremost.

THE CHAIR: Is this something that you think you should be looking at?

Mr Rattenbury: What has particularly come up in the discussions I have had with families who have spoken to us about some of their concerns in this space is that they find the language particularly jarring. If you are talking about someone having inflicted a terrible outcome, with the notion of getting a discount, people find that language diminishes the emotional weight of the circumstances.

There are a range of justice policy considerations as to why people might be given consideration for pleading guilty. In criminal matters, that can mean a victim might not have to go to court and give evidence, which, for many victims, means they can avoid a re-traumatising process. The judge may take that into account, because of the guilty plea; that is weighed up in the process of sentencing, and the accused is given some credit for that. I think people find the language of “discount” quite jarring, though.

THE CHAIR: Indeed. Those are the reports that we have had.

Mr Rattenbury: Yes, I have heard that referred to. The challenge is that it is common legal-speak amongst the whole sector. It is very difficult to change that language, because it is not language that is in legislation; it is language that is common practice.

MR BRADDOCK: I have not heard about the language concern, but I have heard about the impact it has on victims going through the length of the court process, leading up to even appearing. For example, even directions hearings or various associated matters can be quite stressful for victims; hence the question was raised with this committee of whether the discount should take into consideration exactly how much of an impact it has had on the victim, leading up to that point, rather than just a few weeks before the final hearing is held.

Mr Rattenbury: It would be fair to say that, where a plea is made early, it is accounted for. The judiciary has many factors to weigh up, so I cannot sit here and say it is accounted for by a certain percentage or anything like that. But I think it is relevant in the eyes of the judicial officer as to the timing in which that guilty plea was made and the circumstances under which it was made. Where somebody pleads guilty when the evidence is clearly heavily stacked against them, and they feel they might be about to be convicted, anyway, it is quite different from making the plea very early in the process.

DR PATERSON: In the Justice Reform Initiative’s evidence, they have a table of the proportion of prisoners with traffic offences as their most serious offence by Indigenous status. We had a discussion along these lines in annual report hearings. We have the largest proportion of Indigenous people incarcerated with a traffic offence as their most serious offence. It is double the rate for non-Indigenous, and that does not exist in other jurisdictions to this extent. If we are focused on reducing recidivism and reducing the number of Aboriginal and Torres Strait Islander people

incarcerated in the ACT, aren't these hotspots where we should be focusing our attention?

Mr Rattenbury: I think it is an important area of focus. Certainly, in my previous role as minister with responsibility for road safety, we funded work to try and assist young Indigenous people to get their licence. One of the areas of concern—across Australia, various programs have attempted to address this—is that, often, young Aboriginal people can drive a car, but they do not get through the licensing process, for a range of reasons, which can include not being able to afford the lessons, not having access to the lessons, not getting to the test—all of the social factors you can imagine.

If you are capable of driving a car but you do not actually have a licence, it quite quickly leads to the potential for an offence, driving unlicensed or driving an unregistered vehicle, for a range of other social reasons. With the technology that police have to read the number plates as they go, their ability to pick up unregistered, unlicensed or uninsured vehicles can be very quick. Through social disadvantage and a range of other factors, you can see a very quick process by which Indigenous people can be over-represented in these figures.

DR PATERSON: Do you not think, though, that other jurisdictions have exactly the same things going on and have larger populations? For example, the NT has a larger population of Aboriginal people, yet they do not have the figures that we have on this. Clearly, there is an issue here that we should be looking at further.

Mr Rattenbury: My comments were not meant to be comparative. It was more of a reflection of our understanding of the issues that we face. In terms of the comparative analysis, I do not have any comments that I can particularly offer on why it is different between jurisdictions.

DR PATERSON: With the data that we have on the people who are incarcerated or the data that is coming through the courts, in terms of the level of offences, do we need to start analysing that with more scrutiny in terms of that influencing what programs and policies we implement?

Mr Rattenbury: I would suggest that we are doing some of that work. A number of the policies that we are implementing are particularly focused on Aboriginal and Torres Strait Islander communities, and seeking to support them in a range of ways which will impact on these offence types—things like bail support programs, and Yarrabi Bamirr. While it is a partnership predominantly with Winnunga Nimmityjah Aboriginal Health and Community Services, there is a range of supports built into that program where we see benefits well beyond the immediate health outcomes. They also have an impact on lower rates of contact with the criminal justice system.

MR BRADDOCK: I have a question about the Coronial Counselling Service. We have received evidence that seems to indicate there is insufficient funding there to meet the demand being placed on that service, plus a service gap, in terms of being able to meet the needs of those who are traumatised by an event but may not necessarily be linked to the event. Witnesses and other people who have helped out at a roadside incident may not be covered by the service.

Mr Rattenbury: I am not sure what the question was.

MR BRADDOCK: Firstly, is the Coronial Counselling Service funded sufficiently to meet the demand that is being placed on it and, secondly, what is the government doing to address the service gaps that appear to be in place?

Mr Rattenbury: I am having a think about that. I think the actual funding comes from ACT Health. I will take the question on notice. We will get the answer for you. I do not have the detail immediately at my fingertips, I am afraid.

MR BRADDOCK: Okay.

Mr Rattenbury: But we will take it on notice. It does cross over, of course, because a lot of the coronial responsibility sits with me, as the Attorney-General, but that particular service is funded outside my portfolio. I will get the details and provide them to the committee.

THE CHAIR: On behalf of the committee, I would like to thank the Attorney-General, the Minister for Transport and City Services and officials for your attendance today. With questions taken on notice, could answers be provided within five working days of receiving the uncorrected proof transcript? Thank you for your attendance.

BARTELS, PROFESSOR LORANA, Justice Reform Initiative

THE CHAIR: In this session we will hear from the Justice Reform Initiative, and I welcome Professor Lorana Bartels. I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Could you confirm for the record that you understand the privilege implications of the statement?

Prof Bartels: Yes, I do.

THE CHAIR: Thank you for your paper and your recommendations. If there was one thing that you could change in the ACT right now—with a magic wand or whatever—to address dangerous driving, what would that be?

Prof Bartels: I would like to say at the outset that, I, like everyone and like all of the JRI patrons, am very concerned about what has been going on on the roads recently. We are all citizens and we all use the roads and it has been incredibly tragic. I think in these circumstances it is very important that we hear the voices of victims. It is also really important that we ensure that the policy responses are evidence based.

In our submission we were seeking to point this committee to recommendations and suggestions that would be about relying on the evidence to ensure that our roads are safer and that we do not resort to responses that might make us feel safer but not deal with the underlying issues. In particular, we need to be very careful to ensure that we check what is going on.

We have had a spate, unfortunately, of awful incidents on the roads in the ACT lately and, and since we completed our submission, that has lamentably continued. But that had not been the case until recently. By and large, the ACT has a relatively good record comparatively per capita—I cannot remember quite how it works out—of residents and fatalities on our roads. That is not to say that any is okay, and I appreciate that one is working towards zero such fatalities and obviously we would endorse that.

In terms of one sort of magic bullet, as the Chair and the other members know, there is never one solution. Certainly one thing that really struck us as we were preparing our submission is that the impediment to getting a licence for members of the community, especially vulnerable members, might not be adequately appreciated by everyone in the community. Everyone says, “Okay, well people are driving unlicensed. They are driving dangerously”. The assumption might be that we all have equal opportunity to get our licence, but that is simply not the case. It is actually quite expensive, time consuming and difficult to get one’s licence—and, in fact, more so in the ACT than in some other jurisdictions. We were concerned to look at what some of those barriers are and whether they could be addressed such that people who are driving unlicensed are supported to get their licence, and that includes become safer drivers.

I am not saying that everyone should just get a licence because they want a licence. The Road Ready course that young people in school do is about teaching them to be

safe on the roads, but, if one does not complete that as part of the education program it is quite expensive. So we need to think about whether people who are driving unlicensed have just gone, “Well, I am driving anyhow”, without having learnt those educational parts of the program and whether that \$188 is a barrier. So that is one aspect. Do I get a second?

THE CHAIR: I might pass to Dr Paterson. We will certainly let you have an opportunity, I am sure.

DR PATERSON: I suspect the article that was referred to is the article yesterday about the ACT government data—that the data that you were using for your submission was inaccurate. That data has also been used in other submissions. Do you see this as a significant problem and that we need to improve our data collection systems, particularly in respect to certain offences?

Prof Bartels: I was actually away over the weekend and was not aware of this media article and I can only infer what it likely says. The JRI has been in contact with Mr McLuckie, and our executive director has a meeting with him shortly.

THE CHAIR: I guess you could take it on notice to respond to that.

Prof Bartels: Yes, without having seen the article. When he drew our attention to the errors in it, I contacted the Chief Justice with his concerns and was likewise concerned, if there are errors in the database, what the implications of that might be for sentencing practice in the ACT. I guess I can respond more fully when I have seen exactly what is in the media. But Mr McLuckie has raised his concerns with the JRI. We have responded directly to him and I have taken it up further with the judiciary. We have also been in contact with the secretary about amending our submission and the process for doing that, and we will be doing that to correct the record.

DR PATERSON: Just further on the data that is used, we have got all this data now from Operation TORIC, and I think there is a bit of a contest of ideas that, with the evidence base, there is a lot of emotion in the community; whereas, the evidence that is coming out of Operation TORIC is that there is a quite a serious recidivist offender issue in that the level of vehicle thefts has reduced by 50 per cent since Operation TORIC started and the level of burglaries has decreased by 30 per cent. So we have a particular population of highly recidivist offenders. Do you have any views or response to that for the committee recommendations that speak to particular groups in the community that commit these crimes?

Prof Bartels: I only have what has been put forward about Operation TORIC in the ACT Policing submission and what I have seen in the media. I will have to take on notice that they are employing techniques that are designed to target high-risk offenders and that it is in line with the ACT government’s reducing recidivism strategy. I cannot really go beyond that. If it is relying on good practice, then that is something we support.

I want to be clear that the Justice Reform Initiative is are seeking to reduce over-incarceration. We do not oppose the use of incarceration or punitive measures across the board. They obviously have their place. However, we do not support measures such as mandatory sentencing or increasing penalties simply to send a message,

because the evidence indicates that that is not effective. However, where there are particularly high-risk offenders and strategies that are designed to address that behaviour, absolutely there is a place for that in our criminal justice response.

DR PATERSON: Thank you.

MR BRADDOCK: What would the JRI recommend as a range of strategies for those high-risk recidivists who do not seem to care about the fact that their licences are being cancelled and they have been given fines et cetera? What would you recommend?

Prof Bartels: I cannot really speak to the frontline policing side of things, obviously. You will have other people appearing before this committee who are better placed to do so. There may only be a small cohort of people in the ACT who are causing a disproportionate amount of harm in the community but there clearly is a need for a targeted response. I think it has been made clear from the evidence that targeted responses are much more effective than a generic across-the-board response, although there is also a place for the public awareness campaigns generally.

From Operation TORIC, I think it is fair to say that we have had an issue with data in the ACT. So, if they are now collecting data better than what we have previously had, and they can use that to develop a targeted strategy, a multipronged approach that addressed not only policing but also addresses such issues as drug and alcohol issues, mental health issues and whether those individuals are experiencing homelessness and other issues, I think that is what is required. It is already, by the sounds of things, yielding some results, but probably a holistic response is what is required.

Obviously, in some instances, that will also include time in custody. As we said in our submission, that time in custody could also perform a function in relation to making people safer drivers. I could speak much more generally—and obviously we have been before the committee in relation to the AMC previously—but we have been thinking about the AMC and what role it can perform in terms of making people safer drivers. Again, we are talking about access to not only the Road Ready program but also other driver safety programs, driver hours and those sorts of things to help ensure that they return to the community as a safer driver than when they went in.

MR BRADDOCK: Thank you.

DR PATERSON: I understand that tougher penalties do not have the outcomes that people would think that they would. But there is concern that the actual sentences that are given are not tough enough or adequate enough in reflecting the crimes that have been committed, and then you have got this recidivist nature of these crimes. Do you think that increasing the sentencing or at least having some sentencing guidelines or judgement would assist this situation?

Prof Bartels: 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 judgements. 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 judgement. The genesis for guideline judgements 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. I am not sure that there is any particular issue around the latter. Potentially, they could address the former. Legislation can also achieve that by just increasing the maximum penalty. But it does not necessarily give the community and victims what they think is right, and it certainly does not, tragically, bring back anybody lost on the roads. There are more effective strategies to keep the community safe.

DR PATERSON: Thank you.

THE CHAIR: You mentioned you had two things and we moved on. Did you get that second one in?

Prof Bartels: Yes, I did. Thank you, Chair.

THE CHAIR: Which was?

Prof Bartels: I think it was around addressing underlying issues around drug and alcohol and mental health issues and the like, so that we are actually dealing with these underlying systemic issues. They are not an easy fix. It would be so much simpler to say that we have changed the legislation and increased all the maximum penalties by two years or five years. What actually works is much tougher than that, but it is really vital that that is where the efforts go.

THE CHAIR: Okay. Your banner obviously still carries “jailing is failing” as a motto. Does that mean you discount some who just need to be in jail, or do you think there is definitely a category of offenders who need to be incarcerated?

Prof Bartels: Yes, we do. We accept that. Our executive director was discussing that, I believe, with Mr McLuckie recently. Yes, some categories of individuals do, for their safety and the community’s.

THE CHAIR: Thank you, Professor Bartels, for your attendance today. I think there was a questions taken on notice. Was there one?

Prof Bartels: I will read the media report that I missed over the weekend.

THE CHAIR: Yes; it was perhaps a suggestion. If you wish, you may respond. It was not a question, but the article is there for your comment if you wish to provide that to us.

DR PATERSON: Yes; it was about the data collection processes that we have.

THE CHAIR: On behalf of the committee, I would like to thank all the witnesses who have appeared throughout the day. Thank you.

The committee adjourned at 3.32 pm.