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Submission Cover Sheet

Inquiry into Dangerous Driving

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Inquiry into Dangerous Driving

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Introduction

The Alcohol, Tobacco and Other Drug Association ACT (ATODA) represents the alcohol, tobacco and other drug (ATOD) sector in the ACT. Members include specialist alcohol and other drug treatment organisations; distinguished drug experts with deep knowledge of the criminal justice system and population health; the group representing families and friends who have lost loved ones to drugs; and the peer-based organisation for people with lived experience of drug use in the ACT.

ATODA welcomes this Inquiry and its Terms of Reference. Given ATODA's remit and our sector's particular areas of expertise, this submission makes a number of Recommendations (see **page 8**) regarding the following items from the Terms of Reference:

- *Item b) Police response to dangerous driving in the ACT (both in prevention and post-crash response)*, focussing on the need for improved prevention of drink driving in the ACT and the opportunity to review drug driving policy in the ACT;
- *Item d) Prison sentences, fines and vehicle sanctions legislated for dangerous driver offences in the ACT*, focussing on penalties in relation to drink and drug driving;
- *Item g) The effectiveness of rehabilitation and driver re-education at reducing recidivism*, focussing on the ATOD sector's work in this area;
- *Item i) Any other related measure with respect to the administration of corrections, courts and sentences in the ACT with respect to dangerous driving*, with specific reference to the ACT Road Safety Action Plan 2020-2023.

In addition to our commentary against these items, ATODA notes the following:

- ATODA supports the ACT Government's commitment to Vision Zero as articulated in the ACT Road Safety Strategy 2020-2025, meaning no deaths or serious injuries on the ACT's road transport network.¹ ATODA also welcomes the commitment to evidence-based road safety measures.¹
- In line with the ACT Road Safety Strategy 2020-2025, it is important for the ACT Government to holistically consider a range of measures to enhance road safety, rather than limit its attention to any one set of risk factors. ATODA's submission focusses on drink and drug driving behaviours, however there are a number of contributing factors to road traffic crashes, including a range of human factors as well as road and vehicle factors.² ATODA's recommendations should be considered in the context of other priority interventions to enhance road safety.

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

This submission focusses on two components of police prevention of dangerous driving in the ACT, random breath testing (for alcohol) and roadside drug testing.

Data regarding drink and drug driving in the ACT

The ACT Government provides annual ACT Road Safety Report Cards, the latest available being the 2021 Report, which includes the following data:³

- In 2020, 1,621 driver licences were disqualified for drink and drug driving offences.

- In 2020, 226 alcohol interlock conditions were imposed on a licence in the ACT.
- ACT Policing charged 902 people with drink driving offences from July 2020 to June 2021 compared to 824 in the same period the year before.
- Drug driving charges have reduced from 852 in the period from July 2019 to June 2020 to 767 drivers charged in the period July 2020 to June 2021.

Random Breath Testing (RBT)

While ATODA commends the ACT Government and ACT Policing in their continued efforts to curb drink driving in the ACT, there is more that can be done, specifically in relation to the intensity, randomness and publicity regarding Random Breath Testing (RBT) in the ACT.

There is established evidence regarding the levels at which alcohol impairs drivers' abilities, and the effectiveness of RBT programs in reducing alcohol-related road traffic crashes.⁴ Due to this clear evidence base, RBT programs have been a core part of reducing alcohol-related road traffic crashes in all Australian jurisdictions since the 1980s (1982 in the ACT).⁵ It is important to note that implementation and effectiveness varies between the jurisdictions, and research into RBT rates and alcohol-related road traffic crashes across Australian jurisdictions found that increased RBT rates did not always correlate with decreased alcohol-related road traffic crashes or decreased self-reported drink driving behaviours.⁵ This reflects that RBT rates and alcohol-related road traffic crashes are influenced by other factors, including varying levels of RBT publicity and educational campaigns, drink-driving penalties and drink driver rehabilitation.⁵ It is worth noting that this research in 2015 scored the ACT the second lowest score in the country, given its RBT to licensed driver ratio at that time of 1:3 and a self-reporting drink driving rate of 14.56% (second only to the NT).⁵ This is a higher rate of self-reported drink driving than in jurisdictions with RBT to licensed driver ratios of 1:1 or greater.⁵

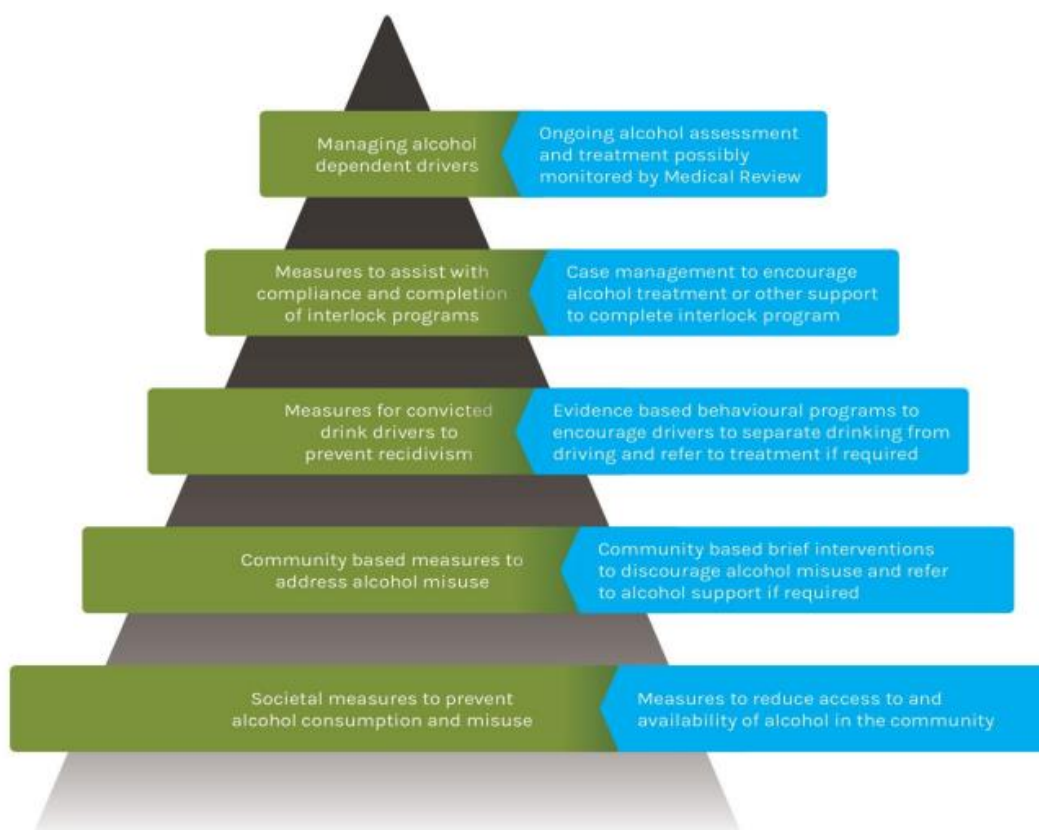
ACT's rate of testing in 2017 was 0.26 tests per licenced driver, an RBT to licenced driver ratio of less than 1:3.⁴ In 2017 ACT also had the second highest rate of detection in the country (1 in 89 tests positive (or 1.12%) second highest after the NT).⁴ That has increased to 2.3% positive detection in 2020, again the second highest positive detection rate in the country, NT being the only jurisdiction with a higher positive detection rate.⁶ In addition to this concerning high positive detection rate, an Australian survey in 2014 found that only 28% of ACT participants agreed with the statement that they would have a high chance of getting caught if they were to drink drive in the next week.⁴

The effectiveness of RBT programs relies on visible and randomised enforcement, so that RBTs are perceived as truly random and ever present by the general community.^{4, 5} Drivers who drink drive and avoid detection contribute to continued drink driving behaviour.⁴ It is concerning that increasingly in the ACT RBT as a term appears to be being used to refer to roadside breath testing at targeted locations and/or times or targeting certain drivers, which negates the demonstrated role that randomness has in the effectiveness of RBT programs. ATODA recommends that the ACT Government implements genuinely random RBT programs at an increased intensity, aiming for an RBT to licensed driver ratio of 1:1, in line with other stakeholders' advocacy and Austroads' *Effectiveness of Drink Driving Countermeasures: National Policy Framework*.^{4, 7}

While increasing the intensity and randomness of RBTs is ATODA's primary recommendation in relation to drink driving, given less barriers to achieving this than for example implementing new initiatives, it is important to recognise that there are a range of measures that should be considered in a holistic manner to reduce drink driving. The

following diagram (Figure 1) from Austroads' *Effectiveness of Drink Driving Countermeasures: National Policy Framework* provides a useful overview of these measures, some of which are discussed in more detail later in this submission.

Figure 1: Interventions to address alcohol misuse and drink driving (Austroads)⁴



Consistent with a robust public health response which prioritises prevention, the ATOD sector has a particular role to play in relation to “community based measures to address alcohol misuse” (Figure 1). In the ACT, the specialist ATOD treatment sector provides a wide variety of high-quality services to different client groups experiencing issues with alcohol or other drugs. However, the sector is at capacity: current waiting times for some programs are long, and service providers are at times only able to provide low intensity treatment options to clients assessed as needing high intensity treatment.⁸ Findings from recent Drug and Alcohol Service Planning modelling (DASPM) of the ACT’s ATOD service system indicate up to 4,750 more people annually require treatment than are currently being treated through existing services, with an investment gap of approximately \$24 million per annum.⁹ It is important to note that this is an underestimate as the DASPM accounts for only 93% of treatment presentations (as it is restricted to four drug classes);⁹ assumes treatment for only 47% of those people who meet the criteria for dependence;⁹ and was undertaken before the most recent population numbers for Canberra were published by the Australian Bureau of Statistics, which indicated an undercount of approximately 20,000 persons.¹⁰ While the recent budget announcement from the ACT Government of an additional \$13m investment is most welcome,¹¹ a significant investment gap remains and further investment is required to ensure a sustainable and accessible specialist ATOD sector in the ACT.⁸

Recent analysis from the Australian Institute of Criminology found that on average demand reduction programs, including specialist ATOD treatment services, provide a return on investment of \$5.40 (AUD) for every dollar spent.¹² Other studies have found similarly

favourable cost-effective ratios across ATOD treatment services and harm reduction programs.¹³⁻¹⁵ ATODA recommends that the ACT Government increases funding to the ACT ATOD sector to ensure increased reach and accessibility of services reducing alcohol dependence and misuse in the community.

Roadside drug testing

While the evidence regarding efficacy of RBTs in enhancing road safety is extensive,⁴ that is not the case for roadside drug testing, as the level of impairment from typical use of some illicit substances is not as high as for alcohol,¹⁶ the link between impairment and detectable amounts is not clear;^{17, 18} and the deterrent effect is less well-established.¹⁹ Given the complex nature of drug driving epidemiology, ATODA notes the argument for a zero tolerance approach for illicit drugs in relation to driving.¹⁷ However, while outside the scope of this Inquiry, it is worth noting that ATODA and other stakeholders, including the ACT Human Rights and Discrimination Commissioner, made submissions in relation to the Private Member's Bill Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Bill 2009 and subsequently the Exposure Draft of the Road Transport (Drug Driving) Bill 2010 and the Road Transport (Alcohol and Drugs) Legislation Amendment Act 2010. ATODA's concerns articulated in those submissions regarding the introduction of roadside drug testing in the ACT remain, particularly given that in the period since that legislation passed there remains no clear evidence of appropriate thresholds at which drugs other than alcohol increase the risk of a road traffic crash.¹⁷

The ACT Government does note in the ACT Road Safety Action Plan 2020-2023 that "to date, no major international or technological developments have been able to establish a causal link between specific levels of drugs and impairment, which can be applied across the population".¹⁸ The ACT Government has acknowledged concerns regarding the lack of impairment testing as part of the ACT's drug driving framework.¹⁸ While the ACT Road Safety Action Plan 2020-2023 notes that the ACT Government will monitor national and international developments and approaches to roadside drug testing and impairment testing,¹⁸ the issue remains that without evidence-based impairment thresholds, there are significant human rights and proportionality concerns associated with a zero-tolerance approach.²⁰ In addition, research indicates that roadside drug testing has not proven effective in reduce drug driving activity in the same way that drink driving countermeasures have reduced drink driving activity.¹⁹ ATODA notes research conducted by the Monash University Accident Research Centre that claims roadside drug testing has reduced drug-related road traffic crashes.²¹ However, the validity of these findings has been questioned.²²

Without a strong evidentiary base, roadside drug testing has the potential to divert police resources for more efficacious measures (such as RBTs) and to undermine community confidence in the legitimacy of ACT Policing's enforcement activities.²³ It is concerning that roadside drug testing has increased in the ACT while the intensity of RBTs, a proven road safety measure, has significantly decreased.^{6, 24} While illicit drug use can contribute to impairment, the evidence is clear that alcohol must remain the focus of road traffic crash prevention measures.²⁵⁻²⁷ It is also critical that to inform evidence-based policy, ACT Policing provides timely and transparent data in relation to drink and drug driving in the ACT, with data related to road traffic crashes and deaths showing separately the number where alcohol only was present, where one or more other drugs were present, and where both alcohol and one or more other drugs were present.

Given the range of concerns outlined above, ATODA recommends that the ACT Government's roadside drug testing program be reviewed as part of review indicated in the ACT Road Safety Action Plan 2020 – 2023: this is discussed further in relation to **Item i**. This

review should take into account relevant international evidence and experience, for example the findings of the Report from the Expert Panel on Drug Driving in the United Kingdom and the findings of the Driving Under the Influence of Drugs, Alcohol and Medicines project in the European Union.^{26, 28, 29}

Such a review should specifically consider the relationship between the ACT's zero tolerance approach to driving with any detectable amount of cannabis, the implementation of the Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019,³⁰ and the NSW Government's Standing Committee on Law and Justice Report No.81: Road Transport Amendment (Medicinal Cannabis-Exemptions from Offences) Bill 2021).³¹ This review should also consider the latest research regarding cannabis use and road traffic crash risk,³² including research that indicates the risk of road traffic crashes associated with moderate cannabis use is comparable to that for moderate tobacco use.¹⁶ Recent epidemiological evidence and increased prevalence of medical and personal use of cannabis present an opportunity to revisit drug driving regimes that criminalise drivers on the basis of presence alone.^{32, 33} Similar to the situation with alcohol, prevention in the form of increased resourcing for alcohol and other drug treatment and harm reduction services to enable more people to quit or reduce drug use would be useful.

This review should also consider the significant amount of research underway, particularly in the USA, on handheld impairment testing devices. These test impairment as such, independent of the source of the impairment. ATODA recommends that the ACT Government actively monitors developments in this domain, with a view to rapidly adopting these devices when they become more readily available on the market. The ACT Government has demonstrated its openness to technological advances to enhance road safety with the introduction of the alcohol interlock program (discussed further in relation to **Item g**). Technological advances in testing for impairment have the potential to resolve some of the concerns related to existing roadside drug testing practices in the ACT, including reliable threshold amounts, human rights and proportionality concerns, unnecessary interactions with the criminal justice system, and direct enhancement of road safety.

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

The ACT Government's range of sanctions in relation to drink driving (broadly similar to those for drug driving, noting the zero tolerance approach to drug driving) are detailed as at 30 June 2019 in comparison with other jurisdictions in Austroads' *Effectiveness of Drink Driving Countermeasures: National Policy Framework*.⁴

ATODA notes that the evidence indicates increased severity of sanctions, such as longer prison sentences or increased fines, is not an effective deterrent of drink driving in the future.^{4, 34} However immediate license suspensions, licence bans and interlocks have been demonstrated to be effective deterrents.⁴ In line with the ACT Road Safety Strategy 2020-2025's commitment to evidence-based road safety measures,¹ ATODA recommends that any review of penalties associated with drink or drug driving in the ACT aligns with the evidence about effective deterrents and considers the human rights and proportionality concerns noted above.

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

Research indicates that in relation to drink and drug driving offence, education or intervention programs can improve drivers' attitudes, reduce alcohol consumption and

decrease recidivism.^{26, 34, 35} In the ACT it is a mandatory licensing requirement for drivers convicted of a drink or drug driving offence to complete an alcohol and drug awareness course. The ATOD sector in the ACT currently plays and can play an expanded role in the delivery of this course, which is approved by the road transport authority and that raises awareness about the effects of alcohol and drugs, including their effects on driving and health.³⁶ There are two types of courses in the ACT to accommodate the specific needs of offenders: the standard course which is primarily an educational awareness course, and the extended course which is a therapeutic and educational awareness course.³⁶ In the ACT currently, there is one approved standard course (offered by a road safety training organisation) and two approved extended course (one offered by the same road safety training organisation, and one offered by a specialist ATOD treatment provider).³⁷ An evaluation focussed on the completion rates and educational aspect of these courses and completion rates found that course completion rates were high, the effect on knowledge and attitudes was unclear, and that the introduction of the courses have correlated with reductions in drink driving detections in the ACT.³⁸

The evidence indicates that all persons convicted of a drink or drug driving offences should participate in intervention programs, and that higher risk drivers require more intensive programs.⁴ It is commendable that the ACT Government do include all persons convicting of a relevant offence in scope, and tailor the courses to individual needs through a two-tiered approach. However, there is scope for improvement. Programs that focus solely on education have not proven effective,³⁹ and research indicates that education programs combined with therapeutic support are more effective.⁴⁰ Research also indicates that drink and drug driver rehabilitation programs integrated into the ATOD treatment system provide the most effective support,⁴ and drivers experiencing a dependence on alcohol or other drugs may require specialist treatment.²⁶ Given this, the ACT Government should ensure that collaboration occurs between program providers and the ATOD sector and consider whether a greater priority should be placed on courses provided by a specialist ATOD treatment service. There is also an opportunity for the ACT Government to work with the ATOD sector to integrate therapeutic elements into both the standard and extended course, noting there will be resourcing implications for any change of scope. If the therapeutic element of these courses is expanded, the ACT Government should consider whether specialist ATOD treatment providers should be prioritised in the course delivery.

One issue of concern is a potential cost barrier for participants. For some participants, paying for the courses may appropriately emphasize its importance and may enhance engagement. However there is likely to be potential participants who genuinely cannot afford the course costs and therefore do not attend. Some may then drive without having their license reinstated, and there may be an opportunity to subsidise participants with genuine financial need to enhance road safety. Another area for consideration is accessibility for the cohort of participants who are exiting the Alexander Maconochie Centre (AMC), and whether offering the standard or extended course prior to exiting AMC would be more appropriate and reduce the risk of individuals driving without their license being reinstated. Providing timely relevant data to the sector including referrals to the standard and the extended course would assist the ACT Government and the ATOD sector to consider a range of issues including whether the program is performing as intended, whether more therapeutic supports are needed, whether affordability is an issue for participants, whether accessibility could be improved for particular cohorts, etc.

ATODA recommends that the ACT Government work with the ATOD sector and other stakeholders to develop and appropriately resource effective therapeutically-informed driver intervention programs in relation to drink and drug driving. The review of the ACT

Government's roadside drug testing discussed previously should also consider the appropriateness of requiring non-impaired drivers to participate in these programs.

In addition to driver intervention programs, the ATOD sector has a broader role to play in reducing drink and drug driving in the ACT, at the point of intervention. For example, ATODA commends the ACT Government for the implementation of alcohol interlocks to prevent re-offending, which have been demonstrated to be an effective countermeasure.^{4, 34} It is important to note that alcohol interlocks are only effective at reduce drink-driving whilst they are in place, and are just one aspect of holistic drink-driving countermeasures as articulated in Figure 1 above. ATODA notes that an evaluation of the ACT Alcohol Interlock Program was completed in 2019,⁴¹ and would welcome that report being made public. The ACT Government is to be commended for including a requirement for an assessment of whether any form of therapeutic treatment or program might assist an individual with a mandatory interlock condition, and make associated recommendations to the court.⁴² Research indicates that interventions like interlocks should be combined with behavioural change interventions like some form of rehabilitation program for lasting change.³⁴ In instances where individuals do not comply with interlock conditions this can be an indicator of alcohol dependence.⁴³ Consistent referral pathways in the event of interlock breaches and continued engagement between ACT Policing and the ATOD sector can contribute to ensuring that drivers with an alcohol dependence access the help they need.^{4, 43}

Given a high proportion of repeat drink drivers meet the threshold for potential alcohol dependence,⁴⁴ supporting treatment pathways for these individuals in an area in which specialist ATOD services in the ACT could play an important role in supporting ACT Policing and the ACT Government in enhancing road safety. The ATOD sector has demonstrated that it can work effectively as part of multi-agency, multi-disciplinary models of care to support the Canberra community.⁴⁵ It is important however to note that effective engagement and rehabilitation in relation to ATOD use depends on a viable, sustainable and accessible specialist ATOD sector in the ACT.⁸

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

ATODA notes that the ACT Government's Road Safety Action Plan 2020 – 2023 includes the following actions:¹⁸

- "Review and assess the effectiveness of the Territory's drink and drug driving scheme against best practice models including to consult with experts and the community on the effectiveness of the scheme and potential reforms.
- Explore measures that are appropriate for the ACT, which will deter drink and drug driving."

ATODA and the ATOD sector would welcome consultation from the ACT Government on these important actions. The guiding principles for road safety articulated in the ACT Road Safety Strategy 2020-2025 include: "Programs and policy will be evaluated to ensure continuous improvement and effectiveness in improving road safety".¹ The ACT Government should engage with the ATOD sector as part of such an evaluation of the drink and drug driving measures in the ACT, and provide evidence to the community as to their effectiveness. This review should also take into account the new ACT Drug Strategy Action Plan 2022-2026, currently under development.

Recommendations

ATODA recommends that the ACT Government consider the following actions to enhance road safety in the ACT:

1. Increase intensity and randomness of Random Breath Testing (RBT) in the ACT, in line with Austroads' *Effectiveness of Drink Driving Countermeasures: National Policy Framework*, in order to reduce alcohol-related road traffic crashes.
2. Increase funding to the ACT ATOD sector to ensure increased reach and accessibility of treatment services reducing alcohol dependence in the community.
3. Work with the ATOD sector and other stakeholders to develop and appropriately resource effective therapeutically-informed driver intervention programs in relation to drink and drug driving, and increase referral pathways for drink and drug drivers to treatment where required.
4. As per the ACT Road Safety Action Plan 2020-2023 and in consultation with the ATOD sector: "Review and assess the effectiveness of the Territory's drink and drug driving scheme against best practice models including to consult with experts and the community on the effectiveness of the scheme and potential reforms".
 - This review should particularly consider drug driving as it relates to cannabis legislation in the ACT, and consider the adoption of impairment testing devices once available on the market to directly enhance road safety.

ATODA appreciates the opportunity to provide this submission to the Committee, and is available to provide any additional detail that may be required.

About ATODA

ATODA is the peak body for the alcohol, tobacco and other drug (ATOD) sector in the ACT. Its purpose is to lead and influence positive outcomes in policy, practice and research by providing collaborative leadership for intersectoral action on the social determinants of harmful drug use, and on societal responses to drug use and to people who use drugs.

ATODA's vision is a healthy, well and safe ACT community with the lowest possible levels of alcohol, tobacco and other drug related harms. Underpinning ATODA's work is a commitment to health equity, the social and cultural determinants of health, and the values of collaboration, participation, diversity, respect for human rights, social justice and reconciliation between Aboriginal and Torres Strait Islander people and other Australians.

Note: While the term AOD (alcohol and other drug) is commonly used to refer to the alcohol, tobacco and other drug sector, ATODA's preference is to use the term ATOD. This acknowledges the role that specialist service providers in this sector play in providing tobacco cessation support, and because tobacco use is the leading preventable cause of the burden of disease in Australia, contributing far more than alcohol or all illicit drugs combined.

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