



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY  
Mr Peter Cain MLA (Chair), Dr Marisa Paterson (Deputy Chair),  
Mr Andrew Braddock MLA

## Submission Cover Sheet

### Inquiry into the Road Safety and Crimes Legislation Amendment Bills 2022

**Submission Number: 009**

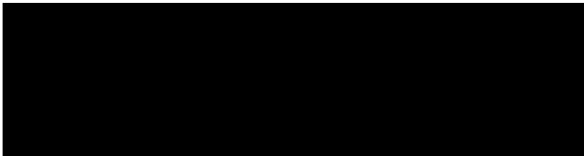
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Standing Committee on Justice and Community Safety  
ACT Legislative Assembly  
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**Inquiry into the Road Safety Legislation Amendment Bill 2022  
and Crimes Legislation Amendment Bill 2022 presented  
23 November 2022**

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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 is specific to the Road Safety Legislation Amendment Bill 2022 and the proposed legislative amendments to introduce immediate license suspension for refusing to provide an oral fluid sample.

Consideration of these legislative amendments should take into account ATODA's submission to the Inquiry into Dangerous Driving (Submission 34).<sup>1</sup>

ATODA is concerned that these legislative amendments have been proposed before the Standing Committee on Justice and Community Safety has released its report regarding the Inquiry into Dangerous Driving currently underway.

### Immediate license suspension for refusing to provide an oral fluid sample

License suspension is a punishment with significant ramifications before an individual has been given a trial and convicted of an offence. In certain instances, the community has accepted this intrusion upon human rights because of the risks involved, for example in the case of high blood alcohol level readings due to the well-established link between high blood alcohol levels and impairment, resulting in a genuine risk of harm should that driver continue driving. As detailed in ATODA's submission to the Inquiry into Dangerous Driving, presence does not equate to impairment, and the ACT Government has acknowledged concerns regarding the lack of impairment testing as part of the ACT's drug driving framework.<sup>2</sup> In contrast to a well-established link between blood alcohol concentration and impairment, there is not a clear link between the presence of other drugs and impairment.<sup>3</sup> The associated human rights and proportionality concerns, heightened by this proposed legislative amendment, were raised in the ACT Human Rights and Discrimination Commissioner's advice in relation to the Private Member's Bill Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Bill 2009 in June 2010. For drivers who refuse to provide an oral fluid sample who appear to be impaired, other mechanisms can be used to reduce immediate road safety risk, such as police transporting people home or to a sobering up shelter.

Given that in relation to roadside drug testing, the link between impairment and detectable amounts is not clear;<sup>2, 3</sup> the deterrent effect is less well-established,<sup>4</sup> and that there have been no epidemiological studies in Australia of the impacts of roadside drug testing on road safety, there is no clear rationale for expanding the reach of the current ACT drug driving program in this manner.

The Explanatory Statement makes a critical error, presenting targeted drug test results in the ACT as an indicator of prevalence.<sup>5</sup> Targeted testing dramatically overestimates prevalence. Only a random sample would provide genuine prevalence data. It is also disappointing that the Explanatory Statement not only cites Victorian data where ACT data would be more appropriate, but also cites a Victorian study (Cameron et al)<sup>6</sup> ignoring that the validity of these findings has been questioned.<sup>7</sup>

Given the lack of a sound evidence base regarding roadside drug testing, the inadequate justification of these legislative changes, and the ACT Government's stated commitment in the ACT Road Safety Strategy 2020-2025 to evidence-based road safety measures,<sup>8</sup> ATODA does not endorse further expansion of the roadside drug testing program or any increase in associated sentencing. It is particularly inappropriate to do so until the following action from the ACT Government's Road Safety Action Plan 2020 – 2023 has been completed: "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".<sup>2</sup>

ATODA notes that any legislative amendments which are likely to increase the number of drivers who are convicted of a drink or drug driving offence requires increased investment in alcohol and drug awareness courses currently required (the ATOD sector's involvement in these courses is detailed in ATODA's submission to the Inquiry into Dangerous Driving).

## Recommendations

ATODA recommends that the ACT Government:

- 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".
- Not progress legislative amendments in relation to the ACT drug driving program until the above review is complete.

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.

## References

1. Alcohol Tobacco and Other Drug Association ACT (ATODA). *Submission to the Standing Committee on Justice and Community Safety Inquiry into Dangerous Driving*. Canberra 2022.
2. ACT Government. *ACT Road Safety Action Plan 2020-2023*. Canberra: ACT Government, 2020.
3. Blandino A, Cotroneo R, Tambuzzi S, et al. Driving under the influence of drugs: correlation between blood psychoactive drug concentrations and cognitive impairment. a narrative review taking into account forensic issues. *Forensic science international: Synergy* 2022; 4: 100224.
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5. Legislative Assembly for the Australian Capital Territory. Explanatory Statement, Road Safety Legislation Amendment Bill 2022. 2022.
6. Cameron M, Newstead S, Clark B, et al. Evaluation of an increase in roadside drug testing in Victoria based on models of the crash effects of random and targeted roadside tests. *Journal of road safety* 2022; 33: 17-32.
7. White M. *Evaluation of roadside drug testing in Victoria. Supplementary Submission Number 49b to the Inquiry into Road Transport Amendment (Medicinal Cannabis Exemptions from Offences) Bill 2021*. 2022. NSW Parliament.
8. ACT Government. *ACT Road Safety Strategy 2020 - 2025*. Canberra: ACT Government, 2020.