



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

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 Dangerous Driving

Submission Number: 035

Date Authorised for Publication: 10 October 2022

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INQUIRY INTO DANGEROUS DRIVING

by the Standing Committee on Justice and Community Safety for the Legislative Assembly for the Australian Capital Territory

Submission by Andrew Corney – 30 September 2022

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Dear Committee

Please accept my submission to your inquiry into dangerous driving in the ACT. I am happy for the submission to be published but request my personal contact details be redacted. I am happy to appear before the Committee at a public hearing.

I thank the Committee for taking the issue of dangerous driving in the community seriously by holding this inquiry. I want to see changes that limit the prospects of anyone being in my position, that is the tragedy I outline below. Sadly, in the time since Blake died, I have seen very few changes and despite positions of an 'evidence-based approach' I see little evidence, that is change that produces a positive impact on preventing people being in my position.

Primarily I believe Government should protect the community from dangerous individuals. From my experience all three arms of government (legislature, executive and judiciary) have failed at this. My statements below are primarily based upon my lived experience.

Please note that I have **highlighted** actions I think should be taken.

My Loss Due to Dangerous Driving

On 28 July 2018 my life was irreparably diminished. Around 9.26am on that day, while my family (my wife Camille and our two sons Blake (4 years old) and Aidan (2 years old)) and I were in my family's Ford Territory at the traffic lights at the intersection on Mugga Lane Road and the Monaro Highway, a Canberra Sand and Gravel truck, driven by Akis Livas, smashed into my family's car. What happened following that impact was the death of my four-year-old son, Blake, and an event that has severely affected my family and me.

I do not consider that this crash was an accident as what happened was avoidable. All Akis Livas had to do was pay the attention to the road and reduce speed in line with the cars stopped at the traffic lights or pull over and rest, as required of any licence holder. I feel great fury, anger, disappointment and disgust for what the offender did on the day of the crash and how the criminal, parole and correction services processes played out following Blake's death.

Both my wife and I suffered physical and mental injury from the crash with the effects on Aidan being relatively unknown at this stage. My father died from Acute Lymphoblastic Leukemia just under five months after Blake's death and I will always consider Blake's death was the spark that kicked off dad's cancer. I will be retiring from work far earlier than planned and the list goes on in terms of aftereffects from Akis Livas' actions on 28 July 2018.

The Crash

On the day of the crash, I remember sitting in the car at the traffic lights thinking that life was good. It was warm in the car, and I was thinking about whether we should first go to a toy store or an antique store. Then a force hit the car and I felt the car move forward, I lost sight, my arms became paralysed and then I was knocked out.

I came to, thinking I was watching an advert on television about road accidents and how paying attention to the road is critical in avoiding accidents. However, this was no accident this was a crash that was avoidable, as I have previously noted.

In terms of force, a simple physics formula of force equals mass times acceleration lets me understand in comparative terms how fast our Ford Territory would need to travel to generate around the same amount of force as the Canberra Sand and Gravel truck. The Territory would need to travel at around 235 kilometres an hour. I find that frightening and concerning that anyone would think to drive with such reckless indifference towards cars waiting at traffic lights. Blake's horrific head wound is the result of such force hitting our car. I still suffer ongoing daily neck pain from this crash. My reminders are both physical and mental.

I discovered Blake's horrific head wound when I tried to free him from the car. As I went to move his head the top part of his head came away, but it was still attached by a thin strip of flesh. I could see Blake's skull was empty through to the top of his spine at the base of his skull. I turned my head to the driver's well and could see large bits of his brain. I gently put the top of his head back down and held his hand for the last time. This is something no one should ever see. Blake's death was not instantaneous, Blake was enjoying his favourite music in a warm environment. As the truck hit, Blake would have had a short but awful time of worry as the shock wave came through, like me, he probably lost his vision as his seat was propelled forward. Then a hit to the head and that was it. This was what I experienced at the same time.

What I saw of the inside of Blake's skull will stay with me for life and it was gruesome. I think I am a positive person, but hope left me at that sight. I still struggle mentally with how quickly and absolutely Blake's life ended. If there is any picture a dangerous driving offender should see it will be that of Blake's head wound.

Criminal justice response to dangerous driver offending in the ACT

I have focused on the different phases of the criminal legal system as it applied to Blake's death and the impact of this process on my family and me. The DPP were always professional and dealt with my family and I with a great deal of empathy and respect.

Laying of Charges

As both my wife and I suffered significant physical injuries with ongoing effects from the collision, I consider that there should have been additional charges laid against Akis Livas based on our physical injuries. As referenced above, the damage to my family and I was enormous and not solely reflected

in the most serious charge, that of culpable driving occasioning death. I think that where a serious dangerous driving charge is considered that, where possible, all additional charges should be laid to ensure the judge is able to consider the full effect of the damage an offender has caused. I note that this would be in accordance with sections 33(1)(b) and 33(1)(e) of the *Crimes (Sentencing) Act 2005 (Sentencing Act)*.

The main support my family received through the initial period of charges being laid was from the police victim liaison service. The person we dealt with was outstanding and in a period where it was difficult to think straight a great support. I note the Charter of Rights for Victims of Crime from the VoC Commissioner would have been of great assistance at the time, but I understand it was finalised only a few years ago. Increased financial support to the VOC Commissioner will greatly aid those who find themselves in my circumstances.

I understand that Akis Livas did not assist police with their enquiries and handed his mobile phone over 2 weeks after the collision he caused. I think that where inattention is a possible cause to a collision, mobile phones should be checked immediately and lack of assistance by drivers should be factored into sentencing. Such lack of assistance should include whether the offender assisted police or not which I note is part of the section 33(1)(l) of the Sentencing Act.

Towards Trial

I greatly appreciate the DPP's ability to find evidence that confirmed Akis Livas was aware of that he potentially had a sleep apnoea condition. This evidence collapsed his defence, which was that he had fallen asleep and was unaware he had a sleep apnoea condition.

Akis Livas was first charged in December 2018 and his arraignment, where he pled guilty, was on 19 February 2020. This was a significant period of time that continued to affect my family and I as we sought answers about what happened and that some measure of justice would be brought to Blake's killer. I suggest that in all cases where the Defence poses an unknown medical basis for a collision that Services Australia be requested to provide Medicare Benefits Scheme and Pharmaceutical Scheme Data. This is likely to lead to the who the offender's treating doctors are and, on that basis, whether there were existing doctors' notes. As a victim I can do nothing to speed this process up but must bear the pain.

Where evidence contradicts a defence and the defence ultimately collapses, as in Blake's killer's case, then this should be factored into the sentence an offender receives. I consider that running a defence (just under 15 months from date charged to guilty plea) that is ultimately found to be false should be considered an abuse of legal process and should have consequences for the offender, particularly considering the weak sentence discounts applied.

The nature of the collision which involved Akis Livas driving a truck that hit our car at 69 kilometres an hour while staying within the traffic lane and at a constant speed for over 250 metres would seem to indicate that sleep was not just beyond reasonable doubt but beyond any doubt. The criminal trial found Akis Livas' culpability was due to his sleep apnoea but did not state a cause for the accident (see paragraph 29 *R v Livas (No 2)* [2020] ATSC 116).

The Chief Coroner referred to inattention or a micro sleep as the likely cause of the collision (see paragraph 53 [2021] ACTCD 6). If Akis Livas had a micro sleep it would seem beyond doubt given the

passage of his truck that he was travelling too fast for the clearly visible traffic lights and line of cars at the lights to break and avoid impact. It seems Akis Livas' case was built around an impossibility given the footage from his truck cabin and ultimately unsuccessful because he knew he had an underlying condition of sleep apnoea.

On two separate occasions the lawyer representing Akis Livas failed to show at court. In both cases the hearing was adjourned to a later date. While such delays were, I think, only for a week in each occurrence the delay affected me as it delayed resolution of the matter and left me wondering what was going on. This was a serious case, and it does not seem to have been handled with an appropriate level of seriousness by the defence lawyer. **The court should expect higher standards with respect to attendance, especially in serious matters that involve loss of life.**

At the arraignment where Akis Livas pled guilty (19 February 2020) evidence was tendered by the DPP that suggested Akis Livas had driven to his doctors while on a suspended driver's license. The judge at the time did not accept this evidence based upon his view as to the unreliability of doctor's notes and he asked the lawyer representing Akis Livas to verify with Akis Livas something along the lines of whether he remembered making the statement, to which he replied (not under oath) that he did not. While the rejection of this evidence did not affect the outcome of Akis Livas being remanded in custody, given the seriousness of the driving without a license in this case I would expect confirmation of such evidence as if proven would cast further doubt on Akis Livas' ability to drive again.

Sentencing Process

I consider the sentence handed down by Justice Mossop was manifestly inadequate, that is, not out by a few months but by years. I note that recently in another sentencing for culpable driving occasioning death the father of the victim was quoted in the Canberra Times as stating the sentence was "totally inadequate". The current sentencing regime does not foster faith in the criminal legal system in this jurisdiction. I understand some of this is ideological, but certain criminals should not be afforded generosity and to discern such criminals requires judgment. Such judgment appears to be lacking. I accept some of the research but demonstrably, as in Akis Livas' case, it has not proved a specific deterrent, not a general deterrent and does not satisfy the victims. On that basis a check box approach to criminal law appears a waste on every front.

Victim impact statements seem at best cathartic for the victim and to humanise a judge's sentencing remarks. I do not feel my victim impact statement had any impact on the sentence despite being a relevant consideration in sentencing (see section 33(1)(f) of the Sentencing Act). **I think the legislature should ensure the law requires a greater appreciation of the effect criminal activity has on victims.**

I note that several members of the police who attended the collision site where not able to provide victim impact statements to the court as I understand the Defence indicated new evidence was being provided. I understand the tactical reasons why the DPP did not use the statements but feel that knowing what the police saw, and the fact that 3 members of the police have moved to different jobs after attending the collision site, that **any victim should be able, at law, to tender a victim impact statement.**

Akis Livas did not assist the police with their investigation as noted above. I note the Sentencing Act states a relevant consideration is any assistance by the offender to law enforcement authorities (see

section 33 (1)(l)). No mention was made of this lack of assistance in the sentencing remarks of the judge, despite such a fact being a relevant consideration in sentencing.

The offender's apology letter was noted yet was made only a few days before sentencing I do not accept as genuine remorse given the lateness of the letter and the inconsistencies in the letter.

In the sentencing remarks Mossop J notes at paragraph 27 that:

this articulation of culpability does not identify any actual knowledge on the part of the offender that he had sleep apnoea or any knowledge that a doctor had recommended to or instructed him that he should not drive

such a statement seems to reduce the driver's personal responsibility. The driver felt tired a few days before the collision and has been found culpable on the basis that over an extended period of time he knew he potentially had sleep apnoea yet choose not to have it diagnosed. Must drivers only be personally responsible if an expert recommends, they do not drive. If a driver is over the alcohol limit, do they need a doctor to recommend they do not drive. I consider an opportunity was missed to ensure in this case, and those cases that follow, that community expectations regarding personal responsibility are clear.

Mossop J notes at paragraph 35 of his sentencing remarks that this 'is not a case involving an immediate and obvious risk of which the offender was conscious at the time of the offending'. Akis Livas was driving a truck at around 74 km/h into stationary vehicles at traffic lights. He had referrals for potential sleep apnoea over a period of 5 years and the agreed facts state he felt tired for the few days before the collision. It seems beyond belief to make the above statement that the offender was not conscious about an immediate and obvious risk. I do not believe a reasonable person in the community would endorse Mossop J's logic. **I consider an education campaign for judges on community expectations in relation to dangerous driving is overdue.** I think of similar education around community expectations on drink driving.

Following on from the above, Mossop J comments at paragraph 60 that 'this case is not closely comparable to them because it does not involve short term negligence directly connected with the circumstances of the accident'. I consider this was a case involving short term negligence as Akis Livas was either distracted or was travelling at a negligent speed for the circumstances and had a micro sleep (as suggested by the Chief Coroner). The judge appears to have only considered that no other criminal charges applied like speeding or being under the influence of alcohol. However, the legislation states the basis for the charge is where a person has driven negligently (see section 29(6) of the *Crimes Act 1900* (Act)). Driving at 74 km/h into stationary vehicles at a red light is likely to be considered negligent by most reasonable Canberrans. **The legislature should provide direction to judges to clarify circumstances other than other criminal charges amount to negligent activity, such as driving too fast for the circumstances.**

Pre-sentence reports appear to apply to apply a high threshold when assessing an offender as highly likely to offend again. In the pre-sentence report for both the death of my son and for Akis Livas' rape case considered Akis Livas was a low to medium chance of reoffending. Given his number and range of offences I would have thought it obvious he is a high chance of reoffending as he does not seem to understand appropriate community behaviour. **On that basis a review of pre-sentence reports by an independent person should be conducted to determine if they are generally correct and useful.**

The discount applied to the sentence was 12% (maximum 25%) with Mossop J noting precedent in paragraph 50 of his sentencing remarks. However, Akis Livas pled guilty some 15 months after being charged, 19 months after Blake died, did not assist police, ran a defence which ultimately his lawyers advised him they could not use, I was already subpoenaed for the trial and witness proofed and Akis Livas had no defence to the charge. This percentage is obscene and should be no more than 5%. **The legislature must provide better direction to judges to overcome the precedent stated.**

The sentence handed down to Akis Livas was 3 years and 3 months after discount with a non-parole period of 2 years 3 months. As Akis Livas chose not to assist police I consider that the non-parole period should be longer as Akis Livas chose not to work with the community to resolve this matter. I understand NSW is considering (or has introduced) a requirement to extend a non-parole period in murder cases where the offender has not disclosed the location of the body. **The ACT should increase non-parole period for serious offences where offenders are not cooperative as I consider the community expects cooperation.**

The sentence handed down for Akis Livas as a repeat offender who has fled the jurisdiction before being sentenced for a previous offence, who did not assist police, ran a defence that his lawyers ultimately said could not work, provide an inconsistent apology days before sentencing over 20 months after killing Blake, driving a truck as a professional driver at speed into clearly visible cars at stop lights is not one which, from my discussions, would be supported by the community. Such a sentence cannot provide a basis for faith in the criminal legal process in this jurisdiction. If such decisions are replicated then there is a much wider problem, and I draw your attention to the quote from another father I have reference above. **The legislature should provide better sentencing directions to judges and mandatory minimum sentencing, loading for repeat offenders or loadings for particular aspects of crime to ensure more meaningful sentences that are supported by the community can be delivered.**

Review of decisions

I requested the DPP consider an appeal against the sentence handed down to Akis Livas through both the DPP and the Attorney-General (The AG referred my request to the DPP). The DPP chose not to review the sentence on the basis that they did not feel an appeal had good prospects of success. From recollection they argued that the judge had not missed anything substantial in his remarks and the sentence was not manifestly inadequate (they thought 4-6 years against 3 years 9 months from the sentence handed down by the judge). They stressed that if an appeal was not successful then the case would be precedent for a future case rather than just be persuasive. They noted that without a judge assigning weightings to the factors they considered that an appeal is very difficult to mount. However, I understand the case against Akis Livas was used in the case involving the death of Lachlan Seary.

I consider a review process is present to guard against a singularly bad decision but if sentencing remarks are not weighted then the transparency of those remarks is questionable. While I consider, for the reasons noted above, that the sentencing remarks are deficient, **I consider that the legislature should require Supreme Court judges to provide weightings of factors they considered as part of their sentencing remarks for serious matters such as death and sexual assault.** This should be a step towards improving transparency.

Changes Needed

I consider sentencing is in such a mess that the legislature must provide sentencing direction to assist the judiciary in interpreting the Sentencing Act. Victoria has a Sentence Advisory Council to bridge the gap between the community, the courts and government. I also understand they put through template sentencing decisions to assist in consistency and understanding of sentencing. **The Legislature should consider this approach.**

I have spent a lot of time trying to think through what happened in the crash and make sense of it. I drive on the Monaro Highway nearly every workday and it is only relatively close to the traffic lights that steering input is not required when travelling north. From my experience I cannot see how the offender's initial plea of not guilty makes sense. The traffic lights are visible from the point you need to stop applying steering input and yet the truck speed was kept high. There is no logic that presents any option other than sustained inattention or a microsleep. I therefore consider that the offender was simply not paying attention to the road, whether tired or otherwise and travelling too fast. This is frightening to me because if this was normal, I could never feel safe on the roads. The police told me that my family and I would only be safe if we were in a tank. I don't want to feel like I must drive a tank to be safe on the roads.

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

In our case the police were excellent, they were professional, respectful, and showed empathy. The lead investigator and collision analyst were especially excellent, but I call out the police victim liaison person who was our lifeline in the period leading up to sentencing. **I think greater resources should be available to the police to assist victims but also to prevent crime in the first place.**

I note the recent comments by Alex Caruana the President of the AFP Union and support his comments about public safety and poor sentence outcomes.

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

I found the Ambulance drivers excellent. However, I still see the disgusted look on one of their faces when they asked me to remove my jumper before getting in the ambulance as my son's brains and blood were smeared across the back. This is no slight on the driver for their understandable reaction. I also applaud the public for their help.

The Canberra Hospital services were great though my memory from this day is hazy. We were provided a separate room, social worker, and various scans for the injuries we had suffered. It was difficult leaving Blake behind but also very difficult to think clearly.

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

The Sentencing Act as part of its Objects (see section 6) states it is to 'promote respect for the law and the maintenance of a just and safe society'. From my views about the sentencing of Akis Livas above it should be clear I think this has not been achieved by the current interpretation of this Act. I note from the recent petitions to the ACT Legislature on dangerous driving and the comments by the AFP Union that many other people also consider sentencing is not working.

Not only are the weak sentences, provided at present, undermining the objects of the Sentencing Act but the way parole and corrections programs like the Transitional Release Program are handled further undermine sentencing and put the community at risk.

I note various reports such as the Law Council of Australia's paper 'Policy Discussion Paper on Mandatory Sentencing'. I find papers like this are deficient in research, but I accept that greater sentencing does not necessarily provide deterrence, for either the individual or others. However, they are typically light on the value of preventing harm to the community by holding criminals in jail and providing assurance to victims that the state will deal with criminals rather than the individual. Papers, such as the one references are simple weak in real evidence and as such provide a false basis for weaker sentencing, naturally reflected in the problems the ACT is experiencing.

Support for victims of dangerous driving offences through the justice system

Initial support from outside police was a collection of bodies like Red Nose and the Coroners Court. I support any additional resources that can be provided to victims as it is a very difficult road.

As noted above, I consider that victims are only given lip service through the sentencing process, parole and other corrections programs. I cannot recommend victims involve themselves in these processes because only disappointment will result. **I think greater attention needs to be paid to victims and this must come from the direction of the legislature.**

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

Correctional Services

In my view, **both the Transitional Release Program and the Parole Board processes should be reviewed to determine if decisions are producing beneficial outcomes to the community.** Are those criminals involved in the programs demonstrating changed attitudes? I consider it highly likely that some criminals will not change and the gamble that these processes take can result in catastrophic consequences when combined with lenient sentencing. Akis Livas has been to jail twice, has fled the jurisdiction while awaiting sentencing for rape and has continued to show a disregard for appropriate behaviour in the community. There would not appear to be any sound basis for a

decision that allowed him entry into the Transitional Release Program or parole. I don't think that such decisions would meet with the expectations of the majority of the community.

The Chair of the Sentence Administration Board (SAB), Laura Beacroft, recently wrote to Heidi Yates, Victims of Crime Commissioner, regarding our request that Akis Livas not be released on what would be Blake's birthday. Laura Beacroft stated "... submissions requested that Mr Livas not be released around his NPP date to avoid Blake's birthday, however the actual date of Blake's birthday was not provided.". I understand that the SAB could have found out Blake's birthday if they felt it was important to their deliberation and take into account any special circumstances (as per section 120(l) of the Crimes (Sentence Administration) Act 2005). This would seem to demonstrate inherent deficiencies in these processes and would make one wonder whether the parole and transitional release processes are, in fact, sufficient to provide a suitable level of protection for the community.

What I hope happens next

I think that there are a variety of areas, large and small, that require further investigation against appropriate statistics. For instance, lately I read in the Canberra Times that the drug and alcohol program was a successful as it was full of applicants. That is not success to me; success would be a clear reduction in recidivism in relation to charges involving drug and alcohol, noting the definition of recidivism is narrow. It would seem that some further thought should be given to what actually is the appropriate measure of success for this type of programme.

I note that the Chief Justice, in response to AFP Union concerns on sentencing, is quoted as saying "My concern is the long game" (see Canberra Times article 15 July 2022) when discussing community angst about sentencing. I find these comments at best are insensitive and poorly thought through and at worst risk blurring the lines of the separation of powers. I found myself thinking is Blake collateral damage for this long-term vision that does even appear to be evidenced based and what does this statement say about handling each case on its merits. **Policy statements should be made by the executive or legislative arms of government not the judiciary.**

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

Based upon my comments above and those in the community at present it appears that current rehabilitation methods are not working. The success of rehabilitation should be that an individual does not commit any more crime. Operation Toric, referenced below, is an indication that current rehabilitation methods have failed.

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

I refer the Committee to the Chief Coroners report (as noted above) into Blake's death and its recommendations to prevent dangerous driving. **Primarily Fatigue and Distraction Detection Technology and Automated Emergency Braking (Recommendation 7) are two significant technological advances to adopt.**

I note the current police operation 'TORIC' which is targeting recidivist offenders to address and increase in motor vehicle thefts and associated dangerous driving in the ACT. The operation appears to be a significant success and **more resources should be provided to the police to expand this operation**. I also note that it appears to be evidence as to the failure of the current soft sentencing approach.

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

I applaud Minister Steel for considering legislation to crush hoon cars (as reported in the Canberra Times 9 August 2022).

I think companies who employ drivers who are convicted of dangerous driving should be required to reimburse victims for damage. As a victim it is not necessarily financially viable to take action and certainly emotionally difficult. In our case, Canberra Sand and Gravel offered to help so I sent them a list through registered mail of items not covered by insurance that were destroyed. I have not heard from Canberra Sand and Gravel since. **The Executive should not provide contracts to companies that do not act as model citizens and take responsibility for the actions of their drivers.**

I think the ACT needs to acquire actual evidence about those who continue to commit crime, and certainly outside of the narrow definition used for recidivism. The ACT should then invest in an external, independent review on how to best use that evidence to protect the community. I expect this would include a better risk-based approach to rehabilitating criminals but accepting that some criminals will never be rehabilitated. Every time a weak approach is taken with a criminal the government gambles on what that person will do.

My son is dead because of that gamble and from my point of view that is unacceptable.

Thank you for your consideration

Andrew Corney – Canberra Resident

Father of Blake Corney, killed by Akis Livas on 28 July 2018 when he drove a truck into our stationary car.