SENTENCE ADMINISTRATION BOARD OF THE AUSTRALIAN CAPITAL TERRITORY

Submission by way of follow up to the hearing conducted 18 November 2022

I write on behalf of the ACT Sentence Administration Board (the Board). I thank the Committee for the opportunity to appear before the Committee on 18 November 2022. I am providing this submission to follow up on matters raised in other evidence provided to the Committee relevant to the Board and also to questions asked of me by the Committee on 18 November 2022.

Firstly, I want to acknowledge the importance of this Inquiry. The Board deals with many offenders who are sentenced for dangerous driving offences and understands the community interest in ensuring that the criminal justice system, including the Board, responds appropriately to such offenders. I acknowledge the importance and wealth of evidence and submissions provided to this Inquiry. I particularly acknowledge the importance of evidence and submissions provided by victims of dangerous driving offences, including Ms Camille Jago, Mr Andrew Corney and Mr Stefaniak who lost family members due to dangerous driving. They have drawn on their experiences of the criminal justice system and make specific comments about the Board. Their commentary, insights and recommendations provide a unique and important perspective and I thank them for these.

The Board makes the following submissions:

1.) In regard to issues raised by Mr Corney and Ms Jago I make the following submissions:

Mr Corney (Submission 035) quotes from correspondence I, as the Chair of the Board, provided to the Victims of Crime Commissioner. It was in response to a concern raised by Mr Corney and Ms Jago about Board proceedings for Mr Livas such that Mr Livas could be potentially released around the birthday of Blake (the victim of the dangerous driving).

I acknowledge the distress Mr Corney and Ms Jago experienced when the Board conducted parole proceedings for Mr Livas. They have raised a concern that the non-parole period end date (NPP date) for Mr Livas's sentence, being 18 May 2022 and which was set by the sentencing court, was near Blake's birthday – this meant that the potential timing of the offender's release, if granted parole by the Board, was on or near Blake's birthday.

I previously provided to the Committee (see letter dated 18 November 2022) the outcomes and timelines of the parole and subsequent management proceedings for the Livas proceedings, which the Board decided to make public in accordance with the *Crimes (Sentence Administration Act)* 2005 (CSA Act). This information is provided again in this submission for ease of access (Attachment A). The Board granted Mr Livas parole, and he was released on 1 June 2022, which is 2 weeks after the NPP date. The Board is required as far as practicable and subject to considerations set out in the CSA Act to respect the NPP date which is set by the sentencing court. Since being granted parole, the Board has conducted a management hearing with Mr Livas and found no further action is required at this time.

As many submissions to this Inquiry emphasize, reducing recidivism of dangerous drivers requires a focus on the causes of the dangerous driving and determining whether the offender should hold a driving licence and in what circumstances, among other issues. The sentencing court found that Mr Livas's medical issues contributed to his dangerous driving. While the Board can consider in its decision-making whether an offender is seeking medical treatment for a condition that increases their risk of re-offending, it is not able to mandate that any offender undergo medical treatment under the *Human Rights Act* 2004[1] (s10(2), see Extract 1 below). Also, it cannot disqualify a person from having a driving licence - this is a matter for the sentencing court and fitness to drive laws. In any case, Mr Livas cannot obtain a driving licence until ordered by a court. As set out in the legislation, parties to any court hearing to make this decision will include the road transport authority and the chief police officer, and evidence about a number of factors will be required including "any relevant rehabilitation or remedial action undertaken, or to be undertaken, by the person" and the "risk to the safety of other road users" (s65(7) *Road Transport (General) Act* 1999, see Extract 2 below)

After the parole proceedings for Mr Livas concluded, the Board undertook a review of its processes. As a result, the Board has changed the templates used to communicate with victims in order to find out from them any dates or time periods that they request be considered by the Board for e.g. a hearing date not be set down on or around a victim's birthday. A sample of a revised template letter, with the change highlighted in yellow, was provided in a letter to the Committee dated 18 November 2022 (Submission 049) and the revised template letter is attached to this submission for ease of access (Attachment B). Ideally, the entities and services that interact with victims before sentencing (e.g. the courts) will similarly ensure that they obtain details from victims of any significant dates that the sentencing court should take into account, for e.g. the NPP date not be set down on or near a victims' birthday or anniversary of the crime.

Ms Jago's submission (Submission 021) raises the importance of recommendations made by the Coroner, particularly those about fitness to drive and heavy vehicle licensing. The Board supports a focus on these issues by this Inquiry. In many respects the offender, Mr Livas, does not match the usual profile of dangerous driving offenders - a 2015 Victorian Sentencing Advisory Council Report (cited in Submission 042 by the Australian College of Road Safety) explains the common profile of an offender to be male, young, disadvantaged, and an unauthorised driver. The latter mentioned issues and recommendations about fitness to drive and heavy vehicle licencing are very relevant to this Inquiry.

Mr Corney (Submission 035) raises that "TRP [Transitional Release Centre] and Parole Board processes should be reviewed to determine if decisions are producing beneficial outcomes to the community…There would not appear to be any sound basis for a decision that allowed him entry to the TRP or parole. I don't think that such decisions would meet with the expectations of the majority of the community". I acknowledge Mr Corney's concern. However, it is well-evidenced that recidivism of those who transition back to the community from prison on orders that are proactively managed, such as parole (compared to those who leave prison without this supervision in the community) is lower. The most current evidence on this point is set out in the Board's Annual Report and was provided to the Committee in a letter dated 18 November 2022. For ease of access the letter is attached to this submission (Attachment C).

2.) In regard to themes from other evidence and submissions proved to the Committee the Board makes the following points:

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[1] Protection from Medical/Scientific Experimentation (act.gov.au)

- Mandatory sentencing has well-evidenced unintended consequences, as many submissions to the Inquiry point out. Evidence from NSW studies (cited in the Submissions 041 by the ANU Law Reform and Social Justice Indigenous Reconciliation Project) suggests that what works best for driving offenders is sentences that involve driving sanctions and driver re-education programs for repeat offenders and some first-time offenders.

- Submission 040 by the Justice Reform Initiative promotes taking an evidence-based approach and the Board supports its analysis and recommendations.

- Some submissions refer to a recommendation in the "Pathways to Justice" Report by the ALRC that recommended auto-parole for those that have a sentence under 3 years. Auto-parole means that a person is automatically released on their NPP date, regardless of whether they have undertaken any rehabilitation, their risk to the community and victims, and indeed whether they are being released into high-risk settings such as homelessness. Auto-parole is largely driven by overwhelming numbers in the corrections systems of larger states, and it does not promote community and victim safety. The Board is of the view that auto-parole is not required in the ACT at this time. Relevantly, Board timeframes to hear parole and ICO-reinstatement proceedings and any related breach proceedings have improved, as set out in the attached Table (Attachment D).

3.) Driving offences and Intensive Corrections Orders (ICOs) – law reform should be considered to enable the Board to proactively manage driving offenders on ICOs similar to its pro-active approach to managing such offenders on parole.

Persons convicted of serious traffic matters may be subject to an ICO. The review of ICOs states that of a total of 230 ICOs considered in that review, 28 (i.e. 12%) were for traffic offences[2]. Over time the profile of persons subject to ICOs and parole has become more similar. Yet the capacity of the Board to pro-actively manage offenders on ICOs is very limited, for e.g. even if there is a notification of a new charge/s or some other concerning issue brought to the attention of the Board (for e.g. by a victim), it has no power to bring an offender on an ICO before the Board until a breach is raised. Whereas the Board can do so for offenders on parole and even cancel the parole order if warranted. The Board requests that there be consideration given to it having the power to manage offenders on ICOs, such as offenders convicted of traffic offences, similar to its powers (called management powers) for those on parole (refer to s153 CSA, Extract 3 below).

Please let me know if I can assist the Committee further

[redacted]

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[2] https://www.parliament.act.gov.au/__data/assets/pdf_file/0010/1483381/List_-Intensive-Correction-Orders-Review-Report.pdf

Extract 1: section 10 *Human Rights Act* 2004

10 Protection from torture and cruel, inhuman or degrading treatment etc

(1) No-one may be—

(a) tortured; or

(b) treated or punished in a cruel, inhuman or degrading way.

(2) No-one may be subjected to medical or scientific experimentation or treatment without his or her free consent.

Extract 2: section 65-66 *Road Transport (General) Act* 1999

65 Disqualification until court order

(1) This section applies if—

(a) a person is disqualified (whether or not by court order) from holding or obtaining a driver licence because of being convicted, or found guilty, of an offence, or offences, against the road transport legislation or any other territory law; and

(b) the total period of disqualification (the ***compulsory disqualification period***) is 12 months or more.

(2) If the court that convicts the person, or finds the person guilty, of an offence mentioned in subsection (1) is satisfied, after considering the matters mentioned in subsection (7) and any other matters the court considers relevant, that it is necessary in the public interest to do so, the court may disqualify the person from holding or obtaining a driver licence from the end of the compulsory disqualification period until the disqualification is set aside under subsection (3).

(3) If a court is satisfied, on application by a person who is disqualified under subsection (2) and after considering the matters mentioned in subsection (7) and any other matters the court considers relevant, that the disqualification is no longer necessary in the public interest, it may set the disqualification aside.

(4) An application under subsection (3) must be given to the registrar of the court with an affidavit of the applicant setting out the grounds of the application.

(5) The respondents to an application are the road transport authority and the chief police officer.

(6) If the Magistrates Court commits a person mentioned in subsection (1) to the Supreme Court for sentence under the *Magistrates Court Act 1930*, section 92A, subsection (2) applies as if the Supreme Court had convicted the person.

(7) For subsection (2) or (3), the court must consider the following matters:

(a) the total period for which the person concerned is, or has been, disqualified from holding or obtaining a driver licence;

(b) the person's history of offences (including offences for which infringement notices were served on the person)—

(i) against the road transport legislation or a law of another jurisdiction corresponding to it (or to part of it); or

(ii) against another law of any jurisdiction in relation to the use of motor vehicles;

(c) any relevant rehabilitation or remedial action undertaken, or to be undertaken, by the person;

(d) the risk to the safety of other road users.

(8) In this section:

infringement notice includes a notice (however described) served on a person under the law of another jurisdiction that gives the person the option of paying an amount for an offence instead of being charged with the offence.

66 Effect of disqualification

(1) If a person is disqualified (whether or not by court order) from holding or obtaining a driver licence because of being convicted, or found guilty, by a court of an offence against a territory law, the disqualification operates to cancel any driver licence held by the person at the time of his or her disqualification.

(2) The cancellation takes effect at the same time as the disqualification.

(3) If a person is disqualified from holding or obtaining an Australian driver licence in another jurisdiction because of being convicted, or found guilty, by a court of that jurisdiction for an offence against the law of that jurisdiction, the disqualification has effect in the ACT as if it were a disqualification from holding or obtaining a driver licence made under a territory law because the person had been convicted by an ACT court of an offence against a territory law.

(4) If the holder of a driver licence is disqualified as mentioned in subsection (1) or (3), the person must surrender the licence—

(a) if the person is present at the court, the court is an ACT court and the person is in possession of his or her driver licence—to the registrar immediately after being disqualified; or

(b) in any other case—to the road transport authority as soon as practicable (but within 14 days) after being disqualified.

Maximum penalty: 20 penalty units.

(5) If a driver licence is surrendered to the registrar of a court, the registrar must give the licence to the road transport authority.

(6) Subject to any other provision of this division, a person who is disqualified from holding or obtaining a driver licence is not eligible to apply for, or be issued with, another driver licence, other than a restricted licence, or a driver licence with an interlock condition, during the period of disqualification.

Note 1 Sections 66A to 67C affect the eligibility of a person to apply for or be issued with a restricted licence.

Note 2 The following provisions of the road transport legislation also contain limitations on the issue of restricted licences:

- s 45 (3) (which is about suspension in relation to an infringement notice)
- s 88 (4) (which is about suspension or disqualification for default in payment of an outstanding fine)
- the *Road Transport (Driver Licensing) Act 1999*, s 18 (4), s 19 (7), s 20 (3) and s 21 (7) (which are about suspension or licence ineligibility under the demerit points system)
- the *Road Transport (Driver Licensing) Act 1999*, s 33 (5) (which is about cancellation of a restricted licence because of contravention of its conditions)
- the *Road Transport (Driver Licensing) Regulation 2000*.

Note 3 The *Road Transport (Driver Licensing) Regulation 2000*, pt 3A (Alcohol ignition interlock devices) and s 103AA (Overseas drivers—eligibility criteria) set out the circumstances in which a person may be eligible for a driver licence with an interlock condition.

(7) In this section:

interlock condition—see the *Road Transport (Driver Licensing) Regulation 2000*, section 73W.

Extract 3: section 153 *Crimes (Sentence Administration Act)* 2005

Division 7.4.3 Parole management

153 Board inquiry—management of parole

(1) The board may, at any time, conduct an inquiry to review an offender's parole.

(2) Without limiting subsection (1), the board may conduct the inquiry to consider whether parole is, or would be, appropriate for the offender having regard to—

(a) any information about the offender that the board became aware of after it made the offender's parole order; or

(b) any change in circumstances applying to the offender; or

(c) the history of managing the offender under parole, including any history relating to physical or mental health or discipline.

(3) To remove any doubt, the board may conduct the inquiry—

(a) before the offender's release on parole; and

(b) in conjunction with any other inquiry under this Act in relation to the offender.

(4) The board may conduct the inquiry—

(a) on its own initiative; or

(b) on application by the offender or the director-general.