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STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

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Submission Cover Sheet

Inquiry into Dangerous Driving

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Standing Committee on Justice and Community Safety

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Inquiry into Dangerous Driving

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Please find below my submission for the Inquiry into Dangerous Driving. I request that my submission be published in full on the website. Thank you for the opportunity to be included in this important inquiry. Thank you for acknowledging the public importance of conducting an inquiry into dangerous driving in the ACT. May positive outcomes occur through this inquiry process.

I am making this submission as an individual. My submission evidence is based on my personal experience as a victim of dangerous driving, with reference where appropriate to Chief Coroner Walker's findings and recommendations in [2021] ACTCD 6, Inquest into the death of Blake Andrew Corney, and the response of the ACT government, presented by Chris Steel MLA. I refer you to the summary of factual circumstances at [5] in [2021] ACTCD 6, Inquest into the death of Blake Andrew Corney as the background to my submission.

a) Criminal justice response to dangerous driver offending in the ACT

Justice.... It is difficult to know where to even begin. My view of what justice should look like has changed since becoming a victim of crime. My eldest son died as a result of an act of dangerous driving. The driver was convicted of culpable driving causing death. It is my personal opinion that our societies' judicial ethos of 'innocent until proven guilty' and a

concerted effort for the Human Rights of those accused of criminal acts (and offenders), that the human rights of victims have been underrepresented.

Maximum penalty

The maximum penalty for culpable driving causing death is 14 years. I appreciate there needs to be scope for circumstances to be worse, but I can not imagine that an offender would ever be given anything remotely near the maximum, given the sentences offenders charged with culpable driving causing death are currently receiving. The offender in my case received a sentence of 3 years 3 months after discount (12%), 2 years 3 months non-parole. Maximum penalties being so far beyond sentences given is perplexing. What are maximum penalties designed to achieve? Are they guidance for judges? Are they to protect the offender from an unduly harsh penalty? They create frustration, bewilderment and anger for victims due to the seeming disconnect between the maximum sentence and the average sentence.

Consideration for Improvement – Review the disparity between average sentences given and maximums for the offence.

Discount of Sentence

The discount the offender received in my case, 12%, was given due to pleading guilty a few weeks prior to the trial date. In my opinion, the discount given was too lenient. At the point at which the offender changed his plea, we had been subpoenaed to appear before the court as witnesses, which takes up court and police time and therefore money. We had been briefed by the DPP, which takes up resources (time and money). Added to the consumption of public resources is the effect of this process on victims/witnesses. This will be addressed in section e.

Consideration for Improvement – revise the leniency of discounts to sentences of serious crimes.

Court Date No shows

The accused' legal representative did not appear at two separate directions hearings in the Magistrate's Court with no repercussions. For a victim, each court date creates anxiety and

brings to the foreground the event that necessitates a court date. For me, that was the death of my eldest son. I would relive the collision more often in the lead up to court dates. No court date went unnoticed by me. Each of them affected me emotionally, mentally and physically. When the accused' representative is a no show, not only is this contempt of the process, in my opinion, there is no consideration of the affect this has on victims.

Consideration for Improvement – repercussions for court no shows where prior notice has not been given to the court.

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

I will be addressing post-crash response only.

The collision team within ACT Police did an excellent job of maintaining communication with us through both the lead investigator and the liaison officer.

Police should be able to confiscate mobile phones on the spot when a collision has occurred. It took many weeks for the accused to hand over his mobile phone in my case. While his mobile phone was not able to be proved as the cause of the collision, it did delay the investigation, therefore adding further distress to victims.

Consideration for Improvement – Enable police to confiscate mobile phones on the spot in serious collisions.

It took over 4 months for a charge to be laid against the truck driver. I believe this was in part to do with the length of time it took to get an interstate expert to assess the truck. Also, the offender did not cooperate with police. He was given ample opportunity to do so. Delays in charges being laid affects victims mental health. While I understand why those accused of crimes are given every opportunity to cooperate with police, and that ultimately this should make later parts of the process smoother, it does not help victims in the short term.

Consideration for Improvement – Not co-operating with police should be taken into account when sentence discounts are being decided.

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

I wish I had spent more time with my dead son at the collision site before leaving in the ambulance. Hindsight. I'm not sure if there is anything that can be done about this. I was in such shock and was scared our car might burst into flames. I may not have returned to the car even if I had been asked if I wanted to. (I can't say for certain that I wasn't asked. I vaguely remember being asked if I was ready to get into the ambulance. While that implies I'm ready to leave the scene, it's not quite the same as being ready to leave my sons' body behind).

At the hospital, a counsellor/psychologist spent some time with us. There was a follow up phone call a week (I'm not entirely sure) later. I think it was a different person who did the follow up call, but again, that period of time is so hazy, I don't remember those details clearly.

The mental health practitioner who saw us at the hospital gave my surviving son a Red Cross Trauma Teddy. When she discovered that he had already been given a soft toy from the ambulance, she tried to take the second teddy back, and I said no. I found her actions to be inadequate in the circumstances. How could it possibly be ok to try and take back a teddy just given to a 2 year old who has been in a motor vehicle collision in which his brother died? I put it down to inexperience or lack of training. The guilt I feel that my surviving son got 2 teddies that day, is in part the reason I knit 2 teddies each year for donation to Red Cross.

Consideration for Improvement – Additional training of mental health practitioners who respond to crisis in hospitals.

Four days after the collision, my surviving son required medical attention after hours. We had one family support person with us at the time. (We found out later that our family support system had been advised to have at least one person with us at all times in case we were suicide risks). It was raining and dark, not ideal driving conditions in any circumstances.

We were only 4 days from our sons' death which occurred in good weather conditions. In order to fit 3 adults in the car to get to the after hours service at the hospital, my deceased sons' car seat had to be removed. It was far too soon after his death to be doing something like that. It was devastating. The after hours service is at the hospital. The hospital we had only been at 4 days prior, to be checked over after the collision that killed one of our sons. The scenario, taken in isolation: a child with a fever and rash that requires an after hours medical diagnosis, seems only slightly anxiety producing. In our circumstances, there were at least 6 big triggers, some trauma, some grief. I wish there had been a phone number given to us by the hospital or the police or the ambulance that we could call to help navigate the scenario we found ourselves in that evening.

Consideration for Improvement – a 24 hour hot line phone number for trauma support to be supplied to road trauma victims at the earliest possible time.

Red Nose contacted us at some point. I think they were given our details from ACT Police. We began seeing a counsellor through Red Nose soon after the funeral. I still attend counselling sessions through Red Nose over 4 years later.

We also had access to counselling through the Coroner's Court which thankfully was able to commence prior to the Criminal process being finalised. I do not remember if we were given the pamphlet about this service from ACT Police or the funeral home. I will reference this service again in section e.

I am so grateful for access to both these counselling services. They have been invaluable to me.

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

Prison sentence

The truck driver who ploughed his truck into the back of our stationary car was sentenced for the crime of Culpable Driving Causing Death. The maximum sentence for this charge is 14 years imprisonment. He received 3 years 3 months after discount, 2 years 3 months non

parole. He was not technically speeding as the speed limit on that section of road is 80 kph and he hit us at 69 kph. But we were stopped at traffic lights. So for the traffic conditions ahead of him, he was going way too fast. His truck should have been at 0 kph at least a metre before the back of our car, and instead he hit us at 69kph. In my mind he was travelling at 69 kph above the speed he should have been doing, but the letter of the law says he was not speeding.

He was a commercial truck driver. There are 2 components to this, firstly, he was paid to drive. I believe the level of responsibility for a commercial driver should be at an even higher standard than regular road users. Secondly, he was driving a truck, meaning that based on pure weigh and force his vehicle had the potential to do more harm, and therefore he should be held to a higher standard of responsibility.

The truck driver had many prior convictions for various offences and had previously served jail time for 2 of them. This is not a person who appears to learn how to live in a community through prior penalties imposed. I am glad his licence was revoked and that he will have to go to court to request it back.

Where rehabilitation seems likely I am all for it. But not all members of society are able to be rehabilitated. Sometimes the safety of the community needs to be put ahead of the rights of the offender, and for the safety of the community keep offenders off the road by keeping them in prison for a longer period of time than they currently receive. I reiterate, what is the point of a maximum of 14 years if 5 years is rarely given? Low average sentences for culpable driving causing death adds a layer of hurt to victims and their families who are already suffering so much.

Consideration for improvement – Repeat offenders should have a clearly defined % loading, rather than it being an undefined consideration. The definition of repeat offender does not need to be for the same charge. The test should be ‘has this person learnt how to be a reasonable member of society, with a reasonable level of care for themselves, others and the environment’.

Consideration for improvement – For Culpable Driving charges, the non parole period should be a higher proportion of the sentence. This is to reflect the seriousness of the charge and to keep the community safe for a longer period of time.

e) Support for victims of dangerous driving offences through the justice system

Victims become victims twice over in my opinion. There is the originating crime, and then victims of crime become victims of the justice system. At every turn in the criminal proceedings victims have to play second fiddle to the rights of the accused.

Subpoena to appear in court

The subpoena to appear in court was delivered by a police officer to our house. It is a very cold administrative procedure. We had been given verbal notice through our liaison officer that the subpoena would be arriving in a particular week. This was my first experience of being subpoenaed. I could not possibly have foretold how I would react to it. I do understand that not all witnesses would be victims. All witnesses are treated the same for the subpoena process. I do understand why, but is this the best our society can do? The subpoena occurred in January when many people are on leave, including our designated liaison officer, my psychologist and my counsellor. So my access to support was limited. My memory is that it was also delivered on a weekend, so even if it had not been January, access to support on the day would not have been available. I found the lack of empathy in the process to be very difficult. My son was dead after all.

The wording in a subpoena adds an additional layer of trauma and anxiety to a victim. A victim feels threatened, the trauma they have experienced has their body in fight/flight mode so much more readily than the average person. Then you receive a subpoena, the wording of which feels like a threat and your body reacts to it that way. As well as the physical reaction I experienced in reading the subpoena, I also felt incredibly misunderstood. I wanted to yell at the top of my lungs 'I'm the dead victims' mother! Nothing but my own death will stop me from being in that court room!'. The attitude to the wording of subpoena's is 'that's just the way it is'. Change would never occur in any area of society if that was accepted in all things. I don't accept it for this. I'm sure this could be done better even though I do not have a solution at present. I'd also like to note the disparity in there being a penalty for not appearing as a witness as requested in a subpoena, but the accused representative not appearing at directions hearings has no penalty attached. How is this appropriate to victims of crime?

Consideration for Improvement – Timing of subpoenas – due consideration should be given to access to support services for victims who are witnesses (and quite possibly all witnesses as this will save on needing to make that determination, and it is possible that witnesses who are not victims may also benefit from access to their support network) in the form of subpoena's being delivered outside of peak holiday periods and avoidance of weekends, if at all possible.

Consideration for Improvement – Trauma informed wording of subpoenas, or at the very least, trauma informed delivery method of the subpoenas to victims of crime.

Shared space in the court building

Prior to the accused being found or pleading guilty, the victims and accused share the same space in the court building, including the foyer and café. This causes an additional layer of distress and anxiety for victims. During a recess, the accused and his lawyer were already seated in the court building café, so we chose to leave the premises rather than share a public space with him as it was far too awkward and distressing. Added to that, we then needed to come back through the security area when the recess was over.

Consideration for Improvement - I would like to see the family area being made available to victims' families of matters before the ACT Supreme Court when there is a serious charge involved. When we were going through the coronial process we had access to the family area on many occasions. It felt like a safe space and I appreciated it. There are 5 or 6 rooms, and I never saw them all full on the days we were there, so I do believe this is something that could be achieved. I really wish we had access to the family area on the day of the accused' arraignment so we could have the choice not to go through the above.

Noting, I assume not bumping into victims in the shared space areas of the court building would be of benefit to the accused as well as the victims.

Significant Dates

The timing of court dates, non parole end date, parole being granted, victim impact statements and victim submissions being due, and sentence end date should be taken into consideration as a sign of respect for the victim(s), and to alleviate distress on top of key grief related dates for families. This would include anniversaries of: the collision (in dangerous driving offences), the death, and birthday of the deceased. My experience of this

is that sentencing occurred close to the birthday of my dead son, then non-parole period was up close to the birthday 2 years later. The parole hearing was then close to his birthday. I requested in my victim submission to the Sentence Administration Board, that the date be moved to a further distance from the birthday of my deceased son. This was not possible, but I believe due to our advocacy and with assistance from the Victims of Crime Commissioner, that it is being looked at by the Sentence Administration Board for future. I am glad this is going to be considered going forward by the Board. I would also really like judges to take these key dates into consideration. They have scope to move non parole date and end of sentence dates by a few weeks in order to alleviate additional pain to victims who are already suffering so much.

Consideration for Improvement – training of judges and court support staff in trauma and grief informed interactions, including a suggestion to consider the significant dates of a deceased victim when setting the dates mentioned above.

ACT Police Family Liaison Officer

I'm not sure if the Family Liaison Officer from ACT Police is considered part of support from the justice system, but I'd like to mention my appreciation for the role. Having a point of contact within ACT Police who could help keep us up to date with proceedings and help us navigate the path of the criminal justice system was very helpful.

Coronial consideration

I consider the coronial process to be part of the justice system because it is part of the Magistrate's Court, and as such I make my next few points.

We had access to the counselling service provided by the Coroner's Court, due to our sons' death. We had access to this support from the beginning even though it would take almost 2 years for the criminal process to conclude so that the coronial process could begin. I am so grateful for this service. Please ensure it is properly funded to continue the much needed support for families going through the coronial process.

During the coronial process, the Family Liaison Officer played a crucial role in keeping us informed of proceedings, taking notes during meetings (victims memories can be poor, their ability to take in information during meetings can be impaired due to grief, and knowing someone in the room is taking notes that you'll be able to reference at a later date is very

useful), and guiding us through the coronial process. Please continue to properly fund this role. It is very much needed and appreciated by families.

Victims of Crime Commission

We were not made aware of the Victims of Crime Commission until the coronial inquest had begun. The Victims of Crime Commission has been a wonderful resource since, but I feel that something slipped through the cracks that it took almost 2 years for us to be made aware of the Victims of Crime Commission.

An example of the advocacy the Victims of Crime Commissioner has undertaken at our request related to the Transitional Release Program. This program is now mentioned in the initial letter that victims who go on the Victims Register receive. This was in direct response to our being blindsided by the offenders' application into the Transitional Release Program, a program we had never heard of previously.

Consideration for Improvement – ACT Police Family Liaison Officer provides information about the Victims of Crime Commission.

Noting, this may have already improved now that there is a Victims Rights Handbook available.

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

Transitional Release Program

The Transitional Release Program is administered by ACT Corrective Services. In theory, I agree with a program like this being available to offenders who have a reasonable success rate of rehabilitation. In particular, I agree with the sections on work and study/training. Personally, I don't think the main criteria for acceptance into this program should be behaviour while imprisoned. The seriousness of the original charge should be a significant factor. Culpable driving causing death is a serious charge. It is effectively manslaughter with a vehicle involved. Why should the offender get to spend time in the family home with relatives, costing the community the salaries of the corrections staff that need to be in attendance and associated costs, when I don't get to be with my son's physical form ever again? AMC has visiting hours surely. Significant people in the offenders' life can maintain connection with them during visiting hours at AMC.

People on the Victims Register are notified of a detainees' application into the Transitional Release Program. They are able to provide a victim submission. In my case, the offender applied for the TRP in July 2021. He was accepted into the program in Feb/Mar 2022. I was notified of the acceptance and what the terms of acceptance and privileges awarded were. This came in a few weeks after the offender had parole rejected 'on the papers'. For a first time victim, these 2 decisions misalignment was very confusing and bewildering. From a victims' perspective, these 2 decisions being made by different bodies is irrelevant.

Considerations for Improvement

- The connection with people aspect of the Transitional Release Program, particularly for serious offences, should be scrapped. It is too lenient. I don't think this would meet with community expectations if it was more widely known that public money is spent in this way. I think the money could be put to better use.

- The Transitional Release Program needs more transparency.

- ACT Corrective Services and the Sentence Administration Board should engage in information sharing so that there is some continuity in decision-making from the perspective of victims, and potentially so that victims may only need to provide a submission once, rather than for both the Transitional Release Program and parole (with the victims' permission).

Sentence Administration Board

There is no transparency in decisions being made by the Sentence Administration Board. When parole is applied for, people on the Victims Register are notified and able to make a victim submission. The reasons for a rejection at an 'on the papers' review are given, in writing, to victims who provide a submission. The hearing is a different matter. Victims are not able to attend the hearing, nor do they receive any feedback on the reasons for the decision. In our case, the offender was granted parole at the hearing. Given the objections to granting parole 'on the papers' only a few months earlier, it is difficult to understand how the Board came to this decision at the hearing. Victims have no avenue to find out.

Consideration for Improvement – Increase the transparency of parole hearing decisions by making available to victims on the Victims Register the reasons for the parole decision.

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

No comment

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

In November 2021, Her Honour Chief Coroner Lorraine Walker released her findings and recommendations arising from the inquest into my sons' death. Below I have included the three recommendations that relate to technological advances:

“Recommendation (v): That the ACT Government considers forms of incentivisation that may encourage the uptake by trucking operators in the ACT of vehicles fitted with AEB (Autonomous Emergency Braking) systems or FDDT (Fatigue and Distraction Detection Technology), including but not limited to preferencing contractors who have voluntarily adopted such technology and registration discounts.

Recommendation (vii): That the Minister of Transport and City Services pursue the early implementation of the requirement for mandatory AEB (Autonomous Emergency Braking) systems in heavy vehicles throughout Australia, pursuant to the Memorandum of Understanding for The Effective Delivery of Heavy Vehicle Regulatory Services In The Australian Capital Territory Between The National Heavy Vehicle Regulator And The Australian Capital Territory Road Transport Authority.

Recommendation (viii): That the Minister of Transport and City Services pursue early consideration of the suitability of fatigue and distraction detection technology for mandating in in heavy vehicles throughout Australia, pursuant to the Memorandum of Understanding for The Effective Delivery of Heavy Vehicle Regulatory Services in The Australian Capital Territory Between The National Heavy Vehicle Regulator And The Australian Capital Territory Road Transport Authority.”

The ACT Government response presented by Chris Steel MLA, Minister for Transport and City Services in May 2022, agreed with these 3 technology related recommendations from the Coroner. In Chris Steel's response to recommendation (v), he noted that

“On 24 February 2022, the Assistant Minister to the Deputy Prime Minister, the Hon Kevin Hogan MP, signed Australian Design Rule 97/00. This mandates autonomous emergency braking for most heavy vehicles. The technology will be mandatory for

new models from 9 1 November 2023, all new buses from 1 November 2024, and all new goods vehicles over 3.5 tonnes GVM from 1 February 2025.”

I am pleased that “The ACT Government is assessing options to further encourage the uptake of autonomous emergency braking and fatigue and distraction detection technology in heavy vehicles through the procurement activity of the ACT Government.” Without incentives, the natural roll over to heavy vehicles fitted with AEB, due to the life span of heavy vehicles, will take until 2050 according to the Trucking Industry Council. (12 Nov 2021, The Canberra Times, Peter Brewer).

While mandatory AEB in heavy vehicles in the next few years is welcome news, many people are going to die in collisions that may have been prevented, or the severity of injuries reduced if we don’t incentivise early uptake of the technology. Chief Coroner Walker found “Having regard to the evidence before me, I am satisfied that had Mr Livas been driving a truck with an AEB system fitted, Blake may still be alive today.”

It is my understanding that retro fitting AEB is prohibitively expensive, whereas that is not the case for FDDT.

I have attached both Chief Coroner Walkers findings and recommendations, and Minister Steel’s response to my submission for this Inquiry.

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

I have nothing further to add.