

# SUBMISSION TO THE NSW SENTENCING COUNCIL: HOMICIDE CONSULTATION PAPER 2020

Tess Knight

---

Thank you for reading this submission. Michael Guider killed my daughter Samantha Knight in August 1986. She was 9 years old.

Let me take you on a short illustrative journey.

In the 1990s, concern began mounting that several children died in Australia each year from accidental strangulation on the cords of blinds and curtains. Each child was simply playing with the cords and no one in the family noticed until too late that the child had accidentally hung him or herself. After considering the issues the State responded by passing laws that require every blind or curtain with dangling cords to have wall brackets to hold those cords tightly against the wall and eliminate the risk of a child getting entangled in them. The State's goal was that no other child would ever die again from that cause.

In NSW before 2001, children were occasionally injured or killed by motor vehicles when walking to or from school. In 2001 the State responded by dramatically dropping the speed limit around all schools for 3 hours a day on every school day. The State's goal was to prevent any other child being injured or killed by a motor vehicle near their school. Why do I say that zero deaths was the State's goal? It was deemed that the lower speed limit chosen – 40kms an hour – is a speed that guarantees a driver can stop within 26 metres if a child steps or runs onto the road ahead. If the child is so close that the car can't stop in time, sharp braking from 40kms an hour will reduce the seriousness of injury to the child.

These laws and regulations passed despite potential economic impact and increased costs. These actions gave the community confidence that our institutions can enact change in line with better information and understanding, and changes in public opinion.

However, in NSW in the past, when the topic has arisen of sentences for homicide and manslaughter, the issues raised by economists and individual-rights-advocates have been given priority in the debate. Costs are given serious weight - a guilty plea can receive a reduced sentence of 10%-25% because it avoids the time and cost that a trial places on the administration of justice. Killers' desire to have a life after prison is given serious weight, as are the views of individual rights supporters.

Those of us whose child has died through the deliberate criminal act of another, ask why we can pass new product standards to ensure no child will die from accidental hanging on a curtain cord; ask why we can change laws to prevent children dying or being seriously injured by a vehicle near their school again; and yet we are unable to pass laws that ensure a known killer can never take another life? All it would take is a sentence of life-long imprisonment without parole until their death, for taking another's life. Yet as soon as the topic of "Life for a life" is raised, counter-arguments like costs are raised - as if money was relevant.

Advocates will say a killer has a right to repay their debt, to rehabilitate and return to normal life after prison. But in that balancing act the killer's desire to live a post-prison life is given more importance than the lives of the victim and the family. The victim will never live again, will never come back to their family. The family carries the heavy burden of loss for the rest of their lives.

There is no way a killer's debt can ever be fully repaid because the loved one will never return. The only way a convicted killer can satisfy their debt to society, is for society to ensure no other person is ever exposed to the risk of being killed by a convicted murderer. The important point here is that imprisonment will ensure the safety of the community.

Why is it the State has felt unable to pass laws that would ensure no-one else could die at the hands of a convicted killer? Of course, imprisonment and the loss of liberty is a grave matter. Some will argue that the loss of the killer's liberty is so grave a matter that mandatory "life for a life" sentence cannot be contemplated.

However, there are many strong protections for Defendants already built into the system and these ensure that balance is achieved well before sentence even comes into play. Some of those protections are:

- the strict rules around investigation of possible crimes
- the rules of evidence
- the presumption of innocence until proven guilty
- the burden of proof beyond reasonable doubt
- the independence of the judiciary
- the availability of Legal Aid to the defendant

And sadly, another protection for Defendants is the reality that most homicides have no witnesses and evidence is easily disposed of, making it extremely difficult to uncover who might have carried out a particular killing.

What of genuine accidents? Isn't mandatory life too harsh when the death was a genuine accident? I reply that a death resulting from a genuine accident is still a death. The loved one will never return to their family. The family will carry the heavy burden of grief for the rest of their lives.

If someone does something entirely accidentally that threatens another's life, they must respond by doing everything possible to prevent the death.

In my daughter Samantha's case, Michael Guider claimed at trial that he administered too much Normison in a drink of coca cola. He claimed that he did not intend to kill her, and that her death was an accident for which he was not responsible. Despite Guider's claim, Samantha's death was not a genuine accident. Guider could have taken Samantha to a hospital as soon as he realised she might be dying or had just died - however Guider did not attempt to save Samantha's life. Even though he claimed her death was an accident, it ceased to be an accident at the point he took no action to save her life.

On the topic of genuine accidents, I consider there is one circumstance, one exception, where less than mandatory life sentence should be considered, and where the current sentences for homicide would remain in place. That circumstance is when the death was a genuine accident and there is zero reasonably foreseeable risk the Defendant might kill again in future.

The way this single exception might work is this.

- The court could only consider a sentence of less than mandatory life if the Defendant asked the court to consider it.
- Then the following would be necessary for the court to consider the request:
  - the Defendant must give evidence about the circumstances surrounding the death, and
  - the Defendant is cross-examined, and
  - the Judge accepts all the Defendant's evidence on this point, and
  - the Judge considers there is no reasonable likelihood the Defendant will ever cause another death.
- In all cases where the Judge considers there is any reasonably foreseeable likelihood the Defendant might cause someone else's death in future, it would be mandatory life sentence.
- In instances where the Defendant pleaded guilty and the Defendant asked the court to consider less than mandatory life sentence, the court would still need to hear evidence from the Defendant on the circumstances of the death.

Other key aspects would be:

- No capacity for either prosecution or defence to call expert witnesses on the likelihood of the Defendant killing again
- This would be something for the Judge to assess on a case by case basis. The assessment would not be confined to the particular facts of the case before the court, the assessment would consider all reasonably foreseeable future circumstances in which the Defendant might foreseeably cause another death.
- And of course, sentencing and likelihood of killing again would not be for the jury to consider.

One strength of this proposal is, the Defendant would have to give evidence, and be cross-examined, if they wanted the court to consider less than mandatory life sentence.

At all times, Guider avoided cross examination which limited the capacity of the court to question him and gain detail of what happened when he killed Samantha. To a large extent, the circumstances of Sam's death, and what Guider did with her body are conjecture.

I believe this would assist to protect the community, as well as answering the advocates who say the risk is too high of a genuine accident resulting in a mandatory life sentence.

Once the crime has occurred, nothing will help the victim or their family. Prevention and protection of the community is the only way forward.

In response to Question 5.1 Sentencing for child homicide:

(1) Are the sentences imposed for the killing of children adequate?

The sentences and sentencing guidelines for the killing of children are not adequate. The sexual assault and unlawful killing of a child should attract a mandatory life sentence without parole.

In the case of the killing of Samantha Terese Knight there were additional factors which should be reconsidered in future cases:

- a) Guider's refusal to let us know what he did with Sam's body demonstrates his refusal to take responsibility for his action, and acknowledgement of the harm he has caused. Community expectations now have a voice; variously expressed as 'no body, no parole' and 'no body, no release'.
- b) The application of concurrent sentencing rules. Guider was already imprisoned at the time he was convicted of Sam's unlawful death, and his sentences for sexual assault of many children and manslaughter have all been served concurrently. If they had been applied sequentially he would still be in gaol.

Guider has now been released from gaol. He is considered such a serious risk to the community, he is monitored by an experienced team 24 hours a day, 7 days a week.

Postscript: Special thanks to my friend Sarah Goodman who helped me gain some understanding of legal issues. Sarah and I were young mothers together in Manly. Sarah's daughter is alive and well.

Tess Knight

[REDACTED]