



16 December 2022

Paul McGorrery
A/CEO
Sentencing Council of Victoria
Via email: contact@sentencingcouncil.vic.gov.au

Dear Mr McGorrery,

RE: Sentence Deferral in Victoria

I refer to the review of deferred sentences being undertaken by the Victorian Sentencing Council.

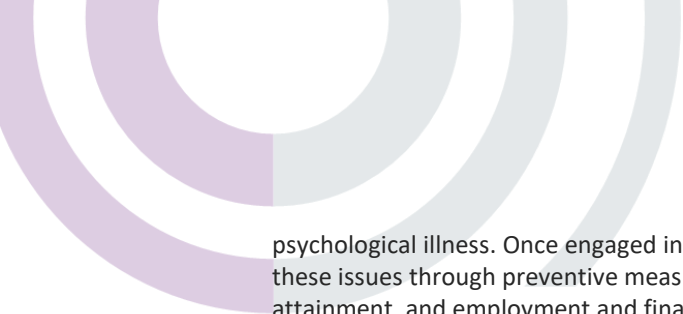
As requested, No to Violence offers a very short commentary on the intersection of advice and assistance sought by people contacting the Men's Referral Service and those who connect with the criminal justice system.

No to Violence is not a subject matter expert in the operations of criminal law, courts administration or sentencing. However, No to Violence has 30 years of experience as the national peak body for organisations who work with men to end family violence. We operate the Men's Referral Service (a national online and telephone counselling and referral service), we provide training and set standards for Men's Behaviour Change Programs, counselling, evidence-based policy, advocacy, research and evaluation, and contribute to setting standards for workforce development and capacity building.

Our MRS counsellors work with men who use violence and who, in many instances as a consequence are connected with the criminal justice system. This includes men who are on apprehended violence orders, those who are at risk of, or who have breached orders, those subject to community corrections orders, or who are awaiting sentence, are sentenced, or are released from prison. We have had experience working with men in migration detention centres. For some men their engagement in the program helps them with their anger towards a system they feel has unfairly treated them, but whose anger is directed towards their partner or former partner. The safety of women and children lies at the centre of all the intervention work MRS undertakes.

One of the central challenges within the criminal justice system is how best to respond to criminal behaviour, with sentencing the harshest of all responses to criminal acts. Within the boundaries of our work, intervention is a critical element. Our work examines questions about, how best to tackle violence, and how best to address the risk of violence before it escalates into actual acts of harm. We undertake this in both our policy and research activities and in the services we deliver.

The profiles of men who use violence are diverse and complex and like all people who are engaged in the criminal justice system, have underlying correlative factors such as childhood and/or intergenerational trauma, drug and alcohol misuse or addiction, mental and



psychological illness. Once engaged in the criminal justice system the opportunities to address these issues through preventive measures such as service support, stable housing, education attainment, and employment and financial security are destabilised.

For the purpose of this response to the Council's consultation paper on deferred sentencing, we agree that deferred sentencing provides an opportunity for other interventions that would not be available to the men who use violence if they were subject only to the blunt instrument of a custodial sentence.

It is important that the Courts have a range of custodial options for people who offend which provide opportunities to receive service and support within a deferred sentence context, with a change to change their behaviour where they demonstrate a capacity to do so. Deferred sentencing should be attended by other support and service interventions that allow for the prospects of rehabilitation, and where the risks to the safety to others are deemed low.

No to Violence provides the Brief Intervention Service which provides multisession counselling for men waiting or preparing for a men's behaviour change program. While the average number of sessions offered each individual participant is six, session can be extended to meet the needs of the individual. Participation in the Brief Intervention Service is not mandated, but by way of self-referral, service referral, or referral via the police referral services (which we have operating in Victoria, Tasmania and NSW, where men subject to a police family violence call out are automatically referred to the MRS). The BIS currently offers support to approximately 100 men a month. An independent evaluation of the BIS judged it efficacious.

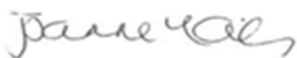
Court referrals under a deferred sentencing arrangement would present an opportunity for appropriately assessed men to engage in services to address their risk of further use of family violence. Any extension of the program to men referred by the courts into BIS is welcome. Additional resources would be required to support the growth in the number and type of referrals anticipated.

Family safety support will be required in parallel to BIS offered through deferred sentence pathways. Risk assessments undertaken to ensure appropriate participation in a deferred sentence and associated program must also assess any increase risk of harm to the partner, former partner and family members of the participant. The safety of women and children must be upheld as a part of any deferred sentence framework for family violence offenders.

Please find attached, No to Violence's comments in response to some of the specific questions raised in the discussion paper; these are the questions we feel able and qualified to respond to. We would welcome any opportunity to meet with the Council and offer you any further expertise or any further advice about our service delivery to aid your reform deliberations. Please contact Dr Khaldoon Fahmi in the first instance via e: khaldoonf@ntv.org.au, or by p: 0478 003 902.

Thank you for the opportunity to comment.

Yours sincerely,



Joanne Yates

General Manager, Policy and Advocacy



Attachment – answers to questions raising in the SCA’s consultation paper.

Question 1: Supreme Court

Should sentence deferrals be available in the Supreme Court?

If so, why? If not, why not?

Answer: As the Supreme Court has jurisdiction to hear the most serious cases involving offences such as murder and manslaughter it might be considered that a deferred sentence is too lenient to be considered for such serious offences. However, this should not preclude the opportunity for offenders to engage in rehabilitative programs as part of their custodial sentence.

Question 3: Eligibility criteria

Are there any issues with the current criteria and considerations courts must take into account before ordering a sentence deferral?

In answering this question, you may want to consider:

- if courts deciding whether to order a deferral should be required to consider the interests or views of any victims, and/or the interests of justice; and
- whether section 83A should specify that a court may order referral even if it considers that the seriousness of the offence justifies a prison sentence.

Answer: The Courts must take into consideration any risk posed by an offender reoffending while on a deferred sentence, notably for family violence offences and ensure the safety of the offender’s partner and/ or former partner is upheld. Victim survivors might be consulted and their views considered, should the Courts grant a deferred sentence.

Question 4: Marginalised groups

Are there reforms that could be made to sentence deferrals that could reduce the disproportionate effect of the criminal justice system on marginalised groups? If so, what reforms would you propose, and why?

Answer: Alternatives to incarceration should be considered for Aboriginal and culturally diverse populations with community orders, justice reinvestment and other non-custodial sentence preferred, together wrap around services and support provided for men willing, and with the capacity to, participate in men’s behaviour change programs.

Question 8: Judicial monitoring


Is there scope to increase or improve the use of judicial monitoring during sentence deferrals? If so, how?

Answer: To judge the efficacy of deferred sentences, as a principle, judicial monitoring should be a part of its implementation.

Question 10: Programs and services

Are there any improvements that could be made to the availability of support services and programs for people whose sentence has been deferred? If so, what do you propose, and why?

Answer: Organisations providing support and service to people at risk of , or who are engaged in the criminal justice system are likely to be resources to support an existing client cohort. Any change in the scope of deferred sentences will likely result in new and/ or expanded



populations requiring access to support programs and services. Additional resourcing across specialist services will be required. However, the likely social impact of investment in custodial alternatives and programs to support rehabilitation and behaviour change are likely to be positive and longer term.

Question 11: Deferral plans

Should offenders receive a written deferral plan outlining what they have agreed to do during the deferral period, and the potential consequences of not engaging positively with those requirements?

Answer: This would seem to be a sensible approach in ensuring systems and individual accountability.

Question 12: Sentence after deferral

Should courts be expressly permitted or required to tell the offender the sentence that they can expect if they successfully engage with the deferral? If so, why? If not, why not?

Answer: This seems a sensible approach to transparency and to systems and individual accountability. No to Violence is aware that men manipulate systems to their own advantage. In these contexts, they may agree to participate in programs and services in order to remain out of custody with the risk that his use of retaliatory violence against a partner may escalate. Having agreed deferral plans, and a stringent risk assessment will ensure that men who are not fully and authentically engaging in service and programs as required, may have their deference extinguished.