



CASA FORUM BASELINE SENTENCING SUBMISSION

Introduction

As non-lawyers the writers of this submission have grappled with some of the concepts. However, as advocates for victims' rights and lessening the trauma and negative impact of court hearings on victims we are pleased to have the opportunity to make the following comments. We have made the following comments only in relation to rape, childhood sexual assault, sexting offences and stalking.

Our primary concerns are

- The judicial system and sentencing are confusing and appear inconsistent at the present time to victims.
- The current system does not encourage confidence in the judicial process as the reasons for various legal outcomes such as acquittal and low sentences appear to be inconsistent.
- Victims and the community need educating about decision making in criminal cases and the reasons behind the decisions. It is apparent that the general community does not understand the, or even know of their existence, five purposes of sentencing.
- Victims and the community need educating about decision making in criminal cases and the reasons behind the decisions.
- We do not want any changes brought in that might discourage guilty pleas as they lessen the burden on victims of sexual assault.

For example:

Guilty Pleas:

A family of 5 children ranging in age from 20 – 10 years, all of whom had been sexually abused by their father were “torn apart” when the youngest child 10 years disclosed sexual abuse by her father to her school teacher. The father was charged, he lost his job, the family lost their house as mortgage repayments would not be met, the 4 children who were still at school had to leave their private schools as they could not pay the school fees.

All the children disclosed that their father had sexually abused them over the years. They were extremely angry with their youngest sibling for disclosing abuse as they had all kept quiet and managed the impact of the abuse on their own.

The father's guilty plea at least assisted the siblings in being able to blame the father for the impact of the abuse rather than their little sister.

- We do not want the resilience, or the lack of resilience, of a victim to be a determining factor for sentencing. The crime itself should be the consideration not the capacity of a victim to cope with the crime perpetrated against them.

For example:

A young woman was repeatedly raped by a stranger who pulled her into bushes off the bike track.



The rape and abduction and assault lasted for several hours. The young woman was injured and severely traumatised.

This young woman managed to go back to work and her studies. She continued her competitive cycling and was selected for the Commonwealth Games team.

Her amazing determination and resilience should not mean her violent attacker receives less of a sentence

- We do not want current community attitudes to unduly influence sentencing procedures because we believe the general public are uninformed about sentencing and its complexity. We note the findings in Roberts, J.V, L.S. Stalens, D. Indermaur and M. Hough (2003) *Penal Populism and Public Opinion: Lessons from Five Countries* (Oxford: Oxford University Press) that the public's concern about criminal activity is derived from media reporting of various criminal activities not from an understanding of the frequency of different offences.
- We want the current anomalies in the law such as 19 year old males engaging in consensual sex with a 15 year old female being charged with sexual assault and 17 year old males ending up on the Sex Offender Register for transmitting a naked picture of their 15 year old girlfriend. We think that these anomalies bring the law into disrepute and waste Police resources.

For example:

A 15 year old girl who was sexually abused by her music teacher bought her 19 year old boyfriend to counselling sessions (with parental consent), as he was her most supportive person after the rape.

- We want rehabilitation for offenders whilst in prison to be a mandatory part of their sentence.

As previously mentioned we are concerned that sentences are not being applied consistently across courts. This causes difficulties for our clients and their families when their reasonable expectations are not met. This makes the court process another trauma and impedes recovery. In addition, it undermines confidence in the judicial system and discourages reporting. We would welcome any system that, while leaving Judges the capacity for exercising discretion, made the system easier to understand.

Questions relevant to determining the baseline

1. Combined model
2. N/A
3. The current factors should be included. However, family circumstances need also taking into account. Although we do support custodial sentences for offenders who are closely related to victims they sexually assault we are keenly aware that for many families this is an



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exceedingly difficult issue and this needs acknowledgement in keeping people informed about parole options and the release of the offender.

4. Courts should stated expressly t he aggravating and mitigating factors. It is our experience that not understanding why the specific custodial sentence has been handed down is confusing for our victims and causing distress.

Questions relevant to offences having multiple baselines

1. Yes. Judges should have discretion in court to consider a range of factors and they need to be able to take into account the individual circumstances of a crime.
2. –
3. Here would still be aggravating and mitigating factors which would allow a court to have reference to the individual circumstances of the case.
4. Some offences need redefining. Legislation needs amending to deal with social media offences which are currently in limbo between Commonwealth and State legislation when they are covered by legislation. The judicial system needs a way of dealing with
 - Underage consensual sex between teenagers
 - Sexting being defined as transmitting child pornography
5. Yes
6. It is difficult to know what the unintended consequences of legislative change may be. The current spate of appeal to the Supreme Court in relation to jury directions and unconscious victims was certainly not the intention of the amendments to the Crimes Act 1958 (Vic) in relation to consent and would appear to not be in the original spirit of the legislation. Whilst no budget is unlimited resourcing should not be the primary consideration when trying to work out best practice.

Questions relevant to offences

1. No
2. –
3. –

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