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Victims of Crime Assistance League (Hunter) NSW

Review of Sentencing Practices for Historical Offences

Prepared By

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About VOCAL

Victims of Crime Assistance League (Hunter) NSW (VOCAL) is an Incorporated Charity organisation that supports men, women and children who are victim-survivors of any crime type throughout NSW. For the past 30 years we have been providing information, guidance and support to individuals and families who have been impacted by violent crime. We act in a consultative capacity to State and Federal governments on matters pertaining to victims' rights.

VOCAL's Victim Support Unit receives funding from NSW Department of Communities and Justice (Victims Services) to provide a free service to victims of crime in NSW's Hunter Region. Support is individualized to the specific needs of each survivor and includes physical, psychological and socioeconomic support and assistance. We welcome the discussion on this issue and appreciate being given the opportunity to provide our feedback.

QUESTION: Should section 25AA of the *Crimes (Sentencing Procedure) Act 1999* be extended to all offences, requiring courts to sentence offenders in accordance with the sentencing patterns and practices at the time of sentencing, not at the time of the offence?

Victim-survivors, advocates and the wider community have welcomed the introduction of S25AA in relation to child sexual abuse offences. The amended is in line with community expectation and sends an important message to victim-survivors and society that sentencing for violent offences is taken seriously by the NSW Criminal Justice System. Therefore, VOCAL supports the expansion of section 25AA to cover all historical offences and believes that sentencing an offender in accordance with current sentencing practices, as opposed to those in place at the time the offence, will improve judicial consistency and transparency.

Historical Violent Offences

VOCAL provides emotional support and practical assistance for victim-survivors and their families of violent crimes. Crime types include, but are not limited to, homicide, physical assaults, and assaults involving weapons, sexual violence, armed hold ups, home invasions, domestic abuse, and child abuse. While some victim-survivors present after recent crimes, a large majority of our clients seek support for historical violent crimes perpetrated against them.

Victim-survivors of historical abuse and violence present with complex challenges that typically include significant and detrimental changes on a physical, psychological, behavioral, financial, social and emotional level. Victim-survivors report that the psychological trauma of a violent crime one that is the most debilitating, for it specifically impedes social, financial and employment capabilities. Different from physical trauma, psychological trauma refers to ‘an experience that is emotionally painful, distressful, or shocking which often results in lasting mental and physical effects¹.

Our work with victim-survivors of historical violent offences is not only about providing practical, needs bases assistance. It often involves working with intense emotions of intense grief, loss, shame, blame, vulnerability, mistrust and complex trauma. In instances where the victim-survivor reported have previously reported the crime, and no action was taken, deep seeded feelings of injustice, devaluation and cynicism often lead to belief systems that include “the system is flawed”, “the system is corrupt” and “there is no justice”. Helping navigate them through this worldview after trauma is exceptionally difficult within a criminal justice system that does not meet expectations. It is common for victim –survivors and community members express their dissatisfaction with the legal system and its inability to meet community expectations relating to sentencing, punishment and justice.

¹ Wassweman, E and Ellis, C (2010) *National Victim Assistance Academy: Impact of Crime on Victims*. Fairfax County Police Department, Fairfax VA.

VOCAL acknowledges that sentencing principles are not designed specifically to provide justice to victim-survivors but believe that sentencing outcomes must come in line with community expectations and reflect the seriousness of harm done to the victim. When introducing s25AA, for child sexual offences NSW Attorney General The Honorable Mark Speakman SC acknowledged that current sentencing for historical child sexual abuse cases resulted in lower sentences, which ‘perpetuates our past lack of understanding of how seriously these offences should be treated and our past lack of understanding of the significant impact they have on the victim. The new provision will ensure that sentences meet current community expectations, to the extent possible within the upper limit of the maximum penalty from the time of the offence’.² It is our experience that victim-survivors of all historical violent crimes experience significant harm and ongoing impact, often decades after the crime, and that convictions for historical crimes need to fall under current sentencing principles.

It must be noted that witnesses in historical violence criminal matters are subjected to secondary victimization via the Criminal Justice System. Their memory is questioned, they are blamed for not reporting and their mental health is scrutinized. For example, during their time giving evidence they can be subjected to victim blaming, humiliation, insensitive remarks, debasement and a minimization of harm. Such systemic response exacerbates the impact of trauma reactions and behaviours, immobilizing and re-traumatizing the victim-survivor. The provisions and restrictions of a victim impact statement means only a portion of the impact of crime can be told and often the total significance of life after crime is underreported to the court.

Conclusion

VOCAL welcomes the discussion on whether to expand S25AA to include other violent historical crime types. By doing so, it will not only provide consistency and adequate justice for victim-survivors of historical crimes, but the change will be more in line with community expectations of how the criminal justice system administers punishment, community protection and justice.

² Donnelly, H (n.d). *Sentencing according to current and past practices*.

References

Donnelly, H (n.d). *Sentencing according to current and past practices*.

[Microsoft Word - DONNELLY Paper - Sentencing according to practices at the time of sentence final \(njca.com.au\)](#)

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