

**Submission  
No 15**

## **SENTENCING OF CHILD SEXUAL ASSAULT OFFENDERS**

**Organisation:** Australian and New Zealand Association for the Treatment  
of Sexual Abuse

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**A submission by the Australian and New Zealand Association for the Treatment of Sexual Abuse (ANZATSA) to the Joint Select Committee on Sentencing of Child Sexual Assault Offenders**

ANZATSA is grateful for the invitation to provide a submission to the NSW Joint Select Committee on Sentencing of Child Sexual Assault Offenders. The authors of the current submission are available should the Committee wish to hear further regarding the contents contained within.

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**About ANZATSA**

The Australian and New Zealand Association for the Treatment of Sexual Abuse is dedicated to community protection and safety through the promotion of professional standards, practices, and education in sexual abuse prevention, assessment, intervention and research. ANZATSA is committed to community protection and safety. When considering case management or intervention we hold the interest and safety of victims and potential victims, as always the priority.

## **Recommendations**

ANZATSA makes the following recommendations with regards to sentencing of Child Sexual Assault Offenders:

1. Decisions on sentencing should take into account the best outcomes for survivors of child sexual assault. This requires relying on evidence-based outcomes rather than leaving responsibility with survivors to determine the course of action. The dynamics of child sexual abuse are complicated, particularly the dynamics of intrafamilial child sexual abuse.
2. Sentencing decisions should be based on empirical evidence that takes into consideration an offender's level of risk as well as their capacity for rehabilitation. Relative treatment intensity must be provided to these offenders, as incarceration alone does not reduce risk of recidivism.
3. Extended periods of community-based supervision and therapeutic management should be employed to obtain the best outcomes for offenders and provide protection for the community. This requires strengthening of current community-based treatment services for offenders.
4. The Child Protection Register should remain protected in order to maximise its utility.
5. Young people who engage in sexually abusive behaviours present with different needs to adult offenders and as such, should not be treated the same as adult offenders. Young offenders have a different profile to adult offenders and due to their different developmental stages as children and young people should be managed in distinctly different ways to adults. There is clear evidence supporting diversion to community based therapeutic services as providing the safest and most cost-effective strategy for most young offenders. This also applies to the Child Protection Register; young offenders should be placed on this only on the basis of assessment by a qualified professional.
6. Each of the above recommendations highlight the importance of the Judiciary being able to exercise discretion when making decisions regarding sentencing of child sexual assault offenders. Mandatory sentencing periods will not assist in this regard.
7. There is need for public education in regards to the research-based evidence around sexual offending, interventions and recidivism. This would provide a fuller and more comprehensive understanding of the relevant issues, thus minimising emotional public reaction. This, in turn would avoid pressure to apply hastily developed reactive policy, often aimed at high profile extreme cases of offending.

### **Best outcomes for survivors**

Much has been written about the short- and long-term impacts for children who experience sexual abuse. Survivors of child sexual abuse experience a range of negative outcomes, including adverse mental health outcomes, physical health impacts (including neurological changes), interpersonal and occupational outcomes, and legal outcomes, such as further victimisation (Cashmore & Shackel, 2013). As these have been well documented, this submission will not review these in detail. Rather, the focus will be on what has been shown to provide best outcomes for survivors.

Research conducted with adult survivors of child sexual abuse identifies that the majority of these survivors reported seeking public recognition of the harm they had suffered, revenge, or retribution and justice (Des Rosiers, Feldthusen, & Hankivsky, 1998). More recently, Julich (2006) conducted interviews with 21 adult survivors of child sexual abuse in New Zealand, most of whom identified that validation and the offender being accountable were integral to their understanding of 'justice', as well as having significant people in their life understanding the dynamics of sexual abuse and recognising that the victims were not responsible. It is clear that validation is important for victims (Danieli, 2006), and that poorer outcomes (including increased negative psychological symptoms) are seen for victims who make internal attributions for the abuse they have experienced (Feiring, Taska, & Chen, 2002). Further, the best mental health outcomes for children who are sexually abused are seen in those who receive support from their parents or caregivers (Wilcox, Richards, & O'Keeffe, 2004).

The adversarial justice process does not provide a platform for survivors to receive validation. Rather, it encourages those accused to deny their wrongdoing in order to avoid penalties. The process of a trial, which often results in a lack of conviction, can be re-traumatising for survivors, especially for children. As such, the best outcomes for survivors of child sexual assault are where offenders are encouraged to plead guilty at an early stage, perhaps through use of incentives. Such an incentive was offered by the NSW Pre-Trial Diversion of Offenders Program, which allowed parents who had sexually abused a child in their care to be diverted from the traditional justice system. This program encouraged early guilty pleas, and thus removed the need for a child to participate in a lengthy legal process. In addition, this program encouraged further disclosures about the extent and nature of their abusive conduct by offenders, thereby providing further validation for children who had been sexually abused (Pratley & Goodman-Delahunty, 2011). Similar disclosure has not been reported by Corrective Services programs in NSW. Furthermore, the Pre-Trial Diversion of Offenders Program was shown to reduce recidivism in these offenders (Butler, Goodman-Delahunty, & Lulham, 2012). This program is due to be closed due to the NSW Government's perception of public opinion. Given the significant benefits this program produced for survivors and their families, it is worth considering that an alternative but similar sentencing scheme could capture the benefits. Any alternative scheme that is implemented would require a level of interagency collaboration to allow open communication between those working with survivors (e.g. Health agencies) and those working with offenders.

### **Sentencing should be based on risk assessment**

Decisions regarding sentencing of child sex offenders should be made based on an individual offender's needs and threat posed to the community, rather than adopting a universal approach that will not necessarily increase safety for the community nor provide effective outcomes for all offenders. The majority of sex offenders will not be assessed as high risk (Helmus & Hanson, 2009), and the needs of such low- or moderate-risk offenders are different from those who are assessed as high-risk. Adopting a principle of deterrence through frequent use of incarceration (a "tough on crime" approach) has been proven ineffective (Seidler, 2010), and in some situations, may actually increase risk of recidivism (Smith, Goggin, & Gendreau, 2002).

Risk assessment of sex offenders is a specialised area, which requires extensive training and supervision. As such, only professionals with the relevant expertise should be utilised to conduct a risk assessment. The NSW Child Sex Offender Counsellor Accreditation Scheme (CSOCAS), managed by the Commission for Children and

Young People, allows for Courts to have certainty that a professional who provides such a risk assessment has the relevant training to do so, and as such, it is recommended that this scheme is maintained.

### **Rehabilitation as an aspect of sentencing**

Therapeutic intervention has been demonstrated to reduce recidivism risk (Collins, Peters, & Lennings, 2009) and provide positive impacts for communities, so long as the therapeutic intervention is matched to an offender's individual needs (also known as risk, needs and responsivity principles) (Andrews & Bonta, 2007; Hanson et al., 2002).

Currently, treatment services offered by Corrective Services NSW focus on services for high risk sex offenders, through the Custody Based Intensive Treatment program (CUBIT). However, as noted, many sex offenders are not assessed as high risk, and as such, they require a different intervention than that provided to high-risk offenders. At times, moderate-risk sex offenders are able to access treatment in a custodial setting (through the CORE-Moderate program), but this is not always provided and, to the best of our current knowledge, is not currently being offered. For all offenders, access to offence-focused treatment in a custodial setting is dependent upon their assessment of risk, but also the length of their sentence. If waiting lists are in place, even offenders who would benefit from intensive treatment may not have access to this if their sentence expires prior to them reaching the top of a waiting list. This means that many sex offenders who are incarcerated are returned to the community untreated. In the community, Corrective Services offer limited services, meaning that offenders must seek treatment themselves, although the cost of this is prohibitive for many offenders. Given that public confidence is a key element in the Government's current approach, some external accountability or visibility should be built in to allow reporting of which offenders get treatment in prison and what that treatment comprises.

Even for those offenders who receive treatment in a custodial setting, this can be viewed as 'hypothetical', given that they are being treated in a setting that is very different from their usual environment. Effective rehabilitation for sex offenders should consist of ongoing supervision, support, and access to treatment while in the community.

As aforementioned, treatment of child sex offenders is a specialised area and should be provided by professionals with expertise in the area. Again, the NSW CSOCAS provides an invaluable service in informing the Courts as to who is qualified to provide this treatment.

### **Community-based supervision – the Child Protection Register**

In the past 20 years, a worldwide trend has been seen of individuals convicted of child sex offenders being required to register with the police and being subject to a wide range of supervision requirements including monitoring and reporting in NSW, to community notification laws that are seen in many states of America. The effectiveness of such laws is unclear and the results are mixed as to the impact that they have on recidivism (For a review see: Tewksbury & Jennings, 2010). However, anecdotal data from NSW suggests that the current system of maintaining a closed Child Protection Register (CPR) has been helpful in managing registered sex offenders (Detective Sergeant Michael Tsung, personal communication 7/01/2009), although other data suggests that the CPR increases feelings of shame in offenders and is subsequently ineffective in reducing risk (Seidler, 2010). Further evidence to support the maintenance

of a closed register is provided by research indicating that compliance with registration reduces in jurisdictions where the register is public (Fedoroff, Martineau, & Murphy, 2009), and that offenders who are included on public registers are subject to a range of negative impacts that lead to increases in dynamic risk factors (Management, 2001).

### **Young offenders**

The empirical evidence base is now clear that young people who engage in sexually harmful behaviours towards children or other adolescents reach this point through a range of different paths compared to adult offenders. Sexually harmful behaviours perpetrated by adolescents are not indicative of sexual deviance and do not translate to lifelong patterns of sexual offending. Low rates of adult sexual recidivism are seen in adolescents who perpetrate sexually abusive behaviours (Nisbet, Wilson, & Smallbone, 2004).

With regards to rehabilitation of adolescents who engage in sexually harmful behaviours, family and community connection, as well as access to specialised treatment services, are key to rehabilitation (Morrison & Henniker, 2006; Schladale, 2007; Thomas, 2004). Shaming and isolating these young people has the same potential as for adults to increase their dynamic risk factors (Jenkins, 2005). Furthermore, inclusion of young people on the Child Protection Register has a significant negative impact in terms of access to education and employment, which further elevates dynamic risk factors.

It is clear that young people who engage in sexual abuse of children or other adolescents require a different approach than that taken toward adult offenders. Such an approach would best be developed by way of a systematic review, separate to the current review of sentencing of adult offenders.

### **Public education**

The public views child sex offenders with a high level of vitriol; this public alarm and anxiety leads to fuelling misinformation through the media. Although this high level of emotion likely has a factual foundation based on the negative impact that child sexual abuse has for survivors and communities, it appears that it is also underpinned by limited understanding of sexual offenders (Levensen, Brannon, Fortney, & Baker, 2007). Much of the media reporting of this topic tends to focus on extreme cases of child sexual abuse; ignoring the fact that most sexual abuse of children is perpetrated in the home (Smallbone & Wortley, 2001), rather than by the stereotypical “predators in white vans”. Furthermore, most sexual offenders will reoffend at a rate of less than 7% over five years (Helmus, Hanson, Thornton, Babchishin, & Harris, 2012), although it is likely that many members of the public would estimate a much higher recidivism rate.

There are some misconceptions that are poorly understood within professional circles let alone within the community such as the fact that not all child sex offenders are paedophiles. Further lacking from the public discourse is an awareness that with the appropriate level of intervention, risk of recidivism in child sex offenders can be reduced, while public shaming and isolation of these offenders may lead to an increase in recidivism through increasing dynamic risk factors.

The value of the public being provided with information based in fact would have the potential to lead to a reduction in emotive responses to such offences and allow for a reasoned and informed discussion about how to manage such offenders. This would

subsequently reduce pressure that is placed on politicians to respond with a “tough on crime” approach that does not produce the best outcomes for communities. This would then allow the Judiciary to exercise the necessary discretion and respond to each offender individually with a punishment and therapeutic intervention that best suits the survivor, the community, and the offender.

### **Conclusion**

Reducing child sexual assault victimisation is an important public policy goal that is deserving of the attention and focus it has received in recent years and through this current review process. However, it is vital that public policies are developed based on the empirical research rather than in response to emotion or a desire for a “quick fix” (Harris & Lurigio, 2010). In addition to penalties administered by way of sentencing, there is a need for community supervision and support post-release or post sentencing, regardless of the sentencing outcome.

A “one-size-fits-all” approach to sentencing of child sex offenders is likely to be ineffective in providing either justice for survivors of child sexual assault or enhancing community safety. The dynamics of child sexual abuse are complex and varied and it is vital that the Courts are able to respond to individual cases with consideration of each of the unique factors at play. Judicial discretion is a vital aspect of this.

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