

SENTENCING OF CHILD SEXUAL ASSAULT OFFENDERS

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Partially Confidential

Alternative sentencing options?

In my original submission I expressed concern that alternative sentencing in cases of child sexual assault seemed less like a genuine alternative, and more like an admission of despair in mainstream Justice system.

Since despair is now my lot, I would like to suggest a number of alternative sentencing options that may offer greater opportunities for remedy to victims of child sexual assault.

1. Clarify/expand the role of the NSW Commissioner for Victims' Rights:

I suggest that the NSW Commissioner for Victims' Rights be given the power to make submissions to sentencing hearings on the impact of serious child sex offences on victims and their families. These submissions should be taken into account in sentencing.

In addition, I suggest that the Commissioner be given the power to make submissions to the Court of Criminal Appeal on guideline sentences for child sex offences, to counter systematic leniency in sentencing.

Finally, I suggest that the Commissioner be given the power to represent the interests of victims of child sex offenses to the Director of Public Prosecutions and the Attorney General, especially in cases where inadequate sentences have been handed down to child sex offenders.

The first Commissioner for Victims' Rights was appointed in NSW in June last year. However, I have not been able to find any specific, public information about her current responsibilities listed anywhere outside a press release. I have also tried to contact the Commissioner's office personally without success. This being so, it is possible my suggestions regarding the Commissioner's role may be redundant.

2. Convicted child sex offenders should lose the right to take civil action against their victims:

I suggest that convicted child sex offenders should lose the right to take any civil action against their victims. In particular, offenders should not be permitted to make defamation complaints for anything a victim says or writes in a Victim Impact Statement, parole board proceeding, police statement, parliamentary hearing or Royal Commission hearing. In addition, victims should not be civilly liable for anything they say or do as a third party to an alleged unlawful detention or arrest by police.

Furthermore, convicted child sex offenders should lose the right to recover costs if their victim begins a civil suit against them. Recently, a

newspaper reported² that a former school teacher, who had been convicted of persistent sexual abuse of his student, is now pursuing his victim for almost \$20,000 in legal costs. The victim had begun a civil suit against the offender and the school. After the victim and the school reached a settlement, the victim offered to withdraw his suit against the offender. The offender, who only received a suspended sentence for his crimes, has now added to his victim's trauma by demanding costs. Offenders should not have the option to harm their victims in this manner.

3. Expand opportunities for Restitution via a Victims' Ombudsman:

Before I made a complaint about [REDACTED] to the police, I approached a legal firm that offered a mediation-based, conflict resolution service in the hope that I could get the matter dealt with that way. After hearing the details of my case, they declined to be involved in a mediation process, saying they feared I could be accused of blackmail because I sought compensation as well as an apology.

I would not have embarked on a painful, and psychologically harmful, journey through the Justice system if the matter could have been dealt with quickly in a private, non-adversarial mediation. This is not to say that my assailant's wrongdoing was not serious enough for a criminal trial. Instead, it is an acknowledgement of the despair I felt, at the start of the process, about my chances of receiving justice from the Justice system.

I suggest that a Crime Victims' Ombudsman (or, ultimately, an inquisitorial sex crimes court) could bypass the current civil system, so that victims of sex crimes in childhood have equitable access to remedy. In this setting, legal costs for victims should be kept to an absolute minimum, with no possibility that assailants can demand costs from their victims. The Victims' Ombudsman should be able to hear cases where evidence from police investigations is deficient for a criminal trial, but sufficient for civil action.

4. Abolish statutes of limitations on civil remedies for damages from child sex crimes

The costs of fighting for punitive damages in a traditional civil court are greatly increased if the case is being heard "out of time". It is normal for child victims not to disclose their experiences of sexual violence for many, many years after the fact. The state should accept that delayed disclosure is a normal consequence of sexual violence and remove all barriers to civil remedy based on the passage of time.

² <http://www.abc.net.au/news/2014-04-14/ex-teacher-who-abused-student-pursues-victim-for-compensation/5389200> Accessed 22 April, 2014

In summary, it is my opinion that the role of the NSW Commissioner for Victims' Rights should be expanded to allow her (or her counsel) to represent victims in court in the sentencing stage for serious child sex offenses. In addition, the Commissioner should have the power to make representations to the Criminal Court of Appeal, the Director of Public Prosecutions and the Attorney General on behalf of victims of sex crimes in childhood.

In addition, I believe that convicted child sex offenders should lose the right to sue their victims for defamation. They should also lose the right to demand legal costs from victims, should victims launch a civil action against them.

Furthermore, it is my opinion that victims should be allowed greater access to remedy through the appointment of a Victims' Ombudsman, who could hear compensation claims outside the civil courts. Finally, I suggest that statutes of limitations on civil remedies for sex crimes should be abolished.