

**Submission
No 10**

SENTENCING OF CHILD SEXUAL ASSAULT OFFENDERS

Name: Name Suppressed
Date Received: 26/02/2014

Partially Confidential

Joint Select Committee
on sentencing of child sexual assault offenders
Parliament House
Macquarie St
Sydney NSW 2000


Dear Members of the Joint Select Committee,

**RE: PARTIALLY CONFIDENTIAL SUBMISSION
to the parliamentary inquiry on sentencing of CSA offenders**

I would like to contribute to your inquiry by offering my opinions on the adequacy of current sentencing practices for Child Sexual Assault Offenders in NSW. To put my remarks in context, I would also like to share with the Committee my history of sexual victimisation in childhood and my current experiences as a complainant within the NSW Justice system.

In this submission I will:

- **Outline** the sexual victimisation I endured as a child, and its immediate and long-term impacts;
- **Outline** my experiences within the NSW Justice system;
- **Share** how current sentencing patterns for child sexual assault offenders in NSW affect me as a victim of crime; and
- **Suggest** changes to current practices that may improve outcomes for myself and other "veterans" who battled sexual abuse in childhood and then volunteered for a second tour of duty in the Justice system as adults.

My submission is made at a sensitive time. Currently, the trial of one of my assailants is under way. 

The investigation of a second, unrelated complaint is not yet finalised. Given these factors, **I ask that the Committee use care to withhold any identifying details from my submission during publication of their findings.** I would like my voice to be heard, but I also want to prevent disadvantage to other victims involved in the current trial.

I would also like to advise the Committee that I am happy to address them in person, should their inquiry lead to hearings and they deem it useful to hear from me.

I thank the Committee for the opportunity to submit my opinions to this inquiry. I wish them every success in gaining the insights they need to improve current practices.

Yours sincerely,

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Executive Summary

My experiences of sexual assault in childhood were persistent, varied and severe. They have had a permanent and adverse affect on my life. Sexual assaults damaged my psychological health, my psychosocial development, my family relationships and my faith in God. My recovery from these losses took many years. Some of the impacts are irreversible. The actions of people in authority at the time convinced me that the police, the Justice system and society at large took no practical interest in protecting me.

My justice journey began four years ago, and is still far from over. Despite a number of positive outcomes, my experience stands as a grim warning to other victims of child sexual assault planning to make a complaint. The significant psychological gains I made early in the process have come at great cost. It is too soon for me to tell whether the process has been worth the pain.

As a victim of sex crime, I do not want my assailants to be treated unjustly. I do not wish for them to be subjected to a crushing sentence or have their rights abused. However, I do not want their crimes to be denied, diminished or excused either. Deficient sentences damage the courts' reputation in the eyes of all victims of child sexual assault. This deters victims from making complaints, which would help protect them and society.

Strategies I suggest to improve current sentencing practices include:

1. Use current laws more effectively;
2. Improve consistency;
3. Abolish suspended sentences;
4. Ignore rape myths when sentencing;
5. Give scientific evidence a stronger role;
6. Consider mandatory sentencing and/or lifetime parole in certain cases;
7. Disregard certain mitigating factors;
8. Separate treatment programs from sentencing; and
9. Decouple Victim Impact Statements from the sentencing process.

Specific actions linked to these strategies include:

1. Specialist training for judges
2. Bench books for judges, on current scientific evidence
3. Loss of passport as a feature of lifetime parole

Alternative sentencing options should not be an excuse for the mainstream justice system to shirk its responsibilities to victims. Bearing this in mind, I recommend three alternative practices:

1. **Universal Victim Impact Statements:** All victims of child sexual assault should be given the option to give a Victim Impact Statement. "Blind" Victim Impact Statements should be delivered in a separate ceremony at the end of the victim's justice journey, regardless of whether the case leads to charges, trial or a guilty verdict.
2. **Civil Liability Rulings:** Judges should be permitted to rule on civil liability in criminal trials. Alternatively, the prosecution should be permitted to apply for compensation on the victim's behalf at the end of the criminal trial. Although this is not a sentencing matter per se, it offers victims much greater access to remedy than the current system.
3. **Antiandrogens:** More scientific evidence is required before anti-androgenic medications are used routinely with child sexual assault offenders.

Submission to the Parliamentary Inquiry into Sentencing of Child Sexual Assault Offenders

My Story

I experienced a prolonged pattern of sexual abuse and physical violence, starting in 1986 when I was 13 years old. The abuse began with a rape by my first boyfriend, who was two years older than I. The sense of horror and worthlessness that I felt after that assault was overwhelming. That, coupled with my childlike Christian faith, led me to believe that my assailant now "owned" me and that I had no other choice than to accept a marriage-like relationship with him. Despite my fear and despair, I stayed with him for about three years, concealing the sexual nature of the relationship as long as I could.

During that time I endured an escalating pattern of violence. I was indecently assaulted, sexually assaulted and sexually assaulted with objects. I was also physically assaulted and survived strangling and blows to the head. On one occasion I was genuinely surprised that I did not die from strangulation. Another time, my boyfriend told me, while holding a kitchen knife, how funny it would be to cut off my breast.

The abuse ended when I was 16, when I was able to overcome my fear and self-blame long enough to put an end to the relationship. Over the years I had formed a traumatic bond with my boyfriend. I believed that if I left him I would die. I was only able to leave when I became convinced that if I stayed, I would also die.

While still trapped in that situation, I met an older man who indecently assaulted me and groomed me for sex. At the time I was 15 years old and he was about 40. This man was a friend of my family and [REDACTED]. I met him after I had already endured years of devastating sexual abuse. I felt profoundly isolated and emotionally deprived and I was drawn to his [REDACTED] and the attention he showed me. Even so, I was able to rebuff his demands for sex and, over some months, he lost interest in me.

Over the years I endured these two different episodes of abuse, I also attended a private religious school and lived in a leafy, waterfront suburb in Sydney. I lived with both my parents, who were highly educated and held stable, well-paid jobs. They loved me deeply and had high hopes for my future. For religious reasons, no alcohol or other drugs were permitted in our home. The old stereotypes of sexual abuse did not apply. There is no sub-plot of poverty, chaotic parenting, poor housing or drug dependence in this story.

The impacts of the sexual and physical violence I suffered have been profound and long lasting. Although it may be counterintuitive, I find it much more painful to describe my injuries than to describe the crimes themselves. Therefore, my discussion of the impacts of abuse below is accurate but not exhaustive.

The immediate impacts of the abuse were physical, psychological, social and spiritual. Physically, I suffered a lot of pain (Rape, it turns out, hurts quite a lot). Psychologically, I suffered a paralysing fear of pregnancy for more than a year and went on to develop clinical depression and post-traumatic stress disorder (PTSD), which were diagnosed by a psychiatrist when I was 16. A major feature of my PTSD was depersonalisation. That is, I often felt an unnerving sense of "unrealism", as though my thoughts and actions were part of a film I was watching rather than my real life.

I had no one to trust. I lost my faith in God, which left me feeling maimed. I became isolated from my pastor, my friends and teachers. My relationship with my parents was severely damaged. I told a teacher at school I was being abused, but the disclosure went badly and nothing was done to help me or inform anyone else in authority. The psychiatrist I met soon after the abuse ended told me not to complain to police when I expressed a desire to do so. She told me the police would not see my case as rape, and I was, in her opinion, too weak to cope in court in any case. Finally, the abuse distracted me from years of schoolwork, which left me performing well below my potential in the fields of mathematics and the sciences.

It has taken many years to overcome the impacts of this violence. Some of them are irreversible. Over the years, I have heard a lot of talk about "healing" and "closure", but I invite the Committee to ignore these terms and instead consider the impacts of sexual abuse in terms of chronic physical injury.

If someone had shattered my knee with a hammer, the joint would never be as it was. My bones might heal. I might learn to walk again. I might even get a prosthetic knee replacement. But I would never have what I had before. Instead, I would suffer more pain and be more vulnerable to new injuries. I might not be able to do the activities I enjoyed before, like running or dancing. Or I might be able to participate, but lack my old stamina.

So too with the psychological, social and spiritual injuries I suffered as a consequence of sexual violence in my childhood. In many ways I have made an excellent recovery. More than one psychologist has described me as highly resilient. But I have vulnerabilities now that I did not possess before I experienced rape. And I have lost forever the opportunity to develop from adolescence to adulthood unmolested, with all the opportunities, joys and tribulations that a normal development might have brought me.

I lived with untreated PTSD for 10 years. Finally, at age 23, I earned enough to pay for a clinical psychologist and begin a slow and painful rehabilitation. I went to the psychologist once a week for about a year. For most of that year I approached each session in a state of intense fear. The thought of speaking aloud about the abuse terrified me. I would sit in the waiting room, literally shaking.

Although the treatment felt awful, I improved a great deal as a result. I "got better". Which doesn't mean, "I got on with my life", because I had been doing

that as hard as I could since the abuse ended. In the years before I started psychotherapy I completed the HSC and a university degree, and spent nearly two years working as a volunteer teacher in a refugee camp overseas.

"Getting better" did not mean "cured". But it did mean a life with less mental pain and less intrusion from the aftereffects of sexual violence. If it had been a shattered joint, rather than a psychological injury, I would have reported a better range of motion.

My first attempts at psychotherapy ended in 1996. I met my husband at about the same time and we have built a family and a life together in the 18 years since. Mostly, my symptoms of post-traumatic stress have retreated into the background and remain manageable.

There have been a few spectacular exceptions, however. My PTSD made an acute return during my first pregnancy in 2005. I have never been at greater risk of suicide than I was then. I had a second episode while making a statement to police about my first boyfriend in 2010, and a third in 2013 when I reached the third anniversary of that investigation without any sign that it would be finalised.

At such times the old feelings rise up in me like a roaring, black tide and I start to forget why suicide is wrong. I have never harmed myself or attempted suicide, but during these acute episodes I feel I am at great risk. My concern is probably justified, given that a 44-year prospective study in Victoria found that victims of child sexual abuse have a suicide rate 40 times higher than normal, and a rate of death by accidental drug overdose 88 times higher than normal.¹ The return of PTSD symptoms was most distressing in pregnancy, when my baby was also at risk.

In summary, my experiences of sexual assault in childhood were persistent, varied and severe. They have had a permanent and adverse affect on my life. Sexual assaults damaged my psychological health, my psychosocial development, my family relationships and my faith in God. My recovery from these losses took many years. Some of the impacts are irreversible. The actions of people in authority at the time convinced me that the police, the Justice system and society at large, took no practical interest in protecting me.

My Justice Journey

I accepted the psychiatrist's poor advice in 1989 and abandoned any hope of help from the police or the justice system. Nothing changed until 2010, when another victim of ██████████ complained about him ██████████. I came forward to police two days later, when they made a general call for assistance ██████████

Coming forward to police after more than 20 years was both easy and very difficult. It was easy because I had no expectation of justice for myself where ██████████ was concerned. Instead, I wanted to support the other woman's complaint. I wanted to help demonstrate a pattern of offending. Decades later, I realised that self-blame had blinded me to the causes of ██████████ behaviour. I saw how wrong I had been to assume I was his only victim. I realised I had a duty to try to protect any children he might be preying upon now, as well as those who had encountered him in the past.

Coming forward was also very difficult because I did not want to report my first boyfriend's crimes. I did not think there was any hope the Justice system would take my complaint seriously. I thought my family would want me to keep silent and I did not want that story to influence ██████████ case. Before I went to the police I sought advice from three different lawyers about my rights and choices.

Meeting the Sex Crimes Squad was a revelation for me. They offered me all the things I had assumed I could never have from the police. They understood sexual violence: I did not have to teach them about it. They took my complaint seriously and showed me respect. Most of all, they showed genuine concern for my well-being, which surprised me a good deal. Even now, the thought of their consistent and genuine concern for me brings tears to my eyes.

I developed a good rapport with the detective that took my statement ██████████. And so, quite cautiously, I told her about my first boyfriend too. She urged me to make a formal statement about him and have the matter investigated. I did so after several months of soul-searching. A second investigation began in the police local area command where the offenses occurred.

My first statement, about ██████████, took about three weeks to finish because I had to juggle the needs of the police with those of a toddler and a nursing baby. The second statement, about my first boyfriend, took four months to complete. After four months of work on that statement, I spent many more hours going through thousands of personal documents, looking for evidence. For months, every moment I had away from my children was taken up with the investigation.

As I write, the trial of ██████████ has just begun. Many other victims came forward and three years passed while the matter was investigated. Extradition and pre-trial matters took another year. To put it another way, there is a gap of 1461 days between the day I met the police for the first time and the day I expect to give evidence in the current trial.

The other investigation has not done so well. As I write, three and a half years have passed since I began the statement about my first boyfriend. The investigation has not yet led to charges. This is not for lack of evidence. Several police have told me that they have never before seen so much evidence in an historical case. There are many disclosure witnesses with good recollection. There is ample written evidence. A telephone intercept with the accused yielded admissions. I am told that his police interview also bore fruit.

The local area command took three years to pass the matter to the Office of the Director of Public Prosecutions. After two years I wrote to the Local Area Commander, asking him to expedite the case. Nothing happened until I wrote to my Member of Parliament a year later, asking for help. The case was handed over to the DPP very soon after. As I write, the matter has been with the DPP for six months.

I have waited 1267 days for charges to be laid against this assailant, and I am still waiting. I cannot predict the outcome of the investigation. Given the many chaotic changes to the laws relating to child sexual assault in the 1980s, there is no guarantee charges will be laid at all. Should the investigation ultimately lead to a trial, I expect that the entire process, from complaint to verdict, will take between five and six years. By then, the infant who lay at my breast while I gave my first statement will be in primary school.

If sexual abuse took me down into hell, then the long delays by the police and the DPP have trapped me in purgatory. A key feature of PTSD is hyper-arousal, a painfully enhanced compulsion to fight or flee. Many times in the years since I made my statements, I have felt an intense, immediate need to have the matters finalised. I burn to confront my assailants in court or be finally free of them. Our legal processes have allowed me to do neither.

Twice I have found the burden of the delay is so unbearable that I contemplated withdrawing from both cases. My reactivated PTSD became too acute. The promise of legal remedy, however weak, unleashed a latent anger over the assaults. This anger had little outlet in my youth and was much less dangerous while I was still paralysed with sorrow. As the investigations dragged, my sleeping hours filled with incandescent dreams of self-harm and I feared for my safety. In the end, I pressed on, but it was a near thing, both for me and for the investigations. I am sure that many complaints of child sexual abuse are withdrawn for similar reasons.

During the same period, I applied for compensation through Victims Services. I was allowed to apply out of time, but told I would have to wait until the criminal trials were complete before my claims would be assessed. The long delays by the Justice system meant that, after waiting two years, I was disadvantaged by the introduction of the Victims Rights and Support Act of 2013. Compensation for rape and domestic violence were heavily downgraded in the new legislation. Where I might have expected \$67,000 at most under the old scheme, I can expect less than \$20,000 at most under the new one.

When I consider my Justice journey so far, my feelings are mixed. On one hand, it has been a very positive experience. As someone who has spent significant

periods working in developing countries, I feel deeply blessed to live in a democracy where cases like mine are heard at all. I know how different it could be, having worked on a project in the Pacific region to prevent the spread of disease caused by rapes perpetrated by police themselves.

My interactions with individual police have been amazing. I wish that all victims of sexual assault could have their statements taken by officers as skilled and supportive as the ones who helped me. One positive outcome of reporting has been social. Certain people in my life have shown greater acceptance of my history now the police are involved. This is particularly true of my parents, who have only begun to understand the extent and seriousness of the abuse through their contact with police. Although this has been very painful, it has been a positive outcome for my family.

Another unexpected benefit of reporting has been a psychological. The act of telling the police about the assaults has a psychologically restorative power that cannot be replicated by counseling.

The counselor says, "Tell me what happened, so I can help you fix yourself." No matter how kindly it is said, the focus remains on the victim as the one with the problem.

In contrast, the detective says, "Tell me what happened, so I can stop the person who did this to you." After years of blame and shame for the victim, the assailant is finally identified as the one with the problem. It is a profound, liberating difference. Every victim of crime should experience it.

Despite these positive outcomes, my justice journey has been fraught with difficulty. Many times I have found it hard to judge whether the promised cure is better or worse than the disease.

Although individuals within the justice system have done their best to help me, the system itself has treated me with reckless indifference. It has exposed me to punishing delays, which still require ongoing pressure from outsiders to resolve. It has reactivated a dangerous mental illness that was previously well controlled. And, because the DPP represents the Crown but not the victim, for a short while it seemed I would be obliged to represent myself in court if I wished to block the subpoena of artifacts of my intimate life of dubious relevance to one of the cases. When I finally give evidence, the current adversarial system will allow a stranger to, metaphorically, kick my shattered knee repeatedly while demanding to know why I cannot run like everyone else. And, in the end, none of these difficulties inevitably lead to the denunciation or punishment of my assailants or a safer community. It might all be for nothing.

I do not regret my decision to report the crimes against me and participate in the Justice system, but I am loath to recommend it to anyone else. I would also find it very difficult to encourage any parent to expose their wounded child to it. I believe in justice, but I believe in suicide prevention even more.

When I finished my second statement to police I went to three different friends, each of whom had a separate and tragic history of sexual violence. I told each

friend that I had met a wonderful police officer that might be able to help her too. Each refused my offer and, years later, I see why.

In summary, my justice journey has taken four years so far, and is still long from over. Despite a number of positive outcomes, my experience stands as a grim warning to other victims of child sexual abuse planning to make a complaint. The significant psychological gains I made early in the process have come at great cost. It is too soon for me to tell whether the process has been worth the pain.

Do current sentencing options for CSA offenders remain effective?

Before I comment on current sentencing options for perpetrators of child sexual assault, I would like to challenge the term "remain" in the Committee's terms of reference. To me, the term "remain" implies that current sentencing options are effective, needing only a tweak or two to stay relevant in the future. I do not believe this is true. In my view, significant change is required before New South Wales can make a genuine claim that its sentencing practices are effective.

Given my history of sexual assault in childhood, one might assume that my main goal in the justice system is to see a crushing sentence of imprisonment handed down to each of my assailants. This is not the case. I do not want my assailants to be treated unjustly, or have their rights abused, for two reasons.

Firstly, I do not want vengeance, which is a slow poison. In turning away from vengeance, I shield myself from corruption and harm. Secondly, I have had direct experience with prisoners through my career, from juvenile detainees and drug offenders to forced migrants. These experiences in Australia, Asia and the Pacific have convinced me that imprisonment is only appropriate as a last resort.

In general, I believe there should be fewer incarcerations, not more. Most crimes should be dealt with in community. However, in the case of child sexual assault, I believe a different approach is needed. Imprisonment is the most severe sanction available to NSW courts. Its use in cases of child sexual assault underlines the severity of the crime. I believe that current sentencing in NSW is frequently inadequate. Too many times, the sentence diminishes the gravity of the offence and denies the devastation it has wrecked on the victim.

Last year I read a newspaper articleⁱⁱ, reporting that a young NSW woman had launched a civil claim of punitive damages against her father after he admitted to repeatedly raping her. A criminal trial had found him guilty. He had been released with a good behaviour bond and an order to attend a program for men guilty of incest.

Explaining why the victim is suing for damages, her lawyer said, "She is doing this because she can't get justice anywhere else."

To me, this sentence responds to incestuous rape as if it were a traffic offence. In handing down deficient sentences of this sort, the courts send a strong message to all child victims of sexual violence, especially those contemplating making a complaint to police. The message is:

"Go home and die of shame. We do not care what happens to you."

On its' websites, the justice system has a lot to say about preserving the law from disrepute. Yet sentences like these do more to damage the law's reputation in the eyes of victims of child sexual assault than any other action. Even as a teenager, I remember reports of lenient sentences or rapes dismissed on strange technicalities. Each example reinforced what I already believed at the time: the law has no interest in protecting rape victims like me.

Without complainants, sexual assaults cannot be prosecuted. Victims' complaints are not just cries for help. They are also gifts, given at considerable cost, to help build a safer society. When victims decide not to complain about their own suffering in the wake of deficient sentencing, they send a silent, but equally powerful, message back to the Justice system. The message is:

"Fool me once, shame on you. Fool me twice, shame on me."

What good is exposing oneself to the purgatory of investigation and trial for outcomes as mean as these? Many times I have heard judges defend their decisions in the media by saying victims do not understand the law. They are wrong. We may not understand all the technicalities, but we understand the Justice system's indifference to us only too well.

What measures could make current sentencing more effective?

1. Use the laws we already have:

Even in the early 1980's, the sexual assault of a child carried a maximum sentence of 10 years imprisonment.ⁱⁱⁱ A later amendment to the Crimes Act makes the persistent sexual abuse of a child punishable by up to 25 years imprisonment.^{iv} Judges should have the latitude to use these severe penalties, especially in cases where there were multiple victims, the abuse was persistent or the child was under the authority of their assailant (e.g. parent, teacher, minister of religion)

2. Be Consistent:

Although each case has its idiosyncrasies, it is wrong to sentence one person to a 25 year term for persistent incestuous rape while another is sentenced to a good behaviour bond. Consistency will send a clearer message to the community that child sexual assault is not tolerated.

3. Abolish suspended sentences for child sexual assault:

Research suggests that there is a higher likelihood of undetected reoffending by child sexual offenders than other criminals.^v This alone should point to the abolition of suspended sentences. However, the practice should also be abolished to help improve the reputation of the Justice system amongst all victims of child sexual assault and thereby contribute to improved reporting rates.

4. Put an end to myths in sentencing:

The sexual assault of children should not be trivialised by myths that persist in the minds of the community or the judiciary. For example, long delays in the reporting of child sex offences should be seen as a normal consequence of abuse rather than a sign of diminished harm.^{vi} Removing myths from sentencing may involve specialist training for judges, so that those hearing child sexual assault cases are qualified to do so.

5. Give scientific evidence a stronger role:

High quality, scientific studies that map the attitudes, behaviours, beliefs and physiology of child sex offenders should have a greater role in guiding sentencing. Even the most experienced judge cannot replicate the observational power that scientists gain from tracking the outcomes of thousands of individual cases over many years. Judges should have access to bench books, which contain up-to-date scientific evidence relevant to child sex offenders and their victims. Bench books should be maintained by the court in consultation with relevant agencies e.g. NSW Health, NSW Bureau of Crime Statistics and Research

6. Explore mandatory sentencing options:

For most crimes I oppose mandatory sentencing. Ideally, a judge should be able to tailor the sentence to the special circumstances of each case, so long as his or her discretion is exercised within the limits imposed by the expectations of society. However, if judges are not able to use current laws effectively, parliament should intervene. Even in the area of child sexual assault, I do not support mandatory sentences across the board. However, in cases of multiple victims, persistent abuse or assault under authority, mandatory sentences should be considered.

7. Explore lifetime parole as a sentencing option:

In general I am opposed to life sentences that preclude the possibility of review. However strong measures should be taken to protect the community from sex offenders who have attacked many children over many years, as [REDACTED] appears to have done. Lifetime parole, following a period of imprisonment, would restrict an offender's access to children permanently. It would align the law more appropriately with known scientific facts, which show that these crimes can be compulsive and recidivism is common amongst certain subsets of offenders.^{vii} Finally, lifetime parole would ensure that NSW takes permanent responsibility for the risk the offender presents globally. Lifetime parolees would not be able to gain access to children by moving to another state or country. They would not be able to engage in child sex tourism in countries with little capacity to prosecute such crimes. Lifetime parole should include the loss of the offender's passport.

8. Disregard certain mitigating factors:

In my view, the court should continue to disregard a number of issues when weighing mitigating factors in child sexual assault cases:

- a. **Consequences:** The social and financial consequences of conviction as a child sex offender (e.g. shame, loss of assets through civil action) should not mitigate the sentence
- b. **Good behaviour:** Good behaviour should not mitigate the sentence, as it is often part of the offender's *modus operandi*. The court should not confuse a talent for stealth with genuine goodness.

c. **Guilty Pleas:** Late guilty pleas, delivered on the steps of the courthouse, should not attract a big "discount" in sentencing. Early guilty pleas, that protect the victim from years of uncertainty, should have much greater weight as a mitigating factor.

d. **Plea bargaining:** Plea bargaining is an important tool to expedite cases and limit costs. The practice should continue. However, I believe limitations should be set on these negotiations in the case of child sex crimes. Bargaining should be not allowed to diminish or excuse serious assaults (e.g. disallow reference to a rape so that a conviction of indecent assault can be achieved easily). Bargaining should not deny the impact of serious crime on the victim.

9. **Consider treatment programs separately:**

Treatment programs for child sex offenders are a very important part of the response to these crimes. However, I do not think that treatment, even mandatory treatment, should be considered part of an offender's sentence. Although diversion to treatment has good results for some other crimes (e.g. property crime driven by drug dependence) diversion to treatment, by itself, is an inappropriate response to child sexual assault. In contrast, diversion may be appropriate for lesser charges of sexual misconduct against children e.g. indecent exposure.

10. **Decouple Victim Impact Statements from the sentencing process:**

The opportunity to make a victim impact statement (VIS) is very important to me. However, I believe changes are in order, both for the delivery of the statement by the victim, and its reception by the state. I describe the changes I would like to see in the VIS process in the next section of this submission.

In summary, as a victim of sex crime, I do not want my assailants to be treated unjustly. I do not wish for them to be subjected to a crushing sentence or have their rights abused. However, I do not want their crimes to be denied, diminished or excused either. Deficient sentences damage the courts' reputation in the eyes of victims of child sexual assault. This deters victims from making complaints, which would help protect them and society.

Strategies I suggest to improve current sentencing practices include: using current laws more effectively; improving consistency; abolishing suspended sentences; ignoring rape myths; giving scientific evidence a stronger role; considering mandatory sentencing and/or lifetime parole in certain cases; treating mitigating factors with greater caution; and decoupling victim impact statements from the sentencing process.

What could be achieved through alternative sentencing options?

I think alternative sentencing options should be approached with caution.

In general, I am a strong believer in restorative justice, particularly for juveniles. I also applaud institutions like the Drug Court, which acknowledge the social and medical complexities that can drive criminality in certain populations.

But when it comes to child sexual assault, alternative sentencing seems less like a genuine alternative and more like an admission of despair. I do not want to suggest alternative strategies simply because I have abandoned hope that the mainstream system will ever deliver justice to victims of child sexual assault.

Parenthetically, I believe the adversarial system is a cruel, flawed instrument for discovering the truth about child sexual assaults. The sooner New South Wales abandons an adversarial model in these cases, the better. It is my opinion that our state should adopt an inquisitorial model and establish a specialised Sex Crimes Court. Until that happens, however, I want the current system to take victims like me seriously. I do not want any victim shuttled off to a toothless alternative process because the mainstream system has thrown them in the "too hard" basket.

Therefore, my suggestions for alternative sentencing are accompanied by a plea that mainstream services do not use them to shirk their own responsibilities.

I suggest the adoption of three alternative practices that affect the sentencing of child sexual assault offenders:

1. Decouple Victim Impact Statements from the Sentencing Process:

The Victim Impact Statement is very important to me. I feel the VIS offers me a unique opportunity to speak in my own voice about the crimes I endured and explain how they have affected my life. The fact that it is delivered in front of the offender is only part of its power. It is also significant because it is public, formal and heard by a person in authority. The Victim Impact Statement is a ceremonial opportunity for the state to acknowledge my struggle as a victim.

Very often, child sexual assault damages the victim's social relationships and his or her identity as a valued citizen. By formally receiving the victim's statement, the court can do much to repair the rift that crime has created between the victim and the rest of society.

Sadly, only a tiny fraction of sex crime victims will ever have the opportunity to make a Victim Impact Statement. Current rules only allow a VIS to be made if the accused is found guilty, which means an estimated 92 per cent of complainants will never be permitted to make one.^{viii} Even then, the true power of the VIS is diluted by fears it will affect sentencing, despite research showing these fears to be unfounded.^{ix} In NSW, the VIS is subject to censorship by the prosecutor and cross-examination by the

defense. Under these conditions, the restorative power of the VIS is diminished.

I believe the VIS process is too important to victims to be limited to the rare instances where the accused is found guilty.

Instead, I suggest that the opportunity to make a Victim Impact Statement should be offered to every person who makes a sexual assault complaint, to be delivered at the end of his or her Justice journey. The vast majority of complaints never lead to charges.* For those complainants, the VIS should be delivered after police determine that no further action can be taken. For the rest, a VIS should be delivered after charges are dropped or after a trial ends.

Where a trial ends in a guilty verdict, victims should still be allowed to deliver a VIS in court as before. However, they and all other complainants should be also be able to give a "blind" VIS. That is, they should be invited to participate in a ceremony at the courthouse, where their VIS can be formally received, without the censorship and cross-examination seen in court. These ceremonies could be closed and/or subject to privilege (similar to the parliamentary privilege enjoyed by this inquiry) so that victims can speak without fear of accusations of libel or slander.

Although the offender would not be present at a blind VIS, I suggest that investigating police and/or the DPP solicitor should attend the ceremony, to give a brief summary of the investigation and/or trial. The Victim Impact Statement should then be received by a representative of the state, perhaps one with a status similar to that of a civil marriage celebrant. The process should be conducted with all the ceremony seen in the drawing up of a deed.

No matter where the justice journey ends, such ceremonies would acknowledge the victim's struggle, reaffirm the community's abhorrence of sex crimes and help to repair the rifts these crimes cause.

2. Allow judges to rule on civil liability in criminal trials:

This is not a suggestion for sentencing as such, since civil consequences are separate from the criminal sentence. However, given the barriers to remedy victims face in our Justice system, I feel this suggestion is important to bring to the Committee's attention.

Currently, the civil and criminal aspects of child sexual assault are heard in different courts. This is waste of resources. In addition, the private costs of civil proceedings act as an insurmountable barrier to civil remedy for the overwhelming majority of complainants, myself included.

The burden of proof in criminal cases much higher than that expected in civil cases. This being so, I suggest that judges presiding in criminal cases be permitted to rule on the defendant's civil liabilities at the end of the

trial, while the jury rules on their criminal liability. If the judge in a criminal trial finds that the test for civil liability has been met, he or she should be able to refer the case to a civil court to assess the quantum of damages. A full second trial would not be required.

This innovation to the current system would offer victims a much greater chance of remedy than a criminal trial alone, given that the rates of criminal conviction for child sexual assault remain so low.

For those who argue that the roles of the two separate courts cannot be combined, I draw attention to an existing precedent. In the past, equity and common law matters were once heard in separate courts in NSW. These two branches of the law can now be heard in the same court.

If rulings on civil and criminal liability cannot be combined during the trial, then I suggest that the prosecution, following the conclusion of criminal proceedings, be permitted to bring applications for compensation on behalf of victims without the victims needing to resort to civil proceedings.

Regardless of the method, the justice system needs to change to offer victims a greater opportunity for remedy.

3. Anti-androgenic medications need a lot more research:

What little I know about neuropsychophysiology suggests that it is too big an assumption to blame androgens as the sole physical cause of sex offending. However intuitive it may appear, I doubt this assumption is borne out by rigorous scientific evidence. I also doubt whether this link is equally demonstrated in different classes of sex offenders (e.g. adults, adolescents, psychotics, compulsives or pedophiles). A quick search for a recent comprehensive review of the scientific literature yielded this observation:

"The lack of credible studies of antiandrogen drugs is particularly striking given the prominence of "chemical castration" in public debates concerning the treatment of known perpetrators."^{xi}

Although it is not my field of expertise, I suspect that further research will reveal a more complex picture of the neuropsychophysiological drivers of sex offending. Androgens are, almost certainly, a piece of the puzzle rather than the full picture. It is my opinion that, given our current limited knowledge, antiandrogenic medications will offer a false sense of security to those using it to prevent re-offending by those who sexually assault children.

In addition, I do not believe that antiandrogenic medications should be imposed on sex offenders while there is scant evidence for their efficacy. The biochemical changes brought about by these medications are significant and affect more than just the sex drive. Other aspects of

personhood are influenced by androgens (e.g. will power). Antiandrogenic medications should never be used as a punishment, but rather as a medical intervention. If the court imposes such an intervention on a sex offender, it should do so with close reference to known scientific facts. Treatment should be governed by the same ethical constraints that protect all patients.

In summary, alternative sentencing options should not be an excuse for the mainstream justice system to shirk its responsibilities. Bearing this in mind, I recommend three changes to current sentencing practices.

Firstly, I suggest that all victims of child sexual assault should be given the option to give a Victim Impact Statement. "Blind" Victim Impact Statements could be delivered in a separate ceremony in those cases where the complaint does not lead to a charge, trial or guilty verdict. Secondly, I suggest that judges be permitted to rule on civil liability in criminal trials. Although this is not a sentencing matter per se, it offers victims much greater access to remedy than the current system. Finally, I suggest that more scientific evidence is required before anti-androgenic medications are used routinely with child sex offenders.

ⁱ Cutajar, MC et. al. (2010) 'Suicide and fatal drug overdose in child sexual abuse victims: a historical cohort study' *Medical Journal of Australia* 2010; 192 (4): 184-187.

ⁱⁱ NineMSN News (2013) "Rapist father says it's not his fault daughter is suicidal" Published: 15 July, 2013. Accessed: 22 February, 2014 at <http://news.ninemsn.com.au/national/2013/07/15/10/37/rapists-father-says-its-not-his-fault-daughter-s-suicidal>

ⁱⁱⁱ Crimes (Sexual Assault) Amendment Act, 1981. Accessed 1 June, 2010 at www.austlii.edu.au/au/legis/nsw/num_act/caaa1981n42351.pdf

^{iv} CRIMES ACT 1900 - SECT 66EA, NSW Consolidated Acts. Accessed 1 June, 2010 at www.austlii.edu.au/au/legis/nsw/consol_act/ca190082/s66ea.html

^v Clark, H (2007) 'Judging Rape: Public Attitudes and Sentencing.' Australian Centre for the Study of Sexual Assault Newsletter No. 14 June 2007. Accessed: 22 February 2014 at www.aifs.gov.au/acssa/pubs/newsletter/n14.html#judging

^{vi} Allnock, D (2010) 'Children and young people disclosing sexual abuse: An introduction to the research' Child Protection Research Department, National Society for the Prevention of Cruelty to Children Accessed on 22 February, 2014 at www.nhs.gov.uk/childprotection/research/children_disclosing_sexual_abuse_pdf_wdf75964.pdf

^{vii} Richards, K (2011) 'Misperceptions about child sex offenders' Trends and Issues in Crime and Criminal Justice No. 429. Canberra: Australian Institute of Criminology, September 2011. Published online at www.aic.gov.au/publications/current%20series/tandi/421-440/tandi429.html. Accessed 26 February, 2014.

^{viii} Shakel, R (2011) 'Victim impact statements in child sexual assault cases: a restorative role or restrained rhetoric?' *UNSW Law Journal* Vol 34(1). Accessed online at www.unswlawjournal.unsw.edu.au/issue/volume-34-no-1

^{ix} *ibid.*

^x Fitzgerald, J (2006) 'The Attrition of Sexual Offenses from the NSW Justice System.' Crime and Justice Bulletin No. 92, NSW Bureau of Crime Statistics and Research. January 2006, 5.

^{xi} Långström, N et. al. (2013) 'Preventing sexual abusers of children from reoffending: systematic review of medical and psychological interventions' British Medical Journal. Published online 2013 August 9. doi: [10.1136/bmj.f4630](https://doi.org/10.1136/bmj.f4630)