

**Submission
No 14**

SENTENCING OF CHILD SEXUAL ASSAULT OFFENDERS

Organisation: Scouts Australia NSW
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Scouts Australia (NSW)

Submission to the NSW Parliamentary Inquiry into
Sentencing of Child Sex Offenders

Scouts Australia (NSW)

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27 February 2014

Mr. Troy Grant
NSW Government
Chair, Joint Select Committee on sentencing of child sexual assault offenders
Parliament House
Macquarie St
Sydney NSW 2000

Dear Mr Grant,

Scouts Australia NSW is pleased to make the following submission to the NSW Government inquiry into sentencing of child sexual assault offenders.

Scouts works closely with law enforcement and child protection authorities to ensure that reporting policies and practices are vigilant, and have dedicated resources that actively support all law enforcement requirements.

Appropriate sentencing of convicted child sexual assault offenders is critical. Scouts Australia seeks an increase to the severity of penalties and sentences for child sexual assault offenders. Only through the quantum of the sentence issued by the courts, will the community redress this important element of our justice system, in recognition of the victims' suffering. It is essential that sentencing for sexual assault crimes and associated activities take into serious consideration the significant and lifetime impact on the victims and the community.

Scouts Australia NSW welcomes this inquiry and looks forward to contributing to the Committee's understanding of the issues in the future. We believe that Scouts have a significant and useful perspective on this issue and would be pleased to appear before the committee.

Please contact my office directly on (02) 9735 9030 to coordinate your requirements.

Kind regards



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Chief Executive
Scouts Australia NSW



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Scouts Australia NSW (Scouts) welcomes the New South Wales Government's decision to inquire into whether sentences applied to child sex offenders are effective.

We will assist the Inquiry in carrying out this important task and make the following submission outlining some key issues we believe need to be taken into consideration in determining the State of NSW's sentencing of sex offenders in the future.

Scouts Australia NSW – the largest youth organisation for girls and boys

Scouts Australia is a family-based organisation that provides its 66,000 youth members, aged six to 25, with fun and challenging opportunities to grow and develop. Scouts has more than 15,000 active youth members in New South Wales.

As the biggest and most successful youth organisation in Australia, young men and women are involved from every community. Our members come from a wide variety of cultural and religious backgrounds, across the socio-economic spectrum and include individuals with intellectual or physical disabilities.

The aim of Scouting is to encourage the physical, intellectual, emotional, social, and spiritual development of young people, so they may play a constructive role in society as responsible citizens and as members of their local and international communities. This is achieved through a series of strong and active non-formal education programs that inspire young people to do their best and to always be prepared.

Our volunteer leaders are generally parents of youth members. We have training teams responsible for delivering modern and accredited training for all our Leaders. Leader training is provided through the Scout Association Institute of Training which has Registered Training Organisation (RTO) status.

As a part of the broad community, we have sadly had occasion to deal with child abuse instances, and we will do anything in our power to eradicate this from our communities and protect young people. Scouts Australia NSW works closely with NSW Police, NSW Community Services, the NSW Office of the Children's Guardian and the NSW Ombudsman to ensure we are doing all we can to protect young people.

Scouts Australia NSW relies heavily on the Police and then the Justice system to remove offenders from our community. Our families and members must have confidence in the justice system in order to encourage reporting when an instance of abuse occurs.

If sentencing is inappropriate or lenient, it undermines actions made by victims and increases the trauma experienced by victims and their families.

We therefore make this submission to outline our concerns and engage with the Government of NSW to establish a more appropriate sentencing regime.

Scouting in Australia operates through a federated model. In each State and Territory, Scouting is organised through a separate body; in most cases it is incorporated by statute. This submission is made on behalf of Scouts Australia NSW.

Identifying offenders and preventing their participation in youth activities

Any case of child sexual abuse is one too many. Australian community groups must ensure that abusers are identified, prevented from having contact with children and immediately reported to the police.

In order to assist organisations prevent child abusers coming into contact with children, strong sentencing helps to identify offenders. A significant custodial sentence also helps to define the severity of their crimes for all in the community to plainly see.

Child Safety

The safety and wellbeing of the 15,000 boys, girls, young women and men who are participating in Scouting in NSW is our number one priority.

As a thriving, modern organisation, we strive to be vigilant in identifying and eradicating child abuse. Scouts has zero tolerance for abuse of any kind - physical, verbal, emotional or sexual abuse of its Members. We have a number of practices and policies in place to avoid criminal abuse of children.

If any concerns of such allegations are made, we deal with them by reporting such allegations to the police and suspending any Leaders in respect of whom such allegations are made. Scouts requires all adults applying to join the Association to satisfy Working with Children Check (WWCC) arrangements; consent to a Police Check as well as undertake a suitability interview by a local community committee. Referees must also be provided.

Reporting allegations of abuse to NSW Police

It is Scouts Australia NSW's child protection policy to report all allegations of child abuse to NSW Police. Scouts Australia NSW also works with NSW Community Services, the NSW Office of the Children's Guardian, the NSW Ombudsman and other relevant authorities to address child protection concerns.

Due to the legal process, Scouts does not conduct investigations (unless the legal process has no interest in the matter) or prosecutions. It is proper that these are handled by the police and crown prosecutors. Scouts does not simply make a report to police. We request and encourage an ongoing interaction with the police in order to provide as much evidence and support for the investigation as possible. We also prepare witness statements for police where a relevant matter goes to trial.

The State Office of Scouts is often contacted directly by NSW Police for assistance in investigations they are conducting that pertain to a former Scout Member, even where the matter is unrelated to that member's involvement with our Association. We provide files, membership records, and contact details to assist police in their investigations.

However, this by-stander position does not mean that Scouts is not supporting the prosecution of these heinous offenders. The organisation will do everything possible to support the justice process and to also build our protection system for young people.

Reporting is the first step, and it depends on our support and response

Scouts believes that during the past two decades, it has become easier to encourage victims and their parents to report alleged instances of abuse, and to take action against suspected offenders.

However, there is still a long way to go to gain the confidence of victims that they will remain safe and be taken seriously by the Australian community and authorities. An example of this relates to a matter of child sexual abuse that occurred in the 1980s. It was reported to Scouts early in 2012. The victim was unwilling to report to the police because he had seen the process the victims had to face in court. He was not able to face such a process. Scouts did report the matter to police as soon as they received the report, but the victim weighed up the emotional cost of going to court against the potential outcome of a guilty verdict and sentence. The victim decided not to proceed at that time.

Examples such as this prove that it is hard for victims to report abuse. They find reporting, preparation for trial and the court process to be gruelling. So when victims do come forward and decide to report abuse and make a formal statement, and where that leads to the prosecution of an offender, it's unacceptable that the court imposes a slight reprimand or a written penalty. A custodial sentence should be expected, and that sentence should be based on the heinous nature of the crime and its long term physical and mental health outcomes.

At the moment, the Royal Commission into Institutional Responses to Child Sexual Abuse is helping to create a more comfortable environment for reporting and a greater acceptance by the broader community. As victims are feeling an impetus to come forward now, the sentencing regime must vindicate the stress and time of reporting. This responsibility can only be fulfilled by the NSW Government increasing sentences through NSW Legislation and the NSW Court system.

Scouts Australia NSW also wishes to discuss with the NSW Government a broader conversation about developing a supportive culture for reporting issues and incidents when they happen. This will help to have positive outcomes for the victims and the protection of other children.

We believe the Committee will be able to assist in this endeavour by enquiring into the current sentencing policies, legislation and practices.

Encouraging reporting

Scouts and our community expect a much stronger message from the courts about this type of crime. Not only for the victims who have been so courageous in coming forward, but also to the police and supporters whose tremendous efforts are involved during a case.

Scouts works closely with the victim and have on many occasions been one of the first people the victim has reported their horrific experience to. This experience gives us real insight into how difficult it is for victims to make the report.

In these cases there is often extreme difficulty obtaining court-quality evidence in matters between a manipulative adult and a young child where there is rarely an independent witness. This often means that the perpetrators remain free to continue their unlawful practices, while leaving a trail of devastation for their victims.

The perpetrators also ruin the confidence and credibility of highly valuable community organisations such as schools and youth groups. The impact is far broader and deeper than is reflected by a 1 or 2 year sentence, or a black mark on a database record that may accompany a non-custodial sentence.

While many organisations have clear policies on reporting allegations of child sexual abuse to the police, the effectiveness of that policy is reduced if individuals do not see a clear benefit as a result of reports being made.

Victims and their families also attach a value to the outcome of the reporting process.

Is the offender removed or punished?

Does the action of the victim strongly impact the offender?

Does the process stop the offences being committed against other potential victims?

The reporting and court case process may have an enormous impact on the victim, and yet may seem to have little impact on the offender. This makes the process seem pointless.

In those cases where a guilty verdict is achieved, a strong custodial sentence clearly provides valuable symbolic and actual benefits to the victim and the community.

Purpose of custodial sentencing for sex offenders in crimes involving children

Scouts understands that there are generally seven purposes of sentencing and that there are recommendations to revise these along the lines of:

- 1) ensure that the offender is punished for the offence and is held accountable for his or her actions,
- 2) denounce the conduct of the offender,
- 3) recognise the harm done to the victim of the crime and the community,
- 4) protect the community from the offender,
- 5) deter the offender and others from committing offences,
- 6) promote the rehabilitation of the offender, and
- 7) reduce crime. ¹

¹ PXV Law Reform Commission Report 139 July 2013

Scouts' believes that purposes 1-4 are the most important in a case of this nature.

- 1) The offender should be accountable: In crimes of this nature it is often the victim who personally takes the blame or the guilt. Strong sentencing may assist the victim, and the wider community, to see that the offender was the responsible person.
- 2) Denounce the conduct of the offender: A strong custodial sentence serves to mark the record of the offender and help ensure that they are restricted from participating in youth activities in the future. There can be no question of the severity of the crime.
- 3) Recognise the harm done: The current Royal Commission has stated that the long term repercussions of sexual crimes involving children is immense, and often understated. Justice Peter McClelland AM, head of the Royal Commission, stated that until he had participated in the victim interviews: "I didn't adequately appreciate, the devastating and long lasting affects which sexual abuse, however inflicted can have on an individual's life."
- 4) Protect the community: Removing the offender from the community, and then ensuring that their actions are clearly seen in criminal record databases across the country (preferably one national system), is crucial to the smooth running of youth based organisations.

According to a NSW Law Reform Commission Report², return to prison rates in NSW and other jurisdictions suggest that fulltime imprisonment does not work well to prevent reoffending. We would therefore urge the Committee to look for other, evidence-based means to prevent re-offending.

What length of custodial sentence?

If the Committee is to be seen as genuinely concerned with alleviating the impact of abuse that has already occurred, a review of sentencing laws for child abuse offenders must be made, with the intention of increasing the penalties.

We believe penalties should reflect the severity of the crime, and only a suitable examination of penalties for convicted child abusers can ensure that this is currently the case.

We understand that when imposing a sentence, the court must take into account factors such as: 3

- 1) the nature, circumstances and seriousness of the offence
- 2) the personal circumstances and vulnerability of any victim arising because of the victim's age,
- 3) occupation, relationship to the offender, disability or otherwise
- 4) the extent of any injury, emotional harm, loss or damage resulting from the offence significant risk or danger created by the offence, including any risk to national security
- 5) the offender's character, general background, offending history, age, and physical and mental condition (including any cognitive or mental health impairment)
- 6) the extent of the offender's remorse for the offence, taking into account, in particular, whether:

² Law Reform Commission Report 139 A July 2013 page 32

http://www.lawreform.lawlink.nsw.gov.au/agdbasev7wr/_assets/lrc/m731654110/report%20139.pdf

³ Pxxvi Law Reform Commission Report 139

- (i) the offender has provided evidence that he or she has accepted responsibility for his or her actions, and
 - (ii) the offender has acknowledged any injury, loss or damage caused by his or her actions or voluntarily made reparation for such injury, loss or damage (or both)
- 7) the offender's prospects of rehabilitation.

In relation to item 1, nature and seriousness: Scouts regards sex offences relating to children as especially serious, and far in excess of larceny, drug dealing, forgery or many other crimes.

In relation to item 2 about vulnerability of the victim: children are especially vulnerable and may be unable physically or psychologically to protect themselves in any way.

In relation to item 4 on extent of injury, loss and damage: the impact on physical and mental wellbeing of the victim and their lifelong implications for functioning in our community is often understated. At the same time as leaving a trail of devastation for their victims, the perpetrators also ruin the confidence and credibility of highly valuable community organisations such as schools and youth groups. The impact is far broader and deeper than is reflected by a mere, say, year-long sentence.

In relation to item 3 and item 6, offender's character: Scouts strongly support the NSW Law Reform recommendation that in sentencing for a child sexual offence, "good character or lack of previous convictions of an offender is not to be taken into account as a mitigating factor if the court is satisfied that the factor concerned was of assistance to the offender in the commission of the offence" The reason for this amendment is that, in cases of sexual offences against children, "good character" may be the critical factor that enabled the offence to be committed, or repeated".

In relation to item 8, remorse: we would caution the courts from accepting statements from offenders in regard to this. The offenders have often lied consistently and with a conviction which has deceived many of their colleagues and community neighbours, often over periods of decades.

An example from our experience: Steven Larkins

Scouts Australia NSW met with the NSW Attorney General on 31st August 2012 to request a Crown Case Review of the Larkins matter and appeal against the leniency of the sentence after a guilty finding.

In the Newcastle Local Court on 30 July 2012, Steven Larkins was sentenced to 22 months prison with 19 months to be served before parole after pleading guilty to four counts of possessing child pornography and forging a document relating to working with children checks. At the time he also pled guilty to 'aggravated indecent assault' (child sex abuse) against an 11 year old boy in 1992 and a 12 year old boy in 1997. It is outrageous that he was not given a custodial sentence for the crime of aggravated indecent assault – only a three year good behaviour bond.

The aggravated indecent assault charge related to incidents reported to Scouts Australia NSW in 2000 following which Larkins was suspended from Scouts. Scouts Australia NSW worked closely with the police at the time of the complaint in 2000 and then during the trial in 2012.

As the matter did not proceed to court at that time, and Larkins' also falsified Working with Children Checks, he continued to work with children until 2011. This matter was the subject of an extensive case study at the first hearing of the Royal Commission in 2013.

The senior leadership team in Scouts believe it was outrageous that a man who was finally convicted of 'aggravated indecent assault' was not sentenced to any gaol time for that matter.

It was gravely disappointing that no appeal was lodged by the NSW Crown and that a man who was convicted of aggravated sexual assault involving a child was not sentenced to a single day of gaol time for that particular crime. The NSW Government must act to ensure this never occurs again.

Scouts Australia NSW seeks an increase to the severity of penalties and sentences, where:

- 1) All members of the community need to have the highest level of confidence in the legal system with regard to the prosecution of perpetrators of child sex offences.

This confidence is eroded when offenders are found to be guilty, but are allowed to immediately return to the community where they have perpetrated these crimes without clear punishment or repercussion.

- 2) It is unacceptable that the NSW Court system imposes sentences of less than several years or even non-custodial sentences for sexual assaults against children.
- 3) It is unacceptable that a local court imposes different sentencing to a district court for the same type of offence.
- 4) There needs to be clear definition of the sentencing for offences committed today, regardless of the court in which the case is presented.
- 5) It is often confusing that offenders receive light sentences for crimes committed twenty years ago that no longer relate to community expectations of sentences today.
- 6) It is incredibly difficult to encourage people to report these types of crimes. It is almost impossible if the sanctions are slight, and the entire process can seem pointless. In this case, the suffering of the victim can be severely exacerbated
- 7) We have worked closely with the police in an open and helpful relationship. We also believe Police and other people working against sexual offenders receive reward and motivation when a conviction is achieved and custodial sentences are awarded.
- 8) Continue a broader conversation about how organisations can work with the NSW Government to develop a culture of reporting issues and incidents when they happen. This will help earlier detection and removal of offenders from children in the community.
- 9) To ensure that necessary improvements in both prevention and protection of children are considered, the Committee should investigate the current lack of consistency across the various Australian jurisdictions, as far as sentencing is concerned.

Clear, consistent and strong sentencing guidelines should help provide victims with greater confidence to report sexual abuse, and the serious penalties help to symbolise that the process has been 'worthwhile'.

Conclusion

Scouts Australia NSW seeks for the NSW Joint Parliamentary Select Committee's scrutiny of sentencing to lead to more consistent and appropriate penalties against recognised criminal offenders involving the abuse of children.

This may encourage and support victims to come forward to authorities.

It may remove offenders from contact and potential engagement with young people.

We look forward to a number of outcomes from the Committee, and the contemporaneous Royal Commission, which would address:

- Current lack of consistency across the various Australian jurisdictions;
- Current lack of centralised administrative and law-enforcement tools;
- Rules and processes governing investigations and reporting of abuse;
- Support for victims;
- Current sentencing standards for perpetrators of child abuse; and
- Organisations' and individuals' ability to participate in the process

Scouts Australia NSW would welcome further opportunities to discuss these issues within the current Joint Parliamentary Select Committee's process.

We await further notification and instruction as to the manner in which the Committee is going to proceed. All correspondence can be addressed to our State Head Office on:

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