

Sentencing Advisory Council

Views on maximum penalties for child sex offences

Response from the Victorian Women's Trust

The Victorian Women's Trust appreciates the opportunity to respond to the Sentencing Advisory Council's review into maximum penalties for sexual penetration with a child under 16. We agree with the sentiments expressed by the Sentencing Advisory Council's Chair Professor Arie Freiberg, that "it will be crucial for the Council to hear the range of views and opinions in the community".

The Women's Trust began in 1985 and is an independent body with a mandate to improve conditions for women living in Victoria, in practical and lasting ways.

As an advocate for women on key issues that affect their lives, we wish to make a couple of comments and recommendations in response to the Council seeking views on maximum penalties for child sex offences:

Disparities in penalties for rape and child sex offences

The most recent change to statutory maximum penalties for child sex offence has seen an increase from 20 years to 25 years for the offence of sexual penetration with a child under the age of 10 years. The significance of this change lies in its alignment of this particular child sex offence with that of rape – both attracting statutory maximum penalties of 25 years.

In fact, the aim of this change was to place this offence "on the same footing as rape."^[1] However, the maximum penalties associated with sexual offences of sexual penetration with a child between 10 and 16 years and of sexual penetration with a child between 10 and 16 years under the care, supervision or authority of the offender have remained static over the past 80 years, attracting maximum penalties of 10 and 15 years respectively.

Discrepancies in maximum penalties across child sex offences are significant when one considers the underlying assumptions inherent in these inconsistencies. In particular, the differences in maximum penalties across child sex offences seem to provide an evaluation or judgement about the varying seriousness of these offences. Current maximum penalties tend to evaluate sexual penetration of a child aged between 10 and 16 as significantly less serious than that committed against a child under 10 years, or over 16 years.

¹ Sentencing Advisory Council. (2009a). *Maximum penalties for sexual penetration with a child under 16: Consultation Paper*. Sentencing Advisory Council, Melbourne, p.5.

The implications of these kinds of assumptions are significant when one considers the extent of sexual violence perpetrated against children aged between 10 and 16 years. Of all the child sex offences, sexual penetration with a child aged between 10 and 16 years is the most common [2]. Therefore, strong responses to sex offences against children aged between 10 and 16 years are important in order to promote the significance and seriousness of these offences within the broader community.

Approaches to penalties for child sex offences

The issues discussed above are linked to the approaches in which statutory maximum penalties are typically based on. Of importance to this discussion is the notion of harm (relating to degree of physical and psychological injury caused by the act) and its impact on the evaluation of seriousness of offences [3]. The scaling of statutory maximum penalties in relation to child sex offences raises a number of questions when considering the degree of harm caused by such offences. For instance, how is the degree of harm assessed or determined for a child aged under 10 years compared with a child aged between 10 and 16 years? Specifically, on what basis are these differences in harms determined? These questions are crucial in the consideration of the seriousness of offences and corresponding penalties.

Age as an aggravating factor

The age of consent is an important component of the laws relating to rape and child sex offences in order to provide a level of protection, while allowing those deemed mature enough to consent to sexual penetration [4]. In saying this, the use of age as a factor in sentencing for child sex offences is problematic on a number of levels. Current difficulties exist in dealing with offences that span a substantial time period. For instance, these age distinctions appear irrelevant and inappropriate in the context of sexual abuse of a child that constitutes a continuing course of conduct spanning a number of years and ages [5].

Existing penalties for child sex offences tend to ignore persistent, continuing periods of abuse, instead opting to focus on distinct age groups and categories. Similarly, age distinctions present a 'clear cut' picture regarding the seriousness of child sex offences. As the New South Wales Sentencing Council states:

² Sentencing Advisory Council. (2009b). *Sentencing for sexual penetration offences: A statistical report*. Sentencing Advisory Council, Melbourne, p.17.

³ Sentencing Advisory Council. (2009a). *Maximum penalties for sexual penetration with a child under 16: Consultation Paper*. Sentencing Advisory Council, Melbourne, p.10.

⁴ Sentencing Advisory Council. (2009a). *Maximum penalties for sexual penetration with a child under 16: Consultation Paper*. Sentencing Advisory Council, Melbourne, p.4.

⁵ NSW Sentencing Council. (2008). *Penalties relating to sexual assault offences in New South Wales (Vol. 1)*. NSW Sentencing Council, Sydney, p.32.

“there is little justification for regarding a sexual assault of a child aged 10 years and 1 month as less serious than one involving a child aged 9 years and 11 months”[6] .

It is difficult to comprehend that the law in its current form can distinguish the seriousness of offences based on small age differences (for instance, in the example above, two months).

Reflection of community attitudes and expectations

Questions surround the ability of maximum penalties for the sexual penetration of a child between the age of 10 and 16 years to reflect current community attitudes and expectations. The fact that current penalties for these offences originated in 1928 places significant doubts on the consistency of these with current day attitudes regarding serious criminal behaviour. Along with the issues discussed above, the outdated nature of these penalties needs to be a key consideration.

Summary and Recommendations

- The current maximum sentencing laws for child sex offences are outdated.
- Age should not determine the severity of sentencing in sexual offences. The community requires uniformity in the severity of maximum sentencing for sex offences, regardless of age.
- To promote the significance and seriousness of child sex offences within the broader community, a strong response to sex offences against children aged between 10 and 16 years is critical. This response should be in line with the severity of maximum sentences for sexual offences.

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⁶ NSW Sentencing Council. (2008). *Penalties relating to sexual assault offences in New South Wales (Vol. 1)*. NSW Sentencing Council, Sydney, p.32-33.