

1. Introduction

The Victorian Women's Trust welcomes the opportunity to make a submission on issues arising from current sentencing guidelines in Victoria. While there is a raft of issues to be addressed in the Council's review, our particular interest in making this submission is to address Question 2 in the Council's Consultation paper: *Are there any issues with the current maximum penalties for any offences of concern, or any other offences?*

In 2009 the Victorian Women's Trust made a submission to the Council's review into maximum penalties for sexual penetration with a child under 16. In that submission we argued that a consistent maximum sentencing penalty of 25 years be applied to sexual offences involving children under 16. In light of this previous submission, we would once more like to advocate for consistency of maximum sentencing penalties for all children under 16 years of age.

For the past three decades of the Trust's work, we have recognised the serious and lasting harm to victims resulting from sexual abuse in all its forms. We consolidated our commitment to eliminating this harm in launching the Dugdale Trust for Women and Girls in 2013 which focuses on harm prevention and promoting leadership by men and women to address the roots causes of harm.

We believe that our suggestions in this submission would satisfy the Attorney General's request for sentencing mechanisms that promotes both consistency of approach in sentencing offenders and promotes public confidence in the criminal justice system.

The functions of a statutory maximum penalty

In the Council's 2009 Maximum Penalties for Sexual Penetration with a Child Under 16 Report it noted that the functions of a statutory maximum penalty:

- reflect the seriousness of the offence in relation to other criminal offences, and community perceptions regarding the seriousness of the offence; and
- serve as a general deterrent to potential offenders by indicating the highest punishment they will face if they commit that particular offence.ⁱ

2. Continuing disparities in penalties for rape and child sex offences

i. The seriousness of the offence in relation to other criminal offences

The Trust noted in our 2009 submission to the Council that the maximum penalty for the offence of sexual penetration with a child under the age of 10 is 25 years, changed to place this offence 'on the same footing as rape'.ⁱⁱ The recent increase the maximum penalty for the offence of sexual penetration with a child under the age of 12 to 25 years in the *Crime Act* is welcomed by the Trust.ⁱⁱⁱ

It is worthwhile to note that after the maximum penalty for the offence of sexual penetration with a child under 12 was increased to 25 years, there has been an increase in the average sentence imposed on offenders from 4 years and 1 month in 2009/10 to 4 years and 7 months in 2013/14.^{iv}

Currently, the maximum penalty of 10 years applies to both the offence of sexual penetration with a child between 12 and 16 years of age as well as the offence of an indecent act with a child under 16.

In contrast to sexual penetration with a child under 12, the average length of imprisonment term imposed on people sentenced for sexual penetration with a child aged 12 to 16 has decreased from 3 years and 1 month in 2009/10 to 2 years and 4 months in 2013/14.^v Similarly, the average length of imprisonment term imposed on people sentenced for an indecent act with a child under 16 has also decreased from 2 years and 1 month in 2009/10 to 1 year and 9 months in 2013/14.^{vi}

While the increase in average sentences for sexual penetration of a child under 12 has, as the Council predicted in 2009, only marginally increased the length of sentencing,^{vii} it represents an important message about both the seriousness of the offence and reflects community attitudes and expectations surrounding punishment for sexual offences (see section ii).

A sexual offence perpetrated against a child constitutes:

- the greatest violation of trust between the victim and the perpetrator,
- a violation of the victim's psychological and physical integrity during a pivotal life stage and transformative period of development,
- deep psychological harm which can last a lifetime, affecting the victim's cultural, social and emotional life as well as their ability to participate successfully in work and civic life.

Therefore, in order to reflect the horrific nature of the offence and the harm to the victim, the Trust submits that sexual offences should consistently attract a maximum penalty of 25 years, *regardless of the age of the victim*.

ii. Reflection on community attitudes and expectations regarding the seriousness of sexual offences

In 2012 the Council released a report on community attitudes towards offence seriousness. The report found that:

- 'participants were united in their views in a number of key areas, in particular that offences involving intentional death and serious injury, rape and child sexual offences are among the most serious offences',^{viii}
- 'Many participants, in talking about the harms inherent in these sexual offences, equated them to the harms in offences involving the intentional infliction of death or serious injury. Thus, many saw the impact of a sexual invasion on a person of such a young age as akin to a sort of 'death'. This was spoken about in terms of the harm and damage it could do to multiple aspects of the child's mental and emotional wellbeing as well as their future relationships',^{ix}
- 'Many participants expressed strong feelings, such as revulsion and disgust for such behaviour or made comments to the effect that they viewed these offences as significantly more severe compared with other offences',^x and,

- 'The age of the victim was relevant to many participants' assessments of the high level of offender culpability in these sexual offences. For some participants, this was because the behaviour constituted a breach of trust and an abuse of a position of authority by reason of the age of the young victim.'^{xi}

In January 2016, *The Age* reported 'shocking statistics' that 'men who rape children under 12 are less likely to be jailed in Victoria, and are being jailed for less time than those convicted of raping adults.'^{xii} The newspaper in this instance, gives a clear example of a contemporary understanding of the community attitudes towards child sex offence sentencing.

Consistency in maximum sentencing penalties of 25 years for sexual offences across all age groups would communicate clearly that:

- community attitudes consider that *all* sexual offences are extremely serious, with devastating and long-lasting effects on the wellbeing of the victims and,
- community attitudes consider that the seriousness of the offences is aligned with other crimes such as rape, intentional death and serious injury which attract maximum penalties of 20 years or more.

iii. Ability for maximum penalties to serve as a general deterrent to potential offenders by indicating the highest punishment they will face if they commit that particular offence

In its 2009 Report the Council noted that while 'it is difficult to quantify whether or not the maximum penalty for an offence has any deterrent effect...the maximum penalty may serve as a useful tool for those whose responsibility it is to provide community education programs as it may assist them to communicate more confidently the community's intolerance of such offences.'^{xiii}

In communicating the extreme seriousness with which the law and the community view sexual offences in recognition of harm to the victim, maximum penalties can do more than act as a deterrent to potential offenders. As the Council noted above, maximum penalties can potentially encourage increased harm prevention initiatives which focus on positive victim-centred outcomes. These could include increasing community education around sexual offences, improved service provision for victims and increased resources for offender rehabilitation programs.

3. Gendered nature of sexual offences and the need for culture change

Sexual offences involving children and adults are overwhelmingly committed by men. Aside from suffering physical and psychological scars, victims of sexual offences (and sometimes those who are responsible for them) can face stigma and criticism from society. This can impede their ability to be heard, feel that their claims have legitimacy, find appropriate professional help and recover from their assault.

Entrenched attitudes and culture which prioritises men's sexual needs over others, maintains their social, cultural and economic power, 'excuses' rape and downplays the harm caused to victims must be addressed and changed.

The Trust believes that the law plays a crucial role in signalling the seriousness of sexual offences and from this, educates the public about the unacceptability of attitudes which can contribute to sexual assault and rape. Focusing on harm prevention and minimisation in order to put the focus the myriad of negative outcomes of sexual offences on victims, is the ultimate goal of increases in maximum sentencing penalties.

4. Recommendations

- There needs to be consistency of maximum penalties for *all* sexual offences against children and adults.
- A stronger response for all crimes involving sexual offences against children aged 12 and 16 is critical. To promote the significance and seriousness of child sex offences within the broader community this response should be in line with the severity of maximum sentences for sexual offences, 25 years.
- In view of community attitudes towards the seriousness and harm to the victim resulting from sexual offences, the current sentencing practices towards victims of sexual offences, whether children or adults, should be reviewed. If found to be inadequate, courts should be required to give equal regard to the maximum penalty for an offence and current sentencing practice.

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5. Endnotes

ⁱ David, A & Close, L, 2009, Sexual Penetration with a Child Under 16 Report, Sentencing Advisory Council, Melbourne, p. 33.

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

ⁱⁱⁱ *Crimes Act 1958* (Vic) s 45(2)(a).

^{iv} Sentencing Advisory Council, 2015, *Sentencing Snapshot: Sentencing trends for sexual penetration of a child under 12 in the Higher Courts of Victoria*, no. 180, State Government of Victoria, Melbourne, p. 3 viewed 11 January 2016, <<https://www.sentencingcouncil.vic.gov.au/publications/sentencing-snapshots/180-sexual-penetration-child-under-12>>.

^v Sentencing Advisory Council 2015, *Sentencing Snapshot: Sentencing trends for sexual penetration of a child aged 12 to 16 in the Higher Courts of Victoria*, no. 181, State Government of Victoria, Melbourne, p. 3 viewed 11 January 2016, <<https://www.sentencingcouncil.vic.gov.au/publications/sentencing-snapshots/181-sexual-penetration-child-12-to-16>>.

^{vi} Sentencing Advisory Council 2015, *Sentencing Snapshot: Sentencing trends for indecent act with a child under 16 in the Higher Courts of Victoria*, no. 178, State Government of Victoria, Melbourne, p. 3 viewed 11 January 2016, <<https://www.sentencingcouncil.vic.gov.au/publications/sentencing-snapshots/178-indecent-act-child-under-16>>

^{vii} David, A & Close, L, 2009, Sexual Penetration with a Child Under 16 Report, Sentencing Advisory Council, Melbourne, p. xii.

VWT Submission to Victorian Sentencing Advisory Council's Sentencing Guidance Reference Consultations

^{viii} Sentencing Advisory Council 2012 , 'Community Attitudes to Offence Seriousness', Sentencing Advisory Council, Melbourne, p. 5, viewed 11 January 2016, < <https://www.sentencingcouncil.vic.gov.au/sites/default/files/publicationdocuments/Community%20Attitudes%20to%20Offence%20Seriousness.pdf>>.

^{ix} Sentencing Advisory Council 2012 , 'Community Attitudes to Offence Seriousness', Sentencing Advisory Council, Melbourne, p. 56, viewed 11 January 2016, < <https://www.sentencingcouncil.vic.gov.au/sites/default/files/publicationdocuments/Community%20Attitudes%20to%20Offence%20Seriousness.pdf>>.

^x Sentencing Advisory Council 2012 , 'Community Attitudes to Offence Seriousness', Sentencing Advisory Council, Melbourne, p. 55, viewed 11 January 2016, <<https://www.sentencingcouncil.vic.gov.au/sites/default/files/publicationdocuments/Community%20Attitudes%20to%20Offence%20Seriousness.pdf>>.

^{xi} Sentencing Advisory Council 2012 , 'Community Attitudes to Offence Seriousness', Sentencing Advisory Council, Melbourne, p. 55, viewed 11 January 2016, < <https://www.sentencingcouncil.vic.gov.au/sites/default/files/publicationdocuments/Community%20Attitudes%20to%20Offence%20Seriousness.pdf>>.

^{xii} Hall B 2016, 'Child rapists get less jail time', *The Age*, pp. 1-2.

^{xiii} David A & Close, L, 2009, Sexual Penetration with a Child Under 16 Report, Sentencing Advisory Council, Melbourne, p. 35-6.