

Analysis and Policy Paper on Sex Offending Changing Community Attitudes

Sexuality & Society

It is important to realise that 'sexuality' and 'abuse' are social terms. What is sexually 'appropriate' is time and culture dependent. What we deem appropriate now is different to that to which was deemed appropriate in previous times, and is different to what is thought to be appropriate in other parts of the world today. One should not take their current beliefs, or those offered by the popular majority, regarding sex and sexuality, to be inherently and universally 'correct'. The purpose of this section is to merely point out some historical and cross-cultural conceptions of sex and sexuality so as to illustrate this proposition.

We contend that there is a strong link between nudity and sexuality. This explains, in part, why those who merely expose themselves in public are stigmatised as having committed a 'sex' offence. Similarly, in 2001, editors of *Australian Women's Forum* were not allowed to include, in an educational story about women having vaginal plastic surgery, pictures of normal women's genitals (Hawkes 2004: 18).

It is quite likely that Christianity has influenced some of our attitudes towards sex. It was demanded of early Christians that they exercise vigilance of their body and its sensuality in both its inward and outward manifestations. The teaching of Christianity had established moral and physical dangers associated with any experience of pleasure from sex, and fostered both fear and guilt about using the body for pleasure (Hawkes 2004: 112). There is little doubt that in modern secular Australia, sex for pleasure is not something that one is taught to be fearful of, or guilty about. However, there does remain a strong view that sex should be between a man and woman who are in a relationship. This view is held despite the fact that in Australia there are 12 million visits to sex workers every year and 1.4 million phone calls to sex lines every month (Hawkes 2004: 21).

To emphasise the time and culturally contingent nature of sexuality in society, consider that in classical Greece, civil or moral laws did not view intergenerational sex as criminally abusive at all (Hawkes 2004: 31). Similarly, in the 17th century, sexual relations between men and adolescent boys were not considered to be serious crimes as compared to sodomy between adult males. This was because masculinity was preserved in the adult, as they were generally the active penetrator, and the younger boy the passive recipient.

Between 1660 and 1750, attitudes regarding intergenerational sexual relations began to change. This was caused, in part, by changing attitudes about young people. Formerly seen as miniature adults, they were now considered to be unformed innocents in need of protection and education

Aborigines would temporarily exchange wives as a gesture of friendship and goodwill, or be offered to visitors to a tribe or brave Chief. Interestingly, some report that women often initiated this process, enjoying the change.

Community Misconceptions: The Stereotypical Sex Offender

Sex offences and those persons who commit such offences generate incredible attention and revulsion by the public, the media, and the legal system (Simon 1999: 485). It is somewhat surprising, then, that the public's understanding of sex offending is based on fallacies and misconceptions.

Large-scale surveys of public opinion about crime and punishment have revealed the lack of accurate knowledge about the criminal justice system held by members of the public in Australia, United States, United Kingdom, Canada and New Zealand. Dr. Karen Gelb points out that such misconceptions are 'especially insidious in the case of sex offenders' (2007: 10). She states that the stereotypical view of the sex offender is 'a sexually deviant and sick stranger who cannot help but repeatedly attack the children he has sought out' (Gelb 2007: 1). The sexual offender is portrayed as having a pathological sexual orientation; fixed sexual proclivities; a sole specialisation in sex crimes; and a high level of future dangerousness (see Gelb 2007: 11; Simon 1999: 486).

As Morrison explains, the myths about sexual assault purport that 'it happens in dark alleyways, is perpetrated by 'sick' strangers, and is experienced by the very unfortunate few' (2007: 55). On the contrary, however, Simon says: 'the man is not the armed stranger jumping from the bushes. Instead, the man is a neighbor, an acquaintance, or a date. The man may have been offered a ride home or invited in. He does not have a weapon, and he acts alone' (1999: 500). In other words, the popular misconception fails to recognise the reality that 'normal males perpetrate most sexual violence and that most offenders are known to their victims' (Glaser 1991: 1, cited in Gelb 2007: 41).

Lievore suggests that sexual offences committed by *strangers* dominate the political and social discourse on sexual offending for the following reasons:

- Stranger violence is viewed by the community as more serious than violence between people known to each other;
- Strangers are often in the notorious category of persistent and visible sex offenders;
- Stranger attacks are more likely to be reported to police;
- These types of cases are more likely to attract sensationalist media attention (2004: 109-10, cited in Gelb 2007: 41).

Likewise, Simon refers to the fear of strangers as being partly caused by the sensationalist media attention given to stranger abduction/molestation (1999: 486). The negative effect of the media's emphasis on particular types of offences leads Simon to argue for newspapers and television programs to highlight the danger of *non-stranger* sex crimes by reporting them more frequently and downplaying the stranger crimes (1999: 530).

Stranger Danger Statistics

The Australian Bureau of Statistics reports that only 11 per cent of persons who reported to being a victim of sexual assault before the age of fifteen reported that abuse as being committed by a stranger. On the other hand, 45 per cent reported abuse by a relative, and 32 per cent reported abuse by an acquaintance, neighbour, or someone else known to them (Gelb 2007: 7).

In a study involving 182 sex offenders, 56.5 per cent reported that they lived with the victim at the time of the offence, and 36.9 per cent reported that they had known the child at the time of the offence. Only 6.5 per cent stated that the victim was a complete stranger (Wortley and Smallbone 2006, cited in Gelb 2007: 7).

These types of statistics are replicated internationally. Simon reports that fewer than 10 per cent of child molestations are committed by strangers in the United States (1999: 490). Rather, the majority of such offences are committed by fathers (20 per cent), step-fathers (29 per cent), other relatives (11 per cent), and acquaintances of the family (30 per cent).

Likewise, over 80 per cent of rapes and sexual assaults committed against adult victims are perpetrated by acquaintances (Simon 1999: 496).

Moreover, victims are less likely to report their victimisation if the offender is known to them (Gelb 2007: 7). As a result, these figures may in fact *overestimate* stranger offending.

Not only do most sexual offences occur in the context of pre-existing relationships, they are arguably more damaging to victims than those that are committed by strangers. Child sex offences committed in the realm of family life will often be for a longer duration and involve more extensive violations (see Simon 1999: 494).

Additionally, it is important for policy makers and community members alike to realise that not all sexual offending – particularly that committed within the family – is perpetrated by adults. In a recent report by the Australian Institute of Criminology, Grant *et al* (2009) cite research estimating that sexual abuse of children by *other children* – particularly brothers – constitutes between 40 and 90 per cent of intrafamilial abuse.

Characteristics of Sex Offenders¹

Classification of Sex Offenders

Before setting out the statistics that help describe ‘sex offenders’, it is useful to classify sex offences into three categories:

1. Rapists: sex offenders who commit crimes of sexual violence *against adults*.
2. Intra-familial child molesters: sex offenders who commit crimes of sexual violence *against children within their own families*
3. Extra-familial child molesters: sex offenders who commit crimes of sexual violence *against children who are not within their family group*.

‘Paedophile’ is inappropriate as a generic term to describe sex offenders who molest children. Paedophilia is a clinical definition ‘of a particular subset of individuals who display particular child molesting characteristics’ (Gelb 2007: 19). The use of

¹ Much of this information is sourced from Dr. Karen Gelb (2007) ‘Recidivism of Sex Offenders: Research Paper’ *Sentencing Advisory Council*. We are indebted to her comprehensive study on this topic and recommend that those interested read the paper in full. What follows is no more than a brief summary.

'paedophile' to describe all child molesters reinforces the inaccurate assumption that sex offenders are mentally ill.

Gender

1. The majority of sex offenders are men (see Gelb 2007: 13)

Age

2. On average, accused sex offenders are much older than *other offenders* but only slightly older than the *general population*.
3. In Australia, the average age for those sentenced for a principal offence of sexual assault is 39.6 (Gelb 2007: 14).
4. United States' research shows that a large proportion of adult sex offenders report that their sexual offending started during adolescence (cited in Gelb 2007: 16).
5. Recidivism is more likely among those persons who commence their offending behaviour at an early age (Gelb 2007: 17).
6. There are, however, divergent findings regarding juvenile sex offending, and more research is needed.

Prior Victimization

- Sex offenders tend to report having experienced sexual and physical abuse as children. This is particularly so in relation to child molesters (Gelb 2007: 17).
- Despite many sex offenders reporting prior victimisation, it should be acknowledged that *most* do not, and should not be viewed as an excuse for adult offending behaviour.
- Gelb (2007: 18) states that the significance of the findings is that they 'highlight the importance of early detection of, and intervention with, children who have experienced sexual and physical abuse.'

Serial Offending

- Contrary to the popular opinion that most sex offenders are 'repeat' or 'serial' offenders, the data show that the majority only commit one sex offence.
- In a Western Australia study, 83.9 per cent of sex offenders reported having only one victim (cited in Gelb 2007: 18).

Recidivism of Sex Offenders

Despite community and political attitudes towards the 'risk' that convicted sex offenders will re-offend, the Australian and international research illustrates that 'sex offenders typically have lower rates of recidivism than do other kinds of offender' (Gelb 2007: 21). For example, a 1995 study by the New South Wales Department of Corrective Services found that men who were imprisoned for sex offences had the lowest recidivism rate for any offence of all offender types at only 11 per cent (Gelb 2007: 22).

The international literature reveals that 'most serious violent and sexual criminals do not have previous convictions for violent or sexual offences and are not reconvicted for violent and sexual offending (Walker 1996, cited in Gelb 2007: 21-2).

Lievore (2004, cited in Edgely 2007: 367) reviewed recidivism studies from a number of countries and found the rate of recidivism to vary between 10 and 20 per cent.

Hanson and Bussiere (1998, cited in *ibid*) conducted a meta-analysis of research from six countries and found that 13.4 per cent of offenders sexually re-offended in the 4-5 year follow up period. Even in the studies with follow up periods of 15-20 years, the recidivism rate never exceeded 40 per cent.

Continuing Detention

State Parliaments have introduced legislation aimed at keeping sex offences in prison beyond their sentence by allowing the respective Attorney-Generals to apply to the Supreme Court of each state for an order that the prisoner's detention continue. Such legislation is supposed to provide a mechanism for dealing with offenders who have committed a serious sexual offence and, at the end of their sentence, are still considered to pose an unacceptable risk of re-offending.

Justice Action's position is that this type of legislation should be repealed. In our view, incarceration should only be employed following a lawful conviction for a specified past crime. In addition, the purposes of punishment – including community protection – are already included in the determination of original sentences under s 3A of the *Crimes (Sentencing Procedure) Act 1999* (NSW).

We believe the legislation offends the principle of proportionality as explained in *Chester v R* (1988) 165 CLR 611. The expiration of a sentence delivered in accordance with the principles and purposes of punishment in s 3A of the *Crimes (Sentencing Procedure) Act 1999* (NSW) discharges the requirement for proportionality (Edgely 2007: 362-3). As McClellan CJ at CL stated in *Attorney-General for the State of New South Wales v Winters* [2007 NSWSC 1071 at [48]:

Legislation which provides for the incarceration of an individual because of a concern that they may commit an offence in the future ... is at odds with the assumption that the penalty imposed by a sentencing judge, within the parameters of the legislation which provides for the offence, will adequately punish and also provide appropriately for the offender's rehabilitation.

We agree with the dissenting judgment of Kirby J in *Fardon v Attorney-General (Qld)* [2004] HCA 46. In that case, his Honour stated at [162]:

... by Australian constitutional law, punishment as such is reserved to the judiciary for breaches of the law. An order of imprisonment as punishment can therefore only be made by a court following proof of the commission of a criminal offence, established beyond reasonable doubt where the charge is contested, in a fair trial at which the accused is found guilty by an independent court of the offence charged. Here there has been no offence; no charge; no trial. Effectively, the presumption of innocence has been removed.

The Act is premised on the notion that future violent behaviour can be predicted. If such predictions cannot be made with reasonable certainty the protective foundation of the Act crumbles. The current tests for ascertaining the likelihood of future offending are neither sufficiently certain nor consistent to warrant the continuing detention of a person whom has served his or her sentence (see Edgely 2007; Keyzer & Cole 2009; Gelb 2007; *Attorney General for the State of New South Wales v Winters* [2007] NSWSC 1071 at [61] (McClellan CJ at CL); *Fardon v Attorney-General for the State of Queensland* (2004) 78 ALJR 1519 at [124]-[125] (Kirby J)).

Edgely (2007: 370) states that there are ‘valid reasons for concern about the reliability of the techniques’ used to assess risk of sex offenders re-offending. Some studies reveal that forensic psychologists are inaccurate nearly two-thirds (64 per cent) of the time (see Edgely 2007: 370). The dangers of using such techniques to justify continuing detention of offenders who have served their sentence has also been recognised in the industry:

Shea, a forensic psychiatrist, writes that ‘the proportion of erroneous judgments of dangerousness (by psychiatrists) is so uncomfortably high that no-one can fail to be depressed’ ...

The American Psychiatric Association and the Royal Australian and New Zealand College of Psychiatrists have also both concluded that predictions of dangerousness are too inaccurate for use in a forensic context (Edgely 2007: 370-1).

Reintegrating back into the Community: Vigilantism, Media & Public Registries

Due to the true nature of sex offending, Justice Action believes that the majority of sex offenders are best dealt *within* the community. We call for greater emphasis on maintaining the family unit and having sex offenders engage in programs and courses that involve their family in the process.

The risk of recidivism can be significantly reduced with appropriate support and supervision, including suitable housing. Keyzer and Coyle (2009: 27) state that the research indicates that housing placement and community support is necessary so as to maximise successful reintegration. In *Attorney General v Hansen* [2006] QSC 35, MacKenzie J said that:

The case for funding and providing physical facilities and human resources to allow for closely supervised reintegration of prisoners of this special class into the community, in the interests of improving the chances that they will not re-offend, seems very cogent.

Justice Action strongly opposes any variation of the American ‘Megan’s Law’ being introduced in Australia. In short, such laws ensure that procedures are in place to inform the public about sex offenders who live in close proximity. The rationale behind this type of legislation is that by notifying the community, community safety from sex offenders will be enhanced through awareness, education and vigilant surveillance (Levenson and Cotter 2005: 50). Notification methods often include press releases, flyers, phone calls, door-to-door contact, neighbourhood meetings, and Internet web sites (ibid).

Justice Action argues that the following reasons justify ‘Megan’s Law’ *not* being introduced in Australia:

- It is an emotionally driven response to sexual violence
- It provides a false sense of security to citizens
- It implies that most sex offenders are strangers
- It may increase the resistance of victims of family members or acquaintances (i.e. the majority of victims) from reporting their victimisation
- It is likely to increase the negative effects on the offender’s family
- It may lead to inadvertent identification of victims

- It is likely to exacerbate the offender's stressors such as isolation, depression, anxiety and lack of support, which may actually trigger recidivism
- May lead to vigilantism, which will often result in the offender having to relocate
- Knowledge of the prior conviction will affect employment prospects, even in careers which pose no risks

JA Mentoring was established to provide ex-prisoners with the ability to re-integrate into society with confidence. This involves a gradual process, requiring commitment and focus to establish themselves as genuine members of society. JA Mentoring provides, among other things, ex-prisoners with the support and resources to find safe and appropriate accommodation.

Victims of Sexual Assault: Focus on Children

Traditionally, accusations of sexual abuse made by children were viewed with aversion, generally interpreted as maliciousness or fantasy (Cossins, 2006; Eastwood, 2003; Kapardis, 2003; Glaser & Frosh, 1993; Doyle, 1994). In 1932, Ferenczi stated that he trusted his patients' reports to be the truth, but was ridiculed by his colleagues (Schetky, 1988). The myths regarding children (and women) have remained until relatively recently.

Doyle (1994: 2) explains that 'the advent of the sexual revolution of the 'Swinging Sixties' meant that people began to talk more freely about sexual matters.' This resulted in greater scope for opinion by paediatricians and child psychologists about sexuality (Doyle, 1994: 2; Schetky, 1988: 28) and improved media attention to child sexual abuse ('CSA') (Doyle, 1994; Glaser & Frosh, 1993; Green & Schetky, 1988). This has, in turn, provided the means for child and adult victims to speak out about their abuse, with less fear of being stigmatised, criticised or doubted (Doyle, 1994; Glaser & Frosh, 1993). Moreover – but perhaps closely related – the women's movement has been crucial in challenging accepted notions of sexuality, highlighting the sexual victimisation of both women and children (Glaser & Frosh, 1993: x). Schetky (1988: 29) summarises this increased recognition by stating:

Although child sexual abuse may not have changed much over the last few thousand years, what has changed is our attitude toward children and sexual abuse: our society has an increased intolerance for sexual abuse and a willingness to tackle the problem.

Although many victims of CSA grow up to be successful, healthy and happy, research suggests that it is nonetheless a significant stressor which increases the victim's chance of suffering from psychological problems either as a child or adult (Glaser & Frosh, 1993). The many possible effects of sexual abuse include: low self-esteem; self-punishment; nightmares and flashbacks; phobias and compulsions; depression; regression; poor sexual functioning; relationship problems; isolation; personality disorders; feelings of guilt; bedwetting; suicide; drug and alcohol addiction; and abuse of their own children (see Glaser & Frosh, 1993; Doyle, 1994; Green, 1988). Moreover, the nature of trauma caused by CSA is quite different from that caused by other experiences. This difference, Doyle (1994: 215-6) explains, is that most other traumas can be discussed with relative ease without shame or embarrassment.

They [other traumas] are the very experiences that constitute the plots of plays and books. Children who are war refugees, orphans or even physically and emotionally abused, such as Cinderella and David Copperfield, are likely to be shown sympathy and understanding. ... Little courage is required for a man to mention that his father died when he was seven years old. It demands enormous bravery to disclose that his father sodomized him (Doyle, 1994: 216).

As mentioned above, not all victims will develop the aforementioned problems. However, chances increase in relation to the duration and frequency of the abuse; and, for this reason, intervention is needed at the earliest possible time (Tsai *et al*, 1979, cited in Glaser & Frosh, 1993: 23).

Reluctance to disclose one's victimisation will often be a result of the grooming tactics of the abuser, which occur in a context of power inequality. The child may fear punishment by the abuser; rejection by the family; imprisonment or general loss of contact with the abuser; not being believed; and a general sense of shame, guilt and embarrassment (Glaser & Frosh, 1993; Doyle, 1994; Green & Schetky, 1988).

Arguably the most important issue facing victims of CSA revolves around their treatment by the criminal justice system – specifically the judiciary – and the resources implemented in response to such issues.

The first concern regards the credibility that a child has in the courtroom. Kapardis (2003) illustrates that the law has traditionally regarded child witnesses as inherently unreliable, evidenced by competency requirements and the need for corroboration. New South Wales has since abolished the corroboration requirement (Kapardis, 2003: 98), but there nonetheless remain many problems. It should be stated at the outset that it is a misconception that children's memories are inherently less accurate than adults (Doyle, 1994: 157; Kapardis, 2003). Although there is a positive correlation between age and memory, it does not increase after the age of 8 to 9 (Kapardis, 2003:104). In any event, '[b]y age 3, children's memories are remarkably accurate and enduring' (Fivush, 2002: 65, quoted in Kapardis, 2003: 105). In saying that, there is evidence to suggest that children who have suffered severe sexual abuse will make more omission errors in relation to 'abuse-relevant questions' (Kapardis, 2003: 107). The irony in this is that while defence lawyers will argue that memory failures and inconsistencies are indicative of the falsity of the allegation, it may in fact be *suggestive* of sexual abuse.

The main problem arises, however, with the *retrieval* of knowledge. Kapardis (2003: 105) states that:

... young preschoolers have limited general knowledge, limited retrieval structures and focus on routine and general information ... Consequently, even though they encode a great deal of information, they have difficulty retrieving it when interviewed and are thus vulnerable to the effects of multiple interviews.

Therefore, while children's memory provides them with the ability to answer specific questions relating to an event, inconsistencies will arise if they are asked multiple questions from different perspectives (Fivush *et al*, 1991, cited in Kapardis, 2003). This will be exploited by defence lawyers as indicative of the child's lack of credibility.

Throughout the investigation and the trial, the child will likely be asked for exact details regarding the times and places when the alleged abuse occurred. However, not only do children have conceptual difficulties with time (Doyle, 1994: 157), their desire to be helpful (rather than deceitful) may also generate inconsistencies in their account. Doyle (1994: 157) contends that while they may not remember peripheral or unimportant facts, the child may feel obliged to fabricate an answer. If such an answer is inconsistent with the account of other witnesses or their previous statements, then the credibility of the child is questioned.

The very nature of the adversarial system may result in ‘further trauma and abuse of the child’ (Eastwood, 2003: 1). The adversarial system is not designed to deal with the uniqueness of child sex offences compared to other crimes, in terms of the targeting and grooming practices of offenders *and* the evidentiary problems that arise from a victim/offender relationship that is based on an abuse of power. The adversarial system is about two competing parties and their representatives ‘battling’ for victory.

As a result, Grunseit (1991: 143) illustrates that:

It is therefore naive to expect kindness, latitude and consideration for so called “innocent” children. Children go into the ring on equal terms with everyone else and even though at the end of the battle the defending lawyer may regret the trauma suffered by the child involved in the case, the child will often emerge from the court sadder, more bruised and not greatly impressed by the adult world and the administration of justice.

In fact, one member of the QLD judiciary has been quoted as saying:

Their [children’s] rights have been invisible – they have been denied very basic rights ... the trial process is flawed for anybody, but for children it is not only flawed – it is cruel (quoted in Eastwood, 2003: 3).

The cross-examination is reported by CSA victims to be an exceptionally traumatic experience (Eastwood, 2003; Schetky, 1988: 170). It is clear that children’s linguistic ability is not the same as adults; and it is by no means as proficient as that of trained barristers. Consequently, defence lawyers often tactically use language to confuse and intimidate child complainants (Cossins, 2006; Grunseit, 1991; Eastwood, 2003). Cashmore and Trimboli (2005, cited in Cossins, 2006: 310) found defence lawyers to generally be ‘aggressive, sarcastic, or accusatory towards the child’. Eastwood (2003: 5) cites the following example as illustrative of such practices:

... the crying child was repeatedly shouted at and asked more than 30 times to describe the length, width and colour of the penis of the accused. She was forced to draw the penis “to scale” although she said she could not draw. The child was repeatedly subject to intimidating, misleading, confusing, annoying, harassing, offensive and repetitive cross-examination.

Section 41 of the *Evidence Act 1995* (NSW) provides that questioning must not be unduly annoying, harassing, intimidating, offensive oppressive or repetitive; but there appears to be much evidence to suggest that it is not enforced by trial judges (Eastwood, 2003; Cossins, 2006).

Moreover, notwithstanding the severe trauma involved in the court experience, CSA has quite low conviction rates. Due to the nature of sexual abuse, there are usually no witnesses who can corroborate the allegations of the child (Glaser & Frosh, 1993; Cossins, 2006; Grunseit, 1991); abusers very rarely admit their guilt (Glaser & Frosh, 1993: 134); and there is often no forensic evidence (Cossins, 2006: 305; Grunseit, 1991: 124). In light of the need to prove guilt beyond reasonable doubt, the ‘word against word’ scenario in most cases makes prosecution very difficult.

An Alternative Approach: Reintegrated Offenders, Supported Victims, and Safer Communities

There is an urgent need to educate the community as to the *realities* of sex offending. Two areas require particular attention:

7. The emphasis on ‘stranger danger’ must give way to greater recognition to the true nature of sexual offending. We must recognise, for instance, the ‘normal’ father who is repeatedly and systematically sexually abusing his children in the ‘safety’ of their own bedroom. *This* is the person committing 90 per cent of the abuse against children. *This* is the person police and politicians should be targeting if they truly care about the safety of our children.
8. Communities must be informed as to the statistics on sex offending so as to dispel the misconception that those who have been convicted of a sex offence are inherently risky.

Justice Action proposes that sex offences be dealt with in a specialised court, more akin to the Family Court or Drug Court. The court would focus on the medical and psychological needs of both perpetrators and victims so as to substantially reduce the incidence of such offending. Such a court could also address the issues of intergenerational trauma (stolen generation, war trauma, previous abuse) so that the present generation can be provided with programs to address their own behaviour. Without this we will not break the cycle of abuse and re-offending. Reducing neutralization and increasing the capacity of the offender to take greater responsibility is essential to break this cycle.

If the goals of intervention (the cessation of abuse, protection from future abuse, recovery from the abuse, and rehabilitation of the abuser) can be achieved by means that avoid the trauma of an adversarial court experience, such an approach should be preferred.

Not only would such an approach avoid the negative encounters experienced by victims throughout the trial, but also the negative effects of a conviction for victims. Glaser and Frosh (1993: 131) suggest that punishment of the abuser – particularly imprisonment – can cause the child to experience extreme guilt and familial rejection. More importantly, an understanding of the possible consequences of conviction may dissuade victims from reporting their victimisation in the first place.

Accordingly, the proposed court would be characterised by non-adversarial procedures, which aim to encourage mediation and restorative justice. To this extent, the court would be staffed not only by lawyers, but also by counsellors, clinical

psychologists, and forensic psychiatrists. In addition, a close working relationship should be developed between the court and other community agencies such as Centrelink and the Housing Department.

Hearing these matters in a closed court best serves the interests of the offender and victim alike. There would be a general prohibition against identifying either victims or offenders. There is currently a prohibition against the identification of victims (including the publication of offenders' names where publication would identify victims) under s 578A of the *Crimes Act 1900* (NSW), and thus the legal change would be minor. Importantly, however, the change would assist in the reintegration of offenders into the community, which is crucial to the rehabilitation of the offender and the safety of the community.

The proposed court would have the following as its guiding objectives:

1. Promoting the welfare of the victim by providing the necessary medical or psychological help that they may require.
2. Promoting the welfare and stability of the family unit where the sex offence(s) occurred within the family. The family is to be provided with counselling and support, including measures aimed at preventing re-offending.
3. Treating the offender through appropriate measures – whether social, psychological, or behavioural. Objective three (3) and objective (2) should not be considered separate and distinct.
4. If the court finds it necessary to imprison the offender, the following principles should apply:
 - The person should be afforded the opportunity to engage in appropriate programs based on behavioural change;
 - Recognition that community safety necessitates emphasis being placed on the offender's successful reintegration into the community;
 - Post release supervision should include the Circle of Accountability program.