

NSW Sentencing Council
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Sent by email: sentencingcouncil@agd.nsw.gov.au

Dear Council Members

Submission – Review of sentencing for murder and manslaughter

New South Wales has a brutal history. It began as a penal colony, when the cat and nine tails and the hangman's noose were commonly imposed, but notwithstanding the tough penalties, the authorities still had power to exercise discretion. Convicts who possessed useful skills or a record of good behaviour were often freed and allowed to become useful members of the colony.

My great, great, great grandmother Mary Anne Young who came to Sydney as an 'Irish bride', fatally stabbed her husband Edward Young in Gulgong in 1872, after he horse whipped her in a public street. The trial judge accepted her guilty plea and committed her for trial on a charge of manslaughter, rather than murder. After serving six months in Darlinghurst Gaol, she changed her name to Edith and brought up her 11 children alone.

Hers was not in the worst category of murder, she clearly had the sympathy of the townsfolk, and she was willing to pay for her crime. However Mary Anne might have been hanged and her children orphaned, if the judge had been bound by mandatory sentencing.

The last execution in New South Wales was carried out on 24 August 1939, when John Trevor Kelly was hanged at Sydney's Long Bay Correctional Centre. The death sentence was then replaced with life, but judges retained discretionary powers on sentencing. Those powers were removed in 2011 in NSW when truth in sentencing was introduced and judges' hands were tied. I believe this is wrong. We need to trust the judiciary to have the wisdom and experience to set appropriate prison terms.

We have ended hanging and flogging but the incarceration of offenders without any prospect of release is cruel and unnecessary punishment in many cases. The absence of a parole date removes all hope and incentive from lifers, some of whom do not pose a threat to society and live out their final years on the outside.

I am writing as an ordinary citizen to ask you to scrap the mandatory truth in sentencing law that requires judges to impose life sentences for murder. NSW is the only state in Australia, which prevents judges from setting a parole date for convicted murderers. This is an anomaly. It goes against the principles of justice respected elsewhere in Australia and in comparable societies throughout the world. If we regard ourselves as a progressive society we need to return the discretionary powers to our judges.

Thank you for the opportunity to put my views

Carlotta McIntosh

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