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Terms of Reference

The Sentencing Council is to review the sentencing for the offences of murder and manslaughter under sections 19A, 19B and 24 of the *Crimes Act 1900* (NSW), in particular:

- the standard non-parole periods for murder and whether they should be increased; and
- the sentences imposed for domestic and family violence related homicides.

In undertaking this review, the Sentencing Council should consider:

- Sentences imposed for homicides and how these sentencing decisions compare with sentencing decisions in other Australian states and territories;
- The impact of sentencing decisions on the family members of homicide victims;
- The devastating impact of domestic and family violence on our community;
- The application of section 61 of the *Crimes (Sentencing Procedure) Act 1999* in the context of life sentences imposed for murder;
- The principles that courts apply when sentencing for these offences, including the sentencing principles applied in cases involving domestic and family violence; and
- Any other matter the Council considers relevant.

Position Statement

My name is Eileen Culleton. I am a resident of NSW and the sister of rape and murder victim Anne-Marie Culleton. Anne-Marie was raped and murdered on 23 February 1988 when Jonathan Bakewell, 26, broke into her flat in the middle of the night when she was sleeping. Anne-Marie was only 20.

The rape and murder occurred in the Northern Territory by Bakewell who was on the run from South Australia after breaching parole. Despite Bakewell receiving a life sentence with no parole for the rape and murder of my sister, the laws were changed and he was released in 2016 and is now living in South Australia.

However, given that Bakewell has crossed borders to kill before, and while on the run visited NSW, means that women in NSW are not safe from this dangerous offender. It is also important to be aware that Bakewell has previously applied to move to NSW, unsuccessfully because I protested to the authorities.

Since his release in 2016 Bakewell has breached his parole four times for drug taking – the very drugs he took the night he raped and murdered my sister – yet the SA Parole Board keep releasing him. I am living in perpetual fear that he may rape and murder again.

Over the 31 years since my sister's rape and murder, I have experienced the impact of the whole spectrum of judicial decisions – from justice being served with the original sentence of life without parole, to justice being ripped away with a law change to enable parole, to the offender's appeals all the way to the High Court of Australia to get his non-parole period reduced, his release on parole, breaching parole four times, my unsuccessful fight to have his parole revoked and his latest release for the fifth time on parole in October 2019. Even if Bakewell's parole is finally revoked, I face a lifetime of fighting, because he can reapply for parole every 12 months.

My Preliminary Submission to this Murder and Manslaughter Sentencing Review and my Submission to this Consultation Paper is informed by my 31 years of experience as a victim family member impacted by the judicial system.

It is informed by my aim that no other victim family member will have to suffer what my family have suffered, and to prevent the ongoing suffering of other rape and murder victim family members.

It is informed by my aim to prevent more victims of rape and murder.

And it informed by the fact that rehabilitation of rapist murderers is not guaranteed.

I am calling for the crime of rape and murder to receive a mandatory life sentence with no parole.

It is my position that society needs a zero-tolerance policy toward rapist murderers and this should be reflected in sentencing. These murderers should never get a second chance to rape and murder another person again.

I am also calling for rape and murder to be a stand alone crime to reflect its gravity and to enable specific mandatory sentencing.

A mandatory life sentence without parole for the crime of rape and murder will serve to recognise the life lost of the victim of the crime and the lifelong harm inflicted on their loved ones.

The sentence will also recognise the harm to the community of having a woman raped and murdered in their midst.

Rape and murder is a gender crime which strikes fear into the hearts of all women in the community.

We have a national crisis of violence against women.

- 1 in 5 women in Australia are sexually assaulted.¹
- One woman a week is murdered.²
- We don't have statistics for the rape and murder of women because the government doesn't collect them - because rape and murder is not a specific crime. It needs to be.
- One in four women don't feel safe walking the streets in their local area alone at night³
- One in four women don't feel safe waiting for public transport after dark⁴
- One in 10 women don't feel safe home alone at night⁵

The Personal Safety Australia 2016 survey with statistics above was undertaken before the rape and murder of Aiiia Maasarwe in January 2019 and Eurydice Dixon in June 2019 - crimes which shocked and outraged the nation and have made women feel even more unsafe.

As the men and women of Australia have clearly demonstrated through their outrage and nationwide public vigils in response to the rape and murder of Aiiia Maasarwe, Eurydice Dixon and Jill Meagher, we have a national crisis.

When women don't feel safe walking the streets at night, we have a national crisis.

When women don't feel safe being alone at home at night, we have a national crisis.

Strong sentencing for the crime of rape and murder will send a strong message in society and help to reduce all violent crimes against women.

A mandatory life sentence with no parole for the crime of rape and murder meets the sentencing purposes of just punishment, crime prevention, community protection, community condemnation, making the offender accountable and recognising the harm done to the victim and their loved ones as well as the community.

Mandatory life sentencing without parole for rapist murderers will also ensure certainty, equality and consistency of sentencing, which are key pillars for ensuring public confidence in the justice system.

The mood of the community towards the crime of the rape and murder of women is also striking anger. This is evident by the Australia wide vigils, including across NSW, for victims Aiiia Maasarwe, Eurydice Dixon and Jill Meagher.

1

<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4906.0~2016~Main%20Features~Key%20Findings~1>

2 <https://www.ourwatch.org.au/understanding-violence/facts-and-figures>

3

<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4906.0~2016~Main%20Features~Feelings%20of%20General%20Safety~10005>

4

<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4906.0~2016~Main%20Features~Feelings%20of%20General%20Safety~10005>

5

<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4906.0~2016~Main%20Features~Feelings%20of%20General%20Safety~10005>

Here in NSW, community anger over parole applications and the release of rapist murderers also demonstrates community attitudes towards releasing these dangerous offenders. For example a petition to refuse parole for child rapist and murderer Neville Towner, who in 1989 raped and murdered 4 year old Lauren Hickson, was signed by over 150,000 people and was described as the largest petition of its kind. Towner died suddenly in June 2018 just prior to his parole hearing.

The petition to keep Michael Guider behind bars reached over 200,000 signatures yet he was released in September 2019.

This is why I have also called for mandatory life sentencing without parole for child rapist murderers. So that the Michael Guider's of this world do not get a second chance to rape and murder another child.

And so that the child victim family members should not have to fight the rapist murderer's parole release and face the dire consequences when unsuccessful. It should not be up to the murder victim family to fight to keep the community safe.

Keeping our community safe is the role of our government and police, supported by the rule of law.

I commend the NSW government for their national leadership in calling for this murder and manslaughter sentencing review and hope the NSW Sentencing Council and the government will be strong and set a precedent Australia wide in addressing the crime of rape and murder which is a scourge on our society and ongoing risk to women's safety and sense of safety.

While it is not my platform, I have also called for life sentencing with no parole for domestic violence related murders. A key reason for this is the national crisis we have with domestic violence murders. One woman a week is murdered in this country in domestic violence situations. Millions of dollars is being spent nationally on programs to address this issue, yet weak sentencing is undermining the message. Strong sentencing will reinforce society's condemnation of this crime and act as a powerful deterrent.

3. Sentencing principles that apply in cases of murder and manslaughter

Question 3.1: Life sentences for murder

Are the existing principles that relate to imposing life sentences for murder appropriate? Why or why not?

Some relevant general principles

3.23 A court may impose a life sentence even though the offender: has pleaded guilty (because the law acknowledges that some crimes can “so offend the public interest” that the maximum sentence without any discount for a guilty plea is appropriate)

I agree with this principle that a court may impose a life sentence even though the offender has pleaded guilty.

This is important in the crime of rape and murder because the perpetrators can plead guilty purely for the purpose of getting a “discount”.

A case in point is that of Jaymes Todd who raped and murdered Eurydice Dixon in a Melbourne Park in June 2018. In the sentencing remarks it was revealed that Jaymes Todd only confessed to the murder in the police interview once it was made clear to him that he would be subjected to DNA testing.

“30 The interview was then suspended at 12.55am, in order for the police to prepare documentation in relation to a request for forensic procedures from you. Detective Sergeant Millar remained in the interview room with you. He explained to you the forensic process which would be undertaken, and which included a full examination to record your injuries, as well as comparing your DNA sample with those taken from the crime scene. At that point, you responded, ‘Don’t worry about the DNA, I did it, I will tell you everything’.”⁶

However, Jaymes Todd then proceeded to fabricate stories trying to minimise his involvement in the crime before finally admitting to each of the offences.

Todd did plead guilty to those offences [section 96] and he did receive a discount from the judge.

“127 As I have already stated, I have taken into account, as a mitigating circumstance in your favour, the fact that you have pleaded guilty. [Section 6AAA](#) of the [Sentencing Act](#) requires me to state the sentence and the non-parole period which I would have imposed but for your plea of guilty. For the purpose of that provision, but for your plea of guilty, I would have imposed a sentence of life imprisonment, with a minimum non-parole period of 43 years.”⁷

I believe this 7 year discount should not have happened. I believe that Jaymes Todd should have received a true life sentence not a nominal one of 36 years. Jaymes Todd will be 55 when he is eligible for parole. Young enough to repeat his crimes.

⁶ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2019/585.html?context=1;query=Todd;mask_path=au/cases/vic/VSC

⁷ Ibid

Yet Todd is still appealing his sentence. His appeal was announced during the sentencing trial for Corey Hermann's rape and murder of Aiaa Maasarwe by the defence lawyer Tim Marsh who is acting for the offenders in both cases.⁸

It is also important to note that a guilty plea is often used by the defence as 'evidence of remorse' leading to a further discount in sentencing.

But this fake 'remorse' is demonstrated by the offender then appealing his sentence. True remorse involves accepting your punishment.

It is also important to bear in mind in relation to the crime of rape and murder, DNA evidence is so compelling in enabling the prosecution to prove guilt beyond reasonable doubt, that a guilty plea should not be given a discount.

⁸ <https://www.abc.net.au/news/2019-10-03/eurydice-dixon-rapist-and-killer-jaymes-todd-appeals-sentence/11570856>

3.23 A court may impose a life sentence even though the offender: has no previous criminal history (consistent with the principle that an offence can be so heinous as to justify disregarding subjective circumstances wholly or substantially)

I agree with this principle that a court may impose a life sentence even though the offender has no previous criminal history. This particularly applies to the crime of rape and murder.

It is my strong view that if a person has raped and murdered someone, they don't need to have a previous record in order to deserve a life sentence.

It is also important to note that given that 80% of sexual assaults go unreported⁹ the fact that the offender does not have a previous criminal record does not guarantee they have not raped before.

According to a Australian Bureau of Statistics (ABS) Personal Safety Survey 2016, the majority of women (9 out of 10) who were sexually assaulted did not contact the police (87% or 553,900).¹⁰

When you also consider that of those rapes that are reported, only a small percentage proceed to trial, and according to a recent ABC Report¹¹, a high number of cases are rejected by police or withdrawn by the victim, this also adds to the uncertainty about the offender's previous history.

According to sex offender recidivism statistics and sex offender profiling it is highly likely the rapist murderer has raped before but hasn't been convicted.¹²

9

https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/publications_archive/archive/violenceagainstwomen

10

<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4906.0~2016~Main%20Features~Key%20Findings~1>

¹¹ <https://www.abc.net.au/news/2020-01-28/how-police-are-failing-survivors-of-sexual-assault/11871364>

¹² <https://aic.gov.au/publications/archive/recidivism-of-sexual-offenders>

3.23 A court may impose a life sentence even though the offender: is a young adult

I agree with this principle that a court may impose a life sentence even though the offender is a young adult. This particularly applies to the crime of rape and murder.

Two recent young adults convicted of the crime of rape and murder are Jaymes Todd who at 19 raped and murdered Eurydice Dixon who was 22 and Codey Herrmann, who at 20 raped and murdered Aiiia Maasarwe who was 21. These crimes occurred in Melbourne in 2019.

Aiiia Maasarwe's rapist murderer Codey Herrmann and Eurydice Dixon's rapist murderer Jaymes Todd will be in their early to mid 50's when they will be eligible for parole.

Given that life expectancy for men in Australia is now 80 years,¹³ being released in their 50's means they still have another 20 plus years - over a third of their life - to live in freedom.

Another 20 plus years to rape and murder again. Another 20 plus years that women in the community are at risk from a released rapist murderer fully capable of attacking again.

Meanwhile their victims, who were also in their 20's, lost their whole lives. Aiiia and Eurydice will never have the opportunity to fully live out their dreams, or to get married or to have children.

The victim families and loved ones have been given a life sentence of the agony of their loved one being taken from them in such a horrific way, combined with the real fear that the offender will be released to re-commit his crime.

As stated earlier, it is important to note that despite Jaymes Todd receiving a sentence in which he will be eligible for parole in his mid-fifties, he is still appealing his sentence for being too harsh. It beggars belief that Australia's criminal justice system today allows this corruption of true justice – all at the tax payers expense.

¹³ <https://www.aihw.gov.au/reports/australias-health/australias-health-2018/contents/indicators-of-australias-health/life-expectancy>

3.23 A court may impose a life sentence even though the offender: has some prospect of rehabilitation

I agree with this principle that a court may impose a life sentence even though the offender 'has some prospect of rehabilitation' though I strongly disagree with this statement of 'some prospect of rehabilitation' when it is applied to the crime of rape and murder.

There is no evidence that rehabilitation of rapist murderers is guaranteed.

In fact there is plenty of evidence that rehabilitation programs do not work when it comes to rapist murderers.

One prime example is rapist murderer Terrence Leary. 17-year-old Vanessa Hoson was asleep in her family home in Sydney in 1990 when Leary broke in, attacked and murdered her.¹⁴

Prior to his first parole release, Leary had been deemed a "model prisoner" who had 'ticked all the boxes' for his rehabilitation.

Then Attorney-General Greg Smith reported "Mr Leary completed programs to address his drug and alcohol issues and sex offending behaviour prior to his release on parole."¹⁵

He even completed a university degree in prison including a Bachelor of Arts studying sociology and anthropology.

Leary was released on parole despite the victim family's protests, and in 2013 tried to rape and stabbed a woman at a bus stop. The victim is only alive today because the police arrived on the scene in time to save her.

Yet, incredulously, Judge Syme, in sentencing Leary for his rape and knife attack on the women at the bus stop, still took into account Leary's rehabilitation programs in prison before his parole release - when evidently the prison rehabilitation programs did not work.

Even the Judge said Leary was still a danger to the community because no one could be sure he wouldn't suffer another outburst.

*"His unpredictability makes his management in the community a challenge,"¹⁶
Judge Syme said.*

"Not all forms of antisocial behaviour can be treated through therapy."

It is critical to note, if a so called "model prisoner" like Leary could repeat his crimes, this is clear evidence that sexual offending rehabilitation programs do not work. It is also evident that psychiatrists and psychologists who also have input to parole release applications cannot predict human behaviour.

It is important to bear in mind that no state correctional authority in Australia has undertaken studies of repeat offending of homicide offenders let alone rapist murderers. In a Centre for

¹⁴ <https://www.smh.com.au/national/nsw/terrence-leary-given-another-chance-for-parole-after-explosive-attack-20160329-gnsq8w.html>

¹⁵ <https://au.news.yahoo.com/murder-victims-sister-breaks-23-year-silence-17791130.html>

¹⁶ <https://www.smh.com.au/national/nsw/terrence-leary-given-another-chance-for-parole-after-explosive-attack-20160329-gnsq8w.html>

Criminology article “Counting the risk of murderers re-offending” by Roderic Broadhurst, Professor of Criminology and Ross Maller, Professor of Probability and Statistics at the Australian National University, the authors note that no state correctional authority has undertaken accurate studies of recidivism (repeat offending) of homicide offenders.¹⁷

Sex Offender Recidivism

The countless examples of sex offenders repeating their crime after being released from prison point to the fact that rehabilitation programs do not work.

In regard to the effectiveness of treatment of sex offenders a report prepared by the Australian Institute of Criminology for the Office of the Status of Women, “Recidivism of Sexual Assault Offenders: Rates, Risk Factors and Treatment Efficacy” found this to be questionable:

“While it is assumed that treatment will reduce the risk of sexual recidivism, the evidence is ambiguous. There have been few systematic evaluations of treatment programs and no definitive results regarding treatment efficacy.”¹⁸

ABC Journalist Jill Meagher’s rapist murderer Adrian Bayley is a prime example of a repeat violent sex offender who escalated to murder. Bayley had a long history of rapes spanning more than 20 years.

Bayley also admitted faking his way through a sex offenders program to get early release.¹⁹ This begs the question, how many other prisoners have faked their way through sex offenders programs?

There has also been little research on Australia sex offender recidivism rates. In the Australian Institute of Criminology report²⁰ one study of 402 prisoners found 27% were found to have at least one previous conviction for a sexual offence.

The Australian Institute of Criminology report also stated that sex offender recidivism rates are underestimated due to the lack of recorded data for this crime. One reason for this is that repeat sexual offenders may be identified for the principal offence for which they were convicted, which may not be the sexual offence.

Also, importantly, according to a Australian Bureau of Statistics (ABS) Personal Safety Survey 2016, the majority of women (9 out of 10) who were sexually assaulted did not contact the police (87% or 553,900).²¹

When you consider that of those rapes that are reported, only a small percentage proceed to trial, it makes estimating sex offending recidivism rates problematic.

What is clear from the existing evidence is that sex offender rehabilitation programs do not guarantee success. Hence why we need to err on the side of women’s safety. No risk to a woman’s life is an acceptable risk.

¹⁷ <https://criminology.research.southwales.ac.uk/cirn/research-projects/reoffending/>

¹⁸ Lievore D 2004. *Recidivism of sexual offenders: rates, risk factors and treatment efficacy*. Archive. Canberra: Australian Institute of Criminology. <https://aic.gov.au/publications/archive/recidivism-of-sexual-offenders> (Accessed 29 November 2019)

¹⁹ <https://www.abc.net.au/news/2015-03-26/adrian-bayleys-violent-history-of-sex-attacks/6349852>

²⁰ Lievore D 2004. *Recidivism of sexual offenders: rates, risk factors and treatment efficacy*. Archive. Canberra: Australian Institute of Criminology. <https://aic.gov.au/publications/archive/recidivism-of-sexual-offenders> (Accessed 29 November 2019)

²¹

<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4906.0~2016~Main%20Features~Key%20Findings~1>

An offender's future dangerousness

3.24 An offender's future dangerousness alone is not sufficient to bring a murder into the "worst case" category. However, the courts have identified it as being highly relevant when considering a life sentence.

I agree with this principle that an offender's future dangerousness is highly relevant when considering a life sentence. This particularly applies to the crime of rape and murder.

As I argued in 3.23, there is no evidence that rehabilitation of rapist murderers is guaranteed, therefore their future dangerousness to the community and the need to protect the community must be a primary purpose for imposing a life sentence.

No risk to the community is an acceptable risk.

Given that men in their 70's have been convicted for raping and murdering children, the life sentence for Andrew Garforth who raped and murdered nine year old Ebony Simpson in 1992 was the correct sentence to protect the community.

As stated in the 1994 criminal appeal to the High Court of Australia in which Garforth unsuccessfully attempted to get his sentence reduced:

*"There are some cases in which the circumstances of an offence on their own suggest the possibility of dangerousness. This is one of them."*²²

3.25 Future dangerousness cannot be given such weight as to result in a penalty that is disproportionate to the gravity of the offence. However, the Court of Criminal Appeal has observed that it can be used "to offset a potentially mitigating feature of the case, such as the offender's mental condition, which might otherwise have led to a reduction of penalty". The Court has also considered the possibility that "in the case of homicides involving a high degree of culpability", a life sentence might be justified if the offender will likely remain a danger to the community for the rest of their life.

I agree with the above statements, particularly in relation to homicides involving a high degree of culpability, which is the case with the crime of rape and murder. As argued earlier, rapist murderers remain a danger to the community for the rest of their life.

²² *Garforth v The Queen [1994] HCATrans 125*

**Using past sentences for guidance
3.30 and 3.31**

I strongly object to the principle of using past sentences for guidance in rape and murder cases because this is the prime reason why a life sentence for the term of the offender's natural life is not a realistic prospect for a rape and murder case today.

It is my strong view that this principle of using past sentences for guidance has led to the degradation of the judicial system and weak sentencing for the crime of rape and murder.

There is little chance today for the crime of rape and murder to receive a life sentence without parole

A life sentence for the term of the offender's natural life is not a realistic prospect for a rape and murder case today.

The recent sentencing in Victoria of Codey Herrmann in October 2019 for the rape and murder of Aii Maasarwe powerfully exemplifies this.

The judge, Elizabeth Hollingworth said the crime was not deemed to "warrant the imposition of the maximum penalties".

Yet this is, by any community standard, a horrific crime. It involved a man brutally raping and murdering a young woman walking down a public street. It involved the rapist murderer also setting fire to parts of her body in an attempt to destroy DNA evidence.

This rape and murder of Aii Maasarwe sparked an outpouring of public outrage, not just in Melbourne, but in vigils across the country including in NSW.

Yet the judge did not deem it to "warrant the imposition of maximum penalties".

The fact that Justice Hollingsworth made this judgement clearly demonstrates how broken our justice system is, and the depths of injustice to which our justice system has plummeted in relation to the crime of rape and murder.

Sentences for rape and murder are becoming progressively weaker due to current sentencing practices

Despite community outrage and Australia wide vigils this year and last year in response to the recent rape and murders of Aiiia Maasarwe and Eurydice Dixon, and the call for life sentencing, the prosecution did not call for a life sentence with no chance for a non-parole period.

Nor did the judges apply that sentence despite having the power to do so.

I believe this is due to the fact that the hands of the judges are tied by the practices of precedent and comparing sentences. So even if a judge did apply the maximum sentence of life without a chance of parole, it would be swiftly undone by the subsequent criminal appeal that would find that the judge "erred" in relation to practices of precedent, comparing sentences etc.

For instance Jaymes Todd did not even get the maximum sentence of life without parole²³ for his rape and murder of Eurydice Dixon – he will be 55 when he is eligible for parole - yet he is appealing. His appeal was announced during the sentencing trial for Corey Hermann's rape and murder of Aiiia Maasarwe by the defence lawyer Tim Marsh who is acting for the offenders in both cases.²⁴

Crimes of rape and murder are ranked according to a hierarchy of depravity

The current sentencing practice of comparing cases of rape and murder is perpetuating a spiralling degradation of justice as judges and lawyers rank the rape and murder of women according to a macabre hierarchy of depravity.

The crime of rape and murder is an inherently extreme, horrific, abhorrent, violating crime against women. It is a crime which should not be macabrely dissected and ranked.

Yet this is exactly what is going on in our courts today. Supreme Court Justice Elizabeth Hollingworth compared Aiiia Maasarwe's rape and murder with the recent rape and murder of Eurydice Dixon because that is 'current sentencing practice'. This involved the judge comparing key 'aggravating' and 'mitigating' circumstances of each rape and murder. For example the judge said:

"On the one hand, Mr Todd killed his victim with his bare hands, rather than a weapon. He also did not commit any aggravating act, such as setting fire to the body."

"On the other hand, unlike in this case, Mr Todd's offending involved substantial premeditation. He had had a long-standing sexual fantasy to rape and strangle to death a woman, for more than a year."

It was due to this 'ranking' process that the judge found, in relation to the rape and murder of Aiiia Maasarwe, "the case does not warrant the imposition of the maximum penalties."²⁵

To further illustrate my point and broaden the argument regarding current sentencing practices, consider the sentencing in February 2019 of mass murderer James Gargasoulas who murdered six people and seriously injured 27 others when he drove at high speed down the Bourke Street Mall in the Melbourne CBD mowing down pedestrians including a woman with two babies in a pram.

²³ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2019/585.html?context=1;query=Todd;mask_path=au/cases/vic/VSC

²⁴ <https://www.abc.net.au/news/2019-10-03/eurydice-dixon-rapist-and-killer-jaymes-todd-appeals-sentence/11570856>

²⁵ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC//2019/694.html>

Despite the crime being described by Justice Mark Weinberg as “one of the worst examples of mass murder in Australian history,” he did not deliver the maximum sentence of life without parole called for by the prosecution. Justice Weinberg said:

“Your counsel referred me to a number of cases where, it was said, murders that were individually more horrific than those of which you were convicted, had still resulted in the fixing of non-parole periods.”²⁶

If this mass murder did not warrant the maximum life sentence, what will? This judicial practice of precedent and comparing current sentencing practices has resulted in a broken justice system in relation to sentencing for crimes of murder.

This is why we need mandatory life sentencing for the crime of rape and murder.

And this is why the crime of rape and murder needs to be a specific offence.

²⁶ <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2019/87.html> p29

Question 3.2: Particular categories of murder victim

Are the existing principles and provisions that relate to sentencing for the killing of particular categories of victim appropriate? Why or why not? If not, what should change?

I believe two new categories need to be added:

- Rape and murder
- Rape and murder of a child

I believe both categories should carry a mandatory life sentence with no parole.

This would bring the crimes into alignment with the murder of a police officer which carries a mandatory life sentence for the term of the person's natural life. 19B (Mandatory Life Sentences for murder of police officers).

For example:

"19C (Mandatory Life Sentences for rape and murder)"

The sentencing act for this crime should also be framed in a similar way to 19B to ensure that as per section (2), (4) and (5), the life sentence is for the term of the person's natural life, it is mandatory and no other law or act can authorise a court to impose a lesser or alternative sentence:

"2) A [person](#) sentenced to imprisonment for life under this section is to serve the sentence for the term of the [person's](#) natural life.

(4) If this section requires a [person](#) to be sentenced to imprisonment for life, nothing in section 21 (or any other provision) of the [Crimes \(Sentencing Procedure\) Act 1999](#) or in any other Act or law authorises a [court](#) to impose a lesser or alternative sentence.

(5) Nothing in this section affects the obligation of a [court](#) to impose a sentence of imprisonment for life on a [person](#) convicted of murder in accordance with section 61 of the [Crimes \(Sentencing Procedure\) Act 1999](#)."

Question 3.3: Victim impact statements

Do the current provisions relating to victim impact statements in sentencing for homicide appropriately recognise the harms caused by murder and manslaughter? Why or why not? If not, what should change?

No I do not believe the current provisions relating to victim impact statements in sentencing for homicide appropriately recognise the harms caused by murder and manslaughter because many murder trials take place shortly after the offence, whereas the harm impacts on victim family members is life long.

As a murder victim family member who at 19 years old lost her 20 year old sister Anne-Marie Culleton when was raped and murdered in her flat in 1988, the harms I have suffered have been life long and will continue to be.

Over the 31 years since the murder, I have experienced the impact of the whole spectrum of judicial decisions – from justice being served with the original sentence of life without parole, to justice being ripped away with a law change to enable parole, to the offender’s appeals all the way to the High Court of Australia to get his non-parole period reduced, his release on parole, breaching parole four times, my unsuccessful fight to have his parole revoked and his latest release for the fifth time on parole in October 2019. Even if Bakewell’s parole is finally revoked, I face a lifetime of fighting, because he can reapply for parole every 12 months.

[The impact of having my sister raped and murdered](#)

To assist the Sentencing Council to understand the life long impacts of murder on family members, I feel it is important to share some of these impacts on my life.

My sister Anne-Marie Culleton had her life brutally cut short at 20 years old when she was raped and murdered in her flat in 1988.

In the last few weeks of Anne-Marie’s life, at 20 years old, she had reached a turning point of independence. She had a job, her drivers licence, a car and five weeks prior, she had moved out of home into her first flat. She had hopes and dreams that she was excited about.

When she came to my 19th birthday dinner, she was absolutely glowing. I’d never seen her so happy in her whole life. That’s the last time I saw her. Two weeks later she was dead. Raped and murdered in the middle of the night by a man who broke down her back door to attack her in her bed.

I was interstate, studying at university, when I received the devastating phone call that my sister Anne-Marie had been raped and murdered. In an instant I did not just lose my sister, I lost my youth, my future, my dreams, my idealism, my peace, my sense of security and my joy. I felt like the light had gone out of my world.

Anne-Marie’s rape and murder in her home at night is every woman’s worst nightmare.

I was traumatised, devastated and heavily weighed down by grief and the senselessness of it all. Anne-Marie was a beautiful, talented, 20 year old young woman with a bright future ahead of her. With dreams she never got to realise.

To think of the nature of her death causes me great anguish. This was made worse by seeing the police video re-enactment of Anne-Marie’s murder broadcast on television. It tortures me to think

about the terror and suffering that my sister endured at her death. I wish I could erase the images from my mind.

To this day, seeing cases of other rape and murder victims on the news never ceases to disturb me as it triggers memories of Anne-Marie's death and my heart goes out to the victims and their families, thinking of their pain.

As a result of Annemarie's murder, I also lost my sense of personal security and safety and suffered from post-traumatic stress. The fact that Anne-Marie was attacked in her home in the middle of the night meant that as a young woman I felt constantly vulnerable. I became anxious if I was at home alone, even during the day. I suffered nightmares and would often stay awake until dawn - then I would feel safe enough to sleep for a few hours. This went on for a number of years.

The trauma of Anne-Marie's murder also impacted my relationships. After finishing university I never returned to Darwin to live as I could not bear the memories, or the societal stigma, and it was hard to even go home to visit. My mother had moved to Palmerston and to visit her meant driving on the highway past the prison creating a painful reminder.

I made the decision that I would not become stigmatised as a 'victim of crime' and moved to Western Australia to create a new life where, apart from one close friend, no one knew me and what had happened. This move negatively impacted my family relationships and friendships. It also impacted new friendships because I kept my sister's rape and murder a secret. I did this because I didn't want to be defined or stigmatised by this tragedy.

I also did not want to run the risk of inflicting fear on my young female friends. I wanted them to sleep peacefully at night in their beds.

It also meant that I could never mention Anne-Marie. When people asked about family, I'd have to bend the truth and say I only have two sisters. On the anniversary of her death and on her birthday I'd always have an emotional meltdown and could never tell anyone why. Despite my friendly outgoing nature, I kept an emotional distance from people and became emotionally isolated.

In relation to the impact on my family, while I cannot speak for them, words cannot describe the anguish I felt to witness my mother's grief and ongoing heartbreak at losing her daughter so young and in such a horrific way. Mum passed away seven years ago.

[The positive impact of the offender receiving a life sentence with no parole](#)

Jonathan Bakewell's original life sentence with no parole was critical in enabling me to have a sense of justice being done for my sister, my family and the community.

It also gave me the peace of mind that the offender would never be free to rape and murder another woman again.

This justice and peace of mind was destroyed when the sentencing laws changed to allow parole and Bakewell had his life sentence reduced to 20 years non-parole and he was freed.

Impact of the injustice of law change to overturn life sentence without parole

As stated earlier, Bakewell's original sentence was for life without parole. However in 2004 the laws were changed in the Northern Territory to enable parole for life sentence prisoners.

I feel a great sense of injustice about this. My sister, my family and the community was robbed of justice with this law change and the subsequent release of Jonathan Bakewell.

Impact of Bakewell's numerous appeals to have his non-parole period reduced

This sense of injustice was further exacerbated by the number of appeals that Bakewell was allowed to fight to prevent his non-parole period being increased from 20 years to 25 years following the new legislation for murders involving rape.

This is despite the fact that Bakewell pleaded guilty to the rape at the time of sentencing and his sentence for the rape was 10 years, which he did not serve due to his head sentence being for life.

Bakewell had been transferred to a prison in South Australia and it was on this basis that he appealed, saying the laws of the Northern Territory no longer applied to him. In 2007 Bakewell appealed the NT Department of Public Prosecutions Application to the Supreme Court to increase his non-parole period from 20 years to 25 years following the new legislation for murders involving rape. When he lost his appeal, Bakewell then appealed all the way to the High Court of Australia.

These appeals attracted a great deal of publicity and public comment. It also meant the graphic details of my sister's rape and murder were accessible on the internet, despite the murder occurring before the internet existed, resulting in additional anguish for myself and my family.

After appealing all the way to the High Court of Australia Bakewell was successful and had his non-parole period reduced to just 20 years. So despite the fact that he raped and murdered my sister and was originally given a life sentence with no parole, his sentence was reduced to just 20 years and he didn't even serve time for the rape. Where is the justice in this?

To add insult to injury our family has had to suffer the injustice of having the appeal judges minimise the crime and effectively rewrite history. Judge Southwood in the first appeal stated in his opinion the murder was not serious and did not even warrant more than 20 years non-parole.

"...I would have determined that the relative seriousness of the crime of murder committed by Bakewell was not such as to require a longer non-parole period than 20 years." ²⁷

Judge Southwood 2007

Judge Southwood's comments are in total contradiction to those of sentencing Judge Kearney in 1989 who made the following remarks at sentencing:

"You displayed not a vestige of civilised humanity towards [Ms Culleton] when she was alive and you gained little credit in my eyes for your limited attempts to revive her later on.

²⁷ <http://www.supremecourt.nt.gov.au/archive/doc/judgements/2007/ntsc/20071016ntsc51.html>

Crimes such as the one you committed, Mr Bakewell, spread terror throughout the community, particularly amongst young women who live alone and who have to entrust their safety at night to the security of the locks of their doors. To such ordinary people, although you may not understand it, you are a figure of nightmare. They are entitled to look to the system of justice to protect them from such people as you and to demand a punishment which reflects their abhorrence of what you did.

In your case, the punishment laid down by law, is not a matter within my control, it is the punishment of imprisonment for life for the murder which you committed. I consider it is a punishment which in your case is fully warranted in every way and indeed represents the minimum punishment which a civilised society can rightly demand be imposed upon you.

In causing the death of this young woman you displayed such complete heartlessness and lack of any human compassion as to mark you out clearly from your fellow man. That you should be required by law to be condemned to prison for life reflects in part the community's horror at what you did and their legitimate and proper need that the risk which you present to the community be removed from the community for many years to come.

The punishment now inflicted upon you contains some small element of retribution for what you did, which society can properly demand be imposed on you both for her and for those people ... on whom you have brought untold grief.

As a person in prison for life, Mr Bakewell, you are not eligible to be considered for parole. You may, however, be considered for release at some future time if the executive decides that the prerogative of mercy should be extended to you. If and when that matter arises for consideration, many years will have rolled past. People alive today and vitally affected by these elements may have joined your victim in her grave and be unable, effectively, to express their view about your release. The memory of the authorities who may consider the question of your release may have faded [it maybe] that they can only gain their knowledge from the written record.

I think it is therefore important to state, as I now do, that despite your limited prior criminal record I regard you at this time as a highly dangerous person who represents an extreme risk to the ordinary members of the community and, as such, you are a person unfit to live freely in society at least for many many years to come.

Whether you should ever be permitted to live again as an ordinary member of society is something cannot now at this time be determined."

Judge Kearney 1989

Note that Judge Kearney said the sentence of life was:

"... a punishment which in your case is fully warranted in every way and indeed represents the minimum punishment which a civilised society can rightly demand be imposed upon you."

This example of appeal judges substituting the sentencing judges judgements and sentencing is exactly why we need mandatory life sentencing with no parole for rapist murderers.

Because appeal judges can re-sentence a prisoner many years later, based on their personal subjective view, which does not reflect the reality or gravity of the crime committed at the time. Nor do appeal judges take into account the impact of their judgements and comments and sentencing on the murder victim families.

What was also devastating is the way the victim is completely disregarded. When the appeal went all the way to the High Court of Australia, Anne-Marie Culleton's name is not mentioned nor are the details of her murder. It was stated:

*"It is not necessary to describe in any detail the facts which lead to the appellant being sentenced to life imprisonment."*²⁸

The High Court of Australia effectively airbrushed the crime. There was no focus whatsoever on delivering justice for the murdered victim, nor justice for the victim family, or the community.

The focus was on the offender, Bakewell's rights. And the reprehensible quibbling over points of law was extremely devastating and disheartening reading and has caused me to lose faith in the integrity of the justice system. In my view we don't have a justice system anymore - it's a legal system that has lost its moral compass and lost its justice compass.

And now, that the offender has been released on parole, and re-released back into the community for the fifth time, after four parole breaches for taking drugs – the same drugs he took the night he raped and murdered Anne-Marie, this is a legal system that has inflicted on me a life sentence of injustice and anguish.

²⁸ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2009/24.html?context=1;query=bakewell;mask_path=

Impact of parole release in traumatising the victim family

At the prospect of Bakewell's pending parole release, the PTSD that I suffered from initially after my sister's murder came back, but far worse. Because I am now living with a very real fear that this rapist murderer could strike again. So it's not just Post-Traumatic Stress Disorder that I am suffering from – its also Continuous Stress Disorder which is worse.

I did not fight Bakewell's parole release because I had no surviving family in Australia at the time to support me and I was suffering from the re-onset of PTSD at the prospect of his release.

Another reason why I did not fight parole was because I believed it to be a fait accompli. The SA Government had abolished the Executive Council which had vetoed his release for years and the Parole Board were now free to go ahead and release Bakewell. The parole board's intention to release Bakewell was made very clear back in 2007 when Bakewell was fighting appeals by the NT DPP to increase his non-parole period.²⁹

Because I didn't fight Bakewell's parole release, I was living with great angst and guilt and a feeling that if Bakewell rapes and murders again I would be partly responsible because I did not try to prevent his release. This is not a burden that any murder victim family member should have to shoulder. It should not be the responsibility of the victim family to fight for justice and to fight for community safety.

This angst was exacerbated by Bakewell's subsequent four breaches of parole for taking drugs – the same drugs he took the night he raped and murdered my sister. It was then that I realised I had to fight to have his parole revoked.

The problem is, that even if Bakewell's parole is revoked, I will have to fight the parole release battle for the rest of my life because he could be eligible to re-apply every 12 months as is the law in South Australia.

All over the country and here in NSW, victim families are facing a life sentence of fighting against the release of their loved one's rapist murderers. Notable NSW cases that involved petitions on Change.org and significant media publicity recently are:

- Michael Guider case – with over 200,000 signatures³⁰ 205,974 as at 3 Feb 2020. Unfortunately he was released in September 2019.
- Neville Towner case - reached over 150,000 signatures in June 2018³¹ before it was cancelled because Towner died in prison unexpectedly just prior to his parole hearing. At the time it was said to be the largest Change.org petition of its kind.

Fighting parole release is a cruel and intolerable burden on the victim families.

My proposed mandatory life sentencing without parole for rapist murderers will be vital for community safety and for justice and ending the parole battle nightmare for victim families.

²⁹ <http://www.supremecourt.nt.gov.au/archive/doc/judgements/2007/ntsc/20071016ntsc51.html>

³⁰ <https://www.change.org/p/stop-the-release-of-child-killers-who-won-t-provide-a-body-no-body-no-release>

³¹ <https://www.abc.net.au/news/2018-06-05/neville-towner-parole-application-over-lauren-hickson-murder/9837254>

This is why I have made this submission to call for mandatory life sentencing without parole for the crime of rape and murder. Because I do not want any more victim families to suffer the anguish and trauma that I am suffering:

- So murder victim families don't have to fight for justice
- So murder victim families don't have to fight for community safety
- So murder victim families don't have to be re-traumatised by having to constantly re-live the murder every parole review and fight parole.
- So murder victim families don't have to be re-traumatised by the thought of being responsible to prevent more murders.
- So murder victim families don't have to be re-traumatised by having to mount public media campaigns to fight parole release.

Impact of parole breaches in traumatising the victim family

Since being released on parole in September 2016, Bakewell has breached parole four times for taking drugs – the same drugs he took the night he raped and murdered Anne-Marie.

The South Australia Parole Board refused to revoke his parole and released him for the fifth time in October 2019.

After the second breach I became so alarmed, I realised I had no choice but to fight to have Bakewell's parole revoked. My alarm was amplified when I was doing research on him and discovered while reading his Police Interview that he had breached parole in 1987 and was on the run from South Australia when he raped and murdered my sister. And that while on the run he had travelled to NSW and QLD before arriving in the Northern Territory. This revelation made me realise no woman in Australia is safe from Bakewell.

In March 2019 I wrote to the South Australian Premier, Attorney General and Police and Correctional Services Minister, calling for urgent action.

In the meantime Bakewell breached parole again and in April 2019 he was sent back to custody. When my letters to the politicians were dismissed, with Bakewell's parole hearing scheduled for June 2019 I began a media campaign, speaking publicly for the first time in 31 years, first to the Sunday Mail³² and then to the radio, 5AW Breakfast³³.

I also contacted the Opposition and questions were asked in the SA Parliament of the Premier in July 2019³⁴.

Bakewell's parole hearing was deferred to October. In the meantime I was contacted by members of the public who had been in contact with him and were alarmed at his behaviours and had written to the parole board calling for his parole to be revoked. I made a 53 page submission to the parole board which I copied to the key politicians and others, calling for the revocation of Bakewell's parole and for an urgent review of the parole board.

In October I mounted another media campaign, speaking on the TV news for the first time.³⁵ Unfortunately my campaign was not successful, my pleas fell on deaf ears and Bakewell was released for the fifth time on 18 October 2019.

I am horrified about this and am convinced from the new information that I received during my campaign that Bakewell is just as dangerous today as he was the day he raped and murdered my sister.

The problem is, that even if Bakewell breaches again and his parole is revoked, I will have to fight the parole release battle for the rest of my life because he could be eligible to re-apply every 12 months

³² <https://www.adelaidenow.com.au/truecrimeaustralia/sister-of-annemarie-culleton-who-was-raped-and-murdered-in-1988-by-jonathon-bakewell-urges-parole-board-to-cancel-his-release/news-story/ac034390f9f68c9afc1c0138147717d9>

³³ <https://www.fiveaa.com.au/shows/david-and-will/Woman-s-Warning-As-Parole-Board-Considers-Releasing-Man-Who-Killed-Her-Sister>

³⁴ <https://twitter.com/EileenCulleton/status/1154320945189752832?s=20>

³⁵ https://7news.com.au/news/crime/convicted-murderer-and-rapist-jonathan-bakewell-to-walk-free-in-sa-c-508850?utm_campaign=share-icons&utm_source=facebook&utm_medium=social&tid=1571314920738&fbclid=IwAR3kWoCfKDFu0Gq1kdwy3bgu9Eh1B-ZvhyFJ_UtFbMzoaTsdo2BxOOMIAC

as is the law in South Australia. As stated earlier, here in NSW, victim families are facing a life sentence of fighting against the release of their loved one's rapist murderers.

Bakewell's Parole Breaches for drug taking

- Bakewell was released from prison on 8 September 2016 after serving 28 years for the rape and murder of Anne-Marie Culleton on 23 February 1988. The original sentence was life without parole.
- 4 July 2017 Bakewell's first breach - the Parole Board did not jail Bakewell and did not notify the victim family of the breach.
- 15 November 2017 he was jailed after his second breach (four and a half months)
- 25 September 2018 he was jailed after his third breach (for only 5 weeks).
- 26 April 2019 Bakewell was jailed after his fourth breach.
- 18 October 2019 Bakewell was released for the fifth time

Bakewell's long history of breaching parole and bail

- Bakewell's history of breaching parole and bail dates back to 1980.
- In 1980 Bakewell breached bail for the charge of robbery in company involving the assault of a woman. He went on the run interstate for 7 years. He lived and worked in Sydney.
- Bakewell also went overseas to New Zealand for 12 months before he was deported. I don't know why he was deported.
- In November 1987 he was released on parole in South Australia after finally serving jail time for the 1980 robbery in company charge.
- November 1987 he breached parole by leaving the state, going to NSW, QLD and the NT.
- Bakewell caught buses and hitchhiked through multiple states. In NSW he passed through Sydney and Taree. In Queensland he travelled up to Cairns. He then travelled to the Northern Territory to Darwin.
- 23 February 1988 there was a warrant out for his arrest for the parole breach and he was on the run interstate in Darwin when he raped and murdered Anne-Marie Culleton.
- After the murder Bakewell used false names and caught buses and hitchhiked from Darwin to Alice Springs where he was apprehended two hours before catching a bus to Adelaide.
- During questioning for Anne-Marie Culleton's murder Bakewell told police he had breached parole before and gotten away with it.

Question 3.4: Factors going to objective seriousness

Are the existing factors considered relevant to the objective seriousness of an offence of murder or manslaughter appropriate? Why or why not?

If not, what should change?

Should any other factors be taken into account when assessing the objective seriousness of a particular murder or manslaughter offence?

My answer pertains to the relevance of factors when assessing the objective seriousness of the crime of rape and murder.

The crime of rape and murder is an inherently grave, extreme, horrific, abhorrent, violating crime. Rape and murder is a crime of the highest objective seriousness in the eyes of the community and this is why it needs to be a specific offence to reflect its gravity and to enable specific sentencing.

Currently rapist murderers are sentenced for the murder and rape separately. This is the wrong way to characterise the crime and results in the rape and murder being macabrely dissected and ranked according to a hierarchy of objective seriousness.

I believe this practice is perpetuating a spiralling degradation of justice as judges and lawyers rank the rape and murder of women according to a macabre hierarchy of depravity.

This results in the crime as a whole being minimised and sends the wrong message to the community.

A case in point is the recent sentencing of Codey Herrmann who attacked, raped and murdered 21 year old international student Aiiia Maasarwe when she was walking home at night in Melbourne. In this horrific crime Herrmann attacked Ms Maasarwe with an iron bar, raped her, murdered her and set fire to parts of her body in an attempt to remove his DNA.

Yet Supreme Court Justice Elizabeth Hollingworth stated "the case does not warrant the imposition of the maximum penalties."

In reaching this conclusion the judge compared Codey Herrmann's rape and murder of Aiiia Maasarwe with Jaymes Todd's rape and murder of Eurydice Dixon because that is 'current sentencing practice'. This involved the judge comparing key 'aggravating' circumstances of each rape and murder. For example the judge said:

"On the one hand, Mr Todd killed his victim with his bare hands, rather than a weapon. He also did not commit any aggravating act, such as setting fire to the body."

"On the other hand, unlike in this case, Mr Todd's offending involved substantial premeditation. He had had a long-standing sexual fantasy to rape and strangle to death a woman, for more than a year."

It was due to this 'ranking' process that the judge found, in relation to the rape and murder of Aiiia Maasarwe, "the case does not warrant the imposition of the maximum penalties."³⁶

Meanwhile any reasonable person in the community would judge Aiiia's rape and murder as a horrific crime that should be sentenced the maximum penalty of life imprisonment. Men and women around the country, including in NSW held public vigils after the murder to express their horror and outrage. Even the Prime Minister Scott Morrison described the murder as "sickening".

³⁶ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC//2019/694.html>

“This was a disgusting crime. It is sickening this sort of violence against a woman was committed in Australia,” he said on Twitter.³⁷

To further illustrate my point and broaden the argument regarding the ranking of murders, consider the sentencing in February 2019 of mass murderer James Gargasoulas who murdered six people and seriously injured 27 others when he drove at high speed down the Bourke Street Mall in the Melbourne CBD mowing down pedestrians including a woman with two babies in a pram.

Despite the crime being described by Justice Mark Weinberg as “one of the worst examples of mass murder in Australian history,” he did not deliver the maximum sentence of life without parole called for by the prosecution. Justice Weinberg said:

“Your counsel referred me to a number of cases where, it was said, murders that were individually more horrific than those of which you were convicted, had still resulted in the fixing of non-parole periods.”³⁸

If this mass murder did not warrant the maximum life sentence, what will? This judicial practice of precedent and comparing current sentencing practices has resulted in a broken justice system in relation to sentencing for crimes of murder.

This is why we need the crime of rape and murder to be a specific offence and category and this is why it needs mandatory life sentencing.

This destructive practice of ranking the crime of rape and murder according to objective seriousness also applies to appeals. For instance a rape and murder 30 years ago, when brought up for appeal would then be reviewed in relations to ‘worst cases’ that have happened since then – which in NSW would include serial killer rape and murders such as the Ivan Milat backpacker murders. And the likely decision being made that the non-parole period should be reduced.

I have experienced the injustice of this practice in relation to subsequent appeals by my sister’s rapist murderer Jonathan Bakewell to get his non-parole period reduced. In 1989 when sentencing Bakewell to life without parole, the sentencing Judge Kearney described it as the most serious of crimes that warranted the sentence:

“Crimes such as the one you committed, Mr Bakewell, spread terror throughout the community, particularly amongst young women who live alone and who have to entrust their safety at night to the security of the locks of their doors. To such ordinary people, although you may not understand it, you are a figure of nightmare. They are entitled to look to the system of justice to protect them from such people as you and to demand a punishment which reflects their abhorrence of what you did.

In your case, the punishment laid down by law, is not a matter within my control, it is the punishment of imprisonment for life for the murder which you committed. I consider it is a punishment which in your case is fully warranted in every way and indeed represents the minimum punishment which a civilised society can rightly demand be imposed upon you.

In causing the death of this young woman you displayed such complete heartlessness and lack of any human compassion as to mark you out clearly from

³⁷ <https://www.theaustralian.com.au/nation/aiaa-maasarwes-killer-codey-herrmann-to-learn-his-fate/news-story/ca5ef154e25b206dfe7a0792f3762ad8>

³⁸ <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2019/87.html> p29

your fellow man. That you should be required by law to be condemned to prison for life reflects in part the community's horror at what you did and their legitimate and proper need that the risk which you present to the community be removed from the community for many years to come.

The punishment now inflicted upon you contains some small element of retribution for what you did, which society can properly demand be imposed on you both for her and for those people ... on whom you have brought untold grief.

As a person in prison for life, Mr Bakewell, you are not eligible to be considered for parole. You may, however, be considered for release at some future time if the executive decides that the prerogative of mercy should be extended to you. If and when that matter arises for consideration, many years will have rolled past. People alive today and vitally affected by these elements may have joined your victim in her grave and be unable, effectively, to express their view about your release. The memory of the authorities who may consider the question of your release may have faded [it maybe] that they can only gain their knowledge from the written record.

I think it is therefore important to state, as I now do, that despite your limited prior criminal record I regard you at this time as a highly dangerous person who represents an extreme risk to the ordinary members of the community and, as such, you are a person unfit to live freely in society at least for many many years to come.

Whether you should ever be permitted to live again as an ordinary member of society is something cannot now at this time be determined."

Judge Kearney 1989

The judge's sentiment was expressed in the community at the time. In a NT Parliamentary Debate on Wednesday 28 February 1990³⁹ regarding the murder and trial, it was agreed that the crime was 'particularly horrific'. The Chief Minister Mr Perron said:

"The crime which we have been discussing was particularly horrific. Fortunately, in my view, justice was done."

Another Minister, Mr Bell said:

"I remind the honourable members of the specific murder case involved. It was particularly horrific. It was a matter of deep concern that such a horrific crime should occur in Darwin. Reading some of the transcript of the case, I felt that the person convicted was somewhat less than human."

However in 2007, after the laws had changed to allow non-parole periods to be set and Bakewell was appealing the NT Department of Public Prosecutions Application to the Supreme Court to increase his non-parole period from 20 years to 25 years following the new legislation for murders involving rape, Judge Southwood minimised the seriousness of the murder. He made the following remarks:

³⁹ http://classic.austlii.edu.au/au/legis/nt/consol_act/paa227/notes.html

“...I would have determined that the relative seriousness of the crime of murder committed by Bakewell was not such as to require a longer non-parole period than 20 years.”⁴⁰

It appears from the appeal transcript that Judge Southwood re-tried the case based on “worst” category of cases that exist to date, outlining both aggravating and mitigating factors and his own personal subjective view.

“Having considered all of the objective and subjective factors referred to above and given what I consider to be appropriate weight to the sentencing purposes of punishment, denunciation and general and specific deterrence I would have determined that the relative seriousness of the crime of murder committed by Mr Bakewell was not such as to require a longer non-parole period than 20 years. Nor it the level of Mr Bakewell’s culpability such as to require the court to fix a non-parole period.”⁴¹

Use of a weapon

I believe the use of a weapon is not relevant to the crime of rape and murder because men don’t need to use a weapon to rape and murder a woman. Their body is a weapon.

What has our justice system come to when judges are giving a rapist murderer credit for not using weapons? In the case of my sister’s rapist murderer Jonathan Bakewell, the appeal judge Southwood gave Bakewell credit for not using a weapon other than a sheet:

“The objective seriousness of the offending is also qualified by the facts that apart from the piece of sheet no weapons were involved in the attack on Ms Culleton and the prisoner did not mutilate her body.”⁴²

Can you imagine how I felt as Anne-Marie’s sister reading that statement? Bakewell did not need a weapon. His brute strength was his weapon. Brute strength that enabled him to bash in her locked door. Brute strength that had him initially strangling her with his hands. Brute strength that enabled him to tear a sheet to use as a ligature to suffocate her to stop her screaming and fighting as he raped her.

Let’s not forget Eurydice Dixon and Jill Meagher were both strangled by their rapist murderers. I fail to see how this can make it any less of a horrific crime. The community shock and outrage at the rape and murders of Eurydice Dixon and Jill Meagher, both of whom were strangled, demonstrates that it is the crime itself that is of objective seriousness – not the method of murder.

And in fact in the case of Jaymes Todd’s rape and murder of Eurydice Dixon, Todd admitted it was his long-held fantasy to strangle a woman to death while raping her.

⁴⁰ <http://www.supremecourt.nt.gov.au/archive/doc/judgements/2007/ntsc/20071016ntsc51.html>

⁴¹ <http://www.supremecourt.nt.gov.au/archive/doc/judgements/2007/ntsc/20071016ntsc51.html>

⁴² <http://www.supremecourt.nt.gov.au/archive/doc/judgements/2007/ntsc/20071016ntsc51.html>

Treatment of victim's body after death

The treatment of the victim's body after death is not relevant to the objective seriousness of the crime of rape and murder because the crime itself is of the highest objective seriousness.

What has our justice system come to when judges are giving a rapist murderer credit for not mutilating the victim's body? How can this possibly in the eyes of any fair minded person serve to reduce the seriousness of the crime?

This discussion of use of a weapon and mutilation of the body occurred in Justice Hollingworth's sentencing of Codey Herrmann's rape and murder of Aiaa Maasarwe, which she compared with with Jaymes Todd's rape and murder of Eurydice Dixon. For example the judge said:

"On the one hand, Mr Todd killed his victim with his bare hands, rather than a weapon. He also did not commit any aggravating act, such as setting fire to the body."

"On the other hand, unlike in this case, Mr Todd's offending involved substantial premeditation. He had had a long-standing sexual fantasy to rape and strangle to death a woman, for more than a year."

This is what the appeal judge Southwood also did in discussing my sister's rapist murderer Jonathan Bakewell's crime.

The objective seriousness of the offending is also qualified by the facts that apart from the piece of sheet no weapons were involved in the attack on Ms Culleton and the prisoner did not mutilate her body."⁴³

For the record, Bakewell did mutilate Anne-Marie's body. To remove evidence he washed her body in a scalding hot shower and wedged her body face down so that it remained immersed in scalding hot water with the shower running for 40 hours before my mother and sister Rita found her.

These actions, together with the high humidity in the closed bathroom, served to conceal the murder method by advancing body decomposition.

In the NT Parliament Question Time on Monday 19 October 2009⁴⁴ after Bakewell's successful appeals to reduce his non-parole period from 25 years to 20 years, this mutilation of Anne-Marie's body was raised as part of the horror of the crime:

"Mr MILLS to CHIEF MINISTER

In 1988, Jonathan Peter Bakewell raped and murdered his next door neighbour, Anne Marie Culleton, before throwing her body under a scalding hot shower."

Also for the record, 21 years later in 2009, both sides of government were acknowledging it was a horrendous crime and stating that they do not believe Bakewell should have been given parole.

Mr MILLS (continued)

"Under your soft sentencing regime, Jonathan Peter Bakewell has been granted parole by the South Australian Parole Board and could be released from prison at any time. Given the aggravated nature of Bakewell's crime, he should have served

⁴³ <http://www.supremecourt.nt.gov.au/archive/doc/judgements/2007/ntsc/20071016ntsc51.html>

⁴⁴ NT Parliament Question Time Monday 19 October 2009 p505

at least 25 years inside. Can you explain to Territorians how it is that Bakewell could soon be walking free? Do you think Jonathan Peter Bakewell has done his time for his crime?

ANSWER

Madam Speaker, it was an absolutely horrendous crime. I personally know some of our police officers involved in that investigation.

Regarding Bakewell being released on parole, we did challenge that matter in the High Court. We did not believe he should be granted parole. Ultimately the High Court rejected our challenge. The position of the government is that he should not have been granted parole.”

This change in the judicial system’s attitudes towards the crime of rape and murder, based on the use of sentencing factors such as aggravation and mitigation and subjective factors relating to the offender themselves is what is contributing to reducing what judges deem the ‘level of seriousness’ of the murder.

I believe this is having a detrimental flow on effect on levels of sexual violence that is pervading like a cancer in our society.

Motiveless crime and lack of premeditation

The crime of rape and murder is not a motiveless crime. It is inherently a crime of motive.

Lack of premeditation should not be relevant because the crime of rape and murder is often an opportunistic crime which makes it even more frightening for women walking the streets of our community.

Absence of intention to kill

It is very difficult for the prosecution to prove intention to kill in the crime of rape and murder because no one can read a person’s mind and the rapist murderers often say they didn’t intend to kill their victim in a bid to reduce their sentence.

This was the case with my sister’s rapist murderer Jonathan Bakewell, and after reading the police confession and the criminal trial transcripts, the evidence clearly points to an intention to kill.

Intention to kill is also more difficult to prove when the victim is strangled, as was the case with my sister, though this is a common form of murder in rape and murder cases because men’s inherent strength over a woman enables them to not need a weapon.

This also applies to the rape and murder of children. The Dante Arthurs case is one such case where a child rapist murderer who strangled his victim received a reduced sentence based on the inability of the police to charge him with wilful murder, because it could not be proved it was his intention to murder. Arthurs raped and strangled eight-year-old schoolgirl Sofia Rodriguez in a Perth shopping centre toilet in June 2006.

Former policeman and family friend of the victim, Paul Litherland, who launched a successful petition on Change.org to prevent Arthur’s parole release said “Arthur’s sentence was manifestly inadequate.”⁴⁵

⁴⁵ <https://www.change.org/p/john-quigley-do-not-release-dante-arthurs>

I believe the current criteria which states that the prosecution must prove that the person killed the victim:

- With intent to kill
- With intent to inflict grievous bodily harm
- With reckless indifference to human life

This criteria is sufficient because strangulation can be proven under the criteria of “reckless indifference to human life.” The facts speak for themselves.

For the record, due to the inherent high objective seriousness of the crime of rape and murder, I do not believe the rest of the following factors are relevant:

- Conduct surrounding the offence
- Multiple murders
- Previous record of violence
- Remote location
- Degree of violence
- Drug induced offending
- Contract killing
- Concealing location of the body

4. Sentencing for domestic violence related homicide

Question 4.1: Sentencing for domestic violence related homicide

Are the sentences imposed for homicide in the context of domestic or family violence adequate? Why or why not?

What changes, if any, should be made to penalty provisions that relate to homicide in the context of domestic or family violence?

No, the sentences imposed for homicide in the context of domestic or family violence are not adequate.

I believe domestic violence related murder should carry a life sentence with no parole. The key reason for this is the national crisis we have with domestic violence murders. One woman a week is murdered in this country in domestic violence situations.⁴⁶

Millions of dollars is being spent nationally on programs to address this issue, yet weak sentencing is undermining the message.

Strong sentencing will reinforce society's condemnation of this crime and act as a powerful deterrent.

This sentence would meet the following sentencing purposes:

1. ensure that the offender is adequately punished for the offence
2. prevent crime by preventing the offender and other persons from committing similar offences
3. protect the community from the offender
4. condemn (denounce) the conduct of the offender
5. make the offender responsible (accountable) for his or her actions
6. recognise the harm done to the victim of the crime and the community

⁴⁶ <https://www.ourwatch.org.au/understanding-violence/facts-and-figures>

5. Sentencing for child homicide

Question 5.1: Sentencing for child homicide

Are the sentences imposed for the killing of children adequate? Why or why not? What changes, if any, should be made to penalty provisions that relate to the killing of children?

No the sentences imposed for the killing of children are not adequate.

I believe the rape and murder of a child should carry a mandatory life sentence without parole to reflect the gravity of the offence and society's condemnation of this crime.

This sentence would meet the following sentencing purposes:

1. ensure that the offender is adequately punished for the offence
2. prevent crime by preventing the offender and other persons from committing similar offences
3. protect the community from the offender
4. condemn (denounce) the conduct of the offender
5. make the offender responsible (accountable) for his or her actions
6. recognise the harm done to the victim of the crime and the community

6. Penalties for murder and manslaughter – options for reform

Question 6.3: Mandatory life imprisonment

Should a sentence of mandatory life imprisonment apply to any other categories of murder? If yes, which ones?

Yes. The sentence of mandatory life imprisonment should also apply to rape and murder.

The sentence of mandatory life imprisonment should also apply to the rape and murder of a child.

What changes, if any, should be made to the existing provisions relating to mandatory life imprisonment for the murder of a police officer?

I do not believe any changes are required.

Question 6.8: Concurrent serious offences

What new provisions, if any, should apply where a homicide offender has committed one or more additional serious offences?

I believe that crimes that involve both rape and murder needs to be treated as a stand alone crime carrying a mandatory life sentence without parole to reflect the gravity of the offence.

This sentence would reflect the totality principle which requires that the overall sentence is a just and appropriate measure of the total criminality involved, which ensuring that it meets the different objectives of sentencing.

Sentencing purposes of a mandatory life sentence without parole for the crime of rape and murder

The proposed mandatory life sentence without parole for the crime of rape and murder meets the purposes of sentencing under NSW law⁴⁷ in the following ways:

1. ensure that the offender is adequately punished for the offence
2. prevent crime by preventing the offender and other persons from committing similar offences
3. protect the community from the offender
4. condemn (denounce) the conduct of the offender
5. make the offender responsible (accountable) for his or her actions
6. recognise the harm done to the victim of the crime and the community

⁴⁷ <http://www.sentencingcouncil.justice.nsw.gov.au/Pages/Sentencing/purposes-sentencing.aspx>

1. Ensure that the offender is adequately punished for the offence

A life sentence with no parole is just punishment for taking a life in such a horrific and brutal way as is the case of a rape murder.

This is the community sentiment being constantly advocated for in petitions calling to prevent parole for rapist murderers.

2. Prevent crime by preventing the offender and other persons from committing similar offences

A mandatory life sentence without parole for rapist murderers will prevent crime by preventing the offender from repeating their crime.

The sentence will also prevent crime by acting as an effective deterrent for potential rapist murderers.

I believe it will also have a flow-on impact in helping to reduce all violent crimes against women.

3. Protect the community from the offender

A mandatory life sentence without parole for rapist murderers will protect the community from the offender repeating the crime and creating more victims.

4. Condemn (denounce) the conduct of the offender

A mandatory life sentence without parole for rapist murderers would effectively condemn this crime. It would powerfully communicate society's condemnation and disapproval of this crime and send the message that society has a zero tolerance for the crimes of rape and murder.

5. Make the offender responsible (accountable) for his or her actions

A mandatory life sentence without parole for the crime of murder with rape would make the offender responsible for his or her actions.

It would also send a powerful message about society's attitudes about the offender's responsibility and accountability for the crime.

6. Recognise the harm done to the victim of the crime and the community

A mandatory life sentence without parole for the crime of rape and murder will serve to recognise the life lost of the victim of the crime and the lifelong harm inflicted on their loved ones.

The sentence will also recognise the harm to the community of having a woman raped and murdered in their midst.

Rape and murder is a gender crime which strikes fear into the hearts of all women in the community.

We have a national crisis of violence against women.

- 1 in 5 women in Australia are sexually assaulted.⁴⁸
- One woman a week is murdered.⁴⁹
- We don't have statistics for the rape and murder of women because the government doesn't collect them - because rape and murder is not a specific crime. It needs to be.
- One in four women don't feel safe walking the streets in their local area alone at night⁵⁰
- One in four women don't feel safe waiting for public transport after dark⁵¹
- One in 10 women don't feel safe home alone at night⁵²

The Personal Safety Australia 2016 survey with statistics above was undertaken before the rape and murder of Aiaa Maasarwe in January 2019 and Eurydice Dixon in June 2019 - crimes which shocked and outraged the nation and have made women feel even more unsafe.

As the men and women of Australia have clearly demonstrated through their outrage and nationwide public vigils in response to the rape and murder of Aiaa Maasarwe, Eurydice Dixon and Jill Meagher, we have a national crisis.

When women don't feel safe walking the streets at night, we have a national crisis.

When women don't feel safe being alone at home at night, we have a national crisis.

Strong sentencing for the crime of rape and murder will send a strong message in society and help to reduce all violent crimes against women.

Mandatory life sentencing without parole for rapist murderers will also ensure certainty, equality and consistency of sentencing, which are key pillars for ensuring public confidence in the justice system.

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<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4906.0~2016~Main%20Features~Key%20Finding%20s~1>

49 <https://www.ourwatch.org.au/understanding-violence/facts-and-figures>

50

<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4906.0~2016~Main%20Features~Feelings%20of%20General%20Safety~10005>

51

<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4906.0~2016~Main%20Features~Feelings%20of%20General%20Safety~10005>

52

<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4906.0~2016~Main%20Features~Feelings%20of%20General%20Safety~10005>

Question 6.9: Redetermining natural life sentences

In what circumstances, if any, would it be appropriate to have a scheme of judicial redetermination of natural life sentences for murder?

I strongly object to the redetermination of natural life sentences for murders which involve rape.

As stated earlier, I am calling for the crime of rape and murder to carry a mandatory life sentence with no parole.

A key reason for this is that there is no guarantee of rehabilitation and rapist murderers should not get a second chance to rape and murder again.

Another objection I have to the redetermination of natural life sentences for murder is the trauma it causes victim families and I have outlined my personal experience in Section 3.3

Question 6.10: Managing high risk offenders

What provision, if any, should be made for the management of high risk of offenders in relation to murder or manslaughter?

I believe no risk is an acceptable risk when it comes to rapist murderers. They should not be released from prison ever.

As is evident from rapist murderers who re-offend on parole, such as Terrence Leary who was deemed a model prisoner, it is impossible for psychiatrists and psychologists to predict human behaviour.

For the protection of the community, rapist murderers should be given a natural life sentence, never to be released.

Also, for the protection of victim families who are subjected to a lifetime of trauma at the prospect of the offender's release and following the offender's release, there should be no option for parole for rapist murderers.