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Terms of Reference

The following terms of reference will be addressed in this submission:

1. The sentencing for the offences of murder under sections 19A (Murder) and 19B (Mandatory Life Sentences for murder of police officers) of the Crimes Act 1900 (NSW)
2. The application of section 61 of the Crimes (Sentencing Procedure) Act 1999 in the context of life sentences imposed for murder
3. The principles that courts apply when sentencing for these offences
4. The standard non-parole periods for murder and whether they should be increased
5. The impact of sentencing decisions on the family members of homicide victims

Position Statement

My name is Eileen Culleton. I am a resident of NSW and the sister of murder victim Anne-Marie Culleton. Anne-Marie was raped and murdered on 23 February 1988 when Jonathan Peter 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 his parole. Despite being given a life sentence with no parole, the laws were changed and he was released in 2016 and is now living in South Australia. However, given that he has crossed borders to kill before, 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 two years ago Bakewell has breached his parole twice for drug taking and I am living in perpetual fear that he may rape and murder again.

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. They 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.

It is my belief that 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 also ensures certainty, equality and consistency of sentencing for the offenders, the victim families and the community.

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

The brutal rape and murder of my sister Anne-Marie while she was asleep in her flat is every woman's worst nightmare. The murder was described by the sentencing judge as a horrific and callous crime.

Here in NSW, 17-year-old Vanessa Hoson was asleep in her family home when rapist murderer Terrence Leary broke in, attacked and murdered her in 1990. What horrifies me is that Leary was released on parole despite the victim family's protests, and in 2013 viciously stabbed and attempted to rape a woman at a bus stop. The victim is only alive today because the police arrived on the scene in time to save her. Even now, Leary only needs to serve 11 years before he will be eligible to apply for parole again.

It is incredulous that the sentencing judge for his rape and knife attack on the women at the bus stop took into account Leary's previous rehabilitation efforts in prison before his parole release. This

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is incredulous because evidently the prison rehabilitation programs did not work because Leary raped and attempted murder again.

What is also critical for legislators to note is that if a so called “model prisoner” like Leary could rape and attempt to murder another woman again, this is clear evidence that rehabilitation programs do not work and psychiatrists and psychologists who also have input to parole release applications – cannot predict human behaviour.

Sex offender recidivism rates alone reflect this.

Hence why we need to err on the side of women’s safety. As well as this case being one of grave injustice, I believe it is also a prime example for the need for rapist murderers to be locked away for life with no parole.

The mood of the community towards the crime of the rape and murder of women and the offenders being released on parole is also striking anger. The community has had enough of weak sentencing and the revolving parole door for rapist murderers. This is evident by the Australia wide vigils, including across NSW, for victims Aia Maasarwe, Eurydice Dixon and Jill Meagher.

Here in NSW community anger over parole applications by child rapist and murderer Neville Towner, who in 1989, thirty years ago, raped and murdered 4 year old Lauren Hickson, was demonstrated by a petition in 2018 signed by over 150,000 people. Like Bakewell, Towner’s original life sentence without parole was overturned due to a change in legislation. This petition and the community sentiments expressed, demonstrates community attitudes towards releasing these dangerous offenders.

The recent community response to the death of one of Anita Cobby’s rapist murderers, Michael Murphy, who was given a life sentence with no parole in 1987, also shows that over 30 years later community attitudes have not changed in relation to life sentencing for this crime.

As a victim family member who has experienced both justice being done through a life sentence without parole – and then justice ripped away due to law changes – and the murderer being released, I emphatically call for law reform to ensure this never happens to another victim family.

With the NT law change in 2004, Anne-Marie was robbed of justice, my family was robbed of justice and the community was robbed of justice.

Bakewell was transferred to prison in South Australia in 2005 and released on parole in 2016. I did not fight Bakewell’s parole release because I had no surviving family in Australia to support me and I was suffering from the re-onset of post traumatic stress disorder (PTSD) which came back again at the prospect of his release - but 10 times worse. The severity of PTSD is exacerbated by the fact that Bakewell is free and could repeat his crime, and I am living in perpetual fear and anguish about this.

However I am now fighting to get Bakewell’s parole revoked and him put back in jail, because after his two parole breaches for drug taking, and the fact that he was in breach of parole when he raped and murdered my sister, I strongly believe he still represents a great danger to the community and feel I have no choice but to fight this.

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. This is a cruel and intolerable burden on the victim families.

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Victim family members like myself and Vanessa Hoson's family should not have to fight 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.

This is another important reason why we need mandatory life sentencing without parole for rapist murderers. Today there are victim families in NSW and across Australia living with the ongoing fight against the parole release of rapist murderers. This living nightmare for victim families has got to stop.

The proposed mandatory life sentencing without parole for rapist murderers will be vital for women's safety and for justice and ending the parole battle nightmare for victim families.

I commend the NSW government for their national leadership in calling for this murder and manslaughter sentencing review and hope 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.

1. The sentencing for the offence of murder

The need for law reform to drive change to reduce sexual violence against women

It is generally accepted that Australia has a problem with the rates of sexual violence against women.

1 in 5 women in Australia will experience sexual assault at some time in their life.¹

I believe that part of the reason for the high rates of sexual assault is the weak sentencing laws for this crime exacerbated by weak sentencing of the ultimate crime of rape and murder.

In order to change these statistics, we need to institute laws that reflect the community's abhorrence for sexual violence against women.

By legislating for mandatory life sentencing for the crime of rape and murder, this will send a strong message that society condemns violence against women and will help to reduce the levels of sexual violence against women.

The rise of the #metoo movement globally and here in Australia demonstrates the change in public mood towards violence against women.

The mood of the community towards the crime of the rape and murder of women and the offenders being released on parole is also striking anger. The community has had enough of weak sentencing and the revolving parole door for rapist murderers. This is evident by the Australia wide vigils, including across NSW, for victims Aia Maasarwe, Eurydice Dixon and Jill Meagher.

Here in NSW community anger over parole applications by child rapist and murderer Neville Towner, who in 1989, thirty years ago, raped and murdered 4 year old Lauren Hickson, was demonstrated by a petition in 2018 signed by over 150,000 people. Like Bakewell, Towner's original life sentence without parole was overturned due to a change in legislation. This petition and the community sentiments expressed, demonstrates community attitudes towards releasing these dangerous offenders.

The recent community response to the death of one of Anita Cobby's rapist murderers, Michael Murphy, who was given a life sentence with no parole in 1987, also shows that over 30 years later community attitudes have not changed in relation to life sentencing for this crime.

¹ <http://www.nswrapecrisis.com.au/Portals/0/PDF/Sexual%20Assault%20The%20Law%20and%20Statistics.pdf>

CRIMES ACT 1900 - SECT 19A, SECT 19B

My Submission regarding reviewing sentencing for offences of murder and manslaughter under sections 19A² (*Murder*), 19B³ (*Mandatory Life Sentences for murder of police officers*) of the Crimes Act 1900 (NSW), in particular:

1. Sentences imposed for homicides

It is my position that the crime of rape and murder needs to be a separate crime with its own section which carries a mandatory life sentence for the term of the person's natural life. For example:

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

This would bring the crime of rape and murder in line with 19B (Mandatory Life Sentences for murder of police officers).

The sentencing act also needs to 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](#)."

² http://www5.austlii.edu.au/au/legis/nsw/consol_act/ca190082/s19a.html

³ http://www5.austlii.edu.au/au/legis/nsw/consol_act/ca190082/s19b.html

2. The application of Section 61 of the Crimes (Sentencing Procedure) Act 1999 in the context of life sentences imposed for murder

“61 Mandatory life [sentences](#) for certain offences⁴

(1) A [court](#) is to impose a [sentence](#) of imprisonment for life on a person who is convicted of murder if the [court](#) is satisfied that the level of culpability in the commission of the offence is so extreme that the community interest in retribution, punishment, community protection and deterrence can only be met through the imposition of that [sentence](#).

3) Nothing in subsection (1) affects section 21 (1). (aggravating, mitigating and other circumstances and relative seriousness of the offence)

(6) This section does not apply to a person who was less than 18 years of age at the date of commission of the offence.”

As stated earlier, regarding reviewing sentences for offences of murder under sections 19A (Murder) and 19B (Mandatory Life Sentences for murder of police officers), it is my position that the crime of rape and murder needs to be a separate crime with its own section which carries a mandatory life sentence for the term of the person’s natural life. For example:

“19C (Mandatory Life Sentences for rape and murder)”

This would bring the crime of rape and murder in line with 19B (Mandatory Life Sentences for murder of police officers).

Just as with the murder of police officers, the rape and murder of a person is a crime which inherently meets the criteria for 61 (1):

“... the level of culpability in the commission of the offence is so extreme that the community interest in retribution, punishment, community protection and deterrence can only be met through the imposition of that [sentence](#).

The community sentiment in regard to the need for life sentencing for rapist murderers has not changed in the past 30 plus years since laws were changed to introduce parole to life sentence murderers.

As stated earlier, the mood of the community towards the crime of the rape and murder and the offenders being released on parole is striking anger. The community has had enough of weak sentencing and the revolving parole door for rapist murderers. This is evident by the Australia wide vigils, including across NSW, for victims Aiiia Maasarwe, Eurydice Dixon and Jill Meagher.

Here in NSW community anger over parole applications by child rapist and murderer Neville Towner, who in 1989, thirty years ago, raped and murdered 4 year old Lauren Hickson, was demonstrated by a petition in 2018 signed by over 150,000 people. Towner’s original life sentence without parole was

⁴ http://www5.austlii.edu.au/au/legis/nsw/consol_act/cpa1999278/s61.html

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overturned due to a change in legislation. This petition and the community sentiments expressed, demonstrates community attitudes towards releasing these dangerous offenders.

The recent community response to the death of one of Anita Cobby's rapist murderers, Michael Murphy, who was given a life sentence with no parole in 1987, also reinforces that over 30 years later community attitudes have not changed in relation to sentencing for this crime.

3. The principles that courts apply when sentencing for these offences

Sentencing Purposes

The proposed mandatory life sentence without parole for the crime of rape and murder meets the purposes of sentencing under NSW law⁵ 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
7. promote the rehabilitation of the offender

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. Recent petitions include the Lauren Hickson petition of 2018.

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.

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 crimes of rape with murder.

⁵ <http://www.sentencingcouncil.justice.nsw.gov.au/Pages/Sentencing/purposes-sentencing.aspx>

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 offenders 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 and the fear it strikes in the hearts of women everywhere.

7. Promote the rehabilitation of the offender

A mandatory life sentence without parole for the crime of rape and murder will serve to acknowledge the reality that rehabilitation of rapist murderers cannot be guaranteed.

CRIMES (SENTENCING PROCEDURE) ACT 1999 - SECT 21A Aggravating, mitigating and other factors in sentencing

As with 19B (Mandatory Life Sentences for murder of police officers), it is my position that section 21⁶ should not apply to the crime of rape and murder, where at present it does:

“3) Nothing in subsection (1) affects section 21 (1). (aggravating, mitigating and other circumstances and relative seriousness of the offence)”

I strongly object to the application of aggravating and mitigating circumstances and any effort to try to reduce the seriousness of the offence.

The crime of rape and murder is an inherently extreme, horrific, abhorrent, violating crime which should not be minimised in any way.

The process of applying aggravating and mitigating factors to crimes of rape and murder leads to a degradation of justice as defence lawyers and even judges rank them according to a macabre hierarchy of depravity in which subsequent rape and murders are compared to ‘worst’ category of cases⁷.

This 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 regarding non-parole periods. 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 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

⁶ http://www5.austlii.edu.au/au/legis/nsw/consol_act/cpa1999278/s21a.html

⁷ <http://www.sentencingcouncil.justice.nsw.gov.au/Pages/Sentencing/factors-sentencing.aspx>

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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 1990⁸ 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:

⁸ http://classic.austlii.edu.au/au/legis/nt/consol_act/paa227/notes.html

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"...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." ⁹

Judge Southwood 2007

It appears from the appeal transcript that Judge Southwood re-trying 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."¹⁰

One particularly reprehensible statement Judge Southwood made was:

"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."¹¹

Can you imagine how I felt as Anne-Marie's sister reading that statement?

What has our justice system come to when judges are giving a rapist murderer credit for not using weapons, other than a sheet to strangle his victim? In fact 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 force 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. As stated earlier 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.

Secondly, 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?

For the record, Bakewell did mutilate Anne-Marie's body. He threw her body under a scalding hot shower to remove evidence. In the NT Parliament Question Time on Monday 19 October 2009¹² after Bakewell's successful appeals to reduce his non-parole period from 25 years to 20 years, this was raised as part of the horror of the crime:

⁹ <http://www.supremecourt.nt.gov.au/archive/doc/judgements/2007/ntsc/20071016ntsc51.html>

¹⁰ <http://www.supremecourt.nt.gov.au/archive/doc/judgements/2007/ntsc/20071016ntsc51.html>

¹¹ <http://www.supremecourt.nt.gov.au/archive/doc/judgements/2007/ntsc/20071016ntsc51.html>

¹² NT Parliament Question Time Monday 19 October 2009 p505

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“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.”

Again, can you imagine how I felt as Anne-Marie’s sister reading this, and then reading Judge Southwood’s comments?

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 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.

Subjective factors

I also strongly object to the application of subjective factors about the offender in relation to rapist murderers in order to reduce their sentence. For example:

(3) (e) the offender does not have any record (or any significant record) of previous convictions

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.

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It is also important to note that given that 80% of sexual assaults go unreported¹³ the fact that the offender does not have a previous criminal record does not guarantee they have not raped before. Indeed according to sex offender recidivism statistics and sex offender profiling it is highly likely they have, but that they just haven't been caught.¹⁴

Another example that is self evidently a contradiction of terms is:

(f) the offender was a person of good character

If a person has raped and murdered someone they are evidently not a person of good character.

Another strong point of objection I have is regarding the applying rehabilitation factors, when rehabilitation programs are of questionable effectiveness when it comes to rapist murderers:

(g) the offender is unlikely to re-offend,

(h) the offender has good prospects of rehabilitation, whether by reason of the offender's age or otherwise,

In regard to the effectiveness of treatment of sex offenders an Australian Institute of Criminology report 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."*¹⁵ P8

I also refer to Judge Syme's comment in regard to treatment for rapist murderer Terrence Leary after his attempted rape and knife attack on a woman after his parole release:

*"Not all forms of antisocial behaviour can be treated through therapy."*¹⁶

Remorse

Then we come to the issue of remorse:

i) the remorse shown by the offender for the offence, but only if:

(i) the offender has provided evidence that he or she has accepted responsibility for his or her actions, and

¹³

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

¹⁴ <https://aic.gov.au/publications/archive/recidivism-of-sexual-offenders>

¹⁵¹⁵ <https://aic.gov.au/publications/archive/recidivism-of-sexual-offenders> p8

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

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(ii) the offender has acknowledged any injury, loss or damage caused by his or her actions or made reparation for such injury, loss or damage (or both),

This is problematic because genuine remorse is something that is impossible to ascertain because no one can read someone's heart. It is also problematic because offenders are told that if they 'tick the boxes' in expressing remorse they will receive a reduction in their sentence.

I have personal experience of this in relation to my sister's rapist murderer Bakewell. The appeal Judge Southwood also cited Bakewell's new found remorse in prison as a subjective factor in his conclusion that Bakewell's rape and murder of Anne-Marie Culleton was at a reduced level of seriousness:

"Mr Bakewell admits that he is responsible for the crimes that he committed and he is remorseful for his crimes."¹⁷

I beg to differ and have personal experience that even an apology letter is not necessarily worth the paper it is written on.

While I did not have the strength to fight the parole application battle for my sister's rapist murderer, because of all that a successful battle would require including mounting a public campaign with a petition, media publicity and a social media campaign; what I did decide to do was to write a forgiveness letter to my sister's murderer.

My objective for this was to touch his heart and hopefully precipitate a change of heart. However I made it very clear that I was not forgiving him for his crime of rape and murder, but only for the impact his crime had on me personally. I also made it clear that I did not believe justice was being done in releasing him but that I did not have the strength to fight his parole due to the re-onset of PTSD at the prospect of his release.

As it happens Bakewell did write back with an apology letter which appeared to express remorse. However I have come to realise, on examining his statements in light of the facts, that this remorse was not genuine. For example he said that he was sorry from day one of the murder. When I read a transcript of his confession containing callous comments he made in regard to the victim, I did not see evidence that he was sorry from day 1. The facts are that despite making a confession on video including video reenactments of the murder, Bakewell launched an appeal to prevent the evidence being presented to a jury. In addition to this he initially pleaded not guilty on all counts and only pleaded guilty to the count of rape during the trial.

Further to this, after the laws were changed to grant life sentence murderers parole, and the DPP, in enacting the new legislation, applied to the court after 19 years to increase his non-parole period from 20 to 25 years due to the fact that the murder included rape, Bakewell appealed all the way to the High Court of Australia. This attracted a great deal of publicity and public comment. It also meant the 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. Combine these facts and any reasonable person would come to the conclusion that Bakewell's remorse is a case of 'crocodile tears.'

¹⁷ <http://www.supremecourt.nt.gov.au/archive/doc/judgements/2007/ntsc/20071016ntsc51.html>

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There are more aggravating factors, mitigating factors and subjective factors that I could respond to, but I trust my examples suffice to support my argument that they should not be applied to the crime of rape and murder.

Culpability

Finally I would like to address the issue of culpability. It is my strong view, and the view of any reasonable fair minded person, that the act of rape and murder carries an inherent culpability and in particular moral culpability. The act of rape and murder by its very nature is intentional.

In conclusion, it is clear that, like 19B (Mandatory life sentences for murder of police officers), in which Section 21 and all other acts do not apply, so the crime of rape and murder needs to be framed the same way.

4. The standard non-parole periods for murder and whether they should be increased

It is my position that the sentence for the crime of rape and murder should be mandatory life with no parole.

Rapist murderers should never get a second chance to rape and murder another woman again.

The crime of rape and murder should be a stand alone crime similar to the murder of police officers. And it should carry the mandatory life sentence for the term of the person's natural life.

The sentencing could be drafted similar to 19B Mandatory life sentences for murder of police officers where a person sentenced to imprisonment for life under this section is to serve the sentence for the term of the person's natural life.

My rationale for this is based on evidence that rapist murderers released on parole repeat their crimes and society should not be taking this risk with women's lives.

My experience as a murder victim family member having the offender released on parole

My position is also based on my personal experience as a murder victim family member, whose rapist and murderer has been released on parole despite originally being given a life sentence and the fact that I am living in a state of perpetual fear that he may rape and murder again.

I did not fight Bakewell's parole release because I had no surviving family in Australia to support me and I was suffering from the re-onset of post traumatic stress disorder (PTSD) which came back again after 30 years at the prospect of his release - but 10 times worse. The severity of PTSD is exacerbated by the fact that Bakewell is free and could repeat his crime, and I am living in perpetual fear and anguish about this.

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.¹⁸

However I am now fighting to get Bakewell's parole revoked and him put back in jail, because after his two parole breaches for drug taking, and the fact that he was in breach of parole when he raped and murdered my sister, I strongly believe he still represents a great danger to the community and feel I have no choice but to fight this.

¹⁸ <http://www.supremecourt.nt.gov.au/archive/doc/judgements/2007/ntsc/20071016ntsc51.html>

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Bakewell's Parole Breaches

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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. It is my understanding that in NSW it is every 3 years (check). This is a cruel and intolerable burden on the victim families.

Victim family members like myself should not have to fight a 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.

This is another important reason why we need mandatory life sentencing without parole for rapist murderers. Today there are victim families in NSW and across Australia living with the ongoing fight against the parole release of rapist murderers. This living nightmare for victim families has got to stop.

The proposed mandatory life sentencing without parole for rapist murderers will be vital for women's safety and for justice and ending the parole battle nightmare for victim families.

¹⁹ <http://www.austlii.edu.au/cgi-bin/viewtoc/au/cases/nt/NTSC/1989/>

²⁰ <http://www.austlii.edu.au/cgi-bin/viewtoc/au/cases/nt/NTSC/1989/>

Terrence Leary

A prime example of a rapist murderer released on parole repeating his crimes is that of 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.²¹ What horrifies me is that 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. Even now, Leary only needs to serve 11 years before he will be eligible to apply for parole again.

Leary had been deemed a "model prisoner". It is incredulous that Judge Syme, in sentencing Leary for his rape and knife attack on the women at the bus stop, took into account Leary's rehabilitation programs in prison before his parole release. This is incredulous because 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,"²²
Judge Syme said.*

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

What is also critical for legislators to note is that if a so called "model prisoner" 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.

Risk of parolee rapist murderers re-offending

In a Centre for 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, found homicides by parolees are to some extent predictable.²³

"Two recent events — the horrific sexual assault and murder of Jill Meagher in Melbourne by repeat sex offender Adrian Bayley while on parole and the violent sexual assault on a woman at a Sydney bus-stop allegedly by convicted murderer Terrence Leary while on parole — raise questions about the capacity of parole authorities to predict and manage the risks of repeat dangerous offending. Such extreme cases may be relatively rare but they have catastrophic impacts on families of victims and survivors. They also have broader impact by raising the fear of crime in general, and have a chilling effect on the freedom of women in particular. Last year there were 297 victims of homicide in Australia most of

²¹ <https://www.smh.com.au/national/nsw/terrence-leary-given-another-chance-for-parole-after-explosive-attack-20160329-gnsq8w.html>

²² <https://www.smh.com.au/national/nsw/terrence-leary-given-another-chance-for-parole-after-explosive-attack-20160329-gnsq8w.html>

²³ <http://criminology.research.southwales.ac.uk/features/reoffending/>

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whom died at home or at another's residence. Just over 30 per cent (91 victims) were females, over half of whom (47 victims) were aged 20-34 years.

Yet homicide events involving parolees while rare are to some extent predictable because the likelihood of repeat offending by certain offenders can be estimated with a fairly high degree of accuracy. Adrian Bayley's early onset of violent sex offending, repeated sex offending following imprisonment and violent assault a few months prior to the fatal attack on Ms Meagher had cumulative value in indicating a very high degree of dangerousness. Those factors alone (other behaviour such as the savagery of the assaults and the personal circumstances of the offender also being highly relevant) should have been sufficient to warrant the closest supervision possible. In short, uncomfortable as it may be to acknowledge, Ms Meagher's death was preventable, if weight had been given to the actuarial risk of Bayley's risk of re-offending."

The authors note that no state correctional authority has undertaken accurate studies of recidivism (repeat offending) of homicide offenders.

Nor do there seem to be studies of recidivism of rapist murderers. However, based on sex offender recidivism rates, it can be predicted that the likelihood of re-offending is high.

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Sex Offender Recidivism

In 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"²⁴ one study of 402 prisoners found 27% were found to have at least one previous conviction for a sexual offence.

It is important to note that there has been little research on Australia sex offender recidivism rates.

The 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 2005 Australian Bureau of Statistics (ABS) Personal Safety Survey estimated that only 19% of female victims of sexual assault in Australia reported the incident to the police.²⁵

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

Hence why we need to err on the side of women's safety. No risk to a woman's life is an acceptable risk.

As well as the Leary case being one of grave injustice, I believe it is also a prime example for the need for rapist murderers to be locked away for life with no parole.

Treatment of sex offenders

In regard to the effectiveness of treatment of sex offenders an Australian Institute of Criminology report 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."*²⁶ P8

I refer to Judge Syme's comment in regard to treatment for Leary:

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

²⁴ <https://aic.gov.au/publications/archive/recidivism-of-sexual-offenders> p28

²⁵

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

²⁶ ²⁶ <https://aic.gov.au/publications/archive/recidivism-of-sexual-offenders> p8

5. The impact of sentencing decisions on the family members of homicide victims

As a murder victim family member I have experienced the impact of the whole spectrum of sentencing decisions – from justice being served with the original sentence of life without parole – to justice being ripped away with the law change, to appeals all the way to the High Court of Australia and Bakewell’s subsequent release on parole.

Nothing can bring back my sister, or erase the life sentence of anguish I have been given. However the 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.

The life sentence with no parole 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 was freed.

Injustice of law change to overturn life sentence without parole

I feel a great sense of injustice because the original justice of a life sentence with no prospect of parole in 1989 was robbed from my sister and our family when the laws were changed in 2004 (in the Northern Territory).

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 due to the fact that the murder involved 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.

After appealing all the way to the High Court of Australia Bakewell was granted this injustice from the highest court in the land.

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?

Injustice of appeal judges minimising the murder and having no consideration for the victim or the victim's family

To add insult to injury I have 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 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.

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.

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

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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."

Again, 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 resentence 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.

And that when the appeal went all the way to the High Court of Australia, reading the document in which my sister Anne-Marie Culleton's name is not mentioned nor are the details of her murder:

*"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

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

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of the justice system. In my view it's not 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 twice after two parole breaches, it is a legal system that has inflicted on me a life sentence of injustice.

Trauma impact of parole release on the victim family

The impact of my sister's murderer's parole release has caused me to suffer from extreme Post Traumatic Stress Disorder (PTSD).

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 was living with a very real fear that this rapist murderer could strike again.

This severity has been exacerbated by Bakewell's two parole breaches for drug taking and subsequent release back into society instead of having his parole revoked.

I am also living with great angst and guilt that I was not strong enough to fight the parole application and that if Bakewell rapes and murders again I would feel 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 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 be re-traumatised by the prisoner mounting appeals and having to advocate in the media for the appeals to be quashed
- 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.

As stated earlier, in the section on standard non-parole periods for murder and whether they should be increased, I did not fight Bakewell's parole release because I had no surviving family in Australia to support me and I was suffering from the re-onset of post traumatic stress disorder (PTSD) which came back again after 30 years at the prospect of his release - but 10 times worse. The severity of PTSD is exacerbated by the fact that Bakewell is free and could repeat his crime, and I am living in perpetual fear and anguish about this.

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

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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

However I am now fighting to get Bakewell's parole revoked and him put back in jail, because after his two parole breaches for drug taking, and the fact that he was in breach of parole when he raped and murdered my sister, I strongly believe he still represents a great danger to the community and feel I have no choice but to fight this.

Bakewell's Parole Breaches

- Bakewell has a history of breaching parole going back to 1987.
- 9 November 1987 Bakewell was released on parole in South Australia after finally being caught for a robbery with another man in 1980. Robbery in company is a violent crime. They caught him in 1987. He went to prison for a few months.
- 23 February 1988 Bakewell had breached parole in SA, there was a warrant out for his arrest and he was on the run interstate in the NT when he raped and murdered Anne-Marie Culleton.³⁰
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The impact of parole breaches in traumatising victims

When I was informed of Bakewell's first parole breach it was via an email letter. There were no details given. Other than that he had breached parole and was back in custody.

My first thought was that he had attacked another woman. I called the Victims Services Unit and was given no additional information. I was absolutely traumatised. Shaking, crying, panicking. I read the email on a Friday and I had to wait the entire weekend in that traumatised state until Monday when the manager was available to talk to me and explain the reason for Bakewell's parole breach, which was due to drug taking.

My initial relief that Bakewell hadn't attacked anyone was replaced by alarm that a convicted rapist murderer on drugs was walking the streets.

I am even more alarmed now that I know that Bakewell has a history of breaching parole going back to 1987 and knowing that he had breached his parole when he raped and murdered my sister. I was not aware of this until I began writing this submission and in my research came across the 1988

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

³⁰ <http://www.austlii.edu.au/cgi-bin/viewtoc/au/cases/nt/NTSC/1989/>

³¹ <http://www.austlii.edu.au/cgi-bin/viewtoc/au/cases/nt/NTSC/1989/>

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court transcript of a mini trial held when Bakewell appealed to try to get his confession evidence, including two video re-enactments disallowed from the murder trial.

Reading about how Bakewell spoke with such a cavalier attitude towards parole - that he'd done it many times before with no repercussions, still has me in chills.

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. It is my understanding that in NSW it is every 3 years (check). This is a cruel and intolerable burden on the victim families.

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