

Law Reform and Sentencing Council Secretariat
NSW Department of Justice
New South Wales Sentencing Council
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Preliminary Submissions - Review of sentencing for the offences of murder and manslaughter, including penalties imposed for domestic and family violence homicides and the standard non-parole periods for murder

Thank you for the opportunity to make preliminary submissions to the Sentencing Council regarding the above Terms of Reference.

My name is Amani Haydar and I am a lawyer, artist and activist against domestic violence. I make these submissions in my personal capacity.

My mother, Salwa Haydar, was murdered at her Bexley home on 30 March 2015 by Haydar Haydar (my father). My sister Ola Haydar was assaulted and injured during the attack. Following the attack, my father handed himself in to police. He did not attempt to render any assistance to either of his victims. My mum died at the scene from 30 stab wounds after my sister who was 18 years old at the time made every effort to render assistance to her.

On 31 March 2017, Haydar Haydar was found guilty (*R v Haydar (No.3) [2017] NSWSC 159*). He was sentenced on 19 May 2017 (*R v Haydar (No.4) [2017] NSWSC 615*) as follows;

- 1) For the offence of the wounding of Ola Haydar with intent to cause grievous bodily harm to Salwa Haydar, a sentence of imprisonment comprising a fixed term of **4 years** commencing on 30 March 2015.
- 2) For the offence of the murder of Salwa Haydar, a sentence of imprisonment comprising a non-parole period of **16 years and 6 months** with a balance of term of 5 years and 6 months to commence on 30 September 2016.

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

Whilst my sisters and I have accessed (to varying extents) the services of the Homicide Victims' Support Group and Victims Services NSW, we have continued to face the mental and physical health ramifications of the murder which are particularly pronounced for Ola who was an eye-witness. The sentence handed down to our father will never capture the immensity of his crime or the value of our mother's life. There is space for the legal system to do more for family members of homicide victims both during the trial process and through sentencing decisions.

I found immense relief in the fact that our father was found guilty and received a sentence, even though it only reflected a fraction of the suffering my sisters and I experienced. Any professional progress or psychological recovery that I have made over the past two years is partly owing to the incomplete but incredibly important acknowledgment that the legal system was able to offer. The

belief that some justice has been achieved has allowed me to alleviate a great deal of the trauma, anxiety and depression symptoms that I experienced before the trial and in its immediate aftermath.

For this reason, I firmly believe that sentencing decisions are of the utmost importance to family members of homicide victims and can be pivotal in the process of the recovery from trauma. Following a homicide, family members of victims look to the legal system as an avenue for the restoration of a sense of control and safety¹. Inadequate sentences leave a frustrating gap between what the family members have lost and any justice they might expect to see done. This gap can be understood by family members as a lack of compassion or as a reflection of society's attitudes towards the value of the victim's life, which in turn, undermines the pain and sadness felt by the victim's family. Whilst that gap can never be completely mended, more severe penalties and longer sentences in the appropriate circumstances can serve as a bridge between a person's loss and devastation and their eventual recovery. The restorative and healing role of the legal system should not be underestimated in this regard.

By better reflecting the needs and expectations of family members, sentencing decisions for these types of crimes have the potential to create a sense of justice and order for the individuals who have been most severely impacted by the crime.

The devastating impact of domestic and family violence on our community

I have spent significant time over the past year participating in local initiatives against domestic violence. It is incredibly concerning but not surprising, that many women have contacted me privately to share the ways in which their lives have been affected by domestic and family violence. Further, in my capacity as an executive Board member at Bankstown Womens' Health Centre I am aware that frontline services are stretched and struggle to keep up with the demand for housing and support by women fleeing domestic violence. Women may be to report abuse for fear of violence, shame, homelessness, or even an impact on their Visa status. Domestic violence is underreported, particularly in Aboriginal and Culturally and Linguistically Diverse communities where the available services are not always culturally-sensitive or appropriate.

I would like to shed light on some of the devastating impacts of domestic and family violence on my own life;

Health and safety

- The trauma of the murder has caused an array of mental and physical health issues. I have spent considerable time seeking counselling and working to manage my triggers, anxiety and physical health. Because memories and triggers cannot be eliminated, I must continue to manage these carefully to be able to live a positive and healthy life.
- My father's family and supporters engaged in victim-blaming and harassment before and after the trial which caused extreme distress and necessitated police involvement. My overall sense of safety has been affected by this.

¹ Research indicates that attempts to apply alternative justice programs in cases of serious interpersonal violence have not been successful. Researchers have reported that abusers are likely to exploit any mediations or meetings with victims as a way of further manipulating and gaslighting them.

- As I was pregnant at the time of the murder, the trauma placed me at an increased risk of post-natal depression. Ultimately, I was unable to properly breastfeed my newborn and struggled to find any enjoyment during that important milestone in my life.
- My children will never know their grandmother and I will have to explain why at some point in the future. Whilst my father will likely be a free man in about 15 years, the grief and anxiety caused by his actions will never fully subside.

Financial and legal implications

- To properly grieve and support my sisters I took leave from employment prior to my planned maternity leave which affected my financial security during a time when I was already vulnerable which, in turn, prejudiced my parental leave pay entitlements (under the 'work test').
- There were considerable costs associated with housing my sisters and ensuring that they had the opportunity to continue their lives with as little disruption as possible.
- I have not yet been able to fully dispose of my mother's estate, because a conviction needed to be obtained before letters of administration could be granted (to evoke the *Forfeiture Act 1995 (NSW)*).
- I owned property jointly with my mother and father and I have not yet resolved the legal and practical issues that have arisen from that. We also shared bank accounts that required both my mother and father's signatures and I have not been able to access those accounts since the murder.

81 women lost their lives to violence the year that my mum was murdered, and they were all survived by friends and family who have been affected in countless ways, just as I have been and continue to be. The devastation is long-lasting and exponential; it outlives the sentences that have been imposed for these crimes.

The principles that courts apply when sentencing for these offences, including the sentencing principles applied in cases involving domestic and family violence

Some sentencing principles cause family members of domestic violence homicide victims a great deal of agony; they primarily arise in relation to the application of the Section 21A of the *Crimes (Sentencing Procedure) Act 1999*.

It is peculiar that an offender's character is often construed positively in cases of domestic violence homicides. The considerations listed as mitigating factors in section 21A(3)(e), (f) and (g) do not seem to reflect the reality of abuse. I believe this is an area where there is significant room for improvement.

Firstly, a lack of a prior record does not indicate that the offender is less culpable or dangerous. According to the Duluth model² of power and control, this might instead indicate that prior to the homicide, the offender was so in control of the victim that he did not previously feel the need to resort to violence. Alternatively, the power and control exercised by the offender may have prevented the victim from contacting the police to report violent incidents.

² See for instance, <https://www.theduluthmodel.org/wheels/understanding-power-control-wheel/>

Further, the weight given to a lack of prior convictions or the perception that the offender is of good character can also be attributed to the nature of non-violent forms of abuse. Emotional abuse can be subtle and long-term and is not yet captured by legislation in New South Wales. It is seen to be more benign and less traumatic, even though frontline organisations and advocates have stated that it can be more devastating than physical violence.

A large proportion of domestic violence homicides occur with no prior reported history of violence³; however, media reports invariably indicate that there is some form of abuse during the relationship between the offender and the victim and in the lead-up to the homicide. It is unfair for the factors in Sections 21A (3) (e), (f) and (g) to be construed in favour of the offender when the target of the abuse – the person most qualified to give evidence about the offender’s character - is dead. In many cases the offender’s perceived good character has contributed to his ability to disguise and deny the abuse or discredit the victim.

Accordingly, the following should be considered:

- The perceived good character of the offender is often instrumental in their abuse and enables them to get away with it for a longer period;
- Emotional abuse and other invisible, non-physical forms of abuse can be as harmful as physical violence and contributes to long-term PTSD in survivors;
- That emotional abuse and other non-physical forms of abuse are an underreported and significant factor in a large proportion of homicides but are not fully captured in legislation in NSW. There cannot be a conviction for behaviours and forms of abuse that are not currently illegal.

The perception of good character is often weaponised against family members of the victim, as was the case during my father’s trial. By repeatedly asserting that our father was of “good character” without “any record” our father’s family attempted to guilt and shame us for cooperating with prosecutors, giving evidence and reading out victim impact statements. I respectfully submit that the law and its application by the judiciary should not unwittingly enable this kind of behaviour.

Further, some commentators have indicated that domestic violence is a gateway crime.⁴ It should be a matter of concern (rather than mitigation) during the sentencing process that an offender’s first conviction occurs in a domestic violence setting and this is a factor that seems to increase the likelihood that the offender will engage in future crime.

Lastly, but importantly, any assessment of the factors in Section 21A should never lead to a reduction of the offender’s sentence on the basis that the victim was his partner or ex-partner. This is completely out of step with social expectations about the inherent value of women’s lives. The implied assertion that an offender would only choose to harm a partner and is therefore unlikely to re-offend is of little comfort to the public and is of no value to the family of the victim. Instead, these facts ought to be taken as an indication of how repugnant the crime is, given that it constitutes an abuse of trust. It would be more appropriate, for instance, if the murder of a partner or ex-partner should be characterised as an aggravating factor in accordance with section 21A (2)(eb) and (k).

³ Review of Domestic and Family Violence Deaths in the ACT, 2016, page 3.

(https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0003/864714/DVPC-Review-of-Domestic-and-Family-Violence-Deaths.pdf)

⁴ Jenna Price, Sydney Morning Herald, Is domestic violence a gateway crime? 25 January 2017

(<https://www.smh.com.au/lifestyle/is-domestic-violence-a-gateway-crime-20170124-gtxn3t.html>)

I am grateful for the opportunity to submit the above for consideration by Sentencing Council and I look forward to seeing the outcomes of the review.

Regards *A*



Amani Haydar