

Mary-Ann Parker

28 May, 2015

To: The Victorian Royal Commission into Family Violence 2015

To whom it may concern,

I would like to make a submission addressing the "Terms of Reference" of the Royal Commission into Family Violence (RCFV) as per the Media release of March 31st, 2015:

"The Royal Commission is also accepting submissions that address its Terms of Reference without responding to the particular questions in the Issues Paper."

I am very concerned with the Terms of Reference & the Issues Sheet published by the RCFV. My concern is primarily that there is absolutely no focus on strengthening sentencing for offenders: There is no mention of the efficacy of current sentencing lengths in the published Terms of Reference or the Issues Sheet. The closest potential opportunity for reviewing sentencing lengths can be found at item "d" in the first point (1) in the section titled "TERMS OF REFERENCE" where "perpetrator accountability" is listed as a concern for which best practice should be examined and evaluated. Within the context of the two documents the only conclusion to be drawn is that perpetrator behaviour change is almost exclusively the focus when it comes to perpetrators. Given that Daniel Andrews has said that "Nothing will be off limits"¹ in the RCFV I am shocked and dismayed that there is no mention of examining the effectiveness of sentencing as a tool to be used to achieve safety, justice and deterrence for the people of Victoria.

There is a view amongst the legal community that the research shows that 'prison does not work' when it comes to perpetrators of physical abuse and violence. This is absolutely not acceptable and needs to be changed. Anyone who is physically abusive or violent to another person must not be treated with leniency or regarded as being "unlikely to reoffend against 'most of society'". Too often the focus used to determine sentencing is on the fact of who the victim was in relation to the perpetrator and the likelihood that the offender would only re-offend against the original victim. This is unacceptable reasoning. If the offender was violent once they can be violent again and must be held to account for their actions. Not only is prison a mechanism of deterrence but it is also a mechanism of ensuring a safer

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<http://www.heraldsun.com.au/news/victoria/premier-daniel-andrews-vows-tough-new-laws-to-stop-family-violence/story-fni0fit3-1227236220664>

community. To argue that it doesn't work while continuing to incarcerate people for other crimes is unfair on society, illogical and irrational and ultimately unsafe. Most problematically of all, it sends the message to society that physical violence is less important than other crimes. There must be appropriate sentencing to primarily keep the community safe but also ensure that physical violence is regarded with the seriousness it deserves as the ultimate crime in society second only to murder.

Physical abuse should always be treated more seriously than ALL financial crimes and crimes against property. Money and property is a construction of our society and while it is important to preserve its integrity and ensure the continuance of our society in a harmonious fashion its crimes are ultimately on not comparable with the devastating effects caused by physical assault and abuse.

It is often claimed that legal research shows that prison does not work as a deterrent for physical abuse. I'm not an expert on the details of the research however as a member of society I am confident that if a person is contemplating committing a crime they will either regard prison as a desirable outcome or an undesirable outcome but that will not be dependant on which crime they are contemplating. Whether someone is thinking about breaking a financial law or committing assault they will have the same expectations of the experience of prison life. If this is not the case and there is an unspoken understanding that prisoners of physical violence are themselves subjected to violence from other prisoners then this situation is not a reason to avoid stronger sentencing, it is an indicator that the RCFV should call for measures to mitigate and eliminate this by changes to the prison system.

Other claims such as "the criminal did not plan/intend/think about getting caught" and therefore didn't really mean it and so does not deserve as long a sentence is equally applicable to all crimes and in no way a reason to be more lenient. Similarly "the heat of the moment" argument is absolutely no excuse for a lenient sentence, if anything it is a reason to impose a more lengthy one as it shows just how ingrained and normalised physical violence in the heat of the moment actually is.

The idea that men are monsters who need to be tamed by men's behaviour change programs is effectively victim blaming on a grand society-wide scale. To say that in 2015 we are all responsible for taming monster men who are physiologically monstrous and that ultimately it isn't really their fault is a massive insult to the #notallmen majority who are NEVER physically and monstrously violent to ANYONE.

Yes we need men's behaviour change programs and MORE of them but not at the expense of strong & appropriate sentencing. The purpose of men's behaviour change programs is not to make civilised men out of monsters it is to make sure men understand how to treat other human beings with respect for their physical space.

The majority of men and an even greater majority of women do not go to the level of violent behaviour like the small minority of (mostly) men who do. This is a pretty big testament to human civility and the capabilities of personal control and restraint in the vast majority of the population. Of course men (& some women) still by and large use a range of verbal/financial/psychological abusive techniques but it is a spectrum and physical violence and abuse must be regarded as the most unacceptable. Sentencing must reflect this.

Why can't we physically protect victims of physical violence by using prisons for what they are, at their most basic level, designed to do: keep the community safe?

There are nearly 49,524 signatures calling for longer stronger sentencing in this change.org petition and the equivalent should also apply for physical violence and abuse: whether it is rape or whether it is non-sexual physical abuse it should be treated equally severely:

<https://www.change.org/p/kevin-rudd-tony-abbott-and-australian-attorneys-general-we-must-have-stronger-sentencing-for-rape>

The recent legislation to impose a minimum 10yrs non-parole sentence for a "Fatal Coward's Punch" is an example of community support resulting in legislative action on stronger sentencing. The successful implementation of stronger sentencing for this type of physical violence should be examined closely when dealing with arguments against stronger sentencing for physical family violence.

<http://www.heraldsun.com.au/news/opinion/one-punch-now-equals-10-years/story-fni0ffsx-1227026709496>

The following three facebook pages are examples I am aware of of groups of people all calling for stronger sentencing for crimes of physical violence and abuse:

- <https://www.facebook.com/jailnotbail/timeline> has 22,000 likes and 1,444 change.org signatures: <https://www.change.org/p/austalian-government-change-our-weak-sentencing-and-bail-laws-now>
- <https://www.facebook.com/Rekiahslaw> has 7,876 likes and 5,224 change.org signatures: <https://www.change.org/p/australia-needs-rekiah-s-law>
- <https://www.facebook.com/pages/Australians-Demanding-Tougher-Penalties-for-Criminals/231116490238332?sk=timeline> has 4,451 likes.

Recently on the ABC TV program Q&A on 23 February, 2015, there were calls for perpetrator accountability: <http://www.abc.net.au/tv/ganda/txt/s4173309.htm>

@18:30 Natasha Stott Despoja: "Holding perpetrators to account is essential and our national action plan in australia recognises that fact."

@42:00: Rosie Battey: "A breach is a breach. If we don't put any great weight onto it being a crime, what is the point?"

@43:40: Rosie Battey: "Violence is a continuum: without intervention it will always escalate and get worse. Always."

With that in mind, to totally disregard stronger sentencing in addressing perpetrator accountability and intervention would be illogical and irresponsible.

How is it that armed robbery has a 25 year maximum sentence yet intentionally causing serious injury only has a 20 year maximum sentence? Physical injury is of far greater concern to society than loss of property.

<https://www.sentencingcouncil.vic.gov.au/about-sentencing/maximum-penalties>

A maximum prison sentence of 3 months is absolutely unacceptable and far too low as a penalty for assault. <http://www.findlaw.com.au/articles/4667/assault-charges-in-victoria.aspx>

In 2012-2013 there were 33,879 Family Violence Intervention Orders and of those 14,570 were breached. That is 43% of people who were not protected. The available research may suggest that prison does not work but that is not good enough - too often research is biased and ineffective in wholistically arriving at a useful, practical, applicable conclusion. Science must always be regarded as a work in progress. Research conducted with a rigorous scientific method - as important and crucial as the scientific method is - must be regarded with the understanding that the more rigorous the scientific method the less holistic, relevant and applicable the findings can be. 14,570 people in a single year were denied basic safety because the legal system would not take appropriate action. The legal system must take stronger action.

<http://www.abc.net.au/news/2015-04-02/domestic-violence-intervention-orders-being-violated/6369336>

My key concern is that BOTH stronger sentencing AND more support for victims and perpetrators behaviour change programs is needed to ensure we see a real decrease in violent physical abuse in our community. The purpose of my submission is to validate the focus of the Terms of Reference and Issues Sheet and to call for stronger sentencing for physical abuse as it is equally vital in ensuring a safer society.

Thanks & Regards,

Mary-Ann Parker