

# Reform to sentencing practices

## Justice Fact Sheet

The NSW Government is drafting a bill to amend the *Crimes (Sentencing Procedure) Act 1999* which would require courts to apply *current* sentencing practices to *all historical* offences.

The proposal follows a six-month Government review into this complex area of law, which engaged a series of key stakeholders. Stakeholders will have a further opportunity to provide input on the draft bill before it is introduced to NSW Parliament next year.

### Why did the NSW Government conduct the review of sentencing practices for historical offences?

Currently, courts are required under common law to impose a sentence on an offender according to the sentencing patterns and practices that existed at the time the offence occurred, rather than the practices which exist at the time of sentencing.

This has led to concerns that some offenders are receiving sentences that are not in line with current community or judicial expectations, or the way in which certain criminal offences are now understood.

In 2017, the Royal Commission into Institutional Responses to Child Sexual Abuse recommended state and territory governments introduce legislation to ensure that sentences for child sexual abuse offending be imposed according to practices that exist at the time of sentencing, instead of the time of the offending. In response, the NSW Government passed [legislation in 2018](#) to enable the courts to apply current sentencing practices in child sexual abuse matters.

The Government's review considered whether this reform should be extended to other criminal offences, and whether this inconsistency has led to inequality before the law in sentencing practices.

### How did the review operate?

The NSW Government issued a discussion paper to a range of legal experts, victims' advocacy groups and government agencies in June 2021. The review considered the question of whether courts should sentence all offenders in accordance with the sentencing patterns and practices at the time of sentencing, not at the time of the offence.

### How often are historical offences prosecuted in NSW courts?

Prosecutions for historical offences are a tiny minority of all prosecutions. When these prosecutions do occur, these generally involve serious matters such as sexual assault or fraud where the accused has managed to evade detection or has been the subject of a long-running investigation.

## What types of offending might be subject to delayed reporting or changes in community attitudes?

Sexual offending against adults or domestic and family violence may be reported many years after the crime due to the long lasting trauma inflicted on victim-survivors and the intimate and complex nature of the violence.

Increased community understanding of the devastating impact of sexual offending and domestic violence has dramatically changed attitudes to those crimes as well as expectations of how perpetrators should be held to account by the criminal justice system.

Complex commercial fraud and other financial crimes are other examples of areas which may take some time to detect and finalise investigations, and where community attitudes have shifted as technology has transformed the depth and breadth of these offences.

## What impact will this bill have?

If passed, this Bill will require judges to sentence all offenders according to the sentencing patterns and practices that exist at the time of sentencing, not those that existed at the time of the offence.

The aim of the reforms is to ensure sentencing is just, fair and reflects contemporary community and judicial expectations.

## What are the next steps?

An exposure draft Bill is being prepared and will be circulated for stakeholder consultation, before it is introduced to Parliament in 2022.

The Bill will extend the change made in response to the Royal Commission into Institutional Responses to Child Sexual Abuse recommendation by section 25AA of the *Crimes (Sentencing Procedure) Act 1999* to all offences.

## Do any other international jurisdictions apply current sentencing patterns and practices for historical crimes?

A number of international jurisdictions require courts to apply, or have regard to, contemporary sentencing patterns and practices when sentencing for historical offences.

For example, courts in England and Wales are required to sentence all offenders according to the sentencing patterns and practices that exist at the time of sentencing, not at the time of offending. A similar approach applies in Canada, where the common law has long held that courts should apply sentencing patterns and practices that exist at the time of sentencing.