

The Law Reform and Sentencing Council Secretariat

New South Wales Sentencing Council

GPO Box 31

Sydney, NSW, 2001

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RE: Call for submissions to the Review of fraud and fraud-related offences

My name is Dr Cassandra Cross, and I am an Associate Professor in the School of Justice, Faculty of Creative Industries, Education and Social Justice, at Queensland University of Technology. My area of expertise targets (online) fraud, but also encompasses related areas such as identity crime, data breaches, cybercrime, and cybersecurity more broadly. I first started researching fraud in 2008, while working as a civilian with the Queensland Police Service. In 2011, I was awarded a Churchill Fellowship to explore the prevention and support of online fraud victims. This enabled me to travel across the UK, US, and Canada to engage with over 30 agencies working in this space. It was an invaluable experience which was the catalyst to my academic transition.

My appointment to QUT in September 2012 has enabled me to pursue a research agenda focused solely on fraud. I have developed an extensive and authoritative track record in this area, across both national and international fronts. I have published over 70 outputs predominantly relating to fraud and cybercrime. I have been successful in bidding for, and attracting research funding, having led eight research projects, all in collaboration with government or industry partners, totalling over \$1.3 million.

My fraud research has focused on all aspects of fraud victimisation, across policing, prevention, and the support of victims. I have focused largely on gaining direct narratives from those who have experienced fraud, as well as professionals who are tasked with responding to fraud across a wide range of stakeholder contexts (police, consumer protection, government, industry, and community organisations). Fraud is a global issue, and my work has highlighted the complexities, nuances and ongoing challenges posed by fraud to individuals, governments, corporates, and society as a whole.

Fraud sees millions of victims lose millions of dollars annually, with their livelihoods lost and destroyed. The current inquiry is focused on the sentencing of offender as it relates to fraud offences in NSW. One of the ongoing challenges with fraud is the issue of jurisdiction, whereby offenders often target victims in Australia from overseas. In many cases the victim and offender are in different locations, with money being transferred to a third jurisdiction. Offenders use the geographical limitations of police jurisdiction to their advantage, at the detriment of those victims who have lost their money.

While the majority of my fraud expertise has been focused on fraud victimisation which is unlikely to attract a police investigation, arrest and subsequent prosecution, there are some aspects to this which I believe are relevant to the current inquiry. I thank the NSW Sentencing Council for the opportunity to contribute to this initial call for submissions.

Dr Cassandra Cross

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The following submission is based on my collective research into fraud, which extends back to my first project in 2008. It draws largely on the direct narratives of fraud victims I have interviewed across the years, as well as my many interactions with other scholars, law enforcement, government and non-government agencies who work within the fraud space.

The submission focuses on the following two questions proposed stemming from the terms of reference:

- What factors should courts take into account when sentencing for fraud?
- Does sentencing for fraud appropriately respond to the needs of fraud victims?

However, before detailing my response, it is important to note upfront some key facts about fraud, which should underpin the current inquiry's considerations.

An overview of fraud

At its core, fraud is characterised by lying, cheating and deception, to obtain a financial reward. In most cases, this will see an offender gain a direct money transfer from a victim, but it can also encompass the harvesting of personal information and identity credentials to perpetrate a variety of identity crimes (such as setting up new credit cards, loans, and lines of credit).

The known losses to fraud are substantial. The Australian Competition and Consumer Commission (ACCC) reported losses of over AUD\$850 million by Australians in 2020, up from AUD\$634 million in 2019. While the official statistics are not yet released for 2021, it is anticipated that reported losses will exceed one billion dollars for the first time. This is not only occurring in Australia, with the United States of America reported over USD\$4.2 billion lost to fraud in 2020, up from USD\$3.5 billion the previous year. Increases in reported losses are repeated across countries worldwide.

Despite the magnitude of known financial losses, these are likely only a minority of actual losses experienced by fraud victims. Fraud is known to have one of the lowest reporting rates of all crime types. It is usually estimated that less than one third of all fraud offences are ever reported to authorities. Further, these figures do not include the extensive range of non-financial harms experienced by victims of fraud in the aftermath of an incident. Combined, the actual losses sustained because of fraud are arguably more sizeable than is currently known.

In recognising the low reporting rates for fraud, many factors contribute to this. The first is the ability for victims to navigate what is termed the "fraud justice network". In the context of fraud, there are a multitude of agencies that a victim can potentially contact to lodge a complaint and seek action. This may include police, banks and financial institutions, consumer protection agencies and a range of government and non-government organisations (dependent on the situation). In having so many agencies who could *potentially* take a complaint, victims find difficulty in finding an agency who will take the complaint, as many will refer victims onto another agency, known as the "merry-go-round" effect. This recognises that fraud victims are often passed from one agency to another, in the hope of being able to submit a complaint and initiate any action. In some ways, the establishment of "Report Cyber" (online reporting mechanism for cybercrime in Australia) has overcome this, however victims still report frustration and difficulty, and are often forced to interact with several agencies unsuccessfully regarding their incident.

In addition to the above, there are other reasons why victims do not report fraud offences. This includes victims not recognising their own victimization; not being sure of whether an offence has occurred; believing that the offence is too trivial; a lack of knowledge about who to report the incident to; and a belief that nothing can be done about it. Fraud also suffers from a strong negative

stereotype associated with victimisation. Fraud victims are unique in that they usually play an active role in victimisation, through the sending of money to an offender, or the sending of personal information. In this way, there is a strong sense of shame and embarrassment about being a victim and a corresponding sense of guilt and personal responsibility in their circumstances. This is often affirmed by third parties, including family, friends, and authorities. Victims overwhelmingly report negative experiences in attempting to report fraud, from outright humiliation and degradation, through to not being believed and refused the ability to make a complaint. Victim's fear disclosing what has occurred, with many (particularly older victims) reporting being disowned by their families, having had access to their grandchildren withheld, and a questioning of their capacity.

Fraud is not a new offence, having existed for generations. However, the evolution of technology has significantly altered the vulnerability profile of many across society, and exponentially increased the ability of offenders to target potential victims. Offenders can use social media and other communication platforms to easily connect with those globally. Offenders are highly skilled, tech savvy individuals, who are able to identify a weakness or vulnerability and exploit it mercilessly. The affordances of technology and the internet work clearly in favour of offenders, through the challenges posed to verifying the authenticity of an identity online. Offenders have embraced using a range of synthetic and stolen identities to deceive their victims.

The internet has also impacted on the ability of police and other law enforcement agencies to effectively investigate and arrest fraud offences. Offenders usually target victims outside of their own jurisdiction, which poses a challenge to the traditional geographically based model of policing and authority in existence. Given an offence usually is attributed to the jurisdiction of the offender, victims in Australia struggle to gain any investigation from police agencies. Offenders also use the cover of anonymity and identity theft to commit their offences. It is therefore difficult to attribute offences to an unknown entity. While in most cases, fraud does have a money trail, this also poses difficulties as offenders are increasingly using money mules as vehicles for receiving and transferring their funds. In many cases, fraud also requires a specific skill set on the part of a police officer. Fraud can be difficult to detect, investigate and prosecute. Further, fraud has never been the priority of police agencies, with resources focused on other crime types.

Overall, the above paints a sober picture of the complexities and nuances associated with fraud. In the large majority of circumstances, victims in New South Wales (and Australia) will be unable to lodge a complaint that leads to the investigation, arrest and successful prosecution of an offender. In this way, the current inquiry is important, but speaks to a niche category of victims. This in no way diminishes the experience of those who are successful in having their case prosecuted. Every fraud victim deserves to have an outcome, regardless of how the fraud was perpetrated against them. However, it is important to locate this in the broader context of fraud, and to understand the limitations of focusing solely on the sentencing of fraud offences. It is only a very small population of individual victims who will achieve this outcome. The majority will get no response, no outcome, and have no sense of justice afforded to them and their circumstances, despite many having lost everything.

What factors should courts take into account when sentencing for fraud?

As stated, most of my work to date has been with victims who are unable to achieve a successful prosecution through the courts and for who the above question is somewhat irrelevant. This has focused predominantly on individuals as victims but has also encompassed several small businesses

who have been defrauded through various schemes. It has focused on individuals as victims, not as those perpetrating fraud against organisations. Despite this, there are some overriding points that I believe should be considered in the sentencing of fraud offences at any level.

The first concerns the overall impact of fraud. While fraud is focused on financial gain, it is a myth to think that fraud losses are only financial. Instead, there are a wide range of non-financial losses which victims experience in addition to any loss of money. This includes a physical deterioration of their physical and emotional wellbeing, varying levels of depression, relationship breakdown, unemployment, homelessness, and in extreme cases suicide. Victims often speak of the violation and betrayal they have experienced at the hands of the offender, and the long last impacts of this on their ability to move forward. There are some studies which equate the impact of fraud victimisation as similar to those who experience violent crime. The severity of the impact should not be underestimated, under an assumption that fraud is categorised as a “property” crime. Fraud offenders employ the use of directly personal and intimate techniques of persuasion and control, which can destroy the lives of those targeted. Research documents the use of grooming, marketing and persuasion techniques, social engineering techniques, and most recently, the use of psychological abuse techniques (as established within domestic violence contexts), to gain compliance from victims.

Further to this, I have recently completed research which begins to document the fear of crime experienced by romance fraud victims. There are those who have been defrauded through the intimacy of what they believed was a genuine relationship, who suffer the acute and ongoing effects of fear of crime in the aftermath of an incident. They express a genuine concern for their physical safety, for that of their families, and for that of their identity. This is also expressed in an altruistic manner, as a fear of victimisation for others. It can manifest itself in simple actions such as closing bank accounts and resetting passwords. But it can also manifest itself in extreme actions of moving house and uprooting one’s life to try and regain a sense of control and safety. For those who do not have the resources to sever ties and establish themselves in a new location, the fear is palpable and unrelenting. This is the first piece of work to acknowledge the ongoing impacts arising from fear of crime, and its obvious transcendence across online and offline boundaries.

The sentencing of any fraud offender should account for the impacts described above, in terms of recognising the reality of fraud victimisation, and the ongoing and sometimes acute harm which may be experienced by a portion of victims long after the last amount of money has been sent.

Does sentencing for fraud appropriately respond to the needs of fraud victims?

In the research I have conducted, fraud victims are clear in articulating their needs. First, there is an overwhelming emphasis on the importance of being acknowledged and having what has occurred to them recognised. Their inability to lodge a complaint in many circumstances, and the lack of action which arises from any complaint, leaves many feeling that what has occurred has been minimised and trivialised by those around them. Many victims will experience additional trauma and suffering at the hands of the system in attempting to lodge a complaint and seek any sense of justice. Second, many victims seek action. This might be in the form of an investigation, and of potentially getting their money back but it also speaks to the desire to prevent their occurrence from happening to others. Action involves listening and not promising to do something that cannot be accomplished.

In the current context, the sentencing of a fraud offender clearly achieves the goals that many victims express. It means that an offence has been recognised, an offender has been located and

successfully prosecuted, and the offender is now being held to account for their actions. This is a rarity in the context of victims I have spoken to, though I acknowledge this may not be the case for the victims referred to within this context.

Conclusion

The effects of fraud victimisation can be life changing for those individuals who are impacted. Nobody expects to be a victim of fraud, and when it occurs, it can be devastating, financially and across many other facets of a person's life.

The current inquiry is focused on the cases whereby a successful criminal justice proceeding has been executed, and an offender is being held to account. It is important to consider this and ensure that current processes and proceedings are fair and just to all involved. The research I have conducted in this specific context is clearly limited.

However, I also implore future consideration to be given to those who fall outside of the remit of the current inquiry, and whose fraud victimisation will never be recognised and whose offender will never face criminal justice proceedings. While I note it is beyond the current terms of reference, it is arguably the experience of many fraud victims in New South Wales and has significant and ongoing detrimental impacts at both an individual and societal level.

References

A copy of all my publications can be found at the following link:

https://eprints.qut.edu.au/view/person/Cross,_Cassandra.html

I can provide full text copies of anything upon request.