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Foreword | *Consumer fraud costs Australians almost \$1b a year and most of this fraud involves scams in which individuals are persuaded to part with an upfront, or advance, fee, with the promise of large financial or other gain in the future.*

In this paper, consideration is given to the sentencing issues that apply in cases of this nature. In particular, the author examines the application of the key sentencing purposes, such as deterrence and rehabilitation, and the sentencing principles applied by courts, such as the proportionality principle, and the challenges that may arise in this context.

Key sentencing factors often cited in aggravation or mitigation are also reviewed, before an examination of some of the issues relating to specific sentencing options is undertaken. This paper goes some way in providing a brief analysis of sentencing practices. However, further research is required to better explore how sentencers respond to consumer fraud matters.

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Sentencing scammers: Law and practice

Lorana Bartels

The Australian Bureau of Statistics (ABS) (2008: 5) has defined consumer scams as a fraudulent invitation, request, notification or offer, designed to obtain someone's personal information or money or otherwise obtain a financial benefit by deceptive means.

According to the Australian Competition and Consumer Commission ((ACCC) 2012a), scams tend to succeed because they appear legitimate (see also Budd & Anderson 2011; Smith & Budd 2009). Indeed, it has been suggested that 'scams are the hardest security threat to protect against because they rely on exploiting naivety rather than technical flaws' (Turner 2011: np).

The ACCC recently updated its *Little Black Book of Scams* (ACCC 2011), which lists 15 distinct categories of scam types, including money transfer requests; banking, credit card and online account scams; golden investment opportunities and health and medical scams (see also Smith 2007). In 2011, the ACCC received 83,150 scam-related contacts from individuals and small businesses, with reported losses of \$85.6m, a 35 percent increase on 2010 (ACCC 2012b).

Advance fee fraud involves tricking people into paying an advance fee upfront, on the false promise that they will receive a large financial or other benefit at some time in the future (see Ross & Smith 2011). Examples of these scams include the so-called 'Nigerian scam', where a scammer offers the intended victim a reward in exchange for helping to transfer money (commonly with a fee attached) and fake inheritance scams, where the scammer claims the intended victim has been left a large inheritance, but has to first pay costs such as lawyers' fees. Ross and Smith (2011: 1) have suggested that 'most types of consumer fraud entail the use of so-called "advance fee" techniques'.

According to data from the 2007–11 Australasian Consumer Fraud Taskforce (ACFT) survey, email predominated as the source of scams, although 2011 data indicated a decrease in the use of email as an initial means of contacting people (AIC 2012). Data from the most recent Australian Personal Fraud Survey indicate that the national scam exposure rate between 2007 and 2010–11 was 36 percent of the population aged 15 years and over, with a victimisation rate of three percent (ABS 2012b).

Unfortunately, there are no comprehensive data available in Australia on sentencing practices in relation to those convicted of carrying out a scam. In this paper, sentencing in such cases is considered, with an emphasis on scams that target individuals, as opposed

to corporations or government agencies. In particular, the application of key sentencing purposes and principles in such matters is discussed, together with sentencing factors cited in aggravation or mitigation. The sentencing options that apply in the context of scamming cases are also discussed.

Purposes of sentencing

Several Australian jurisdictions set out the relevant purposes of sentencing, while other jurisdictions remain governed by the common law (see ALRC 2006; Mackenzie & Stobbs 2010 for discussion).

The key purposes are:

- punishment;
- deterrence (general and specific);
- rehabilitation;
- denunciation; and
- protection of the community.

However, as Mason CJ, Brennan, Dawson and Toohey JJ noted in *Veen v The Queen (No 2)* (1988) 164 CLR 465 at 476, the purposes

overlap and none can be considered in isolation from the others when determining what is an appropriate sentence in a particular case. They are guideposts to the appropriate sentence but sometimes they point in different directions.

In its 2006 review of federal sentencing, the Australian Law Reform Commission (ALRC) recommended that promoting 'the restoration of relations between the community, the offender and the victim' (ALRC 2006: Rec 4-1(f)) be included in an exhaustive list of the purposes that can be pursued when sentencing a federal offender. To date, however, 'restoration does not appear in any Australian sentencing legislation as a sentencing purpose' (Mackenzie & Stobbs 2010: 51). In addition, Smith (nd) has suggested that such approaches may not be suited to scamming cases.

An additional point in the present context is that many scams occur transnationally. Consequently, the impact of sentencing would likely be different, in terms of general deterrence, denunciation and so on, than would normally be expected in relation to domestic crime.

Application of sentencing purposes to sentencing scammers

Scamming cases may result in significant loss, not only in terms of financial loss, but also broader social impacts, for example, loss of trust in others (including commercial and/or government institutions) and loss of confidence in commercial markets (IRGI 2007).

However, the fact that many scammers are white-collar offenders may suggest that they are inadequately punished for their offending. Retired Federal Court judge Ray Finkelstein recently criticised 'the judiciary for being soft on white-collar crime', although it is difficult to determine the accuracy of this assertion empirically, due in part to the fact that many white-collar offenders are diverted from court through civil and administrative processes (Freiberg 2000). Indeed, Freiberg (2000: 3) has suggested that it is 'not possible to determine whether white-collar criminals receive more favourable treatment than ordinary offenders', adding that

issues of 'leniency' or 'severity' are difficult to determine in the abstract...

General sentencing levels for offences are likely to be misleading because of the heterogeneity of cases which come before the court and the difficulty in identifying which ones are 'white-collar' related (2000: 4).

Finkelstein noted that general deterrence was "usually the sole guiding principle" judges used when sentencing white-collar criminals' (Butler 2012: np). General deterrence is commonly thought to assume a particular significance in the context of fraud, especially where the criminal action is generally well-planned and carefully executed, and offenders can therefore be assumed to have conducted a cost-benefit analysis of their conduct. Indeed, it is not improbable that the operators of a bogus work-from-home scheme would be deterred if they learned of the sentences received for similar schemes. There also remains a place for specific deterrence in the present context, especially where the penalty might otherwise simply be disregarded as the cost of doing business.

In the case of *Nikaghanri v Western Australia* [2009] WASCA 192, the offender committed an advance fee fraud against five victims.

On the appeal against his sentence, the Court found at [17] that 'the repetition of the offending demonstrates that significant weight had to be given to the need for personal deterrence in addition to general deterrence'.

A key point in relation to rehabilitation is that many scammers show significant business acumen, technological nous and entrepreneurship. Accordingly, adopting a rehabilitative model may assist offenders in harnessing their skills in a pro-social way. To this end, the Prison Entrepreneurship Program, which was first developed in Texas, may provide a useful model. The program links executives and prisoners through entrepreneurial education and mentoring, and engages business and academic talent to redirect inmates' energies in a constructive way, which will enable them to productively re-enter society. In 2007, it was reported that in the first three years of the program, its graduates had a return-to-prison rate of 3.7 percent, compared with a national average of 50 percent (Rohr 2007). According to the most recent data available, by July 2010, over 90 percent of the 600 graduates had been legitimately employed within three months of their release from prison, with 75 new businesses started (PEP 2012).

Finally, denunciation may be relied on as a means of expressing disapproval. As the ALRC has noted (2006: [4.18]), the courts, through their denunciatory role, 'seek to educate both the offender and the public about correct moral values', with sentences that denounce the offender's conduct representing 'a symbolic, collective statement of society's disapproval of the criminal behaviour'. In the case of *R v Shannon* [2005] VSCA 143, the offender pleaded guilty to 28 counts of obtaining property by deception after raising more than \$7m through bogus raffles, which purported to raise funds for a children's charity. Nettle JA commented at [9] that the offences

represent fraudulent conduct on a very large scale. They warrant condign punishment in order to express the Court's denunciation and the community's intolerance of offending of that kind.

Sentencing principles

Australian courts are required to apply the following sentencing principles when sentencing an individual offender.

Proportionality principle

The principle of proportionality requires courts to impose sentences that bear a proportionate relationship to the criminal conduct in question. The principle operates to prevent the imposition of sentences that are manifestly excessive or lenient (Warner 2002; see also ALRC 2006; Edney & Bagaric 2007; Mackenzie & Stobbs 2010).

It might be argued that as scams become more extensive and sophisticated, judicial officers may come to see lenient sentences as disproportionate to the gravity of the offence, especially having regard to the number of victims and the extent of the loss suffered. As Smith, Grabosky and Urbas (2004: 107) noted:

Cyber crimes raise new concerns about proportionality, as the consequences of some types of offending can be great, and yet the conduct itself involves no physical violence.

Parsimony principle

The parsimony principle operates to prevent the imposition of a sentence that is more severe than that necessary to achieve the purpose(s) of the sentence (eg see *Sentencing Act 1991* (Vic) s 5(3)). Courts will likely be more willing to impose a parsimonious sentence on a scammer when rehabilitation is seen as the main goal than where the objective is deterrence or punishment.

Totality principle

The totality principle applies where an offender is sentenced for multiple offences or is already serving an earlier sentence and seeks to ensure an appropriate sentence overall (see *Mill v The Queen* (1988) 166 CLR 59). One key implication of this principle is that it appears to benefit high-volume offenders. For example, an offender will not receive twice as long a sentence if 200 people fall for a scam than if 100 people had done so. In the case of *Marinellis v The Queen* [2006] NSWCCA 307, the NSW Court of Criminal Appeal held that the sentencing

judge was inappropriately lenient in ordering the sentences for 10 charges of fraud to be served concurrently, 'because each offence was independent and involved different victims' (McAdams J at [34]), but this was still required to be subject to the totality principle. In that case, the offender was the 'Australian clearinghouse' for an international syndicate that created fraudulent transactions that induced victims to make contact with the offender for the processing of funds. By the time the victims were asked to contact the offender, they had been supplied with false Nigerian government documents, emails and faxes and other information from fictitious security companies, as well as details of the money they would receive.

Consistency/parity principle

Consistency in sentencing is regarded as fundamental to a fair and equitable criminal justice system and ensures that two offenders who have committed similar crimes and have similar personal circumstances are going to receive a similar sentence (see ALRC 2006 for discussion). In order to promote consistency for offences of this nature, it is vital that there be comprehensive research that compares like instances of offending, including across jurisdictional borders.

The parity principle, which may be regarded as a subset of the consistency principle (ALRC 2006), requires offenders who have jointly engaged in the same type of criminal conduct to generally receive similar sentences, although courts can take into account different levels of culpability and individual circumstances. This will, of course, have particular relevance where there may be multiple co-offenders participating in the same scam.

Individualised justice

Finally, the principle of individualised justice requires the court to impose a sentence that is just and appropriate in all the circumstances of the particular case. As Mahoney ACJ said in *Kable v DPP* (NSW) (1995) 36 NSWLR 374 at 394, 'if justice is not individual, it is nothing'. Judicial officers therefore need to have sufficient discretion to consider all the facts when sentencing an offender and ideally, have enough

sentencing options to tailor their sentence to the offender's individual circumstances. The recent observation by Selvadurai, Islam and Gillies (2010) that there needs to be greater flexibility in sentencing, given the wide spectrum of identity fraud-related activities, is clearly apposite in this context.

Sentencing factors

Over 220 factors appear to influence sentencing courts (La Trobe University 1980; Shapland 1981; see Bartels 2009 for discussion). Factors may be classed as aggravating or mitigating (see *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A), but the legislation in most jurisdictions (eg *Crimes Act 1914* (Cth) s 16A(2)) reflects the fact that this will depend on the circumstances (see ALRC 2006).

The following factors represent some of the key factors in Australian sentencing law (see Edney & Bagaric 2007; Mackenzie & Stobbs 2010; Warner 2002), which may be of particular relevance in scamming cases. The cases cited serve as examples of instances where a particular factor has been cited by the court, although it is not suggested that they are representative of how courts consider the competing factors in all such cases.

Factors relevant to the offence

Factors that relate to the offence itself are principally concerned with the nature and seriousness of the offence. One key means of determining this is the legislative view of gravity, that is, the maximum penalty laid down by the legislation (see *Markarian v The Queen* (2005) 228 CLR 357 for discussion).

Another important consideration is breach of trust, which is an aggravating factor (see Edney & Bagaric 2007; Warner 2002). This may be of particular relevance in the context of banking, health or superannuation scams, or where the offender holds a particular position. For example, in the case of *R v Street* [2007] VSCA 185, the offender was a financial adviser who defrauded five clients of over \$1m in an advance fee fraud. In dismissing the offender's sentence appeal, King AJA, with whom Vincent JA and Smith AJA agreed, referred to the breach of trust, noting at [45] that it was

expected that those involved in crimes of this nature have no prior convictions, and occupy positions of trust which give them the ability to easily abuse their position.

Intention and consequences are also relevant considerations (Edney & Bagaric 2007; Warner 2002); it may therefore be aggravating that the consequences of a scam involved significant financial damage to an individual. Conversely, where little financial damage was suffered, or where the offender did not foresee the extent of the damage (eg if the scam went much further than anticipated), this may limit liability.

Motive is also relevant to sentencing outcomes, with Chief Justice Spigelman stating in *R v Swan* [2006] NSWCCA 47 at [61]:

Motive is always a relevant factor. It affects the moral culpability of the offender, the weight to be given to personal deterrence and may affect the weight to be given to general deterrence.

As Hessick (2006: 146) has argued in relation to property offending more generally, if an offender's motive is

not simply to profit personally, but to help care for a severely disabled family member, she has probably distinguished herself sufficiently from the ordinary defendant who acts for a financial motive, and she is thus entitled to a sentence reduction.

Conversely, where scams are motivated by pure greed, this will be aggravating (see eg *Marinellis v The Queen* [2006] NSWCCA 307). Another consideration is the method of execution, especially the extent of sophistication involved in planning and executing the offence, with Edney and Bagaric (2007) noting that offences that involve a high degree of planning are difficult to detect, investigate and prosecute. Accordingly, it may be aggravating to carry out a scam that closely imitates a legitimate government or corporate website or logo. To this end, the SCG, discussed below, lists careful planning as an aggravating factor.

An offender's degree of participation is also relevant (Warner 2002), with principal offenders generally receiving more severe

penalties than those who have only played a minor role, although this is subject to the parity principle discussed above. In practice, however, it may be difficult to determine the role played by each offender, especially where numerous transactions and/or victims are involved.

The victim is also a relevant consideration (see Edney & Bagaric 2007; Fox & Freiberg 1999; Warner 2002). First, their vulnerability may aggravate an offence. Second, the victim's response to the offence and the impact on the victim may be relevant; for example, if they suffer long-term financial or other harm.

Finally, the prevalence of an offence might be a relevant consideration; for example, if a particular offence has been increasing over a period of time or in a particular area, this can be taken into consideration by the court. It may, however, be difficult to accurately determine prevalence, especially with scams that are perpetrated across national and international borders. In *Sweeney v O'Brien* [2010] NTSC 18, where the offender unlawfully obtained money using another person's identity, a sentence appeal was allowed in part on the basis of the lack of evidence about the prevalence of identity fraud.

Factors relevant to the offender

Whether an offender has previous convictions is regarded as 'one of the most important factors in a sentencing hearing' (Mackenzie & Stobbs 2010: 62). A linked issue is the offender's good character, such as volunteer work in the community (see *Ryan v The Queen* (2001) 206 CLR 267 for discussion). In this context, some white-collar offenders will be able to draw on unblemished characters and clean prior records to mitigate their sentence. For example, in a 1990s case, Warren Bund defrauded more than \$2.3m from a business consortium as part of a Nigerian scam, but was described as being 'a highly respected businessman and a devout member of Adelaide's Jewish community' (Owen-Brown 1999).

The offender's mental and physical health are also important considerations (see *R v Tsiaris* [1996] 1 VR 398). In *R v Street* [2007] VSCA 185, the offender appealed against

the sentence imposed for the advance fee fraud he had committed against five victims, arguing that the sentencing judge had given insufficient weight to the fact that the offender suffered from bipolar disorder. However, King AJA held (with Vincent JA and Smith AJA agreeing) that this was to be balanced against other factors, including the breach of trust, the duration of the offending, the number of separate transactions and total money involved, the sophisticated and calculated nature of the false representations and the steps taken to ensure that no one would be able to discover that the money was being transferred to Nigeria. Significantly, the medical evidence was found not to support the argument that the applicant's mental condition was causally involved in the offending.

Previous research has indicated a strong connection between fraud and gambling (see AIC 2008) and courts recognise gambling addiction as a relevant factor, albeit only of limited mitigating value (see Edney & Bagaric 2007 for discussion). In *R v Riganis* [2010] NSWDC 116, the offender pleaded guilty to an investment scam. In sentencing the offender, Berman DCJ considered the fact that the offender was a 'pathological gambler' but noted at [36] that although gambling 'may explain some of the offender's misconduct...it does not mitigate it' (see also *R v Grossi* [2008] VSCA 51, where the relevance of pathological gambling in sentencing was considered in detail).

Response to the charges

The offender's behaviour after the offence is relevant to the sentence. First, pleading guilty is an important mitigating factor (Edney & Bagaric 2007; Mackenzie & Stobbs 2010; Warner 2002), although the weight to be given to this will vary, especially depending on the time when the plea is entered and the strength of the prosecution case. Many consumer fraud cases will involve both large numbers of victims and significant paperwork around what financial transactions took place when. Accordingly, there may be a large discount for early pleas on the basis of their utilitarian value in reducing court costs and delays.

Another factor (often, but not always, linked with a guilty plea) is the presence of remorse or contrition, which Kirby J described in *Cameron v The Queen* (2002) 209 CLR 339 at [65] as having 'always been treated as deserving of...recognition in the sentencing of an accused'. This will carry greater weight whether they are accompanied by some action, for example, apologies to victims or efforts towards restitution. Restitution or reparation are separate mitigating factors (see *O'Keefe* [1959] Qd R 395), which may achieve a degree of restoration for the victim, but it is generally argued that an offender should not be able to 'bargain with the court' or 'buy their way out of sentences' (see Warner 2002: 110). This is particularly apposite in the present context, where scammers may amass considerable wealth from their crimes. Conversely, as the UK Sentencing Guidelines Council (SCG) (2009: 11) has noted

providing an incentive to return property or money is particularly important as it may be difficult for a victim to recover his or her losses in any other way.

Finally, providing cooperation and assistance to law enforcement authorities can carry substantial mitigating weight, especially where the offender volunteers offences of which the authorities would not otherwise have been aware or gives evidence against co-offenders (Edney & Bagaric 2007; Mackenzie & Stobbs 2010; Warner 2002). Again, in fraud cases, which can be cross-jurisdictional, highly sophisticated and involve multiple offenders, the ability of the court to recognise an offender's cooperation, at times at great risk to themselves, is an important part of the sentencing discretion.

Effect of the offence and sanction

Another category of factors relates to the effect of the offence and sanction on the offenders and in some circumstances, others, such as the offender's family. In particular, it may be a mitigating fact that the offender has suffered extra-curial punishment through public exposure and loss of position, status or income (see Warner 2002; for a critique, see Mackenzie & Stobbs 2010). This may again advantage middle-class offenders and is clearly relevant in the context of fraud offenders who have hidden

behind a mask of respectability to help them perpetrate their crimes.

UK Sentencing Guidelines Council

The SCG recently handed down guidelines for sentencing in statutory fraud offences, in which it stated that the 'primary consideration when sentencing fraud offences is the seriousness of the offending behaviour' (SCG 2009: 4). The SCG suggested that in determining the seriousness of an offence, culpability and the harm caused should be determined by reference to factors including:

- the impact (including risk of physical harm) of the offence on the victim and the harm or risk of harm (including physical harm) to the victim or others;
- erosion of public confidence;
- the difference between the loss intended and the actual loss that resulted; and
- any legitimate entitlement to any of the money obtained.

Aggravating factors relating to the seriousness of the offence include where:

- an offence was carefully planned;
- there was a high level of profit;
- an attempt was made to conceal or dispose of evidence;
- there was deliberate targeting of vulnerable/multiple victims;
- there was a breach of trust; and/or
- there was use of another person's identity.

Mitigating factors nominated by the SCG include:

- mental illness or disability;
- where the offender played only a minor role in the fraud;
- that the behaviour was not fraudulent from the outset (ie the offender originally had a legitimate claim to the money), or the offender was involved on the basis of misleading information;
- voluntary cessation of offending;
- restitution and disclosure of the extent of the fraud; and/or
- financial pressures to which the offender was subject.

In light of the paucity of research and clear guidance in Australia this area, it may be of benefit for Australian researchers, policymakers, practitioners and judicial

officers to collaborate in developing guidelines such as those finalised by the SCG in order to promote consistency of approach in similar cases (eg the importance of denunciation and general deterrence in such cases). The need for a harmonised approach is particularly desirable, given the likely inter-jurisdictional nature of the offences. However, the broad range of charges under which scams can be prosecuted, in addition to the need for individualised justice, makes it undesirable to set down any prescriptive mandatory minimum sentences.

Sentencing options

There is a broad range of sentencing options available to judicial officers. Some of the key considerations that arise in the present context include the fact that dismissals, community service and probation orders will generally be limited to minor cases, given the relatively low threshold (eg 320 hours community service under the *Criminal Law (Sentencing) Act 1988* (SA) s 47(1)). By contrast, fines may have a high maximum threshold (eg \$110,000 under the *Crimes (Sentencing Procedure) Act 1999* (NSW) ss 15, 17). Sentences of imprisonment may also be lengthy; internationally, there are instances of scammers receiving terms of up to 150 years, such as in the case of Bernie Madoff (Teather 2009).

Substitutional orders of imprisonment, such as suspended sentences and home detention, are formally sentences of imprisonment that are not served in a custodial facility. The advantage of these sentences is that the offender can remain in employment and may thereby be able to make a valuable contribution to society, including one that ameliorates some of the effect of their crimes. One major issue here, however, is that well-off offenders will suffer a relatively more lenient penalty than those who live in less palatial surroundings and this form of punishment may therefore also benefit white-collars scammers (see Moran 2011).

Courts can also make orders for restitution, reparation, compensation and/or forfeiture, generally as an ancillary order (eg s 110(1) of the *Sentencing Act 1995* (WA) provides that

a reparation order 'is in addition to and not part of the sentence imposed on an offender'). Orders of this nature serve as a means of recouping stolen funds, as well as goods used in the commission of the crime, and can be quite considerable in scope. For example, in an American case, an offender was ordered to pay \$30m in restitution for his involvement in a concert promotion Ponzi scheme (US Attorney's Office 2011).

Restrictions on the use of computers as a sanction

The court may order an offender to forfeit computer equipment or other sources of technology used in the commission of the crime, either as an ancillary order or as a condition of sentence. In an analysis of 33 cases where courts imposed forfeiture or restriction-of-use orders in relation to computers, Smith (2004) argued that orders of this nature would be appropriate where reasonably linked to the purposes underlying the order (such as deterrence or incapacitation), so long as they involve no greater deprivation of liberty than necessary (ie not breach the parsimony principle) and are not overly broad.

However, this is to be balanced against the now widespread use of computers in many aspects of daily life, including those that would promote an offender's rehabilitation, for example, if the offender would thereby be prevented from being gainfully employed. This might, in turn, have an impact on their ability to make restitution for their crimes. In addition, the potential impact on others must be considered. In a Queensland case in Smith's study (2004), for example, it was found that ordering the forfeiture of a computer on which the offender had accessed child pornography would have been detrimental to the offender's children; this could possibly be seen as a violation of the proportionality principle discussed above.

There may also be issues of enforceability, especially where offenders could use other people's computers to circumvent the intention of the order (eg by using a computer at public library), or where others have a legitimate and unrestricted right to use the same computer as the offender. Finally, as Smith (2004) acknowledged, in spite of the increasingly sophisticated monitoring or filtering software, many

scammers will be more technologically adept than the probation services monitoring them and therefore able to evade detection.

At the other end of the sentencing spectrum, Smith (2004) has suggested that courts could order offenders to use their technological know-how in a constructive way, for example, by performing community service that builds on their expertise, or delivering cautionary warnings about fraud to would-be offenders and/or victims. Quite how judicial officers would craft and enforce such orders in scamming cases remains to be seen, but this approach may be worthy of further examination.

Conclusion

The ABS (2008) has estimated that consumer frauds cost Australians almost \$1b each year, although it would appear that only a small proportion of these are reported to police (ACCC 2012b; Smith 2007; Smith & Akman 2008). In spite of the apparent prevalence of consumer fraud and scams, there is currently little information on sentencing practices in relation to offences of this nature. This appears to be due in part to the range of offences that might be classified as scams and the lack of national sentencing data generally. The fact that only five percent of fraud matters finalised in 2010–11 were resolved in the higher courts (ABS 2012a) may also impede the development of a clear understanding of the operation of sentencing principles in practice.

This paper has sought to go some way to filling the gap by providing an introduction to Australian sentencing law, with reference to actual and theoretical application in the context of scamming cases. The key sentencing purposes, such as general and specific deterrence, were considered. The principles that courts are bound to apply in sentencing an individual offender, such as the totality principle, were also considered. The paper then presented an overview of some of the key aggravating and mitigating sentencing factors that may be of particular relevance in such cases. Examples of factors relating to the offence, to the offender, the offender's response to the charges and the effect of the offence and sanction were illustrated by recent case law examples. The approach of the UK SCG

was also discussed. Finally, the key sentencing options available to the courts and the issues these may present in the context of scamming cases were explored, especially in relation to the imposition of restrictions on the use of computers used to commit the offence.

There is a growing level of awareness about the nature and scope of scams of this nature (see ACCC 2011; 2012a; 2012b; Smith 2007; Smith & Akman 2008; Smith & Budd 2009). What is required now, however, is greater guidance for criminologists and legal practitioners about how sentencers do and should respond to such cases. Research is therefore required on the types of sentences currently imposed in consumer fraud cases, including any jurisdictional variation. An exploration of the extent to which the sentencing factors discussed in this paper appear to influence sentencing outcomes would also be instructive; particular consideration should be given to the desirability of adopting the UK model in setting out guidelines for the courts to consider. The operation of sentencing principles in cases of this nature, for example, the operation of the totality principle in cases that may involve potentially thousands of victims, would also be instructive. Finally, research on the purposes of sentencing adopted by the courts, including the relevance of restoration as a sentencing objective, would also assist in determining in which directions the guideposts point when sentencing scammers.

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