

**Submission for The '80 per cent rule': Serious violent offences scheme in the Penalties and Sentences Act 1992**  
**To the QLD Sentencing Advisory Council**  
**Submitted by**  
**Fighters against child abuse Australia [FACAA]**



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**14<sup>th</sup> of December 2021**



## **About the author:**

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Adam Washbourne is the founder and President of the charity group Fighters against child abuse Australia. He founded the charity July 2010 to fill a big gap that he saw within the community and to bring about an end to an issue that has plagued our nation for far too long now.

Adam has a Diploma of Community services (Welfare) specializing in child trauma counselling and has worked in the field for the past 13 years since completing his degree. Adam is also a martial arts instructor and has been teaching children how to defend themselves for the past 18 years.

Adam has worked for various community centres, mental health facilities and martial arts schools but currently counsels for FACAA and teaches for KMA martial arts in Liverpool Sydney, one of Australia's premier martial arts schools.

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## **About Fighters against child abuse Australia**

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Our mission is to end child abuse once and for all within Australia.

Our vision is to make Australia the only nation on the planet that does not suffer from the scourge that is child abuse.

Our guiding principals are to remain completely non-denominational and non-political to achieve our mission of ending child abuse once and for all by whatever means are required (within the laws of the land). If a program does not exist to meet the needs of our clients, then we will make one to meet their needs.

FACAA has been working actively for the past 10 years to end child abuse within Australia. We are currently running a survivor's healing programs, educational and legal reform programs, domestic violence programs, anti bullying programs and a social media awareness campaign which is one of the most successful social media campaigns of its kind in Australia.

FACAA is a national organisation that has full deductible gift recipient status as a public benevolent society. We have volunteers working and clients from every part of Australia and we have members from all over the world.



## **Introduction**

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When Fighters Against Child Abuse Australia were formed, we started to help survivors of child abuse heal from their ordeal and to also raise awareness of child abuse in Australian society. One of the main issues we see with child abuse is the vastly inadequate sentences handed down by judges, all too often, in spite of the fact that the laws exist to keep them behind bars for quite a significant time. Despite these laws being in place, despite the public outcry against it, time and time again we have seen child abusers, child rapists and even child killers getting out of prison with community correction orders or even wholly suspended sentences.

This is simply not good enough, it is not good enough as a deterrent to stop other criminals from committing these crimes, it is not good to reach public expectation of punishment for those who hurt the most vulnerable members of our society and it is no where near good enough to “rehabilitate” these offenders against children.

Letting serious violent offenders off after serving just one third of their sentence is a slap in the face to victim survivors everywhere. The 80% rule is a great move forward to bring the sentences of those who commit serious violent offences in line with societal expectations and even principles of criminal sentencing in general.

Currently lenient sentences for serious violent offences and offences against children do not even meet the principles on which criminal sentencing exist.

Even the language used in this review is entirely perpetrator centric. While we understand that it is the perpetrators who are being affected by the wording of this review our system needs to realise that every piece of legislation and every review has a direct and lasting impact on victim survivors as well. As such it

is FACAA's belief that all legislation and any review wording need to be victim survivor centric not perpetrator centric as perpetrators have a choice as to if they end up being affected by the wording of this review or not, victim survivors do not have that choice.

Light or lenient sentencing for serious violent offences and offences against children fail to offer retribution of any kind considering they get light sentences to begin with and then get set free after serving just one third of their sentence with parole and a guilty plea.

Light sentencing offers little or no deterrence to other criminals considering a similar crime as they literally get a slap on the wrist despite public outcry against their crimes.

Light or lenient sentencing for serious violent offences also fails to incapacitate perpetrators from society as they do not serve any decent amount of time compared to the horrendousness of their crime. Rehabilitation is entirely out of the question considering if a perpetrator isn't behind bars long enough to get into a rehabilitation program let alone complete one (not that child abusers can be rehabilitated).

The 80% rule is a very big step forward to see the principles of sentencing met for serious violent offenders and child abusers. It will also go a long way to restore lost public faith in our legal system. The only thing needed to see this law restore the lost faith in our legal system would be to make it compulsory for all serious violent offences and child abusers with no exceptions and no plea deals to get perpetrators out of it.

FACAA understand sexual crimes against children and production of child abuse material are not considered violent crimes. We would like it clearly stated that these crimes ARE in fact very violent at their very core. Children are left forever scarred by the ordeals of sexual abuse and being forced to be a

part of child abuse material either producing it themselves or being a filmed for the abuse material. Survivors of child sexual abuse (even when the abuse isn't doesn't involve direct violence) are left with post traumatic stress disorder at such a high level it is comparable to front line soldiers who have come home from a war. One of the victim survivors FACAA helps with our Phoenix survivor's healing program told us that they will spend literally the rest of their lives looking into the eyes of strangers looking at them and wondering "Did they see the pictures? did they see the videos?" If that isn't' violent I don't know what is.

Calls for submissions like this by the Sentencing advisory council will go a long way to restore public faith in this system if it is backed up with the legal reform that will no doubt be called for by the final report. Hopefully with that legal reform that is so desperately needed we can do more then restore the public's faith in the system. Hopefully we can bring back the justice to our legal system when it comes to children and child abusers.



## Questions and answers

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### QUESTION 1: REVIEW PRINCIPLES

1. *Do the principles adopted by the Council for the purposes of reviewing the operation and efficacy of the serious violent offences scheme ('SVO scheme') provide an appropriate framework for reform?*

The principles the council used to review the SVO scheme make for a good base however each one could use a few additions made to them.

*Principle 1: Reforms to sentencing and parole laws should be evidence based with a view to promoting public confidence*

While this is good in theory, practically it is useless if the evidence provided to the public is filled with jargon, acronyms and legal speak that the public simply cannot understand. It will just seem to everyday Jane/Joe Citizen like another political campaign filled with words they can't understand put out by a government trying to make it unreadable to the average person. In short always ensure all publications designed to restore public confidence is jargon, legal speak and acronym free.

*Principle 2: Sentencing decisions should accord with the purposes of sentencing as outlined in section 9(1) of the Penalties and Sentences Act 1992 (Qld).*

This should be the guiding principle behind all reforms and amendments made. The principles of punishment, denunciation and community protection in particular need to be behind any review.



*Principle 3: Sentencing outcomes arising from the operation of the SVO scheme should reflect the seriousness of these offences, including their impact on victims, while not resulting in unjust outcomes*

This is another key principle that needs to be considered when undergoing any review. However, it is FACAA's belief that this principle needs to be backed up by an education program for judges. FACAA would be more than happy to facilitate a program where any judges implementing the 80% rule for the SVO would have to sit down and hear the stories from victim survivors as to just how truly serious the crimes they are sentencing on are as well as the long-term consequences to the victim survivors and their families. FACAA would facilitate victim survivors and their families to tell judges face to face just how horrific these crimes really are and just how much they have forever changed their lives for the worse.

*Principle 4: Parole serves an important purpose in helping prisoners to reintegrate into the community successfully and safely and in minimising the likelihood of a person reoffending, thereby promoting community safety.*

In this principle the 80% rule will go a long way to restoring the public's lost faith in our legal system. All too often serious violent offenders and child offenders are given light sentences and are paroled after serving just one third of that light sentence. Therefore, FACAA believe wholeheartedly in the 80% rule which we believe should become mandatory for all SVO and child offenders. Without the possibility of plea deals seeing the offender dodging the SVO scheme.

*Principle 5: Sentencing inconsistencies, anomalies and complexities should be minimised.*

Once again, this principle is good in theory however all too often this principle is used to keep sentences low. Sentences for SVO and child offenders need to be as a standard kept as vigorous as possible. The anomaly should be a low sentence not a decent sentence.

*Principle 6: Any reforms should consider likely impacts on the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system.*

The over representation of Aboriginal and Torres Strait Islander people is something that simply must be ended. It creates generational issues and creates a cycle of abuse and violence. FACCJ are quite happy to hear this principle held in high regard when it comes to any reforms.

*Principle 7: The circumstances of each offender and offence are varied. Judicial discretion in the sentencing process is fundamentally important.*

This principle needs to be re-worded as in its current form it appears to be showing sympathy and telling judges to take time off sentences due to “circumstances” . FACCJ would like it worded with a victim survivor centric approach. Something like

The circumstances of each crime and offence are varied, judicial discretion in sentencing is fundamentally important and the victim survivor stories must be heard.

*Principle 8: Sentencing orders should be administered in a way that satisfies the intended purposes of the sentence. Services delivered under them, including programs and treatment, should be adequately funded and available across Queensland both in custody and in the community.*

Once again, this principle is worded wrong, FACAA would like once again for it to be re-worded in a much more victim survivor centric way. Something like,

Sentencing orders should be administered in a way that satisfies the intended purposes of the sentence including all principles of sentencing. Services delivered under them including services for the victim survivors of the crime should be adequately funded and available across Queensland.

*Principle 9: Sentencing decisions for serious violent offences should be informed by the best available evidence of a person's risk of reoffending*

This principle should be governed by one simple rule. The best indicator of a person's future behaviour is their past behaviour so if an offender has any criminal history it needs to be assumed that they will re-offend and therefore the best available evidence of a person's risk of re-offending is their criminal history which should be available to the judge and jury.

*Principle 10: Any reforms should aim to be compatible with the rights protected and promoted under the Human Rights Act 2019 (Qld) or be reasonably and demonstrably justifiable as to limitations*

Once again the wording of this principle is entirely perpetrator centric and literally only cares about the perpetrator and their rights. Once again perpetrators choose if they do or do not

become affected by the wording of the SVO scheme and victim survivors do not.

FACAA's preferred wording would be something like  
Any reforms should aim to be compatible with the rights protected and promoted under the human rights act 2019 (Qld) or be reasonably and demonstrably justifiable as to limitations. By the same token any reforms should consider how the perpetrator broke the human rights act of 2019 (Qld) with their offences against the victim survivor.

The principles were a good base however they need to be much more victim survivor centric as opposed to being entirely perpetrator centric. While we are well aware they were written with their effect to the perpetrator in mind as said the victim survivor has no say if they do or do not become affected by the wording whereas the perpetrators do get that choice.

#### QUESTION 2: 7.1 Objectives and nature of the SVO scheme

*2. Are the purposes of the SVO scheme clear? Is any additional legislative guidance required?*

The purpose of the SVO scheme is clear, protection of the public. FACAA would like a particular emphasis placed on the protection of children in the objectives of the SVO.

#### QUESTION 3:

*3. Is the current scheme meeting its intended objectives?*

FACAA believe the current SVO scheme is helping to protect the public. With longer sentences being handed out and longer non parole periods being handed down there must be a deterrence effect in place. Plus, we have heard directly from

victim-survivors that they are feeling much more positive towards the legal system as a result of those who have committed crimes against them being given much more appropriate sentences.

We at FACA also note that the research cited in 6.2.2 on page 47 of the issues paper is entirely contrary to the findings of the research of FACA through talking directly to victim survivors. We are unsure of whom the researchers cited in 6.2.2 spoke to in order to get statements like “*There is no evidence that the threat of a longer prison term has a deterring effect*”. Not only is this entirely illogical (by definition you can not tell me if a criminal is considering a crime they will not think twice if a conviction means significant prison time) but it is literally only half the story. Not only are longer sentences for serious violent offences and offences against children good to act as a deterrent but they also act to restore much lost faith that our society has in our legal system. With that you will also see a flow on effect of less crimes being committed as people will know they will be punished should they be caught as they will know our legal system is one that will see the perpetrators punished for their crimes. We believe it is important to provide both sides of the benefits of longer sentences rather than just half the story.

#### QUESTION 4:

*Is the SVO scheme, as it is currently being applied, targeting the right types of offences and offenders?*

The SVO scheme is currently targeting serious violent offences and offences against children. This is precisely who it needs to target. If you want to restore public faith in our legal system, then you need to target these crimes.

In terms of targeting offences against children the SVO scheme should be expanded to include those who have committed child abuse material offences. Production of child abuse material significantly harms children the world over including Australia, yet our judges (based upon the sentences handed out) see it as a crime comparable to avoiding fines with most sentences handed down being either wholly suspended or the entire sentence for hundreds of charges being measured in months.

#### QUESTION 5:

*How, if at all, should a person's criminal history and other personal circumstances factor into whether an SVO declaration is made?*

A person's criminal history is the best predictor of their future behaviour. With that in mind the entirety of a perpetrator's criminal history should be made available to the judge, the jury and the prosecution. The prosecution should be made to take the criminal history into account when making a plea deal.

If the criminal history features any kind of similar crime to the one the perpetrator is currently being charged with, the sentence should be increased dramatically.

## QUESTION 6 :

*How well are prison and post-prison rehabilitation or reintegration measures working for people who have been declared convicted of an SVO? How can they be improved?*

FACAA can not speak to the post-prison rehabilitation nor reintegration measures as we do not concern ourselves with the welfare or well being of convicted child abusers.

## QUESTION 7:

*Is the current guidance and the information provided to courts on the making of a discretionary declaration sufficient? If not, what additional guidance or information is required?*

No. FACAA would like to see clear guidance as to what an Serious Violent Offence is and a clear list of offences. We would also like to see the “no more than 10 years behind bars” rule removed and have a no less than 5 years but no limit as to how many years to be served can qualify under the SVO scheme.

Offences we at FACAA would like to see as part of the SVO include but are not limited to:

Murder with intent (premeditation),

Multiple murders,

Repeat (more than 5) domestic violence offences.

A domestic violence offence resulting in hospitalisation of the victim-survivor,

Domestic homicide,

Murder or manslaughter of a child under 16,

Multiple violent offences against a child under 16,

Penetrative rape of a child under 16,

Incest,

Production of child abuse material by an adult involving threats of violence or manipulation of the child,  
Assault of a child requiring hospitalisation.

There needs to be a list of pre-defined crimes that qualify for the SVO so judges can have no discretionary powers to not give the perpetrator the SVO scheme extension to their parole. Also crimes on the list need to be exempt from plea deals that include the removal of the SVO scheme.

## QUESTION 8

*Should there be a statutory requirement for a court to provide reasons for declining to make a declaration when asked by the prosecution to do so?*

Absolutely yes, if a court decides not to apply the SVO scheme when asked by the prosecution they should absolutely have to provide a full and detailed reason as to why they made this choice.

Should the one judge repeatedly decline to make a declaration then that judge needs to be counselled as to the serious impacts of the crimes they are deciding are not so serious. FACAA would happily provide victim-survivors to help facilitate this counselling.



## QUESTION 9 Impact on court sentencing practices

9. *How is the SVO scheme affecting court sentencing practices?  
For example:*

(A) *What is the impact of the SVO scheme on the length of head sentences?*

Apparently the SVO scheme is reducing the length of head sentences. Which flies in the face of the SVO scheme being created. The whole entire point of the scheme is to protect the public and restore faith in the legal system. The judges need to stop taking into account how hard done by the perpetrators are and start taking into account the fact that they have destroyed lives. Not one life but many lives. The SVO scheme needs to be made as an addition to the sentencing and judges need to not have the ability to reduce the sentence should the SVO scheme be applied. Clearly, they simply care more for the perpetrators and their “overall circumstances” then the do the victims and the victim-survivors. Since when judges served the perpetrators and their needs as opposed to serving the victims, the victim-survivors and their families.

(b) *Where the automatic application of the scheme is avoided due to the sentence falling below 10 years, how does this affect the setting of parole eligibility dates?*

Sadly, when the automatic application of the scheme is avoided the parole eligibility dates are set as normal, in some cases it can be as little as one third the total sentence which is a slap in the face to the victim-survivors, entirely robs public faith and trust in the legal system, offers no possibility of rehabilitation or acts as any form of a deterrent.

QUESTION 10:

*Does the current application of the scheme and anomalies in its structure and operation create inconsistencies or other problems? How might these be overcome?*

Under the current ambiguous definitions of what offences qualify for the SVO scheme, there may be an argument that could be made that there exist anomalies which could create inconsistencies or other problems. This could be easily fixed by clearly defining the crimes that fall under the scheme and not allowing courts to avoid the scheme in anyway.

QUESTION 11:

*Are there any other issues with the operation of the scheme as it impacts court sentencing practices not identified that should be considered as part of the review?*

The main issue we at FACAA are seeing with the SVO scheme is the fact that there is too much discretion to not apply the scheme. We believe that the easy fix to this issue is to make the SVO scheme mandatory for the crimes listed above.

QUESTION 12: Automatic operation of the scheme and parole eligibility.

*Are mandatory sentencing schemes appropriate in certain cases – such as for serious violent offences?*

Absolutely they are ! In the crimes listed by FACAA above a mandatory sentence is not just appropriate but required. Time and time again FACAA have seen child rapists walk free from court with a wholly suspended sentence, those who produce and distribute child abuse material have no conviction recorded and in the famous case of Matthew James Ireland who brutally bashed 18-month-old Hemi Goodwin-Burke over several hours and was given a pathetic maximum 8 and a half years behind bars with a parole eligibility of under 2 years.

Cases like this not only tear apart what little faith the general public have in our legal system, but they offer no deterrent against future crimes what so ever, they remove the possibility of rehabilitation (how can you even start a rehabilitation program in under 2 years let alone complete one successfully).

Cases like this only serve to prove the fact that mandatory sentencing isn't just appropriate but is absolutely necessary as our judges have proven time and time again that they simply can not be left in charge of handing down sentences in cases of serious violence or crimes against children.

QUESTION 13:

*Should the distinction under the SVO scheme between sentences at or above 10 years and below 10 years be retained?*

No, that rule should not be retained, if the crime fits the SVO scheme no matter what sentence the judge is considering the SVO scheme should be applied to the parole eligibility automatically without the possibility of it being removed.

QUESTION 14:

*If retained, should the discretion for the SVO scheme to be applied to a listed offence for sentences of imprisonment of 5 to 10 years be retained, or should this apply to a sentence of any length where a listed offence is dealt with on indictment?*

Firstly the scheme should 100% be retained, secondly the scheme should apply to a sentence of any length where the listed offence is dealt with on indictment.

This will remove any barriers to the scheme not being implemented and stop perpetrators legal counsel being able to get them out of the scheme, as the old saying goes “ If you do the crime you will do the time”

## QUESTION 15

*Is the 80 per cent/20 per cent split between the minimum period in custody and maximum period on parole appropriate for offenders declared convicted of an SVO or should this be changed? If changed, what approach do you support:*

We at FACAA believe the 80/20 percent split is appropriate for the SVO scheme. The 20% of the sentence gives the system enough time for re-integration such as post custody monitoring but doesn't significantly reduce the time spent behind bars for the perpetrators of serious crimes.

## QUESTION 16

*If the SVO scheme is retained in some form, should a court have the ability to depart by setting either:*

- (a) a lower non-parole period; and/or*
- (b) a higher non-parole period?*

The SVO scheme should 100% be retained. We at FACAA believe that B is the appropriate option as a higher non-parole period is always better than a lower non parole period. Who in their right mind would want perpetrators convicted of a serious violent offence or an offence against children to have a lower non parole period ?

## QUESTION 17

*If a court has the ability to depart from the scheme's mandatory application, is any legislative guidance required to a court in the setting of a:*

- (a) a lower non-parole period; and/or*
- (b) a higher non-parole period; and*

*what form should this take (e.g. where there are 'exceptional circumstances' or 'special circumstances' or where this is 'in the interests of justice')?*

We at FACAA believe there should be no ability for the court to depart from the scheme. The SVO scheme should be entirely mandatory, if the crime on the list above is committed then simply put the SVO scheme should be applied with no reduction in the head sentence.

## QUESTION 18:

*What factors should be considered in the setting of either a higher or a lower non-parole period, and should these be legislated?*

The only factor that needs to be considered in this question is how high a non parole period can be put in place and still allow adequate time for post release monitoring.

The more time a perpetrator of a serious violent crime and crimes against children serves behind bars the better for everyone

## QUESTION 19: Offences included in the scheme

*If the SVO scheme is retained, should a schedule of offences to which the SVO scheme applies form the basis for its application?*

Yes, there needs to be a clearly defined list of offences that is not open to interpretation so the perpetrators involved can not make deals to avoid the SVO scheme.

Once again the list of offences FACAA would like to see as part of the SVO include but are not limited to:

Murder with intent (premeditation),  
Multiple murders,  
Repeat (more than 5) domestic violence offences.  
A domestic violence offence resulting in hospitalisation of the victim-survivor,  
Domestic homicide,  
Murder or manslaughter of a child under 16,  
Multiple violent offences against a child under 16,  
Penetrative rape of a child under 16,  
Incest,  
Production of child abuse material by an adult involving threats of violence or manipulation of the child,  
Assault of a child requiring hospitalisation.

## Question 20

*If a separate schedule is retained, should the schedule be separate to that which applies for the purposes of section 156A(1)(a) of the Penalties and Sentences Act 1992 (Qld) ('PSA')?*

*“156A of the Penalties and Sentences Act 1992 is that it requires every sentence imposed for a schedule offence to be served cumulatively with every sentence which is imposed on the same offender, either earlier or on the same occasion.”*

FACAA would like to say this part of the legislation is absolutely brilliant. We would like to see all crimes against children be served cumulatively instead of concurrently. This part of the SVO is absolutely necessary and needs to be rolled out to all crimes against children.

One of the cases FACAA helps with our Phoenix survivor's healing program told us that they couldn't understand why their abusers got 4 years behind bars for over 100 counts of abuse against her when each count should have seen them get 12 years. She was 8 years old and proudly showed me a calculator with  $100 \times 12 = 1200$ . So why she asked did her abusers get 4 years.

I had to explain to her that in NSW the law states that sentences are served concurrently which means one on top of the other, to which she responded “ That seems silly to me “

It seems very silly to us too, the SVO scheme involving cumulatively sentencing is one of the aspects that we are most proud of and we at FACAA hold it up anytime one of our clients is telling us that there is zero justice. We hold this section up and remind them that there is hope and our legislators are listening.

We at FACAA would like to say on behalf of our 150,000 plus members that serious violent offences and offences against children being served cumulatively **MUST** remain, even if the SVO scheme itself is scrapped we must keep the cumulative sentencing aspect of the legislation in place.



## QUESTION 21

*Is the current list of offences to which the scheme can, or must, be applied (depending on the sentence length) as listed in Schedule 1 of the PSA appropriate?*

(A) Yes FACAA are quite happy with the list and are even happier with the list of proposed additions to the crimes in table 7 of page 71.

We are very happy to see child exploitation (abuse) material on the proposed additions to the list. As we have stated in our introduction, despite what some might think are quite violent in nature and leaves the victim survivors involved with lifelong wounds.

(B) FACAA question if having fraud on the list of SVO scheme crimes won't pull focus away from the more important crimes such as violent crimes and crimes against children. We are not saying fraud is not a crime deserving of punishment, but we are questioning if it belongs on a list with violent crimes and crimes against children.

## QUESTION 22

*Should the ability to make a declaration for an offence not listed in the schedule be retained and if so, are the criteria under s 161B(4) appropriate?*

Yes, the ability to make a declaration for an offence not listed in the schedule should be retained, yes the criteria is appropriate however we at FACAA would like to see the limitations on sentencing removed.

## QUESTION 23

*If retained, should the scheme be renamed to better reflect the types of offences captured by it?*

The name SVO serious violent offenders' scheme is a good one, however it may be confusing by using the word violent. Often during FACAA's Jamie's Guardians court support program we see defence lawyers using legislation being confusing to try to have charges thrown out.

With that in mind FACAA might suggest a slight name change to something like "Serious criminal offences scheme"

## QUESTION 24 Victim satisfaction with the scheme and sentencing

*Does the SVO scheme impact on victims' satisfaction with the sentencing process and if so, in what ways?*

Yes the SVO scheme certainly does have a positive impact on victims satisfaction with the sentencing process. FACAA have listed several ways we have used the SVO scheme has positively affected the victim survivor satisfaction with the legal system and the sentencing process.

The main way we find victim satisfaction with the sentencing process being positively effected is that the victim survivor feels heard, they feel like their abuser is getting a decent sentence especially when compared to non SVO scheme conviction and sentences.

We at FACAA have seen victim survivors walk out of courtrooms feeling defeated and deflated and downright depressed after their abuser has been sentenced however never

once have we seen a victim survivor who's abuser was sentenced under the SVO scheme feel anything of the sort. We are also more than happy to put the sentencing council in touch with victim survivors who have had their abusers prosecuted and sentenced under the SVO scheme should they require it.

FACAA would like at this point to ask a very direct question. Where did the council get it's information in the final paragraph on page 72 of paragraph 7.7 ?

It is literally not true, we spoke to many victim survivors who have yes all found the court process to be traumatic and re-abusive, however not a single one has said that they would not happily fight if their abuser did not plead guilty if it meant they would get longer time behind bars. The thought that a victim survivor would like harshly upon the possibility of a longer prison sentence for their abuser if they had to go to court because they did not plead guilty is in our experience just simply not true. Once again we are left wondering where the council got this information and why they have included it in their issues paper.

## QUESTION 25

*How important is the parole eligibility date to victims' overall satisfaction with the sentencing process?*

FACAA do not have any information on this as we are unsure of exactly what eligibility date the council refers to.

## QUESTION 26

*What considerations are important to victims in enhancing their satisfaction with the sentencing process for offences that could attract an SVO declaration?*

Victim survivors need to feel heard; they need to feel like their voices are being heard because one of the main weapons of an abuser to rob the victim survivors of their very voices and to make them feel powerless. The grooming process of finding a victim involves stripping back their ability to use their voices, to say no, to speak out about what is happening to them.

We could be here all day explaining how victim survivors feel voiceless. However, our point is still the same, if you want victim survivors to be satisfied with the sentencing process hear them. Let them speak for themselves if they can. Let them be a part of the process, show them the options available to them and let them decide which one they would like the judge to pursue in regard to sentencing. We can almost guarantee the victim survivors will choose to pursue the options that involve the most prison time for their abuser and rightfully so they should.

Acknowledge that what happened to the victim survivors should have never happened to anyone ever and then ACT ACCORDINGLY WITH HARSH SENTENCES.

## QUESTION 27 HUMAN RIGHTS CONSIDERATIONS

*Is the current SVO scheme compatible with rights protected under the Human Rights Act 2019 and other human rights instruments (e.g. UN Convention on the Rights of Persons with Disabilities)? If it is not compatible, are any existing limitations reasonable and demonstrably justifiable (Human Rights Act 2019, s 13)?*

This entire question is wrong and the fact that there is a consideration for the rights of the perpetrators but not for the rights of the victim survivors is abhorrent.

Yes the SVO scheme is entirely compatible with any and all human rights instruments. What is not compatible with any and all human rights instruments is what the perpetrators sentenced under the SVO scheme have done to their victims.

Only when we stop considering the rights of the perpetrators and start considering the rights of the victims and the victim survivors will we start to see any semblance of justice restored back to our legal system. The human rights of the perpetrators should have ceased the day they committed the heinous acts that have seen them convicted and sentenced under the SVO scheme.

## QUESTION 28

*What reforms could be made to the scheme to improve its compatibility with and/or to meet the test of being 'reasonably and demonstrably justifiable'?*

No reforms need to be made to the scheme as the QLD legal system has every right to protect the citizens of QLD from threats such as criminals who have committed serious violent offences re-offending.

The rights of the people of QLD to be safe and not have serious violent crimes committed against them is the only rights that need to be considered here.

## QUESTION 29 SVO scheme other issues

*Is there any other issue in relation to the SVO scheme or sentencing responses for serious violent offences that have not been addressed in the questions, that you would like to raise with the Council?*

Yes, reading this issues paper it feels as though that the SVO scheme will be terminated as a foregone conclusion. This deeply disturbs us and our members at FACAA. We would like to state unequivocally that we do not want the SVO scheme to be terminated, in fact we would like to see it expanded to include other crimes such as child abuse material production and other child abuse material charges so we can finally see a sense of justice for the children involved with that heinous crime that is all too often laughed at in terms of sentencing.

There is not many better pieces of legislation out there than the SVO scheme to help protect citizens from violent criminals or to restore people's faith in our legal system. To see it scrapped because of a few studies (that by the way fly directly in the face of what we at FACAA know for a fact) seems a total injustice and would leave victim survivors everywhere left feeling unheard, ignored and completely voiceless once more.

## QUESTION 30 Reform options

*What would the benefits and risks be if the SVO scheme was*

*(A) retained in its current form – with no changes to its operation or scope*

The benefits would be that justice would continue returning to our legal system one case under the SVO scheme at a time. Perpetrators of serious violent crime would stay behind bars where they belong, and the public would stay safe from those convicted under the SVO scheme.

The only risk we can see is that if the scheme remains in its current form is that it will not be expanded to include other crimes that dearly need the SVO scheme.

*(B) Automatically applied to sentences for listed offences of 5 years or more, but less than 10 years;*

We at FACAA would like to see the time limits for the SVO scheme removed that way more crimes could be added and more serious crimes could be added that attract a higher sentence than 10 years. However the SVO scheme should be absolutely mandatory.

*(C) Presumptive (as to sentences of 10 years or more for listed offences) rather than mandatory*

If you leave the option to give longer sentences to judges they will not do so. For some reason they are all afraid to apply anywhere near the maximum sentence. Proof of this lies in NSW Child rape charges, child rape of a child under the age of 10 can attract a sentence of up to 25 years, the minimum recommended sentence is 10 years. The average sentence handed down (when a conviction is recorded which sadly sometimes does not happen) is just 14 months.

So with that in mind the risk of having the SVO scheme presumptive is that the judges will not apply the scheme.

We at FACAA do not see any benefits to having the SVO scheme presumptive.

*(D) Presumptive (as to sentences of 5 years or more, but less than 10 years) rather than discretionary;*

As above same risks same benefits

*(E) Entirely discretionary (applying to listed offences dealt with on indictment, in a discretionary way, regardless of sentence length); or*

As above same risks same benefits

*(F) Abolished entirely*

To abolish the scheme serves absolutely no benefits what so ever but does have several risks involved such as the danger of releasing serious violent offenders back into the community far too soon (if you think an ankle bracelet will stop a serious crime then you better be installing an electro shock to it wired up to the perpetrator's thoughts). The loss of faith in the legal system by the public, the loss of satisfaction with the legal process by victim survivors.

There are absolutely no benefits to abolishing the SVO scheme.

### QUESTION 31

*Are there any specific benefits or risks of the above listed reform options that would apply to (A) Aboriginal and Torres Strait Islander peoples; and (B) people who are vulnerable or marginalised?*

The benefits to both Aboriginal and Torres Strait Islander peoples and vulnerable or marginalised people of the SVO scheme are they can feel safe knowing their abusers are behind bars where they belong and not out abusing them or others.

Both groups of people will see an increased satisfaction with the sentencing process and a restored faith in our legal system (which is rare among both these groups).



The risks involved are almost none, provided they are not committing serious violent offences they literally have nothing whatsoever to worry about.

## QUESTION 32

*If the SVO scheme is retained (in its current or modified form), which of the options do you prefer and why?*

Option A 2 as it is entirely in line with the model FACAA believe the SVO scheme should take on. We would also like the suggested crimes listed in table 7 added to the SVO scheme.

## QUESTION 33 Alternative options

*If the SVO scheme was repealed or replaced, what approach would best ensure sentencing outcomes reflect the seriousness of offences to which the SVO scheme currently applies. For example:*

Firstly, the SVO scheme should not be replaced, secondly if it was to be replaced it would need to be replaced with a mandatory sentencing system that would see the list of crimes from the SVO added to a mandatory minimum sentencing list. Judges should not have discretionary powers when it comes to serious crimes such as violent offences or offences against children as they have proven time and time again that they will give the least amount of prison time possible even if the crime is viewed as horrific by the public.

There also needs to be an abolishment of early parole for the crimes on the SVO scheme list.

In short keep the SVO scheme in place and expand the list of crimes to include those on table 7.

#### QUESTION 34

*If standard parole provisions were to apply in place of the SVO scheme to all Schedule 1 offences, are any legislative changes required to help guide the court in setting an appropriate non-parole period for serious violent (non-sexual) offences, serious violent sexual offences and serious drug offences (beyond the guidance contained in s 9 of the Penalties and Sentences Act 1992 (Qld))?*

Yes, for serious violent offences or offences against children several legislative changes would need to be made.

Firstly, mandatory minimum sentences need to be attached. Parole periods of less than 75% of the total sentence need to be banned and reducing the head sentence in order to accommodate these “circumstances” needs to be abolished also. On top of that for crimes that were on the SVO scheme sentences need to be handed down cumulatively not concurrently. Once again in short it is much easier to keep and expand the SVO scheme.



## **Conclusion**

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The FACAA Julia's Justice legal reform program was started like all FACAA campaigns to end child abuse once and for all. To do this the Julia's Justice program intends to end child abuse by changing one law at a time until we have brought the justice back to our legal system.

When we write a submission it is always with the view to make child abuse and child abuse related crimes the most punished offence in the Australian legal system with punishments so severe as to act as a deterrent to anyone even considering hurting a child in Australia.

This particular submission was quite a different experience as we are used to writing in a much more open format and the series of questions made us feel quite led throughout the process. As we have stated we are not lawyers so if we got some of the legal definitions and jargon wrong we do apologize.

In this submission and the issues paper attached we get a sense that abolishing the SVO scheme is a forgone conclusion due to the language used, the examples used (some of which are literally mind blowing in their outright falsehood) and the fact that the United Nations conventions on human rights in mentioned when referring to the rights of the perpetrators.

The entire focus of this issues paper seems to be entirely perpetrator-centric and the focus of a justice system must be entirely victim or victim survivor-centric.

Only by focusing on the human rights of the victims and victim survivors will we see any form of justice. To focus almost

entirely on the rights of the perpetrators and worry so much about how they are being adversely effected flies in the very face of everything a justice system should be.

Surely the time has come to bring the justice back to our legal system and stop being so focused on the rights of those who have committed heinous acts against our most vulnerable. Surely the time is here to focus our efforts on making the crimes listed on the SVO scheme punished appropriately so the victims and victim survivors can finally feel a sense of justice for the horrendous crimes perpetrated against them.

We would like to thank the QLD Sentencing advisory council for the opportunity to present our submission and for the ability to help change the legal system for the better. FACAA hope this council will help bring back the justice to the legal system.

