Intermediate sentencing options and parole submission for the QLD Sentencing Advisory Council
Submitted by
Fighters against child abuse Australia [FACAA]

2[1st] of May 2019

About the author:

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.

This submission was prepared by Fighters against child abuse Australia FACAA.
PO BOX 404 Moorebank
NSW 1875
Email Adam@facaaus.org
Web :www.facaaus.org / www.facebook.com/facaaus

Table of contents:

About Fighters against child abuse Australia

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 of 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 8 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 regularly receives over 1.5 million unique views making it the single most successful social media campaign 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

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.

Calls for submissions like this by the Sentencing advisory council will go a long way to restore public faith in this system as long as 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

QUESTION 1: SENTENCING PRINCIPLES

What changes (if any) are required to existing sentencing principles under section 9 of the Penalties and Sentences Act 1992 (Qld) to allow for the greater use of community-based sentencing orders in appropriate cases (that is, where the safety of victims and other community members will not be compromised)?

We at FACAA believe that there needs to be a division of crimes in terms of if it is appropriate for them to be punished with a community-based sentence or not.

In our opinion any crimes of child abuse and crimes of violence or of a sexual nature should not ever be given a suspended or a community-based sentence. We do believe several crimes should be dealt with using suspended sentences and community-based sentences, however we will only be speaking to the child abuse crimes and their sentences in our submission.

So the first change we would like to see is a list of crimes where it is not appropriate for a community based order or a suspended sentence to be drawn up and all child abuse crimes to be added to this list.

The reason for this is due to the very high level of public expectation placed upon any child abuse sentence. Society rightfully expects that those who offend against our most vulnerable in our society, would be punished with a custodial sentence in most cases of a significant length. We know this is the case because we get told over and over again that the general public feel robbed by the fact our judges hand down community based or suspended sentences to child abusers.

Another reason we need custodial sentences for child abuse crimes, is because of the need for rehabilitation. How can a criminal be rehabilitated if they don't even go to prison ? do the judges believe they are being rehabilitated by folding clothes at the local Salvation Army store ? No they need the specialized rehabilitation programs that can only be found inside of prison walls.

Probably the most important reason for us at FACAA to see that child abusers are never given community based orders or worse suspended sentences, is the need for the survivors of child abuse to see a sense of justice done. The fact is they have to endure the crime itself which leaves them broken and damaged people. Then they have to go through the trial which is nothing short of re-traumatising and after all of that to see their abuser be given a non-custodial sentence robs the survivor of any sense of justice or faith in the system as a whole. We at FACAA know for a fact that a lot more survivors would seek justice if they knew (before the charges were laid) that their abuser if found guilty would not be escaping prison. We know more people would certainly seek justice if they thought their abuser would definitely be doing time behind bars should they be found guilty. We know this because they told us so. With that in mind, imagine if a law was passed to say no child abusers can be given community based or suspended sentences. Imagine how many survivors of child abuse would come forward and seek justice and imagine how many child abusers would be taken off the streets, how many future victims we could protect, imagine how much we could reduce child abuse by simply giving survivors of child abuse an assurance that their efforts won't be for nothing (because that's how it feels to a survivor when their abuser gets a suspended sentence).

So for all of those reasons we know that sentences for child abuse crimes must not include an option for suspended or community based sentences. In order to help bring the justice back to our legal system for child abuse survivors, crimes

against our most vulnerable children must be punished with custodial sentences or a combination or custodial sentences and then community based sentences but only after a custodial sentence has been served.

QUESTION 2: MANDATORY SENTENCING PROVISIONS

Are current Queensland mandatory sentencing provisions sufficiently clear so as to operate with certainty and consistency? If not, what provisions should be considered for review and how should they be reformed?

We at FACAA would like to see more mandatory sentences for all states. We are firm believers that if you kill a child or rape a child under the age of 10 then you MUST end up behind bars.

I site the case of Hemi Goodwin-Burke. Little Hemi was brutally bashed to death by his then babysitter Matthew Ireland. Hemi was just 18 months old at the time that Matthew Ireland bashed him so severely that they found 75 bruises to his abdomen, a broken rib, ruptured internal organs and a severed brain stem. Matthew Ireland is eligible for parole after just 2 years behind bars because he was allowed to plead down to the significantly lesser charge of manslaughter.

This is absolutely despicable to us here at FACAA and all of our 120,000 plus members agree. This does not even slightly meet the public expectation for justice. An 18 month old baby boy bashed by an adult male so savagely that he severed his little brain stem gets 2 years behind bars. Surely this council can see that this is a sad joke of a sentence that makes a giant mockery of our legal system.

Hemi’s case raised so many question of our legal system, who approved this child murderer to get the plea that allows him to be eligible for parole in just 2 very short years ? Who signed off on the deal and the sentencing recommendations ? Why was this

allowed in the first place ?

All of these questions could have been taken care of if we simply had mandatory minimum sentences for the killing of a child.

The public expectation is that if you bash a baby to death then you will go to prison for a very long time. If we have mandatory minimum sentences for child killers then the public expectation will be met. Plus it will send a clear message of deterrence that if you are caught killing children then you will serve at least 10 years behind bars. This will act as a deterrent for anyone even considering hurting a child due to the fact that currently in QLD, everyone knows the case of Hemi Goodwin-Burke and everyone knows that in QLD you can brutally bash an 18 month old baby boy to death and be eligible for parole in just 2 short years ! We need this deterrent not only to restore the public's faith in our criminal justice system but also to send a loud and clear message that child killers will do a very long time behind bars.

Our recommendation is 10 years behind bars for the manslaughter of a child mandatory minimum. 25 years behind bars for the murder of a child mandatory minimum (murder must be proved that there was intent to kill previous to the incident, hence it getting the much longer custodial sentence)

We at FACAA would also like to see mandatory minimum sentences for child rapists. Currently we see child rapists who rape children under the age of 10 get suspended sentences or no conviction recorded. This doesn't just happen once but again and again and again. We at FACAA have one client who's rapist was allowed to plea down to the lesser charge of common assault and served no prison time after repeatedly raping an 8 year old girl. The justification for this deal was "It's hard to get 8 year olds to remember times and dates so it's better we take the plea deal for assault" The victim told me she felt as though she had been raped all over again. This time by a judge, a

“public defender” and various other people who were supposed to have her best interest at heart.

One of the key recommendations from the Royal Commission into institutional abuse was that children don’t have to remember names and dates and times in the traditional method but instead could describe incidents and not have to provide heavy details. This was made law in NSW and we believe QLD should do the same.

FACAA would like QLD to send a clear and concise message to anyone considering raping a child and that is if you rape a child under the age of 10 years old in QLD then you will be sentenced to at least 15 years behind bars for your first offence and at least 20 years for your second offence and at least 25 years behind bars for your third offence.

This will send a clear and concise message to the people of QLD that their children’s lives matter to the QLD Criminal Justice system. It will also send a very loud and clear message of deterrence for all paedophiles that QLD is not the place to rape a child.

We have utilized the increasing mandatory minimum sentences per offence because we are big believers that child rapists can not be rehabilitated, and that prison simply educates them on how to not get caught (which also explains the seemingly low recidivism rates for child abusers). We think it will be a big benefit for child rapists to know that if they are caught again destroying a child’s life and innocence, then not only will they be looking at more prison time with a mandatory minimum sentence but they will also be looking at serving even more time than before. FACAA believe that will be a much greater deterrent then just knowing they might get more time and they might not.

So FACAA’s recommendation for the QLD Mandatory

minimum sentences is that child murderers get 10 years for manslaughter of a child and 25 years mandatory minimum for the murder of a child, as well as a mandatory minimum sentence of 15 years for the first rape of a child under the age of 10 years old, 20 years mandatory minimum sentence for the second conviction of the rape of a child under the age of 10 years old and 25 years mandatory minimum sentence for the third conviction for the rape of a child under the age of 10 years old.

QUESTION 3: LEGISLATIVE GUIDANCE ON THE USE OF CCOS AND IMPRISONMENT.

3.1 If introduced, what legislative guidance should be given to courts when considering imposing either a CCO or a term of imprisonment (including a suspended term of imprisonment)? For example

(a) Should it be a requirement for a court to consider the availability of a CCO prior to considering imprisonment

Before answering the next section please let me state that FACAA do not believe of the use of CCOs or suspended sentences when sentencing child abusers. So many survivors have bravely come forward and sought justice for their ordeals only to have their abusers come out with a CCO or suspended sentence (or no conviction recorded) due largely to plea deals. This has left them feeling “re-abused” and that is not the meeting of public expectation at all. So please let us say outright that we do not believe in the use of CCOs or suspended sentences for the sentencing of child abusers in any form.

It is our belief that CCOs or suspended sentences are more appropriate for crimes like driving offences, vandalism offences, unpaid fines, petty theft. However crimes against children, violent crimes, crimes of a sexual nature or high end theft

should not be dealt with by handing out CCOs or suspended sentences. For these crimes it is simply not appropriate.

(A) Obviously if there is no CCO available then the criminal should be sent to prison until the CCO becomes available or the sentence is served. Other options to replace CCOs can include weekend detention where appropriate.

(b) Should there be legislative guidance that provides no more conditions are to be ordered than are necessary to meet the purposes of the order?

It is our belief that any conditions that need to be imposed should be imposed. Legislation limiting conditions of an order could potentially limit the order's potency and ability to act as needed.

(c) In imposing a CCO and considering appropriate additional conditions, should a court be required to have regard to the vulnerabilities of the defendant in complying with that order, including for example, any geographical constraints in complying and/or limitations on service delivery in that region?

There is an old saying "if you do the crime you do the time" now if there is no CCO provisions available in a criminal's geographical area or the criminal is unable to comply with the order due to a disability of health constraint, then sadly the punishment must be increased and the criminal should receive a custodial sentence, starting with weekend detention and if the need arises a full custodial sentence should be handed down. The criminal is fully aware of the constraints surrounding them be it geographical or their own limitations before committing the crime and to claim they don't have to serve their CCO due to a condition they already knew about before committing the crime, seems like a bit of a cop out to us. Once again, do the crime you do the time.

3.2 Should additional legislative guidance be provided that makes clear that the fact a CCO has been imposed previously, including upon a breach, should not inhibit the further imposition of a CCO (taking into account the broad range of conditions that can be attached)?

It is the belief of FACAA that if you are currently under a CCO and you break the law then you should be given a custodial sentence. However in the case of crimes committed before the CCO was handed down and sentences only being handed down after a CCO was put in place then yes multiple CCOs can be in play and consideration should be given to the previous CCO conditions so as they do not clash. However as we said if the crime is committed while the CCO is in place then a custodial sentence must be imposed.

QUESTION 4: HOME DETENTION

4.1 If a new CCO is introduced in Queensland, should 'home detention' (an extended curfew with electronic monitoring) be excluded from being available as a condition of the order?

That depends on the nature of the crime. If the nature of the crime involves a direct threat to the general public (child offences, sex offences, violent offences) then no a home detention order is inappropriate as an ankle bracelet electronic monitoring device will not stop someone from abusing a child or committing a sexual offence against a member of the public.

Home detention is appropriate when the crime committed does not place the public in harms way should the criminal re-offend. These crimes include petty theft, not paying fines, driving offences (other conditions can be used for driving offences such as interlock devices or impounding of the convicted person's car). As previously stated CCOs or suspended sentences and home detention are never appropriate for child abuse sentencing.

4.2 In the alternative, do you support home detention being introduced as a form of sentencing order? How might this be distinguished from court ordered parole with electronic monitoring and curfew conditions?

As stated above FACAA support the use of home detention being introduced as a form of sentencing order for the appropriate crimes only (see above for list of inappropriate crimes)

We believe that not only should electronic monitoring and curfews be used but also random checks should be done by parole officers to ensure the criminal hasn't slipped their monitoring device as well as background checks should be performed on the home's occupants should have background checks done on them to ensure they are not people of questionable character which could be detrimental for the convicted person to be around while serving a home detention sentence.

4.3 If home detention was to be introduced as a sentencing order, what protections would need to be introduced to ensure it is used only in appropriate circumstances? For example, should the availability of home detention be restricted to circumstances where:

(a) The person is convicted of an offence punishable by imprisonment. If the person can be imprisoned for the crime they should be. Giving home detention should only be used for cases where the crimes have not put the public at risk at all.

(b) A conviction is recorded. A conviction should always be recorded whenever someone is found guilty. No conviction recorded is not an option we at FACAA believe should ever be used.

(c) The person consents to the order being made. The criminals wants shouldn't be considered when handing out conditions of CCOs . It is a punishment not something they should have a say in. However the other occupants of the home should be considered when making this order.

(d) The court would otherwise have imposed a sentence of immediate imprisonment and would not have ordered the sentence to be suspended or the person to be released at the date of sentence or shortly after this on court ordered parole. If a custodial sentence is appropriate then it should be served.

(e) A suitability assessment has been undertaken which takes into account any impact the order is likely to have on any victim of the offence, any spouse or family member of the offender, and anyone living at the residence at which the person would live. This should be an absolute must for any order of home detention. If the home is near the victim at all then it is inappropriate. This is why we at FACAA believe home detention is inappropriate for child abuse sentences. Simply put homes are always near pre-schools, schools, parks and this is not a risk we are willing to take so a convicted child abuser can serve their sentence in comfortable surroundings.

Background checks also need to be done on all residents of the home the detention is to be served and their criminal history needs to be checked. Should it be found the residents of the house are of questionable character, then that residence would be deemed to be inappropriate for a home detention order to be served.

(f) Any co-resident has consented to the person living at the nominated address? Obviously the current residents of the house must give consent to the criminal serving their sentence at their home as part of their home detention CCO. If they do not consent for whatever reason then that residence would be

deemed inappropriate for a home detention order to be served.

4.4 Should there be any restrictions on the types of offences, or circumstances, in which home detention is used (e.g. if there are safety concerns for victims or co-residents, or in the case of offences involving the use of violence, there is an unacceptable risk of the person committing a further violent offence)?

As previously stated If the nature of the crime involves a direct threat to the general public (child offences, sex offences, violent offences) then no a home detention order is inappropriate as an ankle bracelet electronic monitoring device will not stop someone from abusing a child or committing a sexual offence against a member of the public.

Home detention is appropriate when the crime committed does not place the public in harms way should the criminal re-offend. These crimes include petty theft, not paying fines, driving offences (other conditions can be used for driving offences such as interlock devices or impounding of the convicted person's car). As previously stated CCOs or suspended sentences and home detention are never appropriate for child abuse sentencing.

FACAA believe home detention is inappropriate for child abuse sentences. Simply put homes are always near pre-schools, schools, parks and this is not a risk we are willing to take so a convicted child abuser can serve their sentence in comfortable surroundings.

4.5 What should the maximum period of home detention be:
(a) 12 months (Northern Territory and New Zealand model)
(b) 18 months (Tasmanian model)
(c) 2 years (NSW model)?

(A) We believe any longer than 12 months home detention isn't appropriate because it shouldn't be a softer option for serving time. If the time is longer it should be served as a combination

of a custodial sentence and home detention to finish the sentence.

4.6 What should be the maximum curfew period in a given day and/or week?

6pm should be the curfew period. The criminal serving home detention should not be able to be out at night. During the day they can be performing their job and helping them re-integrate into society. However night time seems too tempting to commit crimes.

QUESTION 5 SUSPENDED SENTENCES

5.1 Are wholly suspended sentences operating as an effective alternative to actual imprisonment in Queensland?

No ! Suspended sentences offer zero deterrent to and bring absolutely no sense of justice to the victims of crime, not to mention destroying the public's image of our criminal justice system.

5.2 Are there cases where suspended sentences could be used, but are not? If so what are the barriers to their use?

No, there is never any reason to use suspended sentences. They are an utter waste of time and quite detrimental for all concerned (except the criminal)

5.3 Are there unique factors for offenders in remote and very remote areas of the State, including Aboriginal and Torres Strait Islander offenders, that: (a) affect a court's decision to make a suspended sentence order; and
(b) if imposed, are likely to predispose such offenders breaching the order through commission of a new offence?

(a) Aboriginal and Torres Strait Islander peoples represent 27.3% of adults and 48.5% of incarcerated people in our prison system. This is incredibly disproportionate to the population overall in which Aboriginal and Torrest Strait Islander people only represent 3% of our overall population. This represents a huge inequality in our society and our justice system as a whole. suspended sentence, I feel as though the suspended sentence system is not being utilized among the Aboriginal and Torrest Straight islander people. This could be due to the fact that geographically they can live in quite isolated communities and the judges may feel they do not have the ability to comply with the conditions of the suspended sentence.

(b) While there may well be several reasons for this disproportionate representation of Aboriginal and Torres Strait islander peoples in our custodial system, I don't feel like making an excuse for anyone is a good move. If you commit a crime while under a suspended sentence then you deserve to be put behind bars no matter what mitigating factors there are in the case.

QUESTION 6 : GUIDANCE ON SETTING OPERATIONAL PERIOD

6.1 Is the current guidance under section 144(6) of the Penalties and Sentences Act 1992 (Qld) about the setting of the operational period for a suspended sentence sufficient?

Yes it is quite clearly defined in the act, must not be shorter than the sentence and must not be longer than 5 years.

FACAA would like to seen an amendment to section 143 of the penalties and Sentences Act of 1992 to say "No suspended sentence may be given to child sexual offenders of any kind as the ordeal of a trial on those victims can be incredibly detrimental to the victim and a suspended sentence will often re-traumatize the victim unjustly"

6.2 If there is a need for additional guidance, what form should this take (e.g. legislative guidance, bench book, professional development sessions for lawyers and/or judicial officers, other)?

We at FACAA feel like if that is not crystal clear in it's guidance then perhaps a legal career is not for you.

6.3 If legislative guidance is provided, should this specify a specific proportion between the term of imprisonment imposed and the operational period? For example, that the operational period set can be no more than two times the period of imprisonment imposed?

If this is a problem then perhaps a very easy solution would be to put down a mandatory 5 years on suspended sentences ? We at FACAA don't feel they are useful anyway and feel they shouldn't be used in crimes where victims can feel re-traumatized by their perpetrator anyway, however if it is a question then perhaps it would be easily solved if the operational period should be a standard 5 years. This way we know the criminal will always have to keep themselves out of trouble but perhaps an extra long operational period might help facilitate this.

QUESTION 7: POWER OF THE COURT DEALING WITH AN OFFENDER ON BREACH OF SUSPENDED SENTENCE.

I would like to open this section by saying one of the main complaints we at FACAA receive is that if our clients get justice (and that's a big if) and their abuser gets a suspended sentence, that their abuser can repeatedly breach their suspended sentence conditions over and over again with absolutely zero legal repercussions. We have heard of child rapists getting suspended sentences, then stalking their victims despite part of the

conditions being zero contact with their victims, these abusers openly stalked their victims only to receive repeated warnings against doing so, repeatedly being told to stop breaching the orders but for some reason no one ever breached them and nothing ever happens to them from a legal point of view. Breaches of court orders are not policed and they should be.

7.1 Are the courts' powers on breach of a suspended sentence, as set out under section 147 of the Penalties and Sentences Act 1992 (Qld), appropriate? For example:
(a) should the requirement under section 147(2) that the court activate the whole of the sentence held in suspense unless of the opinion it is 'unjust to do so' be removed in order to promote greater judicial discretion in the sentencing process; and/or

(b) should the wording of section 147(3)(a) be amended to widen judicial discretion when dealing with a breach of a suspended sentence — for example, to remove the reference to whether the subsequent offence committed during the operational period of the order is 'trivial'?

(A) We at FACAA believe that if you are convicted of committing a crime while under a suspended sentence, then the court should activate the whole of the custodial sentence, regardless of circumstance. So we at FACAA believe removing that so as to promote judicial discretion would be detrimental to the pursuit of justice as we at FACAA have found that time and time again the legislators write terrific laws and then give judicial discretion only to have the judges only to have them completely mess up the sentencing. One example of this is when the recommended minimum sentence for the crime of raping a child under the age of 10 in NSW is 20 years behind bars, however when judicial discretion sees the average sentence for the rape of a child under the age of 10 years old is just 8 months behind bars. You can not tell me that such a huge discrepancy between the recommended minimum sentence and the actual

average sentence is within the intended spirit of the act. So no do not remove the clear and concise wording to allow judicial discretion as they will simply mess it up.

(B) Once again giving more judicial discretion is always a bad idea however, in this case we believe in removing the word "trivial" and replacing it with something much more concise, we believe that the word "inconsequential" should replace trivial. Trivial can come across as too broad a word in our opinion where as inconsequential has very definite meaning and removes the possibility of judicial discretion (our example above explains why we want to remove judicial discretion)

7.2 Are there any other changes that should be made to the current powers of a court on breach of a suspended sentence – for example, to introduce an additional power to: (a) impose a fine and make no other order (Western Australia and England and Wales); and/or (b) make no order (Northern Territory and Tasmania).

We at FACAA believe it is imperative that all breaches of suspended sentences be punished. Take the case of domestic violence for example, the victim gets a DVO or AVO thinking this makes them safe. Then their abuser continues to stalk and harass them. Over and over again they report the breaches but because the police have discretionary powers to decide to breach the abuser or not they nearly always chose not to. We at FACAA know of 4 people who have died as a result of the inaction of NSW and QLD police when it comes to breaches of DVOs.

A suspended sentence is handed down with conditions and the number one condition is that you do not commit any other crimes. If you do so and there is an option like in the Northern Territory and Tasmania that says "make no order" then what was the point of the initial suspended sentence ?

Any and all powers to do nothing when a criminal is breaching their suspended sentence conditions must be removed and replaced with mandatory prison time being either the entire or part of the custodial sentence being activated.
A clear and concise message must be sent that if you are lucky enough to get a suspended sentence but foolish enough to break the conditions by committing another crime then you will be behind bars quick smart.

QUESTION 8 BREACH POWERS:

8.1 Should a court have a discretionary power to deal with a breach of a suspended sentence imposed by a higher court, if that court is dealing with an offence that breaches the higher court's order?

Yes, if there is a court order (any court) and you breach it then your custodial sentence should be activated. You shouldn't have to wait until a court space is available in the court that issued the order. Any judge should have the power to deal with breaches of court orders and should do so quite harshly.

8.2 If so, should there be guidance as to the use of the discretion and what form should this take?

Yes the guidance should be that any breaches of court orders, be they suspended sentence conditions, DVO condition breaches or any other breaches of court orders should be dealt with in a harsh manner. Obviously the court can not hand down custodial sentences outside of it's normal powers of incarceration but the maximum sentence possible should always be handed down for breaching a court order so as to send a clear and concise message that court orders are not to be breached for any reason and to do so will ensure you will face the fullest extent of the law.

QUESTION 9: COMBINED SUSPENDED SENTENCE/COMMUNITY BASED ORDERS

9.1 Should greater flexibility be introduced to allow a court:
(a) to make a probation order in addition to a suspended sentence for a single offence, and/or
(b) to make a community service order in addition to a suspended sentence for a single offence; or
(c) as an alternative to (a) and (b), to make a CCO in addition to a suspended sentence for a single offence?

This all depends on the nature of the crime. If the crime is non-violent, non-sexual and did not leave the victim traumatized, then perhaps this could be used. Our recommendation would be to use option (C) a CCO and a suspended sentence together would be the most effective form of sentence handed down. But once again this would only apply to cases where there is basically no victim who can feel revictimized by their attacker/abuser being handed a suspended sentence in leu of prison time. So crimes like not paying fines, not buying tickets on trains, petty vandalism, drug possession crimes and so on and so forth.

9.2 Under this form of order, should a failure to comply with the conditions of the community-based order be dealt with under Part 7, Division 2 of the Penalties and Sentences Act 1992 (Qld) (Contravention of community-based orders) or an equivalent provision?

Yes it should be handled just like any breach of any suspended sentence conditions. If the conditions are breached then the full (or part depending on circumstances) custodial sentence should be activated.

9.3 Should the maximum period the person is subject to conditions be limited in some way? For example, should the

term of the probation order or CCO be required to be no longer than the operational period of the order, provided the operational period does not exceed 3 years?

If you are getting a suspended sentence this is like a gift from the judicial system. A gift that says you should be going to prison and if you do one more thing you will be. So it is our opinion that it serves no extra purpose to limit the operational period of the suspended sentence orders. It is our belief that all operational periods for all suspended sentences should be 5 years because all it is saying is do not commit any other crimes and what could possibly be wrong with making people beholden to that condition ?

QUESTION 10: SETTING A PAROLE RELEASE DATE

How should the anomaly identified by the Court of Appeal in v Sabine [2019] QCA 36 (18 February 2019) be addressed?

As a non lawyer this question was way above my pay grade and understanding.

QUESTION 11: COURT POWERS WHILE OFFENDER ON PAROLE

11.1 Do the provisions relating to the powers of a court where there is further offending while an offender is on court ordered parole, such as sections 209, 211, 215 of the Corrective Services Act 2006 (Qld) and section 160B of the Penalties and Sentences Act 1992 (Qld), require amendment?

What changes would you suggest be considered?

Firstly the language used in Section 160B of the Penalties and Sentences Act 1992 is very convoluted and difficult to understand. 160B 5b even has a note at the bottom trying to make it easier to comprehend but it's still very difficult. 160B 6 and 7 are just as convoluted and confusing.

Why this matters is because people then have to take that law and work out actual sentences in regards to time served. Now if it is too difficult to understand how to work out their remaining sentence or how much time a prisoner should serve behind bars after they have had their parole cancelled, then those issuing the sentence will simply work it out wrong.

FACAA have heard of a case where a prisoner had their parole cancelled and the clerks who were meant to work out how much time he should get behind bars, got it wrong. His lawyers then used this mistake to successfully argue that he should be immediately released. Also on the flipside of the coin, having confusing language in determining sentence time or time remaining could see someone given more time than they should be behind bars.

If we simplify the language used in 160 5b,6 and 7 then it removes the possibility of human error and removes the possibility of incorrect sentences being handed out and thus removes the possibility of someone being able to use that

mistake to walk free when they shouldn't or removes the possibility of someone doing more time behind bars than they should have done.

FACAA believe that the section 211 (3) of the Corrective Services Act 2006 should be entirely removed. What purpose does it serve to say that the parole board (who are not judges nor are they legal experts in most cases) can make a judgement call to say that a criminal who has broken their parole conditions does not have to serve all of their remaining time behind bars. Why is this amendment even included in the act ? It essentially grants more power to the parole board than our judges and as previously stated why on earth would this happen ? they are not in most cases legally trained and they are not judges.
If our judges can make a determination that a prisoner should serve X amount of years behind bars and our parole boards simply decide no we believe it should be only 1/3 of X years behind bars then we are essentially making a mockery of our own judges and placing the parole boards above them in terms of power and authority. We would like to see this amendment removed entirely.

FACAA would like to see an amendment added to section 211(1) of the same act to say that another reason parole can be cancelled is due to the prisoner having an AVO or DVO placed against them. We believe this will act as a deterrent to people domestically abusing their partners and hopefully help decrease the domestic violence rates which as we all know are far too high in Australia.

11.2 Should section 209 of the Corrective Services Act 2006 (Qld) be amended so that if a court ordered parole order would, on the current provisions, be cancelled automatically by a new sentence of imprisonment, the sentencing court has a discretion to again set a parole release date if it considers court ordered parole is still appropriate?

NO ! if parole is automatically cancelled then the custodial sentence must be immediately served. By granting the sentencing court the ability to simply set new parole date because it considers parole to be still be appropriate even though that parole had been automatically cancelled is not in the spirit of justice. It is simply giving parole violators, yet another chance and the parole is meant to be that second chance.

QUESTION 12: SENTENCE CALCULATION

Are there any particular sections of the Penalties and Sentences Act 1992 (Qld) or Corrective Services Act 2006 (Qld) that make the sentencing calculation process in Queensland unnecessarily complex? If so, how would you recommend the current level of complexity be remedied?

Section 160B of the Penalties and Sentences Act 1992 is very convoluted and difficult to understand. 160B 5b even has a note at the bottom trying to make it easier to comprehend but it's still very difficult. 160B 6 and 7 are just as convoluted and confusing.

Why this matters is because people then have to take that law and work out actual sentences in regards to time served. Now if it is too difficult to understand how to work out their remaining sentence or how much time a prisoner should serve behind bars after they have had their parole cancelled, then those issuing the sentence will simply work it out wrong.

FACAA have heard of a case where a prisoner had their parole cancelled and the clerks who were meant to work out how much time he should get behind bars, got it wrong. His lawyers then used this mistake to successfully argue that he should be immediately released. Also on the flipside of the coin, having confusing language in determining sentence time or time remaining could see someone given more time than they should be behind bars.

If we simplify the language used in 160 5b,6 and 7 then it removes the possibility of human error and removes the possibility of incorrect sentences being handed out and thus removes the possibility of someone being able to use that mistake to walk free when they shouldn't or removes the possibility of someone doing more time behind bars than they should have done.

QUESTION 13: TIME IN PRE-SENTENCE CUSTODY WHICH IS DECLARABLE.

13.1 Should section 159A(1) of the Penalties and Sentences Act 1992 (Qld) be amended to allow the court an ability to declare pre-sentence custody in circumstances where this is currently not permitted (e.g. by removing the words 'for no other reason')?

No, and I ask this question. Why are these council's questions constantly leading the responder to suggest ways for criminals to serve less time behind bars ?

Why would this question be asked in this manner with a suggestion or example that would only benefit the criminals by giving them less time to serve behind bars.

My suggestion is and always will be to get tougher on crime and give harsher sentences particularly when it comes to child abuse and domestic violence crimes.

If a prisoner has served time behind bars for any other reason not related to the crime they are convicted of later it should absolutely NOT count towards their time served. To suggest so is to simply try to get convicted criminals less time behind bars.

13.2 Should section 159A(4)(b) be similarly amended, or greater clarity provided as to its application? Are there risks regarding unintended consequences if such an amendment was made?

Yes it should be amended to provide greater clarity however it should be amended in a manner that does not allow convicted criminals any means to get less time behind bars. That is the only risk we see, that to provide greater clarity can lead to giving lawyers more loopholes to squeeze their clients out of or could possibly allow criminals to serve less time behind bars.

QUESTION 14: AVALIABILITY OF PAROLE FOR SHORT SENTENCES OF IMPRISONMENT.

14.1 Should parole for short sentences of imprisonment of six months or less be abolished, meaning the sentence would need to be served in full, unless suspended in whole or in part ?

Yes, all too often we see child abusers being given short sentences with parole on top of that. The average sentence in NSW for the rape of a child under the age of 10 years old (Despite the recommended minimum sentence being 20- 25 years behind bars) and all too often they can get parole after just 4 months. So child rapists are receiving a 16 week or 112 day sentence for the rape of a child under the age of 10 years old.

We believe parole should be abolished for sentences under 1 year. We also believe that child abuse (of any form) sentences should never receive suspended sentences.

14.2 If a court's ability to set a parole release or eligibility date for short sentences of six months or less is abolished, should there be any recognised exceptions. For example, should this apply
(a) to activation of a suspended term of imprisonment on breach by reoffending?
(b) if an offender has an existing parole date and reoffends while on parole?

(A) Yes it should apply to a suspended term of imprisonment on breach by reoffending. It should be especially applied to cases of breaches of suspended sentences.

(B) Yes Absolutely it should apply to people who breach their parole. Very simply put if your sentence is under 1 year long then you should not be eligible for parole because your sentence is so short to shorten it any further is an insult to your victim/s.

14.3 What might some of the risks of the above reforms be?

Some of the risks could be that lawyers will a lot harder to organize deals for their clients to get their sentence suspended rather than fighting for a short prison term. This risk could be easily mitigated by simply not allowing public defenders to make such deals. It is our belief that suspended sentences should not be used anyway so it makes sense to us to have the public defenders given a mandate that clearly discourages the use of suspended sentences. It is also our belief that suspended sentences should never be used in the case of child abuse of any form (sexual, physical, neglect or emotional)

QUESTION 15 PRE-SENTENCE REPORTS

15.1 Should pre-sentence reports or assessment reports be mandatory for some types of orders or conditions?

Yes, if a criminal is trying to have their sentence transferred from custodial to home detention then a pre-sentencing report on the chosen address being applicable for the serving of a sentence is needed. Questions like local dangers such as childcare facilities or schools in the case of child abusers and criminal history of the other residents must be considered and submitted during a pre-sentencing report.

15.2 If so, for what conditions or orders should such reports be mandatory, and why?

Home detention must have a pre-sentencing report to examine all relevant information such as location in relation to child care facilities, pre-schools, schools, parks or anywhere else children gather. Also the criminal history of the other residents living at the address must be considered. If they have committed a similar crime then they could be considered a risk to the criminal re-offending.

Suspended sentences should take in a pre-sentencing report to consider the victims of the crime. Their victims impact statement should be heard as part of the pre-sentencing report to give them a voice in trying to stop the judge from allowing the criminal to walk away from prison. This will help restore public opinion of the legal system and also help act a deterrent for anyone considering a crime if they know their victims impact statement would be read in open court before they were sentenced.

QUESTION 17: SENTENCING DISPOSITION – CONVICTED NOT FURTHER PUNISHED.

17.1 Should the sentencing disposition of convicting and not further punishing an offender for an offence be legislated?

Yes, but it should only ever been used in the case of forensic patients who are found not guilty by reason of mental defect or illness. The ruling of convicted not further punished should replace the words Not guilty by reason of mental defect of illness. This is the only time this should ever be handed down and is not an acceptable sentence for anything else.

17.2 What aspects of the order would need to be included in a definition?

The disposition of convicted not further punished should only be used to replace the words "Not guilty by reason of mental defect or illness". This means its definition should be a straight replacement for terminology that means a person while found guilty of the crime is not having any further punishment due to the fact that at the time of the crime they were not in complete control of themselves or their mental facilities and so therefore could not technically be held accountable for their actions.

By saying that they are in fact guilty of the crime (even though there will be no more punishment) makes survivors of the crime feel a much greater sense of closure and feel much better about their experience with the legal system.

We at FACAA have helped a woman who's entire family was murdered by her ex husband. He killed her mother, father, 2 sons, daughter and her sister. He then pleaded not guilty by reason of mental defect or illness. He was officially declared not guilty by a judge despite admitting to taking a shotgun and stalking around her house shooting her entire family while they slept.

As you can imagine the trauma from the incident was bad enough, the simultaneous loss of her entire family, 3 generations of her entire family, her parents her sibling and her children all gone. If that wasn't bad enough to then have him walk out of a mental health facility 6 years after committing the horrendous crime an entirely free man who was declared as being not guilty left her permanently jaded to say the very least.

Recently NSW changed their forensic patient laws significantly. FACAA helped spearhead those changes and one of the proudest changes we helped the department of justice bring in was changing the term not guilty by reason of mental defect or illness to Guilty or convicted with no further punishment. We did this for our client who had to live with the knowledge that the man who murdered her entire family was not only free but officially not guilty.

Guilty with no further punishment should not however be used for any other crimes. If you can be found guilty of a crime then you should be punished in some way (As long as you are mentally responsible for committing the crime).

QUESTION 18: ABILTY OF HIGHER COURTS TO DEAL WITH BREACH OF A MAGISTATES COURT

Should the Penalties and Sentences Act 1992 (Qld) expressly permit the District Court and Supreme Court to deal with breach of a community based order imposed by a Magistrates Court?

Yes, as soon as a breach is confirmed any court that can see the criminal should be able to deal with that breach which of course should mean that they are to serve the remainder of their custodial sentence.

QUESTION 19: POWER OF LOWER COURTS TO DEAL WITH HIGHER COURT CBO BREACH

19.1 Should Magistrates Courts and the District Court have a discretionary power to deal with breach of a CBO imposed by a higher court?

All too often we see higher courts with much longer waiting times than lower courts due to their specialist nature. We at FACAA believe that we can free up a lot of higher court time if magistrates and district courts are granted discretionary powers to deal with simple breaches of CBOS imposed by higher courts.

However, these powers should not be mandatory but rather discretionary as sometimes certain decisions made by higher courts are quite specialized and not within the expertise of the lower courts. These breaches should not be handled by anyone except the expert court that handed down the sentence.

19.2 If yes, should there be guidance as to the use of the discretion and what form should this take ?

Yes there should be guidance in the form of being aware that sometimes higher courts have access to experts in particular fields. As such certain orders are based upon the opinions and guidance of experts. These orders and breaches should not be handled by a court that doesn’t have access to the expert who’s guidance or advice helped write the initial order.

QUESTION 20: MAGISTRATES COURTS' POWER TO DEAL WITH BREACH OF A CBO IMPOSED BY A MAGISTRATES COURT ON OWN INITIATIVE.

Should section 124 of the Penalties and Sentences Act 1992 (Qld) be amended to allow a Magistrates Court to deal with a breach, by reoffending, of a CBO imposed by a Magistrates Court, without proceedings first having to be instituted under section 123?

Yes, doing this would expediate the process of dealing with breaches and hopefully free up court time and resources across the board if the beaches can be dealt without first having instituted under the section 123.

Conclusion

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.

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.

A very big thank you and reference needs to go to the volunteers of the FACAA social media awareness campaign. TC Robinson, Genevieve Elliot, Kellie Roche, Kimberly Daboul, Cris Uola, Penny McNichol, Carly Evans and Morandir Armson. Without who this submission would have never occurred.