

**Submission to the
Queensland Sentencing Advisory Council Review of
sentencing for sexual violence offences and aggravating
factor for domestic and family violence offences.**

**Submitted by
Fighters against child abuse Australia [FACAA]**



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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.

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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). All our programs are written with this vision in mind.

FACAA has been working actively for the past 13 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 a 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 tax-exempt status as a registered charity. We have volunteers and clients from every part of Australia, and we have members from all over the world.



Introduction

Firstly, on behalf of myself and the members of Fighters Against Child Abuse Australia (FACAA), we would like to thank the honourable Shannon Fentiman MP for their letter requesting a submission from FACAA on behalf of our members and clients. We take the opportunity to be the voice of the victim-survivors in this process very seriously and can only hope we do them the justice they deserve.

Appropriate sentences given to rapists is a topic that will always cause conjecture among the public, but it brings with it very definitive emotions among members of FACAA. No victim-survivor will ever feel that there is an adequate sentence for rape, however the current maximums (which are RARELY enforced) are nowhere near the public expectation nor are they just, considering the lifelong impact felt by the victim-survivors.

When it comes to domestic violence we can, and will, tell you dozens of stories about how policy and procedure are simply not being met for various reasons often leaving domestic violence victim-survivors at risk, in danger, and without assistance.



Recommendations

1. Legislation needs to act as both a means for getting justice for the victim-survivors and a way to ensure the public has faith in the judicial system. The current maximum sentence of life is amazing, however the average sentence for rape is just 6.6 years behind bars. This average is far too low for a crime that affects the victim-survivors for the rest of their lives.
2. Currently, a favourable character reference can change the outcome of a conviction. In the case of rape, that simply should be unacceptable, especially in the case of child rape. Rapists are not people of good character. No matter who or what they portray themselves as, or who they were before they committed their crimes, rapists are not people of good character and as such any character references are redundant and therefore should be abolished for rape cases, (especially child rape cases).
3. Plea deals need to be limited for rape cases. Far too often we at FACAA hear from survivors that their rapists, (even child rapists), have pleaded their case down to common assault charges. This is simply not in line with the principles of justice, nor does it restore the public's faith (which is already badly damaged) in our judicial system. Plea deals in rape cases need to be limited in how far from the original charge they can be pleaded down.
4. 84 Domestic violence orders were breached per day when they are there to stop abusers having access to their victims and subsequently further abusing them. When these orders are contravened there needs to be custodial

sentences for doing so without fail, and without discretion of arresting officers.

5. 30.4% of rape offences were committed as domestic violence offences. If there was a DV and rape register women and children would be able to find out about their new partners and there would be yet another deterrent for committing the crime in the first place.



Explanation of each recommendations

1. 1. Legislation needs to act as both a means for getting justice for the victim-survivors and a way to ensure the public has faith in the judicial system. The current maximum sentence of life is amazing, however the average sentence for rape is just 6.6 years behind bars. This average is far too low for a crime that affects the victim-survivors for the rest of their lives.

While having a maximum sentence of life behind bars for rape is an incredible potential sentence, it is sadly no where near what the average rapist is being sentenced to, in fact with the average being just 6.6 years behind bars, the punishment is simply not appropriate for the crime.

When you consider that most victim-survivors of rape (in particular child rape) say that the damage and trauma caused by the crime, lasts an entire lifetime. You would think the average sentence would be closer to life behind bars, whereas sadly with the average sentence being just 6.6 years, this is not even slightly the case.

We at FACAA have no clients whose abusers have seen anywhere near 6.6 years behind bars in fact a vast majority of them had their abuser's charges pleaded down against their wishes.

Without fair and adequate sentences for rapists there will never be a sense of justice for victim-survivors who have braved the often re-traumatizing process of seeking justice through our court system.

FACAA would recommend mandatory minimum sentences for penetrative rapes of 10 years for first offences and up to 14

years for aggravating circumstances such as the victim being under the age of 12. With a mandatory minimum sentence of 16 years behind bars and 20 years behind bars for aggravating factors such as the victim being under the age of 12 for the 2% of rape offenders who were repeat offenders.

FACAA are well aware these are heavy minimum sentences, however as we have stated every single FACAA client who is a victim-survivor of rape will tell you that the traumatic effects of rape last a lifetime. The memories, the nightmares, the dependency on illicit drugs and alcohol as self-medication all last a lifetime, so why shouldn't the punishment fit the crime?

Having such a heavy mandatory minimum sentence should also act as a serious deterrent to anyone even considering the crime of rape. While sometimes the crime is opportunistic by nature it is our hope that mandatory minimum sentences of a decade will make anyone think twice before committing the offence of rape.

2. Currently, a favourable character reference can change the outcome of a conviction. In the case of rape, that simply should be unacceptable, especially in the case of child rape. Rapists are not people of good character. No matter who or what they portray themselves as, or who they were before they committed their crimes, rapists are not people of good character and as such any character references are redundant and therefore should be abolished for rape cases, (especially child rape cases).

My first question is who writes character references for rapists? who in their right mind would want their name associated with

helping a rapist?

It seems like a ridiculous question; however everyday our judges accept that rapists are people of good character when anyone with good sense knows this is simply not the case. How can a judge a very well educated and trusted person in a very high position of power, possibly not only accept that a rapist is a person of good character but go so far as to reverse a conviction or reduce a sentence based on that falsehood?

It simply makes no sense to allow character references for rape charges particularly child rape charges. Certainly, no sense from a moral perspective but also no sense from a legal perspective. Judges must accept that people who commit rapes are brutal violent people with little or no regard for the feelings of their victims and their families. How then can they possibly say that a person who they have accepted as such horrendous people can possibly be people of good character. It's a literal contradiction of terms and as such should be illegal.

3. Plea deals need to be limited for rape cases. Far too often we at FACAA hear from survivors that their rapists, (even child rapists), have pleaded their case down to common assault charges. This is simply not in line with the principles of justice, nor does it restore the public's faith (which is already badly damaged) in our judicial system. Plea deals in rape cases need to be limited in how far from the original charge they can be pleaded down.

We at FACAA have 4 clients who have all told us that their abusers were arrested and charged with rape, then just before court the police prosecutors or public defenders informed them that their abusers had accepted a plea deal and would be

pleading guilty to assault. With absolutely zero discussion with the victim-survivors at all, in fact in one case the DPP told our client that they had “great news”.

To hear that their abuser or rapist had pleaded guilty to a charge of assault is not “great news” for a victim-survivor. Not only are they acutely aware that their rapist would never appear on the sex offender’s register, but they would also fully qualify for a working with children check.

Pleading down needs to be done within the confines of the same type of case, rape cases MUST remain within sexual abuse cases so the abusers can never again receive a valid working with children check and MUST appear on the sexual abuser register.

To allow a rapist to plead down all the way to assault or even simply sexual touching without consent has left FACA clients feeling like the people who were supposed to speak for them in the courts, the public defenders “literally slapped them in the face”. I am fairly sure these fits into the category of having an adverse reaction on the public perception of the legal system. To see their rapists plead down their charges robs the victim-survivors of any sense of justice. It doesn’t let them speak publicly about the truth of what happened to them as the conviction is only assault and does not feature a sexual component. We have even heard of victim-survivors being sued for speaking their truths and having to spend thousands to defend the defamation lawsuit brought about them by their rapists.

It is simply not fair, to victim-survivors, to their families and to the system as a whole and it can be easily ended by making the crime of rape holding special category that can’t be pleaded down further than sexual abuse.

4. *Domestic violence orders are there to stop abusers having access to their victims and subsequently further abusing them. When these orders are contravened there needs to be custodial sentences for doing so without fail, and without discretion of arresting officers.*

How many times are we going to hear about a murder happening after a DVO was repeatedly broken. We at FACCIA work quite closely with the family of Doreen Langham who was killed in a fire by her ex-partner Gary Hely when he set her Browns Plains apartment on fire. The coroner was absolutely scathing in her report of the incident and the police's response leading up to it.

The coroner found the QPS response to be "inadequate" and called the tragedy a "systematic failure" to quote the coroner "I find that overall the response of QLD Police was inadequate and they failed to protect her or prevent her death"

Two officers were dispatched to the home mere hours before Doreen died, one of these officers admitted to not running a background check on either Doreen or her ex, did not check the back entrance to see if her house had been broken into (despite Doreen pleading to do so) and told Doreen that she was "overreacting" despite the fact she said her ex had broken into her apartment. Hours later Doreen was dead.

The coroner found that there were numerous breaches of Hely's DVO orders so numerous the QPS had lost count and not a single time was he sent behind bars. One instance where he broke into her car and beat Doreen, he was given a single night behind bars then given an entirely suspended sentence for the assault despite the repeated DVO breaches.

If a DVO is breached this must trigger an immediate custodial imprisonment response as a standard. If a domestic abuser is breaching a domestic violence order meant to protect their

victim-survivors, they must be locked up for the protection of that victim-survivor while they are still a survivor.

Further to that an extra charge of breaching the DVO must be added as an aggravating factor to any charge that arises from breaching that DVO. This aggravating factor must add substantial time to any charge and also remove the possibility of pleading away the aggravating charge.

This will be a significant deterrent to anyone considering breaching a DVO as they would be fully aware that anything they did as a result of that breach would most certainly see them land behind bars, where now the reality is they can repeatedly breach the DVO and get told to “calm down and go home”

Our DVO system needs a complete overhaul, our police officers need to know that domestic abusers can quickly escalate to domestic murderers. The police need to know that if they ignore breaches of DVOs they are literally placing the victim’s life at high risk. Any breaches of DVOs needs to be met with a custodial sentence.

5.30.4% of rape offences were committed as domestic violence offences. If there was a DV and rape register women and children would be able to find out about their new partners and there would be yet another deterrent for committing the crime in the first place.

Women and children's rights to be safe from potential domestic abusers and rapists should outweigh convicted rapist and domestic abuser's rights to privacy. It seems like a very obvious statement but sadly it simply does not.

One way to re-balance the scales, would be to have a public register of convicted domestic abusers and convicted rapists. That way if a predator is grooming a mother in an attempt to get their hands on her child or if a domestic abuser is lining up their next victim, then the potential victims have a way to find out the truth about their prospective new partner's past so they can make an informed decision about the type of person they wish to see and they wish to have around their children.

A register would not only educate potential victims of domestic violence and rape as to the realities of new people in their lives, but it would also act as yet another layer of deterrent for those potentially committing the crime. The main criticism of the registers is their lack of efficacy. The studies that are cited to back that up were all held in 2016, however since then there has been an explosion in social medias with accounts rising from under 1 billion in total in 2016 to over 3 billion accounts on just one platform (Facebook).

With their names and faces on social media being easily and rapidly shared among friend groups and local news pages, convicted rapists and domestic abusers would certainly think twice before re-offending and winding up back on the register for another stint.

A publicly accessible rapist and domestic violence register would go a long way to make victim-survivors feel like justice has been served, a lot of our clients at FACAA tell us that one of the worst parts of the judicial process was that they felt entirely powerless and voiceless throughout. Having their abusers on a publicly accessible register that they could then share would give them their voice back and empower them because they would be able to say “This happened to me and this is the person who hurt me”.

The register would cost next to nothing to set up as they already exist all they need to do is make them public, The state of Massachusetts in the United States uses a login to access system where you can only access people in your own locality. There are literally no valid objections to the registers being made public except the issue of privacy, however as previously stated the safety of women and children comes before the privacy concerns of convicted rapists and domestic abusers.



Conclusion

The current legal system is often referred to by our victim-survivor clients as “Not a justice system and barely a legal one” this is mainly due to the excessively low sentences given to crimes of a sexual nature and the way DVO’s are not enforced despite them having the literal purpose of saving lives.

When a law is written into legislation part of its purpose is to ensure that there is a level of positive public perception of the judicial system. Sentencing rapists to just 6 years on average while their victim-survivors get a life sentence does not serve that purpose at all.

Another major failing of public opinion of our judicial system is having repeated breaches of domestic violence orders only to see that abuser literally set fire to the victim as was the case of Doreen Langham.

The fact is Doreen would still be alive if it wasn’t for the repeated failings of Queensland police force. There was a domestic violence order in place and still the QPS repeatedly ignored Doreen’s pleas for help. If they had not done so Doreen would be alive today this fact was confirmed by the coroner in her findings in a report about the incident.

FACAA dedicate this entire submission to the memory of Doreen and a sincere hope that the recommendations we made, significant increase in sentencing for rape, no more plea deals for rape cases, aggravating factors that lead to increased sentences for those who use rape as a method of control and minimum custodial sentences for those who breach DVOs. All become a reality in Doreen’s name for Doreen’s family that she left behind when she was so tragically taken from this world.

This submission contains practical easily implemented solutions to not only act as deterrents for the crimes, but also to help go a long way to restoring public faith in our legal system. If the victim-survivors feel like they were heard and they were a part of the process, then they are more likely to feel like justice has prevailed.

It is our hope that the solutions we have offered up would be made part of our legal system to go a long way to curbing one of the biggest social issues of our day. Rape and domestic violence are scourges that have plagued our society for far too long and it is time to come down hard on those who would perpetrate these heinous crimes.

We at FACAA would like to thank the Queensland sentencing advisory council and The QLD Attorney General and Minister for women for the Prevention of Domestic and Family Violence, the honourable Shannon Fentiman for starting this review and inviting FACAA to put forward a submission on behalf of our members.

We would like to offer ourselves in person or remotely in any capacity required by the council to explain any aspect of our submission. Should you require a representative of FACAA please do not hesitate to email me on [REDACTED] or call me directly on [REDACTED].



References

Direct interviews, emails and phone calls with FACAA members and clients who have endured court cases in the family court system recently. We spoke to over 25 clients and heard about their experiences with domestic violence, domestic homicide and seeking help in shelters.

(i) QLD Sentencing advisory council website

<https://www.sentencingcouncil.qld.gov.au/statistics/type-of-offence/rape>

(ii) Crimes act 1900 section 351

http://www5.austlii.edu.au/au/legis/nsw/consol_act/ca190082/s19a.html

(iii) CRIMES ACT 1900 – section 19B

http://www5.austlii.edu.au/au/legis/nsw/consol_act/ca190082/s19b.html

(iv) QLD Government Law and Crime

<https://www.qld.gov.au/law/crime-and-police/types-of-crime/assault-sexual-assault-and-stalking>

(v) Highlights of QLD SAC report into rape statistics

<https://www.couriermail.com.au/truecrimeaustralia/police-courts-qld/queensland-sentencing-advisory-councils-sentencing-spotlight-reveals-latest-rape-statistics/news-story/824c3aac98f3f7df4e877da6b89be5b3>

A very big thank you and reference needs to go to the volunteers of the FACAA social media awareness campaign. [REDACTED]

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Without who this submission would have never occurred.

