

**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]**



4th of April 2024



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 [REDACTED]

Web : www.facaaus.org / www.facebook.com/facaaus



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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 and the QLD Sentencing Advisory Council 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.

To get the answers to the questions asked by the QSAC FACAA asked our social media pages which consist of over 185,000 victim-survivors and their advocates and asked them for their thoughts, their opinions and their feelings in regard to the questions.

As with every legal reform campaign our Julia's Justice team accept on behalf of our members, the response was overwhelming. FACAA received over 500 completed questionnaires and another 660 partially completed questionnaires. With well over 1000 responses this Julia's Justice legal reform campaign was our most successful to date in terms of responses.

The main themes of the responses were a need for safety of victim-survivors and the need for victim-survivor voices to be

heard when it comes to sentencing for rapists. One of the key points of legal reform is the question of does the reform help ensure the public's perception of our justice system is a good one. Currently we have not heard a single respondent say that they even think we have a justice system. Most said we have a legal system at best and some said we don't even have that. This shows us at FACAA that the QSAC have a real chance to make much needed changes that could go a long way to restoring the long lost faith in our legal system that our public once had.



Answers to Questions

1. The most important purpose of sentencing for a person for sexual assault and rape is the safety of the victim-survivors. This is one of the most common themes throughout all responses. Safety for victim-survivors of rape and sexual abuse is not just limited to their immediate safety needs but must extend to their lifelong safety. This means there is a need for lifelong protection orders to be put in place for victim-survivors against their rapists/sexual abusers who we shall be referring to as their perpetrators. A recent example of this need is the case of Grace Tame, Grace's abuser has repeatedly and deliberately intimidated her both online and in person despite there being judge's orders for him to stop doing so. Every time Grace's abuser contacts her she is forced to relive her ordeal at his hands. FACAA know of several survivors who are not as mentally strong as Grace and when their perpetrators have contacted them after they have been released, it has led to mental breakdowns or worse in some cases survivors have experienced suicidal ideations and even some cases of attempted suicides as a direct result of their abusers being able to contact them after they have been released.

Further to the concept of safety for victim-survivors of rape and sexual abuse is the concept of their mental health being adversely affected by unjust sentences. It is well documented that going through the process of seeking justice for a crime can be as traumatising as the initial crime itself. To go through that re-traumatising process to see their perpetrator receive a slap on the wrist instead of a decent custodial sentence leaves the victim-survivors feeling let down by the system and in very poor mental health as a result.

FACAA has seen literally dozens of cases where victim-survivors have had their trauma dug up for all to see, had their experiences questioned and then had to watch while their abusers have not even had a conviction recorded against their names.

Victim-survivors of rape and sexual abuse aren't the only ones who feel let down by light sentences for rapists and sexual abusers. If you ask everyday people about what they think about our justice system, and most will tell you that we simply do not have one.

The very simple answer to both improving the mental health of victim-survivors and improving the overall level of public trust in our criminal justice system is to increase sentences handed down to perpetrators of rape and sexual assault.

QLD have some of the best laws in Australia when it comes to rape sentencing multiple time rapists. Currently there are mandatory minimum sentences of life for repeat federal level rapists, however there are too many ways around these mandatory minimum sentences. Public defenders or police prosecutors can make deals with the perpetrators to get charges downgraded, judges can downgrade charges to help get guilty pleas or because they feel the charge was too "harsh" there are several ways perpetrators can get around the mandatory life sentences. These loopholes need to be closed immediately to prevent these good and just laws going to waste.

2. After receiving so many responses we are of the opinion that judges should get the specific training of listening to rape and sexual abuse survivors tell their stories and traumas and be given general guidelines to increase

sentencing for rape and sexual assault to be more in line with sentences handed to car thieves or those who have committed taxation fraud. We believe if judges had more empathy for victim-survivors by hearing the trauma they have endured and continue to endure, then they could hand out sentences' society would deem appropriate and that would leave victim-survivors with a sense of justice and safety.

3. Section 9 1 fails to meet the principles that are important to victim-survivors particularly child abuse survivors. Section B talks of the need for rehabilitation, child rapists can not be rehabilitated. C refers to a deterrence for future offences, yet how can non-custodial sentences ever be a deterrent to anyone especially the perpetrators of these crimes? D once again sounds good but is completely unravelled when rapists are given non-custodial sentences with suspended sentences or community corrections orders. The very simple solution to this is to make a mandatory custodial sentence for anyone found guilty of a penetrative rape offence particularly against a child.
4. The current guidelines offer several acceptable reasons why someone might commit and offence however there is no justification for rape or sexual abuse. It mentions the perpetrator being a victim of domestic violence or rape themselves, yet any survivor of these crimes will tell you that they wouldn't inflict this crime upon their worst enemy. It mentions their heritage however ignorance of the law is not an excuse for breaking the law. The fact is there are no acceptable reasons for committing a sexual offence so there should be no reasons for giving lenient sentences to rapists and sexual abusers. In particular there should never be character references accepted for sexual abuse and rape cases because no matter who someone was before they

were a rapist once they cross that line and commit a sexual offence, they are no longer a person of good character. People of good character do not commit sexual offences especially not against children!

5. In short NO. Children under the age of 16 should have special protections and anyone who is in charge and entrusted with children who abuse that power should as a direct result face severely aggravated charge. This includes teachers, sporting coaches, tutors anyone who is entrusted with the care of children. This will go a long way to act as a deterrent for anyone using the system to get close to children to then hurt them.
6. YES. Good character should play absolutely no part in rape and sexual abuse cases because as stated in question 4, "*In particular there should never be character references accepted for sexual abuse and rape cases because no matter who someone was before they were a rapist once they cross that line and commit a sexual offence, they are no longer a person of good character. People of good character do not commit sexual offences especially not against children!*"
7. I am unsure of why any race or culture should be considered when sentencing for rape or sexual abuse. Being of a certain race or culture does not excuse rape or sexual assault or any crimes for that matter, so why would it be a factor in sentencing?
8. As above ignorance of the law is no excuse for breaking it so why should any culture or lack of English speaking be considered when sentencing for rape or sexual abuse?

9. Absolutely none, as previously stated any victim-survivor of rape or sexual abuse would not inflict that crime upon their worst enemy. Anyone using the “it happened to me” defence needs to have their claims of rape or sexual abuse fact checked and using that excuse also shows a complete lack of remorse for their crimes.

10. There needs to be changes made to section 6 the specifics of the exceptional circumstances that could lead to a non-custodial sentence. B needs to be a sliding scale whereby the younger the victim the more severe the sentence. C does not take into account that all rapes are violent offences because forcible penetration of a child is always violent and painful for the child and therefore rape is always a violent offence. D Once someone has raped a child, they are a risk to all children because they will forever be trying to find more child victims. E needs to include a severely aggravating factor for those in charge of children. F the need to deter similar behaviours needs to be re-written to be the need to stop similar crimes as it is a crime we are talking about also this principal should be the reason that non-custodial sentences should never apply for rape or sexual abuse cases. G child rapists can never be rehabilitated.

11. Question is very unclear.

12. In short no, however in our research we found that this is not due to poor legislation but rather implementation by judges and by public prosecutors and public defenders. Legislation needs to be put in place to stop plea deals from circumventing the legislation written to act as a deterrent for future crimes and also to bring a sense of justice to victim-survivors.

13. The only amendment we would suggest is one that says that not only is a previous conviction in a similar crime a mitigating factor for sentencing, but it should be allowed to be brought up in deciding the guilt or innocence of the perpetrator. For example, if the perpetrator has committed a rape of an underage girl previously then it is far more likely that perpetrator is guilty of the rape than if there was no history of similar crimes.
14. No actual question
15. The only information needed in imposing sentences for rape or sexual assault is in relation to the victim-survivors. Judges do not need to know about the hardships of the perpetrators as there is no justification or reasoning for rape or sexual abuse. The judge does however need to know about the impact on the victim-survivors, their diagnoses and any other factors that have affected the victim-survivors.
16. Once again we and our members were at a total loss as to why any considerations should be made for sentencing of Aboriginal or Torres Strait islanders. I ask the QSAC what difference at all it makes to sentencing if the perpetrator is of Aboriginal or Torres Strait islander or Russian or Chinese or Anglo Saxon. Why does this matter at all ?
17. As previously discussed, there is a need for legislation to stop backroom deals being done to lessen charges and subsequently circumvent the mandatory sentences. There is also a need for judges to hear directly from victim-survivors so they can get a better understanding of the trauma endured which will

hopefully lead to more appropriate sentences and less plea deals for perpetrators of rape and sexual abuse.

18 and 19 As I am not a member of the Aboriginal or Torres Strait islander I do not find it appropriate for me to comment on how their culture is affected by the court process.

20. Restorative justice principals were universally not welcomed by our members. We at FACAA fail to see why restorative justice is being rolled out despite the concept being to help perpetrators. Restorative justice might be applicable for car theft or even robbery but there is no reasonable excuse for rape or sexual assault so why should there be a way for the perpetrators to feel better about the crime? No restorative justice should not be applicable for rape or sexual abuse crimes.



Conclusion

In conclusion while the system has gotten much better in recent years in particular in QLD, we still have a long way to go in terms of sentences being handed down for rape and sexual abuse crimes. We at FACAA believe that child abuse material and child exploitation material as well as “revenge porn” should all fall under the sexual abuse guidelines as the sentencing for those crimes is abhorrent.

Currently the legislation exists in QLD for mandatory life sentences for repeat offenders, however we at FACAA would like to ask the question of why these mandatory sentences are not being activated and the reasons we have found are due to deals done for guilty pleas to avoid these mandatory sentences need to be stopped. We also believe that the judges have a lack of empathy towards victim-survivors which could be helped by having judges hear the stories of what victim-survivors have endured.

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

Questionnaires distributed to the FACAA members of which over 1000 were returned either fully or partially complete.

(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

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

[REDACTED]
Without who this submission would have never occurred.