

**Submission to:**  
**The Victorian Legislative Council Legal and Social Issues**  
**Committee Inquiry into Victoria's Criminal Justice System**  
**Submitted by:**  
**Fighters Against Child Abuse Australia [FACAA]**



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## **About the Author:**

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Adam Washbourne is the Founder and President of the charity group Fighters Against Child Abuse Australia. He founded the charity in July 2010 to fill a gap that he recognised 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) specialising 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. He currently counsels for FACAA and teaches for KMA Martial Arts in Liverpool, N.S.W, one of Australia's premier martial arts schools.

This submission was prepared by Fighters Against Child Abuse Australia [FACAA].

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## **About Fighters Against Child Abuse Australia**

We are a charity formed to empower survivors, to raise awareness and to bring justice back to our legal system.

Our vision is to see a world where child abuse is no longer a plight our children must face.

The core values which guide FACAA are:

Integrity above all.

Always show empathy and compassion.

Respect the journey, every survivor's path is different.

Never lose the passion that hardens your resolve.

FACAA has been working actively for the past 11 years to end child abuse within Australia. We run several programs all with our goal of ending child abuse in mind, such as survivor's healing programs, educational and legal reform programs, anti-domestic violence programs, anti-bullying programs and a social media awareness campaign with over 135,000 followers on our main Facebook page alone, making it one of the most successful social media campaigns of its kind in Australia.

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



## **Introduction**

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To be blunt, we have found the Victorian legal system's reputation among the victim-survivor community to not be a positive one.

Victoria has been labelled the "secrets state" due to a culture of issuing suppression orders. Of the 906 suppression orders issued nationally in 2020, 497 were from Victoria. Often hiding the identity of child rapists and rape victims despite victim-survivor wishes that they be named.

Inquiries like this will go a long way in helping to change this belief if they are backed up with positive actions. The recommendations FACAA are making are not lofty ideals, they are all accompanied by attainable actions that will see a reduction in criminality in Victoria.

We would like to say thank you to the Council for allowing us to contribute our submission to this important and necessary inquiry.



## **Recommendations**

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In response to the 2nd question: Strategies to reduce rates of criminal recidivism.

1. Child abuse often leads survivors to self-medicate with drugs and alcohol, in an effort to deal with the PTSD and mental health trauma they have endured. This leads to several associated crimes such as petty theft, robbery, armed robbery, dealing drugs and so on. If we could do more to help survivors of child abuse heal while they are still young these crimes could be dramatically reduced.

2. A publicly searchable Sex Offender's Register along the lines of the "Megan's Law" model. Including domestic violence offences.

3. All child sex abuse convictions should result in custodial sentences and serious crimes against children should be added to the mandatory minimum imprisonment list.

4. Child abusers are NOT people of good character, as such they should not be able to get reduced sentences for good character references.

In response to the 3<sup>rd</sup> and 4<sup>th</sup> questions, both have the same recommendations.

5. Judges should be informed of the lifelong impacts of child abuse by a panel of survivors of child abuse.

6. Specialty judges who are highly trained in trauma informed practices should be appointed to a specialised court that focusses on offences against children using similar methods to the NSW Children's Champion pilot program, (now known as The

Witness Intermediary Program).



### **Explanation of Recommendations:**

*1. Child abuse and neglect often lead to adverse outcomes in adulthood. Survivors may self-medicate with drugs and alcohol, in an effort to deal with the PTSD and mental health trauma they have endured. This leads to several associated crimes such as petty theft, robbery, armed robbery, dealing drugs and so on. If we could do more to help survivors of child abuse heal while they are young these crimes could be dramatically reduced.*

Experiencing abuse and/or neglect in childhood will often lead to serious adverse outcomes in adulthood. Survivors may self-medicate with drugs and alcohol to deal with the PTSD and mental health trauma they have endured.

All too often associated with addiction are crimes such as petty theft, robbery and armed robbery, break and enter, drug dealing etc.

These drug and alcohol addictions also have a huge cost to our health system. The rehabilitations, the associated health issues that go with addiction (liver, kidney and heart conditions for example) the mental health treatments cost our public health system hundreds of millions of dollars every year.

If we could treat the trauma of child abuse survivors, at a young age, we could help to prevent many of these issues. FACAA's Phoenix survivor's healing program which offers a unique way to help survivors heal from their ordeals has had incredible

success Australia wide. Currently in Victoria FACAA have only 4 approved facilities that can take clients in our Phoenix survivor's healing program.

FACAA is entirely volunteer run and with minimal funding from the Victorian government we could expand our Phoenix survivor's healing program, expanding from 4 approved facility providers to over 30 in the first year, with continued growth every year after that.

The FACAA Phoenix survivor's healing program works. We approve facilities that offers our clients empowering activities such as martial arts, dance, gym and fitness classes, music therapy, art therapy, personal training, boxing. Basically, anything to get the survivor moving, their endorphins flowing and their healing into their own empowered hands.

The approval process for the facilities is stringent and includes working with children checks, character checks for instructors, proficiency checks and so on.

FACAA sponsor the victim-survivors to do the activities to accompany their healing and fast track them overcoming their trauma. We cap each facility at 6 survivors to ensure privacy is always adhered to. With funding from the Victorian government, we could approve and fill 2 facilities a month every year. That is an extra 144 clients per year in Victoria being helped to heal from their trauma.

We know helping survivors heal from their trauma, regaining their self-esteem and self-confidence would make a sizeable impact on the overall numbers of survivors who go on to offend due to the trauma of abuse and the need for self-medication. Without the need for self-medication and the associated crimes there would be a marked drop in the criminal recidivism for the victim-survivor community.

FACAA interviewed a doctor at a narcotics treatment clinic for this submission. He estimated that 90% of his clients receiving opioid replacement treatment for their narcotic addictions had survived some form of child abuse and/or neglect.

If we could offer the victim-survivor community better ways to heal from their childhood abuse/neglect, then we as a society wouldn't have to deal with the myriad of associated problems of surviving childhood trauma.

FACAA's Phoenix survivor's healing program is just one of many great programs out there, however all too often the programs receiving government funding are the traditional approaches to mental health. These are not always trauma informed and are not applicable for all victim-survivors. Sadly, victim-survivors can be left feeling detached by traditional counselling models and non-traditional trauma informed approaches like the FACAA Phoenix survivor's healing program are often a better fit for a more wholistic approach to healing victim-survivors.

*2. A publicly searchable Sex Offender's Register along the lines of the "Megan's Law" model. Including domestic violence offences.*

A publicly searchable sex offender's register is needed in Australia. With cases like Daniel Morcombe's making worldwide headlines the time has come for Australians (starting with Victorians) to be able to know who is hiding in plain sight, within striking distance of their children.

The arguments against a register talk about studies done into

their effectiveness showing no conclusive drop in child abuse, however none of the studies cited were done after 2016. Since 2016 there has been a huge rise in social media use (4.48 billion users in 2021, where 2016 only had 1.98 billion more than double) and social media campaigns using Megan's Law would be much more successful today as they would utilise the increased power of social media which would lead to a much greater reach and therefore greater awareness.

Another common argument against the register is the risk of vigilantism. Firstly, vigilantism is simply not occurring, in America they have entire counties that place large red signs outside the houses of convicted sex offenders, and they do not have an increased problem with vigilantism.

Secondly, a major problem with this is the presumption that people would use this information (knowing offenders' locations) not to protect their families but to commit acts of violence against them. The flaw in this thinking is that the people with the greatest reason to want to commit acts of violence against sex offenders, (the families of the victim-survivor, or the victim-survivor themselves) already know the perpetrator. The victim-survivors and their families usually know exactly who the perpetrators are, where they are and where they will be, for example, court dates. In our research for this submission, we could not find any recent examples of vigilante attacks by victim-survivors or their families against sex offenders in Victoria.

If vigilantism is such a huge concern, might we suggest an amendment to the law that simply removes addresses of convicted sex offender's and replaces them with local area codes. Those with concerns could easily look up names or local photos without placing the abuser in any immediate danger.

One of the common arguments against a register is that on the USA registers you can be labelled a sexual predator for nothing

more than “young love” or an “innocent incident.” An example of this is an 18-year-old boy being with his 15-year-old girlfriend, or the concern that someone could be placed on the register for public urination where children are present.

Both these problems with the USA version of the register are easily fixed with simple amendments. The first of which to counter the “young love” problem is to place a minimum age requirement to be added to the register of 25 years old. This means a perpetrator’s victim would have to be 10 years younger than the offender for them to be placed on the register.

We at FACAA polled our members and none of them had an issue with a 25-year-old being added to the register for being in a so called “consensual” relationship with a 15-year-old or younger, as this is not a relationship of equals. At 15yrs old or younger a child is incapable of consent and the opportunity for manipulation and grooming exists, that is why despite whether the child is a willing participant, it is illegal. This would eliminate the whole “young love” argument and the fear that young people could be made criminals for life, being added to the register for consensual acts.

The other scenario that is mentioned whenever the USA register is suggested is the concern that people could be added to the register for urinating in public. For the record, we at FACAA don’t see this as an issue, if you’re exposing yourself to children to urinate in public then perhaps you should be on a register.

However, an easy fix to this objection would be to define a difference between public exposure and deliberate flashing. The difference simply is intent, if the perpetrator knows a child is looking (makes eye contact and no attempt to apologise or remedy the situation) then that is flashing and should be added to the register. If the perpetrator on the other hand shows instant remorse the moment they realise a child is looking or has seen them, or makes instant moves to remedy the situation, then you

could argue this is not a sexual crime but instead an “innocent incident.” Once again FACAA feel that if someone is careless enough with their nudity that a child (not their own child) sees their genitals then they should face the consequences. However, we have included this by way of countering arguments against the register itself.

A register would allow concerned parents to instantly be aware of the criminal history of someone trying to groom their child. Several crimes that are on the rise could be greatly reduced by a register, such as children (and parents) being groomed by predators on social media, single parents being groomed by predators using dating apps, child abusers posing as instructors or teachers, the list goes on and on. Giving parents and concerned adults the ability to check if someone has been convicted of a sex crime removes an abusers power of anonymity which is one of the main weapons used by these criminals.

We believe a Publicly Searchable Sex Offenders Register in today’s social media driven society would see a drop in child sex offences without seeing an increase in vigilantism-based violence.

*3. Stop all child abuse convictions from receiving non-custodial sentences and move serious crimes against children to the mandatory minimum imprisonment list.*

Convictions for any form of child sexual abuse should see a custodial sentence. We believe every single one of the purposes of sentences are failed by non-custodial sentences.

Section 3A of the Crimes and sentencing act clearly states;

### 3A. Purposes of Sentencing-

The purposes for which a court may impose a sentence on an offender are as follows--

- (a) to ensure that the offender is adequately punished for the offence.
- (b) to prevent crime by deterring the offender and other persons from committing similar offences.
- (c) to protect the community from the offender.
- (d) to promote the rehabilitation of the offender.
- (e) to make the offender accountable for his or her actions.
- (f) to denounce the conduct of the offender.
- (g) to recognise the harm done to the victim of the crime and the community.

In FACAA's opinion and the opinion of every survivor of child abuse we spoke to, to sentence a child sex offender to a non-custodial sentence fails in literally every aspect of the purposes of sentencing.

If you consider the lifelong impacts of child abuse upon the victim-survivors, sentencing perpetrators of this crime to anything less than a significant custodial sentence does not meet the Purposes of Sentencing.

To (A) "ensure the offender is adequately punished for the offence," considering that the maximum non-custodial sentence that can be handed down in Victoria is 2 years, there is no

possible way a non-custodial sentence ensures the offender is adequately punished.

Non-Custodial sentences also do not

(b) “Prevent crime by offering a deterrent to the offender and others from committing similar offences.” By giving child abuse offenders ‘slap on the wrist’ sentences, including no conviction recorded, we are telling the general public that our judicial system believes that child abuse offences are not crimes to be taken seriously. We are telling victim-survivors that they are unworthy of justice and the message being sent to perpetrators is that they can continue to commit these heinous crimes without fear of losing their freedom. The judicial system appears to not see crimes against children as being serious enough to deserve severe punishments, if any punishment at all in some cases.

This does not act as a deterrent and considering the horrendous nature of these crimes one would think that the judicial system would want to impose as strong a deterrent to future offending as possible.

In no way, shape, or form do non-custodial sentences for child abusers “protect the community from the offender,” unless there has been upgrades to the current GPS locator that includes a shock system should the offender go near a child.

Failing that upgrade, it is quite dangerous to release a convicted child sex offender back into society because children are never safe around them again. Non-custodial sentences for child sex offenders epically fail at “protecting the community” (C) in the purposes of sentencing.

(D) “To promote the rehabilitation of an offender” is probably the most often used reason to give child sex offenders non-custodial sentences according to our surveys. However, we at

FACAA believe that child sex offenders cannot be rehabilitated especially not in the community. How can you rehabilitate from something you don't feel is your fault, something you have not taken responsibility for, something you don't even see as a crime?

Rehabilitation starts with taking responsibility for your actions and the harm they have caused, child sex offenders in general don't believe they are causing harm and light punishments only tend to reinforce their belief that their actions are not criminal at all. We have seen child sex offenders laugh as they walked out of court after having no conviction recorded, or being given a wholly suspended sentence.

They know that they don't have to take responsibility for what they have done because they are serving no time behind bars for doing it. What hope is there for them to realise what they did was wrong, own it, and make the necessary steps to ensure it never happens again, without serving a custodial sentence for their crime?

(E) "To make offenders accountable for their actions" is also severely failed by giving those convicted of child abuse a non-custodial sentence because how can you be held accountable for something if you are literally getting less than someone who repeatedly rode the trains without a ticket, or someone who stole a fully insured car?

There is zero accountability for any child abuse offenders who get a non-custodial sentence, so that is yet another one of the guidelines for sentencing that is being failed by giving non-custodial sentences to child abuse perpetrators.

(F) and (G), "To denounce the conduct of the offender" and "To recognise the harm done to the victim and society" are both

horrendously failed by giving child abuse perpetrators non-custodial sentences.

How is a crime denounced without its perpetrators being given custodial sentences?

How is the suffering of a victim or the impact on society recognised without a prison term for those convicted of the crime?

Child abuse survivors suffer from the ill effects of that abuse for their entire lives, entire communities are shattered by child abusers and their crimes, yet it is still an option and a commonly used options for our judges to give those who commit these crimes non-custodial sentences. This is simply not acceptable.

In todays society of law and reason to give a perpetrator of any form of child abuse a non-custodial sentence fails each and every one of the guidelines for sentencing in the act itself. Child abusers should never be given non-custodial sentences at all. Even if you remove the massive amount of appropriate emotion surrounding the topic and strictly discuss the letter of the law, child abusers according to the guidelines for sentencing purposes should never get non-custodial sentences.

Further to ensuring that all child abuse convictions see a custodial sentence handed down, we at FACAA would like to see several child abuse crimes added to Victoria's Offences with statutory minimum imprisonment sentences and non-parole periods list.

We notice the list is quite impressive (however often unenforced due to plea deals and by judges, despite the word mandatory). It is a very good step in the right direction when it comes to reducing criminal recidivism, however we are disturbed the list features no mention of crimes against children. We at FACAA

know for a fact that Victorian society agrees with us when we say that several crimes against children need to be added to the mandatory minimum sentences list.

The list currently stands at (according to <https://www.sentencingcouncil.vic.gov.au/about-sentencing/sentencing-schemes>)

*Manslaughter in circumstances of gross violence*

*Manslaughter by single punch or strike*

*Causing serious injury intentionally or recklessly in circumstances of gross violence to an on-duty emergency or custodial worker*

*Causing serious injury intentionally or recklessly in circumstances of gross violence*

*Causing serious injury intentionally to an on-duty emergency or custodial worker*

*Aggravated carjacking*

*Aggravated home invasion*

*Causing serious injury recklessly to an on-duty emergency or custodial worker*

*Intentionally exposing on-duty emergency or custodial worker to risk by driving*

*Contravening a supervision order*

*Causing injury intentionally or recklessly to an on-duty emergency or custodial worker*

Now while we understand that some of these charges could apply to charges against children, we at FACAA would like to see several child specific crimes added to this list, especially as children are our most vulnerable in society and our laws should reflect this.

The crimes we would like to see added to the mandatory minimum sentences list are-

Child homicide or causing the death of a child

Rape or penetration of any kind against children under the age of 16 (with a minimum 4 year age difference between victim survivor and perpetrator to qualify for the mandatory custodial sentence)

Persistent sexual abuse of a child under the age of 16 (no minimum age gap required)

Production of, or dissemination of, child abuse material with a minimum age of 21 to qualify for the mandatory custodial sentence.

The Victorian system of classification for child abuse crimes is quite strong when compared to the rest of the nations. We do however notice that despite the ability to hand down life sentences for category 1 crimes and the ability for those crimes to be served consecutively, neither has ever been optioned by a judge when sentencing these criminals. We at FACAA would like to see these sentencing options handed down as a standard for all category 1 crimes against children, and judges who hand down publicly perceived “weak” sentences should be counselled as to the damage they are doing to the public’s opinion of our legal system and the fact that weak sentences offer little or no deterrent to stop future crimes from being committed.

In response to the 3rd and 4th questions both have the same recommendations

*4. Judges should be informed of the lifelong impacts of child abuse by a panel of survivors of child abuse.*

Judges often are accused of not living in the worlds of those they preside over, this feels never truer than when speaking of child abuse survivors. All too often judges seem to be harsh towards survivors of child abuse through no fault of their own when all they are doing is upholding the very letter of the law.

This could easily be eliminated by training judges in trauma informed approaches and having judges actually sit down and listen to victim-survivors and hear their stories. We know they hear the victim impact statements however all too often after hearing these VIS the judges will then turn around and make comments that show a complete lack of empathy and understanding towards the victim-survivors.

We at FACAA would like to see judges spend some time with professionals in the trauma informed field such as KnightLamp a Victorian company that specialises in trauma informed education, along with a selection of victim-survivors and actually sit down and listen to what they have to say and learn from their experiences and expertise.

FACAA know this would help give judges a much better understanding of the unique problems and issues facing victim-survivors of child abuse. This would help lead to tougher sentences, justice for victim-survivors and lower criminal rates and recidivism amongst child abuse perpetrators.

*5. Specialty judges who are highly trained in trauma informed methods should be appointed in a specialist child abuse survivor's court with similar methods to the NSW Children's Champion pilot program (now Witness Intermediary Program)*

The Children's Champion pilot program (now known as the Witness Intermediary Program) was a program piloted in the Downing Centre Courthouse in Sydney. The main feature of this program was an advocate who took the statements of victim-survivors of child abuse under the age of 16 years old and read them in the courts to avoid child victim-survivors from having to face a grilling from the defence barristers and thus leaving them re-traumatised by the court experience, seeing the perpetrator and the re-telling of the crimes for which they were there to seek justice.

This program had several other features including regular breaks for victim-survivors giving evidence (if the advocate could not), judges wearing street clothes and safe places for victim-survivors. All of these measures were designed to improve the victim-survivor's ability to give evidence.

The pilot program was written in response to victim-survivors feeling unable to present their evidence due to the re-traumatising nature of the court room and adversarial nature of cross-examination and as such the victim-survivors felt that their evidence was going unheard and often leading to an unfair acquittal of the alleged perpetrator.

We at FAAAA saw this as a miscarriage of justice and the NSW state government agreed with us and piloted the Children's Champion program in the Downing Centre with a great reaction and incredible success. The program is now being rolled out across NSW into several regional towns and centres.

The Victorian Court needs a program similar to the Children's Champion program now the Witness Intermediary Program. With it the victim-survivors will not only be more empowered and feel like their voices are heard, but more victim-survivors are likely to come forward if they feel like they will be treated with kindness and compassion. We must be careful not to re-traumatise children having to repeat their story over and over again.

The Children's Champion program protects children from the re-traumatization of the legal process. This will lead to more arrests more successful convictions and more child abusers off the streets.



## **Conclusion**

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The Victorian criminal laws like all criminal laws, need to be much more victim-survivor focused. If we ever want to bring the justice back to our legal system, we must see much less focus on rights of convicted perpetrators to appeal or make deals to reduce the punishments they receive for their horrendous crimes against our children, and more focus on seeking actual justice for victim-survivors and restoring the public's long-lost faith in our judicial process.

We have the potential to give out good sentences with the crime of raping a child under the age of 10 years old possibly getting up to a 25-year sentence, however the average sentence is 4 years and 7 months.

This tells me that our system is in dire need of a massive overhaul and this inquiry and others like it will go a long way to fixing the huge gaps that are in desperate need of fixing.



## **References**

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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.

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