



Fighters Against Child Abuse Australia Submission
Strengthening Child Sexual Abuse Laws

Fighters Against Child Abuse Australia is a not for profit charity fully registered by the ACNC with one main goal, to end child abuse once and for all.

We will do this through our programs which are aimed at ending child abuse and helping survivors to heal. One of those programs is our “Julia’s Justice” legal reform campaign. This submission was written by the volunteers of that campaign.

This submission was made by asking the over 100 thousand FACAA members Australia wide for their input.

Question 1

1a, b and c – FACAA agree on all 3 of these points but would like to point out that one must be careful in what we are terming “victims and survivors” when it comes to the abuse of a child. Non-offending parents or caregivers are also victims in a very big way, and should be supported, respected and listened to as such. This is the reason FACAA have extended our flagship program the Phoenix survivors program to include non-offending immediate family members.

Question 2

2a and b, all state and federal governments should be working closely with police in the ways in which law enforcement responds to child abuse allegations. FACAA would like to see a national based response to stopping child abuse for example a national working with children check, a national DVO system that includes DVOs and AVOs that cross state borders. Police officers also however need more intensive and specific training in these areas also including sensitivity towards child abuse survivors. Police officers who are the first point of contact for a survivor should never take the attitude that a child abuse case is not worth pursuing. The words no child abuse survivor want to hear are “There’s no point in pursuing this case” after they have just worked up the courage to finally seek justice.

Question 3

Police officers are often the front line for survivors of child abuse seeking justice and certainly do need to understand that the initial contact is incredibly important, when disclosures are first made

this will set the scene for any future interactions between the victim and the police.

A survivor who is treated with respect and empathy at that initial point is much more likely to be able to provide a solid and coherent statement, and much more likely to see the case through to its conclusion, acting in partnership with the law enforcement officers involved rather than feeling alienated from them and acting accordingly.

All officers must be made aware that the difficulty in relating what has happened is very real, that it does not however mean that the offence did not occur or is of little significance. Police officers are not required to be psychologists but a basic understanding of the nature of complex trauma and a list of appropriate resources is vital to being able to assist survivors and to see perpetrators brought to justice.

All people who approach police to report abuse should be treated equally, with empathy and respect and belief that what they are saying is true. As with all dealings with the public, cultural awareness is also vital.

All victims/survivors and accompanying adults in the case of minor children (or non-offending parent/caregiver) should be provided with referrals to relevant support agencies such as Victims Services, counselling, refuges if required and so forth. Referrals to trusted advocacy groups would also be highly beneficial.

In saying this, initial contact officers or desk officers cannot be expected to get specialized training required to deal with the complexities of survivors of child abuse. Our recommendation is that there be a specially trained officer specifically to handle child abuse survivors seeking justice. The initial contact officers should be trained to explain the basic procedure to the child abuse survivors seeking justice and to make a booking for them to speak with the specially trained officer at a time that is convenient for both of them. This way the survivor feels validated and is handled properly with due compassion and understanding to their anxieties and complex needs without the need to have that specialist officer on hand 24/7.

Question 4

Victims/survivors should not be made to feel pressured at any point. If they feel that they need to withdraw from the case that decision must be respected. Any insistence, no matter how well-intentioned can result in tragic mental health outcomes.

Making a statement should be made as comfortable and simple as possible under the circumstances. The use of various forms of reporting to police, advocacy groups, support people, interpreters and translators are all vital tools to aid both the police and the survivors and should be utilised fully.

Even if the perpetrator has passed away, is close to death or otherwise unlikely to face trial, their victims deserve some form of closure and justice – the crime committed is no less and not softened in any way by the removal of the perpetrator. With that in mind it is important to take statements from these survivors, in fact it is a slight to the justice system not to, because at the end of the day they could go on to live for years and abuse more victims in that time. The information received from their victims may help in solving other cases and will definitely be helpful to the survivor in their healing process.

At least starting the process of seeking justice might deter the alleged perpetrator from seeking out new victims as well as bringing the survivor a sense of justice and closure. It is the sense of not being

heard or not being believed that can be very re-traumatizing for the survivor.

Question 5

As the rate of child abuse in Aboriginal and Torres Strait Islander people is significantly much higher (some reports have it as high as up to 4.3 times higher than those in the non-aboriginal community). Good relations between police and people of Aboriginal and Torres Strait Islander backgrounds are necessary at any time, but particularly with issues as emotionally charged and potentially dangerous as child abuse. A good working rapport will make it easier for people to come forward and reveal abuse, as would the involvement of community leaders and Elders and alternative reporting methods. Indigenous people are 6 times more likely to be removed from home and placed into care so the need for a good working relationship between the authorities and the Aboriginal and Torres Strait Islander elders and community leaders is vital for all aspects of the justice system not only the child protective services aspects.

Question 6

One of the FACA members who helped with this submission is a doctor at a methadone rehabilitation clinic. He suggested that a high proportion of his clients had some form of child abuse in their past and many have also had some form of incarceration in their life. Therefore, FACA firmly believe that people who are incarcerated should not be excluded from seeking justice for childhood abuse. Education and awareness programs in prisons could help prisoners to know they can make a report and how to do that as well as actively encouraging them to do so. While they are incarcerated sensitivities can be shown towards the prisoners such as not announcing the fact their victim's services officer is there to see them, not having paperwork in obvious envelopes and things of that nature. One of the main deterrents for people who are incarcerated reporting child abuse is the fact that they do not want to be seen as "snitching" or reporting on criminals inside the prison facility so if it can be made quite clear that they are not doing this then we could remove several of the barriers to reporting by incarcerated people.

Once released, it is inappropriate in many cases to expect the survivor to willingly enter a police station to make a report, so alternative methods would be very beneficial.

Any reports of child abuse are beneficial, even if only from an information gathering point of view, taking one child abuser off the street can theoretically save up to 450 new victims as there was a study done in Canada of child rapists behind bars and they said that on average each child rapist will abuse between 200 – 450 children unless they are stopped so encouraging and making it easier for those who are incarcerated to report can only be beneficial to the fight to end child abuse.

Question 7

A. Continuity is vital in cases of child abuse, once trust has been established with one police officer or team it is very difficult if not impossible for the survivor to feel that same level of comfort with someone else, and feeling like they need to go back over everything for the benefit of a new officer can make them want to drop the whole thing altogether. Though of course it is not always possible, continuity should be a priority in every case. One example we hear repeatedly at FACA is the detective that initially took their case went on holidays or long service leave and then another officer who was perceived to be not as good or as compassionate, did something that upset the survivor.

Trust is everything and once that trust is formed it is imperative to do everything possible to keep it. We have heard cases where replacements have accidentally caused problems for survivors by not knowing the background.

We have heard this example more than once so we would suggest a way to prevent this is by organizing a "hand over" of cases where by if the detective In charge of a particular survivor's case is going away or onto long service leave, they arrange a time to walk the officer taking over for them through each case including explaining the story in order to prevent the survivor from having to repeat it again and again. The new officer must also be made aware of any sensitivities, briefed on any advocates in the case and ensure all the needs of the client are being met by the new officer before they go on leave. The handover of cases could easily be done before the detective in charge of the case goes on leave and while not taking that much time will greatly increase the continuity of the police for the survivors of child abuse.

B. The way in which the case progresses, what will happen next and so on is of paramount importance to survivors and their supporters. Survivors must be kept informed about what is happening and why it is happening. This responsibility also falls to the office of the DPP and victims support officers. We at FACAA would like an amicable agreement to be reached between the detective in charge of the case, the DPP support staff, victim's services and the survivor seeking justice. BY amicable we mean that we know it is un-realistic to expect the survivor to get daily updates from the various services however we feel it is realistic to expect at the very least monthly updates delivered in whatever form the survivor feels is the easiest for them to deal with. Be that a phone call or perhaps an email which they can read at their leisure, or even a face to face at a time suitable for the detective or victim's services. FACAA believe knowing when they will be receiving their regular updates will help encourage survivors to come forward and continue their pursuit of justice which is the goal.

C. Surviving child abuse is not a one-day thing, survivors of child abuse have lifelong PTSD with similar levels to those who have served on the front line of wars. The implications and trauma last a lifetime and many survivors, as with all forms of PTSD and trauma response, will seek ways to cope and adapt, some of which may not be legal or socially acceptable. This is not the fault of the survivor and it is also irrelevant to the credibility of the statement they are giving. Their past and even present self-medication attempts should have no bearing on their ability or lack thereof to give evidence in court and as such should not be able to be brought into question by the defense attorney on cross examination. Even if they approach police slightly intoxicated because they needed "Dutch Courage" for example, all people presenting to report child abuse, whether historical or more recent, must be treated with respect and belief. The pursuit of justice against the abuser is of paramount concern and what the survivor does to get through the day is of little or no consequence to the case and they should not be treated as though they are either lying or less of a person for however they decide to self-medicate for their PTSD.

Question 8 We completely agree with all the points raised in point 8 as they were exactly what we said in our submissions.

Question 9

Most of the points raised in question 9 were part of the FACA authored Children's Champion program so we agree with them in their entirety in point A and B

C. The use of video recording of interviews is highly necessary as they can be later used in evidence if something should happen to the survivor. We would like to see all steps taken to ensure that all equipment is functioning as it should prior to commencement to avoid having to repeat the interview. Copies of the recording should be stored and secured appropriately. Due to the sensitive nature of the recordings we feel that an outside company may not be the best to maintain the equipment, if it is necessary to use an outside company all care must be taken to make sure memory cards etc are removed so no breaches of privacy will occur.

D. we totally agree with

E. When you have first aid training or you get your nursing degree you must refresh it every couple of years so why should it be any different when dealing with mental health healing? Like it or not the justice system is part of the healing process for survivors of child abuse and the sensitivities required therein can be like dealing with a PTSD patient. Refresher courses are needed regularly to ensure that the client is getting the best possible level of service from everyone involved in their seeking justice. Be they police or public prosecutions who are dealing with the legal and justice side of things, or be they charities or victim's services who are helping them heal. Everyone needs adequate mental health training and regular refresher updates.

The refresher courses should be subsidized by the government, in our opinion, so as not to price them out of the reach of smaller organizations but ensure equal access to high quality service for all clients no matter if they choose a government organization or a smaller one.

F. The only question we have about this is the selection of so called "experts". We would like to see the selection of experts to come more from the field itself as opposed to intellectuals with lots of qualifications but no actual field time, when dealing with survivors of child abuse actual face to face time with survivors is worth much more than any degree.

G. Once again we agree with everything said in this section. We have been fighting for a while to have impediments and barriers removed for those seeking justice.

H. Copied from point C The use of video recording of interviews is highly necessary as they can be later used in evidence if something should happen to the survivor. We would like to see all steps taken to ensure that all equipment is functioning as it should prior to commencement to avoid having to repeat the interview. Copies of the recording should be stored and secured appropriately. Due to the sensitive nature of the recordings we feel that an outside company may not be the best to maintain the equipment, if it is necessary to use an outside company all care must be taken to make sure memory cards etc are removed so no breaches of privacy will occur.

I Could not agree more that the comfortability of clients during statement collection and testimony gathering should be paramount. Any use of interpreters during this time should be actively encouraged, however the interpreters used should be aware of their limitations so as not to have a case thrown out due to "Coaching". While most interpreter services are aware of this and even

certified in this, some can be less than scrupulous.

Question 10

When making the ultimate decisions about who to charge and what to charge them with, police should be aware that there is not always going to be evidence or a way to corroborate the statements given. This does not mean the events did not occur, it simply means that they were perpetrated against a young and vulnerable person who was left highly traumatized and reflects the very secretive nature of most cases of this type of offending. With that in mind we believe the police should be believing all survivors of child abuse to be giving factual statements as per their experience. With this shift in mindset and mandate we believe that survivors will feel more welcome coming forward which will lead to more arrests and lead to less child abusers on the streets. With this very simple mindset switch we believe survivors will never hear the words "There's no point in pursuing this case" because they will now have the mindset that all cases are real and therefore there is always a real perpetrator to pursue.

Question 11 and 12 a

Once again FACAA have written several submissions summarizing exactly these thoughts.

12 B Clients should never be forced to do anything they do not want to do including but not limited to participating in an investigation.

12 C FACAA would like to see more support services actively added to the list of support services handed out by victim services. Currently they only list government services and the larger known charities however there are so many other great charity organizations out there with incredible programs to help survivors of child abuse and other crimes.

12 C and D and E we agree with entirely.

12 F This is a very important point to raise because the fact is even being heard for a survivor is a great thing for their healing and for their sense of closure over their abuse. When a police officer spends the time to at the very least take a statement even knowing full well they will not be making an arrest that helps that survivor greatly.

The other side of the coin is information gathering from the police officer's point of view. While taking a statement they can find unexpected other pieces of information that can come back at random while discussing horrific events.

For example they could be describing the deceased perpetrator and just randomly say "Yeah there was this guy named XXXX XXXXX he just used to hang around I think"

They now have a new name to look into and a new avenue they may not have ever seen or heard of before this. To let the survivor speak is a win win and doesn't cost that much for a detective to take a statement even with an advocate present.

12 G and H are both important for the survivor to feel as though their case is important and their voice has been heard. This is important for their sense of continuity of their case which as discussed

is important for them to not have to interact with several officers and to re-tell their story which can re-traumatize the survivor.

12 I – This speaks in a similar manner to the need for a change in attitude by police. They must believe that the complainant is telling the truth at all times at the very least in their own mind. That being said if the complainant is proven to be false or even malicious, they should be prosecuted and punished to the fullest extent of the law.

However, should there be no proof that the complainant is lying (and obviously it should always be presumed they are telling the truth) then the police should act as though every word they are being told is true in order to not only make the complainant feel as though they are being listened to but also a comfortable complainant is more likely to be forthcoming with more information in regards to not only their case but other cases so once again this attitude shift is a win win for all involved.

Question 13 A

When dealing with survivors of child abuse the attitude must be that there is an assumption that the survivor is dealing with some level of post-traumatic stress disorder. Special consideration needs to be given when dealing with survivors of child abuse in regard to Post traumatic stress disorder. Sadly, different survivors have different level of associated PTSD. We all know that child abuse survivors can have similar levels of PTSD to frontline soldiers. However, some survivors may not have the full-on PTSD while some may well have all the symptoms. Having said that special consideration needs to be given to survivors no matter what level of PTSD they are battling through even if it is not obvious to the detective taking the statement they should never use the words “No signs of lasting trauma” when describing a child abuse survivor.

For example, if the survivor is an adult male reporting historical child abuse they are likely to try and “tough it out” and give the appearance that they are unaffected by the trauma associated with their child abuse survival. Now just because they are not currently showing signs of PTSD does not mean for a second that they are unaffected. They could be self-medicated or even medically professionally medicated with anti-anxiety medication in order to get their statement out and if the investigator writes their claim of PTSD from the trauma they endured because they can’t immediately see it, that survivor will be less likely to be believed down the line.

There needs to be an assumption just by the very nature of the crime that all survivors of child abuse are enduring some form of PTSD because of the trauma they have lived through. To do this will help get adequate services for the survivor and adequate victims of crime compensation. Plus, as previously mentioned anytime a survivor feels comfortable and listened to, they are more likely to reveal more information for the police.

13 B.

Copied from 12 B and 10

This speaks in a similar manner to the need for a change in attitude by police. They have to believe that the complainant is telling the truth at all times at the very least in their own mind. That being said if the complainant is proven to be false or even malicious then they should not be allowed to get away with it and be punished to the fullest extent of the law.

However, should there be no proof that the complainant is lying (and it should be assumed that they are in fact NOT lying) then the police should act as though every word they are being told is true in order to not only make the complainant feel as though they are being listened to but also a comfortable complainant is more likely to be forthcoming with more information in regard to not only their case but other cases so once again this attitude shift is a win win for all involved.

13 C Agree completely

13 D FACAA do not agree with this point because if there is a lack of intermediary or a lack of services to assist with the gathering of evidence then instead of deciding not to lay charges because of the lack of ways to gather the evidence and barriers to doing so, it should perhaps be treated like 12 F where the accused is deceased and the police take the statement (or what they can of it in this case) anyway regardless of the barriers because as previously stated the survivor feels like they are being listened to and having their voice heard as well as a sense of closure and from the police's point of view vital information can be gathered even though they may be having trouble getting passed various barriers.

14 A – agree completely.

14 B – In the past the institutions in particular the religious organisations have hidden information about investigations into their staff or priests even in school situations. This must not continue, the police themselves must be responsible for ensuring that the public and in particular school community is notified if there are allegations of child sexual assault within that institution. This is not to alert people to a potential law suit as was suggested at the round table meeting but it is to ensure they can and will safeguard their children from the alleged child abuser. To hide the fact that there is an accused child abuser in a school community is disgraceful and completely goes against the welfare of the child.

15 Agree

16 A Agree completely

16 B – All agencies that deal with children should have a policy in place that they will blind report all information on current and past instances of child abuse. To not do so is to risk another child being hurt and nothing makes that risk ok. FACAA will be taking this approach and encouraging others to do the same.

17 . FACAA believe that should a survivor not want to pursue charges or take their complaint to the police then that client should have their information redacted from the report and the report should be made blind. Just to get the police the relevant information on the perpetrator themselves as opposed to the survivor. To report a survivor who is not ready to face the justice system is to place

that survivor's welfare at risk and is not even slightly ok. However the blind reporting with relevant information redacted is a completely viable action in this case and should be the standard as opposed to breaking the wishes of the survivor because you are dealing with more than a survivor's wishes you are in fact dealing with a survivor's very welfare.

Question 18 – As above

Question 19 – Agree on both points however the option should be to do survivor's personal information redacted blind reporting so this should not be a problem.

Question 20 – Agree only with the full co-operation of the survivor who is deemed able to handle the pursuit of justice, can the survivor be interviewed and in the case of FACA it is our policy that the survivor only goes forward with a FACA advocate present.

21 Agree on all points excluding E

21 E – FACA would like to see the sentencing always done to the maximum sentence available without the consideration for precedent. Simply because the current precedent is shockingly low and is constantly allowing child abusers to get off with horribly low sentences for horrific crimes. A new precedent of maximum sentences must be established because to do so is to send a clear message that the states take the crime of child abuse seriously and as such those sentenced for it will receive a long custodial sentence. Hopefully this will make criminals think twice before abusing a child and keep offenders behind bars for longer which keeps them off the streets and away from children and therefore unable to offend.

Question 22 – No comment due to lack of provision H

Question 23 Yes very much yes all states and territories need this charge

Question 24 Agree entirely, this is the way this new charge should be decided upon, 2 or more unlawful sexual acts should equal an unlawful sexual relationship which should replace the current terminology of "Maintained a sexual relationship with" when referring to children it is clearly not a sexual relationship but instead a pattern of rape or an unlawful sexual relationship.

Question 25 Yes, yes, absolutely yes, this should include any use of sexual material or language with a child and should expand to include any and all carriage devices such as in games or on social media, text messages, conversations, skype anywhere adults can talk to children.

Questions 26 Yes, absolutely yes, this should include those who are not intellectually or emotionally available to give moral or intellectual consent including those with disabilities or mental health issues.

Question 27 Yes, yes, massively yes ! If the abuser is in a position of power or authority over the teenager in question then yes there should be an extra charge added to their charge sheet because the original child sexual offences will be considered on the lesser side due to the child's extended age. Adding this charge will allow the perpetrator to face actual justice that they should face due to their position of authority and trust both of which they have seriously abused.

Question 28 As above yes we agree completely

Question 29 As with FACAA's advice on the public child abuse register a very simple way to fix this problem is to have a minimum age for the perpetrator of 21. This is a 4-year gap between the victim and the abuser which ensures there was an inappropriate relationship and a breaking of the trust of their position and the carnal knowledge law can also apply in this case.

Question 30 – All statute of limitations on any form of child abuse need to be removed, be that for civil or criminal convictions.

Question 31 When looked up the law it was renumbered as section 54 of schedule 11 which could not be found.

Question 32 Copied from Question 17 - FACAA believe that should a survivor not want to pursue charges or take their complaint to the police then that client should have their information redacted from the report and the report should be made blind. Just to get the police the relevant information on the perpetrator themselves as opposed to the survivor. To report a survivor who is not ready to face the justice system is to place that survivor's welfare at risk and is not even slightly ok. However the blind reporting with relevant information redacted is a completely viable action in this case and should be the standard as opposed to breaking the wishes of the survivor because you are dealing with more than a survivor's wishes you are in fact dealing with a survivor's very welfare

Question 33 A I and II Agree completely and really like the fact that the persons of religious ministries are mentioned and that it is not limited to a specific religion as all religions need to be bound by this law.

Question 33 B - Agree completely and FACAA would like it to be expanded to include the confessional booth used by priests of various religions. If they learn of child abuse during the act of confession and do not report it they must be charged.

Question 33 C – Agree on all points except for the fact that individual foster carers are exempt because we all remember the case of Tialeigh Palmer where the entire family hid her murder. These laws could have been used to further prosecute the members of the family who did not actually participate in her murder but instead helped to cover it up, as they all were also aware of Trent Thorburn her older foster brother and his incestuous rape of Tialeigh. If they had reported that, rather than murdered her to try and hide it she most certainly would have been alive today.

Question 33 D – I II and III agree completely and FACAA was pleased because this II clause will help stop the whole “Well they no longer deal with children what more do you want us to do” rubbish that we at FACAA come up against when dealing with large organizations such as PCYC's

Question 34 – A agree completely

Question 34 B – FACAA disagree with this point, because we believe it is better to have repeat reports as opposed to not reporting for fear of doubling up the reports. To us that is not even slightly a defense for not reporting.

Question 35

FACAA could not agree more with these points especially point B considering the Archbishop of Melbourne once said that he would rather go to prison than to break the “sanctity” of the confessional chamber. We simply MUST stop letting religious organizations hide behind their religion to justify not reporting child rapists. It is the equivalent of letting Biker clubs say that part of their religious code is the Omerta code that says no snitching no matter what, so therefore they don't have to report crimes. If we don't accept it from bikers why do we accept the same excuses from religious organizations?

One suggestion the FACAA came up with was a very simple one that should any religious organization refuse to report child abuse for fear of breaking a religious rule, then that religious organization MUST lose their tax-exempt status in a not negotiable manner. If that organization passes mandates to deny reporting child abuse then that organization should instantly lose their tax-exempt status. This status should also be taken away retro-actively should an organization be found to be putting out mandates privately that contravene their public mandates.

Question 36

A – agree completely

B – Disagree entirely, why should foster or kinship carers get away with this new crime. It is an incredible legislation but to simply give those foster carers a get out of gaol free card doesn't make sense to FACAA. We would like to once again point out the Tialeigh Palmer case. Under this new law the mother and younger brother could be charged with this crime because they knew that the older brother Trent was raping her. This is proven by the fact that the father killed her to cover up the son's crimes and the entire family lied to the police to cover it all up. If foster carers are exempt cases like this will go uncharged. We do not see what advantage it presents to give them exemption.

However we do agree that individual foster carers can not be held responsible for the actions of the organizations that they foster for. For example an individual carer can not be held responsible if Bernardos knowingly employ a child rapist.

We were referring to when the family unit that adopts the child or fosters them, becomes an institution unto themselves and act in collusion with one another to commit crimes as the Thorburns did in this case.

C – See above

D – Agreed entirely

Question 37

A – very important to get anyone involved with seeking justice for survivors of child abuse appropriately trained in how to sensitively deal with child abuse survivors with emphasis on historical cases as they have different PTSD symptoms which is self-evident by the length of time taken to actually get the courage up to report the crimes.

B – Absolutely vital that the survivor only has to deal with a single representative from each

organization and if the need arises for a switch in workers handling the case an appropriate hand over and get to know you meeting must be done featuring the old worker and the new worker meeting the client together in a non-formal setting to facilitate a smoother transition for the survivor.

C – Absolutely vital for the continuity of the case and the mental health of the survivor.

D – Absolutely agree on all points but it needs to go further than this, the witness assistance services and victims services need to team up to ensure the survivor is safe and secure and un-intimidated during the court process. When FACA do court escort programs we train our volunteers to spot the perpetrator and keep them away from the survivor at all costs. This includes setting up a room for the victim to go with a shut door that the perpetrator is not allowed to loiter near. This is because our first court escort featured an incredible sensitive case where the perpetrator and his supporters came in behind the victim and tried to stand over them, then in the court itself tried to sit directly behind the survivor in the public gallery and did whatever they could to try and intimidate them including putting their feet up on the survivor's seat, literally standing over the victim and trying to shove the victim at every chance. Of course the FACA volunteer (me) did not allow this to happen which brought it to the attention of the judge who then made the appropriate separation between victim and perpetrator. However why was this not done as a standard practice? why was the perpetrator and their supporters allowed to walk in behind the survivor in the first place ? These simple steps must be taken to ensure the child abusers do not get to intimidate and trigger the survivors.

E - I Could not agree more mental health issues are part in parcel with survival of child abuse and survivors simply cannot be judged for this by anyone especially prosecution staff.

II Yes absolutely this must be included in an overall attitude shift that we have discussed in several points above. This attitude shift is incredibly important and vital to reforming our legal system into a justice system.

F – could not agree more especially in relation to the attitude shift that is needed for our justice system to be brought back. Those with disabilities who survive child abuse find it particularly difficult to not only report but to go through the justice system and face cross examination. It is our suggestion that the children's champion program is extended to include those with disabilities so as to minimize the impact of seeking justice on those with disabilities.

38 - Absolutely agree however there is a much simpler way to facilitate this and that is to make the child abuser's register public and pass legislation to ensure that all organizations who deal with children search the register before hiring and also make it an offence to not report to a new organization that you are seeking employment with your status as someone on the child abuser's register.

With the register publicly accessible any organization dealing with children could simply check the register when hiring new staff. Also if a potential new staff member is facing a case where as the penalty includes being put on the register it should be an offence against the legislation to not mention the charges.

The whole vigilantism argument against the register being made public is absolutely defeated by the

fact that the people most likely to commit violence against the child abusers already know all the details of the abusers and still they don't commit violence against them, ever. These people are the families of the victim, the fathers, the mothers the brothers and sisters. If anyone was likely to commit a violent crime against a child abuser it would be the victim's families who already know all the details of the abusers.

39 A - Could not agree more, last minute plea deals make survivors of child abuse feel like they have been abused all over again. The charge should be locked in at the earliest possible time and not changed in exchange for a guilty plea. The sentence handed down should change (although not significantly unless the guilty plea is very early, if it was late in proceedings the sentence should barely change) but not the charge itself. We at FACAA have seen several last minute plea deals done to change child rape charges to common assault charges thus escaping the child abuse register. This is simply not even slightly justice.

39 B – See above charges should be locked in as early as possible and deals for guilty pleas should not change the charge itself only the sentence in varying degrees dependent upon how close to the initial charges being laid the defendant takes the plea deal.

39 C - Absolutely very important point that victim impact statements are collect before the court case and read to the prosecution before they lock in the charge. It is appropriate for the survivor to know the prosecution fully understand the impact the crime had upon them.

39 – D Absolutely could not agree more, however needs to be extended to include those who are using advocacy services given time to consult with their advocate (legal aid lawyers do not count as advocates we are referring to NGO assistance for example Disability assistance Australia advocating for a disabled person trying to get justice get adequate time to consult their advocate and the impact on the mental health of the survivor is discussed during the process with both the advocate and the survivor being present at the time)

Question 40

40 A – Absolutely these decision making protocols should also be given to new survivors seeking justice at the initial contact stage via email for them to fully understand the decision making process they are about to be a part of.

40 B – Agree

40 C – Absolutely any decisions must be explained in plain English to the clients and explanations must be made available in a timely manner in case the client wishes to appeal the decision made.

Question 41

Absolutely could not agree more, much more transparency is needed with prosecution decisions including appeals.

Question 42

Agree as above

Question 43

Agree and the ability and mechanism with which to do this should be provided to the survivor/client at the initial contact stage via email and also sent to the client's advocacy service should they be utilizing one.

Question 44

Absolutely agree especially the point about joint trials for multiple victims in order to establish a pattern of abuse.

Question 45

45 A I and II Could not agree more with this, to not mention a perpetrator's past crimes (Especially those that directly relate to the crime, for example a child rapist being charged with once again raping a child) that relate to the current crime is a shocking miss-carriage of justice. Why it is currently inadmissible due to "prejudice" shocks us at FACAA because you can use pattern of crime in other cases but not child abuse cases for some reason.

This must be fixed soon previous charges must be able to be mentioned especially if they are similar in nature to the case they are currently facing. Not only do previous crimes help establish a pattern of criminality but they also can help the jury get a better understanding of the perpetrator's mindset that is if someone is continuously breaking parole and stalking their child rape victim and they get charged with raping that victim then the just can better understand that the child abuser is clearly obsessed with the victim.

45 B I – At the end of the day we at FACAA do not really care about what is fair for those on trial for child abuse. If the thought of fairness came into play then perhaps the question should be what is fair for the child that has survived being abused. Is it fair to mention the defendant's past in order to help facilitate a conviction and therefore get a child abuser off the streets and unable to abuse more children ? To us this is the only point of fairness worth considering.

45 b II – The judge in each case can always give the jury appropriate directions to ensure they do not unfairly affect the defense of the defendant. It is a simple matter of the judge handing down the directions for the jury and then believing in the jury themselves. To say that anything they hear about the defendants past will be prejudicial is to say that the jury is simple and unable to make decisions on their own. If this is the case why then do we have a jury system at all, simply put because the jury members are not simple and cannot be easily swayed into unfair assumptions especially if they are given appropriate direction from the judge at the time of the defendants' past being brought up in the case.

Question 46

Could not agree more because a pattern of behavior as stated above is needed when seeking justice in child sex offence cases due to the problematic nature of the often only witnesses being children.

The children's champion program has gone a long way to fix these problems however being able to establish a pattern of criminality and criminal behavior would also help in this, which would lead to more convictions which means less child sex offenders on the streets and less children being sexually abused and assaulted.

Question 47

Agree completely as all too often we at FACAA see the defendants over stating the possibility and effects of so called coaching in child sexual offence cases. The fact is that in 98.5 % of all cases when a child is saying that they were sexually abused they are telling the truth. The word coaching is thrown around court rooms left and right now days and usually accompanies the words parental alienation syndrome and malicious false allegations.

The fact is if a child is saying they were sexually abused we simply must believe them and the power of so called coaching must be left up to a jury to decide with the facts that 98.5 % of sexual assault claims by children were proven to be accurate presented to them before the case for coaching is heard.

Question 48 – Yes yes absolutely yes ! With the establishment of pattern of criminal behavior the focus must not be on singular facts being proven correct but an overall sense of the criminality of the perpetrator instead should be the main focus. This will stop long and unnecessary cross examination of witnesses to try and poke a single hole in their evidence.

Question 49 – A and B could not agree more especially about the point of acts for which the defendant has been charged and not convicted. This is an incredibly important point which simply MUST be made into legislation because time and time again we at FACAA see perpetrators with multiple charges for child sex offences getting full custody of those very children that they victimized just because they did not get a conviction recorded even though they were found to be guilty on all counts.

Question 50 – We at FACAA strongly agree with this point

Question 51 – FACAA are assuming this means that the legislation will be accepted across all states and territories. If this is the case then yes strongly agree.

Question 52

52 A – Agree, sometimes to record and re-record the statement of traumatic facts can be detrimental to the survivor's health and as such only one recording should be done and all feasible steps should be taken to ensure this is the case including but not limited to proper maintenance of equipment and due diligence should be given to the survivor's not becoming re-traumatized by the whole process.

52 B – Very important point as stated above any and all measures to ensure the mental health and stability of the survivor and witnesses should be paramount to the concern of the court.

Question 53

Agree on all points, the use of pre-recorded evidence in these sensitive matters is vital to stopping the re-traumatization of survivors of child abuse at the hands of the legal system due to horrific cross examinations of witnesses by defense attorneys.

Question 54

Absolutely agree, the children's champion program which FACAA was involved in writing mentions a lot of these rules such as when the advocate for the witness or the witness themselves calls a time out they are to be granted a time out, if the witness is a child they should be provided with a safe place away from the court environment, the use of assistance animals should be considered as should the judges and barristers de-robing and wearing street clothes more comfortable for the child.

Question 55

Absolutely agree and adequate resources and funding needs to be made available for the use of pre recording of evidence including as previously stated but not limited to the correct maintenance of the devices by a sworn in officer of the court so as to eliminate the claims of tampering.

Question 56

Yes agree 100% on all points, this legislation needs to be a part of all state and territory laws

Question 57

Absolutely agree and as previously stated the use of sworn in officers trained in this field will be needed to ensure no suggestion of tampering or any other impropriety with the storage of the evidence files and maintenance of the equipment. Full lock and key with log books security will be needed for the storage of the files.

Question 58

The mental health of the witnesses should be paramount and discussion with witnesses as to potentially re-recording of evidence should include not only the witnesses but their advocates or family members concerned with their welfare.

Question 59

Yes yes so much do FACAA agree with this, so much so that we wrote exactly these words when we formulated the original plan for the Children's champion program, a program which has just undergone a 3 year trial in NSW and is receiving rave reviews.

This simply must be rolled out nation wide and expanded to include any and all witnesses that have trouble communicating with the court be it due to cultural background, disability or mental health issue. We at FACAA do have one suggestion, in order to keep cost down instead of using trained qualified child psychiatrists make a special category of intermediary training at TAFE like an early childhood educator. Once they have this certificate they can then be a courtroom intermediary and

this will cut the cost from around \$280 per hour down to around \$60 per hour making it much more attractive to governments to roll out nationwide.

Question 60

Absolutely agree with this, although we still think all evidence given during child sexual assault prosecutions should be done so through the use of pre-recorded videos with the presence of an intermediary but this does make a fine plan B should that not be available for whatever reason.

Question 61

Copied from 59

Yes yes so much do FAAAA agree with this, so much so that we wrote exactly these words when we formulated the original plan for the Children's champion program, a program which has just undergone a 3 year trial in NSW and is receiving rave reviews.

This simply must be rolled out nation wide and expanded to include any and all witnesses that have trouble communicating with the court be it due to cultural background, disability or mental health issue. We at FAAAA do have one suggestion, in order to keep cost down instead of using trained qualified child psychiatrists make a special category of intermediary training at TAFE like an early childhood educator. Once they have this certificate they can then be a courtroom intermediary and this will cut the cost from around \$280 per hour down to around \$60 per hour making it much more attractive to governments to roll out nationwide.

In our initial program suggestion for the Children's champion we discussed disrobing of judges and barristers, the use of a safe place for children away from the court environment, the use of court support animals and intermediaries and even came up with a way to make this all much cheaper than it is currently running at.

All of these suggestions were obtained through direct consultation with our members and we simply asked "what would you want to make your court experience easier"

It is so incredible to see these changes being utilized in actual court rooms and knowing that children are benefiting from our program that our members helped write. Our members even named the program with the winning name being given a free t-shirt (there were 4 members all with the same name suggestion)

This MUST be rolled out nationwide and not for our ego but because simply put it works and will make seeking justice easier for survivors which will lead to higher convictions which will mean less abusers on the streets.

Question 62 – Agree entirely because if a child doesn't start giving evidence properly does not mean they won't finish that way. By that we mean that a child may warm up or get comfortable after the first couple of questions especially if the Children's Champions program is in place and they are being made to feel comfortable. With that in mind it should be up to a jury to decide if the child was giving good evidence or not and if they were fit to proceed UNLESS to proceed will adversely affect a child's welfare in which case a break should be called in the filming of the evidence and the court support animal brought in until the child is calm and able to continue without risking their mental health or stability.

Question 63 – Agree completely

Question 64 – Agree not only should they consider it, they should adopt a similar scheme.

Question 65

65 A I - Absolutely no complainant should be judged or penalized because they took their time with bringing forth the charges. It is not widely accepted as fact that this is simply what happens in child sexual assault cases. Sometimes they take longer than other cases, this does not mean they are making it up or it is less severe.

65 A II – NO there should never be a reason where the complainants delay in reporting should be used to prejudice the complainant. It is well known that the complainants take as long as they need. Hence why statute of limitations have been removed in cases of child sexual assault.

65 A III – Very much agree with this, judges use of such language should be brought into question with all cases.

65 B I – Absolutely as stated these cases take as long as they take to come to justice.

65 B II – NO the judge should never warn or suggest that the delay has caused forensic disadvantage to the accused. To do so will be to prejudice the jury FOR the accused.

65 B III – NO the judge should not mention any disadvantage suffered by the accused caused by a delay. The accused should have thought about the disadvantages suffered by their victims when they allegedly abused them instead of worrying about how long it took them to report the crime and how this would affect their forensic advantages.

65 B IV – Yes once again anytime a judge uses such language in any case it needs to be stringently looked at as to why the judge is trying to say that evidence is not good.

65 C – Yes as above

65 D I – Absolutely the days of children being described as unreliable must come to an end. This is all part of the attitude shift that we have previously mentioned being needed for our legal system to move towards a justice system.

65 D II – As above this language is dangerous and must be scrutinized if used in any case.

65 D III - Absolutely the days of children being described as unreliable must come to an end. This is all part of the attitude shift that we have previously mentioned being needed for our legal system to move towards a justice system.

Question 66

Completely agree these directions must go in order for our legal system to move back towards a justice system. Why they were there in the first place is beyond us at FACA.

Question 67

Absolutely agree and this should include regular update training or top up training to ensure they stay on top of the latest ways to deal with child sexual abuse survivors and never fall behind or forget their training.

Question 68

Absolutely agree and this should include regular update training or top up training to ensure they stay on top of the latest ways to deal with child sexual abuse survivors and never fall behind or forget their training. Furthermore this training should be delivered by someone with actual field time and face to face time with survivors of child sexual assault not just a fresh out of university trainer with a bunch of thesis written and no actual field time.

Question 69

Absolutely agree and once again these experts should be counsellors or psychiatrists who are dealing with survivors of child abuse on a day to day basis not just a thesis trained university graduate.

Question 70

FACA agree judgements made in child sexual offence cases are grossly inadequate and education of judges and judicial officials may assist in fixing this horrific issue. Considering the fact that the legislative changes have already been made and very harsh recommended minimum sentences already exist to see the judges simply not hand down one tenth of the recommended minimum is a slap in the face to survivors of child abuse everywhere. If educating these officials helps fix this then we are all for it.

Question 71

Absolutely agree the earlier juries know problems that may arise during trial the earlier they can be on guard against it and if this is blocked by legislation this needs to be changed immediately.

Question 72

Absolutely agree this will help with ensuring continuity throughout the case as well as putting a stop to last minute guilty pleas allowing child sex offenders to plead down to a significantly lesser charge in exchange for a guilty plea.

Question 73

Absolutely agree if you delay a trial the defense can claim they are being denied their right to a speedy trial so any barriers to ensuring the delivery of a speedy trial is a good thing in our eyes.

Question 74

YES absolutely yes ! so called good character reference MUST NOT APPLY in child sexual abuse cases because no matter what or who the person was before they sexually abused a child the moment they committed that abuse they lost any and all claim to being a person of good character as their character is then seen and proven to be one of a coward with zero integrity and credibility. There is absolutely no reason to not make this standard legislation across all states and territories.

Question 75

Absolutely agree with this, we MUST drop the concurrent sentencing for multiple child sex offence charges and we MUST move to a consecutive sentencing similar to the one used in some states of the USA which sees some child sex offenders put away for 120 plus years. We feel this is fair for multiple time child rapists as once they are convicted more than once they simply can never again be trusted around children as they have proven they WILL re-offend.

Question 76

DO not agree with this historical cases MUST be judged based on today's standards unless in the unlikely case that the historical maximum was MORE than today's maximum standard. We feel the more time that a child abuser can be given behind bars the better.

Question 77

77 A – Absolutely agree

77 B – why should there be objections to victim impact statements, it's not the defendants impact statement it is the victims impact statement and whatever is true for them in relation to how the crime has impacted them should be included in the VIS.

Question 78

Agree and in the case of children who are still under 18 at the time of sentencing, the non-offending parent or caregiver as well as non-offending immediate family members, should also be able to enter a Victims Impact Statement rather than being overlooked and disregarded as they are now.

The level of suffering for these people as well as the victim is huge, particularly if the offender has been their partner. They should never be told as I was "You are just the mother it has nothing to do with you" These VIS should be read in the court during sentencing alongside the victims.

Question 79

Agree on all points is FACCIA's response to this once we googled certain words.

Question 80

Absolutely agree and this makes us question as to why they were not already adequately resourced to do so.

Question 81

Currently only 5 % of all appeals launched are by the DPP to overturn decisions. This shocks us at FACCIA and simply must be changed. Judges get it wrong all the time especially court of appeal judges. Their decisions are all too often a slap in the face to victims of child sexual assault everywhere.

With that in mind the DPP must outline their guidelines for an appeal for a retrial should their initial decision be reversed and they should also consult the survivors involved in the case. Should a re-trial adversely affect their welfare then it should not continue however this should not be the case with the use of pre-recorded video evidence the utilization of intermediaries.

We at FACCIA know that survivors will mostly say let's go again in the case of a re-trial and will feel vindicated in doing so however it is needed that their mental health be placed a paramount concern before making this decision based on the likelihood of a similar outcome and how this might affect them.

Question 82

82 A – agree

82 B – Agree

One more category needs to be added to this, the DPP's office needs to be monitoring judges to see if they are putting in a pattern of behavior that is pro child abuser. It sounds insane however think about Judge Neilson who said "incest will one day become the norm just like homosexuality" a look at his judgements revealed a pattern of declaring miss-trials and dismissing cases involving child sexual assault. It has been proven again and again that child abusers can infiltrate the ranks of any profession and organization so judges too must be monitored to see if they are making a pattern of behavior that can be seen as pro child abusers. If so that judge's appointment needs to come under scrutiny.

Question 83

Why should the Northern Territory government get different directives to the rest of Australia?

Absolutely this attitude must be dropped and once again this is a part of the attitude shift that is needed for our justice system to come back however once again why should NT be different to the rest of Australia?

Question 84

FACAA question this question and wonder if this isn't what the juvenile justice system isn't for.

Question 85

Absolutely agree like any legislation it should be monitored for effectiveness and to see if the judges are actually implementing it or if they are just rolling out some tired old precedent as is so often the case. In the case of institutional child sexual assault, we have no doubt that the institutions will find new and inventive loopholes with which to dive through so therefore constant monitoring of cases involving the legislation is required to ensure that the legislation can stay one step ahead of those seeking to break it and get away with it such as the institutions like the Catholic and Anglican churches.

Fighters Against Child Abuse Australia put together this submission with the help of our members who like us would like to thank the Royal Commission for their hard work in examining our current institutional response to handling child abuse allegations. All of us here at FACAA would also like to thank the NSW Department of Justice for their continued efforts to strengthening the laws as they relate to child abuse and their constant search for improvement both from a legislative approach and a departmental one.

FACAA looks forward to working with both organizations on future endeavors designed to protect our children and help us achieve our goal of ending child abuse once and for all.

This paper was authored by FACAA President Adam Washbourne and co-authored by the head of FACAA's legal reform Genevieve Elliot and edited by FACAA Senior Vice President T. Robinson.