

**Submission to the**  
**NSW Department of Justice Sentencing Review of**  
**sentencing for murder and manslaughter**  
**Submitted by**  
**Fighters against child abuse Australia [FACAA]**



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**16<sup>th</sup> of February 2020**



## **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 July 2010 to fill a big gap that he saw within the community and to bring about an end to an issue that has plagued our nation for far too long now.

Adam has a Diploma of Community services (Welfare) specializing in child trauma counselling and has worked in the field for the past 13 years since completing his degree. Adam is also a martial arts instructor and has been teaching children how to defend themselves for the past 18 years.

Adam has worked for various community centres, mental health facilities and martial arts schools but currently counsels for FACAA and teaches for KMA martial arts in Liverpool Sydney, one of Australia's premier martial arts schools.

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## **About Fighters against child abuse Australia**

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Our mission is to end child abuse once and for all within Australia.

Our vision is to make Australia the only nation on the planet that does not suffer from the scourge of child abuse.

Our guiding principals are to remain completely non-denominational and non-political to achieve our mission of ending child abuse once and for all by whatever means are required (within the laws of the land). If a program does not exist to meet the needs of our clients, then we will make one to meet their needs.

FACAA has been working actively for the past 8 years to end child abuse within Australia. We are currently running a survivor's healing programs, educational and legal reform programs, domestic violence programs, anti bullying programs and a social media awareness campaign which regularly receives over 1.5 million unique views making it the single most successful social media campaign of its kind in Australia.

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



## **Introduction**

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In a 2015 report by the NSW State ombudsman it was found that 84 children from 75 different families died in abuse related circumstances. That is 84 too many !

Our focus at FACAA is on ending all forms of child abuse, we are also one of the few charities to consider domestic violence to be child abuse, and filicide to us is the worst form of child abuse possible.

During our research we found that the state of NSW has some of the best sentencing recommendations for murder, domestic homicide and manslaughter. Our findings indicate that the recommended sentences are in fact adequate however there is an enduring legacy in sentencing of treating family violence and even domestic homicides as less serious than other forms of violence which can be summed up by one decision in November 2018 when Supreme Court Justice David Davies sentenced a man who was found guilty of murdering his wife by setting her on fire in front of their two children to a minimum sentence of 27 years because “ the victim was not unknown to her perpetrator”

Perhaps it is because the courts do not know the reality of domestic violence, you see I myself survived growing up in a home with extreme domestic violence issues, and it was my experiences that led to the formation of FACAA. FACAA was one of the first charities in Australia to recognize domestic violence as a form of child abuse, even when the children were not the ones being physically abused, we recognised that the psychological and emotional abuse is still extremely damaging. As such survivors of domestic violence and their non-offending immediate family members get full access to the FACAA Phoenix survivor’s healing programs.

Growing up with a domestic abuser was like growing up with a ticking time bomb in your lounge room, except the time bomb had dozens of triggers and it was your parent. Coming home from school you never knew what sort of a day the bomb was having, so you never quite knew what to expect. The weekends were always a difficult time because the addition of large amounts of alcohol would mean you were in for a more explosive time than usual. At a very early age you learned that drinking alcohol yourself would make the inevitable explosions easier to survive. This led down the path of substance abuse and associated petty crimes,

Living with a domestic abuser was horrible, but living with two younger brothers made that horror even worse, seeing literally anything they did used as an excuse to start the abuse was like watching your siblings playing catch with a hand grenade. You knew full well that eventually you would need to jump on the hand grenade and absorb the force of the explosion. They were simply too young and too innocent to have to deal with the ensuing violence, even though doing so always made the fall out much worse.

You would watch and pray they would stop doing whatever it was that was setting the bomb off, usually playing with their toys too loudly, when the bomb was hung over. Of course children being children they wouldn't pick up on the subtle, (sometimes not so subtle), cues that preceded explosions so it was up to you to pre-empt the violence by blurting out a forbidden word, or in emergencies, by running right at the explosion, taking the full force head on.

When you woke up eventually, sometimes hours later, you would be told things like, "look what you made me do," or "you better hide that cut or you'll cop much worse if anyone comes asking questions." Sometimes the damage was so severe the only way to hide it was to avoid school all together, which of

course led to other problems associated with missing large portions of the school term. Every time you came to, you would frantically look for your siblings, only to find them cowering in their room, or crying surrounded by toys that had been stomped into a thousand pieces. It's then you realize it was all for nothing and the explosion reached them anyway.

This is the reality for a family experiencing domestic violence, this is what they face daily. The constant treading lightly, almost like walking through a land mine field trying desperately not to set it off, the anxiety and fear that the bomb might well explode anyway. Looking for food for you and your siblings because your parent was too drunk to be bothered cooking for you that night, or they were angry with you for some perceived sin. The daily constant horrors never end until you can finally leave the house, once and for all.

Sadly, for some it doesn't end there, it ends with the news that what you feared most has happened. The worst possible fear, that you knew would one day happen, has come to life. One of your parents has slayed the other. You begged them to leave, you pleaded with them to get out, but they wouldn't because they couldn't take you with them, and they paid for that loyalty and protection of their children with their very lives.

That's the reality for an ever-increasing group of children who have lost one of their parents to domestic or family violence homicides. No matter how much they begged, no matter how much they pleaded their parent simply wouldn't leave because either they lacked the finances needed to leave, they had no where to go, or they knew that their abuser would simply follow and hunt them down.

Now the children are left with no parents, one is behind bars where they belong, and the other is dead, murdered by the person who was supposed to love and protect the family. Who provides for them now? Who protects them now? Who nurtures

them, loves them, shows them the way now?

These are the questions too many children are left asking after burying one parent and testifying in the murder trial of the other. Many more are left fearing this outcome, far too many Australian children have had to grow up with this level of trauma and we at FACAA hope we can help put a stop to it once and for all with this submission and our other programs.

So with that insight into domestic violence and homicide and our research suggesting that sentencing is not horrendous but implementation is the problem, we have written our key recommendations.





## **Recommendations**

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1. Officers who get reports of ADVO or AVO breaches **MUST** fully enforce them and the penalties for breaching those orders must be increased.
2. Too many domestic homicides are being classed as manslaughter rather than murder to avoid the longer prison sentence due to the difficulty in proving intent. There must be a “fair assumption” law, that states that by committing multiple assaults or certain attacks the perpetrator was fully aware the crime would lead to the taking of the victim’s life and therefore is eligible for a murder conviction by action alone.
3. Anyone who is found guilty of the murder of a child under the age of 10 years old, or a disabled child under the age of 16 years old or an autistic child under the age of 14 years old, should be automatically sentenced to 25 years behind bars. Anyone found guilty of more than one murder of a child under the age of 16 years old will also be automatically sentenced to at least 25 years behind bars.
4. Child murder charges and domestic homicide charges should be served consecutively not concurrently. Killing 7 children under the age of 16 years old should not get you the same sentence as the killing of 1 child under the age of 16 years old. Each and every child is a valued member of society and every

victim of murder deserves justice, their own justice and therefore their own sentence imposed for the loss of their life.

5. Being impaired by drugs or alcohol should not be a defence for murdering a child or a domestic homicide. Those defending child murder or domestic homicide charges should also not be able to claim “good character” as grounds to get a reduction in sentencing. People who kill children or their partners are not people of good character.



## **Explanation of each recommendations**

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- 1. Officers who get reports of ADVO or AVO breaches MUST fully enforce them and the penalties for breaching those orders must be increased.*

Over and over again FACAA get reports from our members of their ex partners repeatedly breaching ADVO and AVOs, no fewer than 4 times this has led to the murder of those victims of domestic violence. When we or their families, asked why the ADVO or AVO breaches were ignored we were simply told “operational reasons”.

This is not even slightly good enough, the AVO and ADVO system is in place to ensure that dangerous people stay away from those they are putting into direct danger. To ignore a breach in these orders is to put a life directly into harm’s way. Some of the excuses we have heard from sworn officers as to why they chose to ignore ADVO or AVO breaches include: (the excuses have been deliberately made genderless and without age or location to ensure privacy of our clients)

“Come on they got drunk and wanted to see his ex”

“They wanted to see their kids, you can understand right ?”

“How were they to know they’d driven into the exclusion area ? They don’t have their ex lowjacked”

“So what they went shopping get over it”

“So what no one got hurt did they ?”

“Look they’re not dealing with the break up very well, cut them some slack hey”

“I know this person and they are not violent, I know the allegations are entirely made up so back off with your little charity and stop running the name of a good person into the ground !” (this last one was said to me personally by the head of the station in a rural area. The person in question went on to murder their ex-partner in front of their children. No action was taken by anyone for the officer’s clear bias and horrendous decision making.

These are just a standard sample of the excuse’s officers are using to justify allowing breaches of DVO or AVOs to go unpunished and unreported. We need to fix this immediately and start reporting all breaches no matter how small or insignificant they may seem, reporting of all breaches must be made mandatory and punishment for repeatedly breaching must be made severe. The current maximum NSW penalty for the non-violent breach of an AVO is \$5,500 fine and or 2 years in prison. We at FACAA would like to see it to be doubled and the prison sentence to be handed down much more often. Judges should be instructed that breaching an AVO is a serious offence and 3 breaches of the AVO should result in an immediate custodial sentence.

The issuing of custodial sentences for breaching AVO or DVOs will result in fewer breaches and less victims being re-victimized by their abusers. Custodial sentences will not only act as a deterrent to those considering committing the crimes but also give those with the AVO or ADVVO to get away while the offender is serving their sentence.

AVO and ADVVOs are vital methods to keep people safe, to ignore them is to not only ignore a judge’s orders, but to put the people they were meant to be protecting directly in harms way. A penalty for choosing to ignore breaches of AVOs and ADVVOs should also be considered to deter others from choosing to ignore them.

2. *Too many domestic homicides are being classed as manslaughter rather than murder to avoid the longer prison sentence due to the difficulty in proving intent. There must be a “fair assumption” law, that states that by committing multiple assaults or certain attacks the perpetrator was fully aware the crime would lead to the taking of the victim’s life and therefore is eligible for a murder conviction by action alone.*

At FACAA over our ten years we have seen this again and again, offenders being convicted of manslaughter after years of domestically abusing their partners rather than murder because the defence they used was “I didn’t intend to kill them at the time of the last attack” . Yet they had been abusing the person for years, so what did they expect would happen from repeated horrendous beatings? Surely a fair assumption law can be written to enable prosecutors to show that while the perpetrator may not have “intended” end the victim’s life, any reasonable person would have been well aware that by repeatedly beating their victim so severely or an adult assaulting a child would lead to that victim dying as a result of the perpetrator’s actions.

The case that is the perfect example of this is the case of Mathew Ireland murdering 18 month old Hemi Goodwin-Burke in QLD in March of 2015. Mathew murdered the 18 month old Hemi while he was baby sitting by brutally beating him over the course of a 3 hour period. Hemi's little skull was crushed like a coke can and sadly the injuries took his innocent little life. Ireland said in court that he had not intended to kill Hemi, merely hurt him to stop him crying. Ireland was sentenced to just 8 years behind bars for the manslaughter of little Hemi because the prosecutor thought it would be too difficult to prove the intent of Ireland was to kill Hemi. Shockingly Ireland was eligible for parole as early as March 2019 but thankfully has been denied parole so far.

Under the fair assumption law Ireland would have been tried for murder because he not only beat the 18 month old child for 3 hours (prolonged assault) but any reasonable person would have known that an adult male the size of Ireland, stomping on the skull of an 18 month old child would have caused them to die. Ireland and dozens of other murderers are sitting in prison on manslaughter charges and will be getting out in not even a quarter of the time they should be serving. Bringing in a fair assumption law would end this ridiculous defence that allows people who were fully aware their victim would die as a result of the prolonged assault or type of damage they were taking, to walk away without the correct charge of murder being applied to them and subsequently the correct custodial sentence being served.

There are certain websites out there who teach people how to circumvent the law. One of their more controversial teachings is how to avoid a murder charge of your spouse.

These sites literally say “claim you were drunk and had no intention of killing them” knowing full well it will have the charge downgraded to manslaughter rather than murder.

No one who has been murdered deserves such a lack of justice, no families of murder victims deserve such a slap in the face. A law should be created to say that even if you didn't “intend” to murder the victim if you committed life ending actions (such as an adult stomping on the head of a toddler) or assaulted the person over a prolonged period of time or have been assaulting that person many times before hand and a pattern of horrendous abuses can easily be established, then you should still be convicted of murder instead of manslaughter.

- 3. Anyone who is found guilty of the murder of a child under the age of 10 years old, or a disabled child under the age of 16 years old or an autistic child under the age of 14 years old, should be automatically sentenced to 25 years behind bars. Anyone found guilty of more than one murder of a child under the age of 16 years old will also be automatically sentenced to at least 25 years behind bars.*

The most vulnerable in our society are being murdered at alarming rates, all too often by those who are meant to protect and provide them with sanctuary.

This simply must not be allowed to continue. We must send a clear message to those considering taking the life of one of the

most vulnerable that their crimes will be punished no matter which judge they appear before and no matter how much they pay for their barrister.

We must also send a clear message to our nation that we as a society will not tolerate the killing of such vulnerable, such innocence. We must send a clear message that to take the life of a child under the age of 10 or a disabled child under the age of 16 or a child on the autistic spectrum under the age of 14 or to take the life of more than one child under the age of 16, will see you behind bars for a life sentence of at least 25 years.

The murder of our most vulnerable must be the most punished offence in our legal system. NSW already has one of the harshest penalties for the murder of its most vulnerable, but judges do not adhere to the ideals of the NSW law makers. Time after time we see child murders killing babies and getting 10 years or having their murder charge pleaded down to manslaughter (see recommendation number 2). We simply can not allow this to continue, a sentence of 10 years means the perpetrator is eligible for parole in just 5 years (without aggravating circumstances) and all too often we see them getting out of prison not long after they were sentenced due to time served while awaiting trial (as was the case in Matthew Ireland) .

The families of children who have been murdered deserve true justice for the ordeals they have been forced to endure. They deserve to know the killer of their vulnerable child will be serving life (under NSW law 25 years) behind bars without any question. If they are convicted then they are serving life.

It is FACAA's belief and the belief of everyone of our members who helped us to write this submission that the courts need to not worry about issuing "crushing" sentences on child killers as the crimes they have been convicted of by their very nature are "crushing" to the families of their victims and also to everyone



around the child.

*4. Child murder charges and domestic homicide charges should be served consecutively not concurrently. Killing 7 children under the age of 16 years old should not get you the same sentence as the killing of 1 child under the age of 16 years old.*

Currently there is a shocking injustice that is written into our laws. This injustice is the fact our sentences are served concurrently. If a child killer kills 12 children, they will serve just 1 life sentence. This is serves absolutely no justice to the remaining 11 innocent homicide victims.

We at FACAA believe that there would be no greater deterrent than to know that should you be convicted of killing multiple children then you will be staring down the barrel of a 100 year plus sentence.

FACAA believe this will stop anyone considering killing or harming a child in a manner that may kill them (see recommendation 2 above) if they knew that they would be facing consecutive sentences not concurrent.

I mean think about it, what does it matter if they have already murdered one child, if they kill another (from a purely punishment point of view) under the current system they will serve their 2 life sentences concurrently and be out in roughly 15 years if they plead guilty and show good behaviour behind bars.

The members of FACAA would like to see a special law that states child homicide sentences will be served consecutively in order to really send a clear message that NSW will not tolerate child murderers and should anyone be considering it under no circumstances will they get away with it and serve hundreds of

years behind bars for doing so.

*5. Being impaired by drugs or alcohol should not be a defence for murdering a child. Those defending child murder or charges should also not be able to claim “good character” as grounds to get a reduction in sentencing. People who kill children are not people of good character.*

One of the main reasons we at FACAA see people walk away from domestic homicide convictions was due to “alcoholic blackout or “drug induced psychosis. Now while we are not debating the validity of these conditions or if they can or can not cause people to act differently, the fact is and remains no one forced the drugs and alcohol onto them. When a parent murders a child and claims “drug/alcohol induced psychosis” they are saying the drugs or alcohol that they were voluntarily consuming to a point where they have been caused to have a psychotic break while looking after their children. So they took drugs or alcohol repeatedly and in excessive doses while they were supposed to be caring for children which by definition demands a certain level of sobriety (at least enough sobriety to not be having psychotic breaks) in order to actually be responsible for those children’s welfare.

At the very least those who claim “drug/alcohol induced psychosis” if they are declared to not be responsible for the homicide of their children should be charged with negligence causing homicide because it is very negligent to get so very intoxicated and so many times (drug/alcohol induced psychosis only comes on after many repeated doses over many years) while you are supposed to be responsible for the welfare of children.

Further to this those charged with the murder of children should not be able to claim to be a “person of good character” in order to get a reduction in their sentence. NSW led the nation with it’s response to the Royal Commission into survivors of institutional abuse. FACAA were quite proud to have helped write that

response by being on round table discussions into which of the recommendations NSW would be adopting. One of our key points was to stop child rapists being able to claim to be a “person of good character” in order to get a reduction in their sentence. We say with great pride that this was adopted by the NSW response and was legislated not long thereafter. We would like this amendment to be extended to include child killers not being able to claim to be a “person of good character” as we believe the same logic applies. No person of good character is capable of raping a child and no person of good character is capable of murdering a child, so therefore those that do these horrendous acts should not be entitled to a reduction in their sentence on the grounds of being a “person of good character”.



## **Conclusion**

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The home should be a sanctuary, a place of rest and rejuvenation, an escape from the mundane of work and school and the cruel and dark that is all too often the outside world. So we as a society need to send a clear message that anyone committing a domestic homicide will face not only the fullest extent of the current laws, but also face new laws to ensure they can not get away with the crime like so many have before them. No child should ever be murdered, especially in their home by the people meant to love them and give them sanctuary unconditionally, their parents !

New South Wales leads the nation in it's recommended sentences for domestic homicide and the murder of children. However sadly the average sentences just do not reflect this quality legislation. We need to show the world that not only do we have the strongest recommended sentences but we as a state also have the toughest sentences handed down to domestic and child murderers anywhere. The 5 key recommendations made by FACAA would help ensure this and help lower the rates of child murder and domestic homicide as it will be well known that should you commit these crimes in NSW you will be going behind bars for a very long time.

The 5 key recommendations made by FACAA will also ensure that the families of those taken too soon at the hands of domestic homicide and child murder, feel a true sense of justice for their loss. No longer will these brave souls be forced to endure a farcical sentence being handed down to the person who stole their child or partner from them. NSW will be known as the justice state as well as the state with the lowest domestic homicide and child murder rates anywhere.



## **References**

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Direct interviews, emails and phone calls with FACAA members and clients who have endured domestic homicides and the loss of a child due to murder. We spoke to over 25 clients and heard about their experiences with the criminal justice system and how they found the sentence and how they were treated throughout the process.

Australian government Child Family Community Australia  
Child deaths from abuse and neglect  
<https://aifs.gov.au/cfca/publications/child-deaths-abuse-and-neglect>

University of NSW  
Newsroom  
<https://newsroom.unsw.edu.au/news/business-law/hierarchy-violence-still-evident-court-sentencing>

Sentencing bench book  
Concurrent and consecutive sentences  
[https://www.judcom.nsw.gov.au/publications/benchbks/sentencing/concurrent\\_and\\_consecutive\\_sentences.html](https://www.judcom.nsw.gov.au/publications/benchbks/sentencing/concurrent_and_consecutive_sentences.html)

CRIMES ACT 1900 - SECT 18  
[http://www5.austlii.edu.au/au/legis/nsw/consol\\_act/ca190082/s18.html](http://www5.austlii.edu.au/au/legis/nsw/consol_act/ca190082/s18.html)

Crimes Act 1900 No 40  
<https://www.legislation.nsw.gov.au/#/view/act/1900/40/part3/div1/sec22>

## The NSW Government response to the Royal Commission

<https://www.nsw.gov.au/improving-nsw/projects-and-initiatives/the-nsw-government-response-to-the-royal-commissions-final-report/>

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