

Submission to the
NSW Department of Justice Sentencing council on Review of
sentencing for murder and manslaughter in regard to
Domestic and Family homicide
Submitted by
Fighters against child abuse Australia [FACAA]



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About the author:

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

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

This submission was prepared by Fighters against child abuse
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Table of contents:

About Fighters against child abuse Australia4

Introduction5

Recommendations.....9

Explanation of each recommendation and reasoning.....10

Conclusion.....20

References.....22



About Fighters against child abuse Australia

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

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

Our guiding principals are to remain completely non-denominational and non-political to achieve our mission of ending child abuse once and for all by whatever means are required (within the laws of the land). 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

Domestic or family violence has been an absolute scourge on Australian society since before federation. To say that it is one of the worst problems facing Australia today is not an over statement.

If we go purely on cost, making the only unit of measurement a dollars and cents figure then domestic and family violence costs our country \$22 Billion per year and could be as high as \$26 Billion with all factors considered. (i)

However, we all know that is far from the most troubling part about domestic and family violence. The worst part is the permanently debilitating effects it has upon, not only it's direct victims, but also the entire family.

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 our recommendations in this submission.



Recommendations

1. Our first recommendation to help stop domestic homicides is to increase the punishment for domestic homicide from a non-parole period of 20 years to a non-parole period of 25 years behind bars, In line with the sentence for murdering a child or police officer.
2. If you are convicted of domestic homicide, then you should be permanently stripped of their parental rights.
3. Those who breach domestic violence protection orders need to be severely punished in order to ensure they obey the orders and stay away from the person that needs protecting.
4. A new intent law needs to be passed with regards to domestic homicide that uses a previously established pattern of domestic/family violence to prove that the person intended to murder their victim based on the fact that any reasonable person would believe that to repeatedly threaten the life of and severely beat a victim in an escalating pattern of violence, can only possibly lead to murder one day. This will stop people from pleading down to manslaughter on the basis of “I never intended to kill the victim only severely beat them yet again”.
5. NSW MUST open more domestic violence emergency shelters and remove restrictive rules that govern those that are open.



Explanation of each recommendations

1. Our first recommendation to help stop domestic homicides is to increase the punishment for domestic homicide from a non-parole period of 20 years to a non-parole period of 25 years behind bars, In line with the sentence for murdering a child or police officer.

Currently the NSW Punishment for murder is up to life behind bars (ii) with a standard non-parole period of 20 years behind bars. Our recommendation is to bring this sentence in line with the killing of a child or the killing of a police officer (iii). To do this we recommend a small amendment be made to the Crimes Act 1900 Section 19B. A Section 19C and it should be called Mandatory life sentences for murder of domestic partners
19C Mandatory life sentences for murder of domestic partners

(1) A court is to impose a sentence of imprisonment for life for the murder of a domestic partner if the murder was committed. By the domestic partner being defined as either being married to or defector of or in live in relationship.

(2) A person sentenced to imprisonment for life under this section is to serve the sentence for the term of the person's natural life. The mandatory non-parole period for this crime will be 25 years imprisonment.

(3) This section does not apply to a person convicted of murder:

(a) if the person was under the age of 18 years at the time the murder was committed, or

(b) if the person had a significant cognitive impairment at that time (not being a temporary self-induced impairment).

(4) If this section requires a person to be sentenced to imprisonment for life, nothing in section 21 (or any other provision) of the Crimes (Sentencing Procedure) Act 1999 or in any other Act or law authorises a court to impose a lesser or alternative sentence.

(5) Nothing in this section affects the obligation of a court to impose a sentence of imprisonment for life on a person convicted of murder in accordance with section 61 of the Crimes (Sentencing Procedure) Act 1999 .

(6) Nothing in this section affects the prerogative of mercy.

(7) This section applies to offences committed after the commencement of this section.

We believe this law should be written to not only further act as a deterrent to the commission of the crime of domestic homicide, but also to send a clear statement of the judgement and opinion of our NSW society that this crime will simply not be tolerated even slightly.

2. If you are convicted of domestic homicide, then you should be permanently stripped of their parental rights.

One of the worst horror stories we have ever heard here at FACAA is the story of one of our clients who lost his parents and grandfather to a domestic homicide. The child's father killed his mother and her father in a domestic double homicide.

He was eventually given a not guilty by reason of mental illness and became a forensic patient. Then to add major insult to injury, the young boy was forced to have fully supervised

visitation with his father in a visitation centre. It was part of the forensic patient's transferring back to society. Now admittedly it was six years after the murders, however the then teenage boy was still incredibly traumatised by being forced to sit with the man who murdered his mother and grandfather. He was made to feel guilty by the supervisors at the visitation centre who said things like "calm down he is still your father" . It was incredibly re-traumatising for the boy and completely unfair to him and his mental health needs.

We at FACAA would like a blanket ban on any parental rights for the children involved in the case. Currently the Family law Act 1975 states that "decisions regarding the child must be made in the best interest of the child" (iv) the act goes on to say that the best interest of the child being defined as

(2) The primary considerations are:

(a) the benefit to the child of having a meaningful relationship with both of the child's parents; and

(b) the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

Note: Making these considerations the primary ones is consistent with the objects of this Part set out in paragraphs 60B(1)(a) and (b).

(2A) In applying the considerations set out in subsection (2), the court is to give greater weight to the consideration set out in paragraph (2)(b).

As you can see from the above paragraph the greater weight of consideration is given to paragraph (2)(b) the need to protect the child from physical or psychological harm from being subjected to, or exposed to abuse, neglect or family violence.

We at FACAA believe that this is written in black and white and makes the decision to permanently revoke parental rights for those convicted of domestic homicide very easy. The family court Act says that the highest consideration needs to be given

to the need to protect the child from physical or psychological harm. Clearly children who have lost a parent to domestic homicide being forced to visit with that parent's murderer, will have a massively adverse effect on the child's psychological wellbeing.

The rights of a child to be safe from psychological harm must come before the right of a domestic murderer to have a connection with their children.

No child should ever be forced to endure compulsory visitation with the person who murdered their parent and yes we know this is a very harsh punishment however the crime itself and the punishment felt by the victims is much harsher. We can only hope the harshness of this extra punishment might deter others from committing the horrendous crime of domestic homicide.

3. Those who breach domestic violence protection orders need to be severely punished in order to ensure they obey the orders and stay away from the person that needs protecting.

If you knowingly breach an AVO (apprehended violence order) or DVO (Domestic violence protection order) in NSW the current penalty is maximum penalty of 2 years imprisonment and/or a fine of \$5000. (v)

Now if you understand why someone seeks a DVO you might find this current sentencing to be majorly inadequate.

Seeking a DVO isn't something a victim of domestic violence does on a whim, it's usually done after many assaults and with the help and support of loved ones. One of our clients who sought a DVO told us that it was up to the police officers who came to her bedside in hospital and not her, to seek a DVO. Victims are quite often very reluctant to take out a DVO

because of the fact that the abuser will often see the DVO as nothing but a piece of paper and a very insulting one at that. We have been told by dozens of clients that when they first sought the DVO it was broken the very night it was served just to prove that the abuser could break the DVO and nothing would happen to them, sadly the abusers were very much correct.

We at FACAA get countless emails from our clients saying that they took our advice, got a nationally recognized DVO and straight away their abuser broke it with absolutely no consequences. The abusers were filmed breaching the orders by being at the victim's house and yelling abuse at them and still nothing happened. The police were informed of multiple breaches of DVOs that were all backed up with video evidence and still they chose not to lay charges. In some cases our clients were even told to "stop being so female dog like" (not the words used by the police officers) Eventually FACAA learnt to not bother reporting breaches of DVOs to desk clerks at the local police stations but instead go to the domestic violence squad detectives only. However the fact is the victims of domestic violence should be able to go to any serving police officer and have their breaches of domestic violence orders taken seriously.

The reason FACAA know that the breaches of domestic violence orders must be punished much more harshly than they currently are being is because four of our members have been domestically murdered by their former partners who had all repeatedly breached domestic violence orders (or AVOs at the time). We are not just talking one or two breaches either, we are talking multiple breaches in one case twelve recorded breaches of the standing AVO by one abuser on one victim. After the twelfth breach that abuser took the life of the victim leaving three children to grow up without a mother.

We at FACAA would like to see a three strikes policy for the breaching of DVO orders.

The first strike is a written warning served on the abuser and is included on their permanent record. The second strike is an overnight stay in prison and a five thousand dollar fine. The third strike is an instant thirty days behind bars and a twenty five thousand dollar fine. Should the abuser break the DVO after serving thirty days behind bars then they will face sixty days behind bars and a fifty thousand dollar fine. The penalty shall continue to double thereafter.

We must send a clear signal that breaching a DVO is not even slightly accepted anymore. If the abuser can repeatedly breach a DVO without any penalties what so ever then they will also feel very confident in committing assault on their victim or perhaps worse.

If we can stop the repeated breaches of DVOS then we can keep abusers away from their victims and send a clear message that NSW does not accept domestic violence. If we can keep them away from their victims then hopefully we can keep the victims of domestic abuse from becoming victims of domestic homicide.

4. A new intent law needs to be passed with regards to domestic homicide that uses a previously established pattern of domestic/family violence to prove that the person intended to murder their victim based on the fact that any reasonable person would believe that to repeatedly threaten the life of and severely beat a victim in an escalating pattern of violence, can only possibly lead to murder one day. This will stop people from pleading down to manslaughter on the basis of “I never intended to kill the victim only severely beat them yet again”.

As I am sure you are well aware, the penalty for murder in NSW is life in prison with a minimum non-parole period of 20 years.

(ii)

However, to secure a murder conviction the prosecution must

prove that the accused had the intent to take the life of the victim at the time of the incident. (vi)

This can prove problematic when it comes to domestic homicides because all too often the abuser claims that even though the victim did die, they did not intend to kill them at the time of the incident. In several cases we have helped our clients with the accused would not admit that they intended to kill but instead said it was an argument that simply got out of control.

We at FACAA call outright lies on this as in all of the cases we helped with the victims had been repeatedly abused at the hands of the abuser. Despite the clear history of domestic abuse the prosecution could not prove that the intent of the abuser was to kill so they allowed them to plead down to lesser charges of manslaughter.

This left the surviving family members feeling very let down by our legal system. The families told us they were left with a feeling that their parent's murder meant nothing to our system.

We at FACAA would like to see a proven history of domestic abuse being able to be used as proof of intent to kill. The fact is domestic abusers use violence as a control method. All of our clients told us that the murderer of their parent would often threaten to kill over and over again, the police were informed but the family was told "we can't arrest them for making threats" (which incidentally isn't true but what they meant was making threats to kill are quite difficult to charge someone for as they are difficult to prove in court) (vii)

If we can establish a clear pattern of escalating domestic abuse we believe it can be used to prove intent to kill. The statement we would like to see added to law is "Any reasonable person would have had to be aware that continuing this path could only lead you to committing a homicide".

It would be very simple to do as well, in the Crimes Act 1900 Section 18 where the charge of murder is defined as 18 Murder and manslaughter defined as

“ (1)

(a)Murder shall be taken to have been committed where the act of the accused, or thing by him or her omitted to be done, causing the death charged, was done or omitted with reckless indifference to human life, or with intent to kill or inflict grievous bodily harm upon some person, or done in an attempt to commit, or during or immediately after the commission, by the accused, or some accomplice with him or her, of a crime punishable by imprisonment for life or for 25 years.”

Could simply be re-written as “Murder shall be taken to have been committed where the act of the accused, or thing by him or her omitted to be done, causing the death charged, was done or omitted with reckless indifference to human life, or with intent to kill or inflict grievous bodily harm upon some person, or done in an attempt to commit, or during or immediately after the commission, by the accused, or some accomplice with him or her, or has been done after a previously established history of escalating domestic abuse that any reasonable person would have had to have been aware that to continue this path could only lead to homicide, of a crime punishable by imprisonment for life or for 25 years.”

Obviously, our legal wording needs to be re-worked by a constitutional expert however our point is to establish a new law that says a proven history of escalating domestic violence can be used to prove intent to kill in domestic homicide cases.

We believe this will get many more domestic homicides convicted as they should be, as murder and send a very clear signal that NSW does not take domestic homicide lightly and victim’s families will get the justice they deserve.

5.NSW MUST open more domestic violence emergency shelters and remove restrictive rules that govern those that are open.

One of the most largest complaints our clients have about surviving domestic violence in NSW is the lack of beds in domestic violence shelters. It has been said that one in three women who are seeking a bed in a domestic violence shelter in NSW are turned away from the shelter. (viii)

Not being able to get access to somewhere to flee in the case of an emergency can leave a victim of domestic violence with a feeling of despair brought on by feeling helpless and trapped in their shocking situation. It makes them feel unable to leave and so they simply don't sadly. One of the major tactics used by domestic abusers is to isolate their victim. (ix) They will often cut their victim off from friends, families and support networks. This leaves the victims with no option except to flee to domestic violence shelters, so when there are no where near enough places available in these shelters the abusers can further isolate their victims by telling them things like "see even the government won't help you"

So, it is clear that opening up more places in domestic violence shelters will help victims of domestic violence to leave if they need to. Giving them somewhere to escape to we at FAAAA believe will significantly slow down incidents of domestic homicide as the victims will be able to get out before it escalates to the stage of homicide.

The other problem with domestic violence shelters is restrictive rules they have. For some reason male children over the age of 10 are not allowed in domestic violence shelters in NSW (x).

This rule puts huge pressures on women seeking to flee a domestic violence situation. Leaving their children at the home

with the domestic abuser is simply not an option for any protective parent so what do they do if they need to flee and they have an 11-year-old boy with them? This rule often makes victims of domestic violence who want to flee their situation, feel as though it is no longer an option which will sadly lead them to staying in a situation that they know is escalating and they know is harmful to them and their children.

Seemingly the solution is simple, open many more domestic violence shelters and remove the restrictive rules that stop many victims from seeking help at the shelters. However who will pay for this and where will the money come from ?

Sadly, we at FACAA can not answer that question, currently we don't even have funding to run our programs which means all our workers are entirely volunteer. However, we do know that this simply must be done because not giving those who need it a place to flee if they need to get out of their situation is not an option. Without that place to go victims will stay longer than they feel safe and this will lead to more domestic homicides that could have easily been prevented by simply opening more beds in domestic violence shelters and removing rules that would see victims turned away or not even be able to apply.



Conclusion

Domestic homicides and domestic violence in general have been a scourge on Australian society since our nation's federation.

The size of the problem can simply not be understated. 1 in 3 women and 1 in 5 men (viii) have experienced violence at the hands of a current or former partner. It is also said that one woman per week is murdered by her current or former partner which is exactly the type of murder this submission intends to stop, not reduce but stop !

Our hope for the recommendations put forward in this submission is that they will not only act to deter future crimes from occurring, but also to send a clear message that the state of NSW is not the place to be committing these offences. That the state of NSW clearly stands with victims of these shocking crimes and that NSW will not tolerate domestic abuse or domestic homicide in anyway shape or form.

We as a society, have tolerated domestic violence for far too long, FACAA would like to see the state of New South Wales be the first to make a definitive effort to end domestic violence

and domestic homicides once and for all. FACAA know that this is a huge task which will take a herculean effort that will take decades to see completion however, if we do not start this most worthy of tasks now than when? what better time than now?

Please note, this entire submission was kept entirely gender neutral as we at FACAA believe that all victims should be helped no matter what their gender.



References

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

(i) The cost of violence against women and their children in Australia Final Report by Liz Forsyth
Global Lead: Human and Social Services Deputy Chair, KPMG Australia

https://www.dss.gov.au/sites/default/files/documents/08_2016/the_cost_of_violence_against_women_and_their_children_in_australia_-_summary_report_may_2016.pdf

(ii) Crimes act 1900 section 19A

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

(iii) CRIMES ACT 1900 – section 19B

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

(iv) FAMILY LAW ACT 1975 – section 60CC

http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60cc.html

(v) CRIMES (DOMESTIC AND PERSONAL VIOLENCE) ACT 2007 - Section 3

http://www5.austlii.edu.au/au/legis/nsw/consol_act/capva2007347/s3.html#apprehended_violence_order

(vi) CRIMES ACT 1900 - Section 18

http://www5.austlii.edu.au/au/legis/nsw/consol_act/ca190082/s18.html

(vii) CRIMES ACT 1900 - Section 31

http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/ca190082/s31.html

(viii) NSW government in the dark on women's shelters by Rachel Browne for the Sydney Morning Herald

<https://www.smh.com.au/national/nsw/nsw-government-in-the-dark-on-womens-shelters-20160705-gpym51.html>

(ix) Speakloud domestic violence resources page tactic 4 isolation

<https://speakoutloud.net/intimate-partner-abuse/isolation-tactic-of-control>

(x) This rule was told to us by 12 clients who found it to be very restrictive for them getting access to shelters. This rule was not put on the shelter's websites.

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