

**NSW Law Reform Commission Open Justice Court and
tribunal access, disclosure and publication**
Submitted by
Fighters against child abuse Australia [FACAA] for the
Australian Productivity commission



1st of April 2021



About the author:

Adam Washbourne is the founder and President of the charity group Fighters against child abuse Australia. He founded the charity July 2010 to fill a big gap that he saw within the community and to bring about an end to an issue that has plagued our nation for far too long now.

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

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

This submission was prepared by Fighters against child abuse Australia FACAA.

PO BOX 404 Moorebank

NSW 1875

Email Adam@facaas.org

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



Table of contents:

About Fighters against child abuse Australia4

Introduction5

Responses to questions.....6

Conclusion.....38

References.....39



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

Sadly all too often the criminal justice system in Australia can seem like just that, a system to bring justice to the criminals only.

This is particularly true for survivors of child abuse who almost every single time feel re-victimised, re-traumatised and re-abused by the court system itself.

FACAA have been involved in several enquiries and commissions into changing this system and everytime changes are made but over and over again those changes seem to be nothing but lip service with the status quo re-emerging and survivors being re-victimised thanks to budget cuts or failings of staff or even by the judges themselves simply refusing to comply with new changes to the laws.

We are well aware this introduction sounds harsh, sounds jaded even cynical. However this is the experience of our members, this is what we are seeing first hand in the court rooms over and over again.

We would like to say a special thank you for hearing our submission even though the cut off date had expired. It is appreciated and we made our 130,000 plus social media followers aware of the legal reform commission's generosity in this matter.



Responses to questions

2.1

- 1) We at FACAA believe that all too often the closed court laws benefit child abusers and let down those who need them like victims of DV.
- 2) We would like a ban on child rapists being able to have their details suppressed unless revealing their name would name or put at risk a survivor.
- 3) No, there needs to be more choice for survivors to name themselves if they so desire unless of course doing so would name a survivor or put one at risk.
- 4) The standard exception to these rules should be for child abusers. They should not have the automatic right of anonymity.

2.2

- 1) We at FACAA would like to see exclusion orders given as a standard in all child abuse cases including DV.
- 2) Child abusers should be immediately removed from the home without questions until they are proven innocent. Children's lives are too precious to risk for the rights of abusers to be in the home and all too often we here abusers forcing their victims to leave their homes.
- 3) Standard grounds of child abuse should see abusers given exclusion orders immediately.
- 4) As above if there is suspected child abuse the suspected abuser should be immediately excluded from the home NOT the victim under any circumstances.
- 5) The first proven offence for breaking an exclusion order should be a fine. After that it should be an increasing custodial sentence until the 3rd offence in which case the breacher is incarcerated until after their trial.

3.1

Yes, when children's privacy is concerned no matter how close to being an adult they are if they were a child at the time of the offence or crime they should not have their details published. Unless they chose to waive that right and in doing so do not name or put any other survivors at risk.

3.2

Yes for the most part the current statutory prohibitions are appropriate except in the case of child abusers who are getting their details hidden automatically. Unless naming the abuser will name or put at risk their victims they should not have legal protections. The only other change FACAA feel needs to be made is that victims should be able to waive their right to anonymity unless doing so would reveal or put at risk another survivor.

3.3

A person's HIV status, a person's status as a sex worker, a person's disability or even their status as a client of the NDIS. If a victim was intoxicated at the time of the crime.

3.4

- 1) Questions asked that the court deems can not be answered should not be automatically banned from publication if those questions speak to previously established facts such as the criminal history of a defendant.
- 2) Criminal histories of defendants, especially when it pertains to previous similar crimes should not only be available to the public but also to the jury.
- 3) As a standard judges should not have the right to ban the statement of criminal histories of defendants. This information is a matter of record and can not be denied.

3.5

1) No, the length of time of the prohibition into publishing information should be assessed on a case by case basis unless it is referring to the publication of a child's details where that child does want their information suppressed.

2) The victim should have the right to speak on their own behalf and name themselves as a survivor if they so desire as long as to do so does not name another victim or put them at risk, in doing so they may have to break the time given for the prohibition order on their information being released.

3) The lifetime ban on naming child victims should be able to be broken by that survivor should they choose to and doing so would not name another survivor nor put one at risk.

3.6

The crimes appeal and review act allows the acquitted person the reasonable opportunity to be informed in the releasing of their information. In the case of child abusers where they were acquitted by a technicality of the law, they should have their identity published to allow other victims to come forward and give the prosecution a second, third or fourth chance to be successful in achieving a conviction.

3.7

1) , No they are far too open ended and allow too much leeway when it comes to the release of children's information and the protection of child abusers.

2) There needs to be more stringent rules around the exceptions granted to protecting the identity of child abusers and especially in the case of government agencies being involved a child's care status needs to be much better protected. Government agencies have proven again and again that while it is legislated that they should protect

the identity of children in care they consistently do not. Judges can protect these identities especially if they have the power to deny a government agency the ability to name a child or publicise the name. The obvious exception to this is in the case of missing children. When a child is missing or their life is in danger they should be instantly made public because children with a name get searched for. The obvious example being William Tyrell who went unnamed for days due to his status as a foster care child. The public only started to look for him long after the crucial first 48 hours had past due to red tape surrounding his status in the foster care system.

3) None that we can see

4) As a standard a child's identity or status in the foster care system should never be revealed unless it will help find them in an emergency.

5) If a child is in an emergency or is missing then certain information should be revealed. Without a name a child will not be searched for their poster will not be shared. Their status in the foster care system does not have to be revealed however most other information should be made public if there is an emergency and if that information will help locate or assist the child.

4.

4.1

Suppression order's definition needs clarification as to who can disclose the information and Non publication order's definition does not read in plain English and seems to contradict itself. In the first section It says you can't publish information but then says it does not stop you publishing information ? Clear and concise plain English is needed.

4.2

- 1) The current statement of information that may be subject to an order needs to be in better plain English.
- 2) They need to be better explained and easier to understand in by laymen people.

4.3

If a person wishes to go against non publication orders protecting their information and reveal what happened to them, they should be entitled to do so provided that in doing so they do not name any other victims of crime nor put themselves or others in harms way.

4.4

- 1) No as there is not enough protections in place for survivors and far too many protections for perpetrators.
- 2) The protections that see child abusers given anonymity need to be removed and further protections for victims need to be put in place. For example if they were intoxicated, if they had a history of drug use or if they are or have been a sex worker. None of these facts are relevant to them being victimised so why are they reported to the public other than to garner sympathy for their attacker ?

4.5

- 1) No as there is not enough protections in place for survivors and far too many protections for perpetrators.
- 2) A) Child abusers should not be able to make an application for a suppression order unless naming them will also name their victims (who do not wish to be named)

Victims need to be able to apply to have their names suppressed or have suppression orders lifted. This needs to be easy to do and the steps need to be in plain English.

B) A suppression order should have to be made as early as possible because suppressing information that has already

been released in the age of the internet is difficult to the point of pointless.

C) A survivor of child abuse or domestic violence should be able to nominate an advocate (that is not necessarily a lawyer) to act on their behalf before the courts. The process to apply for a suppression order or to have one lifted needs to be in plain English and easy to understand and complete for a non lawyer.

D) As stated all order applications and the applications to have the orders lifted need to be in plain English and easily completed by a non-lawyer.

4.6

If a person is applying to have a suppression order placed upon them lifted the fees should be very minimal as they did not want the order placed upon them in the first place so why should they be financially victimised as a result applying to have the order lifted. Rightly so the cost of having a suppression order applied should not be restrictive to encourage those who need it to apply rather than not do so for fear of cost.

4.7

1) No, there is a huge demand within the public to name all child abuse offenders and to a lesser extent domestic violence offenders. The public want to know who these criminals are and just as importantly WHERE they are in relation to where their own children are.

2) The provision currently allows for convicted child abusers to get suppression orders on all aspects of their cases including but not limited to their name, their location, their previous offending history, where they are going to live once released, if they are appealing their convictions or length of sentence, who wrote them a

character reference. None of these things should be suppressed there is a very large percentage of the normal everyday public who demand to know these facts and feel no sympathy for child perpetrators due to the nature of their crimes. The argument against this being that they fear vigilantism style reprisal is null and void as the people who would do these attacks (the families of the victims) are already very well aware of all of these factors and there have been little if any vigilante style reprisal attacks on child abuse perpetrators.

3) There needs to be a public interest and public safety We must recognize that children are not ever safe when child abusers are around, especially so in the case of child abusers who have been granted anonymity through a suppression order. The safety of our children must be put before the needs of child abusers to not be shamed by their own actions and crimes.

4.8

1) The safety of children needs to be recognized as necessary and it needs to also be recognized that children are never safe around convicted child abusers.

2) Do not know enough about all the other statutes to comment.

4.9

1) There needs to be another ground added for making the orders. The question needs to be asked that will making this order put children's safety at risk ? If so then the order can not be made. Will making this suppression order allow this child abuser to live and operate near children with anonymity if so then children's safety is at risk and therefore can not be made. It also needs to be noted that it is never in the interest of public safety to hide the identity of child abusers.

2) Answered above.

4.10

1) Absolutely yes, all too often judges make decisions that seem insane to the general public and they are not required to explain their reasoning and are completely above answering to anyone for doing so, even if their decisions have led to the harm or even death of innocent children. So anything that forces judges to explain themselves will help restore faith in the justice system as a whole. From there judges need to be held accountable for their decisions and should their decisions directly contribute to the death or harm of an innocent then that judge should face disciplinary action. If you or I release a dangerous dog into a playground and it bites a child we will be fined heavily and rightfully so. Why do judges not have to face responsibility for their decisions that lead to children or others being harmed or worse ?

2) These explanations need to be expressed in plain English that can be easily understood by the general public.

4.11

1) No however we can see the need for an interim order to be in place. They need to be better thought out and properly researched.

2) Interim orders need to be better researched and should be made by the same judge that hands down the final orders for consistency.

3) Interim orders need to be time restricted in order to ensure a judge doesn't just rest on the interim orders and not expediate the process.

4.12

- 1) No, it is far too difficult for survivors of child abuse or domestic violence to apply to have suppression orders lifted should they wish to.
- 2) All of the processes involved need to be in plain English and easily completable by members of the general public.

4.13

The orders need to take into account the wishes of the victims a lot more. The judges making the orders need to consult with the victims in a lot more personal way and also need to consider public safety if they are granting anonymity to a child abuser or repeat domestic violence offender.

4.14

- 1) Anytime there are overlapping statutes public safety needs to be the number 1 priority. The acts that take this into account need to be given priority.
- 2) The provision of considering public safety above all needs to be added. Child abusers and repeat domestic abusers need to be recognised as not being safe especially when it comes to the granting of suppression orders that grant anonymity for dangerous criminals.

5.1

- 1) Not satisfactory, there needs to be a standard across the board enforcement for all breaches of court orders including but not limited to breaches of suppression orders and breaches of domestic violence orders, exclusion orders and apprehended violence orders.
- 2) We have seen cases like Derryn Hinch's case get a longer custodial sentence than a convicted child rapist.

While we see other breaches of suppression orders literally walk away free without so much as a conviction recorded. There must be a consistency with penalties for breaching suppression orders.

3)

A) The system needs to understand that most average people do not know the law and as such breaking it should usually be treated with a warning and explanation.

B) The terms and definitions need to be written in plain English so the general public can understand it easily. That way they can be held responsible should they break the law.

C) There needs to be another statutory defence added to the acceptable defence list. The fact that a child's life was at risk is a perfectly acceptable reason to break any law especially the suppression act laws.

D) The maximum penalty seems fair.

4.

All enforcement of suppression order offences needs to take into account the fact that there is no public register for suppression orders so there is no where they can be looked up. Without the ability to look up suppression orders for cases how can it ever be established that a person was fully aware of the crime they were committing.

5.2

1) There needs to be an agency dedicated entirely to the enforcement of court orders. This would include the monitoring of ADVO, DVO, exclusion orders as well as family court orders. One central monitoring agency would be much more efficient than the differing states and court

based sheriff and bailiff systems. Plus would help improve safety for those using ADVO, DVO and exclusion orders for their safety.

2) If we are going to have transparency about the number of people breaching suppression orders than we also need to have transparency about the number of people breaching other court orders such as ADVO, DVO and exclusion orders. We at FACAA believe that any transparency increase for the courts is a good thing because the current public opinion is that the courts are a law unto themselves who are completely non transparent and as such are not held accountable to anyone.

5.3

1) There needs to be much better arrangements made for websites hosted in foreign countries. Because they know they are not subject to Australian law they are well aware they can not be prosecuted for breach of suppression orders.

2) We need to fix the problem of websites being hosted overseas and as such not subject to Australian suppression order law. We at FACAA believe the best way to do this is by prosecuting those responsible for the posting of the offending article and not just the host of the article.

5.4

1) One simple agency to not only enforce the breaches of suppression orders but to also notify concerned parties (including charities running social media awareness raising campaigns) who may not be aware of the suppression orders would greatly improve justice agencies ability to prosecute cases of suppression and court order breaches.

2) A mutual recognition scheme would improve knowledge of suppression orders and lead to a decrease in them being broken, we at FACAA often hear people directly involved in cases say that they have no idea if there is a suppression order in place or not. A mutual recognition scheme could easily solve that problem and readily stop the whole “I didn’t know” claim by those breaching suppression orders.

3) This question is a difficult one, with hosting offshore becoming more and more popular the only logical solution would be to change laws to ban those pages that repeatedly breach suppression orders on an IP level which would adversely affect several news sites however our laws can not be flouted.

4) Yes, they should be extended to include bans on certain pages or sites being shown in Australia at an IP level if they repeatedly breach suppression orders.

6.1

1) Yes, in the interest of monitoring of offences and also in ease of access of information such as what cases are under a suppression order consolidation would resolve a lot of issues had by courts. This must also include family courts and a register of those who breach court orders.

2) All courts need to be consolidated to allow ease of access to orders including suppression orders, family court orders, DVOs, ADVOs, exclusion orders and any other orders made by the courts. These registers under one umbrella will also allow them to be better policed and enforced.

3) The guiding principal to the combining of court orders for both ease of access to information and easier enforcement should be to ensure public safety is tantamount above all and then the pursuit of justice for victims of crime not perpetrators. We need to get the justice back into our legal system.

6.2

1) The only times the court should have rights to deny or reveal the information is when the people involved want the information revealed (and doing so will not reveal someone's information who does not want to be revealed or doing so will not put anyone at risk). They can also reveal information when doing so is in the public interest (it is always in the public interest to know exactly where and who convicted child abusers are). The courts should be able to reveal information if someone is at risk or someone is missing. For example a child who is missing needs to have their name and photograph released immediately.

2) The information should be available as of right in cases of public interest and in cases of emergency. Children who are missing need to have their information released immediately regardless of their status in the foster care system.

6.3

1) The standard considerations should always be the safety of those involved in the case the courts are considering revealing information about. The wishes of those involved in the case. Public safety and the ability of parents to be aware of child abusers in their

immediate area. The other major consideration that should be a standard consideration is the restoration of the public's faith in our legal system. Currently the public faith in the system is at an all time low. The general opinion of the system is that it protects itself above all else including the safety of children. This faith needs to be not restored or rebuilt but just built.

2) A) The standard consideration of safety must be the first consideration. For example if William Tyrell had his face and name released sooner then who knows he may have been found because people only started to look for him and to share the missing person posters once the child had a name and a photo.

The second consideration is public safety. It is ALWAYS in the interest of public safety to have convicted child abusers named and their locations revealed to protect children from clear and present danger.

6.4

1) Information that needs to be available for access to the public:

Details of Convictions and criminal history

Who wrote character references for the convicted and what did it say.

Proposed locations of living arrangements when the convicted will be released.

Deals done with the prosecution, who made the deals and why.

If the victim of crime wishes their details and what happened to them.

Victims impact statements (redacted if the victim wishes)

Parole or bail conditions and who approved them.

Information that should not be made public
Details of the victim's life choices including drug or alcohol history.
Details of victim's intoxication (unless part of the crime ie drugging the victim)
Details of the victim's occupation (ie sex worker)
Details of the victim's promiscuity.
Non tested or proven statements (ie a statement made by a witness that was not investigated or given credence by the courts or investigators)

6.5

Information that should not be made public
Details of the victim's life choices including drug or alcohol history.
Details of victim's intoxication (unless part of the crime ie drugging the victim)
Details of the victim's occupation (ie sex worker)
Details of the victim's promiscuity.
Non tested or proven statements (ie a statement made by a witness that was not investigated or given credence by the courts or investigators)

6.6

The information being released should be made public.
If you are worried about being labelled as a child sex offender then do not commit child sex offences.

6.7

The privacy of personal identification contained in court information should be protected stringently. All of FACAA's personal information is stored strictly in on offline hard drive that is password and firewall protected. I would expect a higher level of protection

from our courts to include encryption for all information.

6.8

1) When seeking access to court information the person should be needed to provide the standard 100 points of identification. They also need to prove how they are involved in the case and entitled to receive the information they are requesting.

2) The courts should provide guidance to ensure the correct people are getting access to the correct information. Those wanting information that they have no rights to be receiving need to be appropriately punished for trying to access that information, once again at the court's guidance.

6.9

1) Once the person has confirmed their identity and the court has provided guidance to confirm that they have access to the information the method should be as swift as possible and as easily accessible as possible. All steps should be written in plain English.

2) No, all applications should be in plain English and as easily accessible as possible (once it's established that the person has the right to have access to the information and their identity is proven) but other than that keeping the idea as standardised as possible is always the desired result.

6.10

1) A person should only be charged a fee to access information if it is not their own information. To access your file should only cost what it costs the courts themselves ie printing cost only.

2) The cost to access one's own information should be zero (unless printing costs have been incurred) however the cost to access someone else's information should incur a fee.

However it is our belief that the application costs for some actions such as domestic violence orders or exclusion orders should be free to those carrying a health care card, veteran's card or disability card. This is because those of lower socio-economic status are far less likely to access these potentially life saving orders if there is a cost involved. If the cost is waived for those who can not afford it then they will have greater access to these orders which could potentially save their lives. It is shocking that in Australia people avoid seeking legal protections that they are entitled to because of the cost involved. We note that this is not in all states however it should be an across the board action.

6.11

Yes, there should be a national standard on ease of access to information, costs involved and who gets those costs waived just like there should be a national standard and subsequent register for orders such as DVO, ADVO and exclusion orders. A national standard will make it easier for survivors of crime to get access to their information no matter what state they are in or what state the crime occurred.

6.12

Firstly the judges or their associated MUST be the one's to write up their decisions without fail. Far too often FACAA have been in court and heard the judge ask the defendant's lawyers to write up their decisions for them and surprise surprise those orders have been written up wrong. When we pointed this out we were attacked by the lawyers at fault and told that is was a simple clerical error and we should not be wasting the court's time by suggesting anything otherwise. The fact that it happened again and again in the one case made our head's spin because the same judge asked the same barrister over and over again to write up their orders and they got it wrong again and again, always in the matter of who was to pay cost and always against the survivor of the crime. Why are judge's relying on barristers who are clearly not unbiased to write out their orders ? Why do they not get their associates to do these orders ? The fact that judges routinely get their orders written up and served by the barristers for the defendants is ludicrous and fraught with danger. Secondly all judgements need to be handed down in plain English and explained when necessary. While we understand that decisions are based upon points of law and those points must be quoted verbatim , it would be very easy for those points of law to be translated into plain English and explained with context to someone who isn't a barrister. Yes that is meant to be the job of their barrister but when that lawyer is a legal aid lawyer who is already overworked FACAA have heard of dozens of examples of lawyers just saying "Google it if it doesn't make sense" Not good enough !

7.1

1) Yes, unless that child grows up and decides that they as an adult want to tell their story. Then the prohibition should be lifted. However as a general rule children's names should be suppressed.

2) Yes there should be the changes made that allows victims of crime who were victimised as children and as such had their identities and stories suppressed, to tell their stories as informed adults and as such have all suppressions removed at their request, provided lifting such suppressions does not reveal any other victim's identities nor put anyone in danger.

7.2

1) Yes, closed courts provide children with a relief from their anxieties around being in public surrounded by several people who they feel are judging them and someone in strange robes and someone who will try and trick them. Yes absolutely closed courts provide children with a fair attempt at getting justice.

2) No, children need closed courts or giving their evidence via video link where they can not be cross examined and re-traumatised by the defence council.

7.3

1) Yes, children need to be protected from future problems that will arise from the crimes of their youth. No child is born bad so they need to have their crimes and identities protected.

2) The only changes that need to be made are those that allow the young offenders to tell their stories if they desire once they are adults. Should they wish to do so

they should be able to provided doing so does not reveal the crimes of another nor put anyone in any danger.

7.4

1) Yes, protecting children's identities particularly in cases of domestic violence is particularly important due to the false stigmas surrounding domestic violence.

2) As with all suppression orders the only changes that need to be made are ones which will allow survivors of domestic violence to tell their stories as adults should they wish to.

7.5

1) Yes as a standard it is however there is one exception that needs to be immediately changed.

2) In the cases of missing or endangered their details need to be released as a matter of emergency. There must be no delay between the child being reported missing and an Amber alert with name and photograph being shared. You do not need to mention the fact they are in the system so to speak but a child without a name or a face will not have anyone searching for them. The case of William Tyrell is a perfect example. It took days before a name and photograph was released, as soon as it was the image went viral and everyone knew about missing William in the Spiderman suit but it took days for that information to be released to the public. Far too long.

7.6

1) Yes, FACAA were integral in bringing in the Children's Champion program (now known as the witness intermediary program) and the changes to the legislative changes are appropriate.

2) However the program itself has fallen into dark times in a very quick time period. It is severely underfunded and is being blamed for delays in court proceedings. It is not the fault of the program nor the legislation it is however the fault of those who are underfunding the program and as such causing massive delays in it's administration.

7.7

1) The current laws as a standard are fine, however there is one exception that needs to be immediately changed.

2) In the cases of missing or endangered their details need to be released as a matter of emergency. There must be no delay between the child being reported missing and an Amber alert with name and photograph being shared. You do not need to mention the fact they are in the system so to speak but a child without a name or a face will not have anyone searching for them. The case of William Tyrell is a perfect example. It took days before a name and photograph was released, as soon as it was the image went viral and everyone knew about missing William in the Spiderman suit but it took days for that information to be released to the public. Far too long.

3) Yes, however should it be found that an adoptive parent has been convicted of child abuse then that parent's name should be known to the public and they should be permanently banned from ever adopting a child or having anything to do with anyone who does.

4) Provisions need to be made for the naming of child abusers in every court system especially the adoption process.

7.8

1) Yes as I fail to see the relevance that parentage or surrogacy play in court cases.

2) There needs to be provisions where by if the information can help an investigation into a missing child or an investigation into an abused child, then that information can and should be released to do the good that is needed.

3) If there is a child involved and there is a dispute between parents absolutely. Children get scared and intimidated by lawyers and judges and can often say the wrong thing to “stay out of trouble”

7.9

1) Children’s identities should always be protected to avoid future stigmas and to give them the best chance at a new life. However if needed in an emergency certain provisions like suppression orders on a child’s identity need to be dropped temporarily so the child can be found.

8.1

1) The provisions granted to protect children who are witnesses to crimes need to be made mandatory instead of recommended. Particularly when it applies to the family court we at FACAA have heard of several examples of children being intimidated by their parent into withdrawing a statement concerning an AVO or ADVVO. We are told the recommendation was that the court be closed yet for some reason the judges saw fit to allow the parent who was the subject of the orders into the court while the child was testifying which saw the child freeze and be unable to continue their statements. This is why the orders need to be mandatory not recommended.

2) As above.

8.2

1) We at FACAA feel as though a very specific type of victim has been completely forgotten about by all legal protections and that is autistic children. The large scope of autism spectrum disorder goes from the awkward anxious children all the way to non verbal non communicative children. These children seem to be forgotten by the law as the law has special amendments for those who are cognitively impaired however legally speaking autism is not a cognitive impairment, so ASD kids seem to fall through the cracks of the system.

2) We would like to see all forms of ASD (autism spectrum disorder) recognized specifically by the legal protections as well as those with cognitive disorders. Children with autism who have poor communication skills find it difficult enough to speak before a court and their experiences in seeking justice would be greatly improved by having the same legal protections afforded to those with a cognitive impairment.

8.3

Several major questions in regards to privacy of victims and witnesses arises whenever you read a news article on a crime and the court proceedings.

One major question is why do the types of clothes being worn by the victim, the victim's level of intoxication, the victim's criminal history (meanwhile the criminal history of the perpetrator is kept entirely private) or the victim's victimology history. Why are any of those things stated in court, let alone released to the press ?

None of those things have any bearing on the case what so ever ! The court does not need to be told about them and the press certainly do not need to be told at all.

8.4

1) No there is no allowances for victims who have since turned adult age to have their stories told should they so desire and should doing so not adversely affect anyone else attached to the case.

2) We would like to see those provisions in place to allow survivors of child abuse to have their voices heard and be allowed to tell their stories.

9.1

1) Yes the act seems to be quite concise in its prohibition on publishing of details or anything that could lead to details of the person being identified as a complainant of a sexual offence.

2) However we would like to see the judges have less control over the victim's once they come of adult age, ability to tell their stories.

9.2

1) Courts should not be closed for perpetrators of crimes unless that perpetrator is under 18 years old.

2) There needs to be less protections for perpetrators, all too often we see perpetrators protected by suppression orders because they say it will affect their reputation or cost them money if their identity is not suppressed. These two reasons are completely invalid in our eyes and it is always in the public's interest to know who is committing crimes against children.

10.1

1) No, the media should not have access to civil cases as the burden of proof is significantly lower in civil cases. For example I can bring a civil case against literally anyone without any proof what so ever. Yes it will be defeated in court however before that happens that person's name can be slandered all over the media.

Transversely the media should be kept away from reporting on unsubstantiated claims made by defence barristers who are doing nothing but slandering their client's accuser. The defence barristers do not need to prove anything in their initial statements and the press often do not report on whether or not

the claims made by the defence were true or not. Often we hear about a victim's intoxication or criminal history (meanwhile the perpetrator's is entirely protected) Both of which are not even slightly relevant to the case. We would like to see a victim's criminal history protected along with their intoxication, work history and previous victimology.

2) No as stated above civil cases have a much lower burden of proof and there is no obligation for the press to report on final outcomes of facts tendered in civil cases. For example the press may report that a victim had previously sued dozens of men for sexual abuse, a fact like that would make a great headline however when it was proven false the press would be under no legal obligation to print a retraction as they could say that at the time it was facts tendered in the case.

3) A,B,C,D

If the press make a statement about a victim that is later proven to be false they should be under a legal requirement to report the truth and give it the precisely same size of the original claims. Also the press should not be able to slander victims of crime, to do so is a crime in of itself and the press seem to do it with monotonous regularity. Victim's should be protected at all times not only for their sakes but to also encourage other victims to come forward.

10.2

1) No, all too often the media will hang a victim out to dry and cast doubt on a case, all the while scaring other victims out of coming forward. No the media need much tighter reins placed on them when it comes to victims.

2)

a) there needs to be a ban placed on attacking victims of prescribed sexual offences.

b) Proceedings involving children the press need to be much

more able to name their perpetrators and much less able to name the victims.

c) if a courtroom is closed it is closed for a reason which should mean that it is locked off including press.

10.3

The same response as given in 10.2 is appropriate in this question.

10.4

1) While the laws themselves are quite stringent it seems their enforcement is lacking. All too often the media assassinate the victims of crime, even if they don't name them directly the media can talk about a case where an easily identifiable incident occurred thus naming the victim without actually naming them. Also for some reason we at FACAA see the media leaning heavily towards painting the perpetrator as a victim. This too needs to be stopped.

2) There needs to be stricter enforcement and harsher penalties on media who name victims without actually naming them and running their character into the ground. There also needs to be protections for survivors to stop media from painting their abusers as saints as was the case in several high profile priest cases. The media even printed character references verbatim much to the psychological detriment of the survivors of these incidents.

3) a) The public's interest not the interest of the media (which are not the same thing one has a goal of promotion often at the detriment of the truth) should be the pinnacle of concern.

b) Yes however enforcement once again seems to be an issue.

c) No, there needs to be a centralised database for court orders including suppression orders. There is no way of knowing if a case is under suppression orders for the general public.

4) The changes need to be made in the area of enforcement. Much harsher penalties and much more stringent monitoring needs to be made when it comes to the identification of victims. Also a centralised database of suppression orders that is searchable by case needs to be available to the public or media outlets who are interested in publishing court documents such as FAAAA.

10.5

- 1) 2) No it needs to include modern day reporting such as blogs, Facebook pages and even Youtube broadcasters
- 3) Anyone who is doing reporting on court cases should be seen as a media outlet and bound to the same laws and protections.

11.1

1) The federal court is usually quite closed and difficult to gain access directly to the judges, however in Australia the judges seem quite open to speaking with researchers. We believe there has to be more stringent checks done upon the researchers to find out if they are utilizing best practice when it comes to confidentiality and privacy or if they are just publishing names and case studies as they please.

2)

- A) This centralised scheme could be covered by the same centralised scheme suggested by FAAAA into the awareness and enforcement of suppression orders and a centralised database for court orders including family court orders.
- B) Researchers should be researched thoroughly before being granted access to court documents or workers. They should have to prove their credentials, their research is actually being done, that they have appropriate working with children checks and are not undermining the courts processes by trying to set free a convicted child abuser by having a go at the victims.

C) The information given out should never be used to re-victimised survivors of crime ever ! If it is used for this purpose the researchers should immediately lose access to the courts and their information.

D)

E) Researchers should never be given information on victims other than the basics such as name age height, they should never be told about things like the victim's criminal history or history of drugs and alcohol abuse (unless sed abuse was brought on as a reaction to the crime they endured)

F) They should be told outright that if they use this information to re-victimize a victim of crime they will forever lose access to the court systems.

G) The same waiver system should apply to researchers as those filing court actions. If they are on a health care card, Veteran's card or a disability card, then the only cost involved should be printing cost.

H) If archived records are sealed then no one even researchers should be given access to them.

I) Any request to collate data or statistics should be met with a request to see the research methodology and desired outcome of research in order to ensure the researchers are not trying to re-victimize and re-traumatise victims and survivors.

12.1

A) The court room schedule including links to the virtual courts could be easily provided the day before just like any courtroom schedule.

B) Anyone logging in must provide full identification to the court clerk and not be able to log in until they are cleared as being real and authentic people with an interest in being there.

12.2

1) Anyone attending the virtual court case should have to provide full identification and have their identity authenticated.

2)

A) Just like any open court only those who are allowed to have access to the various types of information should get access. This can be done through identification verification.

B)

C) After the identity has been proven their individual information packets can be uniquely tagged and monitored if it is given out it can be easily traced back to the person who distributed the information.

12.3

1) The laws need to be amended to catch up with technology and seeing as most internet pages that break the laws are hosted overseas the laws need to be amended to charge the person who posted the information with doing so rather than the website for hosting it, or both could be charged. Websites that repeatedly breach our laws should be blocked from Australian internet at an IP level.

2) If the information is recognised as being a potential bias for a court case it should be banned on an IP level.

12.4

1) No, the current laws are very broad and can be used easily to attack people. If you can't afford a lawyer you can have your entire life ruined for a single comment on a page that doesn't even have to be your comment. The current system is entirely geared towards whomever has the most money for the highest price lawyer.

2) While the law states those who self represent shall not be unfairly prejudiced by the system that is simply not the case. Judges get plaintiff lawyers to write up their orders and then get shocked when they get those orders wrong. Judges laugh and banter with plaintiff lawyers yet scold those who are self representing for correcting a lie told by the plaintiff lawyers. Those who are self representing never get a fair say because the lawyers bringing the case to the court always know the judges on a personal level and you always side with your friends.

13.1

1) **ABSOLUTELY !** There simply must be a searchable register of suppression orders for all NSW courts. We at FACAA know of people directly involved in court cases who have no way of knowing if their case is under a suppression order or not and they were the victims. Plus under the current system if the courts wish to prosecute someone for breaching a suppression order they will have quite a hard time proving they were well aware that the case was under a suppression order.

2) A) anyone, however to do so you should need to prove your identity and have it verified.

B) The case name and the status of a suppression order.

C) A centralised court service that will also be a centralised register for family court orders and any other court orders in NSW.

13.2

- 1) Yes in the case of children or vulnerable people.
- 2) The advocate should speak for the best interest of the child or vulnerable person and that best interest should be decided with total input from the client. It should not be decided by an outside party like the court.

13.3

- 1) You could do Youtube clips and social media awareness raising clips about the legalities of suppression orders and what they mean and how to avoid breaking them.
- 2) The same centralised organisation who are responsible for the database on court orders.

13.4

- 1) It not only could be amended but it should be amended to ensure the jurors know the trust that is being placed in them and the penalties for breaking that trust.
- 2) Considering the act was written 44 years ago the act needs to be updated for modern times in the first place.
- 3) Social media needs to be added to the statement of not seeking media on the case.
- 4)
- 5) Yes, it should be more direct about the penalties for not avoiding media influence.
- 6) Potential jurors could show a court clerk their facebook feeds to see if they follow any pages that might be discussing the case.
- 7) No, judge only trials are never a good idea as judges are never in touch with the reality of life. All too often we at FACAA see judge only trials end in Ludacris decisions.



Conclusion

While we at FACAA applaud any changes to the court system we would like to see any changes properly funded. When we helped have the Children's Champion program brought in we were very excited as was our 130 thousand membership base. However that excitement was soon replaced with disappointment as the program's name was changed the very first time it was looked at and it was defunded until it is now considered a burden on the courts because it simply takes far too long to implement. What was once called "a brilliant program that should be rolled out to all vulnerable people" is not labelled as a waste of time and a drain on resources due to mismanagement on a massive scale. Any changes made must be backed up with appropriate funding.



References

Direct interviews, emails and phone calls with FACAA members, clients and our Jamie's guardians court support program volunteers 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 as well as their experiences with the legal system and any potholes and pitfalls they wanted us to know about.

Amazon.com links to Jayneen Sanders books *Some secrets should never be kept* and *Body Safety education*.

A very big thank you and reference needs to go to the volunteers of the FACAA social media awareness campaign. TC Robinson, Genevieve Elliot, Kellie Roche, Kimberly Daboul, Cris Uola, Penny McNichol, Anita David, Mishka Hudson, Carly Evans and Morandir Armson. Without who this submission would have never occurred.