

Preliminary Submission to the QLD Sentencing Advisory Council on the review of sentencing for child homicide

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Submission deadline: 5pm, 13 December 2017.

What issues do you think the Council should explore in responding to the Terms of Reference — penalties imposed on sentence for criminal offences arising from the death of a child?

In summary, current:

- Penalties imposed on sentences for criminal offences against children do not meet community expectations
- Penalties imposed on offenders convicted of criminal offences arising from the death of a child do not reflect the community's view; do not protect the child; do not reflect the vulnerability of the victim/child; and do not reinstate the community's faith in the criminal justice system and the administration of justice
- Penalties imposed on offenders convicted of criminal offences arising from the death of a child by no means reflect the community's expectations of what constitutes adequate sentencing of such offenders and certainly do not act as a deterrent
- Penalties imposed on offenders convicted of criminal offences arising from the death of a child do not reflect the offender's culpability or reflect the abhorrence of such crimes
- Penalties undermine the value of children in our society and currently do not act as deterrents or in any way reflect the community's expectations of adequate sentencing or reflect the heinous crimes committed against children.

Many of the criminal offences arising from the death of a child are the result of horrendous abuse or torture over a period of time on children who are not able to defend themselves or retaliate in any way. There have been many such crimes committed resulting in sentences that less than adequately reflect the culpability of the crime or the heinous nature of the crime; with these sentences neither reflecting community expectations nor adequately serving as a deterrent.

Current penalties imposed on offenders convicted of criminal offences against children undermine the value of the life of a child; emasculate the responsibility that our society bestows upon those who have responsibility towards our most vulnerable members of our society; and ridicules the 'trust' and fiduciary responsibilities between children and those caring for children.

Many of the penalties for offenders convicted of criminal offences arising from the death of an adult result in life imprisonment; yet children, who are the most vulnerable members of

our society and bestow their trust in adults, are betrayed in the most deplorable manner when these heinous crimes are committed against them; yet the offender is often given a short sentence which does not reflect community expectations of these heinous crimes; nor does it reflect the gravity of the crime. I urge the QLD Sentencing Advisory Council to ensure that legislative changes take place to reflect appropriate sentencing of these crimes and impose sentences that reflect the culpability of these heinous crimes; and furthermore act as a deterrent.

The Sentencing Council should explore the:

“appropriate sentencing of individual cases, taking into account the offender’s culpability”. There have been a number of recent examples illustrating the inadequate sentencing of offenders convicted of criminal offences arising from the death of a child. One such example was the sentencing of Matthew Scown, the stepfather of little Tyrell Cobb, who walked free after a four year suspended sentence and was allegedly laughing about the fact.

This was a reprehensible crime whereby a little boy died of horrific injuries; yet this man walked free after a short custodial sentence, undermining the value of the life of a child. This sentence highlights the dissonance between society’s expectations of an appropriate penalty and the criminal justice system’s sentencing of these matters; and the dissonance between society’s abhorrence of such criminal acts towards children and the culpability of the offender and the corresponding penalty imposed on the offender.

This short sentence on this man implies that our society under-values the lives of children and undermines much of the work that is being done to try and reduce family violence and abuse against children. Furthermore, this short sentence highlights a dissonance between societal expectations and the sentencing of offenders of criminal offences arising from the death of children and the sentencing legislation needs to be amended to reflect the severity of these crimes and to act as a deterrent.

The legal system holistically has a responsibility to reflect community expectations and this matter certainly did not do this. Unfortunately this is not the only case where a heinous crime against a child has resulted in a short sentence. As a member of the public I look to the courts to set precedents reflecting values of our society; to uphold the values of our society and to impose sentences that reflect the severity of the crime and act as deterrents for such crimes.

I refer to the comments by Clive Wall QC (Courier Mail, 13 October 2017) who was reported as stating that this sentence was inadequate for such a crime; who explained that lenient sentencing was attributed to the Appeal Court and that the recent High Court ruling has now provided a precedent to the courts regarding this issue.

There have been many instances of inadequate sentencing for child related deaths, with some cases provided in the Townsville Bulletin (30 November 2017). These cases included the inadequate sentencing of Todd Reed who killed a 17 month old baby boy and Nicholas Baxter sentenced for nine years for manslaughter of his six-week-old son. Further cases include the eight and half year sentence handed down to Matthew James Ireland who murdered a child he was baby-sitting in Mackay (Brisbane Times, 5 June 2017).

Data shows that “in the 2015-16 financial years there were 390 child deaths registered in Queensland (QFCC, 2016) with fatal assault and neglect being the reason for nine child deaths. It is reported ((Australian Institute of Family Studies (*Child deaths from abuse and neglect*, CFCA Resource Sheet— October 2017) that age appears to be a significant factor in child deaths in all jurisdictions with infants accounting for a large proportion of all registered child deaths. Previous contact with child protection services often with an intergenerational family history, also feature as a common denominator in child deaths across Australia”.

A paper published by the Australian Institute of Family Studies (*Who abuses children?* CFCA Resource Sheet— September 2014) reported “that non-biological parents were 17 times more likely to commit a fatal assault toward a child than biological parents (Yampolskaya et al., 2009); ... with (sic) the majority of perpetrators ... males (Lyman et al., 2003).”

In a paper published by the Australian Institute of Family Studies (*Child deaths from abuse and neglect*, CFCA Resource Sheet— October 2017) it is reported by “Damashek, Nelson, and Bonner (2013) that Australia's rate, 0.8 per 100,000 children, is approximately four times the rates of Spain, Greece and Italy, although it is below the rates in New Zealand (1.3) and the USA (2.10)”. The authors warn that warn that these figures are likely to under-represent the actual numbers of deaths.

This paper also reports that “detailed information on deaths resulting from child abuse and neglect is not available from all Australian jurisdictions; however, information from jurisdictions that carry out official inquiries into child deaths (reviews) provides some guidance.....Child death review teams collate and link data from multiple sources to improve understanding of the circumstances of each child's death. This information is used for the benefit of future prevention and action. In New South Wales, the Northern Territory, South Australia, Western Australia and Victoria, child death review teams are legislated to make recommendations that arise from child death patterns and trends, and to monitor the implementation of these recommendations”.

In summary, I strongly urge the QLD Sentencing Advisory Council to consider increasing the sentences associated with these heinous crimes to reflect the culpability; to demonstrate to perpetrators that our society will not tolerate such abuse of children; much of this abuse being perpetrated over a period of time and subjecting these children, often very small children, to horrendous suffering; and for sentencing to be a deterrent as well as punishment. The sentence should reflect the values and expectations of our society; and society ultimately expects the criminal justice system to sentence perpetrators accordingly to the severity of the crime and to reflect society's intolerance of these crimes.

It is essential that the courts in sentencing demonstrate Australian societal values and expectations; that children, our most vulnerable members of society, are protected and we as a society have a responsibility to ensure they are safe and any abuse and associated criminal activity penalised appropriate to the culpability of the offender. Sentencing needs to reflect the values of our society and this is not currently happening. Those most vulnerable are not being protected and the sentencing of these criminals undermines the welfare and value of children when the perpetrators receive such minimal sentences. Penalties need to act as deterrents as well as punishments appropriate to the culpability.