



30 July 2018

Queensland Sentencing Advisory Council (QSAC)
GPO Box 2360
BRISBANE Q 4001
Email: info@sentencingcouncil.qld.gov.au

Dear Sir/Madam

Re: Sentencing for criminal offences arising from the death of a child Consultation Paper

We refer to the email from the Director dated 18 May 2018 seeking Submissions on the above Consultation Paper by 31 July 2018. We commend the Queensland Sentencing Advisory Council and the Queensland Government for their comprehensive research and commitment to making perpetrators of violent and deadly crimes against children, accountable for their actions.

Protect All Children Today Inc. (PACT) is a non-profit community organisation established in 1986 as a service provider of court support as well as advocating for vulnerable children, young people and their families. PACT's Child Witness Support Program provides support for children and young people who are required to give evidence in criminal court matters, either as victims of, or witnesses to, a crime. PACT recruits Child Witness Support Volunteers to provide child victims and witnesses with support and information about the Criminal Justice System. It is through our experience that we offer the following comments.

In opening, we agree that community concerns are magnified when a child is a victim of homicide and that education is paramount to build community confidence. In addition, we believe that if **the Charter of Victim's Rights** were adequately enforced and embedded into the Policies and Procedures of all key stakeholders, many of the challenges faced by victim families would be addressed.

Issues for victim families that have been communicated to PACT in relation to the current Queensland Criminal Justice System include comments that the entire process:

- is very traumatic, confusing, complex, confronting, sterile, formal and is a process that cannot be avoided or altered.
- takes far too long for matters to be finalised with the effect that lives are put on hold which causes additional stress and trauma.
- can make victim families feel disrespected and ignored by the bureaucracy. Victim families feel that they are a 'case' not a victim or victim family (ie. the Matter of SMITH, Robert John).
- can appear more amenable to offenders where they are afforded private representation which ensures their rights throughout the court process are enforced.
- can result in the a perception that the punishment is too low and with the penalty not reflecting the gravity of the crime that has been committed.
- Involves a lack of communication, progress information and advice regarding likely punishment. Most families do not understand the rationale behind the sentences proposed by the Crown and Defence, nor about the relevance of time already served in custody.

Vice Regal Patron: His Excellency the Honourable Paul de Jersey AC, Governor of Queensland

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Some of these issues can be addressed by:

- ensuring the Charter of Victims' Rights is enforced for all primary and secondary victims impacted by a crime.
- a greater commitment by Police, Prosecutions and the Courts to having child related matters heard as quickly as possible. Whilst we appreciate the complexities involved, it is unacceptable that child homicide cases take significantly longer to progress from offence to sentencing, than adult homicide cases.
- appreciating the level of the victim family's grief and understanding the situation is one that is highly personal to them.
- making families feel respected and ensuring there are views heard throughout the criminal justice process.
- improved information provision and communication so that families understand clearly why decisions are made, especially in relation to sentencing.
- providing information about the rationale for accepting a plea to lesser charges to enable informed decisions to be made. Families are often put on the spot by Prosecutions and Defence to make these decisions quickly without having the time to fully appreciate the potential impacts of such a decision.
- ensuring there are Vulnerable Witness Facilities available in all court houses to make their time at court more comfortable and to ensure, as far as possible, that they feel protected.
- ensuring victim families have access to appropriate support services, such as PACT, Homicide Victim Support Group etc. so that families are well supported to navigate the complex court process. At times, Government puts up barriers to this occurring and sees external service providers as a hindrance to the process, as they do not take the time to consider the victim families' needs.

Question 1: Sentencing Purposes - What are the most important sentencing purposes that should be taken into account by a court when sentencing an offender for an offence arising from the death of a child, and why?

In relation to child homicide, we firmly believe that sentencing needs to reflect the serious nature of the crime and to discourage further deaths of vulnerable Queenslanders. In our opinion, offences of this nature should incur maximum penalties due to the extreme vulnerability of the victim and their lack of physical and emotional maturity to protect themselves.

It is paramount that when sentencing for offences involving violence against a child, the sentencing Court must have regard primarily to factors which focus on risk to the community and public safety, the age and personal situation of the victim child, the circumstances of the offence, the nature or extent of the violence used and issues relevant to the offender.

Whilst PACT's involvement in the court process is completed by the time a matter goes to sentencing, we believe that public perception is that many child related death charges are downgraded from murder to manslaughter. Therefore, we suggest a review of the past sentencing practices to identify if this is in fact the case and if so, why. Increased public education on why this happens would also be beneficial.

We acknowledge the need for judicial discretion and for sentences to be based on precedence and the circumstances of each individual case. However, if the current sentencing system is not appropriate, nor capable of discouraging further offending of this nature, then it needs to be reviewed and amended to ensure better justice and meet broader community expectations.

PACT suggests that the reduction in sentencing for a guilty plea should be reviewed and amended as the current process of a perpetrator serving only one third of their original sentence is too low and does not help to build community confidence. PACT supports the proposal from the Queensland Homicide Victim Support Group (QHVSOG) for the reduction to be a maximum of 25 per cent of their head sentence. It is also difficult to determine if an offender is demonstrating genuine remorse, or behaving in a particular way to reduce their time in prison.

Families feel let down by the system when the perpetrator who has caused the death of a loved one, is released early or has their sentence suspended, as a result of a guilty plea. However, we do appreciate the costs saved to the Queensland Government in relation to the investigative and legal processes and the housing of the incarcerated party.

Question 2: Sentencing Factors – The list of statutory factors sets out a selection of factors courts make take into account under the Penalties and Sentences Act 1992 (Qld) when sentencing a person for an offence that involved violence or resulted in physical harm to another person, including child homicide offences.

2.1 Referring to this list, what are the most important factors that you consider should be taken into account when sentencing an offender for an offence arising from the death of a child and why?

- Enhanced community protection.
- Age of the child is particularly relevant as the younger the child, the more vulnerable they are.
- Clear breaches in a trust relationship.
- The family dynamics and any issues that lead to the child homicide, such as Domestic Violence.
- Age of the offender and their past criminal history.
- Impairments such as mental health and substance abuse.
- Pre-sentence factors need to be strengthened to ensure that applications for bail are denied for serious crimes such as attempted murder. This does not instil community confidence in the Queensland court system.
- The specific circumstances of the offence and the level of known intent ie.– neglect, ignorance or deliberate abuse.

The personal circumstances of any victim is extremely important; such as the living arrangements, family composition and home environment of the victim child. Such as an abuse of a trust relationship, where deaths are perpetrated by an immediate family member. Children raised in a blended or step-family environment may be at higher risk due to the absence of a genetic relationship, so this needs to be a factor of consideration.

The past record of the Offender should be a consideration as it may demonstrate patterned behaviour, especially in relation to violence or physical/sexual abuse of children and young people. This should include any substance abuse factors which could affect the offender's ability to act rationally and with due consideration for the potential consequences of their actions.

Child homicides committed by mentally ill offenders, where there has been a history of mental illness and psychiatric symptoms. Munchausen cases where the offender is likely to deny the offence, even in the face of overwhelming evidence.

2.2 *Are there any other sentencing factors now expressly listed in legislation, or referred to only in a general way, that you think are important in sentencing for these offences? If so, describe the factor/s and explain why they are important.*

We believe the age of the child is particularly relevant; the younger the child, the more vulnerable they are to homicide due to their lack of physical and emotional maturity. They are also unable to adequately protect themselves, or seek protection from a responsible carer. An infant and young child is far more dependant and vulnerable and in greater need of protection.

The nature of the offence and establishment of the cause of death, such as a head injury resulting from shaking, falling or blunt force trauma. Some child victims do not demonstrate external manifestations of abuse, so it may be more difficult to forensically determine the cause of death. We also appreciate as many child deaths occur in the family home there is often no witnesses to the crime nor tangible evidence.

The likely long term impacts of the offence on the victim should be a consideration. We appreciate this is extremely difficult in cases involving young children as the impact is often not known until they become an adult, form relationships and have children of their own. However, in the case of a child homicide, the impact on the immediate and extended family, local community etc. should be a consideration as the child has not been given the opportunity to experience a full life.

Question 3: Sentencing Factors – Referring to the examples of aggravating and mitigating factors listed below, which factors in your view are the most aggravating and mitigating factors to be taken into account by sentencing judges where a person is being sentenced for a criminal offence arising from the death of a child, and why?

PACT support all the identified examples of aggravating and mitigating factors. As mentioned previously, the age of the child is extremely relevant and we strongly believe abuse by a person in a position of trust such as a parent, step-parent, caregiver, teacher, etc. should result in harsher sentences being imposed as the perpetrator is taking advantage of this known level of vulnerability.

Question 4: Sentencing Process – What do you consider are the advantages and disadvantages of maintaining flexibility in the sentencing process when sentencing an offender for an offence arising from the death of a child?

- Precedents in sentencing set clear guidelines and bench marks for the Judiciary.
- Judicial discretion is paramount to take into consideration the range of factors in each individual case.
- Honest and open communication is one of the main ways to improve community understanding and confidence.
- Clear media statements and advice in relation to why a sentence has been imposed will assist in building community confidence in the current system.
- Penalties overall appear to be too low, Queensland should look at sentencing terms imposed in other countries etc.
- Sentencing for guilty pleas is too low – ie. one third of time served for the head charge. This should be increased to reflect the seriousness of the crime.
- If the offender has been sentenced to life imprisonment, it should be for the rest of their natural “life” not 20 years.
- There is much community confusion regarding concurrent sentences and the view these should be served in full, one after the other, rather than at the same time. Families need to fully understand what this means.

Question 5: Reflecting Particular Vulnerabilities of Children in Sentencing

5.1 *How does a child victim's age and particular vulnerabilities impact on the seriousness of a homicide offence?*

PACT strongly believes the age of the child is particularly relevant; the younger the child, the more vulnerable they are to homicide due to their lack of physical and emotional maturity. They are unable to adequately protect themselves, or seek protection from a responsible carer. An infant and young child is far more dependant and vulnerable and is therefore, in greater need of protection.

It was pleasing to note that in the Research Report, QSAC uses the term "child" for a person aged under 18 years at the time the offence occurred. There is much confusion across the child protection, policing and justice sectors in relation to when a child becomes an adult and PACT is of the opinion that this is when they turn 18. If this view was uniformly adopted, we believe at risk children and young people would be greater protected through intervention and adequate support.

5.2 *How can the particular vulnerabilities of child victims best be taken into account in sentencing for an offence arising from the death of a child?*

Through harsher penalties and sentences for homicides involving infants anyone under the age of 18 years. In Queensland, sexual assault penalties increase when a child is 12 years old or younger. The same could apply for homicides against children by implementing an increasing or decreasing sentence scale based on the age and/or identified vulnerability of the victim child or young person.

Question 6: Reforms

6.1 *Are any legislative or other changes needed in sentencing for child homicide offences? If so, what changes are needed and why? What would these changes add to the sentencing process?*

- Legislation should be amended to reduce the time it takes to hear cases involving child deaths – people are living in limbo until the court matter is finalised.
- Enhanced communication, information provision and progress updates for victim families where appropriate, especially in relation to the outcome of bail hearings etc. PACT was supporting a child in an attempted murder charge and the family were not advised that the offender had been granted bail. The family subsequently had to go into hiding to protect their safety and were fearful of the accused finding them.
- Harsher sentences for repeat offenders given their lack of culpability and demonstrated remorse.
- Mandatory requirements regarding the Charter of Victims' Rights across the Child Protection, Policing and Legal Sectors affording victim families their rights throughout the whole process and ensuring they receive the respect and understanding they deserve. This is currently lacking in many areas.

6.2 *Should any other reforms be considered to improve the sentencing process for child homicide offences? For example, should restorative justice approaches have any place in the sentencing process and if so, at what stage should they be considered? What might be some of the advantages and disadvantages of such approaches?*

- Advice should be sought from victim families to gain what they wish to achieve from the Criminal Justice Process and that their voice be heard and considered at every stage in the proceedings.

- The success of restorative justice approaches would depend on the merits of each individual case. Cases where there is clear intent and little remorse from the accused, are unlikely to benefit from restorative justice processes. This would have to be determined and agreed upon early in the court matter.
- It would be vitally important that the victims' family is agreeable to this approach as they could be further traumatised by having to face the offender and may not be open to hearing about their genuine remorse.
- We further suggest feedback be sought from family members who have lost a child or family member to violence to determine their views regarding past sentences imposed. It is only with this insight that the Queensland Sentencing Advisory Council can make informed recommendations to the Queensland Government.
- Enforcement of the Charter of Victim's Rights across Queensland.

Question 7: Community Awareness

7.1 *What issues contribute to or detract from the community's understanding of sentencing for child homicide offences?*

People who have not been exposed to a criminal court process do not understand how complex sentencing is and form opinions based on "urban myths", hearsay and inaccurate media coverage. Misinformation is also gained through television programs which often do not depict what actually occurs in a criminal trial in Australian jurisdictions. Therefore, it is important that the information provision be accurate, timely and provided in a way that is easily understood by a general member of the public.

7.2 *How can communication with community members and victims of crime about sentencing for child homicide offences be enhanced?*

Through open and honest communication, media releases, Sentencing Guidelines and "Judge for Yourself" scenarios, including a child death or child related matter. It is only through improved communication that community awareness will be enhanced, which will lead to a greater understanding and acceptance of the sentences imposed.

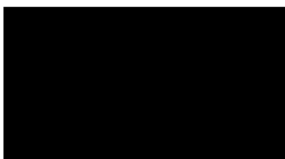
The publication of de-identified sentencing remarks may enhance community awareness and understanding about sentencing processes and outcomes. However, it is important that community members are aware of where they can access this information.

We acknowledge the findings from the Jury Studies undertaken in Tasmania and Victoria, though wonder if a similar Study had been conducted with victim families how different the findings may actually be.

PACT is very grateful to be consulted about this important issue. Should your staff require clarification or further information on any of the issues raised, please do not hesitate to contact Mrs Jo Bryant, PACT's Chief Executive Officer [REDACTED].

Thank you for the opportunity to provide comment on this piece of legislation and trust that our input has been of value.

Yours sincerely



Alexandra Marks
Chairperson