



Sentencing for criminal offences arising from the death of a child — Final report

Advice and Recommendations

The Council presents the following advice and recommendations based on the Council's extensive research and consultation over the 12-month period of the review, including:

- a comprehensive review of sentencing outcomes for child homicide and comparable offences over a 12 year period (2005–06 to 2016–17) and release of a statistical research report based on the findings;
- a cross-jurisdictional analysis of sentencing and offence frameworks for child homicide offences, with a focus on other Australian jurisdictions, New Zealand, the United Kingdom, and Canada;
- release of a public consultation paper (in May 2018) and call for submissions; in response to which, in addition to an earlier call for submissions, 39 submissions were received;
- the hosting of two community summits, one in Logan (16 July 2018) and the other in Townsville (19 July 2018), and six community information sessions — in Brisbane, Sunshine Coast, Cairns, Gold Coast, Mount Isa, and Longreach — as an opportunity for the general public to share their views on sentencing for child homicide offences and hear from experts in the field, including those providing support to family members of victims of child homicide;
- conducting 10 focus groups in six regions — Brisbane, the Sunshine Coast, Cairns, the Gold Coast, Mount Isa, and Longreach — using a random selection process with 103 general members of the community to gauge community awareness of murder and manslaughter and perceptions of 'appropriateness' of sentencing outcomes for these offences;
- meetings with key legal and victims' services stakeholders and others with specific expertise in the area of child homicide, including Subject Matter Expert (SME) and Victims of Crime (VOC) roundtables held in April and June, and again in August 2018, to discuss key issues relating to the review and reform options;
- consultation with state, interstate, national and international government and non-government organisations and research bodies and with victims of crime support and advocacy bodies;
- a detailed analysis of sentencing remarks for the offence of manslaughter committed against both child and adult victims to examine — at the micro level — the purposes and factors that sentencing judges treated as relevant for the purpose of sentencing, and the relative weight accorded to those factors.

The Council's Advice and Recommendations aim to: provide an evidence-based response to improve sentencing practices for child homicide; provide the ability to monitor the impacts of reforms recommended over time; and ensure family members of victims of child homicide receive the information and support they need throughout the criminal justice process.

Advice

Advice 1: Legislative sentencing purposes for child homicide

The current sentencing purposes as listed in section 9(1) of the Penalties and Sentences Act (Qld) are appropriate. Further statutory guidance on the application of these purposes to the sentencing of offenders for child homicide — such as to list specific purposes as the primary sentencing purposes — is not required to ensure children's vulnerability is reflected in sentencing or to achieve higher sentences.

Advice 2: Adequacy of penalties imposed on sentence for child homicide offences — manslaughter of a child under 12 years

Penalties imposed on sentence for manslaughter offences committed against children under 12 years — in particular, those offences involving the direct use of violence — do not adequately reflect the unique and significant vulnerabilities of child victims. Additional legislative guidance to respond to this issue is required (see Recommendation 1).

Advice 3: Impact of the serious violent offence scheme on sentencing

The Council is concerned that the operation of Part 9A of the Penalties and Sentences Act 1992 (Qld) is exerting downward pressure on head sentences for child manslaughter in Queensland. A court is required, as a form of mandatory sentencing, to declare an offender convicted of a serious violent offence when imposing a sentence of 10 years or more for listed offences (including manslaughter). This unintended impact highlights the importance of fully considering all potential implications of reforms to sentencing law and practice.

To respond to these concerns, the Council suggests the Queensland Government consider initiating a review of the serious violent offence (SVO) scheme both in relation to its operation for child manslaughter and more generally. This review should identify how sentencing levels have been impacted by the introduction of the SVO scheme, and any reforms required to ensure any existing barriers to achieving higher head sentences in Queensland for child manslaughter and other offences listed in Schedule 1 of the Act are removed.

Advice 4: Operation of section 13A of the Penalties and Sentences Act 1992 (Qld)

The Council notes stakeholder concern that sentences imposed under section 13A of the Penalties and Sentences Act 1992 (Qld) ultimately undermine public confidence in the justice system. This is because the way this section operates does not allow the community access to all the information that informed the court in imposing the sentence — in particular, the assistance offered in the investigation and prosecution of co-offenders, and the sentence that would have been imposed without this assistance. Given the broader implications of any potential reforms, and the fact that such reforms are beyond the scope of these Terms of Reference, the Council suggests the Queensland Government consider identifying this as an area for future investigation to enable more detailed consideration to be given to this issue.

Recommendations

Recommendation 1: Introduction of new aggravating factor for child homicide offences

Section 9 of the Penalties and Sentences Act 1992 (Qld) should be amended to include a requirement that, in sentencing an offender for an offence resulting in the death of a child under 12 years, courts must treat the defencelessness of the victim and their vulnerability as an aggravating factor.

Recommendation 2: Review of treatment of new aggravating factor for sentencing purposes

The Queensland Government should review the effectiveness of the proposed reforms to section 9 of the Penalties and Sentences Act 1992 (Qld) post-commencement.

Recommendation 3: Queensland Police Service — Allocation of Family Liaison Officers and handover processes

- 3.1 The Queensland Police Service (QPS) should review and enhance its current practice of allocating a dedicated Family Liaison Officer supporting bereaved family members throughout the entirety of their contact with the criminal justice process, including any appeal processes, by providing information and facilitating care. As part of that review, consideration should be given to developing a guideline for appointed Family Liaison Officers on their roles and responsibilities.
- 3.2 The QPS should ensure that processes are in place to formalise appropriate handovers between allocated Family Liaison Officers where a change in staffing occurs whilst the case is still active.

Recommendation 4: Office of the Director of Public Prosecutions — communication with family members of victims of child homicide

The Office of the Director of Public Prosecutions (ODPP) should continue to review current communication practices, processes and training, as required (including the requirements of the Charter of Victims' Rights) to ensure regular and effective communication occurs with family members of victims of child homicide in all cases to keep them informed of key events (unless they have asked not to be kept informed) and to offer conferences prior to and following sentencing and appeal hearings to prepare families and enhance their understanding of the sentencing and appeal processes.

Recommendation 5: Director of Public Prosecution's Guidelines

The section of the ODPP's Director's Guidelines (as at 30 June 2017) dealing with 'Information for Victims' should be amended to reflect the wording of the Charter of Victims' Rights to provide that victims (including family members of victims of child homicide) are to be informed of each major decision (including the reasons for the decision) made about the prosecution of a person accused of committing an offence (unless they have asked not to be kept informed), rather than this information only being provided on request.

Recommendation 6: Information for courts about responding to needs of family members of victims of child homicide

The Department of Justice and Attorney-General, in consultation with the Heads of Jurisdiction, and with reference to work being led by the Judicial College of Victoria, should support the development and provision of practical information for courts about responding to the needs and interests of family members of victims of child homicide, including preferred approaches to acknowledging family members in the courtroom and referring to deceased victims.

Recommendation 7: Timeliness of and publication of sentencing remarks

The Department of Justice and Attorney-General, in consultation with the Heads of Jurisdiction, should consider strategies to increase the timeliness of providing sentencing remarks for child homicide matters heard in the Supreme Court of Queensland to the Supreme Court Library Queensland and their subsequent publication. Wherever reasonably possible, these should be made available and published the day the sentence is handed down, or early the following day.

Recommendation 8: Identification of child homicide offences for research and reporting purposes

The Queensland Government should consider ways to provide for child homicide offences being 'flagged' for the purposes of enabling ongoing monitoring and publication of information in support of enhancing understanding about these cases, including sentencing outcomes — for example, by:

- allowing these offences to be flagged as committed against a child for the purposes of being recorded in the Queensland-Wide Interlinked Courts (QWIC) database and other relevant databases; and/or
- enhancing current linkages between databases maintained by the Queensland Police Service, Court Services Queensland and Queensland Corrective Services to enable the age of the victim, relationship between the victim and offender, and the potential contribution of substance misuse, family breakdown and mental health to be more readily identified.