



Aboriginal & Torres Strait Islander Women's Legal Services NQ Inc

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Your Reference:

Our Reference:

31 July 2018

Qld Sentencing Advisory Council (QSAC)
PO Box 2360
Brisbane Qld 4001

By email: submissions@sentencingcouncil.qld.gov.au

Dear Advisory Council,

RE: Child homicide sentencing review

The Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc ("ATSIWLSNQ") does not undertake criminal law matters and therefore does not provide legal representation in criminal matters involving child homicide. ATSIWLSNQ does, however, represent women in other civil matters which may be related to such charges, including child protection, family law and domestic violence matters.

We propose to provide only a limited response to the enquiry, specifically in relation to sentencing flexibility. Our position in this respect is to support judicial discretion in sentencing, having regard to the injustices that mandatory sentencing may impose.

While the death of a child is always a tragedy, as noted in the Consultation Paper, circumstances surrounding the death may range from "a moment's inattention"¹ to a high level of culpability. It is our position that the penalty imposed in vastly different circumstances should reflect judicial consideration of the sentencing principles as well as the sentencing factors which are usually taken into consideration.

We have read the Queensland Law Society (QLS)'s preliminary submission and its policy position on mandatory sentencing laws and we essentially agree with the concerns raised in both the submission and the policy position. Our experience as legal representatives for Aboriginal and Torres Strait Islander women, has also provided insights into individual circumstances in which the imposition of a mandatory sentencing regime would result in significant injustice, without any benefit in terms of enhanced community protection or deterrence.

We particularly refer to the following points already made in other submissions, which resonate with our clients' experiences.

We have grave concerns that under a mandatory sentencing regime, a woman whose child dies as a result of "a moment's inattention" will be treated in the same manner as a person who deliberately kills a child, as occurs where an offender seeks to conceal a crime committed against the child. In our respectful submission, these scenarios represent different polarities of culpability and should be dealt with by a judge with the full range of sentencing options.

¹ "Sentencing for Criminal offences arising from the death of a child : Consultation paper summary" p.4

It is our view that the governing principles and sentencing guidelines contained in the *Penalties and Sentences Act 1992* provide an appropriate range of considerations for sentencing. It is our submission that the introduction of a mandatory sentencing regime would introduce an arbitrary imposition of penalties and detract from fairness, transparency and proportionality and lead to serious miscarriages of justice.

We agree with the QLS policy position, that judges are best placed to “administer justice through judicial reasoning”² and through their own experience and knowledge of the law. We further agree that mandatory sentencing impinges on the independence of the courts and is inconsistent with Article 14 of the International Convention on Civil and Political Rights³.

We note that the NSW and New Zealand position that “vulnerability or defencelessness of a victim” are legislatively identified as aggravating factors. We do not disagree that the circumstances in which the death occurred should be taken into consideration in sentencing, but we submit that higher minimum penalties would detract from judicial discretion and potentially lead to a serious miscarriage of justice in some cases.

Finally, as a community legal centre, we undertake community legal education as part of our usual duties. As such, we support the QLS proposal that “community expectations” should be informed by community education⁴ and raising public awareness of sentencing processes in a variety of public forums.

We further support school education that promotes an understanding of human rights, legal processes (both domestic and international) including sentencing and legal studies. In our submission this would contribute to raising current and future public awareness and promote better informed public perceptions about sentencing and the rule of law.

Should further information or clarification be required, please do not hesitate to contact the writer.

Yours sincerely,



Cathy Pereira
Principal Solicitor/Co-ordinator
ATSIWLSNQ Inc.

² “Mandatory sentencing laws policy position” Queensland Law Society p.2

³ QLS submissions, p2

⁴ Ibid.