

***R v Chong; ex parte Attorney-General of Queensland* [2008] QCA 22 (22 February 2008) – Queensland Court of Appeal**

‘Aboriginal and Torres Strait Islander people’ – ‘Breastfeeding mother’ – ‘Exceptional circumstances’ – ‘Hardship on children’ – ‘Mitigating factors’ – ‘Orders affecting children’ – ‘People living in regional, rural and remote communities’ – ‘Physical violence and harm’ – ‘Unlawful wounding’

Charge/s: Unlawful wounding, breach of intensive correction order.

Appeal Type: Appeal against sentence.

Facts: The complainant was the respondent’s mother. They lived on the Aboriginal and Torres Strait Islander community of Mornington Island. Following an argument, the respondent stabbed the complainant three times, causing no lasting injuries. The respondent was sentenced to two and a half years’ imprisonment with immediate court ordered parole for the wounding offence.

Issue/s: Whether the sentence was manifestly inadequate, particularly in relation to the order of immediate parole.

Decision and Reasoning: The appeal was dismissed. The respondent had a substantial and relevant criminal history. In mitigation, the respondent had performed well on the intensive correction order, had pleaded guilty and was committed to looking after her seven children, including breastfeeding a baby and ensuring that those of school age attend school. She was an Aboriginal and Torres Strait Islander woman who had suffered abuse as a child. Atkinson J (with whom Keane JA and Fraser JA agreed) held that the head sentence was not manifestly inadequate. In considering whether the immediate parole order was appropriate, her Honour considered various factors, including the respondent’s disadvantage associated with her Aboriginality. Her Honour observed that, ‘The fact that the respondent is an Aboriginal and Torres Strait Islander woman living on Mornington Island is relevant to the question of the effect on her family’. (See at [36]). While the Court noted that the effect on an offender’s children can only be one relevant circumstance in determining sentence, the Court considered that exceptional circumstances were present. The respondent was a breastfeeding mother. Imprisonment would necessitate moving to the mainland, which would remove any practical means of maintaining the breastfeeding of the baby and personal contact with her other children. Her Honour quoted various secondary sources which discuss the substantial effect of incarceration on families, particularly on Aboriginal and Torres Strait Islander families. (See at [37] – [42]). The original sentence sufficiently incorporated deterrent and punitive elements, while the immediate parole allowed for rehabilitation.