



21 March 2019

Mr Peter Russo MP
Chair
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane QLD 4000

Via email: lacsc@parliament.qld.gov.au

Dear Mr Russo,

Response to public submissions on the Criminal Code and Other Legislation (Mason Jett Lee) Amendment Bill 2019

I would like to provide a response to the submissions made by various stakeholders in relation to the Criminal Code and Other Legislation (Mason Jett Lee) Amendment Bill 2019 (**the Bill**).

The Bill introduces a mandatory minimum non-parole period of 25 years imprisonment for the murder of a child under 18 years (clauses 5 and 15). The Bill also introduces a new offence of child homicide which will include a mandatory minimum non-parole period of 15 years imprisonment (clauses 10 and 17). These are two distinct proposals.

I appreciate the submission made by the Crime and Corruption Commission, however I would like to address a comment raised about the child homicide offence. In particular, the submission incorrectly asserted that the Explanatory Notes to the Bill compare similarities between the child homicide offence (clause 10) and aspects of the New South Wales and Northern Territory legislation. The Explanatory Notes unequivocally provide discussion about two distinct aspects of the Bill; the non-parole period for the murder of a child (clauses 5 and 15) and the child homicide offence (clause 10).

Specifically, the Explanatory Notes state:

The Bill provides for a mandatory minimum non-parole period of 25 years for the murder of a child, which is consistent with other Australian jurisdictions. In New South Wales and the Northern Territory, a standard non-parole period of 25 years applies for murder where the victim was a child under 18 years of age.

The Bill provides for a new offence of child homicide. In 2008, Victoria introduced a separate offence of child homicide into the Crimes Act 1958 with the intent to encourage the courts to impose sentences that are closer to the maximum term.

As such, no comparison has been drawn between clause 10 and New South Wales and Northern Territory legislation. The only reference to New South Wales and Northern Territory is in relation to the standard non-parole periods for the murder of a child only (clause 5).

The CCC also noted that consideration of the Victorian child homicide offence by the Queensland Sentencing Advisory Council in its report, *Sentencing for Criminal Offences Arising from the Death of a Child*, revealed the existence of the offence has not resulted in greatly dissimilar sentencing outcomes for child homicide offenders in comparison to Queensland. While the Victorian child homicide offence does not impose mandatory sentencing, the Attorney-General explained in his second reading speech that its intent is to “encourage courts to impose sentences that are closer to the maximum term”. However, if legislation aimed at recognising the vulnerability of the victim does not strengthen sentencing, then other means to achieve this must be considered. Accordingly, these factors were taken into consideration when determining whether there was a need to impose mandatory sentencing.

In respect of the Bravehearts submission, I would like to address a comment raised in the submission. In particular, the submission incorrectly asserted that all offenders who unlawfully kill a child, which does no amount to murder, would be subject to the child homicide offence which imposes a mandatory minimum non-parole period of 15 years imprisonment. While I appreciate the concerns raised by Bravehearts, this assertion is incorrect.

Clause 11 of the Bill amends section 303 of the Criminal Code to provide that a person who unlawfully kills another under such circumstances as not to constitute murder or child homicide is guilty of manslaughter. In addition, the Explanatory Notes to the Bill also articulate that the purpose of this clause is to provide prosecutors with the discretion to charge a person with the offence of manslaughter in circumstances where the act or omission does not constitute an element stated in the child homicide offence or because the unique circumstances of the case warrant the lesser charge.


The Bar Association of Queensland (BAQ) submitted that a breach of section 286 of the Criminal Code will subject an offender to the child homicide offence, in circumstances such as where a child accidentally drowns while a parent leaves the child to make a phone call. While a breach of section 286 is an element of the child homicide offence, it does not mean that all breaches will result in a charge of child homicide. As discussed, the offence of ‘manslaughter’ may be the preferred charge in cases that present exceptional circumstances and in which the injustice of a mandatory sentence would be manifest. This will enable the court to impose a discretionary sentence which the court considers is appropriate.

I would like to reinforce the defences available for any person charged with the child homicide offence. The Bill includes three defences that will operate as a partial defence, in which a successful defence will result in a manslaughter conviction instead of child homicide. The defences include diminished responsibility, killing on provocation and killing for preservation in an abusive domestic violence relationship. A person will not be criminally responsible for an event that occurs by accident, as defined in section 23 of the Criminal Code.

As articulated in my Explanatory Speech, the child homicide offence is deliberately targeted towards those who act violently towards a child or who neglect a child for whom they have a duty of care. For further clarity on the Bill's intent, please review the Explanatory Notes and Explanatory Speech.

Thank you for the opportunity to provide a response.

Yours sincerely

A handwritten signature in black ink that reads "David Janetzki". The signature is written in a cursive style with a large, stylized 'D' and a long, sweeping underline.

Mr David Janetzki MP
Shadow Attorney-General
Shadow Minister for Justice