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7 March 2019

The Committee Secretary
Legal Affairs and Community Safety
Committee
Parliament House
George Street
Brisbane Qld 4000

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

Dear Ms Dalton,

Criminal Code and Other Legislation Amendment Bill 2019 and Criminal Code and Other Legislation (Mason Jett Lee) Amendment Bill 2019

I refer to correspondence from the Chair of the Legal Affairs and Community Safety Committee inviting submissions in relation to the above mentioned Bills currently being examined by the Committee. The following submission on the Bills is made by the Crime and Corruption Commission (CCC).

Clause 3 - Criminal Code and Other Legislation Amendment Bill 2019

The CCC notes the objective of Clause 3 which will expand the definition of murder to include death caused by acts or omissions, done or made, with reckless indifference to human life. The CCC understands that Clause 3 is an additional initiative to the Queensland Sentencing Advisory Council (QSAC) recommendation in its report, *Sentencing for Criminal Offences Arising from the Death of a Child* (the Report), for a new aggravating factor for child homicide offences under section 9 of the *Penalties and Sentences Act 1992*.

While the QSAC Report considered sentencing practices for child homicide in other jurisdictions, and relevant offences in Australian jurisdictions, the United Kingdom and New Zealand, it did not discuss or analyse the implications for, or specific benefit of introducing an additional offence category in the Queensland context. The introduction of an additional basis for the offence of murder in Queensland requires careful and detailed consideration, particularly as to its unintended consequences.

Though homicide laws across Australia are broadly consistent, the incorporation of new elements from another jurisdiction, may not neatly translate, given the origin of those elements within quite different legislative frameworks. For example, the proposed extension of the definition of homicide in section 302 of the Queensland *Criminal Code* would necessarily require careful assessment of its impact on other provisions of the Code, particularly those imposing duties in Chapter 27. Additionally, the analysis in Chapter 3 of the Report reveals that Queensland is one of only two Australian jurisdictions where murder attracts both a mandatory life sentence and a mandatory non-parole period. This is a significant contextual factor that may practically weaken the perceived benefits of the proposal if it has a negative effect on decisions to prosecute or convict persons charged with murder on the basis of the extended definition.

The CCC understands that the extended definition for the offence of murder in Clause 3 is based on the definition of section 18 of the *Crimes Act 1900* (NSW). That Act is not a code and its provisions sit within a common law legal framework as it applies in New South Wales. The history of section 18 of the *Crimes Act 1900* was recently dealt with by the High Court in *IL v The Queen* (2017) 260 A Crim R 101, where the Court observed that the section intended a reformulation of the common law relating to murder, inclusive of the common law requirement of ‘malice aforethought’. There is no direct equivalency between the requirements of section 18 of the *Crimes Act 1900* and those proposed in the Bill, including the provisos in section 18(2) of the Act. The implications for these differences is also a matter that requires careful and detailed consideration.

Clause 10 - Criminal Code and Other Legislation (Mason Jett Lee) Amendment Bill 2019

The CCC notes the objective of Clause 10 in proposing a new offence of child homicide, punishable by mandatory life imprisonment, in circumstances that might otherwise constitute manslaughter. The range of conduct captured by Clause 10 is quite broad but there has not been any detailed evaluation of its scope. The Explanatory Notes to the Bill compare similarities between Clause 10 and aspects of the New South Wales and Northern Territory legislation providing in each case for a standard 25 year non-parole period where the victim of a murder was a child, however the New South Wales and Northern Territory provisions sit within a very different legislative context: the Northern Territory does not have a separate child homicide offence and New South Wales does not have mandatory life imprisonment for the murder of a child. These differences have significant practical effect for comparing the potential application of Clause 10 in the Queensland context.

While conceptually Clause 10 is consistent with the Victorian model in providing a separate offence of child homicide, this is the only similarity between the two pieces of legislation. The Victorian offence found in section 5A of the *Crimes Act 1958*, applies only where the victim is under 6 years of age, provides for a maximum penalty of 20 years imprisonment, and perhaps more importantly, the Victorian offence is an alternative to manslaughter, not murder. Additionally, consideration of the Victorian stand-alone offence by the QSAC in its Report, revealed the existence of the offence has not resulted in greatly dissimilar sentencing outcomes for child homicide offenders in comparison to Queensland.¹

This submission is not confidential and may be published by the Committee.

Sincerely,



A J MacSporran QC
Chairperson

¹ See Queensland Sentencing Advisory Council (2017), *Sentencing for Criminal Offences Arising from the Death of a Child*, pp 97-98 and 100-101.