



11 March 2019

Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE Q 4000

Email: lacsc@parliament.qld.gov.au

Dear Sir/Madam

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

We refer to the email dated 20 February 2019 seeking Submissions on the above Bills by 12 March 2019. We commend the Queensland Government for their commitment to better protect vulnerable children and young people through increased penalties for child related death offences.

Protect All Children Today Inc. (PACT) is a non-profit community organisation established in 1986 as a service provider of court support and advocate for vulnerable children, young people and their families. PACT's Child Witness Support Program provides support for children and young people who are required to give evidence in criminal court matters, either as victims of, or witnesses to, a crime. PACT recruits Child Witness Support Volunteers to provide child victims and witnesses with support and information about the Criminal Justice System. Since its establishment in 1985, PACT has supported over **23,700** child victims and witness.

PACT is supportive of any legislative reforms that better protect vulnerable children and young people who have been victims or witnesses of crime. PACT continually refers to the Convention on the Rights of the Child (CRC) to ensure it is operating in accordance and in the best interests of the children and young people we support.

In opening, PACT agrees that community concerns are magnified when a child is a victim of homicide and that education is paramount to build community confidence. In addition, PACT is of the view that if ***the Charter of Victim's Rights*** were adequately enforced and embedded into the Policies and Procedures of all key stakeholders, many of the challenges faced by victim families would be addressed.

Criminal Code and Other Legislation Amendment Bill 2019

PACT agree with the Queensland Sentencing Advisory Council's consultation which found that sentencing for manslaughter cases involving the direct use of violence against a young child is not viewed by the community as adequate as the sentences do not reflect the unique and significant vulnerabilities of child victims. The introduction of the new aggravating factor will support the court's treatment of these offences as more serious and therefore, deserving of greater punishment. This would also send a positive message through the broader community and to potential offenders that this behaviour is unacceptable and will incur lengthier prison sentences.

Vice Regal Patron: His Excellency the Honourable Paul de Jersey AC, Governor of Queensland

Amendment of Criminal Code:

PACT endorses the proposed expansion of the definition of murder by s302(3) to include reckless indifference to human life and the inclusion of the proposed paragraph which states “*if death is caused by an act done, or omission made, with reckless indifference to human life*”. By ensuring a person is declared convicted of a serious violent offence, the Defendant is more likely to receive and serve a higher sentence because of the disregard shown for human life. PACT is pleased this will apply to include other vulnerable people such as the disabled or elderly.

In relation to the maximum penalties, PACT believes that these should be based on the seriousness of the offence and be in accordance with other jurisdictions throughout Australia. Therefore, PACT supports the proposed amendments to s324(4) (failure to supply necessities) and the wording change from ‘misdemeanour’ to ‘crime’. PACT further support the increase in the maximum penalty from three (3) to seven (7) years imprisonment.

The Evidence Act 1977

PACT strongly supports the operation of the *Evidence Act* which prescribes protected witnesses and regulates the manner of cross-examination, such that a self-represented Defendant is prohibited from cross-examining a protected witness. No child should ever be put in the position of being cross-examined by the Defendant. As you would appreciate, one of the child’s greatest fear is coming into contact with, or facing, the Defendant. As such, PACT believes this should be avoided at all times.

We would also like to see this practice enforced in child-related matters before the Magistrates Court to ensure vulnerable witnesses receive adequate protection from further victimisation. Unfortunately, PACT Volunteers encountered a situation recently which involved a Magistrate who allowed for a self-represented litigant to cross-examine the children he had allegedly assaulted. This was extremely traumatic for the children involved.

Amendment of Penalties and Sentences Act 1992

PACT believes that any offences committed against a child should incur harsher penalties given the child’s obvious level of vulnerability. In addition, the age of the child is extremely relevant and PACT strongly believes that abuse by a person in a position of trust such as a parent, step-parent, caregiver, teacher, etc. should result in harsher sentences being imposed as the offense involves the Defendant taking advantage of this known level of vulnerability.

In regard to s9(9) (Sentencing guidelines) PACT fully supports that when the court to treat the child’s defencelessness and vulnerability, having regard to the child’s age, as an aggravating factor in determining the appropriate sentence for an offender convicted of the manslaughter of a child under 12 years.

PACT is appreciative of the consequential amendment made to Schedule 1 (Serious violent offences) to include a reference to section 324 of the Criminal Code where if a person has been convicted of a serious violent offense, special provisions in regard to parole are enforced.

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

In opening, PACT believes that the Queensland Government should show caution including the name of a specific person ie. Mason Jett Lee in the Legislation. This could potentially be perceived as narrowing the intended purpose. It also maintains an ongoing link to a single victim which may impact negatively on a family’s ability to fully recover and could lead to other victim families feeling disregarded. Therefore, PACT is of the view that the legislation needs to be easily recognisable and broad enough to cover a range of different child-related offences.

Inclusion of words “or child homicide”

PACT supports the inclusion of the words “**or child homicide**” after murder throughout the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*, *Criminal Code*, *Criminal Proceeds Confiscation Act 2002*, *Mental Health Act 2016*, *Penalties and Sentences Act 1992*, *Victims of Crime Assistance Act 2009*, *Weapons Act 1990* and *Working with Children (Risk Management and Screening) Act 2000*.

PACT supports the inclusion of s302A(1) which clearly defines child homicide.

We express deep concern over the introduction of **mandatory sentences** as proposed in s305(15). Generally, Australian criminal laws set a maximum penalty to allow for judicial discretion as to an appropriate sentence length. However, mandatory sentences can have the effect of curtailing a Judge's discretionary power to take into account a case's particular circumstances, including any evidence of premeditation or intent. There is such a broad range of child related homicides (unintentional negligence, accidental deaths to severe physical abuse) and the varying aspects need to be taken into careful consideration by the presiding Judge who is constrained by the law, has the expertise and experience to make an informed judgement based on the evidence available.

Whilst PACT believes perpetrators of child deaths should be punished accordingly, PACT is concerned that mandatory sentencing can result in the reduction of appropriate and necessary judicial discretion. Moreover, mandatory sentences can potentially affect the more vulnerable members of the community negatively. This would include children and young people, homeless people, people with a mental illness or drug addiction and Indigenous people.

Lastly, if you have a mandatory minimum there is no incentive (such as a reduced sentence) for the accused to enter a pleas at an early stage or cooperate with authorities. Therefore, Defendants are more likely to proceed to trial rather than plead guilty, which will serve to increase the workload of courts and negatively affect witnesses who must give evidence.

In relation to s309A(17), punishment of child homicide, again PACT believes judicial discretion is required in sentencing to ensure all mitigating circumstances are taken into consideration.

It was pleasing to note this proposed legislation refers to a "child" as a person aged under 18 years at the time the offence occurred. However, this is contrary to other pieces of legislation such as *the Evidence Act 1977*. PACT appreciates that there is much confusion across the child protection, policing and justice sectors in relation to when a child becomes an adult and PACT is of the opinion that this is when a child turns 18. If this view was uniformly adopted, PACT believes that "at risk" children and young people would be greater protected through intervention and adequate support.

Amendment of Youth Justice Act 1992

PACT philosophically disagrees with the proposed amendment to s127(56) in relation to the court sentencing a child to detention for life on a conviction of child homicide. PACT does not believe children and young people have the emotional maturity to recognise the potential impacts of their inappropriate or ill intended behaviour and that they can act due to peer pressure and poor decision making. Young offenders need to have access to rehabilitative support services to ensure they have the opportunity to atone for their past negative behaviours to turn their life around. Further, as mentioned previously, PACT does not believe that mandatory sentences should be introduced for the reasons detailed above.

PACT is very grateful to be consulted about this important issue. Should your staff require clarification or further information on any of the issues raised, please do not hesitate to contact Mrs Jo Bryant, PACT's Chief Executive Officer on telephone [REDACTED] or email [REDACTED]

Thank you for the opportunity to provide comment on this important legislative review. We trust our input has been of value.

Yours sincerely


Alexandra Marks
Chairperson


Jo Bryant
Chief Executive Officer