Speech By

Daniel Purdie

MEMBER FOR NINDERRY

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CRIMINAL CODE AND OTHER LEGISLATION AMENDMENT BILL; CRIMINAL CODE AND OTHER LEGISLATION (MASON JETT LEE) AMENDMENT BILL

Mr PURDIE (Ninderry—LNP) (3.44 pm): Corby Akehurst did not know what he had done to deserve being squeezed so tightly his ribs popped. He was only 18 months old when his father, Shane, started torturing him. The torture began at Christmas in 2014. When he would not settle at night, probably because he had excruciating pain from his broken ribs, his father would go in and sit beside him on the bed. When Corby looked up at him crying, Shane would punch him in the face. As Easter and his second birthday approached in 2015, his mum left him at home alone with his dad so they could bond. Shane did not want to bond with his son; he wanted time to himself, so he put Corby to bed. When Corby got out of bed, Shane slapped him, told him to shut up and go to sleep. When Corby came out of his room, Shane would throw him back into bed, each time with more force. He eventually snapped, throwing his little boy with all his force. His head slammed into the wall and he began convulsing. That is when the lying and cover-up began.

Shane called triple 0 and in a panicked but innocent voice told the operator he had just found his son unconscious and unresponsive in bed. He was pretending to cry and calling for Corby to wake up as the triple 0 operator gave CPR instructions over the phone. The ambulance arrived at their Kin Kin home and a medivac chopper airlifted Corby to the Lady Cilento hospital.

I got the call at home later that evening. Two of my staff were en route to the address. On their arrival Shane was at the home acting as if nothing had happened. He provided a version blaming the other kids and the dog. Even the family goat got blamed for Corby's injuries. He said Corby was clumsy and was always falling over and hurting himself. Later that night, after an update from the medical experts at Lady Cilento hospital, a major incident room was established and a crime scene was declared at the family home. The next day as Corby was fighting for life in the ICU, Shane sobbed at his bedside pretending to be father of the year. Later that night, in a small room at the Lady Cilento Children's Hospital not far from where his son lay dying, Shane realised his excuses were not flying and admitted to me the events I have outlined above.

Corby never recovered; he died a few days later and we charged Shane with murder and torture. The medical evidence listed 81 separate injuries suffered on numerous occasions including injuries to his scrotum consistent with squeezing or blunt force trauma. His ribs were so badly broken that they were infected and had fused in different places and were malformed. However, it was the acute catastrophic brain injury that killed him. His death was violent and callous. His short life was filled with terror and pain inflicted at the hands of his own father. Last month Shane Akehurst pleaded guilty to manslaughter and was sentenced in the Supreme Court. He got higher than the average sentence due to the associated torture charge, but he will still be eligible for parole in six years after time already served. Corby's family and our wider community are rightly outraged.

What I hope to do in the time I have remaining this afternoon is to outline an honest, practical application of our current law, the government's Criminal Code amendment bill, particularly the expanded definition of murder to include reckless indifference and our new proposed child homicide laws. The murder of a defenceless, vulnerable, young child is the most serious and the most difficult crime for detectives to solve. As opposed to other adult murder investigations where police can often obtain CCTV, text messages, a murder weapon, witness statements or other surrounding evidence, the murder of a child is often committed in the family home in the dark of night where there are no witnesses, no weapon to analyse and no surrounding evidence to assist the investigation. Subsequently, it is often hard for police to satisfy the element of intent to commit murder or grievous bodily harm, so accepting a plea to manslaughter is an easy option for the Crown.

As most members in this chamber would know, currently to be found guilty of murder, which does attract a mandatory life sentence, the Crown must prove the offender had intent to kill or at least the lower threshold of having intent to cause grievous bodily harm. In the Akehurst case, in Shane's record of interview when I asked if he thought throwing his toddler son against the timber wall with all his force was likely to cause grievous bodily harm, he said, 'I didn't care at the time.' Even with this admission, it was decided by the Crown that intent, even as a probable consequence of his actions, to cause GBH was too hard to prove and a plea to manslaughter was accepted, a decision that instantly cut his sentence in half.

The aim of the government's proposed Criminal Code and Other Legislation Amendment Bill is to strengthen sentencing practices around child homicide by expanding the definition of murder to include reckless indifference to human life. In order to uphold a murder charge in a circumstance of reckless indifference the Crown must show that the defendant foresaw that their actions would result in the probable—not possible—death of their victim. I have real concerns with regard to this bill's method of achieving this objective. As seen in New South Wales, an expansion of the definition of murder to include reckless indifference is no sure way to guarantee that where a child is killed through violence or gross negligence a murder conviction will result. This is due to the incredibly high threshold that reckless difference places on the Crown.

This morning I spoke to a former colleague, a detective superintendent in the New South Wales police force, who was formerly an officer in charge of the New South Wales state homicide squad. He told me that the New South Wales state DPP rarely proceeds with reckless indifference. They usually indict with the element of intent, as it is easier to prove intent to cause GBM than it is to establish the offender knew their actions were recklessly indifferent and likely to cause death, so the DPP usually accept a plea to manslaughter. His personal experience is supported by the New South Wales case law outlined earlier by our shadow Attorney-General. In the Akehurst case I mentioned earlier, if his admission that he 'snapped' and did not care if his actions would cause the child GBH was not enough to satisfy a charge of murder, it also would not have been evidence enough to satisfy the court that he knew his actions would probably cause death, and therefore it still falls short of the reckless indifference threshold.

I agree with others here that tweaking the definition is legal trickery. It will result in a lawyers picnic but have no real impact on appropriately punishing the most serious offenders in our community. In contrast, our proposed new specific child homicide laws will complement the government's bill in the event reckless indifference does not result in a murder conviction. It will act as a deterrent and it will enforce stronger penalties. Our new child homicide law will essentially fill the big gap between mandatory life for murder or 6.8 years for manslaughter. Our new child homicide offence will mean that offenders convicted of child manslaughter will serve a mandatory minimum sentence of 15 years in jail.

This new offence will apply to any person who kills a child by an act or omission, including an act of violence, sexual offence or breach of duty in the Criminal Code. Violence includes vigorous shaking, punching, kicking, stomping, throwing, squeezing, suffocating, strangling or violent acts that cause the child's death. There are also sensible safeguards in our bill that will ensure that a child homicide offence will not apply to accidental deaths such as where a child drowns in a dam or is accidentally run over by a car. Reckless indifference by itself does not work. It has not worked in New South Wales; it is just window-dressing. Our bill will complement it and act as a safeguard.

There is no excuse for killing a vulnerable, innocent and defenceless young child. There is no worse crime, there is no worse offender and there is no punishment harsh enough to fit this crime. Monsters who kill innocent, defenceless young kids should serve at least 15 years behind bars. I urge those opposite to do the right thing and support our bill, not only to appropriately punish these monsters but to act as a deterrent and protect our most vulnerable.