Speech By

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

Mr JANETZKI (Toowoomba South—LNP) (3.17 pm): I move—

That the Criminal Code and Other Legislation (Mason Jett Lee) Amendment Bill be now read a second time.

I rise to make a contribution to the government's Criminal Code and Other Legislation Amendment Bill and to the Criminal Code and Other Legislation (Mason Jett Lee) Amendment Bill 2019, a private member's bill I introduced on 13 February 2019. I confirm that the opposition will be supporting the government's bill and urge the government in turn to support the Mason Jett Lee bill. This is this parliament's opportunity to do the right thing, to stand up and seize this moment to send a clear message—that child killers in Queensland must finally receive the tough punishments they truly deserve.

There is no doubt that the Queensland Sentencing Advisory Council has done an outstanding job in completing its review, and QSAC is right to identify that there are many difficulties connected with child homicide cases. They include determining the cause of death, particularly in very young children; a lack of witnesses; and establishing clear intent. There is no doubt at all about that, but Labor's bill alone does not answer the question asked by families who have lost loved ones: why does this evil seem to be not punished sufficiently by the justice system?

According to QSAC's report into child homicide, offenders sentenced for adult manslaughter received significantly longer average sentences, at 8.5 years, than offenders sentenced for child manslaughter, at 6.8 years. These light punishments do not reflect the value of the child's life but have unfortunately formed strong precedent, making it almost impossible for courts to deviate from them and apply a punishment that fits the crime. I submit that the Mason Jett Lee bill will guarantee that. Today all parliamentarians in this House have the chance to rectify shortcomings in our current legal framework.

Firstly, let me turn to the government's bill. It proposes to expand the definition of murder to include reckless indifference as an element of murder, with the intent of capturing a wider range of offending. It inserts the new aggravating factor into the sentencing guidelines which will require courts to take into account the defencelessness and vulnerability of a child under 12 years. It increases the penalty for the offence of 'failure to supply necessaries' from three years to five years imprisonment and changes it from a misdemeanour to a crime. It also proposes to include 'failure to supply necessaries' as a serious violent offence.

The government bill amends section 302 of the Criminal Code to expand the definition of murder to include 'if death is caused by an act done, or omission made, with reckless indifference to human life'. This change adopts the New South Wales definition, which includes reckless indifference as a separate basis for establishing the offence of murder. I note that this proposal was not a recommendation of QSAC.

There are significant concerns that the proposed expanded definition of murder will not always result in a murder conviction even when the killing was violent or grossly negligent. This is because reckless indifference attracts a very high threshold which requires the offender to have the foresight of the probability, as opposed to the possibility, of death arising from that act or omission. It is important to note that the new definition of murder, to include recklessness as an element, will not be specific to child victims but will also include adult victims.

Legal and civil liberties bodies—none of whom, I ought to say, supported the opposition's Mason Jett Lee bill—say the expanded definition could actually work contrary to the government's aim, including in circumstances where the victim has a history of abuse towards the offender. I note that legal authorities, such as Angela Lynch at the Women's Legal Service of Queensland, have said that the new definition of murder was dangerous when combined with mandatory sentencing in Queensland. The Bar Association of Queensland believes that the discretion of sentencing judges and the parole authorities in Queensland is already 'too severely shackled'. These comments beg the question of why the Labor government would seemingly ignore the QSAC recommendations and introduce a concept that was not even proposed by it.

In New South Wales there is ample evidence of case law that shows offenders who have violently killed children entering into plea bargains with the prosecution and pleading guilty to the lesser charge of manslaughter. This has been borne out by the evidence from the practical application of the law in New South Wales. Indeed, an analysis of New South Wales child homicide cases highlights this point.

In the 2004 case R v Hoerler the offender pleaded guilty to manslaughter after an original arraignment on a charge of murder. That case involved a brutal attack on a seven-month-old child. The offender took the child from a pram in the lounge room into the bedroom and struck the child repeatedly, with at least one punch to the head and one punch to the abdomen. At some stage the offender applied a clamp to the baby's toes, causing the child to vomit and die from asphyxiation.

In yet another case a man shook a child, choked the child and then stomped on the child's chest. The man had assaulted the child on previous occasions. The court called the attack on the child brutal and stated that there was 'no evidence of any expression of remorse' by the man. The offender pleaded guilty to manslaughter on the basis that he killed the child by an unlawful and dangerous act—which was accepted by the Crown.

In yet one further case the offender rammed his two-year-old son's head forcefully against a refrigerator door. The offender subsequently placed the boy on a bench where he poked him in the chest. The child fell from the bench to the floor, striking his head again. The offender pleaded guilty to the lesser charge. I could have raised similar issues in the ACT, where 'reckless indifference' comprises part of their legal framework also.

I stress again that all of these horrific cases resulted in a conviction of manslaughter despite the element of 'reckless indifference' being available. As I have said repeatedly publicly, the Crown will end up accepting guilty pleas on the lesser charge of manslaughter. 'Reckless indifference' is a tricky legal fix couched in the very best of intentions. It raises the community's hopes for stronger punishments but will not deliver them. On its own it will fail and it will fail Queensland children.

As I have already stated, this proposal was not recommended by QSAC. In fact, all key legal stakeholders—for entirely different reasons to those that I have raised—including the Queensland Law Society, the Bar Association of Queensland and the CCC, have opposed the expansion of murder to include reckless indifference.

The Queensland Law Society does not believe that there is any cogent evidence or data indicating that the current definition of murder is not appropriately achieving its objectives. These stakeholders also stated that recklessness and intention should not be treated as equivalent concepts.

The Bar Association of Queensland is of the view that a number of domestic scenarios will be caught by 'reckless indifference'—for example, parents being charged for leaving pool gates open or reversing over their own children in the driveway. They assert that other cases unrelated to child deaths, such as extreme dangerous driving causing death, gun accidents and various kinds of behaviour affected by alcohol or drugs, could potentially now attract a murder charge.

This is the element that is proposed by the Labor government's bill. We heard quite fulsomely the critique by the Attorney-General of some of the unintended consequences or alleged unintended consequences of the opposition's private member's bill, but these are some of the concerns raised by legal stakeholders about the government's bill—a government that proposes to introduce law on the basis of evidence over a span of time. I need to raise that as an anomaly in the Attorney-General's argument.

Another aspect of the government's bill is the new aggravating factor. QSAC recommended the introduction of a requirement that, in sentencing an offender for an offence resulting in the death of a child under 12 years, courts must treat the defencelessness of the victim and their vulnerability as an aggravating factor. The government's bill adopts this QSAC recommendation. In particular, the government bill seeks to amend section 9 of the Penalties and Sentences Act 1992 by inserting a new section 9B into the sentencing guidelines.

Currently, the sentencing guidelines are made up of dozens of aggravating factors and mitigating factors. This approach will apply to murder and manslaughter of a child under 12 years. This will not result in drastic change to the sentencing framework. The main reason for this is that, while the court must take into account the child's defencelessness and vulnerability to guide their sentence, this is one aggravating factor that must be weighed up against significant numbers of mitigating factors.

The court will first analyse the aggravating factors, with the aggravating factor of manslaughter of a child under 12 years being one of them. It appears that the scales of justice will tip towards the favour of the victim. However, after being satisfied of any aggravating factors, the court will then turn its mind to mitigating factors. Remorse, admission to guilt and the offender's upbringing are just some of the mitigating factors that might be considered. Sadly, all too often we will see the scales tip back in favour of the offender, leaving families of victims bewildered at the application of the law. In contrast, the opposition's private member's bill, the Mason Jett Lee bill, guarantees the families of victims that their child's killer will serve a 15-year sentence.

The government's bill also amends section 324 of the Criminal Code to change the offence 'failure to supply necessaries' from a misdemeanour to a crime. The penalty will be increased from three years imprisonment to a maximum of seven years imprisonment. This again was not recommended by QSAC.

As a consequence of the amendment to the offence of failure to supply necessaries, the bill amends section 21M—the meaning of a protected witness of the Evidence Act 1977—to include a reference to section 324. A further consequential amendment is made to schedule 1 of the Penalties and Sentences Act 1992 by inserting a new section 30A into the Criminal Code to include a reference to section 324 of the Criminal Code. This again was not recommended by QSAC. This now means that a sentencing court has the discretion to make a serious violent offence declaration when sentencing offenders to between five and 10 years of imprisonment. If a serious violent offence declaration is made, the offender must serve 80 per cent of their term of imprisonment before being eligible for parole.

Now I will turn to the opposition's Mason Jett Lee bill, which I have spoken repeatedly about right across Queensland. This is a bill introduced to remedy the inadequacy of punishments of child killers in Queensland because we knew that Labor does not have the stomach to do what is necessary to deliver justice for Queensland children. Let us never forget the tragedy of our precious young children being killed. I mention 22-month-old Mason Jett Lee: broken bones, ruptured organs, bruised from head to toe, covered in vomit, blood pooling around his neck and ears and a bruise that had swallowed his eye. This bill is named in his honour and memory, but tragically there are so many other precious children who have been killed and their lives cry out for justice. Examples include a three-year-old punched by her father and who died a slow, painful death; a four-year-old punched in the stomach by his mother and who later died of abdominal injuries; a one-month-old baby girl who suffered injuries including a fracture to the skull, ribs and legs; and 18-month-old Hemi Goodwin-Burke, beaten and killed by his drunken babysitter. I will return to Hemi and his family shortly.

The bill is straightforward. If someone is convicted of murdering a child under the age of 18, the court will be required to make an order that the person must not be released from imprisonment until the person has served a minimum of 25 years imprisonment. The bill introduces a new homicide offence in the Criminal Code which will sit between the murder and manslaughter provisions. It will apply to any child under 18 years. Under the new offence, a person who vigorously shakes, punches, kicks, stamps, throws, squeezes, suffocates, strangles or engages in any violent act that causes a child's death will be guilty of child homicide and face a mandatory minimum sentence of 15 years imprisonment.

A person who sexually assaults a child which causes the child's death will be caught under this offence. The abuse of a child for sexual gratification resulting in death is a crime of indescribable evil, which is why any person who rapes a child or commits any sexual offence to cause that child's death will serve a minimum of 15 years imprisonment. A person who has a duty to care for a child and who fails to provide the necessities of life for the child which causes his or her death will also be caught under this offence.

Mandatory sentencing, admittedly controversial, will raise the bar and bring Queensland in line with other Australian jurisdictions that impose sentences that accord with community expectations. We should not forget that at this moment right across Queensland we do have in effect mandatory

sentencing with mandatory minimum non-parole periods for murder including the murder of a police officer and repeat sexual offenders. This is the basis of Queensland law as it stands today for these most serious of crimes.

Now it is this parliament's obligation to represent the interests of the community. Sometimes it is a delicate balance and sometimes it is a controversial balance, but it is a balance that must be found and the voices of the community must be heard. Sometimes the voices of the community must be heard above the legal technicalities, albeit by well-meaning and accomplished lawyers. Our job as parliamentarians is fundamentally different and requires us to balance all competing interests and voices.

On 25 March 2019 the Legal Affairs and Community Safety Committee held a public hearing consisting of a series of eminent and respected lawyers. Unfortunately, tucked away at the end of the public hearing was the lone voice of a family who have lost their everything—their precious boy Hemi, irreplaceable and unspeakably precious to them. The Goodwin and Burke families are here in the gallery again today, as also acknowledged by the Attorney-General. I want to recount some of their words. Shane Burke at the public hearing noted—

No sentence will bring back our child and others who have been killed. We are not seeking vengeance; we are seeking justice.

One of the ways in which the opposition's bill works is that it will offer protection for scenarios where an offender charged with murder subsequently enters into a plea bargain with the prosecution for the lesser offence of manslaughter. Mr Goodwin, Hemi Goodwin-Burke's grandfather, said—

This is not a business deal, which I see in the case of plea bargains because they are private. You do not know what went on; it is between the defence and the prosecution ... Because it never went to court the horrible things that person did did not come to light.

Incidentally, that is one of the QSAC's recommendations that needs to be urgently addressed by the government—better communication with families. I understand from the Attorney-General's contribution that that is well underway. That is a common complaint from families no matter where I travel across Queensland speaking with families. Mr Burke also noted that given the secretive nature of plea bargaining and the manslaughter charge the public believe that it must have been an accident. In reference to this mistaken belief he said—

He did not put 78 bruises on him. He did not cave his skull in like it was a rockmelon. That is what he did, but no-one knew that. They thought it was a one hit thing.

The opposition's bill will mean that an offender has nowhere to hide. They will serve 15 years imprisonment for the manslaughter of a child. That is a guarantee.

I turn now to defences in the bill that will operate as a partial defence in very limited circumstances. The defences of killing on provocation, diminished responsibility and killing for preservation in an abusive domestic relationship will be available for offenders in applicable circumstances. This means that a woman suffering from postnatal depression will have the benefit of relying on such a defence. The defence of killing on provocation is available to a person charged with child homicide. It is not this bill's intent to charge a 17-year-old for the unlawful killing of a 16-year-old. The defence of killing for preservation in an abusive domestic relationship is available to a person charged with homicide. The last thing the bill seeks to do is to make it any more difficult or complex for victims of domestic assault to satisfy self-defence.

All defences will act as a partial defence so that the offender will be convicted of the lesser offence of manslaughter instead of child homicide. As Mr Goodwin observed in the operation of the bill—

That is what this law is meant to capture—not the person who does that stupid act but repeated attacks on the vulnerable child. This is what it is meant to capture. It is not meant to capture the wife who killed her abusive husband. It is not meant to capture any of that.

Again, it is important to make it abundantly clear: people who have the tragic misfortune of being involved in an accidental death will not be caught by the new child homicide offence. Section 23 of the Criminal Code provides that a person is not criminally responsible for an event that occurs by accident. This provision is relied upon to absolve a person from criminal responsibility where an act or omission has occurred independently of the exercise of the person's will or an event that the person does not intend or foresee as a possible consequence. The last thing the opposition wishes to see are parents being charged for leaving pool gates open or reversing over their own children in the driveway. These are scenarios suggested by some of the stakeholders in submissions and they will simply not occur in practice. Again, as Mr Burke has said—

I have read the bill and I believe it is not talking about the accidents or the forgetful mum; it is talking about violence.

Once again, I confirm that the opposition, despite its reservations, will be supporting the government's bill. It is a bill that fails to acknowledge the magnitude of the problem at hand and the tough decisions that need to be made to overcome them, but it is a start. On its own it is just that. Perhaps the government ought to listen more to Shane Burke, who said—

I think considering both of these bills we could unite and make some really robust legislation that will help protect all these children.

I believe that is what we must do. The Mason Jett Lee proposals are tough, but they are exactly what we need to balance the scales of justice in Queensland to give proper value to the lives of our children who have been lost. The community demands meaningful action and our bill will deliver it. For the precious children whose lives have not been properly valued by our justice system, it is painfully and tragically long overdue.