Speech By

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MEMBER FOR MACALISTER

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

Mrs McMAHON (Macalister—ALP) (3.59 pm): I stand here to contribute to this debate, to speak to the amendment bills before the House and to acknowledge that this is no easy thing. We are here to discuss the most tragic and distressing of events that can occur in our society: the death of a child. As I said, there can be no easy conversation. Any time a child dies unexpectedly there are rightfully questions that must be asked and circumstances which must be examined. The place of a child within our society demands it. They are fragile beings, innocent of the wider world and the embodiment of the hope that we have for the future of all of us. They deserve not only our love, time and patience but also our protection to allow them to grow.

The circumstances surrounding the death of a child at the hands of someone who should have been the provider of that love, time or patience—or at the very least a role in protecting a child from danger—causes us to examine all of the factors which may have contributed to such a tragic outcome. It is but one component of the broader complex and interrelated factors that we look at the penalties and sentences surrounding the killing of a child, because in having this debate we may be seen to be throwing our hands up, admitting that children are going to be killed and admitting defeat. I know that I would much rather spend my time here in this House looking at measures and the funding of programs which would prevent situations which lead to the death of a child, but here we are.

I understand that as politicians we spend a not inconsiderable amount of time being reactionary to what happens in the wider community. There is no stronger lightning rod than the community's collective response to the death of a child, particularly in violent circumstances. I have certainly heard, and continue to hear, commentary on the adequacy of penalties and sentences for these offences, so let us look at the legal framework surrounding offences—specifically penalties and sentences—arising from the death of a child, which is what I will focus on today.

The work has been done thanks to the Queensland Sentencing Advisory Council, which released the *Sentencing for criminal offences arising from the death of a child: final report* in October last year. Their extensive research and consultation over a 12-month period produced the final report, and I will unashamedly refer to it throughout my contribution because it is extensive and contains all and any evidence required to contribute to an evidence based discussion.

The report outlines eight recommendations, and I will refer to them shortly, particularly with respect to the government amendment bill. One of the terms of reference of the council's investigation was to determine whether the penalties currently imposed on sentence for criminal offences arising from the death of a child adequately reflect the particular vulnerability of child victims. Reading through the report, one can see the amount of qualitative and quantitative data that was derived and the rigour that went into this task. This was not a skimming of letters to the editor or sifting through an overflowing inbox.

I do support the council's finding that 'sentencing for manslaughter cases involving direct use of violence against a young child are not viewed by the community as adequate.' Further, the council is also of the view that sentencing for manslaughter offences committed against a young child does not adequately reflect the unique vulnerability of child victims. This leads to recommendation 1: the introduction of a new aggravating factor for child homicide offences. It is important to note that recommendation 1 is the only legislative amendment recommendation of the council. It does not recommend new offences, and it certainly does not recommend any regime around mandatory sentences. This is the substance of clause 9 of the government's amendment bill. It amends section 9 of the Penalties and Sentences Act by including subparagraph 9B, which states—

... in determining the appropriate sentence for an offender convicted of the manslaughter of a child under 12 years, the court must treat the child's defencelessness and vulnerability having regard to the child's age, as an aggravating factor.

What is important to note is that this amendment provides a direction for a judge to make specific considerations for vulnerable victims in sentencing but it does not prescribe. It does not tie a sentencing judge's hands. This is important.

I know it is hard to press this case in the public domain because there is a public perception that judges are out of touch with community expectations on sentencing, but even here there is more evidence that the Sentencing Advisory Council can provide members. I implore all members to have a read to assist in dealing with the regular correspondence that accompanies these issues. Let us break it down. The report states that—

... when responding to a general opinion poll the overwhelming majority of people consider sentences are too lenient and that judges are out of touch ...

There you go; that is a headline we see on high rotation. There is some data I would like to bring to this discussion, and it is in the detail. Firstly, public awareness of courts and sentencing is limited. Secondly, research reveals that as people become more informed they report less punitive views on crime, sentencing and offenders. And when the public is provided more information on a given case, judicial sentences and public sentences are very similar. The report continues—

The second Australian jury study found that when informed of the situational and contextual factors of individual cases the 'views of judges and jurors are much more closely aligned than mass public opinion surveys would suggest'.

This is why a large number of the remainder of the sentencing council's report recommendations surround providing the victims, their representatives, the public and media with more information around sentencing in a timely manner.

In the time I have remaining I would like to briefly touch on the opposition amendment bill. It does concern me when someone drafting legislation chooses to use and evoke the death of a child in naming a piece of legislation. This is not just my concern, and I will articulate the submission from the Protect All Children Today organisation. They stated that we should show caution to include the name of a specific person. As stated in their submission—

This could potentially be perceived as narrowing the intended purpose ... legislation needs to be easily recognisable and broad enough to cover a range of different child-related offences.

The submission also states—

It also maintains an ongoing link to a single victim which may impact negatively on a family's ability to fully recover ...

My primary concern with this bill is any approach which seeks to introduce mandatory sentencing. This concern was raised in almost all of the submissions received by the committee. I asked the shadow Attorney-General—who admitted that he did not bother to wait for the Sentencing Advisory Council's final report because he had a 'wide range of information already available to us'—to provide the evidence that supported the role of mandatory sentencing in sentencing. The shadow Attorney-General's amendment bill states—

The intent of the Bill is to recognise and protect vulnerable and defenceless children ...

That is a worthy intent, but when asked to provide the evidence that mandatory sentencing—a key point of difference in the opposition bill—protects vulnerable and defenceless children, he could not. The shadow Attorney-General spoke of community concerns and demands and the need to respond to those demands. He spoke of non-parole periods for murder and repeat sexual offences. He also spoke of the need for deterrence and sending a strong message.

I do have strong reservations about this approach. I feel that, whilst sending messages of deterrence is a component of setting appropriate penalties and sentences for offences, it should not be a determining one. Mandatory sentencing takes away judicial discretion. In 20-odd years of policing I have had many opportunities to scratch my head over decisions made by judicial officers, and I have

even taken umbrage in certain instances, but I go back to my original point. The lack of understanding over the factors that judges and magistrates take into consideration and apply during sentencing is at the root of this lack of understanding. It is important as lawmakers to recognise the expertise in our judiciary and the experience they have in interpreting and applying the Penalties and Sentences Act.

Mandatory sentences also increase the number of contested trials. An offender facing a mandatory sentence has nothing to lose. They will throw the dice, string out a court matter and drag surviving family members through months and months of re-traumatisation.

In examining and reporting on both of these bills the committee heard not only from legal stakeholders but also from community organisations and advocates. We also heard from families of victims. This was no easy topic to examine. I would like to thank my fellow committee members and all those who attended the public hearing. I would specifically like to acknowledge the family of Hemi Goodwin-Burke, who attended and gave evidence before the committee—heartbreakingly so—on the fourth anniversary of the events that led to his death. It was amazing to see your strength and resilience, and I thank you for your ongoing advocacy in this space.