




Speech By
Michael Berkman

MEMBER FOR MAIWAR

Record of Proceedings, 1 May 2019

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

 **Mr BERKMAN** (Maiwar—Grn) (4.19 pm): I rise to speak to the government's Criminal Code and Other Legislation Amendment Bill 2019 and the LNP's Criminal Code and Other Legislation (Mason Jett Lee) Amendment Bill 2019. The death of a child, especially the unlawful killing of a child, is always a tragedy. In this parliament, we must strive to build a society that keeps children as safe as possible—where parents, carers and families have the things they need to thrive, such as a safe, affordable home, access to health care, including drug and alcohol services, and where government agencies responsible for the welfare of children are properly resourced to do their job sensitively and effectively. I pay my respects and give my deepest condolences to those families who have lost a child in whatever circumstances that may have happened and also to those folks who have become advocates on this issue, including those who made a submission to the parliamentary committee.

The Greens and I support the recommendations of the Queensland Sentencing Advisory Council—or QSAC—in responding to these tragic circumstances. When we legislate changes like these bills that will affect the lives of thousands of Queenslanders for decades to come we must always be guided by the evidence and the advice of experts and those who experience the system firsthand. That is why I will not be supporting the LNP's bill and why I cannot support parts of the government's bill that go beyond and contradict the QSAC recommendations.

For my specific comments I will deal first with the LNP's bill. This bill was finalised before QSAC made its findings, so it necessarily ignores its advice. The Greens do not support expanding mandatory sentencing, because the evidence and the advice from legal experts tells us that it does not work and it means that the sentence will almost never fit the crime. As the Aboriginal and Torres Strait Islander Legal Service noted in its submission, there are other ways of increasing non-parole periods, including presumptive parole laws, but the LNP has opted for a crass law-and-order approach.

I turn now to the government's bill. The Greens support the recommendations of the Sentencing Advisory Council, including the proposal to add a new circumstance of aggravation to the offence of manslaughter, which this bill implements. However, we cannot support the other parts of the bill, including the proposal to expand the definition of murder to include reckless indifference, which currently carries a mandatory sentence of life in prison. We cannot support increasing the maximum penalty for failure to provide the necessaries life and adding that offence to the serious violent offender regime. These additional measures, especially the change to the definition of murder, were not recommended by QSAC and, in fact, have never been recommended by any government advisory body or independent agency in Queensland. To be honest, we have no idea where these amendments have come from. No evidence has been presented by either the government or the opposition that these reforms are necessary and, certainly, no-one has done any detailed analysis of any kind about what their impacts would be.

I turn first to that part of the government's bill that we support, which is the addition of a new circumstance of aggravation to the offence of manslaughter. In 2017, the Attorney-General asked the Sentencing Advisory Council to review sentences for people convicted of child homicide. The members of QSAC are reputable experts in their fields and include former judges, academics, advocacy groups, Indigenous communities and the legal profession. The council conducted an extensive process of consultation, including public submissions, community summits, 10 focus groups and detailed research. The council made eight recommendations and offered four pieces of advice. The government accepted all of their recommendations, which is very welcome. In particular, we look forward to seeing the implementation of family liaison officers, better communication with families, more responsive court processes, the publication of sentencing remarks and better guidelines for prosecutors to keep families informed in line with the Charter of Victims' Rights.

I turn now to one of the deeply concerning parts of the bill, namely, the expansion of the definition of murder. We cannot support this change for a number reasons. Firstly, it means a significant expansion of mandatory sentencing, which does not work and which we oppose. Secondly, the government has offered no evidence to show that it is necessary and has not taken any expert advice about its impacts. Thirdly, it could easily lead to a range of perverse and unintended consequences. This amendment would be a major expansion of mandatory sentencing in Queensland. The difference between Labor's bill and the LNP's bill is that Labor expands mandatory sentencing by stealth and the LNP's bill does so explicitly. Not a single expert legal stakeholder supported expanding the definition of murder or increasing the penalty for failure to provide the necessities.

The Crime and Corruption Commission, the Bar Association, the QLS, the Women's Legal Service, Legal Aid Queensland and the Queensland Council for Civil Liberties all raised the alarm about this dangerous amendment. The Women's Legal Service spilled the beans on this incredibly rushed process. It said in its submission—

WLSQ only became aware of the proposed amendment to the definition of murder in the week before the Bill's introduction into parliament and we were given two days to respond to the Attorney General.

...

As the Bill was clearly already drafted and the consultation was undertaken at the last minute—it is difficult to regard it as a genuine attempt to engage with the community on the proposed amendments.

I turn now to some of the key issues raised by submitters in respect of expanding the definition of murder. As I have mentioned, in Queensland, murder carries a mandatory life sentence in prison. Only the Northern Territory has a similar regime. There is no judicial discretion in this respect. As the CCC, the Queensland Council for Civil Liberties and many others note in their submissions, it is impossible to simply import the New South Wales rules with no definition of 'reckless indifference'. I agree with the Women's Legal Service when it cautions that 'a cut and paste approach to reform should be avoided in this situation'.

This newly expanded definition of murder will apply to all murders no matter who is the perpetrator or the victim. The government has totally failed to engage with this fact. The Women's Legal Service has drawn particular attention to the fact that, under these changes, women who kill their abusive partners will be more likely to be charged and convicted of murder and that Queensland's defences to murder in circumstances of domestic violence are already particularly weak compared to those of other states. Manslaughter already carries a maximum sentence of life in prison, which means that for particularly heinous cases the courts already have the discretion to put perpetrators away for life.

One of the very serious possible unintended side effects is illustrated by the following quote—

If they know pleading guilty or not they are getting a minimum 15 years, they will not plead. This means more matters going to trial, more stress and trauma for witnesses but, most importantly, it also leads to an increase of a potential of no conviction at all.

That quote comes not from a stakeholder but from the Attorney-General herself in yesterday's debate while criticising the LNP's bill. Labor's bill expands mandatory sentencing, too, and it will lead to exactly the same problem.

In contrast to the amendments that implement the recommendations, this amendment flies in the face of the views of experts and submitters to the bill. Just yesterday, QSAC released an options paper that articulates its position on mandatory sentencing perfectly clearly. Its view is the following—

In accordance with the evidence, mandatory sentencing does not work either in achieving the purposes of sentencing ... or in reducing recidivism. This is because, as a matter of principle, it assumes that every offence and every offender are the same which is patently not the case. The Council recommends a review of all the mandatory sentencing provisions presently in the law of Queensland.

The position of QSAC begs the question: why, instead of reviewing and repealing mandatory sentencing provisions in line with their position, are we debating the expansion of mandatory sentencing in such a significant way as is proposed in this bill? Creating and expanding offences that carry

mandatory sentences without any evidence is dangerous. It could even have serious negative consequences, such as reducing the likelihood of guilty pleas and putting families through even more trauma at trial.

Here in the parliament we are not experts, but we are the ones with the final say about what happens in our society. Especially in Queensland where we have no upper house and almost no meaningful scrutiny of the executive, listening to experts and those who see the system in action every day is vital. The government has failed to do that in respect of certain parts of this bill. That is why I cannot support those parts.

In the time that remains to me, I turn to the last part of the government's bill, which are the changes to the offence of failing to provide the necessities of life. The Greens oppose these changes because the government has not offered any justification for them. These changes have never been recommended by any independent review agency. It is another set of changes the origin of which, frankly, are a mystery. This offence is typically charged against women, particularly mothers who are more likely to be the primary caregiver for a child in the first place. The offence is an alternative to the charge of manslaughter, so it is totally wrong to say that people charged with this offence have used direct violence against a child. That is the situation that the government claims to be targeting and which the Sentencing Advisory Council identified as the area of most concern in the community.

As well as increasing the maximum penalty from three years to seven years, the government is also adding this offence to the serious violent offender regime, which is completely inappropriate for reasons that I do not have time to go into. I thank the submitters to the bill. I implore the government to take their submissions better into account.