




Speech By  
**Peter Russo**  
MEMBER FOR TOOHEY

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Record of Proceedings, 30 April 2019

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

 **Mr RUSSO** (Toohey—ALP) (3.39 pm): On 13 February 2019, the Criminal Code and Other Legislation (Mason Jett Lee) Amendment Bill 2019 was introduced into the Legislative Assembly by Mr David Janetzki MP, shadow Attorney-General and shadow minister for justice, and referred to the committee. The committee reported to the Legislative Assembly, recommending that the bill be not passed.

On 19 February 2019, the committee invited written submissions on both the bill and the Criminal Code and Other Legislation Amendment Bill 2019, a bill introduced by the Hon. Yvette D’Ath, Attorney-General and Minister for Justice, on 12 February 2019. The committee reported separately in respect of that bill. Fourteen submissions were received by the committee in respect of the bills. The committee received written advice from Mr Janetzki dated 21 March 2019 in response to matters raised in submissions. The committee received a public briefing about the bill from Mr Janetzki on 25 February 2019.

On 25 March 2019, the committee held a public hearing on the bill and the government bill. The public hearing was held in relation to both the bill and the government bill. The submissions, correspondence from Mr Janetzki and transcripts of the briefing and hearing are available on the committee’s web page. One submitter, PACT, raised concerns about the title of the bill, saying—

... 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.

The Queensland Law Society considered that informing the Queensland community was the most appropriate method of managing the perception that sentences for filicide and child homicide are inadequate. They said—

The research suggests that if the community had access to comprehensive evidence on criminal justice sentencing and trends and were fully and properly informed, they would be generally satisfied with sentencing outcomes. As such, the Society supports increased efforts to ensure public awareness and understanding of sentencing decision processes.

I will now deal with the government bill for the balance of my contribution to the House to support the passing of the Criminal Code and Other Legislation Amendment Bill. On 12 February 2019, the Criminal Code and Other Legislation Amendment Bill 2019 was introduced into the Legislative Assembly. The committee reported on that bill on 16 April. The committee received written advice from the Department of Justice and Attorney-General in response to matters raised in submissions. The department briefed the committee on the bill at a public briefing on 25 February 2019. The department also provided the committee with a written briefing note. On 25 March 2019, the committee held a public hearing on the bill and the private member’s bill. The submissions, correspondence from the department and transcripts of the briefing and hearing are available on the committee’s web page.

On 25 October 2017, the Attorney-General issued terms of reference to the Queensland Sentencing Advisory Council to review the adequacy of penalties imposed on sentences for criminal offences arising from the death of a child in response to ongoing community concern about whether sentences for criminal offences arising from the death of a child are meeting expectations. The Queensland Sentencing Advisory Council released its report on 21 November 2018. The government bill proposes to implement recommendation 1 of QSAC's report, *Sentencing for criminal offences arising from the death of a child: final report*. The bill will amend the Penalties and Sentences Act 1992 to provide that, in sentencing an adult 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.

The bill will also amend the Criminal Code to expand the definition of murder to include reckless indifference to human life and increase the maximum penalty for failure to supply necessaries from three years imprisonment to seven years imprisonment and reclassify the offence as a crime. The explanatory notes advise that 'wide-ranging and extensive' consultation was undertaken by the QSAC during its inquiry into the penalties imposed on sentences for criminal offences arising from the death of a child. The explanatory notes further provide that a consultation draft of the bill was provided to key stakeholders and that their feedback was taken into account in finalising the bill.

The key stakeholders consulted included the Crime and Corruption Commission, the Director of Public Prosecutions, the Bar Association of Queensland, the Queensland Law Society, Legal Aid Queensland, the Aboriginal and Torres Strait Islander Legal Service (Queensland) Ltd, the Aboriginal and Torres Strait Islander Women's Legal Services NQ, Sisters Inside, Protect All Children Today, the Queensland Homicide Victims' Support Group, the Queensland Council for Civil Liberties, Women's Legal Service Queensland, Caxton Legal Centre, Community Legal Centres Queensland, the Commonwealth Director of Public Prosecutions, Bravehearts and Prisoners' Legal Service.

The bill proposes to implement recommendation 1 of the QSAC report by inserting a new subsection 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.

Based on the evidence that the Queensland Sentencing Advisory Council received during its inquiry into child homicide, the QSAC reached the view that—

Penalties imposed on sentence for manslaughter offences committed against children under 12 years—in particular, those offences involving the direct use of violence—do not adequately reflect the unique and significant vulnerabilities of child victims.

After noting that the range of sentences imposed for manslaughter against young children has remained stable since at least the 1990s, and with the majority of sentences between seven and nine years imprisonment, the Queensland Sentencing Advisory Council QSAC commented—

Given improved understanding of the significant long-term impacts of child abuse and neglect, and changes in community attitudes about the use of physical punishment against children, higher sentences for these offences, particularly those involving the direct use of violence, in the Council's view are warranted.

The Queensland Sentencing Advisory Council considered various means of supporting courts to better reflect children's vulnerability in sentencing before determining that creating a new aggravating factor in section 9 of the Penalties and Sentences Act was the best means of achieving the goal. The Queensland Sentencing Advisory Council report identified the benefits of the introduction of a new aggravating factor. They said—

Importantly, this approach will retain sentencing flexibility by taking into account the diverse circumstances in which these offences occur while emphasising the factors that make these offences more serious.

The reform recommended has the advantage of applying not just to the setting of the non-parole period, but also to the setting of the head sentence. The Council considers this is a distinct advantage of this approach over other potential changes contemplated to the operation of the SVO scheme.

...

The proposed aggravating factor will serve two primary purposes. First, it will support courts' treatment of these offences as more serious and therefore deserving of more severe punishment. Secondly, it will meet the sentencing purpose of deterrence and denunciation—sending a clear message to the community that violence against children of any kind is wrong and will not be tolerated.

The department stated—

That increases the penalty that they impose for that offender, having regard to all of the circumstances up to the maximum penalty that applies to that offence. In the case of manslaughter that is a maximum penalty of life imprisonment.

I recommend that the Criminal Code and Other Legislation (Mason Jett Lee) Amendment Bill 2019 not be passed and that the Criminal Code and Other Legislation Amendment Bill 2019, which is the government bill, be passed.