




Speech By
Stephen Andrew

MEMBER FOR MIRANI

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

 **Mr ANDREW** (Mirani—PHON) (4.23 pm): I rise to speak to the Criminal Code and Other Legislation Amendment Bill 2019. I want to thank the committee and the secretariat for the effort and consideration towards this bill. I also want to thank the stakeholders who gave evidence during the public hearings such as Bravehearts, the CCC, the Bar Association of Queensland, the Queensland Law Society, J4H or Justice for Hemi and family members. Taking the life of a child is a reprehensible crime, whether done intentionally or by reckless indifference. Courts regularly give people lighter jail sentences for child manslaughter than they give to people convicted of adult manslaughter. Information provided during the public hearings from Shane Burke and Kerri-Ann Goodwin raised the issue of mitigating factors and aggravating factors when sentencing is considered for the defendant. It would seem that cooperation with police can lead to sentence reductions.

The opposition bill, the Mason Jett Lee bill, is designed to be tougher and more definitive than the government bill. Clause 10 relating to child homicide in the opposition bill creates a special offence category of child homicide which is to fit below murder and above manslaughter—that is, where the facts prove murder or intent to kill, the existing murder offence is to apply. Where the facts prove manslaughter with aggravating circumstance of the victim—the child—being in the care of the offender, then this new offence would apply. This is tougher than the government bill, which only seeks the fact of the victim being a child to be a circumstance of aggravation in sentencing.

Clause 15 relates to mandatory sentencing for murder. Mandatory sentencing for anything is controversial as it removes judicial discretion and the parliament can never foresee all the facts in every possible case that will be before the courts in the future. There is usually solid opposition to mandatory sentencing as being interventionist government. It has appeal as being a quick path to tough sentencing, but there are other ways to get judges to set sentences more in line with community expectations, including judicial bench book instructions. Mandatory non-parole periods set by parliament are a strategy against out-of-touch judges. When employed, they usually err on the side of shorter rather than longer periods to take account of the fact that the parliament cannot possibly have all the facts of every case available to it. The opposition bill puts up 25 years as a minimum sentence.

The government bill is nothing to do with the royal commission recommendations. Rather, it arises from recommendations of the Queensland Sentencing Advisory Council. Clause 3 relates to defining murder as including reckless indifference. The issue here is whether a person intended to kill a person, which is the usual threshold for murder. Reckless indifference is setting a new and lower threshold for murder. It is usually associated with manslaughter—that is, death was caused but not necessarily intended. The usual analogy is that of firing a weapon out of a window randomly and a person is killed. The firer did not intend to kill that specific person—that is, not murder—but death of a person was a foreseeable consequence of the fact—that is, manslaughter.

One has to ask: what is the practical scenario the government is trying to address? On one hand it is perhaps suggesting that acts such as a bomb—terrorism—would be covered as murder given the indiscriminate nature of the weapon vis-a-vis the victim. There is perhaps a loophole that a terrorist bomb is manslaughter. It is the responsibility of the government to make its case to the parliament as to why we should support this bill. On the other hand, what about the unintended consequence of the legislation? What about a farmer operating machinery that causes death or using chemicals and some of those chemicals end up downstream and kill people? Is that reckless indifference? If so, is it more correct for it to be murder or manslaughter?

Clause 9 relates to the manslaughter of a child in terms of sentencing. The fact that the victim is a child is a circumstance of aggregation. This is pretty uncontroversial and long overdue and addresses the problem of out-of-touch judges. It maintains judicial discretion, gives judges guidance, protects sentencing from appeal but does not overreach the parliament into every single court case.

The bill increases penalties in section 324 of the Criminal Code for failure to supply necessities, and this reflects the seriousness of the offence. It also updates definition of murder sentencing guidelines to add weight to crimes against children under 12 years of age. The government cannot have it both ways. It would appear that only a part of the work concerning the royal commission's recommendations has been adopted. The government has turned its back on key recommendations, including recommendations 89 and 90 of the 2015 *Redress and civil litigation report*. The government has put forward this bill. It is one thing to implement sentencing reforms but, at the same time, this government is ignoring key reforms to make institutions accountable for child abuse.

This government is wasting so many opportunities to implement all of the royal commission recommendations. Experts have advised that the government should implement the following policy objectives. The first would be to define child abuse, including all its forms of abuse. Secondly, the strict liability of institutions; thirdly, the retrospectivity of institutional liability—

Mrs D'ATH: Madam Deputy Speaker, I rise to a point of order. I am very hesitant to rise to a point of order in relation to this debate. However, the member for Mirani seems to be talking in relation to the civil liability bill, which is not what we are debating today. We are debating the changes to the Criminal Code in relation to child homicide. I ask the member to come back to this bill, because he is anticipating debate on another bill.

Madam DEPUTY SPEAKER (Ms McMillan): Thank you, Attorney-General. Member, please return to the long title of this bill.

Mr ANDREW: If this government is serious about justice for children and preventing crimes against children, it will implement all the recommendations of the royal commission. We need to start listening to child protection experts.