



Speech By  
**Hon. Yvette D'Ath**


**MEMBER FOR REDCLIFFE**

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Record of Proceedings, 12 February 2019

## **CRIMINAL CODE AND OTHER LEGISLATION AMENDMENT BILL**

### **Introduction**

 **Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice) (11.45 am): I present a bill for an act to amend the Criminal Code, the Evidence Act 1977 and the Penalties and Sentences Act 1992 for particular purposes. I table the bill and explanatory notes. I nominate the Legal Affairs and Community Safety Committee to consider the bill.

*Tabled paper:* Criminal Code and Other Legislation Amendment Bill 2019 [113](#).

*Tabled paper:* Criminal Code and Other Legislation Amendment Bill 2019, explanatory notes [114](#).

I am pleased to introduce the Criminal Code and Other Legislation Amendment Bill 2019. In doing so I acknowledge Hemi Goodwin-Burke's parents, Shane and Kerri-Ann, and Hemi's grandmother in the gallery and also Tiahleigh Palmer's mother, Cindy, and her aunt who are here today.

Under this legislation, killers whose callous disregard for their victims leads to their death will, if convicted, face life in jail. These are the people who are escaping murder convictions because intent is inherently difficult to prove in these types of cases. This bill will expand the definition of murder to include the unlawful killing of another if the death is caused by an act or omission with reckless indifference to human life.

The Palaszczuk government wants justice to be done: justice for the victims and justice for those left behind, their families and friends. We want to see strong sentences imposed when people take the lives of our most vulnerable—our children, our elderly and the disabled. The community must have confidence that this state has a criminal justice system that is robust in its protection of the most vulnerable members of our community. Some of the most vulnerable members of our community are, of course, our children. Every child has the right to be safe and live in a home free from violence. Every adult needs to remember that being a parent and a carer is not a right; it is a responsibility.

The Palaszczuk government recognises there is significant public concern about whether sentencing for criminal offences involving the death of a child is meeting the community's expectations. These deaths result in a deep sense of sadness for the death of a vulnerable child and a desire to ensure those responsible are held to account. That is why I requested that the Queensland Sentencing Advisory Council, QSAC, review the adequacy of penalties imposed on sentence for criminal offences arising from the death of a child. QSAC is an independent body with members from a diverse range of backgrounds and with a wide range of experience. Their role is to inform the community about sentencing in Queensland through research and education, to engage with Queenslanders to gather their views on sentencing and advise on sentencing matters. QSAC plays an important role in ensuring our sentencing laws are up-to-date and meet community expectations. QSAC's year-long review involving extensive consultation and research culminated in a thorough evidence based report, *Sentencing for criminal offences arising from the death of a child: final report* released on 21 November last year. The report makes eight recommendations and presents four areas of advice to improve sentencing practices and community understanding in relation to sentencing for child homicide.

As QSAC acknowledged, while the number of deaths due to child homicide in Queensland is small, these deaths are nevertheless felt deeply by the community. These children who have lost their lives as a result of homicide are not just a number or statistic; they represent a child lost and a young life cut far too short. I thank QSAC for undertaking this significant and important body of work. I would also like to acknowledge the invaluable contributions of all who made submissions and contributed to the review, particularly those families bereaved by child homicide who shared their knowledge and experience with QSAC. While this involvement with the review was no doubt extremely difficult at times, it has been critical and ensures the human impact of these offences was not forgotten in QSAC's deliberations.

The focus of QSAC's review was on sentencing for the offence of manslaughter. QSAC's work highlighted that manslaughter offences occur in a diverse range of circumstances. A number of features of these cases make them particularly challenging to investigate and prosecute, including that they usually occur in private with no or very few witnesses and due to the physical vulnerability of young children it is often difficult to establish what injury or injuries were the substantial cause of the child's death, when these injuries occurred and who was responsible for inflicting them. The same features also make these cases among the most challenging from a sentencing perspective.

Ultimately, QSAC found that the system is not working when it comes to manslaughter sentences for children. The average custodial sentence for child manslaughter in Queensland is 6.8 years compared to 8.5 years for manslaughter of an adult. QSAC found 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. The Palaszczuk government will implement all recommendations in QSAC's report as well as expanding the definition of murder.

The bill contains amendments to amend the Penalties and Sentences Act 1992, the PSA, to provide that, in sentencing 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. After considering a range of possible options, QSAC considered this to be the best approach. The aggravating factor will serve two primary purposes. It will:

- support the courts' treatment of these offences as more serious and therefore deserving of more severe punishment; and
- meet the sentencing purposes of deterrence and denunciation to send a clear message to the community that violence of any kind against children is wrong and will not be tolerated.

The new statutory aggravating factor in section 9 of the PSA inserted by the bill will apply to any sentence post commencement and is not intended to restrict the ability of courts to take into account other factors, including those applying when sentencing for offences involving violence. This reform has the advantage of applying not just to the setting of the non-parole period but also to the setting of the head sentence—that is, the total period of imprisonment imposed.

QSAC's report considers alternative approaches, including the stand-alone and specific offence of child manslaughter in Victoria, which carries a maximum penalty of 20 years imprisonment. However, research showed that since its introduction in 2008 only three people have been sentenced for this offence. Rather, the sentences imposed range from nine to 9½ years imprisonment. The evidence suggests that the implementation of a specific child manslaughter offence would do very little to increase penalties and satisfy community expectations. The report also addresses the unintended consequences of mandatory sentencing, particularly in respect of child manslaughter cases that occur in a diverse range of circumstances.

The report used the case of a father who abused both his child and the child's mother as one example of two people who were both jailed for manslaughter but whose actions were very, very different. The child's life ended before she was even two months old because her father broke four of her ribs, fractured her arm and caused skull fractures so severe that she received brain damage. The mother tried to seek medical treatment for the child, but her abusive partner actively discouraged her from calling an ambulance after he fatally injured their baby. Over a seven- to 10-day period, he tried to manipulate her so that she would not seek help, but she did. Unfortunately, when she took her child to the hospital it was too late. The child was not able to be saved. In that case, the mother did not physically harm her child. She was a mother who was subjected to domestic violence at the hands of a man whose direct actions killed their child.

To take another example from the report, a father forgot his nine-month-old child was in the back of his car and left her unattended for a number of hours. Tragically, the child died of dehydration. The father was greatly and understandably distressed when he realised what had happened. With respect to the two examples I have outlined to the House, all three parents appeared before the court and

entered pleas of guilty to manslaughter. The cases against each of them were all very different and their levels of criminality were all very different. A fair-minded person could not reasonably argue all three should be sentenced to a mandatory minimum penalty of 15 years imprisonment.

The mother who pleaded guilty to manslaughter on the basis that she did not obtain medical assistance for her child quickly enough, in a domestic and family violence context, would be sentenced potentially to 15 years jail under the LNP's proposed mandatory regime for manslaughter, the same as her partner who violently assaulted their child and showed a callous disregard for their child's needs. Any proposal to apply minimum mandatory sentencing would see the father who tragically forgot about his child in the back seat of his car also receive a mandatory 15-year jail sentence. These examples demonstrate the unacceptable injustice that would follow if this parliament were to legislate for a minimum mandatory sentence for manslaughter.

Seeking to legislate a specific offence of child manslaughter with a mandatory sentence is a simplistic approach to what is a very complex sentencing matter. It is disappointing that the opposition released their policy prior to the release of QSAC's report, underscoring the fact that their policy is not compatible with QSAC's evidenced based findings. QSAC is best placed to provide recommendations in this area as an independent body comprised of legal representatives and community advocates with extensive experience in victims of crime and in conducting prosecutions.

As I have stated previously, many unlawful child killings in Queensland result in an offender being convicted of manslaughter rather than murder for a range of reasons, including difficulty in establishing intent even where the death is due to physical abuse. This present definition of murder was frequently raised with QSAC throughout its review.

The decision to include recklessness as to death in the definition of murder was the result of thorough consideration this government undertook via QSAC into how we can better protect our most vulnerable Queenslanders. It reflects that intention and foresight of probable consequences are morally equivalent—that is, a person who acts recklessly knowing that death is probable and with callous disregard is just as culpable as the person who intends to kill another person.

These amendments will provide police and prosecutors in the future with broader scope to charge killers with murder in circumstances where a child killer shows callous disregard causing a death. If convicted, such offenders will face mandatory life imprisonment or an indefinite sentence and will not be eligible to apply for parole for at least 20 years.

Including an element of recklessness in the definition of murder will bring Queensland into line with other Australian jurisdictions. In New South Wales, reckless indifference to human life is included in the offence of murder. The Australian Capital Territory and Tasmania also include recklessness as a basis for establishing murder under statute, and reckless murder exists under the common law in Victoria and South Australia.

The expansion is not designed to capture tragic accidents, such as a parent or guardian backing out of their driveway and tragically hitting their child or a parent who forgets to secure the pool fence and a child drowns. The expansion is not designed to capture conduct that today would not result in a manslaughter prosecution. Ultimately, what charge is preferred will be a matter for the prosecution and the verdict is a matter entirely for a jury. Consistent with existing laws and common law principles, the expanded definition will operate prospectively and apply to offences committed after commencement.

The bill amends section 324 of the Criminal Code to increase the maximum penalty for the offence of failure to supply necessities from three years imprisonment to seven years imprisonment. This offence may be charged when a child is injured but not killed or charged alongside murder or manslaughter if the facts warrant it. Further work undertaken since QSAC's report was released has highlighted the need to bring the maximum penalty for this offence into line with other jurisdictions and the maximum penalties applying to other similar serious offences in the Criminal Code, including cruelty to children. The increased maximum penalty will more appropriately reflect the community's condemnation of such offending.

The bill contains a number of necessary consequential amendments arising from the increase of the maximum penalty in section 324 of the Criminal Code, including listing the offence as a serious violent offence in schedule 1 of the PSA and in the definition of protected witness under section 21M of the Evidence Act 1977 to prevent an accused person from cross-examining a victim in person.

Another key area highlighted during QSAC's review was the need to ensure effective system responses to child homicide. I am pleased to advise members that work has also commenced on QSAC's non-legislative recommendations in this area to ensure, as far as possible, that the justice system is responsive to the needs and expectations of bereaved family members. The reforms in the

bill presented to the House today and the associated work underway to implement QSAC's recommendations are another important step forward in ensuring perpetrators are held to account and to deliver an improved justice system for victims and their families.

Keeping communities safe is a key objective of the Palaszczuk government. We have a demonstrated track record through the investment of significant funding to reform the child and family support services that assist parents and families. We have strengthened the child protection and foster care systems to keep young, vulnerable Queenslanders safe from abuse and neglect. We are making wide-ranging reforms to improve the blue card system and implement the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. The Palaszczuk government also acted to strengthen the laws applying to child sex offenders.

Great progress is being made in our fight to protect children, but there is more work to be done. Everyone has an important role to play in protecting our most valuable asset—our children. These reforms will mean that, should someone abuse a position of trust they have in relation to a vulnerable person, demonstrate a callous disregard through the refusal to obtain medical treatment, inflict prolonged mental and physical suffering through persistent violence and that vulnerable person dies as a result of a reckless indifference to human life, the offender can expect to be charged with murder and if convicted will be sentenced to life imprisonment.

I strongly encourage members on all sides to take a bipartisan approach on these important issues and deliver the reforms in this bill which are based on the comprehensive and independent evidence presented by QSAC. In conclusion, once again I thank QSAC for its extensive and informative body of work. I also take this opportunity to acknowledge and thank all of the stakeholders for the time and resources they have generously continued to provide during consultation in development of the bill.

I also thank the family members who have advocated long and hard for changes to our law to ensure that sentencing adequately reflects community expectations and to work harder to provide support to victims' family members when they go through these most difficult times, and particularly while they are in the justice system. I commend the bill to the House.

### **First Reading**

**Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice) (12.02 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

### **Referral to Legal Affairs and Community Safety Committee**

**Mr DEPUTY SPEAKER** (Mr Stevens): Order! In accordance with standing order 131, the bill is now referred to the Legal Affairs and Community Safety Committee.