Speech By

Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

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

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice) (6.08 pm), in reply: In replying to the government's bill and the private member's bill, I start by acknowledging all of the speakers on these bills. This is not an easy topic at all. It is extremely serious and it is very sensitive, and I note the emotion in many people's speeches. Irrespective of what has been said in this chamber in this debate, everyone on both sides wants to see increased sentences for child killers. That is all there is to it.

That is why we are doing what we are doing. That is why we had a year-long inquiry with the Queensland Sentencing Advisory Council. That is why we introduced this bill and that is why the LNP introduced its bill. I want to acknowledge that. The government is not taking the position it has in relation to the private member's bill because it is the LNP's bill; it is because we need to ensure that whatever we do in changing the laws in this space to achieve the aim of increased sentences is done on an evidence basis and is also well considered.

I have heard a number of people on the opposition side say that the LNP's bill is seeking to fill the gaps that the government's bill leaves behind, or that both bills complement each other and work together. The problem is that the LNP's bill was not designed to work in conjunction with the government's bill. The LNP's bill was released a week before QSAC's year-long review report was handed down that everyone knew was coming. The LNP's bill was introduced in the absence of knowing what the QSAC report was going to recommend and the submissions and the evidence that QSAC released. That means that the LNP has not explained how its bill works in conjunction with the government's bill.

We are going to have a new element of murder being reckless indifference, then we are going to have child homicide and then we are going to have manslaughter. The definition of 'child homicide' in the private member's bill talks about assault, sexual assault, shaking, kicking and hitting. The question is: where is the distinction between that and what we seek to achieve with reckless indifference for murder? If the shadow Attorney-General is correct in his reading of the LNP's bill—that a jury will be able to choose the alternative of child homicide if it does not believe that the charge of murder is met—how is the jury going to distinguish that when all of the examples that we have talked about in this debate have been the same types of cases? Which case falls into child homicide and which one falls into murder? How is a jury to know that when we are saying that they are the same thing? It is very reasonable to assume that a jury may very well choose, if there is any doubt whatsoever in their minds, the child homicide offence over murder, which will result in 15 years imprisonment versus a mandatory minimum sentence of 20 years imprisonment. That creates complexity and confusion as to what charges are going to be laid and what a jury will ultimately decide.

The bills have not been designed together. The private member's bill was designed in the absence of knowing what the government was going to do and the QSAC report. There has been no explanation about how these bills could work together. The private member's bill proposes an increase

to the mandatory minimum sentence of murder of a child. QSAC specifically went to that issue. In its report it states that it considered increasing the penalty to 25 years imprisonment based on submissions put to it. QSAC said in its report—

... on the basis they may result in injustice in individual cases and, in the case of child homicide, may, in combination with the current life sentence that applies to murder, discourage the possibility of offenders entering a guilty plea.

…

Where a higher non-parole period is warranted, the court retains discretion to set the non-parole period above the minimum non-parole period mandated by law.

We support the recommendation of the QSAC report. We do so for another reason, which is that our bill's reckless indifference element of murder is not limited to children. We understand that we are all focused on increasing sentences for child homicides but, as the report says and as stakeholders put forward, there are many other vulnerable people in our community, including people with severe and profound disability, who are nonverbal, who may be the subject of serious abuse that leads to their death and elderly people. In bringing in that element, we do not believe that it is appropriate to then pick one category out of that vulnerable cohort to which to give a higher sentence. We believe that it is a life imprisonment minimum mandatory 20 years and the court has the discretion to go higher if it believes it appropriate.

In relation to the child homicide offence, the LNP has failed to address the issue raised by the Bar Association of Queensland. I respect the views of the member for Noosa who said that this issue has been discussed and answered by the LNP, but it has not. The LNP has said that the accidental death of a child when a pool gate is accidentally left open, or a parent reverses down the driveway, is not meant to be captured. I accept that, but the LNP has not said that in relation to the example that the Bar Association gave of the woman from a non-English-speaking background who has been the subject of domestic violence, who was making multiple calls trying to find alternative accommodation for her and her child and who left that child unattended in a bar. The Bar Association said that that person would be captured by the child homicide offence mandating a 15 years minimum sentence. The LNP has not said whether it disagrees with the Bar Association's analysis of that case—

An opposition member interjected.

Mrs D'ATH: I take that interjection. It is the Bar Association's submission. The Bar Association has given that example. I also take members to the private member's bill and new section 302A titled 'Definition of child homicide'. In addition to the acts of violence and the offence of a sexual nature, that new section includes 'a breach of a duty stated in section 285 or 286' of the Criminal Code. Section 285 is 'Duty to provide necessaries' and section 285 is 'Duty of person who has care of child'. These are negligence offences. The QSAC report referred to what it considered to be low-level negligent cases—

... a female offender who pleaded guilty to manslaughter of her newborn baby on the basis of not seeking medical attention immediately after the child was born was sentenced to 5 years' imprisonment, suspended after 12 months... The offender was diagnosed with a major depressive episode at the time of the offence, and gave birth alone in the bathroom. It was accepted that the offender had believed, though unreasonably, that the child was already dead and she had not intended to harm the baby.

That person is guilty of manslaughter. That person is guilty of a breach of a duty of care and providing the necessaries of life. That is captured by the child homicide offence in the private member's bill that would see 15 years imprisonment. That is just a fact on the papers. The other example is as follows—

... in one case the female offender had been subjected to domestic violence by her male co-offender, who had fatally assaulted her baby, and he actively discouraged her from seeking assistance every time she suggested calling an ambulance. When she did take the baby to hospital, it was too late.

It is not that, in these cases, the accused had a defence and were not convicted. They were convicted of manslaughter. Despite those circumstances, they were convicted, because they were still guilty of a breach of duty of care and failing to provide the necessaries of life, which are the key arguments in these cases. Most of these cases—and I have had the conversations with the Office of the Director of Public Prosecutions—include failing to provide the necessaries of life and a breach of duty of care. They are negligence cases. Putting aside those cases where people deliberately harm their child—and they are the ones we are trying to get here—for whatever reason I still do not know but the opposition included sections 285 and 286 of the Criminal Code in its child homicide offence. That potentially will see those people I referred to being captured. We have not heard from the LNP about those sorts of examples.

We have heard from the LNP that it has included in the defences domestic violence. Domestic violence can be argued as a defence in relation to child homicide. On its face, that seems okay, except the defences are around killing on provocation. Killing on provocation is when a person killed a person who was seeking to harm them. It is not killing a child on provocation. The child is not provoking that person.

In relation to the defence of killing for preservation in an abusive domestic relationship, I want those opposite to understand this: it is using that defence as an example that someone in a domestic violence situation will have a defence, but that defence relates to killing for preservation in an abusive domestic relationship. This is the defence of someone killing the person who is causing harm to them to preserve their life, not killing their child. That is not a defence. This defence does not apply. It is misleading to say that in the private member's bill there is a defence in a domestic violence situation. Sadly, I am saying absolutely categorically that that defence will not apply to the mother referred to in the QSAC report who has been the subject of domestic violence. That defence does not apply, so those people will be captured by that provision.

That is why I argue that there has not been enough work done around this child homicide offence that would sustain the argument that the LNP's bill should be supported at this stage. If there is any doubt that juries will choose this offence over murder, that means that we are not getting the sentences that we want. There is that risk. We are bringing down those really serious offences that we want to capture as murder and we are increasing those lower-end offences that are negligence and we do not want to see those offenders get a minimum 15 years—or murder, for that matter.

The opposition has said that this is consistent with Victoria's child homicide offence in terms of the creation of a separate offence aimed specifically at child homicide. There have been a number of examples used and criticism about our offence in relation to reckless indifference. In their view it has not worked in New South Wales. What they are not talking about is the fact that on page 98 of the QSAC report in relation to the Victorian child homicide offence that it is based on it states that since its introduction in 2008 only three people have been sentenced for this offence in 10 years. In 10 years there have only been three people sentenced under the child homicide offence. It is not getting the results that those opposite are claiming, yet they have made so many guarantees here today.

In relation to reckless indifference, there is commentary that it is too broad and that courts and juries will struggle to interpret it. There is a lot of jurisprudence around this in New South Wales and other jurisdictions. There are bench books. The Judicial College of Victoria has put out an intentional or reckless murder paper that goes through the elements that must be met to meet the term reckless. It is settled in the sense that there are directions there for juries and the courts as to how to interpret that.

In the time I have left I want to take members to other examples. We have heard a small number of examples that those opposite say have not worked in New South Wales. I refer to a Public Defenders New South Wales report on sentencing under section 19A in New South Wales. These are child deaths since 2000. I will skip over the ones that are multiple family members and older teenagers and just concentrate on giving some examples to give members an idea of what we are doing with reckless indifference. All were convicted of murder.

In the first case I will refer to, an adult caused fatal head injuries to a 15-month-old child. The offender admitted abusing the boy physically over the week preceding the death as they were frustrated by the victim's crying and behaviour. It was an unplanned offence. In that particular case the judge actually said he did not believe that the offender intended to kill the child; that he certainly intended to inflict very serious injuries; he was probably recklessly indifferent to the death of the child. The offence was also aggravated because of the position of trust placed in the offender. He was convicted of murder. There was no intent.

Another example involved the severe assault of a three-year-old stepdaughter left at home with the offender and her nine-year-old sister when the mother went to a refuge. She was assaulted all over her head and body. The offender was intoxicated and had no recollection. He was in a position of trust. He was convicted of murder.

Then there was the case of a seven-year-old daughter who died as a result of starvation and neglect. The daughter suffered developmental delay and autism. She was left in a bedroom in unhygienic conditions. It was one of the worst cases of neglect seen by the court. The mother was convicted of murder. Another case involved the bashing of a two-year-old by a de facto partner. There was blunt force trauma that caused massive internal bleeding leading to death. There was a history of assaults on the victim. The offender was convicted of murder.

In another case, a mother and stepfather killed a three-year-old male child. The stepfather was found guilty of extended joint criminal enterprise. The victim was assaulted over a 51-day period before the murder. There was extensive emotional and physical abuse. There were fatal injuries committed by the mother and the stepfather. There were substantial acceleration forces. There was a conviction of murder. Another case involved the killing of a 12-year-old daughter following sustained beatings over several days. There were horrific injuries through blunt force trauma. There was a history of regular and increasingly violent assaults. The victim was tied to a garage beam by her hands and hit with electric cord. There was slapping and punching. She was tied to a bed and whipped. She was tortured. There was gratuitous cruelty. There was the use of a weapon. There was an absence of intention to kill. There was a conviction of murder. We are bringing in reckless indifference to life because we want to see convictions. Those are the same examples those on the other side use in relation to their child homicide offences. It is too complex. We need to put it into murder and make it clear.

In finishing I would like to talk about the guarantees that are being given. The shadow Attorney-General in his introductory speech said that the LNP's child homicide offence guarantees the families of victims that their child's killer will serve a 15-year sentence. In his second reading speech he stated, 'They will serve 15 years imprisonment for the manslaughter of a child. That is a guarantee.' We cannot say that. It is irresponsible. It is cruel for any one of us to stand here in parliament, as a minister, as Attorney-General, as a police minister, and guarantee that someone will get charged with this offence, that they will be prosecuted for this offence and that a court and jury will convict of this offence—guaranteed. None of us can do that. Those on the opposite side say under our bill you can plead down to manslaughter—as can be done under their child homicide offence. It is misleading to say there cannot be any pleas. With a mandatory 15-year sentence they are certainly less likely to plead, leading to more trials and maybe less convictions overall.

A number of those cases I read out from New South Wales were not just guilty on the verdict, some of them were pleas of guilty because they know that reckless intent can be proven. It is not just the element of intent anymore. We have to be honest to those amazing people in the gallery, to the families out there, to everyone in Queensland. We will do everything we can to increase the sentencing, but ultimately the courts will decide and work within the framework we have set. Let us not make it too complex and let us not pull them in different directions as to how it is supposed to work. We are confident that we have the right model. We do not believe that we should go ahead with a child homicide offence that could see those other negligence cases pulled into the 15-year mandatory sentence—which has not been answered by the LNP—with juries potentially choosing the child homicide offence over the murder offence in high-level offences. Please do not believe what has been said in this debate that in New South Wales it is not working and they are not getting convictions. I have read a number of them since 2000 and they are getting convictions.

I ask members to support the government's bill. This is not a kneejerk reaction to any proposal of the LNP. It was a year-long comprehensive study by the Sentencing Advisory Council. It is well considered, it is evidence based, it is the right thing to do. We oppose the LNP's bill, not because it is the LNP's bill but because we do not think they have the provisions right.