Speech By

Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 27 November 2019

CRIMINAL CODE (CHILD SEXUAL OFFENCES REFORM) AND OTHER LEGISLATION AMENDMENT BILL

Introduction

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice) (3.46 pm): I present a bill for an act to amend the Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004, the Childrens Court Act 1992, the Corrective Services Act 2006, the Criminal Code, the Criminal Law (Sexual Offences) Act 1978, the Disability Services Act 2006, the Evidence Act 1977, the Justices Act 1886, the Oaths Act 1867, the Penalties and Sentences Act 1992, the Police Powers and Responsibilities Act 2000, the Transport Operations (Passenger Transport) Act 1994, the Working with Children (Risk Management and Screening) Act 2000 and the Youth Justice Act 1992 for particular purposes. I table the bill and the explanatory notes. I nominate the Legal Affairs and Community Safety Committee to consider the bill.

Tabled paper: Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019 2149.

Tabled paper: Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019, explanatory notes 2150.

I am pleased to introduce the Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019. The bill comprehensively reforms the criminal justice system's response to child sexual abuse through a range of amendments responding to both the criminal justice report of the Royal Commission into Institutional Responses to Child Sexual Abuse and the Queensland Sentencing Advisory Council *Classification of child exploitation material for sentencing purposes* report, as well as criminalising the possession, supply and production of child abuse objects.

On 15 June 2018, the Queensland government response to all of the royal commission's recommendations was tabled, accepting or supporting in principle more than 240 of the recommendations. Since that time the Palaszczuk government has continued to implement reforms based on the royal commission's recommendations, including most recently a range of amendments in response to civil litigation recommendations, but the journey is not over and there is more to be done.

The *Criminal justice report*, one of the royal commission's earlier reports, was delivered on 14 August 2017. It contained 85 wideranging recommendations aimed at reforming the Australian criminal justice system to provide a fairer response to victims of institutional child sexual abuse. The recommendations span all areas of the criminal justice system, including police and prosecution responses, offences, conduct of trials, evidence, judicial directions, sentencing and appeals. While the royal commission focused on child sexual abuse in institutions, it considered these 85 recommendations are likely to improve responses to child sexual abuse in all contexts.

The bill introduced today is the product of extensive consultation and consideration, including a public consultation process on a draft of the bill earlier this year. This consultation process elicited over 50 submissions from various organisations, stakeholders and individuals. I would like to thank all of those submitters for their considered feedback on these significant reforms and their ongoing interest in protecting Queensland's children and in the operation of Queensland's criminal justice system. I

would like to acknowledge those in the gallery today who are observing this bill's introduction, many of whom are survivors and advocates on behalf of those who were sexually and physically abused as children.

The issues raised during consultation have very much informed the shaping of the bill introduced today. Feedback provided during the consultation largely focused on the new failure-to-report child abuse offence and the proposed amendments relating to the admissibility of certain types of evidence. As a consequence, the bill differs from the consultation draft in a number of key respects which I will outline.

The royal commission heard evidence suggesting that some institutions emphasised reputational protection over the protection of children in their care. This informed its recommendations that jurisdictions create offences of failure to report and failure to protect against child sexual abuse in an institutional setting. Accordingly, the draft bill contained two new third-party offences of failure to report and failure to protect, both targeted at child sexual abuse in an institutional context.

Whilst feedback on these provisions generally supported the need for the new reporting and protecting offences, strong concerns were raised that the complexity of the failure-to-report offence made the offence extremely difficult to apply and enforce. The complexity arose largely because detailed definitions are necessary to establish the institutional parameters of the offence. Having regard to these concerns, the bill contains a reporting offence that applies beyond an institutional context. This sends a strong message to the entire community that child sexual abuse is not something that can be ignored by any adult. This approach is also consistent with New South Wales, Victoria, the Australian Capital Territory and Tasmania, which have all introduced broad failure-to-report offences that are not limited to an institutional context.

The new reporting offence applies to all adults aged 18 years and over. The offence is established when that adult gains information that causes the adult to believe on reasonable grounds, or ought reasonably have caused them to believe, that a child sexual offence is being or has been committed against a child under 16, or a child under 18 who has an impairment of the mind, and the adult fails to disclose the information to police. Consistent with the draft bill, a maximum penalty of three years imprisonment applies to the offence.

The failure-to-report offence will not apply where a person has a reasonable excuse. Without limiting what may constitute a reasonable excuse, the bill provides that a reasonable excuse exists where the person has already reported the information, or believes on reasonable grounds that the information was or will be reported by another person under existing reporting obligations in the Education (General Provisions) Act 2006, Child Protection Act 1999 or Youth Justice Act 1992. Consistent with the royal commission recommendations, this will assist in reducing duplicate reports to police regarding the same information.

To avoid possible impacts on vulnerable members of the community arising from the expansion in scope of the failure-to-report offence, an explicit provision is also included excusing liability where a person reasonably believes that disclosure would endanger the safety of a person, other than the alleged child sexual abuser.

Unlike most other jurisdictions, in Queensland there is no statutory evidential privilege applying to religious confessions. Whether a common law religious confession privilege exists is not entirely clear due to a paucity of case law. To remove doubt, both the failure-to-report and the failure-to-protect offences in the bill include express provisions to apply to information and knowledge gained during, or in connection with, a religious confession. While this government respects the rights of individuals to practise their religion freely and understands there are strongly and sincerely held views about the sanctity of religious confession and the human rights concerns raised about this and the retrospective nature of some of the reforms in the bill, these concerns must be balanced against the need to protect children from child sexual abuse. The royal commission heard evidence in relation to the issue of religious confessions but ultimately concluded that there should be no exemption or privilege from the failure-to-report offence for clergy who receive information during religious confession that an adult associated with the institution is sexually abusing or had sexually abused a child.

Notwithstanding the expanded approach to the reporting offence, the failure-to-protect offence retains an institutional context. This is because the types of offending the provision captures are unique to an institutional context. It includes, for instance, an organisation moving a known child sex offender to different branches of its organisation, despite knowing the danger that person poses to vulnerable children. This type of behaviour cannot be allowed to continue.

Consultation undertaken on the draft bill also elicited strong objections about the proposed reforms aimed at facilitating greater admissibility of evidence of earlier wrongful conduct in criminal trials. In shaping recommendations 44 to 51 of the *Criminal justice report* in relation to the admissibility

of evidence, the royal commission observed that, of all Australian jurisdictions, the common law which applies broadly in Queensland is the most restrictive approach. The Palaszczuk government acknowledges the need for reform in this area.

The draft bill proposed amendments to increase the admissibility of propensity and relationship evidence and to change the standard of proof required for this evidence in criminal trials. Propensity and relationship evidence is generally evidence of earlier wrongful conduct by an accused person. This can include evidence of prior convictions, uncharged conduct or past conduct that is not necessarily criminal. Consultation on these provisions revealed vastly divergent views and yielded significant concerns that the amendments were complex and difficult to apply and could potentially result in more pre-trial applications, longer trials and more appeals. This would have a detrimental impact on the entire criminal justice system, including victims.

The Palaszczuk government has listened to the feedback from stakeholders and recognises the need for ongoing work with those who apply and interpret the law to ensure the reforms operate effectively as intended. I also note the work underway by uniform evidence law jurisdictions on these royal commission recommendations at the national level through the Council of Attorneys-General. In light of the significant and complex nature of these reforms and the need for ongoing consultation with key stakeholders on options for implementing the intent of the royal commission's recommendations in a Queensland context, the provisions relating to recommendations 44 to 51 of the *Criminal justice report* are not included in the bill being introduced today.

I will now outline some of the other changes since the draft bill was released for public consultation. In expanding the offence of grooming to persons other than the child, the bill being introduced today has adopted a more comprehensive definition of a person who has the care of the child. This definition will include a parent, foster-parent, step-parent, guardian or other adult in charge of the child, whether or not the person has lawful custody of the child. However, the expanded application does not extend to a fictitious carer.

The bill being introduced clarifies the retrospective application of the offence of maintaining a sexual relationship with a child in relation to maximum penalties. It provides that the maximum penalties applying to a pre-1989 offence of maintaining will mirror those applying when the offence was first enacted in 1989. Retrospective application of the current maintaining offence to post-1989 conduct retains the maximum penalty in place when the maintaining offence was committed.

The evidential threshold of the failure-to-report offence has been clarified to ensure that it requires a belief to be reasonably held. Also, the protections against civil and criminal liability for disclosure under the provision have been clarified to require the disclosure to be made in good faith. This will help address concerns raised in consultation about malicious reporting.

Some changes have been made to the provisions in the draft bill relating to jury directions which were intended to implement recommendation 65 of the *Criminal justice report*. These changes are in response to feedback and have regard to the approach in other jurisdictions and intention of amendments made to section 4A of the Criminal Law (Sexual Offences) Act 1978 in 2003.

Importantly, the bill also incorporates further amendments to provide the legislative basis to support a pilot program for intermediaries. The Palaszczuk government is giving a voice to vulnerable victims of child sexual abuse through the provision of funding to support establishment of a pilot Queensland intermediary scheme.

The *Criminal justice report* recommended intermediary schemes be established to mitigate the difficulties that witnesses, including survivors and victims, in child sexual abuse matters may experience in participating in the criminal justice process. At the investigation stage of a child sexual abuse matter, police may request an intermediary through the Queensland Intermediary Scheme's matching service to support a witness to give their most complete and accurate evidence. Under the provisions in the bill, courts will be able to appoint qualified intermediaries for prosecution witnesses who are under 16 years, have an impairment of the mind, have difficulty communicating or fall within another class of persons prescribed under regulation.

The bill provides for pre-trial hearings to enable the court to give directions about communication issues, which the royal commission referred to as 'ground rules' hearings. The intermediary, who is an independent impartial officer of the court, ensures the witness understands the questions being put to them and is given the opportunity to give their best evidence.

Not only will the use of intermediaries ensure that the best evidence is obtained from the witness for the police and courts to assess the child abuse case properly; the communication support provided by the intermediary will also reduce the stress experienced by these vulnerable witnesses in criminal justice proceedings. These proceedings can be daunting and intimidating for any witness but particularly for a child, someone with an impairment of the mind or someone who has difficulty communicating.

Potential intermediaries will need to satisfy appropriate suitability requirements. While intermediaries are typically speech pathologists, occupational therapists, psychologists and social workers, the pilot program will explore drawing intermediaries from other occupations according to skills and qualities witnesses require. There are already comparable schemes operating in New South Wales and Victoria. It is my hope that the intermediary scheme will be able to assist vulnerable witnesses better interact with our judicial system to achieve justice for survivors.

In addition to funding a pilot intermediary scheme, the government has committed funding to support implementation of other criminal justice report recommendations including new victim liaison officers for the Office of the Director of Public Prosecutions and training for all police to better equip them to respond to people who have experienced trauma.

The bill creates new offences in the Criminal Code criminalising the possession, supply and production of child abuse objects. An offender convicted of one of these offences is liable to up to 14 years imprisonment, and that increases to 20 years imprisonment where an offender is convicted of supply or production of a child abuse object for a commercial purpose. The organised crime circumstance of aggravation is also available for this sickening offence.

The example I give is that sadly there are people in possession of, or seeking to possess, a childlike doll that is made to be as realistic as possible that can be used for sexual gratification. These can be very young-looking dolls that reflect very young adolescent children. We must end this. We must send a very strong message that the production, the distribution, the possession of these types of objects will be a criminal offence that carries with it a very significant imprisonment term.

Finally, a minor amendment is made to the Police Powers and Responsibilities Act 2000 to enable a police officer to seize the blue card of a person who has been charged with a serious offence under the Working with Children (Risk Management and Screening) Act 2000.

I wish to thank all of those brave individuals who came forward to advocate for change to the royal commission and acknowledge the survivors who continue to carry the pain of child sexual abuse as well as those no longer with us. Again, I acknowledge those in the gallery today. I acknowledge that Bob Atkinson today stated that there were some 8,000 individuals—8,000 individuals—who gave private statements to the royal commission about their abuse. We acknowledge each and every one of those people.

The fact that we are here today introducing another bill so soon after the passage of the Civil Liability and Other Legislation Amendment Bill to address the scourge of child sexual abuse demonstrates our ongoing commitment to reform. This is just the next step on a very long road. I commend the bill to the House.

First Reading

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice) (4.03 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 Weir): In accordance with standing order 131, the bill is now referred to the Legal Affairs and Community Safety Committee.