Speech By

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

Mr JANETZKI (Toowoomba South—LNP) (5.13 pm): I rise to contribute to the debate regarding the Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019. First and foremost, I confirm that the opposition will not be opposing the bill.

Child sex offending is an abhorrent act of evil and the law must adequately punish offenders for their crimes. This parliament must always denounce this type of offending, which tragically impacts too many vulnerable children. Child sexual offending is a heinous crime which has devastating consequences for the victim. The sickening nature of child sex crimes demands that there be stricter penalties, greater accountability and further safeguards to protect children from this type of offending. This is what the bill largely achieves.

The objectives of the bill are to implement key recommendations of a series of reports. In 2017, the Royal Commission into Institutional Responses to Child Sexual Abuse made a total of 409 recommendations aimed at making institutions safer for children. Prior to this, the *Criminal justice report* was released. It contained 85 recommendations aimed at providing a fairer response to victims of child sexual abuse. Lastly, in 2017, the Queensland Sentencing Advisory Council published its report *Classification of child exploitation material for sentencing purposes*, recommending changes to sentencing guidelines.

The bill has many initiatives to respond to child sexual offending, such as extending the grooming offence in section 218B of the Criminal Code to certain persons other than the child and excluding good character as a mitigating factor at sentencing where that good character facilitated the child sexual offending. I note that on 7 February 2020 the Legal Affairs and Community Safety Committee recommended that the bill be passed.

The bill inserts a new offence, 'failure to report belief of child sexual offence committed in relation to a child', which will be a new section 229BC of the Criminal Code. I note that this adopts the royal commission's recommendation that all Australian jurisdictions introduce legislation to create a criminal offence of failure to report. The offence requires an adult who gains information, including information gained in connection with religious confession, that causes the adult to believe on reasonable grounds that a child sexual offence is being committed or has been committed against a child or a person with an impairment of the mind by another adult, to disclose the information to a police officer as soon as reasonably practicable. There will be exceptions where the adult has a reasonable excuse, such as where the adult believes the information has been disclosed to police, the adult has reported the information under regulation or believes someone has, the adult gains the information after the child becomes an adult, and where disclosing the information would endanger a person's safety. Any person who commits this offence will face a maximum penalty of three years imprisonment.

A majority of submitters commented favourably on the intent of the offence. However, some submitters raised concerns about the mandatory reporting regime's use of information gained during or in connection with a religious confession. For example, the QLS said—

> … it may be difficult for an ordinary member of the community to ascertain whether the information gained should raise suspicion.

PeakCare noted—

> There is a range of circumstances which would impact on a person's capacity to reasonably believe sexual abuse was occurring ...

The Brisbane Rape and Incest Survivors Support Centre stated—

> … a failure to report may not be a result of wilful ignorance, negligence, or a desire to prioritise reputation over a child's safety. Rather, there may be a lack of suitable social, emotional, financial and housing supports available to enable a woman to safely and appropriately report the child abuse in a domestic violence context.

While I note these concerns, my hope is that the offence will help uncover sexual offending which is going on unreported. Any measure that stops sexual offending against children is worth pursuing and I trust the government will take measures to mitigate the concerns raised by these stakeholders as much as possible.

The bill inserts a new offence of 'failure to protect a child from child sexual offence', imposing a maximum penalty of five years imprisonment. This offence is another measure adopted from the royal commission's recommendations and one which is being implemented in the majority of Australian jurisdictions, including Victoria, South Australia, Tasmania and the ACT. Entities such as schools, hospitals, government agencies, religious organisations, childcare centres, licensed residential facilities, sporting clubs and youth organisations will be subject to this offence.

Under the offence, a person associated with an institution commits a crime if the person knows there is a significant risk that another adult associated with an institution will commit a child sexual offence against a child or a person with an impairment of the mind who is under the care, supervision or control of an institution and the person wilfully or negligently fails to reduce or remove the risk. As with other provisions of the bill, submitters were generally supportive of the policy intent of the failure to protect offence. The Anglican Church Southern Queensland agreed that a failure to protect offence is necessary, noting—

> The examples in evidence at the Royal Commission of known perpetrators being moved on to other roles following complaints only for other children to be abused are compelling reasons for reform. Even though such behaviour would be an unthinkable outcome for any institution in the wake of the Royal Commission, providing a standard and a criminal sanction is an important means to eliminate this culture.

The Queensland Catholic Education Commission was not opposed to the offence but was most concerned about the use of multiple legislative reporting regimes which will likely cause confusion and stressed that harmonisation across the relevant legislation would be preferable to avoid misinterpretation of reporting and protection obligations. Specifically, the Queensland Catholic Education Commission highlighted that the offence refers to an accountable person knowing there is a significant risk that another adult will commit a child sex offence whereas under the Child Protection Act the chief executive must be advised when there is a reasonable suspicion that a child may be in need of protection, and the Education (General Provisions) Act 2006 requires a report to be made when there is a reasonable suspicion that a child is likely to be sexually abused.

As I have already stated, this offence came out of the Royal Commission into Institutional Responses to Child Sexual Abuse. The offence came about after substantial consideration and information gathered through public hearings, private sessions, research, written accounts, round tables, public consultations and issues papers. The commission went on to uncover the impacts of child sexual abuse and the impacts of institutional responses to that abuse on victims and their families. For many victims the abuse has profound and lasting impacts. They experience deep, complex trauma which can pervade all aspects of their lives and cause a range of effects across their life spans. As one victim put it—

> As a victim, I can tell you the memories, sense of guilt, shame and anger live with you every day. It destroys your faith in people, your will to achieve, to love and one's ability to cope with normal everyday living.

On this point, I note that some have questioned this aspect of the bill and that it breaks the seal of the confessional. I note that Archbishop Coleridge in his submission to the committee raised a number of concerns including that respect for the seal of confessional and the protection of children are not mutually exclusive. Archbishop Coleridge, whom I hold in very high personal regard, argued that applying the reporting requirement arguments to confession would not only be ineffective but also counterproductive as abusers do not confess their sins and if they did it prevents abusers from confessing their crime, stopping the abuse and reporting themselves.

Archbishop Coleridge also submitted that the bill interferes with freedom of religion as it prevents people from practising their faith by accessing the sacrament of penance according to the church's own discipline. To quote the archbishop—

> It sounds tough, uncompromising, common-sense. But it's also the kind of thing you do when you don't understand the problem you are trying to solve. That's what we are witnessing here: irreligious people trying to address a religious problem with brute secular force. That might make perfect intuitive sense to the staunchly secular mind, but we need more than intuition and declarations of secular supremacy here. What matters is what works. And taking an axe to the confessional box won't work. It might even make things worse.

Archbishop Coleridge concluded by mentioning that it is not the intention of this proposed legislation which troubles the Catholic Church and others but it is its unintended, indeed, counterproductive effects.

It is necessary to note that in Queensland there is no statutory privilege applying to religious confessions. In addition, it is unlikely or at least arguable that the common law religious confession privilege exists. This means that priests may not already be exempt from the requirement to give evidence concerning a confession that relates to an offence. I acknowledge the archbishop's concerns. However, the royal commission found evidence of disclosures of child sexual abuse were made in religious confession by both victims and perpetrators. Further, the royal commission was satisfied that confession is a forum where Catholic children have disclosed their sexual abuse and where clergy have disclosed their abusive behaviour in order to deal with their own guilt.

In just one example, in 2003 Catholic priest Michael McArdle swore an affidavit stating that during confession he had disclosed more than 1,500 times that he was sexually assaulting children. He swore that he made this confession to 30 different priests over 25 years. Nothing was done until ultimately a child went to the police.

The royal commission therefore, in my opinion, appropriately concluded that there should be no exemption from the failure to report offence for clergy who receive information during religious confessions. Similarly, the Council of Attorneys-General concluded that confessional privilege cannot be relied upon to avoid obligations to report beliefs, suspicions or knowledge of child abuse. While I accept that there are varying views on breaking the confessional seal, the underlying objective that this offence is trying to achieve is too great to be ignored. The offence aims to uncover institutional child sexual abuse and, in some cases, it may even save a child from being a victim. Of course, one child being spared as a victim of sexual abuse would mean this offence has done its job.

I welcome the amendments to the current child grooming offence in section 218B of the Criminal Code to extend it to the grooming of parents or carers of children under 16. I note that it was an LNP government that first introduced the offence of child grooming back in 2012 under the criminal law amendment bill. I recall an article in which Detective Inspector Jon Rouse, who runs the Australian Centre to Counter Child Exploitation, warned that single mothers are often targeted by paedophiles on online dating apps—warning mothers not to share any photographs of their children online. He said children who have a single parent are more at risk of being targeted by predators. He went on to say that predators will always look for vulnerable children and, in many cases, single parent children are more vulnerable. This is no doubt appalling conduct and at the very least predatory in nature, which rightfully needs to be criminalised.

Conduct which is also appalling and which must be stamped out is where offenders use the internet to misrepresent their age or identity and arrange to meet with a child. While this conduct is similar to that of child grooming, there is an offence known in South Australian and federal law as Carly's Law, which ultimately gives police the power to act immediately—even before the predator has a chance to groom the child. The LNP has recently announced its commitment to introduce Carly's Law which has been adopted by both the Commonwealth and South Australian governments. I note that these jurisdictions also have the offence of child grooming in their criminal law framework. The opposition will stop at nothing to keep children safe from sexual predators. I cannot think of a better piece of legislation which will give police additional, enhanced powers to act swiftly and early against child sex offenders.

Lastly, I welcome the new offences that criminalise the production, supply and possession of child sex abuse objects. Childlike sex dolls are an emerging form of child abuse material. The federal coalition government has spoken about the need to criminalise this conduct to reduce the risks that these behaviours may escalate the risk posed to children. The Minister for Home Affairs cited at the time contemporary research by the Australian Institute of Criminology which reveal that, among other things, it is possible that the use of childlike sex dolls may lead to the escalation in child sex offending—for example, similar to the way that viewing online child abuse material may lead to additional sexual offending. I especially welcome the tough penalties spoken of by the Attorney-General which will see offenders, depending on the offence, imprisoned for between 14 and 20 years.

Taken together, this bill sends a strong message of a society that hates child sexual abuse and any practices that serve to perpetuate it. On occasions, that may mean limitations are applied to certain freedoms or rights. However, I believe that any such limitations that might be adopted in the pursuit of the protection of our most precious children are completely justified. I commend the bill to the House.