




Speech By
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MEMBER FOR SOUTHPORT

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

 **Mr MOLHOEK** (Southport—LNP) (4.29 pm): I rise to speak to the Criminal Code and Other Legislation Amendment Bill 2019 and the Criminal Code and Other Legislation (Mason Jett Lee) Amendment Bill 2019 in this cognate debate. At the outset of my contribution, I would like to acknowledge Ty De Salis, a Griffith University communications student who has been interning at my office over the past few months. This speech is primarily his work. When we spoke about the opportunity to do some speechwriting, Ty embraced it wholeheartedly and was very keen to write this speech. I think it is quite outstanding for a young person to pick up such a challenging topic as the issue that is before us today. I acknowledge his work in preparing this speech.

The aim of Labor's bill is to expand the definition of murder in the Criminal Code to include the act of reckless indifference to human life with the intended strengthening of legislation around child homicide. The Labor Party aims to accomplish this by including the judicial consideration of a child's defencelessness and vulnerability in the case of an adult offender committing the murder of a child under 12 years of age and introducing failure to supply the necessaries as a crime with an increase to the maximum penalty from the previous three years imprisonment to seven years imprisonment.

In this case the offence would be deemed a serious violent offence, SVO, which gives the sentencing court the power to make an SVO declaration which requires the offender to serve 80 per cent of their punishment before they become eligible for parole. The bill amends section 302 of the Criminal Code to include acts done or omissions made with reckless indifference to human life. This is consistent with the New South Wales legislation, which includes reckless indifference to human life as a separate element for establishing the offence of murder. This offence not only applies to the murder of children but the murder of adults as well.

The LNP holds significant concerns that the Labor government's proposal will not always result in a murder conviction, even in cases where the murder was violent or blatantly negligent. This amendment was not recommended by the Queensland Sentencing Advisory Council. This is why the LNP introduced its own bill to address offences involving the death of children. The aim of the LNP's private member's bill is to introduce harsher penalties for unlawful homicide offences involving the death of a child to reflect the moral expectations of the broader community. This would be achieved by the introduction of a minimum non-parole period of 25 years imprisonment for the murder of a child under 18 years and the introduction of a new offence of child homicide, which entails a minimum non-parole period of 15 years imprisonment.

Our proposed child homicide offence will apply to any individual who kills a child by an act of violence, sexual offence or breach of duty in the Criminal Code such as the duty to provide the necessaries of life. This Mason Jett Lee bill provides defences such as diminished responsibility, killing on provocation and killing for preservation in an abusive domestic relationship. We on this side of the

House believe these defences are necessary in offering protection to women within abusive relationships and to those who are not of sound mind. These are significant proposals to law reform, a concept which falls on the deaf ears of the Labor government.

The expansion of the definition of murder cannot guarantee the result of a conviction for child murder or the intentional negligent killing of a child. This is evidenced in the New South Wales state legislation where abhorrent child murders have resulted in manslaughter convictions based on reckless indifference. This loophole is exploited far too often as defendants offer plea bargains for lesser manslaughter charges. For example, in the case of a child being intentionally beaten, struck and clamped resulting in death by asphyxiation, the offender pleaded guilty to manslaughter. Similarly, consider the case of a three-year-old child being raped and suffocated. The offender was acquitted of the charge of murder but found guilty of manslaughter.

It should be noted that the Bar Association of Queensland, the Queensland Law Society and the Crime and Corruption Commission are all opposed to introducing reckless indifference within the definition of murder. The Bar Association of Queensland holds similar concerns about the vague nature of the bill. They believe the number of domestic scenarios put down to reckless indifference will increase. Situations such as leaving pool gates open or reversing over a child in a driveway would fall under this provision. Other cases based on negligence and accidental causes of death could now be charged as murder. The LNP supports harsher penalties for those committing violent crimes against children and those under the age of 18 with intent to harm, however, we do not support these harsher penalties being given to grieving parents and families, which could be the case under the Palaszczuk Labor government's bill.

Under Labor's bill the introduction of a new aggravating factor would not be different from aggravating factors that exist in terms of sentencing. Courts already have access to dozens of aggravating factors that could increase sentencing—something that has not led to an increase in sentencing for abhorrent child crimes. The Bar Association of Queensland and the Queensland Law Society agree with this sentiment, questioning the relevance of the new aggravating offence given that the proposed considerations are part of current sentencing guidelines.

While the LNP is not opposed to expanding the definition of murder to include reckless indifference to human life, we are concerned that reckless indifference is a legal loophole that could be exploited as it may not always result in a murder conviction. These loopholes have been exploited under similar legislation within New South Wales and we on this side of the House believe that the same outcome may well occur in Queensland.

The LNP's proposed legislation would guarantee that a person convicted of child murder will spend a minimum of 25 years in prison. Labor's bill cannot. The LNP's proposed legislation would guarantee that a person convicted of child manslaughter will spend a minimum of 15 years in prison, double the average time offenders are currently serving. Labor's bill does not guarantee that. The LNP is committed to the appropriate sentencing for abhorrent crimes against children. We are committed to law reforms aimed at protecting children and harsher sentences that reflect the magnitude of the crimes in question. That is why the Queensland LNP introduced its Mason Jett Lee bill and that is why we support that over Labor's bill. I ask that the House sincerely consider adoption of the LNP's proposed provisions as outlined in our Criminal Code and Other Legislation (Mason Jett Lee) Amendment Bill.