

Criminal Code and Other Legislation (Mason Jett Lee) Amendment Bill 2019

Explanatory Notes

Short title

The short title of the Bill is the Criminal Code and Other Legislation (Mason Jett Lee) Amendment Bill 2019.

Policy objectives and the reasons for them

The objectives of the Criminal Code and Other Legislation (Mason Jett Lee) Amendment Bill 2019 (the Bill) are to:

- enforce stronger penalties for unlawful homicide offences involving the death of a child;
- introduce mandatory minimum non-parole period of 25 years imprisonment for the murder of a child under 18 years;
- introduce a new offence of child homicide which will include a mandatory minimum non-parole period of 15 years imprisonment;
- ensure sentencing for homicide offences involving children reflects broader community expectations.

The intent of the Bill is to strengthen the sentencing framework in relation to offences involving the unlawful killing of a child under 18 years of age.

The Bill aims to partly align Queensland's sentencing framework with other Australian jurisdictions. Other Australian jurisdictions, including New South Wales and the Northern Territory, impose a standard non-parole period of 25 years for the offence of murder where the victim was a child under 18 years of age.

The Bill also introduces a new offence of child homicide which will attract a punishment of life imprisonment with minimum non-parole period of 15 years.

Achievement of policy objectives

The policy objectives will be achieved by making changes to the criminal sentencing framework for homicide offences where the victim was a child under the age of 18 years.

Punishment for murder of a child

The Bill strengthens the punishment imposed for the murder of a child under the age of 18 years by requiring the court sentencing the person to make an order that the person must not be released from imprisonment until the person has served a minimum of 25 years or more specified years of imprisonment.

Child homicide offence

The Bill creates a new child homicide offence intended to apply to a person who unlawfully kills a child in circumstances where the person killed was a child at the time the act or omission that caused the person's death was done or made, and the act or omission that caused the person's death involved violence or was an offence of a sexual nature or a breach of duty stated in sections 285 and 286 of the Criminal Code.

The child homicide offence will apply only in circumstances where the unlawful killing does not constitute murder.

The intent of the Bill is to recognise and protect vulnerable and defenceless children, whether it is their age or capacity that increases their vulnerability.

The punishment for child homicide offence is mandatory life imprisonment with a minimum non-parole period of 15 years imprisonment.

Alternative ways of achieving policy objectives

There are no known alternate ways of achieving the same policy objective.

Estimated cost for government implementation

It is expected that there may be an increase in costs to corrective services due to lengthier prison sentences imposed for murder and child homicide convictions.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles as outlined in section 4 of the *Legislative Standards Act 1992*.

Consultation

There was consultation undertaken on the Bill with external legal stakeholders and the Queensland Law Society prior to finalisation.

Consistency with legislation of other jurisdictions

The Bill partly aligns Queensland's sentencing framework with other Australian jurisdictions.

The Bill provides for a mandatory minimum non-parole period of 25 years for the murder of a child, which is consistent with other Australian jurisdictions. In New South Wales and the Northern Territory, a standard non-parole period of 25 years applies for murder where the victim was a child under 18 years of age.

The Bill provides for a new offence of child homicide. In 2008, Victoria introduced a separate offence of child homicide into the *Crimes Act 1958* with the intent to encourage the courts to impose sentences that are closer to the maximum term.

There are consistencies with Victoria's child homicide offence in terms of the creation of a separate offence aimed specifically at child homicide.

Notes on provisions

Clause 1 refers to the short title of the Bill.

Clause 2 provides that the Bill amends the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.

Clause 3 amends schedule 1, item 9(a) to provide that child homicide is a prescribed offence under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.

Clause 4 provides that the Bill amends the *Corrective Services Act 2006*.

Clause 5 amends section 181(2) of the *Corrective Services Act 2006* by omitting (c) and (d) and inserting (c) – (f) to include the new parole eligibility dates for a prisoner serving life imprisonment for the murder of a child and the parole eligibility dates for a prisoner serving life imprisonment for the crime of child homicide.

Specifically, the parole eligibility date for the prisoner serving life imprisonment for the murder of a child is the day after the day on which the prisoner has served 25 years or the longer time ordered. The parole eligibility date for prisoner serving term of imprisonment for life for the crime of child homicide is the day after the day on which the prisoner has served 15 years or the longer time ordered.

Clause 6 provides that the Bill amends the Criminal Code.

Clause 7 amends section 17 of the Criminal Code to provide that section 17 does not apply to the charge mentioned in section 678B (Court may order retrial for murder or child homicide—fresh and compelling evidence).

Clause 8 amends section 286 of the Criminal Code by omitting the words ‘under 16 years’ to provide that it is a duty of every person who has care of a child under 18 years.

Clause 9 amends section 300 of the Criminal Code to provide that the new offence of child homicide falls within unlawful homicide.

Clause 10 inserts a new section 302A into the Criminal Code. This section creates a new offence of child homicide. The child homicide offence will apply in circumstances where a person unlawfully kills a child under such circumstances as to not constitute murder.

Clause 10 details the elements that must be established to satisfy the offence of child homicide. Specifically, child homicide shall be taken to be committed in circumstances where the person killed was a child at the time the act or omission that caused the person’s death was done or made, and the act or omission that caused the person’s death involved violence or was an offence of a sexual nature or a breach of duty stated in section 285 and 286 of the Criminal Code.

The word violence is intended to have a broad application and is not limited to the words provided in the list of examples. As stated in the Bill, examples of violence, which are not exhausted examples, include vigorous shaking, punching, kicking, stamping, throwing, squeezing, suffocating and strangling.

The offence will include acts or omissions which occur in isolation or repeatedly over a short or prolonged amount of time.

Clause 11 amends section 303 of the Criminal Code to provide that a person who unlawfully kills another under such circumstances as not to constitute murder or child homicide is guilty of manslaughter.

The purpose of this is to provide prosecutors with discretion to charge a person with the offence of manslaughter if the act or omission does not constitute an element stated in the child homicide offence. This amendment also recognises that there may be unique circumstances in which manslaughter is the preferred charge.

Clause 12 amends section 304 of the Criminal Code to provide that the defence of killing on provocation is available to a person charged with child homicide.

Clause 13 amends section 304A of the Criminal Code to provide that the defence of diminished responsibility is available to a person charged with child homicide.

Clause 14 amends section 304B of the Criminal Code to provide that the defence of killing for preservation in an abusive domestic relationship is available to a person charged with child homicide.

Clause 15 amends section 305 of the Criminal Code by inserting a new subsection (4A) to provide for the punishment of murder where the person killed was a child at the time the act or omission that caused the person's death was done or made. The court must make an order that the person must not be released from imprisonment until the person has served a minimum of 25 years or more specified years of imprisonment, unless released sooner under exceptional circumstances parole under the *Corrective Services Act 2006*.

Clause 16 amends section 307 of the Criminal Code to provide that any person who becomes an accessory after the fact to murder or child homicide is guilty of a crime and is liable to imprisonment for life.

Clause 17 inserts a new section 309A in the Criminal Code to provide for the punishment of the new child homicide offence. Any person who commits the crime of child homicide is liable to imprisonment for life, which can not be mitigated or varied under any law or is liable to an indefinite sentence under part 10 of the *Penalties and Sentences Act 1992*. The court must also make an order that the person must not be released from imprisonment until the person has served a minimum of 15 or more specified years imprisonment.

Clause 18 amends section 576 of the Criminal Code so that upon an indictment against a person containing a count of the crime of murder or child homicide, the person may be convicted on that count of the crime of manslaughter if that crime is established by the evidence but not on that count of any other offence than that with which the person is charged except as otherwise expressly provided.

Clause 19 amends section 678B of the Criminal Code to provide that the court may order a retrial for the offence of murder or child homicide if satisfied that there is fresh and compelling evidence against the acquitted person in relation to the offence

Clause 20 amends section 678D of the Criminal Code to add the offence of child homicide to subsection (1) which describe what constitutes fresh and compelling evidence.

Clause 21 provides that the Bill amends the *Criminal Law Amendment Act 1945*.

Clause 22 amends section 18B of the *Criminal Law Amendment Act 1945* by omitting section 181(2)(d) and replacing it with section 181(2)(f).

Clause 23 provides that the Bill amends the *Criminal Practice Rules 1999*.

Clause 24 amends schedule 3, part 5, chapter 28 of the *Criminal Practice Rules 1999* to insert a new Form 151A for the offence of child homicide.

Clause 25 provides that the Bill amends the *Criminal Proceeds Confiscation Act 2002*.

Clause 26 amends schedule 2, part 1, item 1 of the *Criminal Proceeds Confiscation Act 2002* by inserting child homicide to the list of section 29 offences.

Clause 27 provides that the Bill amends the *Disability Services Act 2006*.

Clause 28 amends schedule 2, item 4 of the *Disability Services Act 2006* by inserting child homicide under section 302A to the list of current serious offences.

Clause 29 amends schedule 4, item 4 of the *Disability Services Act 2006* by inserting child homicide under section 302A to the list of current disqualifying offences.

Clause 30 amends schedule 6, item 4 of the *Disability Services Act 2006* by inserting child homicide under section 302A to provide that the offence may form basis of investigative information.

Clause 31 provides that the Bill amends the *Mental Health Act 2016*.

Clause 32 amends section 21 of the *Mental Health Act 2016* by inserting child homicide to subsection (1) to provide that the Mental Health Court decides whether a person charged with a serious offence or other particular offences was of unsound mind or, for the offence of murder or child homicide, of diminished responsibility, when the offence was allegedly committed or is unfit for trial.

Clause 33 amends section 110 of the *Mental Health Act 2016* by inserting child homicide to subsection (2)(a) to provide that a reference may be made if a person is charged with the offence of murder or child homicide and a relevant person has reasonable cause to believe the person was of diminished responsibility when the offence was allegedly committed.

Clause 34 amends section 116 of the *Mental Health Act 2016* by inserting child homicide to subsection (1)(b) to provide that on hearing the proceeding for the reference, the Mental Health Court must decide if the person is alleged to have committed the offence of murder or child homicide but the person was not of unsound mind when the offence was allegedly committed - whether the person was of diminished responsibility when the offence was allegedly committed.

Clause 35 amends s 120 of the *Mental Health Act 2016* by inserting child homicide after murder to provide that the proceeding against the person for the offence of murder or child homicide will be discontinued if the Mental Health Court decides the person was of diminished responsibility when the offence was allegedly committed. However, the proceeding may be continued against the person for another offence constituted by the act or omission to which the proceeding for the offence of murder or child homicide relates.

Clause 36 amends section 181 of the *Mental Health Act 2016* by inserting child homicide to subsection (1)(b)(ii) so that Division 1, Making reference to Mental Health Court if person pleads guilty to

indictable offence, applies if the court is reasonably satisfied, on the balance of probabilities, that the person was, or appears to have been of diminished responsibility when the offence was allegedly committed.

Clause 37 amends section 789 of the *Mental Health Act 2016* by inserting child homicide to the definition of 'decision leading to trial' and 'relevant offence' in subsection (3).

Clause 38 amends schedule 3 of the *Mental Health Act 2016* by inserting child homicide to the definition of prescribed offence.

Clause 39 provides that the Bill amends the *Penalties and Sentences Act 1992*.

Clause 40 amends section 171(2)(a)(ii) of the *Penalties and Sentences Act 1992* by inserting section 305(4A).

Clause 41 amends schedule 1 of the *Penalties and Sentences Act 1992* by inserting 14C sections 302A (Definition of child homicide) and 309A (Punishment of child homicide) to provide that child homicide is a serious violent offence.

Clause 42 amends schedule 1C of the *Penalties and Sentences Act 1992* by inserting sections 302A (Definition of child homicide) and 309A (Punishment of child homicide) to provide that child homicide is a prescribed offence.

Clause 43 amends schedule 2 of the *Penalties and Sentences Act 1992* by inserting sections 302A, 309A Child homicide to provide that child homicide is a qualifying offence.

Clause 44 provides that the Bill amends the *Transport Operations (Passenger Transport) Act 1994*.

Clause 45 amends schedule 1A, part 1, division 1, item 12E of the *Transport Operations (Passenger Transport) Act 1994* to provide that child homicide is a Category A driver disqualifying offence.

Clause 46 provides that the Bill amends the *Victims of Crime Assistance Act 2009*.

Clause 47 amends schedule 3 of the *Victims of Crime Assistance Act 2009* so that child homicide is included in the definition of more serious act of violence.

Clause 48 provides that the Bill amends the *Weapons Act 1990*.

Clause 49 amends section 53(7) of the *Weapons Act 1990* to include child homicide to the definition of excluded person.

Clause 50 amends schedule 2 of the *Weapons Act 1990* to incorporate child homicide within the definition of prohibited person.

Clause 51 provides that the Bill amends the *Working with Children (Risk Management and Screening) Act 2000*.

Clause 52 amends schedule 2 of the *Working with Children (Risk Management and Screening) Act 2000* to provide that child homicide is a serious offence.

Clause 53 amends schedule 4 of the *Working with Children (Risk Management and Screening) Act 2000* to provide that child homicide is a disqualifying offence.

Clause 54 amends schedule 6 of the *Working with Children (Risk Management and Screening) Act 2000* to include child homicide as an offence that may form the basis of investigative information.

Clause 55 provides that the Bill amends the *Youth Justice Act 1992*.

Clause 56 amends section 176 of the *Youth Justice Act 1992* to include the new section 305(4A) to subsection (6) and insert a new section 176(6A) to provide that the Criminal Code, section 309A(2) applies to a court sentencing a child to detention for life on a conviction of child homicide.