CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) AMENDMENT (PROTECTION FROM SERIOUS OFFENDERS) BILL 2015

Bill introduced on motion by Ms Mihailuk, read a first time and printed.

Second Reading

Ms TANIA MIHAILUK (Bankstown) [10.13 a.m.]: I move:

> That this bill be now read a second time.

I have introduced the Children and Young Persons (Care and Protection) Amendment (Protection from Serious Offenders) Bill 2015 on behalf of the Opposition with mixed feelings: with a sense of pride for championing the rights of the most vulnerable and voiceless in our community, that is, abused children, and with a sense of sorrow for the children this bill is intended to protect. The purpose of the bill is to protect existing and future children of parents who have committed murder, manslaughter and other certain serious offences against their own children.

The bill will ensure that any person convicted of the murder or manslaughter of a child or of certain other serious offences in relation to a child, where the offender was the parent or guardian of the victim, will automatically have his or her future children removed from his or her care at birth. The bill provides for the issue of restraining notices so that any person convicted of such an offence may be prevented from residing on the same property as a child or young person or from coming within a specified distance of the child or young person's residence or having any contact with the child or young person. Nelson Mandela said:

> There can be no keener revelation of a society's soul than the way in which it treats its children.

I have brought this bill to the Parliament following three particularly devastating cases of child abuse which resulted in the most horrific end imaginable for an innocent child, that is, death. The first case I refer to occurred in 2012 when four-year-old Chloe Valentine was tragically killed after being repeatedly forced by her mother and her mother's partner to ride and crash a 50 kilogram motorbike. At the time of her death, Chloe Valentine had been the subject of 20 child protection notifications to Families SA, the South Australian equivalent of the New South Wales Department of Family and Community Services.

The coronial inquest into the death of Chloe Valentine examined the circumstances of Chloe's life and death. The tragic death of Chloe Valentine highlighted the manner in which child protection authorities in South Australia had mishandled her case and the need for reform in this area. The South Australian coroner made 21 recommendations in order to prevent other children suffering from the kind of neglect and harm that Chloe Valentine suffered at the hands of her carers. Recommendation 22.2 of the inquiry reads:

> I recommend that the Children's Protection Act 1993 be amended to provide that a child born to a person who has a conviction in respect of a child previously born to them for manslaughter by criminal neglect, manslaughter or murder will, by force of the Act, be placed from birth under the custody of the Minister.

The South Australian Coroner also recommended specific reform to the internal processes of Families SA and to the training and practices of social workers, as well as a broader application of income management measures across the State. The South Australian Labor Government fully supported 19 of the recommendations and gave in-principle support for one recommendation. The remaining recommendation is subject to further investigation arising from the coronial inquest into the death of Chloe Valentine. This case, and the resulting coronial recommendations, has resulted in strong legislative action in South Australia and a bill to implement the coroner's recommendations is currently before the South Australian Legislative Council.

On 6 May 2015, the South Australian Labor Government became the first State or Territory government in Australia to propose a bill, known as the Children's Protection (Implementation of Coroner's Recommendations) Amendment Bill 2015, that provides for the automatic removal of a child from a parent or guardian with a previous serious violent conviction against their own child. The South Australian Government's bill follows the recommendations of the coronial inquest into the death of Chloe Valentine and broadens the range of disqualifying offences proposed by the coroner in his report to include the serious harm offences of: an offence against section 23 of the Criminal Law Consolidation Act 1935, causing serious harm; and an offence against section 29 (1) or section 29 (2) of the Criminal Law 5 Consolidation Act 1935, acts endangering life or creating risk of serious harm.

The bill proposed by the South Australian Government also provides for the Chief Executive of the Department of Education and Child Development to issue an Instrument of Guardianship in respect of the child, and to apply for a restraining notice against a person who has been found guilty of a disqualifying offence, if it is found that a child is residing or about to reside with that person. A restraining notice may prohibit an offender, who in this case is a person other than the parent, from residing with a child, from residing in the same premises as a child, coming within a specified distance of the child's residence, having any contact with the child except under supervision, and having any contact at all with the child. It should be noted that the South Australian Liberal Opposition does not seek to oppose that bill.

In light of the South Australian legislative response to the Chloe Valentine coronial inquest's recommendation, there is an opportunity in New South Wales to reflect on our existing child protection legislation. Before I move to the detail of the bill, I will share with the House two more heartbreakingly sad examples of what this bill is aiming to prevent. The first example is the death of Bailey Constable. In 2013, Nathan Forrest pleaded guilty to the manslaughter of four-year-old Bailey Constable. Forrest was sentenced to a maximum of eight years in jail and was to serve a non-parole period of six years. Forrest was the de facto partner of Bailey's mother, Jessica Constable. At trial the court heard that Bailey had told his maternal grandmother of Forrest's repeated physical abuse of him.

Under the existing New South Wales legislation, there is no specific provision that prevents a person such as Forrest with previous convictions for a serious violent offence, such as murder or manslaughter, against a child from residing with another child in the future. The second example is the very sad death of Ikicia Leach. In 2007 Benjamin Leach was convicted of manslaughter of his seven-week-old daughter, Ikicia. Leach was sentenced to four years and seven months imprisonment, but served less than four years. Following his release from prison, Leach changed his name and settled with a new partner, without disclosing his crime to her. A short time later, Leach and his partner had a child together.

Two years later, Leach's former partner, Jannice—Ikicia's mother—discovered Leach's new life by chance while chatting on Facebook. Jannice was horrified to think that the man convicted of the manslaughter of his first child could begin a new life and father another child so easily, without any legal restrictions. Under existing New South Wales legislation, there is no specific provision that states that a child born to or in the care of a person, such as Leach, with a previous conviction for a serious violent offence against their own child should be prohibited from caring or residing with their own or other children in the future. Galvanised by those tragic cases of Chloe Valentine, Ikicia Leach and Bailey Constable, NSW Labor launched a child protection discussion paper in June this year which proposed the reforms that are encapsulated by the bill before the House.

Labor's child protection discussion paper marks the beginning of a long and substantial period of consultation in relation to Labor's proposed child protection reforms. Labor also convened a child protection roundtable in July this year which engaged the deep thought and consideration of organisations such as the Aboriginal Child, Family and Community Care State Secretariat [AbSec], Anglicare, the Association of Children's Welfare Agencies [ACWA], the Australian Services Union, CatholicCare, the Homicide Victims' Support Group, Marist Youth Care, the Council of Social Service of New South Wales [NCOSS] and Uniting Care. I thank all those organisations for the extraordinary time and effort they contributed to making their submissions and for the carefully considered and constructive advice they provided.

In particular, I pay tribute to Martha Jabour from the Homicide Victims' Support Group for her unfailing

support and vocal public advocacy for the reforms proposed in the bill before the House. Martha is present in the gallery. Labor very much values its continued engagement with its stakeholders, particularly when contemplating the sensitive issues addressed in the bill I have introduced today. I also pay tribute to Karen Chapman, the grandmother of Bailey Constable, and Jannice Florendo, the mother of Ikicia Leach—two children who were taken from us far too soon. I acknowledge that Karen Chapman, Jannice Florendo and Bailey's other grandparents, Sandra and Chris Campbell, also are present in the gallery. I thank them for being present this morning.

Both the Leader of the Opposition and I have had the extraordinary privilege of meeting and talking with Karen and the wonderful opportunity of getting to know Jannice. We have been truly inspired by their bravery and courage in confronting what one can only imagine to be the most difficult of personal events to deal with. In particular as a very young mother, Jannice's courage and fortitude in advocating for the reforms proposed in this bill have been nothing less than inspirational and are a tribute to her strength and determination to ensure that Ikicia's, Bailey's and Chloe's deaths were not in vain.

I now turn to the amending bill. The Children and Young Persons (Care and Protection) Amendment (Protection from Serious Offenders) Bill 2015 will amend the Children and Young Persons (Care and Protection) Act 1998. With the indulgence of the House, I will deal with the bill in detail. Schedule 1 item [1] provides for the protection of children and young persons from persons who have been found guilty of certain offences when the victim was a child and the offender was a parent or guardian of the child. The item includes a new part 3A, which relates to protection from persons convicted of certain serious offences in chapter 4. The proposed part contains the following provisions. Proposed section 38B provides a definition of disqualifying offence. A disqualifying offence means any of the following offences, whether committed before or after the commencement of part 3A, when the victim was a child or young person and the offender was a parent or guardian of the child or young person: first, murder; and, secondly, manslaughter.

Thirdly, it means an offence under any of the following provisions of the Crimes Act 1900: section 22A, which relates to infanticide; section 25A, which relates to assault causing death; section 27, which relates to acts done to the person with intent to murder; section 29, which relates to certain other attempts to murder; section 30, which relates to attempts to murder by other means; section 33 (1), which relates to wounding or grievous bodily harm with intent; section 35 (1) or (2), which relate to reckless grievous bodily harm; section 42, which relates to injuries to a child at the time of birth; section 45, which relates to prohibition of female genital mutilation; and section 45A, which relates to removing a person from a State for female genital mutilation.

It also means an offence under section 227 of the Children and Young Persons (Care and Protection) Act 1998, which relates to abuse of a child and young person; an offence constituted by an attempt to commit an offence referred to in subparagraphs (a) to (d) of proposed section 38H, and an offence under the law of another jurisdiction that corresponds to an offence referred to in paragraphs (a) to (e) of proposed section 38H. The offences identified under section 38H of the proposed bill are clearly the most serious offences that could be committed against any other person, let alone a defenceless child. It must be acknowledged that any person capable of such unspeakable crimes against a child ought not to have the right to automatically have children born to them and attempt to raise other children in the future. The offences identified under proposed section 38H of the bill also closely align with the South Australian Coroner's recommendation 22.2 from the inquest into the death of Chloe Valentine, which states:

> I recommend that the Children's Protection Act 1993 be amended to provide that a child born to a person who has a conviction in respect of a child previously born to them for manslaughter by criminal neglect, manslaughter or murder will, by force of the Act, be placed from birth under the custody of the Minister.

It is important to note that a parent is defined in this bill as the biological parent of a child or young person, whether or not that biological parent has parental responsibility for the child or young person, but does not include a stepmother or stepfather of the child or young person unless she or he has parental responsibility for the child. Proposed section 38I explains the extended meaning of being found guilty in the proposed part.

For the purposes of part 3A, a reference to a person being found guilty of an offence will be taken to include a reference to a person having been charged with a disqualifying offence and there being, first, a special verdict that the accused person was not guilty by reason of mental illness under section 38 of the Mental Health (Forensic Provisions) Act 1990; or, secondly, a verdict of the kind referred to in section 22 (1) (c) or (d) of that Act, being a verdict that the accused person committed the offence charged or an offence available as an alternative to the offence charged; or, thirdly, an acquittal on the ground of mental illness, where the mental illness was not set up as a defence by the person acquitted; or, fourthly, any finding of a court of another jurisdiction that corresponds to a finding referred to in subparagraphs (a) to (c).

Proposed section 38J provides that, for the purposes of proposed part 3A, a newborn baby will be taken to reside on the same property as a person if the baby is likely to reside on the same property as the person when the baby comes out of hospital. Proposed section 38K requires the Secretary of the Department of Family and Community Services to assume guardianship of a child if the Secretary becomes aware that the child has been born to a parent who has been found guilty of a disqualifying offence. This is achieved by the Secretary issuing an instrument of guardianship. The child specified in the instrument for all purposes will be under the guardianship of the Minister for a period of 60 days, unless a parent of the child makes a successful application to have the instrument of guardianship revoked.

Proposed section 38L clarifies that the effect of an instrument of guardianship, which is to allocate all aspects of care responsibility for the child to the Minister, is to authorise the removal of the child from the care of those of his or her parents who have been found guilty of a disqualifying offence, require the child to be kept at a place approved by the Minister and specify the arrangements for the custody, care, protection, health, welfare or education of the child. This is, of course, the main operating provision of this bill and closely aligns with the South Australian Coroner's major recommendation of his report at number 22.2 as stated previously, that a child born to a person who has a conviction in respect of a child previously born to them for manslaughter by criminal neglect, manslaughter or murder, will, by force of the Act, be placed from birth under the custody of the Minister.

Proposed section 38M provides that the Act applies to an instrument of guardianship as if it were a care order. Proposed section 38N provides that an instrument of guardianship remains in force for 60 days, unless it is earlier revoked, but can be extended. This provision ensures that should the Minister require further time to provide alternative care arrangements for the child in question, the secretary may apply to the Children's Court to extend the duration of the instrument of guardianship if they are satisfied it is appropriate to do so.

Proposed section 38Q requires the secretary, if he or she becomes aware that a child or young person is residing, or is about to reside, on the same property as a person who has been found guilty of a disqualifying offence, to issue a restraining notice to the person. The secretary is not required to issue a notice if of the opinion that the relevant disqualifying offence occurred where there were significant mitigating circumstances, or arose as a result of any illness or condition from which the offender no longer suffers or from any circumstances that no longer exist. This provision is in place to ensure that any person guilty of a disqualifying offence is unable to reside or care for a child who is not their own, who they may seek to reside with or care for, perhaps due to a pre-existing relationship with the child's parent.

Proposed section 38R provides that a restraining notice may prohibit the offender from residing on the same property as the child or young person, or coming within a specified distance of the child or young person's residence, or having any contact with the child or young person except under supervision, or having any contact at all with the child or young person. Proposed section 38S provides that a restraining notice will apply for a period of 60 days, unless it is earlier revoked, but can be extended.

Pursuant to sessional order business interrupted and set down as an order of the day for a future day.

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Second Reading

Debate resumed from 12 November 2015.

Ms TANIA MIHAILUK (Bankstown) [10.13 a.m.]: Having worked through the specific operative provisions of the Children and Young Persons (Care and Protection) Amendment (Protection from Serious Offenders) Bill 2015, I now turn to the legislative safeguards contained within the proposed legislation. Labor is very conscious that reforms to child protection must be undertaken very carefully, with great sensitivity and with appropriate safeguards in place. This bill has a number of very important safeguards: Schedule 1 [4] allows the Children's Court to revoke an instrument of guardianship or restraining notice where:

> (a) a successful application has been made for revocation by a parent of the child or young person or,
>
> (b) an application for a care order contemplated by the proposed new provisions has been made by the Secretary.

New section 38K (2) ensures that the secretary is not required to issue an instrument of guardianship if the secretary is of the opinion that the relevant disqualifying offence:

> (a) occurred where there were significant mitigating circumstances, or
>
> (b) arose as a result of any illness or condition from which the offender no longer suffers or from any circumstances that no longer exist.

While the bill does not define what these mitigating circumstances might be, this provision should be read narrowly and is only intended to allow for extraordinary circumstances where it would be manifestly unjust to issue an instrument of guardianship against the offender. There is a similar provision under new section 38Q (2) in relation to the issue of restraining notices. A significant safeguard in the bill is to allow a parent guilty of the disqualifying offence whose child has been removed to apply for a revocation of an instrument of guardianship. This is to ensure that if parents can demonstrate to the Children's Court's satisfaction that they are no longer unfit to care for their child those parents may be authorised to do so. This provision aligns closely with the South Australian Coroner's recommendation 22.2 where he stated:

> The power vested in the court to vary or revoke the Minister's custody might be exercised in the convicted parent's favour in the event that they could establish to the court's satisfaction that they had changed their behaviours and attitudes so that the court could be satisfied that they would not subject the child to abuse or neglect.

New section 38O allows that a parent may apply for revocation of an instrument of guardianship. This new section provides:

> The Children's Court may, on application by a parent of the child concerned, revoke an instrument of guardianship if satisfied that it is appropriate to do so.

New section 38U sets out the matters to which the Children's Court is to have regard in determining the application as follows:

> (2) Without limiting the matters to which the Children's Court may have regard in determining an application, the Court is to have regard to the following:
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> (a) the age of the victim of the relevant disqualifying offence when it was committed,
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> (b) the seriousness of the relevant disqualifying offence and of the penalty imposed,
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> (c) whether or not the disqualifying offence involved any aggravating factors,
>
> (d) whether or not the disqualifying offence occurred where there were significant mitigating circumstances,
>
> (e) whether or not the disqualifying offence arose as a result of any illness or condition from which the offender no longer suffers or from any circumstances that no longer exist,
>
> (f) whether or not the offender has a record of previous findings of guilt (particularly if the offender has been found guilty of several disqualifying offences or has a record of previous findings of guilt for serious personal violence offences that are not disqualifying offence).

The Children's Court may also have regard to the same matters when determining an application under new section 38T, which provides that an offender can apply for the revocation of a restraining order. The Children's Court may also have regard to the same matters when determining an application under new section 38P, which provides that a woman who has been found guilty of a disqualifying offence and who is expecting a child may, during the term of her pregnancy, apply for an order of the Children's Court to prevent the issuing of an instrument of guardianship in relation to the child. This provision ensures that a pregnant mother guilty of a disqualifying offence has the opportunity to be declared a fit mother by the court prior to her child being removed from her care. This provision acknowledges the significant development and bond that occurs between a mother and child, and that significant stage of development should not be denied to a mother who a court finds is fit to care for her child. Finally, new section 38K (b) ensures in relation to the issue of an instrument of guardianship:

> If the child subject to the instrument of guardianship also resides with a parent who has not been found guilty of a disqualifying offence, the Secretary is not to issue an instrument of guardianship, but must instead issue a restraining order under proposed section 38Q against the parent found guilty of the disqualifying offence.

This provision is to ensure that no child is removed from a parent innocent of the disqualifying offence. This provision also aligns directly with the South Australian Coroner's recommendation 22.2 in which he stated:

> Furthermore, the Minister would have the same powers in relation to the child as any other child under the Minister's care and protection: for example, the Minister might ... permit the child to remain in the care of some other member of the child's family. This might, for example, include the other parent of the child, who may have no previous conviction in relation to children, and may be a suitable person to care for the child. In such a case the Minister should be empowered to impose conditions on the convicted parent's dealings with the child, if the parents are still in a relationship. That would alleviate the risk that the proposal might work an injustice upon a person with no relevant conviction who happens to have a child with a person to whom the section applies. The Minister would be able to place the child with that parent, if satisfied that he or she was committed to ensuring that the child would be protected from neglect or abuse at the hands of the convicted parent.

This bill emphasises that the rights of the child must remain paramount over the rights of any criminal parents. We must recognise that children, particularly very young children, are the most vulnerable and voiceless in our society. We must do everything in our power not only to protect the children currently at risk of harm but also to prevent future children yet to be born from the evils of those that are simply unfit to care for them. In closing I draw on a passage quoted by the South Australian Coroner in his report of the inquest into the death of Chloe Valentine. The passage comes from Jeremy Sammut's report "Do Not Damage and Disturb: On Child Protection Failures and the Pressure on Out of Home Care in Australia" (2011) and is as follows:

> An enlightened truth, and the bedrock of sound child protection, is that childhood is fleeting. This time of life must be optimised for children's sake, and for society's good, because bad early experiences have deleterious, life-long consequences. Because today's child is tomorrow's citizen ...

Debate adjourned on motion by Mr Mark Coure and set down as an order of the day for a future day.