CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) AMENDMENT (PROTECTION FROM SERIOUS OFFENDERS) BILL 2016

First Reading

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

Second Reading

Ms TAN IA MIHAILUK (Bankstown) (10:36): I move:

That this bill be now read a second time.

On 12 November 2015 I moved a private member's bill with the intent of strengthening child protection laws for all children and young people. Debate was gagged by the New South Wales Government and the bill lapsed despite my request to have it reinstated. Today I am reintroducing the same bill. When I introduced the bill last year the South Australian Government was considering making similar amendments to its legislation, which have subsequently been passed. It is now even more pressing that New South Wales should do the same.

Labor fundamentally believes that the rights of the child must prevail over the rights of those parents or guardians who cause serious, violent harm to their children. The New South Wales Government has a fundamental obligation to stand up for the rights of vulnerable children. This bill is not about partisan politics; it seeks to champion the rights of the most vulnerable and voiceless children in our community. The safety, welfare and wellbeing of vulnerable children must always be the paramount consideration with respect to their care.

This bill would guarantee that vulnerable children and young people are kept safe from parents or guardians who have previously committed a series of violent offences against children, such as murder, manslaughter and other offences which would clearly demonstrate that the parent is incapable of caring for any child. It is important to note that the Parliament of South Australia has now made those amendments to its legislation and I stress the need to ensure that New South Wales keeps up with States like South Australia in protecting vulnerable children, particularly children in care.

The Children's Protection (Implementation of Coroner's Recommendations) Amendment Act 2016 (SA) was introduced in response to the Coroner's recommendations following the inquest into the death of Chloe Valentine. The bill was proclaimed by the Governor of South Australia on 28 April 2016. The South Australian Government has led the way by strengthening child protection standards in its State, and we must ensure that New South Wales is not left behind when it comes to prioritising the rights and safety of vulnerable children. This bill prioritises the safety of the most vulnerable children, while also containing a number of safeguards to ensure that parents who may be capable of adequately caring for their children are not punished twice for a previous serious crime.

This Parliament has an overwhelming obligation to act immediately to further strengthen the legislative framework surrounding the protection of vulnerable children and young persons in New South Wales, particularly in light of the series of recommendations made by the 2015 South Australian Coroner's report into the death of Chloe Valentine. We cannot stand still and rest on our laurels when it comes to an issue as important as protecting the most vulnerable children in our community from harm. This bill will deliver on the New South Wales Opposition's commitment to protect such vulnerable children from persons convicted of previous serious child-related offences against their own children. It will close a loophole in the existing legislation and ensure that all abused children are protected from future harm from parents who have previously committed a range of serious offences, such as murder and manslaughter against their own children, and other disqualifying offences.

Labor wholeheartedly believes that every child fundamentally deserves the right to be protected from harm. We cannot leave the fate of the most vulnerable children in our communities to chance, nor can we leave the fate of children to the actions or inactions of public or private institutions when it comes to safeguarding their safety. In 2012, 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. Chloe Valentine had been the subject of 20 child protection notifications to Families SA, and the coronial inquest into her death clearly highlighted both the manner in which child protection authorities in South Australia had mishandled her case and the need for reform in this area.

Here in New South Wales, four-year-old Bailey Constable was killed by Nathan Forrest, his mother's boyfriend. In 2013, Mr Forrest pleaded guilty to the manslaughter of this vulnerable child. Forrest was sentenced to a maximum of eight years in jail and was to serve a non-parole period of six years. Tragically, Bailey Constable was also the victim of physical abuse before his death. The

equally tragic death of Ikicia Leach highlights how this is not an isolated example. Benjamin Leach served less than four years in prison following his conviction of the manslaughter of his own seven-week-old daughter. Following his release from prison, Leach changed his name and had a child with a new partner, without disclosing his crime.

Under the existing legislative framework nothing will prevent people such as Mr Forrest, Mr Leach or untold numbers of other individuals who have committed similar horrific violent offences like murder or manslaughter of a child, from residing with another child in the future. There is a clear gap in the legislation, and this bill will correct this gap by prohibiting such violent offenders from caring or residing with their own or other children in the future. The tragic deaths of Chloe Valentine, Bailey Constable, Ikicia Leach and many others before them may have been prevented if a legislative framework such as the one proposed in this bill had been enacted in those jurisdictions.

Labor has also acknowledged that in some circumstances a person who is not the parent of a child who is residing with them may have a previous conviction for a serious violent offence against their own child. The presence of a partner or other adult residing with a child's parent or guardian, who has a previous conviction for a serious violent offence against their own child, may also pose a significant risk to the safety and wellbeing of the child they reside with. The bill will also address this issue by proposing to restrain such persons with serious prior convictions from residing with a partner's or de facto's child.

The bill clarifies what constitutes a disqualifying offence which may threaten the safety of vulnerable children. This would include previous serious convictions for offences under the Crimes Act 1900 relating to infanticide, assault causing death, acts done to the person with intent to murder, certain other attempts to murder, attempts to murder by other means, wounding or grievous bodily harm with intent, reckless grievous bodily harm, injuries to a child at the time of birth, prohibition of female genital mutilation, and removing a person from a State for female genital mutilation.

A disqualifying offence would include offences within the Children and Young Persons (Care and Protection) Act 1998, such as the 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 of the bill. These offences are the most serious kinds of offences. They are unjustifiable, and any parent that has committed them against a child in the past should simply not have the right to automatically expose any children to the further risk of harm.

This bill is about strengthening the rights of the child, particularly vulnerable and voiceless children who are at a higher risk of harm. These proposed reforms will significantly strengthen the child protection legislative framework in New South Wales, whilst also introducing the necessary safeguards that create the right balance between protecting our children from serious harm and protecting the rights of the parent or guardian, who may have committed a serious violent offence in the past, to care for future children.

The bill acknowledges that a one-size-fits-all approach with respect to the issuing of an instrument of guardianship or restraining notice for a person who has committed a serious disqualifying offence against a child may not be appropriate in all circumstances. If there were mitigating circumstances where it would be manifestly unjust to restrict guardianship of a child who was not at any risk of harm, then the individual who committed the prior offences against a child would have the capacity to make an application to the Children's Court. This would ensure that if such a parent could demonstrate to the Children's Court's satisfaction that they are no longer unfit to care for a child they would be permitted to still do so. In this regard the court could take into account the age of the victim of the relevant disqualifying offence, when it was committed, the seriousness of the offence and penalty imposed, any aggravating or mitigating factors concerning the matter, an illness or condition of the offender that may no longer exist, and whether or not the offender has a record of a previous finding of guilt for other serious offences.

Overall, this bill is a fair and proportionate proposal that will close a loophole which still exposes some of our most vulnerable children to the risk of serious harm from violent offenders. The bill will strengthen the rights of the child over the rights of parents who have previously committed serious criminal offences against children. The onus should be on such criminal parents to prove why they once again have the capacity to care for vulnerable children, not the other way around, and I stress that this bill has the scope for this to occur in the appropriate circumstances.

Members in this place have an overwhelming duty and obligation to do everything that is necessary to not only protect the children currently at risk of harm, but also any children yet to be born from the evils of those that are simply unfit to care for them. That is the lesson that has been learned from the tragic deaths of Chloe Valentine, Ikicia Leach and Bailey Constable. Not everybody in this

State is fit to care for children, and this bill will, once and for all, clarify that those violent criminals who have committed unspeakable offences against children should be prevented from doing so again.

As I did last year, I pay tribute to the many groups and families who have publicly advocated for strengthening the child protection framework in our State. I take this opportunity to acknowledge Martha Jabour from the Homicide Victims' Support Group, who has been a tireless advocate for this cause, and her contributions have been immensely invaluable. I also recognise again the families of Ikicia Leach and Bailey Constable, who made themselves available for consultation, for their advice in formulating these necessary reforms. It was a very emotional time when we met last year on a number of occasions and I pay tribute in particular to Karen Chapman, Jannice Florendo and Sandra and Chris Campbell, who know more than anybody else the heartbreak of losing an innocent child due to the actions of a violent criminal.

Their bravery and courage in advocating for these reforms and sharing their touching stories has been truly appreciated. If this bill saves just one family from the suffering that these individuals sadly suffered, we will have achieved something befitting the memory of those children. Their deaths will not be in vain. I commend the bill to the House.

Debate adjourned.