Draft Second Reading Speech

Hon Elise Archer, MP

JUSTICE LEGISLATION AMENDENTS (CRIMINAL RESPONSIBILITY) BILL 2020
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Madam Speaker, I move that the Bill now be read a second time.

The Tasmanian majority Liberal has clearly established its law and order credentials and putting victims and community safety first is a core priority for me, as the Attorney-General and Minister for Justice.

The law and order reform which we took to the last State election held this value front and centre, and our policies were strongly supported by Tasmanians.

"One punch" or "cowards punch" incidents have been the focus of national attention as a result of a number of highly publicised incidents, campaigns in relation to alcohol-fuelled violence and the introduction of reforms to reduce violence including new offences across Australia.

These senseless and sometimes fatal attacks are often unprovoked and indiscriminate, but can leave lasting and devastating effects on the victim, their families and our community.

While there are a number of existing offences in Tasmanian legislation that can capture one punch incidents such as assault and grievous bodily harm, I consider reform is necessary to close a loophole that currently exists for offenders to avoid convictions for manslaughter if they successfully argue that the death was an accident.

The experiences of other Australian jurisdictions, coupled with consideration of the Tasmanian legal context and experience, has informed the drafting of the amendments contained in this Bill.

I make no apology for taking the time necessary to thoroughly consider reforms that have occurred in other States to avoid unforeseen or unintended outcomes. Any changes to our criminal law must be carefully considered, analysed and tested with legal stakeholders to ensure they do not have unintended consequences or negative impacts on criminal proceedings.

Our reforms will send a strong message that senseless and cowardly acts of violence will not be tolerated, and will ensure that police and the courts have adequate powers to hold offenders accountable.

Last year, the Department of Justice, released a draft Bill for public consideration. We asked for feedback on proposed legislative changes that will make the defence of accident much clearer and ensure that self-induced intoxication cannot be used as an excuse for random acts of violence.

The public consultation ran for six weeks and concluded in November 2019. Ten submissions were made and were in general, supportive of the Bill. In terms of some stakeholders seeking clarification or raising questions, the Department of Justice undertook further consultation with the Director of Public Prosecutions in order to settle the final version of the Bill.

I will now turn to the specifics of the proposed amendments. The Bill consists of two amendments to s.13 in the *Criminal Code* and an amendment to the *Sentencing Act 1997.*

The Bill amends section 13(1) of the *Criminal Code*. This section sets down the general intent requirements for offences under the Code. Under section 13(1) of the Code, a person is not criminally responsible "for an event which occurs by chance".

This provision is comparable to the defence of accident in the Queensland and Western Australian Criminal Codes.

Common law provides that "an event occurs by accident within the meaning of the rule if it was a consequence which was not in fact intended or foreseen by the accused and would not reasonably have been foreseen by an ordinary person[1]."

In 2011, Queensland chose to amend its Code to remove the word accident and instead articulate the common law.

The Queensland amendment was made as it was suggested that the term "accident" did not "reflect the essence of the excuse and may create misunderstanding within the community".[2]

[1] *Kaporonowski* (1973) 133 CLR 209 at 231

[2] Page 2, explanatory notes *Criminal Code and other Legislation Amendment Bill 2010*

For similar reasons, this Bill amends section 13(1) of the Code to remove the reference to "chance event" and clearly state the principle set down by the High Court in the decision in *Kaporonowski*. This states that for a person to be criminally responsible for an event, it must have been;

- intended or foreseen as a possible consequence; or

- an ordinary person would have reasonably foreseen it as a possible consequence.

The first arm is a subjective requirement that the accused intended or foresaw the event as a possible consequence.

The second arm sets down an objective test, asking whether an "ordinary person" would have foreseen the consequence as possible.

Therefore, even if an accused did not intend for death or grievous bodily harm to occur, and they did not foresee the death or grievous bodily harm, the law will still find them criminally responsible for this event if an ordinary person similarly situated would have foreseen the event as a possible consequence.

Secondly, the Bill enshrines the "eggshell skull" principle within section 13.

Both Queensland and Western Australia have amended their respective Codes to ensure that an accused is not excused from criminal responsibility for death or grievous bodily harm that results to a victim because of a "defect, weakness or abnormality".

This was in response to ambiguity in several cases in these jurisdictions about the appropriate use of the defence of "accident" where the victim's death was a result (or may have been a result) of a pre-existing "defect, weakness or abnormality".

This Bill similarly provides that "a person is not excused from criminal responsibility for death, or grievous bodily harm, which results to a victim because of a defect, weakness, or abnormality, of the victim".

The third amendment is an addition to the *Sentencing Act 1997*.

The Government committed to ensuring that intoxication could not be used as an excuse for a one punch attack. This Bill therefore specifically prohibits self-induced intoxication from being considered a mitigating factor in sentencing.

The Government is committed to providing a clear message that self-induced intoxication, by alcohol or drugs, is not an excuse for violence in our community and we will always stand up for the safety of the community.

And finally, in order to fulfil the additional commitment to "review the existing provisions in the *Sentencing Act 1997,* which give the courts the power to ban offenders from certain areas". I propose to refer this aspect to the Sentencing Advisory Council for their consideration and review. The Department of Justice is currently working on the Terms of Reference.

Our Government also committed $200,000 towards the *Stop the Cowards Punch* campaign to increase awareness and educate people. Developed in line with champion boxer Danny Green's national program, it aims to give young people advice on how to avoid and de-escalate violent situations.

After all, prevention through education is far more preferable than dealing with the consequences of these horrific incidents. This work has commenced and will continue in parallel to the proposed legislative changes.