



Speech by

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Hansard 27 April 1999

CRIMINAL CODE (STALKING) AMENDMENT BILL

Mr FELDMAN (Caboolture—ONP) (2.37 p.m.): I, too, am pleased to speak to the Criminal Code (Stalking) Amendment Bill. There is no denying that the current provisions of the Criminal Code needed clarification. As a former police officer, I knew of the difficulty of attempting to secure a charge against a person under the current provisions of the Criminal Code.

I will speak broadly about a matter into which I was drawn to do some partial investigating. The matter involved a good-looking young woman with a bright and bubbly personality who worked at a car repair centre. She was being stalked by a client who took an interest in her. That stalking by this young man occurred over a very lengthy period. He joined the car club of which she was a member and rang her constantly at work and at home. She also worked at night in a club, and he hung around that club. At first she thought it was just a bit of misplaced friendly affection until, on one fateful occasion, she arrived home one Valentine's Day to find her house had been broken into and this young man had prepared a Valentine's Day dinner for her.

After she spurned his misplaced affection on that occasion, he then attempted to kill himself by driving his motor vehicle into a tree near her home. He did not succeed, and the stalking got worse. She was followed and rung up late at night. She received letters and cards on a daily basis. Each contact got more and more eerie and chilling. One such letter contained just two bullets and a short note saying what a shame it would be if he had to kill her two dogs. She eventually made a complaint, outlining the concerning acts, which included the two bullets sent by mail. This male person was eventually charged and convicted, but that was not the end of the tale. This person even had to be further prosecuted later on because he was making phone calls to this woman from inside prison. He continued the behaviour—definitely not rational behaviour.

In most of these cases we are not dealing with sane and rational people. This is highlighted by an article by Fergus Shiel in the Melbourne Age on 8 April 1999 concerning an article for the British Journal of Psychology magazine in 1999. It has implications for us. The article was headed "Laying claim to the deluded joys of victimhood," and I will read just a portion of it. It states—

"A bizarre act of some attention-seekers is to falsely claim to be stalked. Even more bizarre, some are themselves stalkers.

Stalking can make a victim's life hell, but, for some, it's a fictitious hell of their own disturbed mind's invention.

New research shows that these people, in deluded pursuit of the joys of victimhood, will falsely claim to have been stalked.

Most disturbingly of all, these pseudo-victims include among their ranks stalkers falsely accusing their very real victims of harassing them.

Melbourne forensic mental health specialists Dr Michael Pathe, Professor Paul Mullen and Rosemary Purcell have compared 12 false victims with 100 real ones.

Their findings, recently published in the British Journal of Psychiatry, throw light on the most bizarre of attention-seeking behaviour.

Significantly, they reveal that false victims are capable of infiltrating the depths of our medical and legal systems before being detected.

According to Mullen's estimation, probably less than 1 per cent of stalking claims are false.

The false victims studied by the researchers were in most cases distressed and disturbed (six were delusional) and in need of care, not mere charlatans or liars.

Nevertheless, they posed a big problem because they undermined the credibility of true victims and took away scarce resources meant for them"——

That is a reference to the real victims. It went on—

"There was no problem giving them help. The issue was preventing them from distressing other people,' Mullen says."

The article itself, prepared for the British Journal of Psychology, was "Stalking: false claims of victimisation". The background to the article was that false allegations of victimisation, although uncommon, are important to recognise. This paper examined those who falsely claimed to have been victims of stalking. The conclusions were that the current interest in stalking is promoting false claims of being stalked and that early identification of these cases and appropriate intervention are essential to both minimise abuses of resources available to true victims and equally to ensure appropriate care for those who express their own disordered state in false claims of victimisation.

Whilst agreeing with the necessity to improve the current section of the Criminal Code due to the difficulty of proving that unlawful stalking was occurring, I was initially concerned that this Bill might, in fact, go too far the other way and make it too easy for false and vexatious claims to be made. Upon closer examination it appears that this may not be the case—at least we rely on the Minister's view that this is indeed not the case. The Bill certainly expands the definition of "unlawful stalking" and makes the charge much easier to prove. This more comprehensively covers what actually occurs in reality and what affects people's lives in a very negative way. The current legislation was too difficult to prove and allowed far too many people to escape an unlawful stalking charge.

At first glance there were some issues within the Bill which alarmed me. Feminist legal theory abounds within the legislation and this concerns some groups—as indeed it should—such as civil liberties and men's rights groups. One such group highlights this in an article which, I am led to believe, was delivered to the Minister. It says—

"In the past decade, feminist legal theory has become a formidable presence in many of America's top law schools. Feminist activism has also had a major impact on many areas of the law, including rape, self-defence, domestic violence, and such new legal categories as sexual harassment. However the ideology of legal feminism today goes far beyond the original and widely supported goal of equal treatment for both sexes. (Weiss & Young, Feminist Jurisprudence, Cato Policy Analysis No. 256, 1996)

The above statement though written by Americans for the American market could by all appearances be easily transposed to describe the situation in Australia and particularly the State of Queensland."

This paper was actually delivered at a men's rights agency State cabinet meeting on the Gold Coast on 28 March 1999. I again refer the Minister to some of the following things contained in it—

"The feminisation of our law is not helping women, it is creating more victims.

Changes to the stalking legislation are being welcomed by the feminist lobby. Recently, (March 1999) Zoe Rathus, Women's Legal Service, also Chair of the women's taskforce commented on the ABC, Peter Gooch program:

'this amendment will allow us to push for psychological damage, we couldn't do that easily before under domestic violence ...' "

It goes on to say—

"So perhaps the proposed changes are all about money, just as victim-creation is about money too! Building an ever burgeoning NGO bureaucracy that does not appear to be enhancing the safety of women, but prefers to concentrate on developing even more avenues of fear creation seems to be counterproductive.

Our police force is stretched to the limit, as are our courts. The cost to the taxpayer is enormous."

I am highlighting some of the things that we hope do not occur. The article goes on in another section to deal with the number of complaints. A table, which I shall ask if I can put into Hansard, refers to the number of offences from 1995 to 1998. The article continues—

"However, offences committed against men comprise 27% of the total and it would appear that since 1997 offences against men"—

in relation to stalking—

"have increased by 40% and offences against women have dropped by 20%."

It goes on to state—

"We predict you will find a remarkable turnaround and women's claims of stalking will skyrocket as the women's groups encourage more and more women to claim victimisation by stalking, especially if there could be a financial reward at the end of it."

I am not really talking about financial reward for these women; I am talking about financial reward for our legal system. There are unscrupulous lawyers out there who will push people to make these complaints in order to have more money for themselves. The article states that non-compensation could be a factor because non-complaints could increase as a result of a push from the legal fraternity which can see a possible gravy train of money. This is something that should not happen and should continue to be looked at. We should monitor what and who in the legal fraternity are pushing these complaints, especially ones that do not make the grade.

A lot of unlawful stalking complaints usually revolve around a breakup of a relationship. The difficulty here was determining what was, in fact, reality and what was perception. Under the old Criminal Code, there had to be an initial incident, a concerning act. This incident had to be part of the course of conduct. The difficulty that the police found themselves in was determining what was the course of conduct. This was made more difficult when the situation involved a relationship breakdown where a person had a right of access to children, property or other matters.

Whilst acting within a right of access, a person could perform a course of conduct which resulted in a concerning act. This concerning act, for example, may have constituted the police making an arrest or detaining a person under the provisions of the Domestic Violence (Family Protection) Act. However, if this concerning act involved violence in a course of conduct it could have been the concerning act for the first complaint to be lodged in relation to a stalking complaint. Therefore, under the current Code, a person who was actually conducting unlawful stalking could avoid prosecution on the basis that the act was a domestic violence act. However, this does not mean that every act of domestic violence is stalking.

In criminal proceedings, which this Bill covers, as unlawful stalking is an offence under the Criminal Code, the standard of proof against an accused person must be beyond reasonable doubt. In a civil proceeding, as covered by the Domestic Violence (Family Protection) Act, the standard of proof is on the balance of probability. This allows a judge in a criminal case of unlawful stalking to grant or continue a restraining order with the standard of proof being either beyond reasonable doubt or probability, saving a victim from having to reapply for the order in the Magistrates Court, which takes time and money.

I agree in principle with this section and believe that it will be of great benefit to victims. The civil libertarians and men's rights groups, however, may not agree as this is able to be done regardless of the outcome of the case—whether or not a person is found guilty of unlawful stalking. We must again be trusting of the judiciary—a judiciary that the public is fast losing confidence and faith in.

I notice that the Scrutiny of Legislation Committee is concerned that the increase of the maximum sentence for unlawful stalking involving the use or threat of use of violence, possession of a weapon or contravention of an injunction of a court could be construed as double sentencing, thereby infringing upon a person's rights and liberties. If a person is found guilty of unlawful stalking which involved an act of violence, resulting in a maximum seven-year sentence, and was then tried and convicted for an act of violence and sentenced to a maximum sentence for that act also, I just say: too bad.

I agree that women are in fact the biggest sufferers of stalking activity and need and deserve to be protected by the law. Every person has an inalienable right to go about their everyday life without someone watching, following, threatening or harming them or forcing them to change the way they live to avoid the disturbing actions of someone else.

The strengthening of this legislation to increase the protection offered to innocent people is good. My final assessment is that I believe the Bill does not go too far the other way, but it will always weigh heavily upon the police and the judiciary to not allow openings for false and vexatious claims of unlawful stalking. At this point, until there is evidence of any abuse of this amendment, I will support the amendment to the Criminal Code. I support the Bill.