



Speech by

**Mrs J. SHELDON**

**MEMBER FOR CALOUNDRA**

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Hansard 11 November 1999

**DOMESTIC VIOLENCE (FAMILY PROTECTION) AMENDMENT BILL**

**Mrs SHELDON** (Caloundra—LP) (11.41 p.m.): I would like to make a contribution to an issue that is very important to our community and to the women, families and men in it, and that is domestic violence. I have spoken on this issue before in this House. Undoubtedly, the greater percentage of victims of domestic violence are women and, as a spin-off, the families and the children of those relationships. It is disappointing to see that over the years this problem has been increasing. I think it has increased due to a range of things. I think it has increased due to breakdown in families and difficulties with jobs, with the economic instability in the community and with people's unreal expectations of each other. There is a growing situation in which people who have been a product of families in which domestic violence has occurred seem to perpetuate it. Indeed, one would wonder why, but it does seem to happen when they get into relationships and feel that this is a socially acceptable or, indeed, the only known way they have of acting. It is a terrible situation for many families to be in.

Domestic violence has wide-ranging effects as well on the community. One has only to look at the amount of time that police officers spend in attending domestic violence problems. This time could well be spent on major crime, but they are called to situations that are often acutely aggressive—a lot of danger involved. Indeed, we see a lot of police who are injured—even fatally—when attending these sorts of calls. Anything that could be put in place to reduce that burden on the police, to reduce the spin-off into the community, has to be applauded. I would like to put on record my appreciation of the work that a lot of police do in this regard and the help they do give to victims of domestic violence.

Violence does grow over a period and seems to develop more and more in a relationship as it goes on. It often appears very early. I think a lot of women think that it will abate as the relationship grows or they feel that they are to blame. Possibly in a minority of cases they do contribute, but by and large they do not. They are, indeed, victims. It is often said, "Why can't women in these situations walk away?" That is easier said than done because they are often guardians of their own families; they have the children to protect; they have a situation often where economically it is not viable for them to walk out the door; and they tend to continue in relationships which are detrimental to themselves and to their families. As a community, we have a responsibility to make sure we put in place as much help in these situations—guidance, counselling and help—as we possibly can.

There is no doubt that the whole family is affected by this and, as I mentioned earlier, people who have been in families where there has been a lot of domestic violence tend to perpetrate it themselves when they have a family themselves, when they have the responsibility of children, a husband or a wife. So this whole terrible cycle continues. Very obviously prevention in this situation is a heck of a lot better than cure, and education is a fundamental part of this.

I would have liked to have seen a bit more emphasis on education in this Bill. I know that the Bill is about the nuts and bolts of domestic violence, but we need to educate our young boys and girls in our schools about what domestic violence is all about. Okay, it has to be related to the educational situation, and they are young, growing and, sometimes, semi-adults. However, I think that we should try to educate them as to what can occur, as to accepted modes of behaviour, as to help that is available in the community. I think that we should educate boys that it is not wussy, if you like, to be compassionate and kind, that they do not have to resort to violence and brute force in order to get their point across and that it is totally acceptable not to have, what have been in many situations described

as, manly attributes. These sorts of things—breaking down stereotypes—are very important in helping when this occurs and will help in prevention.

There is no doubt that early intervention of this sort pays off because domestic violence costs our community a great deal of money in the spin-off in terms of the welfare that has to be paid, the protection that has to be paid and the crisis centres that we have to fund. And, of course, there is the whole spin-off of how that affects children, how it detrimentally affects their educational ability, and that does cost the community a lot of money. So money spent in prevention is money well spent as, indeed, it always is.

A lot of talk does go on about women in domestic violence situations and, indeed, in the high percentage of cases in which they are the victims. However, I think just treating the woman in her situation and the situation that her children are in often does not get to the root cause, which in many cases is the man. All too often, yes, we get an order which is breached—and I hope that this Act will make it as difficult for men to breach domestic violence orders as it says it will.

Quite often there is no real help given to the man. He may be held in detention for four hours—and I was hoping to see that detention period increased, frankly, because four hours is not sufficient. If a drunk man who has abused his wife—belted her up—is put in the lock-up at 11 o'clock at night and is let out again at 2 or 3 in the morning, he has nowhere else to go and he will go straight back to the home he has vacated and continue on in the same mode because he has been aggrieved; he has been in jail and his manly pride, if you like, has been hurt.

We need crisis accommodation to which men in these situations can be taken if they are not going to be kept in jail, not just crisis accommodation for women. Some of the funding I allocated as Treasurer was just for that—for help, for education and for crisis accommodation for men so that they would not go back and perpetrate exactly the same thing that happened before. This money was allocated in the budget of Women's Affairs. It was something that I put in place to have done and, indeed, it was being done. In Women's Affairs, we worked very strongly in the domestic violence field. I had a number of meetings and conferences about this. We made it a high priority of what we needed to focus on if we were going to be efficient in the Office of Women's Affairs.

Previous speakers have spoken about the term "knowingly". I think it is wise to clarify any distortion or claim of not knowing that the order had been put in place. I think it has been cleared up pretty well now that the person to whom the order has been taken out against will have the opportunity of having it made quite clear that there is an order out and what the consequences are if that person breaches the order.

Mention is made also of the effect of domestic violence in indigenous communities. I have travelled to all of the indigenous communities in Queensland and I have met with a number of the women in those communities. Domestic violence is undoubtedly a major problem. So is alcoholism. They do, unfortunately, go hand in hand. I was most impressed that it was the women in those communities who were contributing greatly, often against their own culture, to try to get something done. They were forming groups. They were trying to educate their men. They were trying to put practices in place that would help their children. I think that any help that can be given in that regard should be given.

I would like to see more funding channelled directly to women in Aboriginal and Islander communities, because I believe that they are the key to sorting out a lot of the problems. So far there has not been enough emphasis on the role that women in those communities can play. It has improved. There is no doubt about that. We in the Office of Women's Affairs did fund a program for the women of Palm Island so that they could put in place their own agendas and programs and monitor them themselves—I think that is the only way these things are going to work—and be free and encouraged to use the abilities and knowledge that they have in this field. They do have considerable knowledge in this field, as do all women who find themselves in these family breakdown situations.

I think it is very important that the perpetrators of domestic violence are hindered in every possible way from locating or attempting to locate their victims. All too often, domestic orders have been broken. Frankly, very little follow-up occurs. If a domestic violence order is to mean anything, it is essential that it be followed up if it is breached. A number of the women who have spoken to me over the years have said, "What is the point of getting a domestic violence order? It is not worth the paper it is written on." If that is what they really feel, then the law is failing dramatically in that regard. Any beefing up of those protection orders is important. It is most important that the people who have carriage of this issue see that these orders are put in place and that breaches are penalised. I think that needs to be given a very strong emphasis.

One concern I have relates to perpetrators who have access to weapons by virtue of their employment. It is only in relation to their field of employment that I have this concern, because if they have weapons otherwise, then if they are confiscated that is fair enough. But it is important that this

amendment is looked at if it will adversely affect a man—it usually will be a man—in his ability to gain employment and often pay the maintenance or whatever is required to maintain his family. I am a little concerned that the legislation states that where the employer discloses the information more widely than is necessary they are liable for a penalty of up to \$3,000. While that reads well, I ask the Minister to clarify who is going to determine what is "more widely than is necessary" and make sure that men in these situations are not victimised and do not lose their jobs as a result, because that would just have a negative spin-off anyhow. What may be put in place there in anticipation of an important situation may not eventuate.

I feel that the issue of the woman possibly not having to leave her rented home is important. I just wonder how that will be adequately policed, particularly if she is not the one who is paying the rent. I know that the Bill states that an aggrieved spouse will be stopped from returning to that domestic dwelling. I think that will be very difficult to police. Certainly I agree with the concept. Why should the woman always have to leave and find crisis accommodation? Why should not she, who has the children, remain in the home and the perpetrator have to leave? I am not against the thought process behind this, but I do have some concerns about how it is going to be carried out.

Only a couple of weeks ago I spoke in this House about a very obvious effect of domestic violence, a situation about which I will not go into any details. At the time I spoke about battered woman syndrome and how it is not an allowable defence in the courts of Australia. I again urge the Attorney-General to amend the Criminal Code to make it so. As I said in the House on that day, there is a High Court decision which says that it cannot be used as a defence. I think that is a great pity and I am surprised that the High Court came down with that decision.

Nevertheless, as we all know, statute overrides case law. If our Code is changed, then in Queensland at least women will be able to use battered woman syndrome as a defence. I do not know why we are dragging the anchor on this. There only needs to be an amendment to the Criminal Code. I am sure that if the Attorney-General brought such a proposition before the House he would get the support of the Opposition for it. I certainly would support the concept.

In this day and age, when we have rights of all kinds, it is quite amazing that battered woman syndrome cannot be used as an adequate and a reasonable defence. It would have to stand up to all of the scrutiny of examination of any defence. The High Court said that it can be referred to. That is not good enough. It does not have the legal rights, the legal ramifications or the legal clout of a proper defence.

When I was speaking on this matter on another occasion I said that there was minority judgment of the High Court in the case of *Osland v. The Queen*. It was a 3-2 decision. In that case, which was not all that long ago, the High Court held that in Australia there was no separate defence of battered woman syndrome which would exonerate an accused for the murder of a spouse, even if that person had been subjected to years of physical and psychological abuse. If there is not any case law on it, let us put some statute law in place. I encourage the Minister to speak to the Attorney-General about this to see whether we can get the Code changed.

The minority judgment in that case was made by Justices Gaudron and Gummow. That is interesting, with Justice Gaudron being a woman. They found that, at the very least, battered woman syndrome should be accepted by the courts as a condition that is best explained to a jury by expert evidence and that with that evidence the jury would be able to understand the mental state of the accused. That is true, but it still is not given the status of a defence. I think it is very important that we do that.

While researching the speech I made a couple of weeks ago I found out that, apart from the broad and sweeping International Convention on Civil and Political Rights, which Australia has ratified, there appeared to be only one other international instrument—if we look at what is happening in the broader sense—that could potentially affect the area of violence against women. In 1993 the United Nations established the Convention on the Elimination of Violence against Women. Australia did play a very important role in that convention, but it did not adopt that resolution until 25 April 1996 and it is yet to be ratified. We really do need to make sure that we do that.

I have written to the Prime Minister and asked him to ratify the convention. If indeed it is ratified, the convention articles need to be binding on domestic law. We have to have domestic law that fits into that. I think we will need modification of our Commonwealth law. I have asked the Prime Minister to do that. I have also said to him that I would be quite happy to work with him to get a good result in that regard.

I think what we are really talking about here is equality before the law for men and women. I am not asking for the law to be lax or for there to be a bias towards women; I am asking for equality. At the moment we do not have it, particularly in not being able to use something like battered woman syndrome as a defence. Certainly it has been argued successfully by men that they have killed their spouses in a fit of jealous rage after provocation. That may be fair enough, but a woman should be

similarly able to argue years of physical and mental abuse as provocation, and currently she cannot use that as a defence.

I believe that we need sexual equality. We need to make sure that the obligations under the convention on the elimination of all forms of discrimination against women are ratified. We need to make sure that adequate defences like this would counter power imbalances—whether those imbalances be psychological, physical, financial or legal. I believe that anything that we can do to help women and families and, indeed, men in domestic violence situations should be done. I say to the Minister that I believe that this legislation is certainly a step in the right direction. I hope that, on the matters I have raised, we may be able to move further in that regard.

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