



Speech by

**Dr LESLEY CLARK**

**MEMBER FOR BARRON RIVER**

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Hansard 27 April 1999

**CRIMINAL CODE (STALKING) AMENDMENT BILL**

**Dr CLARK** (Barron River—ALP) (2.30 p.m.): I am pleased to contribute to the debate on amendments to the current stalking legislation. It has been acknowledged that Queensland was the first State in Australia to enact stalking legislation when it became clear that the existing provisions of the Criminal Code were inadequate to deal with the new phenomenon of stalking. In the six years that have elapsed since the enactment of Queensland's pioneering legislation, we have learnt a lot more about the nature of stalking behaviour and it has become clear that the current legislation is too prescriptive and restrictive, enabling stalkers to evade the law and continue to harass their victims, causing serious emotional distress. For example, the requirement that the same act of stalking had to occur on at least two separate occasions is now recognised as too restrictive, and the Bill being debated now enables one protracted act of stalking to be sufficient to establish that a concerning act has occurred. Furthermore, under the proposed changes, if the conduct is engaged in on more than one occasion, it will not matter whether the conduct is the same or different on each occasion.

Of even greater concern was the existing requirement that the stalker must intend that the victim be aware that the course of conduct is directed towards him or her. No other Australian jurisdiction has this rigorous test of stalking, which provides a convenient loophole for stalkers who can, for example, claim that they never intended that the focus of their obsessional love be aware of their behaviour. The removal of the consideration of the stalker's intent from the proposed legislation will overcome that problem.

The other onerous requirement of the current legislation is the need to establish that the victim can reasonably believe that the stalker would commit an act of violence against them or their property. This requirement takes no account of the serious psychological damage that a stalker can inflict on their victim, who may live in fear of their stalker for very long periods. The current legislation recognises the situation of the victims of stalkers and widens the test so that a person will be guilty of stalking if he or she engages in a course of conduct directed at the victim, which amongst other things involves or causes detriment to the victim or a person close to the victim. Under the proposed legislation "detriment" has a very wide meaning, including serious mental, psychological or emotional harm or preventing the person from going about their normal daily personal or work activities.

In the debate on this legislation, the shadow Attorney-General has claimed that the proposed legislation is too wide and flexible and will result in many innocent people being convicted of stalking. In light of the extensive defences against a charge of stalking which will prevent abuse of this legislation and vexatious accusations being upheld, I am disappointed that the Opposition, by its approach to this legislation, for all its talk about supporting the victims of crime, will not support women, who are overwhelmingly the victims of stalking. Perhaps I should not really be surprised or disappointed, because it was the member for Indooroopilly, when he was the Attorney-General in the Borbidge coalition Government, who refused to provide compensation as awarded by the courts to women who have been the victims of appalling vicious sexual assaults, despite public outrage and a media campaign waged by Tony Koch of the Courier-Mail. I believe that he deserves the thanks of the women of Queensland for his persistent campaign in this regard, which has brought this matter to everybody's attention.

**An honourable member** interjected.

**Dr CLARK:** That was of great service to the women of Queensland.

The Government now provides compensation; the victims of crime receive the amount awarded by the courts—a policy that was part of the Goss Labor Government. This Government has also recognised that women can be disadvantaged under the law, and has set up a Task Force on Women and the Criminal Code to report to the Attorney-General on changes to the Code that will enable women to be treated fairly under the law. In particular, it will examine the treatment of women when they are victims of crime or proposed perpetrators, and also whether court practices and procedures need to be changed. Whilst the primary focus of the task force is on the Criminal Code, it may make recommendations in relation to other statutes which may have an impact on matters coming under the operation of the Code, such as the Penalties and Sentences Act, the Domestic Violence (Family Protection) Act, the Bail Act, the Criminal Law (Sexual Offences) Act and the Evidence Act, and it may also make recommendations in relation to possible improvements to the criminal law and any other matters relating to women that may be included at the discretion of the task force.

Furthermore, the Minister for Aboriginal and Torres Strait Islander Affairs has also set up a task force, in this case an Aboriginal and Torres Strait Islander Women's Task Force on Violence, to assist her in developing a strategy to reduce the serious level of violence experienced by women in indigenous communities. That task force was set up in December and it is now well into its work. It has held a number of community consultations throughout the State. Over 40 written submissions have been received from individuals and organisations. Typically, those submissions include concerns about the enforcement of domestic violence legislation, the representation of women on community councils, the establishment of alcohol-free areas, the establishment of rehabilitation programs, support or revitalisation of traditional culture and increased service coordination. That task force will be reporting to the Minister at the end of June this year. I look forward, as I am sure do all women in this House and indigenous women, to the implementation of most, if not all, of those recommendations.

These initiatives of the Beattie Government confirm our commitment to the victims of crime, particularly women victims of crime. Along with a number of other significant measures, this illustrates our commitment to practical solutions that will make a real difference to reducing crime rates and supporting victims of crime. In contrast, at our last sitting the Opposition tried to impose on the State simplistic and unworkable 100% truth in sentencing legislation, which was roundly condemned by the Courier-Mail in its editorial of 17 April 1999. I seek leave to have that editorial incorporated in Hansard.

Leave granted.

Sentencing Bill ill-considered

The law and order issue remains a low-cost, low-risk vehicle for political grandstanding. In an effort to regain the support of Queensland's conservative heartland, opposition justice spokesman Lawrence Springborg last year introduced a truth in sentencing private member's Bill. On Wednesday night, the Bill, which would force serious violent offenders to serve 100 percent of their prison sentences, was voted down in Parliament. It was a vote that suggested a measure of maturity among a majority of our elected representatives.

Sentencing is a vexed issue. We should be sceptical of quick fixes. They have not worked in other democracies. There is no reason they should work here. While politicians have an obligation to protect society, a prison system that brutalises prisoners eventually brutalises society. Perceptions of burgeoning crime rates have encouraged community groups to call for tougher sentences. Politicians, ever anxious to garner support, have been ready listeners—conveniently ignoring research that shows no real rise in the rate of the most violent crime.

In power, the National Party introduced legislation ensuring violent and serious offenders served at least 80 percent of their sentences before being eligible for parole. At the last election, the Nationals upped the ante and promised to make such offenders serve 100 percent of their sentences. The Nationals' proposal was met with well-deserved criticism. Former judge Bill Carter and Chief Justice Paul de Jersey, among others, pointed out that if serious criminals were forced to serve their full sentence they would be released without the community safeguards of parole and rehabilitation provisions. Imposing non-parole sentences also would remove judicial discretion and give offenders no incentive to cooperate or rehabilitate themselves.

As a consequence of that informed criticism, Mr Springborg revised the Bill to ensure serious criminals received a mandatory period of community supervision following a sentence. Under the Bill, the length of supervision would be determined by a judge. Mr Springborg's proposal was ill-considered. It offered nothing, only overflowing courts and prisons and little prospect of deterrence. Research has shown the strongest deterrent to crime is the degree to which criminals believe they will be caught.

Queensland's prisons are the most crowded in Australia. Prisoner numbers have risen by 11.8 percent in the past year. While some offenders are incapable of being rehabilitated, the present system already provides indefinite jail terms to lock such criminals away for most of their lives. Serial sexual offenders who, if released, would pose a real threat are invariably given indefinite sentences.

Away from the hothouse of parliamentary point-scoring and vote-seeking, Queenslanders deserve rational and intelligent consideration of a real problem. It is to be hoped that the parliament's rejection of the Springborg solution is a first step in that process of delivering rational and intelligent answers.

**Dr CLARK:** I believe it was important to include this article in Hansard, because it deserves serious consideration by all those who would seek to go down the road proposed by the Opposition. Members will note that the conclusion to this editorial expressed the hope that the Parliament's

rejection of the Springborg legislation would be a first step in the process of delivering rational and intelligent answers to the question of law and order. The proposed stalking legislation being debated today is another step in delivering rational, intelligent answers—in this case, a rational, intelligent answer to the important law and order problem of stalking, which is a particular concern to the women of Queensland. I commend the Bill to the House.

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