



Speech by

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### **CRIMINAL CODE (STALKING) AMENDMENT BILL**

**Mrs LAVARCH** (Kurwongbah—ALP) (12.30 p.m.): On 9 November 1993, the then Queensland Attorney-General, the Honourable Dean Wells, made Australian history by introducing into this Parliament amendments to the Queensland Criminal Code which saw the enactment of the first anti-stalking laws in this country. Since that time, all Australian States have introduced stalking legislation.

Before the House today we have the Criminal Code (Stalking) Amendment Bill which makes amendments to stalking offences. In his second-reading speech the Attorney-General said that this legislation will "keep this offence provision at the forefront of criminal jurisprudence and therefore be of maximum utility to society". I endorse those comments and I am pleased to support the Bill.

This is a Bill which will ultimately benefit the women of Queensland. As noted in the Attorney-General's second-reading speech, it was during the last election campaign that Labor made a commitment to the people of Queensland to establish a task force to examine the impact of the Criminal Code on women in our society. Just three months after being elected, the Attorney-General established this task force and travelled throughout regional Queensland with senior members of the task force to consult with women's groups on what, if any, amendments need to be made to give further protection from stalking. It was identified that the issue of stalking requires urgent reform as what was happening in practice and the protection the laws afforded were two different things.

Even though stalking as a criminal offence is relatively new, the history of stalking behaviour is as old as the history of human relationships. It was never labelled as a separate and distinct class of deviant behaviour and, prior to its common usage and its subsequent designation as a crime, stalking was referred to as harassment, annoyance or, in some cases, domestic violence. It was not until the late 1980s and early 1990s that stalking was seen as a distinct class of offensive behaviour as a result of numerous high-profile cases involving celebrities in the United States. It was the stalked murder of actress Rebecca Schaffer of the television series *My Sister Sam* that prompted the State of California to bring in its anti-stalking laws in 1990.

Since then, stalking has become a common subject in popular media. With the advent of blockbuster films such as *Fatal Attraction*, *Cape Fear* and *Sleeping with the Enemy* and coverage by news media, stalking has become a household word. Stalking is a crime of terror with a beginning but, seemingly, with no end. It is a crime of fear that leaves no physical cuts or bruises—at least not unless the stalker becomes desperate and acts violently, which sadly is often the case.

Studies throughout many jurisdictions have shown that women are more likely to be the victim, with some studies showing that one in 20 women will be stalked at some time in their lives. In the United States, a study was undertaken between 1993 and 1994 and found that 38% of stalking victims are single women aged between 20 and 45 years. This is not to say that teens and older persons cannot be targets as well. More and more victims are being caught up in a terrifying web of obsession.

Stalking occurs when harassing behaviour is repeated, is threatening and is purposely directed at a specific person and would cause a reasonable person to fear bodily injury or death for themselves or a family member. Sometimes it is just surveillance—every place one goes, he is there. Without a doubt, it is emotional terrorism. The victim cannot get away. There are telephone calls—perhaps 20 to 50 a day. Notes are left on the windscreen or the stalker is in the supermarket at the same time as the woman but then he shows up at an event which is 50 kilometres away. That is what is so frightening.

How can this person know what the woman's schedule is and where she is going? But the stalker does! Stalkers may break into their victim's house, read their mail, listen to their answering machine or move things around just to let them know that they have been there.

Whilst the media highlights the cases of celebrity stalking, it is more often than not that the victims are just normal, everyday people. In an article in the *Proctor* magazine in September last year, Sally Kift, a law lecturer at the Queensland University of Technology, reported that in an 18-month period to January 1997 some 1,104 stalking complaints were lodged with the Queensland police. This figure represented over four times the stalking complaints received by police in the previous 18 months.

Other speakers in this debate have referred to a 1995 article by R. A. Swanwick. This article appeared in the *Queensland University Law Journal* and reviewed the first two years of stalking legislation in this State. Swanwick records that the Queensland offence has been extensively utilised. It is recorded that 175 cases of stalking have been brought before the Queensland Magistrates Court, of which 73 were heard summarily and 74 were committed to the District Court. What this tells us is that stalking is not a rare occurrence.

But as we come to understand that stalking is not rare or unusual behaviour, law enforcers are gathering information to give a psychological and behaviour profile of a stalker. Unfortunately, there is no single psychological or behavioural profile for a stalker. In fact, many experts believe that every stalker is different, making it very difficult not only to categorise their behaviour but doubly difficult to devise effective strategies to cope with such behaviour.

Forensic psychologists are just beginning to examine the minds and motives of stalkers. These psychologists have identified two broad categories of stalking and stalking behaviour. These categories are love obsession and simple obsession. Love obsession stalkers are categorised as stalkers who develop a love obsession or fixation on another person with whom they have no personal relationship. The target may be only a casual acquaintance or even a complete stranger.

The United States Department of Justice, National Victims Centre, reports that its studies show that this category represents about 20% to 25% of all stalking cases. Their profiling further shows that the vast majority of love obsessional stalkers suffer from a mental disorder, often schizophrenia or paranoia. Regardless of the specific disorder, nearly all display some delusional thought patterns and behaviours. Since most are unable to develop normal personal relationships through more conventional and socially acceptable means, they retreat to a life of fantasy relationships with people they hardly know, if at all.

They invent fictional stories, complete with what is to them real life scripts which cast their unwilling victims in the lead role as their own love interest. They then attempt to act out their fictional plots in the real world. When their victim does not follow the script they often use threats, intimidation or violence to make their obsession come true. An extreme example of this was when John Hinckley, who was obsessed with the actress Jodie Foster, shot Ronald Reagan in order to get her attention.

The second category of stalkers is the simple obsession stalkers, which represents about 75% of stalking cases and is distinguished by the fact that some previous personal or romantic relationship existed between the stalker and the victim before the stalking behaviour began. Virtually all domestic violence cases involving stalking fall under this heading, as do casual dating relationships which are now commonly referred to as "fatal attraction" cases.

Whilst this type of stalker may or may not have a psychological disorder, forensic psychologists report that they all clearly have a personality disorder. The personality traits or behaviour characteristics among this category have been characterised as individuals who have generally above average intelligence and are socially maladjusted, emotionally immature and suffer from feelings of powerlessness, jealousy and low self-esteem.

Since the victim literally becomes the stalker's primary source of self-esteem, their greatest fear becomes the loss of this person. Their self-worth is so closely tied to the victim that when they are deprived of that person they may feel that their life is without worth. It is the simple obsession stalkers who are so dangerous. They stalk out of anger, hurt and revenge and they may be looking for a way to justify their rage. The simple obsessive stalker is likely to develop the idea, "If I cannot have her, then nobody else will"—something like the plot of the movie *Sleeping with the Enemy*.

Although stalking behaviour is as diverse as the stalkers themselves, behavioural experts are beginning to identify patterns in the cycle of violence displayed by simple obsession stalkers. These stalking behaviour patterns mirror closely those common in many domestic violence cases. The pattern is usually triggered when the stalker's advance towards the victim is frustrated, regardless of whether the stalker is seeking to establish a personal relationship or to continue a previously established relationship contrary to the wishes of the victim.

Experience also tells us that, although there is a common progression in the behaviour of simple obsession stalkers, no stalking case is completely predictable. As difficult as it is to predict what a stalker might do, it is also at least as difficult to predict when he might do it. A few stalkers progress to

the later stages of violent behaviour in a few weeks or even a day. In other cases, stalkers who are engaged in some of the most serious stalking behaviours may go for months or even years without attempting a subsequent contact. It is this unpredictability that makes developing an effective response strategy so difficult in any particular stalking case. It is also this unpredictability that has shown up the flaws in our present anti-stalking laws.

As set out in the Attorney-General's second-reading speech, the existing offence consists of four elements: firstly, that the accused must engage in a course of conduct involving doing a defined concerning act. The same act must be done on at least two separate occasions to another person who may or may not be the victim of the stalking. Secondly, the accused must intend the victim to be aware that the course of conduct is directed at him or her. Thirdly, the victim must be aware that the course of conduct is directed at him or her. Fourthly, the course of conduct would cause a reasonable person in the victim's circumstance described as those known or foreseen by the accused and those reasonably foreseeable by the accused to believe that a concerning offensive act, which is defined as an unlawful act of violence against a person or property, is likely to happen.

Although Queensland has some of the broadest anti-stalking laws in Australia, it is with the wealth of knowledge that we have now been able to glean both here and abroad in the last decade that the present requirement that there be at least two separate occasions on which a concerning act occurs before the offence has been committed does not capture one equally terrifying continuous act of pursuit. The proposed amendment replaces the requirement that the course of conduct involve the same act being done on at least two occasions with a simple requirement that the conduct engaged in consists of the doing of the same or different act on one protracted occasion or on different occasions. That means that there will no longer be the necessity for a minimum number of acts to constitute a course of conduct.

There are other major changes to the anti-stalking laws, and those have been canvassed by other speakers in this debate. The only one change I want to comment on relates to the present law which states that, once a person has been dealt with by the court in relation to a stalking law, whether or not that person is convicted, restraining orders do not continue. If the victim is still in fear, then new court actions are required. This Bill gives the power for a court to make restraining orders against defendants at the end of a trial regardless of whether or not the person is convicted if the court considers it desirable to do so. The criminal law will be advanced in this way, because it will avoid the necessity for victims to make fresh applications and again give evidence before a different court involving additional costs and time delays when the same court that heard the trial will have most of the evidence that it needs to make the decision whether or not to continue the restraining order. I commend the Attorney-General for including that provision in this Bill.

I also want to congratulate the Attorney-General on acting promptly in releasing the discussion paper to review our present stalking laws and bringing these amendments to the House. Most importantly, I want to give my praise to the Attorney-General, because he has undoubtedly shown his support and genuine commitment to improving the status of women in Queensland.

Before I conclude, I want to touch on another matter that has concerned me for some time and has been recently brought to my attention by one of my constituents. Although this issue is not covered by a State law, it relates to harassment. My concern is not so much about the present laws but about the present practice of the police and Telstra in relation to telephone harassment. The Attorney-General may wish to take up this matter at a ministerial council level. I do not have the answer to this problem today, but I believe that it certainly needs a closer look.

This issue extends to what is becoming an increasing tool of harassment, and that is the Internet. In my experience, telephone harassment is usually a number of calls and hang ups, heavy breathing, or just nuisance calls. In practice, Telstra will not act to trace these calls unless a person can show that they are life threatening or threatening to the property. If a person reports calls of heavy breathing or 25 or 50 calls a day where people hang up when the telephone is answered, Telstra states, "You act to protect yourself. You can change your phone number, put in an answering machine, or screen your calls. Under the new system, you can have the number of the telephone from where these calls are being made displayed." However, the person involved—usually a woman—is so terrified by the frequency of the calls that she feels that Telstra are just fobbing her off and are very unfeeling and quite dismissive of the fear that these calls have instilled. If threats have been made, the victim then has to go to the local police station and make a report. It is upon that report that the police go to Telstra and then Telstra makes a decision as to whether or not it will monitor the calls. As I understand it, it is only through the monitoring of the calls that offences under the Telecommunications Act will be acted upon and a person will be charged and brought before the court. The law itself provides that using a telephone for harassment is an offence; it is just a question of how these people are then charged with the offences.

As for the Criminal Code as it relates to women, there are probably other matters that the task force will consider later in the year. Once again, I want to commend the Attorney-General—

**Mr Purcell:** What a magnificent fellow.

**Mrs LAVARCH:** He is. He has acted quickly. He has put the status of women first and he is acting to improve the daily lives of the women of Queensland. I support this Bill.

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