



Speech by

**Mrs E. CUNNINGHAM**

**MEMBER FOR GLADSTONE**

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Hansard 27 April 1999

**CRIMINAL CODE (STALKING) AMENDMENT BILL**

**Mrs LIZ CUNNINGHAM** (Gladstone—IND) (12.48 p.m.): There has been effusive praise of the Minister by the member who spoke previously. However, I am sure that there are many people in the community, men as well as women, who are affected by stalking and the emotional and psychological harm that it causes and who will be thankful for the amendments that are being proposed today. I seek clarification from the Minister on a couple of issues.

In the past, the same act had to occur on at least two separate occasions to be defined as "stalking". I can understand that in a number of instances people who are genuinely attempting to manipulate a person could perform more than a single act on a repetitive basis but not repeat the same act. Whilst guilty of harassing or stalking somebody, those people could get off on a technicality. The fact that that section has been amended to include an act or series of acts, although not necessarily the same act, may more genuinely reflect what happens in real life.

The Act states that the accused must intend the victim to be aware that the course of conduct is directed at him or her. Initially when I read the amendments, I wondered how it could constitute stalking if the person being stalked is unaware of what is occurring. However, considering the deviousness of some of these people, and having read some clarifying notes from the Minister's office and having listened to his second-reading speech, it appears that there is a very valid case for a person who is the subject of stalking but may not be aware of that stalking. That person may not be the principal target of the stalker but could be a family member or somebody closely related to the person who is being stalked. It could be that the stalking was only revealed at a later date when sufficient evidence was accumulated, and that when that person became aware of the incidents they were very concerned at the course of action that had been occurring for some time. The amendment to the Act changes the requirement that the victim be aware of the stalking by stating that an incident of stalking can be validated even though the victim was not aware of it, which reflects what is happening in reality.

This often occurs with legislation. As has been said, this was groundbreaking legislation when it was first introduced in Queensland. As time progresses and real cases are built up, it is important to revisit legislation, as the Minister has done, and amend it to reflect real situations.

The amendment Bill intends to remove the requirement that the course of conduct would cause a reasonable person in the victim's circumstances to believe that a concerning offensive act, which is defined as an act of violence against a person or property, is likely to happen. Further on, there is a definition of "act of violence". In his second-reading speech, the Minister stated, "If conduct consists of an act or threat of violence, the new section will not require that act or threat be of unlawful violence." The only lawful violence that I can think of is self-defence. I would be interested if the Minister could clarify what lawful violence includes. What elements of action would the courts regard as lawful violence, other than self-defence? In the Criminal Code I think it is called commensurate defence. I would be interested to hear what lawful violence is.

I would also like clarification on this sentence from the Minister's second-reading speech: "The Bill also provides that violence does not include any force or impact that is acceptable as incidental to social interaction or to life in the community." I would be interested in hearing a number of examples of what is "force or impact that is acceptable as incidental to social interaction or to life in the community". It would be a tragedy if that particular sentence could be interpreted by the courts—and they have a

mind of their own—as greater than usual force, as the judge did in South Australia. For example, a minor act of violence, if there is such a thing, within a family situation could be deemed to be normal interaction between a husband and his wife. I seek the Minister's clarification on what that sentence means because of its implications if it is misinterpreted or interpreted in a broader sense by the courts.

Under the legislation, defences will be expanded from the current protection for conduct engaged in genuine political and industrial disputes to also include reasonable conduct for the purpose of the execution of a law, and so on. It concerns me that one of the defences relates to industrial disputes. Under this section it is a defence to a charge to prove that the course of conduct was engaged in for the purposes of a genuine industrial dispute.

This House has already debated the Gordonstone situation. Some members of the House supported the right of other members to demonstrate their views on the right to protest in a workplace. My concern with Gordonstone was not about the freedom of people to demonstrate or indicate a dispute with management. My concern was that, over a protracted period, workers where subjected to abuse and acts that were stronger than abuse. There was physical violence and, importantly, on quite a number of occasions men—and in some situations women were also involved—were precluded from going home to their families of an evening. The buses were stopped and the workmen were required to stay at the site overnight. I do not have a problem with the fact that the guys were demonstrating. That is fine. However, the fact is that the men who were required to stay on site were put at risk. Those husbands and wives were subjected to concern about how safe their families were. Those sorts of issues were raised. Will that kind of conduct be accepted as being engaged in a genuine industrial dispute? I reiterate: I am not talking about the right to picket and I am not talking about the right to demonstrate. I am talking about taking that step over the line, where picketers physically stopped people from getting home to their families, which would have ensured that those families were able to enjoy the remainder of the night in peace and safety. I would be interested in the Minister's clarification of that point.

I wish to comment on and offer the support of the community for courts now having the power, at the time of a trial, to impose restraining or non-contact orders on offenders. That is irrespective of the outcome of the case. Most of us know of situations where a case has been dismissed because of a lack of evidence, or for other reasons, and a person has been subjected to significant harassment and abuse by their spouse. The courts should have regard to the incidents that led to a court action and the evidence that was presented at the court action when exercising their freedom to impose restraining orders or non-contact orders. That will work very positively to ensure that families—and I am not differentiating between custodianship by the father or the mother; I am talking about families generally—will have the peace of mind of knowing that if a case is serious enough and if there is sufficient evidence to show that the family could be at risk from one or other of the partners in a relationship the court has the ability to be proactive rather than reactive, to stop a problem before it occurs. I commend the Minister for that.

The other issue that is allied to the Bill is one that I wanted to comment on. The Minister announced assistance to allow court transcripts to be made available to victims of crime free of charge. I commend the Minister for that. A number of people have come to my office and told me that they would have pursued a matter because it genuinely concerned them, but they could not because they could not afford the material.

**Mr Foley:** It is just the sentencing transcripts, so that they can make an application for criminal compensation.

**Mrs LIZ CUNNINGHAM:** Any help that the Minister can give is fine. Many people's ability to proceed with issues is affected because they cannot afford the information to do so.

At page 2 of the Explanatory Notes, under "Administrative cost to Government of implementation", the number of cases relying on the limb of "serious mental, psychological or emotional harm" will be limited by the qualification that the degree of harm must be serious. Can the Minister clarify the sort of benchmark that "serious" will call up? It is a very subjective test. If I was being subjected to psychological or emotional stalking, I would set "serious" at a much lower level than perhaps a court would. I would hate to see people precluded from a very good review of a difficult area of law by an academic qualification of "serious" versus a real experience situation. I would be interested in how the Minister sees the word "serious" being quantified. On behalf of many people in the community, the men and women affected by these sorts of incidents, I thank the Minister.

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