



Speech by

Hon. M. FOLEY

MEMBER FOR YERONGA

Hansard 3 March 1999

CRIMINAL CODE (STALKING) AMENDMENT BILL

Hon. M. J. FOLEY (Yeronga—ALP) (Attorney-General and Minister for Justice and Minister for The Arts) (4.45 p.m.): I move—

"That the Bill be now read a second time."

Showing foresight and compassion for the plight of victims of crime, a Labor Government made Queensland the first Australian State to make stalking a criminal offence. On 9 November 1993 a Bill was introduced by the then Attorney-General, the Honourable Dean Wells. Since that time, variations have been developed and enacted in all Australian jurisdictions. The time has now come to revisit this offence provision to keep it at the forefront of criminal jurisprudence and therefore of maximum utility to society.

During the last election campaign, honourable members may recall that our Government 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. Last September Cabinet established the task force. It has already done extensive work. I have travelled throughout regional Queensland with senior members of the task force to consult with women's groups, rape crisis workers, victims of crime and the legal profession on this important area of law reform.

The task force will present its report in September this year. However, the issue of stalking was identified as requiring urgent reform. On 30 June 1998 the Minister for Women's Policy, Judy Spence, and I released a discussion paper offering a number of options for reform. Subsequently, Cabinet gave approval for the Criminal Code (Stalking) Amendment Bill to be prepared as an exposure draft. Both the discussion paper and consultation draft Bill were distributed to over 450 interested parties for public consultation. Advertisements appeared in all major regional centres inviting comment, and both documents were made available on the Department of Justice and Attorney-General web site.

As a result of such wide exposure and consultation, numerous submissions were received and all were considered. Workshops were held with key stakeholders from several Government departments, the Women's Legal Service, the Gold Coast Domestic Violence Service and others. All respondents agreed that it was necessary to redraft or to amend the anti-stalking laws and there were divergent views about what needed to be changed and how to achieve it, but the amendments proposed in this Bill have substantial support from key stakeholders.

The existing offence consists of the following elements—

1. 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.
2. The accused must intend the victim to be aware that the course of conduct is directed at him or her.
3. The victim must be aware that the course of conduct is directed at him or her.
4. The course of conduct would cause a reasonable person in the victim's circumstances—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.

Experience is a good teacher and experience has taught us that these elements do not always match the experience of victims or the methods of stalkers in our society. Therefore, it is proposed to make the following major reforms with this Bill—

1. The Bill will replace the requirement that stalking consist of a course of conduct—as I earlier described it—with a simple requirement that the conduct engaged in consist of the doing of the same or different acts on one protracted occasion or on different occasions.
2. The Bill will remove the requirement that the offender intend the victim be aware of the stalking conduct. Instead the Bill will require that the stalking conduct be intentionally directed at the stalked person.
3. The Bill will 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. Instead, the Bill will redefine the offence to require that the conduct would cause the victim apprehension or fear reasonably arising in all the circumstances, of violence to a person or property or, alternatively, that it does cause such apprehension or fear or another detriment reasonably arising in all the circumstances, to any person.
4. "Detriment" will be defined to include any serious mental, psychological or emotional harm. It will also include causing a person to refrain from doing something he or she is lawfully entitled to do, or causing a person to be compelled to do something he or she is lawfully entitled to abstain from doing.
5. If conduct consists of an act or threat of violence, the new section will not require that act or threat be of unlawful violence. That requirement in the current section focuses on the legality of the conduct, not on the nature and purpose of the conduct. In the new section it will be the fact that violence or threats of violence are directed at a victim in such circumstances that a detriment is caused to arise, reasonably in all the circumstances, that makes the conduct unlawful as stalking. 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.
6. A power will be included 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 give evidence again before a different court, involving additional costs and time delays, when the same court that heard the trial will have most of the evidence it needs to make a decision. If it does not, it can remit the matter to a Magistrates Court.
7. The maximum penalties will be raised from three years to five years' imprisonment for the crime of unlawful stalking and from five years to seven years' imprisonment for the crime of unlawful stalking with a circumstance of aggravation. These penalties will be the same as the penalties for stalking enacted in the Criminal Code 1995 and subsequently repealed under the coalition Government.
8. Finally, the defences will be expanded, from the current protection for conduct engaged in for the purpose of genuine political and industrial disputes, to also include reasonable conduct for the purpose of the execution of a law, for a lawful trade occupation or business or for the giving or obtaining of information in which the person has a legitimate interest. Also, the reversed onus of proof of the current section has been removed.

Our Government's work will not stop there. We propose to continue the development of laws designed to give protection to citizens from unwanted attention, threats or harassment. We will be closely examining the efficacy of current laws under the Peace and Good Behaviour Act 1982 and the Domestic Violence (Family Protection) Act 1989 and we will make any necessary changes.

Protection orders and restraining orders can serve as notice to a defendant that his behaviour is unwanted and that it is causing the victim to fear. Protection orders and restraining orders may deter a significant number of potential offenders from persisting to engage in inappropriate conduct. We will pursue these further reforms because our Government cares about the safety and welfare of the people of Queensland. I commend the Bill to the House.
