Speech by

Mr L. SPRINGBORG

MEMBER FOR WARWICK

Hansard 15 November 2000

CRIMINAL CODE AMENDMENT BILL (No. 2)

Mr SPRINGBORG (Warwick—NPA) (Deputy Leader of the Opposition) (10.58 p.m.): This private member's Bill has been sitting on the table of this Parliament for some time. Certainly, as the Attorney-General has indicated, and as was quite clear from the introductory comments of the honourable member for Nicklin—which were not quite as specific—it arose out of circumstances surrounding the conviction and subsequent sentencing of Sunshine Coast woman Lorna Mackenzie. As I say, this Bill has now been on the table of this Parliament for some 12 and a half months awaiting debate. Certainly, over that time things have come to pass. There has been much public debate surrounding the issue which was the primary motivation for this amendment Bill coming to Parliament. There has been the adjudication of matters in the Court of Appeal—appeals being lost on the grounds of conviction but being upheld on the grounds of sentencing.

Tonight, I have listened with some degree of interest to the contribution by the Attorney-General. At the outset, I must say that I concur with many of the concerns that he raised during the course of his contribution. Certainly, they are very similar to the concerns that have been raised with me as shadow Attorney-General. However, having said that, the Opposition will be supporting the private member's Bill which was brought into this Parliament by the member for Nicklin, but we are not absolutely convinced that it is without fault. We believe that there is some significant area for improvement. However, I would say that, as the Government has the numbers in this Parliament, it is unlikely that it would reach the stage where amendments could be proposed that may address some of the issues that have been alluded to by the Attorney-General.

It is fair to say that I believe there were some legitimate issues that motivated the member for Nicklin to bring this legislation to the Parliament, notwithstanding the fact that I do not necessarily subscribe to the view that the legislation before us is the most appropriate way to address the issues. The Attorney-General talked a lot about the effects of violence on women and what has been done over the past couple of years in the area of the Women's Task Force on the Criminal Code to try to address some of these issues, and he indicated quite clearly that the task force did not recommend that the Government go down this particular path.

However, it is clear from the evidence that has come to the fore over the past few years that there have been situations in which primarily women have suffered systematic, ongoing physical and verbal abuse that in some cases tends to manifest itself in an overreaction in which somebody gets hurt. Most often it is the woman who gets hurt and in some cases the woman retaliates and then she may very well be charged with manslaughter or even murder. I suppose the actions that are incurred by males in the relationship tend to be more verbal and I suppose they do not necessarily manifest themselves in the gross overreactions that end up in our criminal courts in Queensland.

I will refer to some of the sections of the Bill that is before the Parliament. This Bill purports to restructure the law of self-defence in Queensland to take into account in particular what is now called the battered wife defence. As I said, this is apparently a reaction to the recent case involving that Sunshine Coast woman. The existing section 271 covers the situation where a person is unlawfully assaulted and has not provoked the assault. In that case, the person assaulted is entitled to use force to defend themselves provided the force used is reasonable and is not intended and is not likely to cause death or grievous bodily harm. If the unlawful assault causes a reasonable apprehension of

death or grievous bodily harm and the person defending believes on reasonable grounds that they cannot effectively defend themselves from death or grievous bodily harm, then they may use force as necessary for the defence, even if it does cause death or grievous bodily harm.

Existing section 272 covers self-defence against provoked assault. If there is a reasonable apprehension of death or grievous bodily harm and the person believes on reasonable grounds that it is necessary to preserve from death or grievous bodily harm, then that person is entitled to use force in self-defence as reasonably necessary, even if it causes death or grievous bodily harm.

Existing section 273 applies similar principles where aiding another in self-defence. The proposed section 271 omits any prerequisite that the person seeking to use self-defence must be under assault, either unlawful or provoked. Indeed, as set out in the Explanatory Notes and in the second-reading speech of the honourable member for Nicklin, he makes it quite plain that it is to be lawful for a person who can succeed in utilising his defence to be the initiator of the assault which causes death or grievous bodily harm, provided they can establish a pre-existing history of abuse by the victim. In effect, what the honourable member is saying is that the victim of abuse can transform themselves from victim to aggressor and use force against the previous aggressor amounting to death or grievous bodily harm if they can raise a case of domestic abuse.

Proposed sections 271, 272 and 273 seek to direct the courts to receive as expert witnesses persons who would not normally be regarded as any more expert than the general community. This runs counter to the way in which the law has developed for receiving the evidence of experts whose expertise in particular circumstances is usually or always open to challenge. This complex legal approach is to be removed by the proposal before the Parliament and the views of the majority of the Parliament from time to time as to who is to be regarded as an expert is to be substituted.

A similar criticism can be addressed at proposed section 272. Parliament should be very loath to interfere with the capacity of the judiciary and the Court of Appeal to determine what is the appropriate direction to be given to a jury to enable it to arrive at a just decision in a particular case. Here the Parliament is attempting to direct a judge to give a direction to a jury in a particular way without any knowledge of what the evidence was in a particular case, or the way in which the case might have been fought either by the prosecution or the defence. This raises a real potential for injustices to occur when political ideology is sought to be applied to the difficult task of proving a person guilty of a criminal offence beyond reasonable doubt.