



Speech by

**Andrew Powell**

**MEMBER FOR GLASS HOUSE**

Hansard Tuesday, 9 February 2010

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## **CRIMINAL CODE (ABUSIVE DOMESTIC RELATIONSHIP DEFENCE AND ANOTHER MATTER) AMENDMENT BILL**

**Mr POWELL** (Glass House—LNP) (5.24 pm): I, too, rise this afternoon to support the Criminal Code (Abusive Domestic Relationship Defence and Another Matter) Amendment Bill 2009. It is clear from sitting here and listening to all the speeches made in the House that I, the LNP and indeed all members of the House clearly abhor violence against women and children and abhor abuse of any kind. I, like others who have previously spoken, enthusiastically participated in White Ribbon Day last year and proudly took that oath. I know that it has been read by others but I again read it to reaffirm my commitment. It states—

I swear:

- never to commit violence against women,
- never to excuse violence against women, and
- never to remain silent about violence against women.

This is my oath.

I also commit to improving our legislative and community response to domestic abuse and violence. I do not believe that we have the responses right yet. I recall from my time working with the department of child safety how I often struggled with the concept that we would remove, at best, the abused woman and her children or, at worst, the children alone instead of the perpetrator. It just did not seem right. We were creating a disruption and a danger for the woman and her children that fed fears of reporting in the first place. It certainly fed instances that require this kind of legislation.

I refer to the Parliamentary Library's e-Research Brief where it states—

However, many persons suffering domestic violence may feel that there are no alternatives other than staying in the abusive relationship:

Such persons often act for reasons of self-preservation, expecting the abuse to continue and fearing for their lives or safety. Moreover, they act in desperation, seeing no other viable way of escaping the danger. The option of leaving the relationship is seen as unrealistic, either because there are domestic ties that cannot be abandoned (for example, to children), because of the danger that an attempt to leave will generate an attack from the abuser, because the abuser is likely to track down the victim and renew the abuse, or simply because there is nowhere to go.

It is with that that I am committed to improving our legislative response to domestic violence, and therefore I am pleased to support the bill before the House this afternoon. In doing so I must air some concerns. I hope that the Attorney-General is able to address these when he sums up.

One concern centres around whether this legislation will actually achieve what it intends or will open up a whole range of other concerns. I note some advice from the law profession that in Victoria, where the crime of defensive homicide has been introduced, the successful prosecutions have all related to men killing other men. The provision seems to have provided another alternative way for men to reduce their criminal culpability, although provocation has also been abolished in that state.

Also, Legal Aid Queensland states that the superficial attractiveness of the creation of a separate complete defence and its operation to excuse killings by victims who, for example, meet the typical

battered women syndrome model must be viewed in the reality that any such defence would of course have much wider operation. It would not be gender specific. If all familial and intimate relationships were included, other relationships such as parent-child and sibling relationships would attract the defence. The defence would theoretically be open to males claiming they were victims of serious abusive intimate relationships with females.

Rather, Legal Aid Queensland's preferred option would be the introduction of an appropriate sentencing discretion for murder. They comment that many abusive relationships involve complex dynamics with possible reciprocal abuse between partners and impacts on other parties such as children. A discretionary sentencing regime would make available the full range of sentencing options including those community based options that may in such cases best ensure the defendant is not likely to re-offend by requiring the defendant to complete programs or attend counselling. I would appreciate it if the Attorney-General could address those issues that I raise.

My second area of reservation comes from the *Legislation Alert*. As a member of the Scrutiny of Legislation Committee, I acknowledge and put on record some of the comments from the latest edition, in particular around the clear meaning in this bill. The alert states—

New section 304B(2) states:

- (2) References to the following are to be interpreted in the same way as they are interpreted under the *Domestic and Family Violence Protection Act 1989* for that Act—
- (a) the existence of a domestic relationship between 2 persons;
  - (b) an act of domestic violence in a domestic relationship.

The committee notes a number of issues regarding whether new section 304B(2) is drafted in a sufficiently clear and precise way.

It goes on to state—

Principles of statutory interpretation indicate that beneficial legislation, such as the *Domestic and Family Violence Protection Act*, should be interpreted liberally to achieve its purpose. By contrast, the purpose of the Criminal Code is to prescribe criminal responsibility regarding specific acts or omissions.

It goes on to state—

Principles of statutory interpretation indicate that beneficial legislation, such as the *Domestic and Family Violence Protection Act*, should be interpreted liberally to achieve its purpose. By contrast, the purpose of the Criminal Code is to prescribe criminal responsibility regarding specific acts or omissions. Statutory interpretation approaches penal provisions, such as those in the Code, so as not to extend their operation beyond the words used. Accordingly, the expansive and less precise nature of part 2 of the *Domestic and Family Violence Protection Act* should be contrasted with the prescriptive nature of the Criminal Code. Three matters arise.

Firstly, in theory, 'a codifying Act gathers together all the relevant statute and case law on a given topic and restates it in such a way that it becomes the complete statement of the law on that topic'. Particular rules regarding the interpretation of codes are applied by the courts. In *Bank of England v Vagliano Bros* [1891] AC 107 at 144, Lord Herschell stated:

'The purpose of such a statute surely was that on any point specially dealt with by it, the law should be ascertained by interpreting the language used instead of, as before, by roaming over a vast number of authorities.'

Second, a main objective of codification is to make the law accessible.

The *Legislation Alert* goes on to mention the case of *Bouhey v R* in 1986. It goes on—

Finally, the main purpose of the *Domestic and Family Violence Protection Act* may be contrasted with the purpose of the Criminal Code.

...

The committee draws to the attention of Parliament these matters regarding the incorporation of terminology in the *Domestic and Family Violence Protection Act* into new section 304B(2) of the Criminal Code.

As I said, I ask the Attorney-General if he will kindly respond to these issues in his summing-up. With that, I do conclude. I support the bill before the House.