




Speech by
Grace Grace

MEMBER FOR BRISBANE CENTRAL

Hansard Wednesday, 23 March 2011

CRIMINAL CODE AND OTHER LEGISLATION AMENDMENT BILL

 **Ms GRACE** (Brisbane Central—ALP) (5.00 pm): I rise to support the Criminal Code and Other Legislation Amendment Bill. There are a number of amendments in this bill that I support. This bill demonstrates the Bligh government's commitment to continuing to monitor the Criminal Code in this state and ensuring that the Criminal Code reflects the modern community values and attitudes about how it is used.

There are three primary objectives of the bill that I would like to talk to today. The first is to amend the excuse of 'accident' which was found in section 23(1)(b). This comes out of some recommendations that were tabled earlier, which I will refer to. The second is to recast the partial defence of provocation, which I fully support as well. The third is to amend the law such that we will criminalise the unlawful interference with graves, war memorials and other types of cultural relics where such interference may not fall within the meaning of damage. I think the community at large will welcome such changes, particularly if action was taken against a gravestone of their family member or a war memorial which they were a part of.

In the final report of the Queensland Law Reform Commission that was tabled in parliament on 1 October, in relation to the excuse of accident it endorsed the current reasonably foreseeable consequence test. I think that is a more appropriate way of describing an accident. There is sometimes a misunderstanding in the community about how a court interprets an accident. I believe the minister's amendment to the bill which talks about the reasonably foreseeable consequence is far more appropriate than just the word 'accident'. So omitting that and putting in the two new sections—where it states that 'the person does not intend or foresee as a possible consequence and that an ordinary person would not reasonably foresee as a possible consequence'—makes it much more understandable and it explains that something may happen but then questions whether it was a reasonably foreseeable outcome. I think that is a better way of describing it. I fully support the removal of the word 'accident' and those words being put into the legislation. We will in a way enshrine the reasonably foreseeable consequence test, which I support.

The second objective relates to using the defence of provocation, and I want to talk about how that has been used in the past in the area of domestic violence. I think we would all take offence at somebody using the way the Criminal Code was written to justify a death, an attack or something like that in relation to a partner's infidelity, insults or threats to leave a relationship. I cannot applaud more the changes that have been put into the Criminal Code which protect the area of domestic violence where there is a history of that occurring. It looks at that whole situation in relation to 'circumstances of a most extreme and exceptional character', so it does not remove totally the ability to use a defence of provocation. It puts down the area under which it can be used, because I actually do not support the total removal of the defence of provocation.

I think we have found the right balance in relation to this Criminal Code. It takes away the defence being used in what I might term a frivolous defence—for example, 'She said she was going to leave me so all of a sudden I bashed her over the head and killed her.' I believe that was one case which in a way sparked these changes. I applaud the fact that that type of defence has now been taken away. I can also

think of other areas where this defence of provocation will not be so easily used. I welcome the change so that this section does not apply if the sudden provocation is based on words alone 'other than in circumstances of a most extreme and exceptional character'. I think that has been very well defined in the legislation.

In relation to that not being used in the defence of words alone, I draw the House's attention to the launch last year at Parliament House of a book called *Speaking Out*, by Alan Berman and Shirleene Robinson. One of the first recommendations in that book was that we should review the Criminal Code in relation to the LGBT community, which often uses the section of provocation to non-violent homosexual advances. It has been used as a defence in the past. I would say now that the LGBT community will probably find that, in circumstances where there is a non-violent sexual advance, if it is only words that are used this changes the ability for someone to say, 'They approached me and I bashed them to death and I therefore take that defence of provocation.' I think that is a step in the right direction. It actually meets the brief of that book and that recommendation—that is, if words alone are used and it is not violent in character. You can use that across a number of scenarios, such as people on a night out saying, 'They provoked me by insults and swearing,' or whatever it is. I guess it applies that old saying 'sticks and stones may break my bones but words will never hurt me'.

The legislation now says that, if it is only words and there is not this exceptional character that is described in the legislation and you kill somebody, you cannot say, 'They used these words and I'm going to use that particular section to make the death go into manslaughter.' Clearly, there are other parts of the Criminal Code that could be used in relation to that situation, and the courts have the freedom to judge according to the defence that is brought by that person. I think we are addressing the No. 1 recommendation of the book *Speaking Out* in relation to the LGBT community and non-violent homosexual advances. I really applaud the step that this government has taken in this area, particularly as I am a member who represents a very large LGBTIQ community. I think this is a step in the right direction. It is one that I applaud and I thank the minister for bringing it to the House.

The third and last area I want to quickly refer to is when somebody destroys a gravestone, a war memorial et cetera. It is crazy that someone in the community thinks they can get away with that. These amendments are definitely a step in the right direction. They are removing that difficulty that exists in relation to evidentiary proof, and it is much easier to prosecute these people under the Criminal Code. I think everybody in the public will welcome these changes. Some of these war memorials, gravestones and cultural monuments around Brisbane have great cultural and historical value, and we would hate it if somebody could go in and destroy them and get away with it because of the evidentiary difficulties with the Criminal Code. I think the majority of the general community would welcome those changes. I welcome those changes.

With those few words, I congratulate the previous Attorney-General and the current Attorney-General for bringing these amendments before the House. I commend the bill to the House.