Speech By

Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 15 October 2015

CRIMINAL LAW (DOMESTIC VIOLENCE) AMENDMENT BILL; CORONERS (DOMESTIC AND FAMILY VIOLENCE DEATH REVIEW AND ADVISORY BOARD) AMENDMENT BILL

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for Training and Skills) (4.04 pm), in reply: I thank all honourable members for their contributions to the debate on the Coroners (Domestic and Family Violence Death Review and Advisory Board) Bill 2015 and the Criminal Law (Domestic Violence) Amendment Bill 2015. These bills represent a pivotal step toward fulfilling the Queensland government's commitment to combat domestic and family violence by implementing major recommendations from the special task force's report on domestic and family violence in Queensland entitled *Not now, not ever: putting an end to domestic and family violence in Queensland*. The bills reinforce our intention to ensure that our justice system works as effectively as possible to support and protect victims of domestic and family violence and to hold perpetrators to account to end the violence.

The Coroners (Domestic and Family Violence Death Review and Advisory Board) Bill 2015 establishes an independent body, comprising multidisciplinary experts and separate from the coronial and criminal process, to conduct systemic reviews of domestic and family violence deaths and make recommendations to government and non-government agencies to improve systems, practices and procedures. An independent body that identifies common systemic failures, gaps or issues and draws on the knowledge of the Domestic and Family Violence Death Review Unit within the Office of the State Coroner will increase recognition of and circumstances surrounding domestic and family violence deaths.

This will assist the government and community in gaining a greater understanding of the context in which domestic and family violence deaths occur and the steps that can be taken in the short and long term to prevent these deaths. Domestic and family violence deaths are preventable and having a mechanism in place to identify where the system is failing, as well as what is working well, will give Queensland a clear path to preventing these tragic deaths.

The Criminal Law (Domestic Violence) Amendment Bill strengthens and increases the maximum penalties for offences of contravening a domestic violence order under the Domestic and Family Violence Protection Act 2012. The maximum penalty for a breach offence where the respondent has previously been convicted of a domestic violence offence, including a breach offence, within the last five years is increased from three to five years imprisonment. Otherwise the maximum penalty for a breach offence is increased from two years to three years imprisonment.

The bill amends the Evidence Act 1977 so that victims of domestic and family violence are automatically regarded as special witnesses. This means that victims of domestic violence will have increased access to orders and directions that the court can make to support victims giving evidence.

Amendments are included in the bill to enable a notation to be made on a charge and on an offender's criminal history to specify that an offence occurred in a domestic violence context. These amendments send a clear message to perpetrators that continuing to commit domestic violence offences will be considered by a court in any future court proceedings.

I will now address some of the matters raised by honourable members during the course of the debate. The member for Aspley raised in her contribution the prospect of a scheme that would provide for the disclosure of an individual's criminal history involving offences of domestic violence or offences of a sexual nature to certain parties. This is what is commonly referred to as a Clare's Law scheme. The government is concerned that there are broader implications and issues concerning information sharing and that, in isolation, these sorts of measures do not prioritise victims' needs and safety. The Bryce task force report did not recommend the implementation of a Clare's Law scheme.

On the issue of information sharing, the task force recommended that enabling legislation be introduced to allow information sharing between government and non-government agencies within the context of an integrated service response, with appropriate safeguards. That is recommendation 78 of the report. The government has accepted this recommendation and will consider such amendments as part of its current review of the Domestic and Family Violence Protection Act.

The approach recommended by the task force promotes victim safety by ensuring that victims have access to appropriate supports if required through a coordinated integrated service response. There is an ability to disclose information under existing law if satisfied on reasonable grounds that the disclosure is necessary to lessen or prevent a serious threat to the life, health, safety or welfare of an individual. For these reasons, this government does not support adopting this form of disclosure scheme and the amendments during consideration in detail as proposed.

The member for Warrego made some comments about the Roma Community Legal Service in her contribution. In addition to the matters already covered in my response in question time on Tuesday, I would like to place the following matters on the record. The allocation of funds for community legal assistance in Roma was appropriately handled via a closed tender process run by the department, according to a set of clear criteria and relying on an independent panel's recommendations.

The outcome of that process has been a resoundingly good one for the provision of that vital service in Roma. Previously the Roma Community Legal Service provided one lawyer who would travel to Roma for one week each month, primarily on days when court was sitting, to deliver legal advice and assistance. The Advocacy and Support Centre commenced as the new provider of these services in Roma on 1 October. They have one lawyer working in Roma already, providing a similar level of service that was provided previously. This service level will importantly increase up to 1.34 full-time equivalent lawyers on the ground in Roma from January 2016, which is a significant increase in front-line legal advice and assistance services in Roma. In addition, I can confirm that the new provider is accredited as a community legal centre pursuant to the national scheme.

A number of members, including the shadow Attorney, have raised the issue of the retrospective application of the notation scheme introduced by the Criminal Law (Domestic Violence) Amendment Bill 2015. There is no automatic retrospectivity proposed by these notation amendments. The offences already on a person's criminal history do not suddenly become more serious by operation of the proposed laws. While the government acknowledges that the further information contained in the domestic violence notation is being added retrospectively, inasmuch as it applies to an offence convicted in the past, the underlying purpose of the proposed new section 12A is about ensuring that the context of those criminal offences is evident to the court into the future.

Can I underline the comments I made about this issue in the second reading speech, which go to the heart of what the government is trying to achieve with these amendments—that is, that if the notation scheme only applies to convictions post commencement of this bill, as suggested by those opposite, it will take many years before the benefits of the amendments will be realised. In order to highlight the significance of this point, I will go through the proposed procedure in detail.

Under the proposed new section 12A(6) of the Penalties and Sentences Act 1992 to be inserted by the bill, an application can be made by the prosecution seeking an order from the court that an offender's previous conviction be noted on their criminal history as a domestic violence offence. This can only take place when that individual comes before the court and is convicted of a domestic violence offence after the commencement date. A determination of that application will be by the court—that is, either by a judge or a magistrate—and the offender will be able to make submissions in response to that application.

Furthermore, that decision is reviewable. Proposed new section 12A(8) of the Penalties and Sentences Act 1992, inserted by clause 18, gives the court power to order that a correction be made to an offender's criminal history if they are satisfied that an error has been made in recording or entering

an offence as a domestic violence offence. This can happen on application or of the court's own initiative. In addition to the review within the provision itself, as the notation of an offence under proposed new section 12A is an order of the court under legislation, it will also be subject to review under the Judicial Review Act 1991.

I understand that in practice the prosecution will provide information to the sentencing court about previous convictions through a range of documents including, for example, police information at the time of the offence—called the QP9; transcripts of evidence from the trial, if there was one; and sentencing remarks made by the court when sentencing the offender for the previous conviction. The defence will be able to make submissions about whether those previous convictions are relevant or not.

While an offender may not have been aware at the time of the previous conviction that the particular offence may be noted to have occurred in a domestic and family violence context, a sentencing court can already have regard to a person's criminal history and must treat each previous conviction as an aggravating factor if the court considers that it can reasonably be treated as such having regard to the nature of the previous conviction, its relevance to the current offence and the time that has elapsed since the conviction, bearing in mind that the sentence imposed must not be disproportionate to the gravity of the offence in question.

The higher maximum penalty of five years imprisonment under section 177 will apply to a person who has a previous criminal conviction for an offence which falls within the definition of a domestic violence offence. This could be a breach offence or a criminal offence which is committed in a domestic and family violence context. The definition of 'domestic violence offence' in the amended section 177 inserted by the bill does not rely on a notation being made on a charge or on a person's criminal history under the other amendments in the bill.

Further, an offender will only be liable to the higher maximum penalties if the offence was committed after commencement. This extended application of section 177 of the Domestic and Family Violence Protection Act to domestic violence offences as well as offences under the act is justified on the basis that perpetrators should be held to account for repeated criminal conduct which occurs in a domestic violence context regardless of whether a conviction relates to a breach of a domestic violence order or another criminal offence. A sentencing court will retain discretion in relation to the appropriate penalty to be imposed in the particular case.

As I said in my second reading speech, the increase in maximum penalties in the bill for breaches of domestic violence orders sends a clear message to offenders that this type of conduct will not be tolerated. It reflects community attitudes that domestic and family violence is unacceptable, and strong penalties are required to condemn and deter this behaviour.

The issue was raised in debate about concerns with a possible conflict of interest with the State Coroner being the chair of the death review board. As the State Coroner is Queensland's chief judicial officer in the coronial system responsible for overseeing and coordinating the coronial process, the State Coroner is best placed to chair the board. The State Coroner has the authority and the expertise to lead the development of the necessary recommendations. This will also have the input and support of board members who will be appointed because they have relevant experience and expertise in matters relating to the board's functions, such as domestic and family violence, law enforcement, health and the justice system, with responses to have the aim of preventing or reducing the likelihood of domestic and family violence deaths.

Any potential for conflict between the role of State Coroner or Deputy State Coroner and as acting as chair of the board can be avoided by having other coroners assume responsibility for conducting coronial investigations and inquests in circumstances where a death has occurred in a domestic and family violence context. There are also clear provisions under the bill for how potential conflicts of interest are to be managed—in proposed new section 91X. Can I also point out that only a very small number of domestic and family violence deaths are the subject of a coronial inquest. The death review and advisory board is intended to examine systemic issues relating to domestic and family violence and is likely to consider a wide number of cases that have not been the subject of a coronial inquest and to make recommendations with a view to preventing future deaths.

I want to once again thank members for their contribution to the debate. I think there were considered and passionate contributions from both sides of the debate. We may not have agreed on every point or on the finite detail of every policy, but I think the committee process and debate in the House was handled with maturity and sensitivity, and I thank members for that. Of course, that maturity and sensitivity I have to say was sorely lacking in the contribution last night from the member for Glass House. Rarely have I seen a member in this House so blind to the circumstances of the debate and the nature of his own contribution. I am sure there were many members on his own side of the chamber who were simply embarrassed by such an awkward and out of touch contribution. But, thankfully, the

debate on this legislation has largely been conducted with a genuine approach, and I hope that this House can continue to tackle the scourge of domestic and family violence.

In conclusion, these bills represent a critical part of the government's commitment to combating domestic and family violence. I once again thank all honourable members for their contributions during the debate.