Speech By

Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 2 December 2015

CRIMINAL LAW (DOMESTIC VIOLENCE) AMENDMENT BILL (NO. 2)

Introduction

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for Training and Skills) (4.20 pm): I present a bill for an act to amend the Criminal Code, the Penalties and Sentences Act 1992 and the Youth Justice Act 1992, for particular purposes. I table the bill and explanatory notes. I nominate the Legal Affairs and Community Safety Committee to consider the bill.

Tabled paper: Criminal Law (Domestic Violence) Amendment Bill (No. 2) 2015 [1804].

Tabled paper: Criminal Law (Domestic Violence) Amendment Bill (No. 2) 2015, explanatory notes [1805].

I am pleased to introduce the Criminal Law (Domestic Violence) Amendment Bill (No. 2) 2015. This year the Palaszczuk government made a commitment to end domestic violence in Queensland. We have pledged to take action to combat the pervasive culture of domestic and family violence which is at epidemic levels in our community. This is a difficult challenge but the government believes it is achievable. We must all stand united together and say that domestic and family violence in any form and at any level is completely unacceptable. It is a time for optimism as well as action, not just by the government but all members of this parliament and the entire Queensland community. It is time for us all to stand up to the challenge and tackle this problem head-on.

On 28 February 2015 the Special Taskforce on Domestic and Family Violence in Queensland, chaired by the Hon. Quentin Bryce AD, CVO, released its report *Not now, not ever: putting an end to domestic and family violence in Queensland*. The task force made 140 recommendations on how the government and the community of Queensland can better address and reduce domestic and family violence. The Bryce task force report has a strong focus on action to bring about cultural and attitudinal change, the delivery of more integrated services and improving law and justice system responses. This includes reforms to better support those affected by domestic violence, achieve fair and protective outcomes for victims and ensure perpetrators are held to account.

The Palaszczuk government accepted all 121 recommendations directed at government in our response released on 18 August 2015. Importantly, on White Ribbon Day last week, the Premier announced the establishment of the Domestic and Family Violence Implementation Council to monitor the implementation of recommendations from the Bryce task force report and the Queensland Domestic and Family Violence Prevention Strategy. The council will also champion ongoing implementation of this strategy. The creation of the council addresses the need for an independent oversight body as recommended in the Bryce task force report to maintain momentum and ensure accountable implementation of the report's recommendations. The council will report to the Premier on implementation progress and action taken by the relevant sectors to eliminate domestic and family violence. The council is chaired by the Hon. Quentin Bryce AD, CVO and includes representation from key sectors in the community.

Over 30 task force recommendations are relevant to my portfolio which are aimed at reforming the law and justice system response to domestic and family violence. Implementation of a number of these recommendations is already well underway. One key initiative has been the establishment of a six-month trial of a specialist domestic and family violence court at Southport Magistrates Court to improve the efficacy of system responses. Funding of $1.1 million was also provided in 2015-16 to expand Legal Aid Queensland's domestic violence duty lawyer service to 14 locations across the state. In the wake of three very tragic and public deaths that occurred in September, the government also made reforms to establish a new independent Domestic and Family Violence Death Review and Advisory Board. Recruitment of the board is underway.

Further amendments have been made to ensure that criminal offences that occur in a domestic violence context can be clearly noted on the face of an offender's criminal history. Other changes to the Evidence Act 1977 were made to ensure that victims automatically have status as special witnesses thereby allowing the court to make a range of directions to support them in giving evidence. But there is much more work to be done. The reforms in the bill I am introducing today make further changes to increase perpetrator accountability based on two recommendations in the Bryce task force report following consultation with key stakeholders. These recommendations provide for the introduction of a circumstance of aggravation of domestic and family violence to be applied to all criminal offences so as to increase the maximum penalty for the offence—this is recommendation 118—and for the consideration of the creation of a specific offence of strangulation, recommendation 120.

The Queensland government committed to consult stakeholders on recommendations 118 and 120 and the best way to achieve the objectives underpinning them. To facilitate this consultation, a public discussion paper was released by the Department of Justice and Attorney-General. This discussion paper set out the background for each of the two elements to be considered and provided a number of possible approaches to implementing the recommendations. Thirteen specific questions were posed to encourage engagement and to prompt useful and constructive debate. Twenty submissions were received on the discussion paper from a range of individuals and agencies. I thank all of those who responded for their considered views and dedication to this very important cause. Your opinions are very important to this government. We have listened and carefully considered each and every submission.

Task force report recommendation 118 provides for the Queensland government to introduce a circumstance of aggravation of domestic and family violence to be applied to all criminal offences. A circumstance of aggravation increases the maximum penalty for offences. It must be charged by the prosecution and therefore becomes a matter that must be proved beyond reasonable doubt. Stakeholder responses to the discussion paper acknowledge the inherent complexities of applying a circumstance of aggravation across all criminal offences. One particular limitation of a circumstance of aggravation is that it cannot apply to an offence which already attracts a maximum penalty of life imprisonment. This issue was not canvassed by the task force. While it was not the approach preferred by the task force, there was wide support from stakeholders who responded to the discussion paper for an alternative proposal to amend the Penalties and Sentences Act 1992 to make provision for domestic and family violence as an aggravating factor on sentence. This amendment is included in the bill.

An aggravating factor increases the seriousness of the offence and means that the offender should receive a higher sentence within the existing sentencing range but not exceeding the maximum penalty for the offence. The bill makes it clear that criminal offences that are committed as an act of domestic or family violence require a higher penalty. This will show that the Queensland community will not tolerate this conduct and make these offenders accountable. It is proposed that the impact of this amendment to the Penalties and Sentences Act will be evaluated by the Sentencing Advisory Council, once reinstated, as part of a reference to consider the impact that maximum penalties have on the commission of domestic violence offences. This will enable the government to have a clear evidence base on what works in sentencing perpetrators of domestic and family violence so as to guide future law reforms.

The Bryce task force report told us about the prevalence of strangling or choking conduct in domestic violent offending. It identified that this serious behaviour is not only inherently dangerous but is a predictive indicator of escalation in domestic violent offending, including homicide. The task force noted the importance of identifying this conduct to assist in assessing risk to victims and increasing protections for victims. Unlike recommendation 118, there was, however, no consensus among stakeholders who responded to the discussion about the legislative approach that should be taken to strangulation. In light of the divergence of views that has emerged during consultation, a new offence is proposed but has been framed with a view to addressing a number of the difficulties raised by those stakeholders who did not support a new offence. For example, limiting application to a domestic and family violence context should address the concerns about the unintended capture of a range of conduct

such as law enforcement, security and sport. The bill therefore amends the Criminal Code to create a new offence of choking, suffocation or strangulation in a domestic setting. The new offence will apply if a person, without consent, chokes, suffocates or strangles a person that they are in a domestic relationship with or that constitutes associated domestic violence. The offence will have a maximum penalty of seven years imprisonment. This offence and the significant penalty attached reflect the serious and dangerous nature of the offending behaviour and recognise the importance of deterring this prevalent conduct.

Stakeholders overwhelmingly agreed that any legislative reform in the area of strangulation must be coupled with system-wide changes to ensure that offenders are charged by police and that timely intervention and support is available for victims. Education, training and communication were all identified as imperative. The Domestic and Family Violence Prevention Strategy will provide an opportunity for suggestions made by stakeholders in this area to be considered. This bill is a key step closer in achieving the Queensland government's vision to eradicate domestic and family violence from our communities.

Not related specifically to domestic and family violence reform, the bill also contains amendments to restore the longstanding and established sentencing practice in Queensland. The amendments to the Penalties and Sentences Act 1992 and the Youth Justice Act 1992 will give courts the discretion to receive a submission from both the defendant and the prosecution on what they consider to be the appropriate penalty or the range of appropriate penalties to be imposed at sentence. In February 2014, in the judgement of Barbaro & Zirilli v The Queen [2014] HCA 2, the High Court of Australia held that prosecutors were not permitted to make a submission to the court during sentencing proceedings on the appropriate sentence or the bounds of the range of appropriate sentences to be imposed by the court. This judgement resulted in a significant change to sentencing practice in Queensland. The amendments in the bill return to the previously existing practice where such submissions were provided for the assistance of the court and will improve courtroom efficiency. I commend the bill to the House.

First Reading

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for Training and Skills) (4.31 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to the Legal Affairs and Community Safety Committee

Mr DEPUTY SPEAKER (Mr Furner): Order! In accordance with standing order 131, the bill is now referred to the Legal Affairs and Community Safety Committee.

Portfolio Committee, Reporting Date

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for Training and Skills) (4.30 pm), by leave, without notice: I move—

That under the provisions of standing order 136 the Legal Affairs and Community Safety Committee report to the House on the Criminal Law (Domestic Violence) Amendment Bill (No. 2) by 7 March 2016.