Speech By

Hon. Shannon Fentiman

MEMBER FOR WATERFORD

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DOMESTIC AND FAMILY VIOLENCE PROTECTION (COMBATING COERCIVE CONTROL) AND OTHER LEGISLATION AMENDMENT BILL

Introduction

Hon. SM FENTIMAN (Waterford—ALP) (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) (11.16 am): I present a bill for an act to amend the Coroners Act 2003, the Criminal Code, the Domestic and Family Violence Protection Act 2012, the Evidence Act 1977, the Oaths Act 1867, the Penalties and Sentences Act 1992, the Telecommunications Interception Act 2009, the Youth Justice Act 1992 and the legislation mentioned in schedule 1 for particular purposes. I table the bill, the explanatory notes and a statement of compatibility with human rights. I nominate the Legal Affairs and Safety Committee to consider the bill.

Tabled paper: Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022 1671.

Tabled paper: Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022, explanatory notes 1672.

Tabled paper: Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022, statement of compatibility with human rights 1673.

I am pleased to introduce the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022. The Palaszczuk government is committed to preventing domestic and family violence from occurring in our communities and that is why one of our election commitments was to legislate against coercive control. Coercive control is at the core of domestic and family violence. It is a pattern of deliberate behaviours perpetrated against a person to create a climate of fear, isolation, intimidation and humiliation. It robs an individual of their identity, independence and ability to seek help. All of it can be done without any physical contact.

I am proud that last year we established the independent Women's Safety and Justice Taskforce which brought together experts from various fields related to domestic and family violence led by the Hon. Margaret McMurdo. In its first report *Hear her voice*, the task force examined coercive control and reviewed the need for a specific offence. Many victim survivors described their experience of coercive control as the most harmful aspect of their abusive relationship. As one woman told the task force—

Coercive control is very exhausting, debilitating, emotional, scary and abusive. But it is very hard to explain the abuse that has taken place to an outside person as it makes me sound crazy. It is very hard to live through and heal from.

Over 700 submissions were made to the task force, over 500 of those by brave individuals sharing their lived experience. It is those voices of Queensland women that the Palaszczuk government has heard and acted on. Coercive control can be hard to detect, report and protect from—that is why we have to listen to the person experiencing it.

In introducing this bill, I acknowledge the extensive work undertaken by the task force and I extend my thanks to its members. Additionally, I would like to acknowledge the dedicated stakeholders who contributed to this important work, some of whom are with us today in the public gallery. Thank

you for your guidance in developing this bill, but also for your experience, knowledge and expertise which has informed the recommendations of the task force reports. I also want to acknowledge the incredible advocacy of Sue and Lloyd Clarke. Somehow, through their unimaginable pain of losing Hannah and her three beautiful children, they have been able to keep sharing her story and teaching the community about the dangerous signs of control.

In its first report, the task force found that simply making coercive control a criminal offence is not enough. They made 89 important recommendations for reforming domestic and family violence service and justice systems. While Queensland has made significant progress to reduce domestic and family violence, there is still much to do. These findings and recommendations build upon the government responses to previous landmark reports, including the *Not now, not ever* report.

The Palaszczuk government has indicated its support or support in principle for the recommendations of the task force in their first report and I am pleased that work is well underway to implement those recommendations. Noting the task force's extensive consideration of the justice system and their considerable consultation, the task force's work will function as a review of the Domestic and Family Violence Protection Act 2012, as required under section 192 of that act.

The task force recommended that a standalone offence of coercive control be introduced. However, they were very clear that, prior to the introduction of a standalone offence, system-wide reform is necessary to ensure sufficient services and supports are in place across the domestic and family violence service and justice systems. Critical amendments to existing legislation, requiring immediate implementation, were also identified. This reform and critical amendments are required to ensure the coercive control offence will be effective in reducing domestic and family violence and also mitigating any unintended consequences, particularly as they relate to the misidentification of the primary aggressor and the experience of First Nations women and girls. Therefore, consistent with the task force's approach, this bill does not include the new offence of coercive control but sets the scene and lays the foundation.

The bill gives effect to those recommendations which the task force considered critical ahead of the introduction of the criminal offence. The bill implements recommendations 52 to 60 and 63 to 66 of the task force's first report. The bill's amendments to the Criminal Code, the Domestic and Family Violence Protection Act 2012, the Evidence Act 1977, the Penalties and Sentences Act 1992 and the Youth Justice Act 1992 will work towards combating coercive control by strengthening Queensland's current response and by laying the groundwork to criminalise coercive control. The Queensland government has committed to introducing a second stage of legislative reform that will include a coercive control offence by the end of 2023.

The bill also makes amendments unrelated to the task force recommendations to the Criminal Code, the Evidence Act, the Coroners Act 2003, the Oaths Act 1867 and the Telecommunications Interception Act 2009 which improve and update the operation of justice legislation. I will now briefly outline the bill's significant amendments.

The bill amends the Domestic and Family Violence Protection Act 2012 to include a reference to a 'pattern of behaviour' in the definition of domestic violence. Amendments will also make it clear that domestic violence includes behaviour that may occur over a period of time, including individual acts that, when considered cumulatively, are abusive, threatening, coercive or cause fear, and must be considered in the context of the relationship as a whole. These amendments seek to strengthen systems' responses to coercive control, through a shift from focusing on responding to single incidents of violence to focusing on the pattern of abusive behaviour that occurs over time.

Amendments are also made to clarify the intent and process for a court to hear and decide cross applications—to ensure the person most in need of protection is identified and protected. The task force heard that the Domestic and Family Violence Protection Act is not operating as intended and cross applications are sometimes used by perpetrators as a means of continuing to control and intimidate victims, resulting in domestic violence orders being made against victims of domestic and family violence. As one victim told the task force—

> My ex-husband has dragged me through months of court appearances, and not once been bothered to attend with any legal counsel ... My ex-husband has not shown one shred of proof, yet I have pages of proof on him and his actions.

The use of the courts to further domestic and family violence is not acceptable. The bill addresses this issue by: requiring applications and cross applications to be heard together; requiring the court to consider whether to make arrangements for the safety, protection or wellbeing of the person most in need of protection; requiring the court to identify the person most in need of protection in the context of a relationship as a whole; and only allowing the court to make one order unless there are exceptional circumstances. In response to feedback from domestic and family violence stakeholders, the bill also contains legislative guidance for magistrates to assist in determining the person most in need of protection.

Further, the bill will require the Queensland Police Service to provide a copy of the respondent's criminal history and domestic violence history to the court in all proceedings on private and police initiated applications for a domestic violence order. This will ensure that courts have a full picture of a respondent's criminal and domestic violence history to assess the risk posed to an aggrieved and assist the court in best tailoring conditions that will keep the victim safe. In practice, this means that the respondent's criminal history will outline all convictions of and charges made against the respondent for a Queensland or interstate offence. The court will also be provided with all Queensland current and expired domestic violence orders and police protection notices between the respondent and any other person as well as interstate orders or New Zealand orders between the respondent and any other person that are in the possession of the Queensland Police Service.

The bill also amends the Domestic and Family Violence Protection Act to allow substituted service, for a document ordinarily required to be served by a police officer, in limited circumstances. Importantly, the task force found that personal service by police should continue unless a substituted method of service would provide increased protection to the victim. In response to feedback from stakeholders, the bill also outlines limited circumstances in which a proceeding may be reopened where an order for substituted service has been made. This is intended to provide a respondent with procedural fairness in circumstances where the respondent genuinely has not been able to access the application despite it being served in an approved manner under a substituted service order.

The bill also makes amendments to the Domestic and Family Violence Protection Act to allow the court to award costs against an applicant if the court decides that the applicant has used the proceedings to intentionally engage in behaviour that is domestic violence.

The bill also amends the Criminal Code to modernise and strengthen the offence of unlawful stalking. Stalking is a well-known risk factor for intimate partner homicide and a significant form of abuse within controlling relationships. The task force heard many stories of perpetrators using electronic surveillance to facilitate their abuse, including social media, spyware and tracking devices. As one woman told the task force—

I was understandably always on edge—I would jump at the smallest sound and be scanning the street for his face every single time I was out in public.

Contrary to community perceptions that stalking only happens after a relationship has ended, for many victim survivors these behaviours occurred whilst they were in a relationship with the perpetrator.

The task force found that the offence of unlawful stalking is being underused by police and prosecutors to charge coercive controlling behaviour, particularly in a domestic violence context. In order to encourage greater use of the offence, the bill renames unlawful stalking as 'unlawful stalking, intimidation, harassment or abuse'. The bill also broadens the type of conduct which may be captured by the offence to better reflect the way an offender might use technology to facilitate unlawful conduct. The amendments to unlawful stalking include a new circumstance of aggravation which will apply where there exists or has existed a domestic relationship between the offender and the stalked person, with a maximum penalty of seven years imprisonment for the aggravated form of the offence.

The Criminal Code already permits a court to make a restraining order in relation to a charge of unlawful stalking and provides an associated offence for contravening the restraining order. The bill increases the maximum penalty for contravening a restraining order to 120 penalty or three years imprisonment. The maximum penalty further increases to 240 penalty units or five years imprisonment if in the five years before the contravention of the restraining order the person has been convicted of a domestic violence offence.

The increases in these maximum penalties reflect the existing penalties under Domestic and Family Violence Protection Act which apply to contraventions of orders under that act. The duration of restraining orders made in relation to a charge of unlawful stalking is to be five years, as a default period, unless the court is satisfied that the safety of a person in relation to whom the restraining order is made is not compromised by a shorter period.

The task force also found that the offence of stalking uses outdated concepts and language and needs to be modernised to better reflect these contemporary tactics used by offenders. These amendments will help shift the mindset that this offending behaviour is only perpetrated by strangers or at the end of relationship. Importantly, these amendments will also better reflect the way technology can be used to facilitate intimidation, harassment or abuse in cases of cyberbullying and doxing.

Cyberbullying, like other forms of bullying, can cause severe harm to the victim and those around them. That is why the Palaszczuk government has been committed to tackling the prevalence of cyberbullying. In 2018 the Queensland Anti-Cyberbullying Taskforce developed a framework to address cyberbullying and in 2020 the government delivered on all the recommended community and government actions.

These legislative amendments today strengthen our response to cyberbullying and will capture conduct we know to be harmful, such as publishing an individual's personal information online in a way that is threatening, humiliating or abusive. I want like to commend victim-survivors and families, such as Mick and Tracey Clayton, the parents of Zaeden Clayton, who have advocated tirelessly for these enhancements. I thank the member to Toowoomba South for facilitating the opportunity for me to meet with the Claytons so I could hear their story firsthand.

Consistent with the task force recommendations, the bill amends the Penalties and Sentences Act to specifically provide that a history of a domestic violence order made or issued against an offender may be considered by a court for the purpose of determining the offender's character. Orders made or issued when the offender was a child will not be able to be used for that purpose. The bill also amends the Penalties and Sentences Act to require a court, when sentencing an offender who is a victim of domestic violence, to treat the effect and extent of the domestic violence as a mitigating factor. The bill makes similar amendments to the Youth Justice Act.

I note that the task force heard significant support for a mitigating sentencing factor from domestic and family violence and other stakeholders. The task force found that perpetrators of coercive control use dominating and oppressive behaviours to restrict their victim's freedom and deprive their autonomy. Victims themselves may commit offences because they violently resist their abuser or because they are manipulated at times into committing an offence. It is important that sentencing courts pay particular regard to these circumstances.

The bill also amends the Evidence Act to give effect to a number of other task force recommendations. Importantly, the bill amends the Evidence Act to include victims of domestic violence offences as protected witnesses. As a protected witness, they will be protected from direct cross-examination by a defendant, rather a lawyer will cross-examine them instead. Under the existing protected witness provisions, if a defendant refuses legal representation then they will lose their right to cross-examine the victim. That consequence for a defendant is preserved with the bill's amendments extending the protected witness provisions to victims of domestic violence offences.

The bill also extends protected witness status in certain circumstances to other witnesses of domestic violence who are not the complainant. The amendments further clarify that the protected witness provisions apply to criminal proceedings for contraventions of a protection order under the Domestic and Family Violence Protection Act.

The task force said that the prospect of being cross- examined directly by a perpetrator may be so frightening and intimidating for a victim that they may not be able to give their best evidence or may feel they are unable to give evidence altogether. The task force found that this is a form of systems abuse by perpetrators and it should not be allowed to happen. This amendment works to reduce trauma and suffering that may be experienced by a victim-survivor when giving evidence.

The confidence of the community that the courts can protect victim-survivors is vitally important. Section 132B of the Evidence Act allows for relevant evidence of the history of the domestic relationship between a defendant and complainant to be admitted in criminal proceedings. Under the current law, however, that provision only applies to offences in chapters 28 to 30 of the Criminal Code. The bill amends the Evidence Act to remove that restriction and make admissible evidence of domestic violence whether that evidence relates to the defendant, the person against whom the offence was committed, or another person connected with the proceeding.

The bill also amends the Evidence Act to allow for the admission of expert evidence in criminal proceedings about the nature and effects of domestic and family violence, both generally and on a particular person. The bill further amends the Evidence Act so that juries can be given directions by judges that address a number of misconceptions and stereotypes about domestic violence. Some things that the judge may tell a jury under the new Evidence Act provisions include that domestic violence is not limited to physical abuse, that it can consist of separate acts that form part of a pattern even though each in isolation appears minor or trivial, that there is no typical response to domestic violence, that it is not uncommon for victims to stay with an abusive partner or to leave and then return to them, and that it is not uncommon for victims not to go to the police or seek help.

The task force found that juries have difficulty understanding coercive control and domestic violence, and it can be difficult for prosecutors to demonstrate emotional and psychological harm suffered by complainants, and the prosecution might present evidence of acts by the perpetrator which seem innocuous but are actually part of a pattern of controlling behaviour.

The task force also found that myths about domestic violence and coercive control are still be pervasive in the community and that, as such, they may affect juries. To this end, the task force recommended that juries be allowed to hear evidence, including expert evidence, and be given

directions from the judge about how domestic violence operates. While the task force noted that expert evidence has already been led in some cases under the existing law, they received submissions which suggested this was rare. It is not desirable that the onus is on individual lawyers and judges to recognise its relevance and significance.

As I mentioned previously, the bill makes a range of amendments unrelated related to task force recommendations. The Palaszczuk government has listened to victim-survivors regarding the need to reflect contemporary understanding of the nature and impact of sexual violence in offence terminology. That is why the bill includes amendments to update certain sexual offence terminology in the Criminal Code. These amendments are intended to make plain the gravity of the offending and remove any language that may minimise or trivialise this abhorrent offending. It is timely that this bill is introduced to modernise terminology during Sexual Violence Awareness Month.

Former Australian of the Year, Grace Tame, has galvanised community support for removing terms within legislation that normalise child sexual abuse or somehow suggest that a child is a willing participant in their abuse. I would like to acknowledge the survivors of sexual assault who have advocated tirelessly to highlight these issues and their continued push for systemic change.

The Queensland Law Reform Commission also commented in its report reviewing consent law and mistake of fact about the need to modernise the language used in chapter 32 of the Criminal Code by removing the term 'carnal knowledge'. The bill amends the code to replace the term 'carnal knowledge' which currently describes penile intercourse.

Noting that it has been used in the code since its inception in 1899, the term 'carnal knowledge' has been criticised for being archaic, and probably rightly so. The bill therefore replaces 'carnal knowledge' with 'penile intercourse', ascribing the current definition of 'carnal knowledge' to the new term. The amendment intends to make no substantive change to the operation of offences. It is also important to note that in Queensland other forms of sexual penetration not contemplated by the term 'carnal knowledge' are addressed by other offences within the code.

Secondly, the bill changes the title of the section 229B offence title 'Maintaining a sexual relationship with a child' to respond to victim-survivor criticism that the words 'maintaining' and 'relationship' soften or trivialise criminal conduct and suggest an equal and consenting association between the victim and offender. The bill retitles the offence: 'Repeated sexual conduct with a child' which omits references to the concepts of maintaining and relationship.

The new title of 'Repeated child sexual conduct with a child' has been construed carefully to guard against any unintended change to the practical operation of the substantive provision. Care has been taken not to introduce new concepts in the title which could risk narrowing the broad scope of the offence by subtly raising the threshold of what is required to establish the offence. It is absolutely essential that this pivotal offence provision continues to operate in a way that does not jeopardise convictions and justice for victim-survivors.

The bill also makes further amendments to the Evidence Act to expand the standing of a victim or alleged victim of a sexual assault offence so that they can appear at all stages of a sexual assault counselling privilege proceeding. This amendment addresses immediate stakeholder concerns regarding the practical workability of the sexual assault counselling privilege framework.

Amendments in the bill to the Coroners Act will permit the reappointment of the state coroner and deputy state coroner beyond the current limit of two five-year terms. The current maximum five-year duration of an appointment and reappointment will be retained. The amendment is consistent with provisions dealing with appointments and reappointments of equivalent positions in other Australian jurisdictions.

The bill also amends the Oaths Act to address a number of issues that have arisen during the implementation of the Oaths Act amendments in the Justice and Other Legislation Amendment Act 2021. The amendments clarify the original intention of reforms to ensure efficient conduct of proceedings.

The bill also amends the Telecommunications Interception Act 2009 to support the role of the Public Interest Monitor under the international production order scheme established under the Commonwealth Telecommunications (Interception and Access) Act 1979. While the Public Interest Monitor has been given a role under the Commonwealth IPO scheme, corresponding amendments are required to Queensland legislation to ensure the Public Interest Monitor can properly perform this role including, for example, by providing that they are notified of the application for the interception IPO. This is an historic day for Queenslanders. It is an historic day for victim survivors. I commend the bill to the House.

First Reading

Hon. SM FENTIMAN (Waterford—ALP) (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) (11.40 am): 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 Legal Affairs and Safety Committee

Madam DEPUTY SPEAKER (Ms Lui): In accordance with standing order 131, the bill is now referred to the Legal Affairs and Safety Committee.