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

Hon. SM FENTIMAN (Waterford—ALP) (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) (12.09 pm): I move—

That the bill be now read a second time.

On 14 October 2022 I introduced the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022. The bill was referred to the Legal Affairs and Safety Committee for its consideration. The committee's report was tabled on 25 November 2022 and made two recommendations. The first recommendation was that the bill be passed. I thank the committee for its thorough consideration of the bill and I would also like to thank the organisations and individuals who made submissions to the committee and participated in the public hearing. Today I table the government's response to the Legal Affairs and Safety Committee's report.

Tabled paper: Legal Affairs and Safety Committee: Report No. 39, 57th Parliament—Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022, government response 168.

The bill amends 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 to implement the recommendations from the first report of the Women's Safety and Justice Taskforce, *Hear her voice*, as well as making miscellaneous amendments to other legislation. The task force was established by the Palaszczuk government to provide independent and expert advice about the best way to fulfil the election commitment to legislate against coercive control.

I want to take a moment to thank the courageous victim-survivors, families and stakeholders who have advocated tirelessly for these changes and I also pay my respects to lives needlessly lost to domestic and family violence. Sunday marked three years since the murder of Hannah Clarke and her three children, Aaliyah, Laianah and Trey. I want to particularly acknowledge and thank Sue and Lloyd Clarke whose tireless advocacy has increased community awareness on the dangers of coercive control. For many Queenslanders it was the first time they had heard the term 'coercive control' or realised that they or their loved ones were victims of domestic violence.

In its first report the task force made 89 important recommendations for reforms to domestic and family violence services and justice systems. The bill delivers on several of the legislative recommendations before we introduce a criminal offence of coercive control later this year. We heard throughout the committee process that stakeholders wanted us to take our time and ensure that we are also investing in our systems and particularly training for our frontline responders. The government has now committed well over half a billion dollars to implement the recommendations of the two task force reports and the report of the commission of inquiry into police and how they handle domestic and family violence.

There is still so much work to be done to address the unacceptable issue of violence and abuse in our community. The challenge before us is immense, but the Palaszczuk government has accepted that challenge and this bill is an important next step in doing that. The task force heard that the offence of stalking is under-utilised by police and is often misunderstood as behaviour that occurs only at the end of or outside of a domestic relationship. Currently Queensland's unlawful stalking offence uses outdated concepts and language and needs to be modernised to better reflect contemporary tactics used by perpetrators, including electronic or digital monitoring and surveillance on mobile phones or tracking devices on cars. One victim-survivor told the task force—

He would ask who I am talking to and then if I told him no-one because it is not his business he would go on to recite something that he could see in my conversation with my friend.

The bill renames the offence of unlawful stalking to be called unlawful stalking, intimidation, harassment or abuse. This new title better reflects the contents of the offence as well as increases awareness and encourages better use of the offence by police and prosecutors.

Importantly, the bill also provides a circumstance of aggravation for the offence of unlawful stalking where there exists or has existed a domestic relationship between the offender and the stalked person. A person convicted of this aggravated form of the offence will be liable to a maximum penalty of seven years imprisonment. A court can make a restraining order in relation to a charge of unlawful stalking. The bill proposes an increase to the maximum penalty which applies to the offence of contravening such a restraining order from the current 40 penalty units or one year imprisonment to up to 120 penalty units or three years imprisonment. The bill provides for a further increase in the maximum penalty 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. These amendments also better reflect the way technology can be used to facilitate intimidation, harassment or abuse such as cyberbullying and doxxing. Cyberbullying, like other forms of bullying, can cause severe harm to the victim and those around them and that is why the Palaszczuk government has been committed to tackling the prevalence of cyberbullying.

These legislative amendments strengthen our response 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. The task force found that in some cases courts are not sentencing domestic violence offenders appropriately because they are not being given adequate information about the nature of the offending, including criminal histories showing previous offending related to domestic violence. The bill addresses this by amending the Criminal Code to require the prosecution, where an accused is charged with a domestic violence offence, to disclose to the accused a copy of that person's domestic violence history.

Consistent with recommendation 61 in the task force's second report, the bill includes amendments to modernise the archaic language of our Criminal Code with respect to sexual offenders. Victim-survivors such as Grace Tame have argued that the current use of outdated terms diminishes the gravity and severity of the unlawful criminal offending involved in the offence. The amendments are intended only to modernise terminology. By replacing the term 'carnal knowledge' with 'penile intercourse' it is not intended to substantively alter the scope or operation of offences in the Code.

The government has listened to the voices of brave victim-survivors and the bill renames the section 229B offence, 'maintaining a sexual relationship with a child' to 'repeated sexual conduct with a child'. While most stakeholders supported the renaming of the offence, I acknowledge that a number of stakeholders indicated preference for the offence to be renamed 'persistent sexual abuse of a child' which is a term used in some other jurisdictions. Queensland is uniquely placed with regard to section 229B. Queensland was the first Australian jurisdiction to introduce an offence of this nature. Additionally, the 2017 Royal Commission into Institutional Responses to Child Sexual Abuse found that the Queensland offence provided the best opportunity to charge repeated or ongoing child sexual abuse in a manner that is consistent with the sort of evidence a complainant is more likely to be able to give. The offence is extremely effective in delivering justice for victim-survivors. That is why it is imperative that the offence continues to operate in a way that does not jeopardise convictions and justice for victim-survivors. It is vital that we keep our language broad to ensure we can continue to have successful prosecutions. The new offence title has therefore been strategically constructed to minimise the potential for any unintended consequences in the Queensland specific context.

The bill also replaces the outdated term 'carnal knowledge' with the new term 'penile intercourse'. While most submissions to the committee welcomed the replacement of the term 'carnal knowledge', I acknowledge that not all stakeholders felt comfortable with the term 'penile intercourse'. In its second report the task force cautioned that changing the name of an offence is not a matter of simply replacing one name with another, because jurisprudence is built around the interpretation of language used in and the elements of an offence. Whilst the terminology used in an offence can influence how it is

understood by the community, it is also important that well-intentioned changes to language do not have unintended and detrimental impacts. Carnal knowledge currently means the insertion to any extent of a person's penis into the vagina, vulva or anus of another person. These forms of penetration are a key element of a number of offences in the Criminal Code. Other forms of sexual penetration, such as digital and penile-oral penetration, are captured by offences such as rape and sexual assault. One stakeholder expressed a concern to the committee that the requirement for penile penetration under some offences was discriminatory because it suggests certain offences can only be committed by male perpetrators, however, I can assure the House that the amendments in the bill will not alter the current position that both genders may commit offences with carnal knowledge as an element.

The task force heard that coercive control is a pattern of oppressive behaviour carried out by one person to control another. This is done by causing the victim to fear for their or someone else's safety. It can also be done by physical abuse and sexual coercion. One brave victim-survivor told the task force—

Nothing I could do was right. I was told how to dress and what to wear. When we ate dinner I was made to sit at his feet. On one night I said something wrong and he got up in front of the kids and kicked my dinner plate across the room. I was terrified a lot of the time.

The bill amends the definition of 'domestic violence' to recognise a pattern of behaviour that must be considered in the context of the relationship as a whole and to clarify that harm can be cumulative and may occur over a period. This will assist police, prosecutors and courts to identify coercive and controlling behaviours such as domestic and family violence.

The reports of the task force and the Domestic and Family Violence Death Review and Advisory Board have identified that we must improve both our laws and our systems to prevent the misidentification of the person most in need of protection in domestic and family violence matters. The bill addresses this issue by amending the act to provide further guidance on how to identify the person most in need of protection and strengthens the current framework for hearing cross applications.

The task force revealed how cross orders can be a mechanism for systems abuse by the perpetrator by falsely alleging violence or used in retaliation for a protection order by the victim. Amendments in the bill intend to stop perpetrators using the court system as a means of continuing to control and intimidate victims. The bill also addresses systems abuse by amending the act to allow the court to award costs against an applicant in civil domestic violence proceedings if the court decides that the applicant has used the proceedings to intentionally engage in behaviour that is domestic violence.

The bill also allows the court to make a substituted service order in limited circumstances to prevent respondents from evading personal service to frustrate the process and leave victims without the protection of a domestic violence order.

The bill also expands the operation of the protected witness scheme which ensures that a protected witness cannot be cross-examined by an unrepresented defendant to include the complainant in a domestic violence offence. An accused perpetrator or a person named in a domestic violence order who refuses legal assistance to cross-examine a protected witness cannot undertake a cross-examination.

To address concerns raised by stakeholders during the committee process about additional demand due to these amendments, the Queensland government will provide $18.62 million over four years and $4.7 million ongoing to Legal Aid Queensland to fund the expansion of the protected witness scheme. These amendments are about ensuring that court processes will not be used to inflict further suffering upon those who need the court's protection.

The bill amends the Evidence Act to ensure relevant evidence of domestic violence can be admitted in criminal proceedings. The Evidence Act currently allows for relevant evidence of the history of the domestic relationship between a defendant and a complainant to be admitted in limited criminal proceedings such as homicides and assaults. Consistent with recommendation 63 of the first task force report, the bill removes this limitation and will enable relevant evidence of domestic violence to be admitted in relation to any criminal offence.

The task force noted that the patterned and cumulative nature of coercive control manifests in complex ways that are not well understood by the broader community, police, lawyers or judicial officers and expert evidence on these issues may be needed in some cases. New amendments to the Evidence Act facilitate admission of expert evidence in criminal proceedings about the nature and effects of domestic violence and modifies two common law rules of evidence that may prevent an expert's evidence being admitted into evidence. The effect of this provision is to prevent evidence being inadmissible only because the evidence answers the ultimate issue for the finder of fact's determination or relates to a matter of common knowledge.

The task force also found that jury directions about domestic and family violence are vital to ensure judges and juries consider contextual evidence of the nature and impact of coercive control and domestic and family violence. The bill amends the Evidence Act to introduce directions and ensure that members of juries are given directions by judges to address misconceptions and stereotypes about domestic violence. 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 they can appear at all stages of a sexual assault counselling privilege proceedings.

Submissions to the task force explained that perpetrators of coercive control can manipulate their victims to commit crimes or to wrongly admit the extent of their culpability. To address this the bill amends the Penalties and Sentences Act to require a sentencing court to have regard to whether an offender is a victim of domestic violence and whether the offending is attributable to the effect of the domestic violence upon the offender when sentencing the offender.

Further, the bill amends section 9 of the Penalties and Sentences Act to require the court to treat those features as mitigating factors when sentencing. The task force did note that police, lawyers and judges will need to be astute enough to recognise when perpetrators falsely portray themselves as victims. The amendments in this bill provide the court with a discretion not to treat those matters as mitigating factors because of the exceptional circumstances that may exist in a particular case. These amendments are also reflected by similar amendments to the Youth Justice Act and will ensure that a child's exposure to domestic violence, in addition to being a victim of domestic violence, are factors that the court must have regard to in imposing a sentence.

The bill further amends the Penalties and Sentences Act to provide that a history of domestic violence orders made or issued against an offender may be considered in determining an offender's character. A history disclosed under that provision may be used to inform the sentencing process.

The definition of a domestic violence order in the bill is intentionally broader than the types of orders contemplated by the definition of a domestic violence history as defined by the bill. This is because the intention is not to limit the types of orders which a sentencing court may consider in determining a person's character. It is also not intended to limit material being relied upon by either the defence or prosecution at sentencing that shows the offender was an aggrieved on a domestic violence order.

The bill also makes amendments to other acts. It amends the Coroners Act to permit the reappointment of the State Coroner and Deputy State Coroner beyond the current limit of two five-year terms. However, the current maximum duration of five years for an appointment and reappointment will be retained. The bill amends the Oaths Act to address a number of issues that have arisen during the implementation of the Justice and Other Legislation Amendment Act. The bill amends the Telecommunications Interception Act to complement existing Commonwealth legislation by ensuring the Queensland Public Interest Monitor can properly perform the role created under the international protection order scheme, including, for example, that the PIM is notified of relevant applications and can appear at the application to make submissions.

I also foreshadow that during consideration in detail I will be moving amendments to the Public Guardian Act 2014 to provide legislative certainty to the Public Guardian in making decisions about converting community visitors from a non-permanent to a permanent basis. The amendments will remove an unnecessary requirement in the Public Guardian Act and ensure community visitors will be able to access the new conversion framework under the Public Sector Act when it commences on 1 March this year. As a result of this commencement date, these amendments are time critical.

Despite the amendments made to the Public Sector Bill late last year, the need for further amendments has arisen following further consideration by the Public Guardian of her commitment to bring about the enhancements to employment rights that the Public Sector Act brings. They are necessary to provide certainty to her in her decision-making under the conversion regime as well as to the entire community visitor workforce. Ultimately, the amendments will mean that, come 1 March, the Public Guardian can confidently start the significant task of converting more than 80 community visitors who have been continuously employed with the Office of the Public Guardian for over two years.

As stakeholders and the committee have noted, effective implementation of the amendments to the Criminal Code, the Domestic and Family Violence Protection Act and the Evidence Act will rely on other activities. As I have said, the committee made two recommendations. Firstly, they recommended that the bill be passed. In noting, though, the absolute importance of training, education and change management activities, the committee's second recommendation was that the government report back on those activities within 12 months of the report being tabled. The Queensland government accepts that recommendation and will report back accordingly.

A whole-of-government training, education and change management framework is being developed as a priority in consultation with government and community stakeholders. This includes the development of an implementation plan and resources to support the adoption of the training framework across agencies, and a monitoring and evaluation plan to determine the effectiveness and the outcomes of the training framework. The intent of the framework is to strengthen responses to victims and perpetrators of domestic and family violence through supporting greater consistency of domestic and family violence training delivered across a broad range of service types. It will seek to ensure workers have a comprehensive understanding of domestic and family violence and coercive control so that they can recognise and respond to people affected, within the parameters of their agency's role and responsibilities. It will support workers to understand the gendered nature of domestic and family violence and its impacts.

This is an historic day for Queenslanders. It is an historic day for victim-survivors. When I tabled the first *Hear her voice* report I made a commitment to victim-survivors that the government heard them and was acting. I am proud that we continue to act. I commend the bill to the House.