



Speech by

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CRIMINAL CODE (ABUSIVE DOMESTIC RELATIONSHIP DEFENCE AND ANOTHER MATTER) AMENDMENT BILL

Mrs STUCKEY (Currumbin—LNP) (3.48 pm): I rise to speak to the debate on the Criminal Code (Abusive Domestic Relationship Defence and Another Matter) Amendment Bill, introduced into the House by the Attorney-General, the Hon. Cameron Dick, on 26 November 2009. As members have already heard from the shadow Attorney, we on this side of the House will be supporting this bill, albeit with some reservations as were clearly outlined by the honourable member for Southern Downs. The bill will see amendment to the Criminal Code to create a new partial defence to murder for killing in an abusive domestic relationship and insert a new offence of unlawful possession of equipment for the use of obtaining or making identification information.

A new section will be inserted into the Criminal Code at section 304B for the partial defence of killing in an abusive domestic relationship, making reference to the same interpretations of the existence of a domestic relationship between two persons and an act of domestic violence in such a relationship as in the Domestic and Family Violence Protection Act 1989. The partial defence will operate in addition to, not instead of, existing defences and excuses for murder. The bill will also amend section 408D to include that a person possessing equipment for the purpose of committing or facilitating the commission of an offence against subsection (1), which is obtaining or dealing with another entity's identification information for the purpose of committing or facilitating the commission of an indictable offence, is committing a misdemeanour.

Firstly, I wish to speak on the issue of domestic violence relationships. In 2008 the Queensland Law Reform Commission made a recommendation that a separate defence for battered persons be considered in cases where murder has been committed against an abusive spouse or partner. The result of this recommendation was the *Homicide in abusive relationships—a report on defences* report, known as the Bond report. Commissioned by leading professors from Bond University on the Gold Coast—a wonderful facility, I might add—the report recommended the implementation of the partial defence for murder into the law of Queensland.

In following this recommendation, Queensland, which has lagged behind other states in defence excuse reform, would become the first state in Australia to introduce such a landmark decision. The defence could allow for a victim of an abusive domestic relationship who kills their partner to have their conviction downgraded to manslaughter, giving the court sentencing discretion which does not occur with a murder conviction. This amendment represents a change in the attitude towards victims of domestic abuse, although the road to achieving substantial decreases in incident rates is still a long and arduous one and there is still room for abuse of the amendment, which is why the recommendations of the shadow Attorney have merit.

Actual levels of domestic violence are extremely difficult to quantify. Given the intimate nature of a domestic relationship it is not uncommon for violence, especially sexual assault in the privacy of one's

home, to go unreported to official authorities. While not inaccurate, police statistics on domestic violence could be viewed as just the tip of the iceberg.

What we can be sure of, however, is that domestic violence presents a very serious problem in our society—one that should not be tolerated and one that costs Queensland around \$3 billion a year, according to comments made by the Minister for Communities in August last year. Victimization surveys such as the personal safety survey by the Australian Bureau of Statistics are an important source of data gathering for a true reflection of domestic violence in Australia. The most recent data from 2006 indicated that 31 per cent of cases of physical assaults against females were perpetrated by their current or former intimate partner while only 4.4 per cent of assaults against males were by their current or former intimate partner.

Of great concern is the obscenely high incident rate of domestic violence in Indigenous communities throughout our country and our state. In many cases it is out of sight and therefore out of mind. Yet it is estimated that domestic violence in the Indigenous population is up to 45 times higher than in the non-Indigenous population. Despite countless papers, reports, recommendations and investigations, the Indigenous community is still largely neglected. There remains a serious gap in services and addressing the cause of Indigenous overrepresentation must become a priority, particularly in relation to domestic and family violence.

Unfortunately, acts of domestic violence causing death are prevalent across our nation—and our state is not immune—and this is the focus of our debate here today. Of the reported 206 homicides in 2006-07 in Australia, 25 per cent of those were perpetrated by and against intimate partners. Queensland had 12 intimate partner homicides in that time. In both the national and state figures, women were more likely than men to be victims. As highlighted in the Bond report, victims of domestic abuse who consider or perpetrate retaliated violence against their abuser are often motivated by fear, desperation and a belief that there is no other viable way of escaping danger.

It is difficult for an ordinary person, be they a judge or a person on a jury, to grasp the intensity of the heightened psychological state experienced by victims of severe abuse who cause the death of another in a domestic relationship. Limitations of the current law must be addressed. This proposed offence is a start. But, as we have heard from the shadow Attorney, there is more that could be done, especially with regard to discretionary sentencing.

The proposed defence of BWS will give consideration to a particular group in society that warrants special and sensitive handling. I speak of women suffering at the hands of the battered wife or, I heard the Attorney say, the battered woman syndrome, which is probably the more appropriate term in 2010. Whilst it must be acknowledged that both men and women are victims of domestic violence, and this legislative reform is designed to reflect that fact, 97 per cent of domestic violence is perpetrated by males and most of the abuse is still directed at women. This is according to the *Herald Sun* of 3 May 2008. Studies and research on the battered wife/woman syndrome have been extensive over the past decade. New information is being presented constantly, reinforcing the need to reform legislation and implement policies to deal with the adverse effects placed on society and individuals.

BWS refers to both the pattern of violence and the psychological trauma inflicted on a female victim of domestic abuse. Violence by the perpetrator often falls into stages of tension building, physical assertion of violence followed by temporary cessation and promises by the batterer to stop the abuse. The peaks and troughs associated with the repeated pattern often dismiss the case for immediacy needed to prove self-defence in the act of a resulting homicide. This is according to papers by Dr Patricia Easteel.

It is appalling to think that here in a Western country in the 21st century there is still a small percentage of people with the attitude that women are in some way responsible for violence against them. A survey on the national community attitudes towards women commissioned by the Commonwealth government in 2009 found that attitudes that condone, justify or excuse domestic violence still persist in our society. How can we expect reform to accurately reflect current attitudes in a society that still does not accept that women who suffer in seriously abusive relationships deserve the help of the justice system?

A key Australian case heard before the High Court of Appeal in 1999 was that of *Osland v R*. Mrs Heather Osland was convicted of murdering her husband and her son, David Albion, was acquitted of all charges despite relinquishing the fatal blow that killed her abusive husband and his step-father. The sensitivity surrounding the battered wife syndrome was examined in the *Osland* case by Dr Kenneth Byrne, a clinical and forensic psychologist. He gave expert evidence that the heightened awareness of danger of battered women must be considered as ordinary people cannot relate on the same level.

High Court judges ruled that the expert evidence relating to BWS was admissible. However, because it was general and not put into the context of raising the existing defences of self-defence or provocation, Mrs Osland's appeal was unsuccessful. Dr Patricia Easteel's report for the Australian Institute

of Criminology highlights the trend in the Australian legal system to downgrade the level of legitimacy given to BWS in contrast with that of other developed Western countries.

It is relevant to highlight the current situation of the defences available in Queensland. A full defence of self-defence is available to the conviction of murder provided stringent conditions are met. The Bond report highlights the limitations of section 271 of the Criminal Code in relation to the actions of victims of severe abuse. Firstly, the defence can only be argued in the event of an unprovoked attack on the victim that they are responding to. This does not allow for a victim, who has a heightened awareness of the conditions prior to the onset of violence, to act in anticipation of an attack. If the use of force is considered excessive, the argument for self-defence is excluded.

With the knowledge that a female victim is more likely to be attacked by a stronger male, the issue of reasonable force cannot be judged subjectively. Where a weapon may seem reasonable to an abused female in the circumstances at the time of the attack, without considering the history of past violence and the relentless cycle associated with domestic abuse a judge and/or jury may deem the use of a weapon to be excessive.

It is important to note that there is currently no partial defence available in Queensland. All other states and territories in Australia have modified their criminal law legislation to reflect the changes proposed in the model Criminal Code, a nationwide initiative of the Standing Committee of Attorneys-General—SCAG. Most notably, the changes allow for conduct to be assessed as self-defence in the circumstances as he/she, the perpetrator, perceives them.

As we have heard, for sufferers of severe domestic abuse perception is critical. The fact can no longer be ignored that people with a history of past violence, especially cyclical violence associated with BWS, have a perception of events that are based on previous incidents that a neutral outsider will simply not have. The introduction of a partial defence will supposedly rely on stringent definitions of 'relationship' and 'violence'. The definition of 'relationship' will model that which is in the Domestic and Family Violence Protection Act 1989 and will include spousal, intimate personal, family and informal care relationships. According to the Bond report, the relationship can be current or past and will not be age or gender specific. 'Violence' will be prescribed as meaning physical, sexual or psychological abuse, including intimidation and threats of abuse. The use of the word 'serious' has been prescribed as an appropriate threshold for consideration of a partial defence. 'Serious' will not be defined under legislation and will be held as a matter of judgement by the jury—a point of some contention.

Due regard will need to be given to the existence of a reasonable history of violence. The onus will be on the prosecution to disprove the offence beyond a reasonable doubt. Evidence regarding the history of the relationship, including violence, will be admissible and it will be up to a jury to deliberate on its relevance. This could become a pitfall in a judicial system that relies on proof and not truth. Relying on evidence to prove that a history of violence has existed in a domestic relationship can be problematic, considering cases are often shrouded in secrecy and plagued with silent suffering. There must be due care to ensure that domestic violence is not trivialised further in the courts. However, the government's loose drafting of this bill leaves a number of areas open for misrepresentation.

Although verbal abuse can be debilitating, proving the existence of cyclical or constant verbal abuse will be difficult. It must be a key objective of this partial defence that it will not be used inappropriately, for example by a man seeking defence for killing his nagging wife—although I must say there are probably a few members who have experienced a nagging wife from time to time. We cannot allow anyone to hijack this defence to further reduce their criminal culpability, be they man or woman.

The government's response to the 2005 report by the Crime and Misconduct Commission into the policing of domestic violence in Queensland revealed that police had prior interactions with domestic couples in around 25 per cent of domestic homicide cases. Districts in the United States have established fatality review boards to examine cases of domestic homicide to analyse the response of agencies involved and to alert the relevant departments of gaps in the system that could be preventable.

Honourable members interjected.

Mr DEPUTY SPEAKER (Mr Pitt): Order! The member for Currumbin has the floor, as funny as this is.

Mrs STUCKEY: Thank you, Mr Deputy Speaker. I can see it has created a little debate here. The death review panel, to be chaired by the chair of the Legal Aid Queensland Board, will be responsible for reviewing the incidence of domestic violence homicide in Queensland over the past five years. However, despite this ambitious objective, it has to be asked: is this government really serious about protecting victims of domestic violence? The last time a bill was introduced with the specific aim of protecting victims was in 1989 with the introduction of the Domestic and Family Violence Protection Act. That act introduced the provision of protection orders for persons exposed to the act or threat of domestic violence. The

Domestic and Family Violence Protection Act was amended in 2003 to broaden the scope of domestic relationships to include spousal, intimate personal, family and informal care relationships.

However, of the 15,632 domestic violence orders that were made in 2007-08, in the same period 8,283 breaches were made. Over 50 per cent of the orders were breached. Surely, this government can see that a system that produces that number of breaches needs urgent attention. What is the point of boasting about increasing initial police intervention when the results are showing a major lack of follow-through at the other end?

Since 1989 only two amendments—that being in 1997, when the coalition was in power, and in 1999—have been made to the Criminal Code with domestic violence in mind, and they were for torture and unlawful stalking. Both of those amendments are indirectly related to protecting victims of domestic violence and lack direct interpretation under the law in response to domestic violence circumstances.

In May 2007 the then minister for communities, Warren Pitt, announced the Queensland government's commitment to develop a coordinated strategy to reduce domestic violence. However, it was more than two years before the follow-up announcement was made by the Minister for Community Services and Housing and Minister for Women about the outcome of that grand and long-awaited commitment. The report, *For our sons and daughters: a Queensland government strategy to reduce domestic and family violence 2009-2014*, is awash with sentimental approaches such as support and assistance and not a lot of hard facts on what procedures the government intends to implement to lower the rate of domestic violence in our state. There is an extra \$30 million budgeted between 2008-09 and 2009-10 but no breakdown of how the money will be spent on specific services.

Further, there are no specifications designed around addressing the needs of Aboriginal and Torres Strait Islander communities. As I said, with rates of domestic violence incidents up to 40 times higher than in other groups in society, it beggars belief that there is no specific mention made of direct policy objectives for these Indigenous communities.

I turn now to the criminal activity of card skimming. In 2007, section 408D of the Criminal Code was introduced to provide that a person who obtains or deals with another entity's identification information for the purpose of committing or facilitating the commission of an indictable offence is committing a misdemeanour. The proposed amendment, which inserts a new section 408D(1A), will provide that a person who possesses equipment for the purpose of committing or facilitating the commission of an offence under section 408D(1) also commits a misdemeanour. This amendment will reduce the maximum penalty of persons found guilty of possessing equipment to three years rather than the prescribed 14 years under section 510 of the Criminal Code.

Identity theft is a major issue in Australia, in Queensland and, I am sorry to say, in my electorate of Currumbin. Had the government adequately amended the law with this insertion into the Criminal Code relating to identity back in 2007, the commission of many of these offences could have been avoided. Instead, the government is trying to patch up a loophole that has been overlooked by its incompetence. This amendment, with its maximum three-year sentence, will not deter people who stand to fraudulently gain considerable profits from hardworking and unsuspecting Queensland victims. If the maximum penalty of 14 years is downgraded, as is suggested in this bill, there will be limited deterrent for perpetrators, who, according to the 2007 Australian Bureau of Statistics fraud survey, are causing almost \$1 billion of individual financial loss for over 450,000 Australians a year.

We in this House need to send a strong message that identity theft and trade will not be tolerated in Queensland. My own electorate was rocked by a card-skimming fraud in December last year. A gang of thieves fitted a skimming device into the card slot of an ATM at a Tugun supermarket, with users completely unaware that their personal information was being stolen. The incident was reported as being one of one of five card-skimming frauds hitting the Gold Coast simultaneously. Last year, more than \$80,000 was fleeced from Gold Coast ATMs alone.

But why is the Bligh government letting these people off so lightly? Its soft-on-crime philosophy is letting down the good people of Queensland. If the government is serious about addressing the increase in identity crime, it must make sure that its laws are effective.

In summary, the LNP does not condone domestic violence under any circumstances. The attitudes of the legislative and judicial systems in the past have not taken the issue of domestic violence seriously enough and have not put enough emphasis on reforming community attitudes towards violence, especially violence towards women. Campaigns such as White Ribbon Day and the awareness surrounding them certainly need to be increased.

I would like to commend the Domestic Violence Prevention Centre Gold Coast, and Di McLeod, who has been running that centre for many years. They are in need of much greater funds for the fantastic job that they do and the protection they offer to women. But we must also remember, of course, that men are victims, too.