

CRIMINAL LAWS (DOMESTIC VIOLENCE) AMENDMENT BILL 2016

Second Reading

MR M. MCGOWAN (Rockingham — Leader of the Opposition) [4.01 pm]: I move —

That the bill be now read a second time.

I present a bill for an act to amend the Criminal Procedure Act 2004, the Evidence Act 1906, the Restraining Orders Act 1997, the Sentencing Act 1995 and the Criminal Code, to implement a number of criminal law reforms in the area of domestic and family violence. I am pleased to introduce the Criminal Laws (Domestic Violence) Amendment Bill 2016. I would first like to acknowledge the work done by the Law Reform Commission of Western Australia in its report “Enhancing Family and Domestic Violence Laws”. The extensive research and recommendations have assisted the WA Labor opposition to formulate the first step in a multi-step process to break the culture of violence in our families and communities and protect and support the victims of family and domestic violence.

Before I turn to the content of the bill, some general comments on domestic and family violence would be appropriate. Domestic and family violence is a scourge on our community. It affects all sections of our society—women, men, children and families. Men are victims of domestic and family violence, but women are overwhelmingly the victims of domestic and family violence. Victims of domestic and family violence suffer significant physical and emotional trauma; work and educational opportunities are affected; lives are disrupted; and many victims of this type of violence become homeless. Members of our community die as a result of domestic and family violence. Domestic and family violence is a complex crime, and a law and order and societal issue that we as a Parliament must lead the way in tackling. That is why today I am introducing the Criminal Laws (Domestic Violence) Amendment Bill 2016.

Some of the measures I am introducing in this bill are similar to legislation passed in the Queensland Parliament. It is time that our Parliament passed the measures contained in this bill. It is time this Parliament shows that it is serious about combating the scourge of domestic and family violence. Our message from the opposition is very clear: we will not cop domestic and family violence. We will not cop breaches of violence restraining orders.

This position and message is made clear by the provisions contained in this bill, but we want this message to be a bipartisan message of solidarity against domestic and family violence. We urge all members of this house to support the sensible measures in this bill. Fighting domestic and family violence should not be politicised for personal political reasons. We must come together as a Parliament and as a community to do what we can to fight this terrible crime. I urge the government to come on board with the opposition and support this bill.

The bill before the house contains important reforms to the justice system in the area of domestic and family violence. This bill makes a number of amendments to the Criminal Procedure Act 2004, the Evidence Act 1906, the Restraining Orders Act 1997, the Sentencing Act 1995 and the Criminal Code to increase perpetrator accountability and protection for victims of domestic and family violence. The bill will provide for the signposting of criminal offences and convictions that occur in a domestic and family violence context, ensure that victims of domestic and family violence automatically fall within the definition of special witnesses under the Evidence Act 1906, and increase penalties for breaches of restraining orders.

This bill also increases the maximum sentence imposed for domestic and family violence deaths dealt with under section 281 of the Criminal Code. The bill enables notations to be made that relate to domestic and family violence. The amendments enable notation to be made on a charge in respect of any offence to specify whether it is an offence that occurs in a domestic violence context. Also, if the offender is found guilty of such an offence or pleads guilty, the bill provides for a court to order that this be noted on the offender’s criminal history. Further, the bill allows for the prosecution to apply to the court for a direction that similar notations be made in respect of offences on a person’s criminal history. However, the amendments in the bill will not affect the court’s discretion on whether to formally record a conviction against the offender or when an offender’s criminal history can be taken into account. The capacity to examine a person’s past criminal convictions will flag to interested parties and anyone looking at a criminal history that this is an individual with a history of domestic and family violence. The relevant provisions in this bill will ensure that the court has all the information before it that it considers necessary when there is a history of domestic and family violence in determining whether stronger penalties need to be imposed.

This bill amends the Evidence Act 1906 to include a presumption that victims of domestic and family violence are to be regarded as special witnesses. Victims will have more access to the orders and directions that the court can make to support them in the process of giving evidence—for example, by giving evidence from another room or via a videotaped recording. This bill labels breaches of violence restraining orders as crimes and increases the maximum penalties for those breaches to three years’ imprisonment and six months for breaches of misconduct restraining orders and police orders. These amendments send a clear message to the community and to offenders that this type of conduct will not be tolerated. The opposition understands that this measure in

isolation is not enough, but it is important to send the message to the public that domestic and family violence is unacceptable.

This bill also contains provisions that I first introduced into this house in September 2012 as the Criminal Code Amendment (Domestic Violence) Bill 2012 to increase the maximum penalty for convictions under section 281 of the Criminal Code for domestic and family violence deaths. In order to convict under section 281, the “unlawful assault causing death” provision, the state does not need to prove that the offender intended to kill the victim; the critical issue is that death has resulted from an unlawful assault. Unfortunately, the government voted against my 2012 bill. I hope the government will this time support this important amendment. Recommendation 44 in the Law Reform Commission of WA report “Enhancing Family and Domestic Violence Laws” recommends the changes this bill seeks to make to section 281 of the Criminal Code. It should also be noted that the Attorney General, in tabling a review of section 281 of the Criminal Code on 18 February 2015 in the other place, acknowledged that there is considerable community comment on the need to reconsider maximum penalties for domestic and family violence under section 281.

As I stated in September 2012 when introducing the Criminal Code Amendment (Domestic Violence) Bill 2012, the violent death of Saori Jones was foremost in my mind. It remains foremost in my mind today as I now introduce the bill before us. In December 2010, Saori Jones’ estranged husband battered her to death in his home in an inner Perth suburb while their four-year-old daughter tried to intervene, all the while pleading with him to stop. While this was happening, their 10-month-old baby was crying piteously to be fed. To quieten the baby, he placed it on the mother’s breast, putting a nipple into the baby’s mouth to stop it crying. He then left Saori’s body to rot in a bedroom.

The Director of Public Prosecutions originally charged Mr Jones, the estranged husband, with manslaughter, which was then reduced to an offence under section 281, to which he pleaded guilty. As Saori’s body had been decomposing for 11 days before the police found her, there was a problem in determining the actual cause of death, even though Mr Jones admitted punching her. There was no argument that he killed her, but because of the decomposition of the body, Mr Jones was charged under section 281. He received a five-year sentence with a parole period of three years. He is now free.

After the sentencing of Mr Jones for five years, the Director of Public Prosecutions, Mr Joe McGrath, commented that the government, in certain circumstances, should consider doubling the penalty for an offence under section 281 of the Criminal Code. That is what the relevant amendment in this bill does.

In memory of Saori Jones and the other women who have died, and whose deaths have been prosecuted under section 281 of the Criminal Code, we need to do something as a Parliament. We need to pass this bill to ensure that the seriousness of domestic and family violence offences are reflected in the sentencing process.

The amendments to the justice system contained in the Criminal Laws (Domestic Violence) Amendment Bill 2016 are important and necessary measures in making clear to perpetrators and the community that domestic and family violence will not to be tolerated.

From opposition, we have identified those recommendations from the Law Reform Commission report that will have an immediate effect on the scourge of domestic and family violence in our communities, but they require a singular resolve. This bill is only the first step in a multistep process that a WA Labor government will bring forward. I commend the bill to the house.

Debate adjourned, on motion by **Mr J.H.D. Day (Leader of the House)**.