

~~presumptions in the Status of Children Act 1978 as they apply to same sex couples. This review was publicly released for comment on 18 August 2009. The overwhelming number of respondents to the review supported the proposed reforms. These reforms were also included in the exposure draft of the Surrogacy Bill 2009 released for public comment on 29 October 2009. Again, the majority of respondents who commented on this particular aspect of the exposure draft supported the reforms.~~

~~Finally, I would also like to take the opportunity to congratulate and thank the parliamentary committee on their hard work and diligence in the development of their comprehensive report on this very complex and important issue of surrogacy which has, in the end, led to this important legislative measure being introduced into the Legislative Assembly. I commend the bill to the House.~~

~~Debate, on motion of Mr Springborg, adjourned.~~

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

First Reading

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (11.38 am): I present a bill for an act to make particular amendments to the Criminal Code to provide for a manslaughter conviction in relation to killing in an abusive domestic relationship and to prohibit possession of equipment in relation to an offence of obtaining or dealing with identification information. I present the explanatory notes, and 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.

Tabled paper: Criminal Code (Abusive Domestic Relationship Defence and Another Matter) Amendment Bill.

Tabled paper: Criminal Code (Abusive Domestic Relationship Defence and Another Matter) Amendment Bill, explanatory notes.

Second Reading

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (11.38 am): I move—

That the bill be now read a second time.

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The bill amends the Criminal Code to insert a new partial defence to murder of 'killing in an abusive domestic relationship' and to insert a new offence for unlawfully possessing equipment used to obtain or make identification information. The new partial defence to murder will apply to victims of seriously abusive relationships who kill their abusers. The defence will be the first of its kind in the country and will operate to provide legal protection for victims in this category of offending. The development of a separate defence for these victims has evolved from detailed consideration and examination of the topic by my department, the Queensland Law Reform Commission and academics.

The Queensland Law Reform Commission recommended that consideration be given to the development of a separate defence of battered persons. In furtherance of this recommendation, the Department of Justice and Attorney-General retained Professors Geraldine Mackenzie and Eric Colvin from Bond University to consider this matter further. Professors Mackenzie and Colvin's examination involved consultation with key stakeholders including the judiciary, legal profession stakeholders, community stakeholders and other academics. Their examination also involved a thorough review of relevant case law, legislation and a body of research on the actions of victims of abuse who kill their abusers. The examinations undertaken by the Queensland Law Reform Commission and Bond University demonstrate that victims of seriously abusive relationships often offend in circumstances that fall outside the operation of existing defences like self-defence and provocation because of their experiences within the seriously abusive relationships.

While it is important to maintain the mandatory life imprisonment penalty for those who are convicted of murder, victims of seriously abusive relationships warrant special consideration within our criminal justice system. The new partial defence reflects this. Where no other existing defence or excuse operates to assist these victims, those who kill in the circumstances outlined in the defence will be convicted of manslaughter instead of murder and therefore allow a court to exercise a broader sentencing discretion.

The defence will only be available where the accused has killed a person; the person killed was in an abusive domestic relationship with the accused and had committed acts of serious domestic violence against the accused in the course of that relationship; at the time of the killing the accused believed his or her acts were necessary for the person's preservation from death or grievous bodily harm; there were

reasonable grounds for this belief, having regard to the abusive relationship and all the circumstances of the case.

The use of the term 'serious' within the provision in relation to the level of domestic violence is used as a matter of emphasis to place the nature of the domestic violence in the Supreme Court murder trial in context. It is recognised that domestic violence of any description is a serious issue for our community and we should treat each incident accordingly. All domestic violence must be condemned not only by government but in all our communities and in all our homes. However, the use of the term 'serious' in this bill acts to create an appropriate threshold for the application of this partial defence to a charge of murder.

The operation of the defence will require the evidential burden to lie with the accused but with the ultimate onus of proof remaining with the prosecution—that is, it will be a matter for the accused to ensure there is sufficient evidence before a jury, whether introduced by the prosecution or defence, to raise the defence. Once the evidence in a case raises the defence, the onus will be on the prosecution to negative the defence beyond reasonable doubt. This burden mechanism is similar to that which operates in relation to existing defences of self-defence and honest and reasonable mistake of fact.

The defence is framed in a way that will ensure it is reserved for genuine victims and not abused by unmeritorious individuals—for example, the primary perpetrators of the violence in the relationship. The defence represents an effective balance between necessarily punishing those who would otherwise be guilty of murder and providing some legal protections for victims of serious abuse.

The bill also amends section 408D of the Criminal Code by inserting a new offence of possessing equipment for the purpose of obtaining or dealing with identification information. Currently, it is an offence to obtain or deal with identification information with intent to commit an indictable offence. For example, it is an offence to obtain or use another person's credit card details by skimming an ATM or EFTPOS machine.

However, the law does not provide adequate protection where a person possesses a skimming device but has not yet used it. Equipment that can be used to obtain identification information includes common use items, such as mobile phones with cameras or bluetooth technology and laptop computers. To prevent the mere possession of common items becoming unlawful, the offence requires proof of an unlawful purpose—that is, the prosecution must prove that the defendant possessed the items for the purposes of committing an identity theft offence. The introduction of this offence represents a further step to protect the community from identity theft, which is a highly intrusive and costly form of crime. I commend the bill to the House.

Debate, on motion of Mr Springborg, adjourned.

~~CRIMINAL ORGANISATION BILL~~

~~Second Reading~~

~~Resumed from 25 November (see p. 3638), on motion of Mr Dick—~~

~~That the bill be now read a second time.~~

~~**Mr SHINE** (Toowoomba North ALP) (11.44 am): It is the first and foremost duty of the government of the day to protect its citizens from physical harm, and this legislation is being introduced in that context. The government seeks to make out a case purporting to show that there is a real and present danger to public safety from bikie gangs and that the current laws are inadequate to deal with the situation. Hence, the purpose of this bill is to disrupt and restrict the activities of organisations involved in serious criminal activity, principally by dismantling the membership of such organisations through a range of mechanisms, in particular, orders made by the Supreme Court of Queensland. The bill allows for criminal organisations to be declared by the Supreme Court upon application by the Police Commissioner. Members and associates of declared organisations will, on application of the Police Commissioner, be liable to have control orders imposed upon them.~~

~~The effect of the new law will be that members of the community will be limited to the contact they can have with members of declared organisations and persons subject to a control order. Control orders will also prevent controlled persons from working in areas where they might gain information beneficial to criminal organisations, for example, within the police department. Likewise, they will restrict employment of controlled persons in certain industries where a licence is required prior to employment, for example, as a bouncer in the security industry.~~

~~Having outlined what this bill intends to achieve, do I intend to support its passage? What do I say about the concerns raised? The answer to the first question is yes and to answer the second question I can say that in this place as a backbencher I have always expressed my concerns at any restricting of civil rights. Indeed, on this very topic the record will show that, even as Attorney General, I opposed the opposition's bill in October 2007.~~