

# CRIMINAL LAW AMENDMENT BILL 1993

## EXPLANATORY NOTES

### OUTLINE

#### **Objective of the Legislation**

The objective of the Bill is to provide for a new indictable offence of stalking to be inserted into the Queensland *Criminal Code*. The Bill provides for a two level offence; straightforward stalking which will attract a maximum sentence of three years imprisonment and aggravated stalking which will attract a maximum sentence of five years imprisonment. The Bill also provides for a maximum sentence of 18 months imprisonment for straightforward stalking if the offence is dealt with summarily in the Magistrates Court. Because of the more serious nature of the aggravated form of the offence, it is not an objective of the Bill to provide that aggravated stalking may be dealt with summarily.

#### **Reasons for the Bill**

As part of the Review of the Queensland *Criminal Code*, many submissions were received from community and women's interest groups contending that the criminal law of Queensland did not adequately provide protection for a person who had been followed, placed under surveillance, contacted, or been sent offensive items in circumstances where that person felt harassed, intimidated or threatened.

Although the *Criminal Code* contains a small number of sections which extend criminal liability to an offender who does not undertake actual violence, but causes fear to another or others in narrow and specific circumstances, the *Criminal Code* does not generally provide for criminal liability in cases where a person has been subjected to behaviour which might reasonably cause an expectation of potential violence.

In order that the criminal law may extend protection to all citizens who have been subjected to activities which cause them to reasonably believe they may be the subject of unlawful violence, it is necessary to amend the *Criminal Code* by the creation of the offence of stalking. In particular, such an offence will permit law enforcement authorities to apprehend persons engaging in stalking conduct before that conduct leads to actual violence. In the event that actual violence does occur there are contained in the *Criminal Code* numerous provisions to charge the offender for the harm done. However, by the creation of a stalking offence, it is expected that in suitable cases, an offender may be apprehended and dealt with by a court before the offender actually perpetrates violent acts.

### **Estimated Cost for Government Implementation**

It is not anticipated that there will be any significant cost to Government in implementing the amendment proposed.

### **Consultation**

The impetus behind the development of a stalking offence arose from the consultative process undertaken within the *Criminal Code* reform project. In July 1992, the Honourable the Minister for Justice and Attorney-General and Minister for the Arts released the Final Report of the *Criminal Code* Review Committee. Submissions were sought from the Queensland community on the recommendations contained in the Final Report. A significant number of the submissions received argued for the introduction into Queensland's criminal law of a stalking offence.

Consultation has been undertaken in the community through the Domestic Violence Resource Centre and the Women's Legal Service.

Within government, the Women's Policy Unit (Office of the Cabinet) and the Department of Police have also supported the development and introduction of a stalking offence into the *Criminal Code*.

## **DETAILS OF THE CLAUSES OF THE BILL**

*Clause 1* sets out the short title of the Act.

*Clause 2* provides for the *Criminal Code* to be amended as set out in the Act.

*Clause 3* provides for the insertion of two new sections into the *Criminal Code* immediately following section 359("Threats").

Proposed section 359A provides for the new crime of unlawful stalking. The major elements of the offence are that the offender engages in a course of conduct comprised of two or more separate acts; which conduct is intended by the offender should be known to the potential victim and which is in fact known by the victim; and which conduct is such that it would cause a reasonable person in the potential victim's circumstances serious concern that an unlawful act of violence may occur to the potential victim, or a person about whom the potential victim would be reasonably expected to be concerned, or the property of either such person. A maximum sentence of three years imprisonment is provided for the offence of unlawful stalking.

However, if the offender in committing the crime of stalking actually threatens or uses unlawful violence against the potential victim or other person; or if the offender has in possession a weapon (as defined in the *Weapons Act 1990*); or if the offender in undertaking the conduct contravenes any injunction or order made by any court, then the crime attracts a maximum sentence of five years imprisonment.

A defence to the crime of unlawful stalking - with or without the circumstances of aggravation - has been provided. The defence is to ensure that no person should be convicted of the crime where the person charged proves that the relevant course of conduct has been undertaken for the purposes of a genuine industrial dispute or other genuine public controversy on an issue or topic of public interest. Thus a person who engages in the relevant course of conduct for the purposes of, for example, a genuine environmental protest or political dispute should not be criminally liable for that conduct. The defence requires that the person charged must prove, on the balance of probabilities, that the relevant course of conduct was undertaken for the purposes of a genuine industrial - or other - dispute carried on in the public interest.

The proposed section 359A also sets out the type of acts which, if undertaken by the offender, may attract criminal liability. The proposed section also defines particular terms used within the section.

Proposed section 359B provides that the offence of stalking - when not aggravated by the particular circumstances set out in proposed section 359A(6)(a) - may be dealt with summarily. In such circumstances, upon conviction the offender is liable to a maximum sentence of 18 months imprisonment.

Proposed section 359B also provides that summary jurisdiction in relation to the offence of stalking must be exercised in the same way as currently provided in the *Criminal Code* by section 444.