

DOMESTIC HOMICIDE

Statement

HON SALLY TALBOT (South West) [9.55 pm]: At lunchtime today there was a small but very passionate rally held on the steps of Parliament House. I would like to take this opportunity to put on record some of the points raised during that rally and describe what the rally was focused on. A very substantial petition was tabled this afternoon in this place by Hon Alanna Clohesy that went to the heart of the issue that was the focus of the rally: subsequent to changes made by the Criminal Law Amendment (Homicide) Bill 2008 introduced by the Labor government in 2008, a number of people are still serving prison sentences in this state for homicide who would clearly be subject to different sentences had they been tried under the law as it exists today.

I give members some background for how this state of affairs has come about. In 2006 the Law Reform Commission of Western Australia started a review of the homicide laws in Western Australia. It published an issues paper in May 2006 and a number of the agencies and organisations that are active in representing women and families in a legal sense made submissions to that inquiry. As a result of that inquiry and on the basis of the recommendations from the “Final Report: Review of the Law of Homicide” from the Law Reform Commission, on 1 August 2008 the Criminal Code was amended. Although the bill covered a number of areas, the substance with which we were concerned at the rally was that the history of violence by either the accused or the victim of a murder could be taken into account.

As a result of that amendment to the act in 2008, a group of lawyers in this town, who have come together under the banner of the Social Justice Alliance, made a study of some women who had been convicted under the old act and identified 10 people whose cases they felt warranted further attention. Of those 10 cases, we are left today with two women, who have approached both the Women’s Law Centre of WA and the Women’s Council for Domestic and Family Violence Services and asked for assistance to lobby government to have their cases reviewed and, hopefully, eventually to release them from prison.

I give honourable members a flavour of the two women, who are happy to have their identities revealed. The first is Lesley Dowling. I am quoting from a background document that was distributed by the Social Justice Alliance, which reads —

Lesley Dowling was the victim of family and domestic violence and sexual assault during the period of her marriage at the hands of her husband, Neil Dowling. At a point of desperation, her son Marcus killed his stepfather. On the discovery, Lesley attempted to conceal the fact that Neil had died and to prevent the crime being detected. She also admits to misleading the police about the circumstances of the crime. Lesley demonstrates an understanding of why the jury came to the verdict that she was guilty of willful murder.

Lesley is now 60 years old. She has been incarcerated in Bandyup Women’s Prison since 25 March 1995. Lesley’s earliest release date was March 2012, however she remains in custody. Lesley has been assessed as eligible for parole but ultimately requires a decision from the Attorney General about her release.

The other woman is Robyn Buller, or Robyn Westgate as she was formerly known. The document continues —

Robyn Buller was the victim of family and domestic violence including sexual assault at the hands of her husband Dave Buller. This was perpetrated over a period of many years. After a particularly horrific assault, Robyn decided to end her own life. The gun she intended to use accidentally fired killing Dave Buller who was asleep in the bedroom. Robyn concealed the crime from Police.

Robyn is 54 years old and has been incarcerated in Bandyup Women’s Prison since 27 June 1999. Robyn’s earliest release date is 27 June 2016.

Both these women have had really quite an extraordinary time in terms of their own personal achievements and personal journeys since they have been in prison. I return to the Social Justice Alliance document, in respect of Lesley. It reads —

Shortly after her incarceration, Lesley rediscovered her faith in God and the Church. She has studied theology and has a Diploma in Ministry from the Morling College of Sydney. Whilst incarcerated, Lesley is a liturgical assistant to the chaplains in Bandyup. This is like being a lay deacon and means that Lesley can assist with pastoral care, the liturgy and the services. She has been doing this for over 16 years. Lesley is now studying a Bachelor of Theology at Murdoch University and is currently in her second year.

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On her release, Lesley hopes to be ordained as a deacon of the Anglican Church. It is her intention upon release to enter into the service of the Anglican Church and serve the community.

The other woman, Robyn, has pursued an academic career. The document continues —

Robyn has been engaged in full time study since 2003. She has a Bachelor in Sociology and a second major in History from Murdoch University. Robyn studied Honours at Murdoch University and a Graduate Diploma in Criminology and Justice at Edith Cowen University. Robyn has made the Dean's Honours Roll on two occasions. Robyn has been offered the opportunity to commence a PHD with both Murdoch University and the University of Canberra. Robyn has also been offered employment at Murdoch University on her release.

Both these women obviously play very significant roles in the life of the prison. I know it sounds slightly ironic, but as I was going through the documentation for these two cases it occurred to me, in a cynical moment, that were these two women to be released, it would take at least several people to fill the roles they are playing in terms of mentoring, peer support and counselling at the prison.

The point I want to make is that changes in the law reflect changes in community values and community understandings. I sometimes think, when we look back at old laws—recognising that the statute books are full of old laws that no longer work—it is a bit like looking back at the history of medicine and seeing the use of things like leeches; we can hardly believe that there was a time when such laws were regarded as the norm. To go back to a time when a history of such dramatic violence and abuse in a relationship was not able to be cited by a court as mitigation seems to us, today, to be somewhat hard to come to terms with. I think it is fair to say that the change in the law reflects community values and understandings about exactly what violence in personal relationships means and how devastating it can be.

Law reform in the area of domestic violence has a very long way to go, and I am aware that all members in this place know that we are monitoring a couple of cases, and particularly the government's response to some recommendations that were made in relation to a couple of very tragic recent cases. But I think we have come a long way, and I think that the changes in the Criminal Law Amendment (Homicide) Act 2008 were very significant. The fact is that both these women would now have a defence available to them that was not available to them at the time the offences were committed. Both of them have served their time, and both of them have clearly enriched the lives of people around them who are similarly imprisoned. I put it to honourable members that now is the time to have those cases reviewed in light of the defences that would now be available to them that were not available at the time—in other words, in light of the law as it currently stands.

It seems very clear—I am sure there will not be anyone in this chamber who will disagree with me when I say this—that there is a very real sense in which it is unjust to keep these two women in prison. The passage of time, together with their exemplary performance, makes it evident that the women do not pose a threat to society in any way and that no purpose is served by their continued imprisonment.