DOMESTIC VIOLENCE ORDERS (NATIONAL RECOGNITION) BIL 2017

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Leader of the House)**, read a first time.

Explanatory memorandum presented by the Leader of the House.

Second Reading

HON SUE ELLERY (South Metropolitan — Leader of the House) [4.11 pm]: I move —

That the bill be now read a second time.

In December 2015, the Council of Australian Governments agreed to establish a national cross-recognition scheme for restraining orders that relate to family and domestic violence to be known as the National Domestic Violence Order Scheme, or NDVOS. The Domestic Violence Orders (National Recognition) Bill 2017 before us is to facilitate Western Australia's participation in the NDVOS.

Once established, the NDVOS will eliminate the need to register such orders across jurisdictional boundaries; an order made in one state or territory will automatically operate across Australia. This national system is intended to enhance victim safety and perpetrator accountability by providing consistent, instantaneous legal protection across jurisdictional boundaries. It is also intended to spare victims the perceived time and effort associated with the existing cross-border registration process. For those victims of family and domestic violence who find themselves having to move interstate to escape their perpetrators, this will provide them with seamless legal protection on the road to starting a new life in a new place.

The introduction of a national approach is emblematic of how this nation's perception of, and response to, family and domestic violence has changed for the better in recent times. Family violence was once a dark secret, albeit a poorly kept one. To the extent that victims were protected by the law, justice responses were uneven and often inadequate. Our project of improving these responses is a work in progress, but it is symbolic of how far we have come that the safety of victims and the accountability of perpetrators will soon be the subject of a cohesive national response, which was first endorsed by ministers through the COAG process and which shifts the burden of facilitating inter-jurisdictional law enforcement from the victim to the state. The NDVOS is a national response that befits the national significance of this issue. Without wishing to detract from these sentiments, I also note that there are grounds to temper our expectations for what the national scheme will achieve, at least in its initial form. A cross-recognition system such as this will only be as effective as the information-sharing arrangements that support it. This means giving police and courts ready access to accurate information about orders made in other jurisdictions.

The commonwealth is due to deliver a dedicated information-sharing platform in late 2019. Until then, the NDVOS will rely on an interim system that depends, in part, on manual information exchange. The full potential benefits of the NDVOS will be realised only once the final information-sharing system is in place. Although there are no specific grounds for concern, major IT projects are known to be susceptible to cost and scheduling overruns. I make these observations to underscore the point that the NDVOS is a complex, ambitious scheme, and that the work of bringing it to fruition will continue well after the legislative foundations are in place.

I am pleased to advise members that Western Australia is as well placed as any jurisdiction to make the scheme work on the ground. Our courts and police already exchange information about restraining orders via an automated system. This existing infrastructure provides an excellent platform for Western Australia's participation in the national scheme. Representatives from WA Police and the Department of Justice are actively collaborating at both the local and national levels to position WA to join the scheme in step with other jurisdictions.

The NDVOS was agreed by all leaders at the Council of Australian Governments in late 2015. It is due to commence nationally on 25 November 2017—that is, White Ribbon Day, the International Day for the Elimination of Violence Against Women. Unfortunately, Western Australia is lagging behind other jurisdictions in its legislative preparations. In fact, Western Australia is now the only jurisdiction that is yet to enact enabling legislation. Failure to join the NDVOS in step with other jurisdictions on 25 November 2017 would create practical issues for the victims who will rely on the NDVOS in WA, and would certainly cause significant reputational damage to the state. Given these time constraints and the importance of this legislation, the bill needs to be endorsed by the Legislative Council as a matter of priority. I applaud members in the other place for doing exactly this.

This brings me to the substance of the bill before us, the Domestic Violence Orders (National Recognition) Bill 2017. Like corresponding laws already enacted in other jurisdictions, the bill is modelled on a national model law framework. Developed through a collaborative national process, the model law framework reflects key policy parameters approved by COAG whilst affording jurisdictions flexibility to achieve consistency with local

legislation and meet local operational requirements. The objective of the framework is to achieve national reciprocity, not complete uniformity.

In summary, the bill, in conjunction with the corresponding laws in other jurisdictions, defines which domestic violence orders are recognised under the NDVOS; sets out the consequences of national recognition, including in relation to enforcement, variation and cancellation; and authorises information sharing and establishes other practical measures to support the scheme. The bill is primarily concerned with the status of non-local domestic violence orders in WA and the functions and powers of local authorities. The capacity for WA orders to be enforced, varied and cancelled in other jurisdictions is established in the corresponding laws that have been enacted by other states and territories.

The first key thing the bill does is define what orders are recognised under the national scheme. Recognition is extended to local DVOs—that is, Western Australian restraining orders—interstate DVOs and registered foreign orders. Each of these terms is defined in the bill. The sum effect of these definitions and the regulations that will support them is that the scheme will apply to restraining orders that address family and domestic violence and are made by a court or police officer in a participating Australian jurisdiction or made by a New Zealand court and registered in an Australian jurisdiction. The recognition provisions contained in part 2 need to be read in conjunction with the transitional provisions in part 6, which, among other things, limit the recognition of WA orders to those orders made on or after the day that the act commences—see clause 33. Orders made prior to commencement will not be automatically recognised, but may be declared to be recognised on the application to a court—refer to clause 38. This is in line with the position taken by most other jurisdictions.

The second key thing the bill does is define the consequences of a domestic violence order being recognised under the national scheme. A key principle underpinning the NDVOS is that a recognised order operates in all participating jurisdictions irrespective of where it was made. The bill gives effect to this principle by providing that a recognised non-local DVO may be enforced in WA as if it is a local order—refer to clause 18; that a WA law that prohibits the granting of a licence or similar to a person subject to a restraining order applies to a person subject to a recognised non-local order—refer to clause 20; and that if a recognised non-local DVO disqualifies a person from holding a firearms licence, that disqualification applies in Western Australia—refer to clause 21. More broadly, any consequences under local law that flow from the existence of a local restraining order will now also apply if a recognised non-local order is in force. To illustrate how this principle will operate, if a person commits an assault in WA and in doing so breaches a recognised non-local order, the breach will constitute a circumstance of aggravation for the purposes of section 221 of the Criminal Code of WA as if the order breached were a local order. This is achieved by clause 19, which provides that a recognised non-local DVO has the same effect as a local DVO. This deeming clause avoids the need for consequential amendments to the numerous WA laws that make reference to restraining orders.

Another key principle of the NDVOS is that a recognised order may be varied or cancelled in any participating jurisdiction, but only by a court. The bill gives effect to this principle by empowering WA courts to vary or cancel a recognised non-local order as if it were a local order—refer to clause 24; and providing that a decision of a court in another jurisdiction to vary or cancel a recognised order has effect in WA—refer to clause 12. An application to vary or cancel a non-local order will be dealt with as though it were an application to vary or cancel a local order—refer to clause 25. The bill includes safeguards to preserve procedural fairness for parties who reside outside the jurisdiction in which the court proceeding is initiated—refer to clause 26.

The third key thing that the bill is supporting is the operationalisation of the scheme. As I have already touched on, the NDVOS will require extensive information sharing between jurisdictions. Part 4 of the bill facilitates this by authorising local authorities to exchange relevant information with police and courts in other jurisdictions. In addition, clause 31 authorises WA courts and police to exchange information with a "person or body prescribed in regulations". In practice, this regulation-making power will be used to authorise information sharing with the Australian Criminal Intelligence Commission, the commonwealth agency that will operate the dedicated NDVOS information sharing platform. The bill includes a mechanism to enable jurisdictions to produce and obtain evidence that a recognised order has been properly served in the issuing jurisdiction—refer to clause 32. This is important because such notification is a prerequisite to the enforcement of an order—refer to clause 16.

The bill contains one substantive departure from the model law framework. The model law includes a provision that would prohibit a police officer from making a police order—a short-term restraining order used in emergency situations—if the officer is aware that a nationally recognised court order is already in force. This provision has not been adopted on the basis that it unjustifiably limits the protective options that are available to victims of family violence. In an emergency situation, a police officer may not be able to obtain the full terms of the interstate order. Until this information is obtained, the order is not practically enforceable. Alternatively, the protections contained in the interstate order may be outdated and inadequate in view of recently changed circumstances. In

these scenarios, the making of a police order provides critical interim protection while the court order is being obtained or strengthened as required. This is particularly true in regional and remote Western Australia.

In view of these considerations, the bill does not prevent a police officer from making a police order when a recognised interstate order is in force. It does, however, provide that a later police order will not supersede—and therefore cancel—the earlier court order. The result is that both the earlier court order and the new police order operate in parallel. This replicates the existing position under WA's local restraining orders legislation. I note that Western Australia is not alone in omitting this provision of the model law framework; Victoria and the Northern Territory have also done so on account of similar concerns.

The introduction of this legislation is symbolic of the priority that the Labor government is giving to the prevention of family and domestic violence. This government is proud to have appointed the state's first Minister for Prevention of Family and Domestic Violence, Hon Simone McGurk. With the support of her fellow ministers, Minister McGurk is leading a whole-of-government response to family and domestic violence that aims to better integrate the range of justice protections and support services that the government can offer to victims of family violence. The government's action to position WA to join the National Domestic Violence Order Scheme at the earliest possible opportunity is an important element of this fresh, proactive approach.

Pursuant to standing order 126(1), I advise that this bill is a uniform legislation bill. In view of the urgency I have alluded to, I would respectfully ask that the Standing Committee on Uniform Legislation and Statutes Review discharge its review function in a timely manner.

I commend the bill to the house and table the explanatory memorandum.

[See paper 418.]

Debate adjourned and bill referred to the Standing Committee on Uniform Legislation and Statutes Review, pursuant to standing orders.

Sitting suspended from 4.22 to 4.39 pm