RESTRAINING ORDERS AND RELATED LEGISLATION AMENDMENT (FAMILY VIOLENCE) BILL 2016

Second Reading

Resumed from an earlier stage of the sitting.

MS L.L. BAKER (Maylands) [2.47 pm]: I return to the debate that we began before the lunchbreak on the Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016. Before I return to the topic that I wish to focus on, which is known as the cruelty connection, I will pick up on an issue that was raised by three members before the break. My colleague the member for Armadale —

Point of Order

Dr A.D. BUTI: Mr Speaker, I am seeking to hear the member for Maylands and even though she is next to me, I cannot hear a word.

The SPEAKER: Members, please stop your private meetings.

Debate Resumed

Ms L.L. BAKER: When this debate commenced, two speakers referred to issues of family and domestic violence and the gender perspective on the breakdown on men and women as victims of family and domestic violence. I say emphatically that of course there will always be men who are subject to violence and who become victims of domestic violence in a home. However, historical and current research is completely clear; the figures show that 80 per cent of the victims of family and domestic violence are women or children. That means that a very small proportion of resourcing would be allocated to target men in these circumstances. I do not want anyone in the chamber to think that it is okay to argue for an equal share of the resources when 80 per cent of victims of family and domestic violence are women and children. The murder of women in these circumstances has no comparison.

The ACTING SPEAKER: Members, there is a general rumble in the jungle. Member for Cockburn and Leader of the House, if you need to have a discussion, you can take it outside. We need to give our attention to the member for Maylands.

Ms L.L. BAKER: Just to underline and put a highlighter through the point that I am making, the majority of resources that go into protecting people from family and domestic violence are quite rightly and quite justly targeting women and children who are victims of this heinous crime. Although I am not saying that men do not suffer from this sort of violence, if members compare the 20 per cent of men who are victims of family and domestic violence with the 80 per cent of women and children who are victims of family and domestic violence, that should give them some gauge of the severity of this issue on a gender basis. It is important that I put my feelings about that on the record, because I am concerned that sometimes we get incorrect information, or different people's perspectives, and that clouds the issue. There is no doubt that women suffer from domestic and family violence way more than our male counterparts.

I will now return to the topic that I started with before the break for question time. I am particularly interested in the link between animal cruelty and abuse, and domestic and family violence. As far as I am aware, there is not much current research in Australia. However, in 2012, a seminal piece of research was conducted in New Zealand by the Royal New Zealand Society for the Prevention of Cruelty to Animals, which is the New Zealand equivalent of the Royal Society for the Prevention of Cruelty to Animals, assisted by surveys from women's refuges. This piece of research is called "Pets as Pawns: The Co-Existence of Animal Cruelty and Family Violence". I want to put on the record why this is extremely important. I should start by saying that I understand that proposed new section 5A of the bill address how the crime of animal cruelty and violence is classified. I am heartened that the minister who has carriage of this bill has acknowledged that this issue requires attention and should be taken forward in the next Parliament. I have just heard that the United Kingdom Parliament is currently discussing a piece of legislation that will put crimes against animals on a different level in the court system and enable them to be punished more severely. I look forward to seeing the results of the debate on that bill.

A common feature of what the literature calls the cruelty connection—namely, the link between violence to animals and family and domestic violence—is that the perpetrator of the violence often uses either an overt or covert threats to harm animals as a mechanism to attain, and maintain, control of their family. There are a number of manifestations of this type of cruelty. I will put some of those on the public record now so that we can discuss them as this legislation is rolled out and address them in the future, perhaps in separate clauses or separate legislation.

The New Zealand study found that animal cruelty is manifest in two main ways—cruelty to animals within and during the relationship, and cruelty to animals after leaving the relationship. The study contained a detailed

analysis of what this means. It found that animal cruelty within and during a relationship manifested as normalised violence and psychological and emotional abuse. Animal cruelty commonly occurs as a normalised demonstration of anger. Gradual exposure to a partner's violence towards animals results in women learning to fear their partner's capacity for harm, and to the fear that their partner's violence could escalate to a physical attack on them or their children. Because of this fear, women often describe guilt at not intervening to defend an animal, because they either knew from previous experience, or suspected, that any attempt to rescue the animal would result in them or their children being hurt. The perverse satisfaction gained from hurting animals is identified as a separate classification, because the animals that are hurt or killed are generally the family's domestic pet. Further, the cruelty was orchestrated, and the perpetrator actively sought out the animal in order to injure them. The cruelty also generally occurred with no anger. That is an issue in itself that reflects the kind of emotional torture that a perpetrator of this type of crime is likely to bring to bear. Although this form of violence generally excludes animals and family pets, the fact that the perpetrator inflicted the pain on the animal in the presence of family members establishes a context of fear.

Cruelty to animals is often used as a punishment for unsatisfactory behaviour. Family violence-related animal cruelty was most commonly reported as a form of punishment. The cruelty involved injury or death of an animal in retribution for a family member's unsatisfactory behaviour. As such, the animal cruelty is orchestrated to directly hurt the woman and her children. The outcome of the abuse is a level of intimidation that secures the family's compliance and obedience for fear that their cherished animal will be beaten or killed. Another motivating factor for engaging in aspects of animal cruelty factor is the perpetrator's jealousy of his partner or child's animal. In these situations, the perpetrator will harm an animal with which his partner and/or her children have a close connection, to give the non-verbal message that family members should not have affection for anyone or anything other than the perpetrator. This form of abuse is identified as one of the first indicators of family violence. The nature of the violence will often escalate and broaden to include physical violence towards family members. This form of animal cruelty differs from normalised violence because no apparent anger underpins the cruelty. There is a significant list of circumstances in which animal cruelty is manifest during and within a relationship.

I will now mention some of the circumstances in which animal cruelty can manifest after a woman has left a relationship. It is common for a perpetrator to communicate via telephone, text or a third party their intention to harm animals left in their care. This can create anxiety for a women and her children and is commonly cited as a reason for a woman to return to a relationship. There are numerous reports of perpetrators who have harmed or killed animals left in their care. Harm and/or death are interpreted as a malicious punishment for the woman leaving the relationship.

I will give members a bit of personal experience. About six years ago, I was involved in an equine rescue charity and was delivered a horse that had been rescued from the specific circumstances I have just described. The partner had decided that his wife and children were paying too much attention to the animal. Emotional things were happening in the relationship and the relationship had broken down, so the perpetrator had taken it upon himself to torture the horse. When the horse was delivered to me, it had been severely abused. On the scale of condition of the RSPCA, and I think also the Department of Agriculture and Food, the abused horse was at the lowest level of condition, which is basically that we were lucky it was still standing, let alone breathing. This was a very young and very big thoroughbred. He was not quite four years old and was just over 17 hands. He was in an appalling situation when he got to me. He had been left in a small yard, with his rugs on, and had developed a fungal infection under his rugs. He had not been given any care, food or attention. I am happy to say that when the horse left me and was rehomed, he was very fat and his coat was shiny. That is a personal example of how a perpetrator will take out his anger by punishing an animal that is left in his care. Another manifestation is isolating a woman and her children from a third-party support system. Although it is not often discussed, it has been reported that perpetrators have harmed the pets and animals of friends and extended family members in retribution for helping their partner and children escape a relationship. That is also not unheard of.

The Women's Council for Domestic and Family Violence Services has introduced a system whereby when a woman comes to a shelter, one of the questions they are asked is whether they have any pets or dependent animals that they are worried about. The problem is that there are no related services to help that woman and her children find a home, move the animal and put it into circumstances in which they can trust that it is safe. I will talk about that at the end of my presentation because the RSPCA WA has offered to do exactly that. I want to put that on the record before I sit down today. It is quite clear that many women will delay leaving a relationship because of the animals. They have an overwhelming fear of leaving because of what will happen to their family pets or the animals that they or their children love.

Some women said that at the time they were going to leave a relationship, they had ceased caring about the welfare of the animal and were solely focused on their own and their children's wellbeing. Members can well

imagine why that would have happened and quite rightly so. They would be very concerned when their children are being threatened as an escalation of this behaviour. When escalation of family violence occurs, women fear directly for the most vulnerable in the family. The most vulnerable members of the family are, obviously, children, but pets or animals in the family are also vulnerable. A number of stories are told of women walking the streets with their three-year-old holding their hand and with a labrador tied to a piece of string in their other hand, looking for somewhere to find a home to escape violence. There are a number of structural barriers to women leaving violent relationships—for instance, a lack of rental accommodation available to people with animals, prohibitive cost and an insufficient amount of kennel or animal boarding facilities. This is particularly the case when a large animal is involved—a horse, a cow, a goat, a sheep or something like that. It is very hard to find somewhere to put them.

[Member's time extended.]

Ms L.L. BAKER: There are a number of logistical difficulties with and structural impediments to finding a way to move animals, particularly big animals, including the cost of transporting an animal. A woman may be escaping a violent situation and not have a car or simply not be able to afford the petrol to take the animals with her. A series of misconceptions may stop women reporting to the RSPCA, such as suspect information and misinformation. A woman might think that if she calls the RSPCA to help, the animal will be under the threat of euthanasia if she cannot pick it up or that there will be a time limit for the RSPCA's ability to look after that animal. That points to one of the recommendations that I think need to be made about giving the public, particularly women in these situations, better advice about what services are available.

There are also legal considerations and issues about police responsiveness that we have heard others speak about today. I have a lot of information about quantitative findings, particularly from a New Zealand study that was a survey of women's refuge clients carried out to better understand the role of pet and animal abuse within violent situations and to estimate the scale of the issue.

On threats and actual injury or death, women's refuge survey participants were asked whether a family member or partner had ever threatened to kill or injure one of their pets and whether a family member or partner had actually gone ahead and injured or killed one of the animals or farm animals. Of the survey respondents, 54.7 per cent said that at some point a family member or partner had threatened to kill pets, animals or farm animals. Of that number, 79 per cent stated that at least one threat had occurred within the previous two years. Those who reported abuse occurring within the previous two years equated to 42.9 per cent of the respondents.

Regarding perpetrators, the majority of respondents reported that it was their partners who had threatened to either harm or actually injure or kill their pet or animal. Approximately 90 per cent of threats and actual harm to those creatures were made by the partners and 32.7 per cent stated that one or more of their children had witnessed their partner or family member living at home threaten to injure or kill a pet or an animal. The point about this issue is that the link between abuse of and cruelty to a vulnerable creature and how that escalates into a more serious and more violent crime is very well documented in medical journals, criminal justice journals and other journals. If somebody has a propensity to take their anger out on something that is more vulnerable, as their confidence builds and they cause more abuse or threaten to kill, or kill a creature, it is more likely that they will escalate into violent behaviour towards their partners or towards adults. The Federal Bureau of Investigation in America has significant research that tracks the basis of what we call in modern society serial killers. It looks at their behaviour as children; they have often tortured or abused their own or other people's family pets. This is only hearsay—I cannot remember the details—but I remember someone telling me many years ago that somebody in Darlington had found that a number of pets had been killed and left under the boards of their house. It was tracked back to somebody who lived there as a child who had gone on to commit other offences against people. Again, that is hearsay and I do not have the facts about that, but it is an interesting story that links to this issue. Approximately one-third of respondents to the survey in this New Zealand report reported having stayed in their relationship for fear that their partner would injure their pets or animals. Other obvious reasons we have problems in this area are a prohibitive cost of care, lack of care options and a lack of alternative accommodation. The issue of the coexistence of animal cruelty and family violence should be made public in the community so that people are aware of how perpetrators work and how they use power and abuse in relationships to conduct these violent attacks.

One of the things that is done in other countries and the eastern states about this issue is that the police, the RSPCA, child protection and family services work very successfully together with shared information agreements. At the moment, we know that an RSPCA general inspector or someone who works for the RSPCA is quite probably not an expert in family violence. The same thing applies when the shoe is on the other foot. A person who works for a child protection agency will not necessarily be able to spot the characteristics that show that the pet in the family has been the subject of abuse. Those key agencies should be brought together. If,

for example, an RSPCA inspector is called to a home where pets have been reported as not being fed properly, being violent or being injured, and sees that, along with the two cats and the four dogs that are all suffering from various injuries, are very malnourished and are clearly cowering in the corner, three children are behaving in the same way, there is no protocol that directly says that the information that the RSPCA collects should be put through to police so that the police can investigate what is going on. I know that the police do not need more work, but this is family and domestic violence and it is a pretty significant issue. The same is true the other way round. When WA Police go in, the police are, of course, generally much better equipped to recognise the abuse and torture of animals. If they are called to a domestic violence situation, seeing whether the cat is okay will not be their highest priority; it clearly will not be. If a neighbour reports a case of domestic violence and the police go into a house, taking the most amazing risks that they take every day during their career, to break up or investigate a situation of family and domestic violence, the woman knows that she can confidently ask that officer to put the cat in the car, put the dog in the car, drop them off at the vet or find a place where these creatures can be safe because her kids will be really worried if they are left at home. That has to be a good outcome. That would require better discussions between the RSPCA, family services, child protection and WAPOL. Those protocols are in place in other countries. In the eastern states, I know that the police have regular meetings with the equivalent agencies that I have just named when they discuss these issues and how to share information between departments.

Some of the recommendations that the New Zealanders made in this report that I have been referring to are that RSPCA staff and the WAPOL equivalent, New Zealand police, have extensive training with the women's refuge's involvement on the co-existence of animal cruelty and family violence. Also, training should provide police and the RSPCA staff with the ability to understand that animal cruelty is a form of family violence; understand that animals are used as pawns to keep women and children in a relationship; understand difficulties experienced by women choosing to disclose this information; treat the disclosure of animal cruelty as a component of family violence as confidential; investigate or refer the case to an appropriate agency in the event that that animal cruelty indicates possible family violence; minimise a host of barriers associated with animals that prevent the woman leaving the relationship, like the cost of kennelling, surrender fees and difficulties finding alternative accommodation; and, finally, identify and develop a network of provider agencies that can result in appropriate and timely responses to animal and family violence.

Numerous other recommendations are made but I turn to our own RSPCA in WA. It has recognised these issues in a document that it produced for its readership—"Animal Welfare Matters in the 2017 WA State Election". It is a pre-election description of the things that it thinks are important. Area 5, "Supporting family and domestic violence victims", states —

> For many West Australians, a decision to leave their home because of a domestic violence situation becomes all the more challenging when family pets are involved.
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> ...
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> Some refuges have foster care arrangements for some types of pets, especially dogs, but most are not able to cater for any type of pet. RSPCA WA Inspectors frequently investigate animal cruelty cases linked to family violence and it is clear that a dedicated Pets in Crisis program is needed, aimed at providing facilities for the care and rehabilitation of affected animals and a 'release' for affected people.
>
> This initiative would directly support *The National Plan to Reduce Violence against Women and their Children 2010–2022* and the State Government's *Western Australia's Family and Domestic Violence Prevention Strategy to 2022*.

To provide this support, the RSPCA is asking for very modest one-off funding of $100 000 from whoever is in government after March. It wants to establish a pets in crisis support program for domestic and family violence victims, which would have the capacity to help 30 families and their companion animals at any one time through providing veterinary assistance, animal health and behavioural training services and foster care programs. I know that both sides of this house are aware of this issue. It might seem like a minor or small issue but as a driver of violence in the house, as a predictor of escalating violence and as a very strong behavioural indicator of problems in a family, we cannot possibly overlook animal cruelty and violence. It should be one of the top tick boxes that are looked for by all who are involved in protecting women and children from family and domestic violence. It should be something that the state government takes seriously and it should invest this particularly small amount of money that the RSPCA has identified to help slow the rate of abuse and try to break the nexus between animal cruelty and domestic and family violence.

MR C.J. BARNETT (Cottesloe — Premier) [3.16 pm] — in reply: I thank members for their contributions to the second reading debate. I assume that members opposite wish to go into committee. Is that the case? On

behalf of the minister, I thank members for their comments. I am sure the minister will answer any questions during consideration in detail.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

[Quorum formed.]

Consideration in Detail

Clause 1: Short title —

Ms J.M. FREEMAN: During my speech on the second reading, I referred to the Council of Australian Governments agreement and the current Victorian legislation. If someone under a restraining order flees across the border into South Australia or another state, how will this apply? If the minister has the opportunity to answer that during consideration of the short title, that would be great.

Mrs L.M. HARVEY: Under part 7 of the act, an individual who has a family violence order in place to protect them can have that order enforced in Western Australia. They would need to apply under the provisions set out in section 7 to have the order enforced or recognised in Western Australia. However, some work is being done nationally, between jurisdictions, to streamline the recognition of violence restraining orders across separate jurisdictions. There are some significant information technology issues and data matching challenges, but it is a focus of the officers' group that sits beneath the ministerial council to try to achieve that outcome.

Clause put and passed.

Clauses 2 to 4 put and passed.

Clause 5: Section 3 amended —

Ms L.L. BAKER: I refer to proposed section 5A(2)(f). I wonder whether the minister might like to say a bit about her thinking behind the inclusion of this paragraph in section 5A, "Term used: family violence". The minister was talking about examples of behaviour that may constitute family violence including but not limited to the listed examples. Proposed paragraph (f) reads —

> causing death or injury to an animal that is the property of the family member;

I thought the minister might like to take the opportunity to comment on that.

Mrs L.M. HARVEY: Clause 5(3) includes the words —

> ***family violence*** has the meaning given in section 5A(1)

Section 5A is actually dealt with under clause 7. However, the member is quite right—proposed section 5A(2)(f) reads —

> causing death or injury to an animal that is the property of the family member;

This is now deemed to be one of the definitions of behaviours that would constitute family violence.

Clause put and passed.

Clause 6: Section 4 amended —

Dr A.D. BUTI: Clause 6 amends section 4 of the Restraining Orders Act. I refer the minister to proposed section 4(3), which reads —

> In this Act a person is a ***family member*** of another person if the persons are in a family relationship.

Obviously, that would be the case, but is the family relationship determined by the particular culture of the victim, or is there a legislative definition?

Mrs L.M. HARVEY: "Family relationship" is a defined term, under section 4 of the act. It is a close family member.

Dr A.D. BUTI: Of course it is defined; I read it out. However, my point is, what about cultural differences? If there is a culture that has a different view on what a family relationship is, such as an Indigenous community, that definition may not actually catch the whole situation.

Mrs L.M. HARVEY: Yes indeed, member. In the Restraining Orders Act, section 4(2) goes into a further definition of "family relationship". It reads, in part —

> ***related***, in relation to a person, means a person who —
>
> (a) is related to that person taking into consideration the cultural, social or religious backgrounds of the 2 persons; or

Clause put and passed.

Clause 7: Section 5A inserted —

Dr A.D. BUTI: Clause 7 includes various examples of family violence, which are quite comprehensive. On page 8, proposed section 5A(2)(g) reads —

> unreasonably denying the family member the financial autonomy that the member would otherwise have had;

Proposed paragraph (h) refers to unreasonably withholding financial support needed to meet reasonable living expenses et cetera. I do not argue that this should not be included, but my question is one of determining, on an evidentiary basis, that someone is being denied financial autonomy. In England now this has become a criminal offence, and there is an issue of how we actually go about obtaining evidence to a sufficient standard to be able to prosecute the situation.

Mrs L.M. HARVEY: The advice I have received is that the expectation is that this is based on a civil standard, and that the court will determine the threshold. However, this definition, I am advised, exists in the Family Court Act 1997, so there would be some interrelationship as to where the threshold would be in denying a family member financial autonomy.

Dr A.D. Buti: So this would relate only to civil prosecutions, and would not relate to criminal law?

Mrs L.M. HARVEY: No; this is a civil application for a family violence restraining order. It is not a criminal offence.

Clause put and passed.

Clauses 8 to 13 put and passed.

Clause 14: Parts 1B and 1C inserted —

Ms S.F. McGURK: I refer to proposed section 10D on page 14, "When FVROs may be made". This relates to the question I raised in my second reading contribution about the circumstances in which a restraining order is not given or an interim order is not given, and the matter is simply held over, and there is a period in which the person making the application is left without any protection. That issue was raised by some of the networks of lawyers who represent victims of family violence. They were concerned that there was a gap there. I was looking forward to the minister responding to that issue, but perhaps she will do so in her third reading speech; I am not sure. In any case, can the minister say whether that issue has been contemplated in this legislation, or how we can ensure that an applicant is protected?

Mrs L.M. HARVEY: I missed responding to the second reading debate, because I was given to understand that the member for Girrawheen was going to make a contribution, and I was, sadly, caught on a phone call. This is a very important new part of the legislation. We have narrowed the discretion of the court to refuse an order. In doing that, we expect the court to take into consideration the objects of the act, outlined in proposed section 10A, under which the courts are required to make sure that they are maximising the safety of persons who have experienced or may be at risk of family violence, preventing or reducing if possible their exposure to violence, protecting the wellbeing of children, encouraging perpetrators to accept responsibility, and making perpetrators accountable. Under proposed section 10D(1)(b), if a person is seeking to be protected, or a person is applying for the order on part of that person, we expect the court to grant a family violence restraining order if it has reasonable grounds to apprehend that the respondent will commit family violence against the person seeking to be protected. Proposed section 10D(2) puts the onus on the court to make the order unless it perceives that special circumstances would make the order inappropriate. This very much shifts the focus, if you like, of course, back to the objects of the act to protect the applicant and also to err on the side of issuing a family violence restraining order in certain circumstances, unless there is a special circumstance that would prohibit it or make it inappropriate.

Ms S.F. McGURK: Could the Minister for Police advise whether rules exist in other jurisdictions whereby that gap would be closed even further? Could there be, for instance, an appeal against the refusal to grant an interim order or an interim VRO? Are there jurisdictions in which that appeal could take place? That was one of the requests, again, of the advocates of the victims of domestic violence, that by having some appeal mechanism if a magistrate refused to grant a restraining order or an interim restraining order, it would put the onus on the magistrate to issue reasons for that decision and to get them to think even more carefully about their refusal, leaving the victim possibly exposed without protection.

Mrs L.M. HARVEY: At present, there is an issue with whether there should be a right to appeal an adjournment of an application. At present that right does not exist—that is, appealing an adjournment on an interim application for an FVRO. It is under consideration. However, it should be emphasised that the Attorney General's view is that the bill requires the court to give reasons for an adjournment and those reasons need to

directly address the objects of the act and the safety principles in that new principles clause—that is, taking preventive action, taking a risk-management approach and ensuring that the objects are taken into consideration. I believe those reasons need to be detailed if an application is going to be adjourned, so that is a very high threshold for a respondent to request an adjournment of an interim family violence restraining order application.

Ms S.F. McGURK: Could the minister outline under which provision the magistrate is required to give reasons for deciding to simply adjourn the case without giving the protection of an interim order or granting a substantive application?

Mrs L.M. HARVEY: That is further along in the bill. It is an amendment at clause 72, which provides for proposed new section 63D, in which the court is required to give reasons for certain decisions. We will no doubt come to that in due course, but given that we are discussing that matter now, it provides that a court must give reasons for making an order relating to an FVRO under various sections or for refusing to make an order under section 43(1) relating to an FVRO. Also, the reasons must address the principles referred to in sections 10B(1)(a), (b) and (c).

Ms S.F. McGURK: For the record, I thank the minister. I appreciate that provision being pointed out, but there is still a gap whereby the VRO is not refused but the application is simply held over. Someone may make an application and it may not be that necessarily the application is refused; it may be that an interim order is not given and the original application is just held over. I am told by practitioners in this area that that can be for weeks and it can also be for months, which leaves people applying for a VRO possibly exposed to violent activity; in fact, it could be seen by the perpetrator as, if you like, an aggressive move to protect themselves and that can be a disincentive for people to seek protection.

Mrs L.M. HARVEY: If we look at what proposed new section 63D actually means, we see that it states that the court must give reasons for making an order and that that order may be for a family violence restraining order to be granted, for an interim order, or for an adjournment but that the court must give reasons for doing so. I understand that the Domestic Violence Legal Workers' Network has consulted with and written to the Attorney General about its concerns about an applicant for a family violence restraining order being able to appeal should there be an adjournment of the application. It sounds like it should be simple, but my understanding is that to write that into the legislation, firstly, is not a simple amendment; and, secondly, it may in fact delay processes to a point at which the applicant may be less protected, because in the normal course of things, an adjournment in these circumstances would generally be heard in an earlier time frame than an appeal could be lodged. The Commissioner for Victims of Crime, Jennifer Hoffman; the Attorney General's office; and the Domestic Violence Legal Workers' Network will continue to consult on these matters. We will certainly keep a close eye on what, if any, issues may arise.

However, I refer to the objects of family violence restraining orders. We have put in tests whereby the first consideration of the court always has to be the protection of the applicant, children, the prevention of violence, and the principles that need to be considered and the tightening up, if you like, whereby we have put the onus on the court to err more on the side of granting the FVRO for the applicant rather than not granting it. This will all be, no doubt, addressed at the two-year review of the legislation, at which point it may well be that amendments that could have addressed these concerns, if they had arisen, would then be put forward.

Clause put and passed.

Clauses 15 to 103 put and passed.

New Part 3 Division 5A —

Ms S.F. McGURK: I move —

Page 80, after line 6 — To insert —

Division 5A — *Evidence Act 1906* amended

103A. Act amended

This Division amends the *Evidence Act 1906*.

103B. Section 106A amended

(1) In section 106A delete the definition of ***victim***.

(2) In section 106A insert in alphabetical order:

FVRO has the meaning given in the *Restraining Orders Act 1997* section 3(2);

victim means —

(a) in relation to a serious sexual offence or a criminal organisation offence — a person upon or in respect of whom it is alleged that the offence was committed, attempted or proposed; and

(b) in relation to an FVRO — the person seeking to be protected by the FVRO;

103C. Section 106R amended

After section 106R(3B) insert:

(3C)Despite subsection (3), in an application for an FVRO an order must be made under subsection (1) in respect of the person seeking to be protected by the FVRO unless the court is satisfied —

(a) that subsection (3) does not apply to the person; and

(b) that the person does not wish to be declared to be a special witness.

I am grateful to the parliamentary staff and Parliamentary Counsel for their assistance with this amendment. Essentially, it will make people giving evidence in applications for FVROs or any criminal matters relating to family violence to be treated as special witnesses. That means that the default position would be that they could give evidence remotely or by using CCTV. In fact, it is only if they choose to be present in the court that that would occur.

I hope it is fairly obvious to people participating in this debate that people should have the protections afforded to them, particularly when they are applying for a restraining order or, in the circumstances of family violence, that they are given every protection and consideration available to them.

One other consideration in support of that application is when the defendant—the alleged perpetrator of the violence—could be representing themselves in those matters; so the applicant would have to be cross-examined or forced to answer questions by the perpetrator in court. For many obvious reasons, as many protections as we can put in place should be included for those victims; and I commend the amendment to the Parliament.

Mrs L.M. HARVEY: The government is not going to accept this amendment, but I will detail the reasons. We understand the intent of the amendment and we certainly have some sympathy with it. I acknowledge the member for Fremantle has raised this issue previously in debates around family violence. The issue of automatic special witness status for victims of family violence is now being considered as part of a broader review of the whole issue being undertaken by the Commissioner for Victims of Crime. There is quite a complex collection of provisions and different categories for witnesses, depending on whether the witness is a victim of sexual assault, a child victim, a child witness or another type of victim. As we know, victims of family violence can also be child victims of sexual assault. It is not as simple a matter as inserting a new provision that says family violence victims are automatically entitled to special witness status.

The other issue related to the extension of special witness status is that the capacity of our court facilities would need to be taken into account. Although extensive work has been done about upgrading court facilities across the state, not every court would be equipped to comply with this amending legislation. A consultation process will begin shortly, as part of this broader review, undertaken by the Commissioner for Victims of Crime. That consultation will occur with the judiciary. This state has the separation of powers. The judiciary have autonomous control of the running of their courts. We would rather the judiciary were part of the consultation process. They know their court facilities intimately. They would know the workability of this special witness status being automatically extended to victims of family violence. We want to ensure that the judiciary are involved in the consultation. Obviously, if there is a requirement for innovative solutions in different parts of the state, depending on the existing facilities, we would need to incorporate that into a funding proposal to ensure that legislation that is passed through this Parliament—particularly around something as important as legislation granting automatic special witness status to victims of family violence—would need to be funded appropriately and addressed strategically by government. That would ensure we have closed-circuit televisions, videoconferencing, separate interview rooms or whatever it is that may be required to ensure we can extend the standard expected for the privacy of a witness with special victim status. That is why the government will not support the proposed amendment. I very much appreciate that the member for Fremantle has raised this issue. It is an important issue, but at this point the government is not prepared to accept the proposed amendment. I would expect that at the two-year review of this legislation, this amendment would be considered.

Ms S.F. McGURK: I understand the Deputy Premier said that she thinks this is a valid point but there are resourcing implications and, for that reason, she would like to hold off to see whether this can be either afforded or is necessary in future years after a two-year review. If the idea has merit, that is a very valid reason to give them special witness status. If people who are applying for family violence restraining orders or are appearing in court on a domestic violence matter feel more secure and more likely to go before the court to seek protection because they do not have to face the perpetrator, that is a very valid reason. During question time today, the government talked proudly of its record in eight years, but it has taken it eight and a half years to bring any substantive legislation to protect and improve Western Australia's family violence provisions. But now, at five minutes to midnight of this term of government, it is saying it does not have the resources to protect witnesses in family violence matters. That is a very shameful position. Can I clarify what the minister said? Did the minister say she thinks this idea has merit but there are resourcing implications and, for that reason, she cannot support it?

Mrs L.M. HARVEY: Member, it is not just resourcing implications, if she goes back to what I said. The judiciary has autonomous control of the courts. We need to have some consultation with the judiciary as to these sorts of changes. In addition to that, I think it is very important that members understand, and for the purposes of *Hansard* that this is recorded: victims of family violence at present can apply for special witness status. The government will do whatever it can in those circumstances to ensure that all the protections afforded to special witnesses are made available to victims of family violence; that is, those who the court decrees, on application, should be afforded special witness status. They are not denied the opportunity to be considered as special witnesses at this point in time; it is just not an automatic status that is extended to every single applicant. It is important to know the protection is there. In some circumstances, victims apply for special witness status and that is afforded to them for their own safety. However, the way that the world works, should the government, by accepting this amendment, include this in the legislation, even if it is not proclaimed until the work is done and we understand what needs to happen in the courts, the courts will respond to the intention of the government and the intention of Parliament. This could well have resourcing and time-to-trial ramifications. There could be some delays in hearing some of these trials should this be an automatic expectation for the many thousands of family violence restraining orders that are heard in court every year. The government does not want that ramification. Time-to-trial delays definitely work against victims. They work against swift justice and they would certainly work against the intent of this family violence restraining orders legislation. As I said, the government will not be accepting the proposed amendment but work is in train to look at what would be required to extend automatic special witness status across the board to all family violence restraining order applicants.

Dr A.D. BUTI: The minister raised a few issues. She said that even if this bill is not proclaimed, the court will instigate it. That does not make sense. If it is not proclaimed, the provision for automatic status will not be law so it will not be automatic status. The minister then said to the member for Fremantle that witnesses can still apply for special witness status. They can do that now, so it makes no difference whether this bill passes today but is not proclaimed until government has the resources. It is a fact that we have special witness status now. The courts must have provisions to allow special witness status to operate. The minister also made the interesting statement that there is a separation of power; in fact, there is no legal separation of power under the WA Constitution—that is the federal Constitution, but we will leave that aside. The minister said that the government leaves the courts to manage courts. I can tell the minister that is not correct. The magistrate at the Armadale courthouse wrote to the Attorney General seeking to partition off one of the waiting rooms to make another court and the Attorney General wrote back and said he would not allow that to be done. The minister cannot tell me that the government does not have some say in how the courts operate. The courts do not operate independently of what the government of the day says.

The minister mentioned that a person can apply for special witness status. They can, but victims of domestic violence should not have to go through the added stress of applying. It is clear that victims of family violence should automatically have the protection of being a special witness. It does not mean that they have to take that up, but they should be given the option. In introducing similar provisions, the Queensland Attorney-General stated that a recurring theme in submissions to its task force was that victims were traumatised by having to repeatedly tell their stories. She said that when criminal charges were laid, police reported there was often difficulty pursuing the prosecution, given the reluctance of a victim continuing with a criminal prosecution because of fear of being in the same courthouse as the alleged perpetrator. I cannot think of anyone, bar a child witness, who is more deserving of special witness status. The minister let the cat out of the bag when she referred to resource implications. As the member for Fremantle said, the government should not allow resource implications to affect the quality or merit of legislation. But we know what happened here: the Attorney General did not want to bring this bill to the Parliament. The opposition has been going on about the need for major legislative reform in the domestic and family violence area for a number of years, but as usual the Attorney General did not lift a finger. He received a massive Law Reform Commission report, but he did nothing. The opposition introduced a bill this year, and the Attorney General comes out on the weekend talking about introducing Saori's law and something else, but he did not know whether he would get it through the Parliament. I wonder whether there was a discussion between the Attorney General and another member of the Legislative Council in which the other member pushed the Attorney General to bring this bill to Parliament. I understand the Attorney General did not want this bill to come before the Parliament and be passed this year, but he was pushed by other members of the Liberal Party. The member for Swan Hills may shake his head, but he knows that is true. For the government to bring on this bill in the eleventh hour of this Parliament, at four o'clock on the last sitting day, is an absolute disgrace. The government is lucky that the opposition is very supportive of law reform in this area—unlike members opposite when they voted against a bill that the opposition brought to this place about two months ago. That bill included some of the provisions in this bill.

Should resource implications be an overriding factor in reducing traumatisation of a domestic violence victim? Of course, they should not. This is a good amendment by the member for Fremantle and the minister should be applauding and supporting it. The minister cannot say that the government does not interfere with or have some say

in the management of courts. If she does, I will produce the letter from the magistrate from the Armadale Magistrates Court and the reply from the Attorney General that shows the courts do not have autonomy.

Mrs L.M. HARVEY: I will address some of those issues that the member for Armadale raised. Serious sexual assault and child witnesses are extended special witness status already. We see more examples of the extension of special witness status in serious prosecutions in a higher court. Applications for family violence restraining orders occur in the lower courts right across the state. There are different facilities in the high-level courts compared with the mid-level courts. There are two different sets of facilities. There is a big difference between an opt-in and an opt-out scheme. It will be interrogated as part of the second tranche of work that the Commissioner for Victims of Crime is undertaking. Other parts of this bill are aimed at limiting and reducing trauma to victims of family violence; for example, the rules of evidence amendments and those sorts of things. Although there are good ideas for all sorts of things out there, at this point in time the government is unwilling to accept this amendment for the reasons I have outlined. Notwithstanding that we understand where it has come from and that this initiative is also being interrogated in other states, work needs to be done but it needs to be done appropriately and in a way that does not have ramifications for the operations of our courts. If we interrupt the operations of our courts, the outcomes for victims are dire, and victims need to have access to the courts and not experience long delays. The government is not prepared to accept this amendment at this point. It would also like this legislation passed through the Parliament and, obviously, it is very important legislation. Much has been said about the time it has taken to bring it to the Parliament; however, there has been an exhaustive process in bringing this legislation together. There was a discussion paper, a Law Reform Commission report that came out of the consultation that occurred as a result of the discussion paper and then, following that, the Law Reform Commission made a number of recommendations. From those recommendations, there was seven months of consultation with 24 stakeholder groups that work on the front line in the family violence area. That is why it has taken some time to bring this bill to the Parliament.

Dr A.D. Buti: The bill was ready months ago.

Mrs L.M. HARVEY: The Attorney General has been very keen to see this legislation pass and in fact has asked me about it every day this week.

Ms S.F. McGURK: I want to make clear my frustration at a response that says that when an amendment is put up that the Deputy Premier admits is a good idea, and that there should be protections for witnesses in the case of family violence matters, it has ramifications for the courts and it therefore will not be supported. Of course, any improvement to family violence matters for victims, women and children in particular, will have implications for the courts. That is the whole point. We want improvements in our systems and the courts and the criminal justice system changed so that it can deal with particular circumstances of family violence. We have not done that to date. We are failing to do that. This government has failed to do that in the eight and a half years it has been in office. That is why in the last 12 months Western Australia has had 53 500 reported cases of family violence. There have been 19 fatalities, which is a doubling of fatalities. We have to do better. We have to encourage victims to come forward to seek protection. They need to know that they have the protection of the courts and of the police system, and the support of the community. This government is saying that it thinks the amendment has merit and it is a good idea to put protections in place for witnesses, but it has resource implications and ramifications for our courts, so it is not prepared to do it. Guess what? It is four o'clock on the last sitting day after two terms in government and government members want a break; they want to get on the election trail and they do not have time to deal with this. That is shameful, Deputy Premier. As Minister for Police; Women's Interests, I cannot believe the minister would not support this sort of measure.

Division

New part put and a division taken, the Acting Speaker (Mr N.W. Morton) casting his vote with the noes, with the following result —

Ayes (20)

Ms L.L. Baker	Mr W.J. Johnston	Mr M.P. Murray	Ms R. Saffioti
Dr A.D. Buti	Mr D.J. Kelly	Mr P. Papalia	Mr C.J. Tallentire
Mr R.H. Cook	Mr F.M. Logan	Mr J.R. Quigley	Mr P.C. Tinley
Ms J.M. Freeman	Mr M. McGowan	Ms M.M. Quirk	Mr B.S. Wyatt
Mr R.F. Johnson	Ms S.F. McGurk	Mrs M.H. Roberts	Mr D.A. Templeman *(Teller)*

Noes (31)

Mr F.A. Alban	Ms E. Evangel	Mr A. Krsticevic	Dr M.D. Nahan
Mr C.J. Barnett	Mr J.M. Francis	Mr S.K. L'Estrange	Mr D.C. Nalder
Mr I.C. Blayney	Mrs G.J. Godfrey	Mr R.S. Love	Mr J. Norberger
Mr V.A. Catania	Dr K.D. Hames	Mr W.R. Marmion	Mr A.J. Simpson
Mr M.J. Cowper	Mrs L.M. Harvey	Mr J.E. McGrath	Mr M.H. Taylor
Ms M.J. Davies	Mr C.D. Hatton	Mr P.T. Miles	Mr T.K. Waldron
Mr J.H.D. Day	Mr A.P. Jacob	Ms A.R. Mitchell	Ms L. Mettam *(Teller)*
Ms W.M. Duncan	Dr G.G. Jacobs	Mr N.W. Morton	

Pairs

Mr P.B. Watson	Mr I.M. Britza
Ms J. Farrer	Mr D.T. Redman

New part thus negatived.

Clauses 104 to 112 put and passed.

Title put and passed.

Third Reading

Bill read a third time, on motion by **Mrs L.M. Harvey (Minister for Police)**, and passed.