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

Second Reading

Resumed from an earlier stage of the sitting.

MR J.R. QUIGLEY (Butler) [8.05 pm]: I rise on this Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016 to proffer the opposition's support for it. My comments on this bill will be somewhat different from my comments on the last bill that came before the chamber when I challenged the constitutionality of part 5A of the Sentencing Legislation Amendment Bill. In this case, we agree with all the bill's provisions. We will not vote against any provision in it. However, having said that, my one criticism—I will deal with only one class of offence—of the bill is this. Tragically within Western Australia, victims of domestic family violence comprise half the number of murders per annum, which we can round out to about 40are. We know that about 20 women or children a year are murdered in domestic violence settings. My one regret about this bill is that it has taken the government so long to bring it on. It is now 18 months since the Law Reform Commission published its report on the review of the Restraining Orders Act. It is chilling to think that in the time it has taken for this bill to come before the chamber, on the second last day of this Parliament, another 30 murders in a domestic violence setting will have occurred. Although that seems like a phenomenal number, if this legislation had come on earlier, would it have prevented any of those murders? That is problematic and doubtful insofar as legislation can prevent things, but it would have allowed us to perhaps develop more policy around this area.

My starting point is the Western Australian Ombudsman's report on domestic violence published 12 months ago. The Ombudsman attended this Parliament to present his report in the Centenary Room. The report was of a study of deaths and other domestic violence. At that time, he indicated that during the study period of 18 months, there were 30 murders—30 people died. I hasten to say they were mostly women, then children, and I think also a man—so mainly women and children are the victims of domestic violence but not exclusively. We know, for example, that only last week a mother, daughter and other people were convicted of murdering the partner of the mother's daughter, so there are cases in which males are victims of this, but it is mainly crimes committed by men against vulnerable and physically weaker people—not emotionally or intellectually—and they are women and children. Of those 30 deaths during the Ombudsman's study period, which, as I said, ranged over 18 months, I think just over half the number were Indigenous women. The Ombudsman identified that of the number of women murdered—3.5 per cent of the Western Australian population—just over 50 per cent of the number of victims murdered in domestic violence settings, are Indigenous women. Of the 13 Indigenous women who died in domestic violence situations, over half the number of them were murdered in remote or very remote areas. As my measuring stick when I look at this whole area of death by domestic violence, I suppose I first look at Indigenous people in remote or semi-remote areas and ask myself what we are doing as a Parliament to stem this tragic flow of death. In that regard, I turn to the death of baby Charlie at the hands of the late Mervyn Bell. Baby Charlie was murdered on 19 March 2013 and the death was a subject of review by the Corruption and Crime Commission, which was looking at police performance. This evening I do not wish to be critical of the police performance in the specifics or of any of the sergeants named in that report, but to look at the agency response and how this death could have been prevented.

Of course, beyond murder, there are many other forms of domestic violence and the Law Reform Commission reported on amendments to the Restraining Orders Act and has taken up what now around Australia is a much broader definition of domestic violence, and that is contained in this bill. It includes the withholding of financial support for women and children—trying to take away their autonomy.

[Quorum formed.]

Mr J.R. QUIGLEY: Clause 7 of the bill will insert a new section 5A in the legislation that provides examples that are not exclusive examples but are for the guidance of the court. They include not only assault against a family member, but destroying property; causing injury to an animal, such as killing the partner's cat or dog to cause distress, which has never been included; denying financial autonomy, which I have touched upon; and most importantly, causing any family member who is a child to be exposed to behaviour referred to in this section. The bill that the government brings forward picks up on the recommendations of the Law Reform Commission report, which is available for all members to read, and I will not take the time of the chamber tonight or labour that point for too much longer. What is contained in this bill is reflective of the findings and recommendations of the Law Reform Commission, which received, from memory—I have not got the footnote in front of me—over 30 submissions from people in the community, the courts, women's groups, the legal profession, departments and all sorts of bodies. Over 30 submissions form the basis of the Law Reform Commission's report, which this bill takes up.

I do not want to criticise the bill, and we will support it. However, I want to speak for a moment about what the bill does not contain. The evolution of this law has come a long way in 20 years. In the last 20 years, this law has been advanced by governments formed by both parties. Therefore, this legislation is driven not by ideology, but by the common purpose of all members in this chamber to develop the law to further protect the victims, or possible victims, of domestic violence. This will not be the end of the matter. The law will continue to evolve.

As I have said, it has been some 18 months since the report of the Law Reform Commission was presented to the Attorney General and tabled in the other place. Since that time, community thinking has moved on. One of the most informative documents we could read when it comes to where public policy ought to go is the report of the Victorian Royal Commission into Family Violence. I think the report of the Law Reform Commission made about 74 recommendations. The report of the royal commission made about 370 recommendations—I have read them several times but I have not taken particular note of the actual number of recommendations. The Labor opposition, in informing our policies going forward and in fashioning where we will go if we form government after the election, has looked at that report and recommendations as an indicator of best practice in Australia. It is evident from both that report and the report of the Ombudsman on domestic violence, which I will come to, that there is room for improvement in both legislation and policy.

I have had some experience with domestic violence as a solicitor advocate with clients, and also as a member of this Parliament, when people have come to my electorate office seeking assistance to obtain a violence restraining order, and that has also informed my views substantially. I believe there are areas that can be further pursued and developed. For example, women who suffer domestic violence during the course of a relationship breakdown often have to go jurisdiction shopping. The Law Reform Commission noted in its report that people who are in a matrimonial dispute can go to the Family Court of Western Australia, and thousands of people do that, of course. The Family Court of Western Australia has the power to make orders under the violence restraining orders legislation. However, as the Chief Justice of the Family Court of Western Australia has said, the court is limited to circumstances in which the person who is sought to be restrained is present in court at the time. Under the Family Court Act, the Family Court cannot make an order under the violence restraining order legislation without the male, the husband or the partner—I usually say that because most victims are women—being present in court at the time. From my experience in legal practice, often a woman seeks urgent orders in relation to both her place of abode and the bank account and to help to restrain the husband or partner from continuing the abusive behaviour. It was recommended that the Family Court Act be amended in that regard, because the woman has to go down there while the partner is not there. She can get some of the orders down there; she can get a misconduct order down there, but the enforcement of that is cumbersome—it is by way of contempt of court, not by way of arrest or a charge. Then she has to go up Victoria Avenue and the Terrace to the courts to get a violence restraining order. This unnecessarily puts these women through a second court process. We think that that could have been amended and we will move to do that in the future, and we urge the government to think of that as well.

There was another matter that Rosie O'Grady, the former Australian of the Year —

Mrs L.M. Harvey: Rosie Batty.

Mr J.R. QUIGLEY: Rosie Batty; I am sorry. Why did I say Rosie O'Grady? Sorry; I apologise and hope it is corrected in *Hansard* to Rosie Batty. She presented a petition to the federal government shortly after —

Mrs L.M. Harvey: Rosie O'Grady's is a pub!

Mr J.R. QUIGLEY: I was not going to say that, minister!

Rosie Batty presented a petition to the federal government—I agree with her—stating that precedence should be given to family law cases involving domestic violence. Chief Justice Diana Bryant said that the Family Court could do that, as long as it was given an extra judge in every state. Given the amount of social and economic disruption and the lag in the Family Court, that is probably warranted too.

The royal commission identified that there needs to be a cross-agency approach to the response to family violence. Often several agencies interact with the family and one agency does not know what the other agency is doing. One agency might be able to identify a serious problem with the family but does not inform any other agency. An area for further statutory reform is that the agencies dealing with domestic and family violence should have access to each other's database. This would require legislative amendment.

Let us take the death of baby Charlie in Broome as an example. I go to this death, which is in the forefront of my mind, because only three weeks ago two children were murdered in the family home in my electorate. Within two days of that weekend, an elderly gent was charged with the murder of his wife in a domestic violence setting in Yokine. Many missed opportunities that require structural and legislative change may have prevented the death of baby Charlie. Although we do not criticise the provisions in this legislation, they do not go far enough. If we look at the death of baby Charlie for a moment, the police were called to a disturbance at an intersection

where a naked woman was in obvious distress. She had retreated by that stage to, I think, the carport of a house near the intersection. Two constables were speaking to her, and another constable spoke to a neighbour who reported that there was an incident that involved assault and family violence. That constable did not tell the other constables. The woman, Ms Mullaley, was transported to Broome hospital, where she gave the nurse an account of domestic violence. The nurse assumed that the police had properly reported this to their own database, and that the police were on top of it. Although the nurse had a history, she did not enter it into database and nor was she required to. When Ms Mullaley's father went down to Broome Police Station in distress about the disappearance of Mervyn Bell in the vehicle with the baby, the police did not have a proper history of the matter. The whole system did not operate so as to protect the victim, who was the child. The police, as came out in the Corruption and Crime Commission report, could have rung Telstra or the service providers to triangulate Mr Bell's telephone to locate him, but that is done only when there is the threat of a life being in danger. The officers who were then looking at the case did not have a full history.

We say there should be further legislation to establish a common database—it will be sort of disturbing for the police in some regard to have that access and they may hold it on a separate file within their database—so that everyone dealing with the family is working from the same set of known facts. This is very important when one looks at the report of the Ombudsman, where he goes through the effect of the interaction between the Department for Child Protection and Family Support and families at risk. As happens so often, although the department knew of the danger it did not actually initiate action to help obtain restraining orders that would be protective of the family or children. At paragraph 1.3.18 the Ombudsman identified that of the deaths he was looking at—the children involved in those 30 fatalities—over 30 children were directly affected by family violence. Eighteen, or sixty per cent, were male, and 12 were female. Twenty-one, or 70 per cent, were Indigenous, and nine were non-Aboriginal. Forty-four per cent of the duty interactions with the Department for Child Protection and Family Support identified family and domestic violence, and DCPFS, although knowing of the domestic violence, concluded that it was not departmental business. The department did not proceed with action in a further 271 cases of the 290 duty interactions in which the department identified family and domestic violence as an issue. In 93 per cent of the cases in which the department identified that the family was at risk, the department felt that it was not its business to interfere or to initiate action. That is on page 32 of the Ombudsman's report.

The department assisted with two violence restraining order applications and provided one referral for help regarding the 70 children in the VRO sample. The department did not provide any active referrals for legal advice or help from an appropriate service to obtain a violence restraining order for any of the children involved in the 30 fatalities. We see a systemic failure here. I am not looking at departmental officers; I am looking at the system. There is a systemic failure when the department is reluctant to become involved. The Ombudsman noted that during the 290 duty interactions in which the department identified family and domestic violence, the department did not use the common screening tool to screen for family and domestic violence or accept the risks posed by family and domestic violence against the key risk indicators identified by "The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework". This is further evidence of a complete failure of the system.

Although we support this legislation, it is only the skeleton—the bare bones—of an appropriate response by the Parliament of Western Australia and the agencies of government to this horror show. I say "horror show" of domestic violence when we see that half the number of murder victims in Western Australia are women and children in a domestic violence setting. I invite members to pause for a moment to think that if half the number of murders in Western Australia were committed by terrorists or jihadists, there is no doubt that this community would be at war with them. If half the number of murders in Western Australia were committed by organised crime, we would be at war with organised crime; it would be intolerable. Yet half of the population—the male half of the population—seems to be at war with the females. That is not to slur on every male; that is to say that in half the number of murders—that is, 20 murders per annum—the perpetrators are men against women. This legislation provides a useful next step from where we were but it is only a step. A lot more work needs to be done, both in this Parliament legislatively and by the government of the day in developing policy.

As the Corruption and Crime Commissioner noted in the first sentence of his report into the review of the circumstances of the death of baby Charlie in Broome on 19 March 2013, the words "domestic violence" are a euphemism for serious criminal conduct and should be prosecuted as such. It should be; we cannot go on any longer with agencies having a look at this and saying, "Too hard", and not making referrals. So often it is the case—I have had this in my office and I am sure other members will have experienced it as well—that a victim comes into my electorate office, complaining about domestic violence. I ask, "Have you reported it to the police?" They say, "Yes", and I say, "Get a violence restraining order". This is in cases in which the police have not attended and have not issued a first-up police restraining order. But violence restraining orders should not be

an alternative to prosecution. As Mr McKechnie, QC, said in his report into the death of baby Charlie, domestic violence is a euphemism for serious criminal behaviour and should be prosecuted as such.

So often the police throw upon the victim responsibility for the decision whether or not to prosecute. The police say to a woman who has been badly injured or who has sustained bodily harm with a swollen face and a cut lip, "Do you want him prosecuted? Do you want him arrested?" There is a whole lot of emotional baggage from the relationship coming into that decision: "Do I want the father of my children arrested? Do I want him prosecuted?" It should be the police who take ownership of that responsibility, because this is a crime and it should be treated, first and foremost, as a crime. The agencies should be working together to gather the evidence necessary to prosecute the crime.

In the Ombudsman's 2015 report "Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities" it is noted, rather gently, at paragraph 1.3.24 that —

> **Implementation of DCPFS's policy framework will be critical to further improving DCPFS's response to family and domestic violence**

But until we have an integrated approach across agencies we will not achieve that. Look at the death of baby Charlie. There were at least three agencies involved—the police, Department for Child Protection and Family Support and the Department of Health. It should be a mandatory requirement for these agencies, after gathering evidence of domestic violence, to report it to the police. It should be a mandatory requirement for the police to prosecute when the evidence is available.

As I have already mentioned, there are many cases of behaviour under proposed section 5A that may constitute family violence but fall short of a criminal offence—for example, under proposed section 5A(2)(g) —

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

Another example, under proposed section 5A(2)(h) states —

> unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or a child of the member, at a time when the member is entirely or predominantly dependent on the person for financial support;

There are many cases that do not involve criminality but often lead to criminality. One of the good things about the legislation is its introduction of behavioural management orders. A lot of women do not want to lose the breadwinner; they have three or four children, they are living in a house and they do not want to lose the breadwinner, so they are reluctant to prosecute. They just want the violence to stop so that they and their children can live in peace. This bill, picking up on the recommendations of the Law Reform Commission, introduces the concept of behavioural management orders. This is a very good thing, and deals with the contravention of behaviour management orders. I will not take the time of the chamber tonight to go through all those provisions, because that would be unnecessary. It is there for all members, and we all agree with it.

I believe other areas could be developed as legislative responses. My most recent interaction with domestic violence involved a family friend who had unfortunately suffered this experience. She was assaulted, and her face swelled up like a football. The swelling was immense and the bruising was terrible. I encouraged her to seek a restraining order. She was worried about pursuing one at the time, because she was battered and bruised. The experience reminded me of my days in legal practice. The woman had to go down to the Central Law Courts, file the application with the registrar and then sit in the waiting room with people looking at her distorted face. She was eventually seen at about quarter to four in the afternoon. She was sitting there battered and injured in the public waiting room all day. I think there is scope for development of the concept of these orders being obtained on affidavit evidence. I notice that one of the Law Reform Commission's recommendations was that the police—it should be all departments—hand a pro forma document to the victim about what she will need to prove or say to obtain an order, and that orders can be obtained by way of affidavit evidence without the necessity to appear in person in the first instance.

I am thinking of Mareva injunctions in the Supreme Court, and they are pretty heavy. The most recent experience I have had with a Mareva injunction is a case in which a person resigned from a firm and took its list of clients and intellectual property with him. The company from which the documents were taken was able to go down to the Supreme Court, in closed session, and file an affidavit about what had happened. The court issued a warrant for a court-appointed officer, in this case a chartered accountant, to go to the residence of the person and execute a search warrant to take away all the documents listed in the Mareva injunction. If businesses can go to the Supreme Court and, on affidavit evidence, obtain warrants to enter people's houses and seize computers and documents, I cannot for the life of me see what is standing in the way of restraining orders being issued on affidavit evidence, which, months down the track, could be tested on cross-examination if need be. There is a lot of room for further legislative improvement.

One of the things that the Victorian royal commission into family violence noted was the necessity for the police to develop and publish a separate strict protocol for dealing with the Indigenous population. There are all sorts of unique problems with Indigenous families, who often live in very small communities in remote locations. The victim cannot flee to a shelter or to some safe harbour; they are in the community with all their family, and so is the perpetrator. It requires orders that would banish the perpetrator from not only going near the victim, but also the community, and that would introduce all sorts of issues. I know, Mr Acting Speaker (Mr P. Abetz), that you visit some of these communities so you would appreciate what I am talking about. We think that further policies should be developed specifically for the way that the police deal with Indigenous victims. Indeed, that should not be restricted to the Western Australia Police. It should be across the agencies; the Department of Health, the Department for Child Protection and Family Support and WA Police should all be working to the one protocol with this vulnerable subset of our community.

In part of my speech this evening I talked about accommodation, which is another area that this act does not address; leases and occupancy of residential tenancies is not dealt with in the legislation. Often the tenancy is in the name of the perpetrator and what is the woman, the victim, to do? Is she to take the children and run from her residence? She is at sixes and sevens to get the restraining order because the place where she is living is rented in his name. Legislative provisions should give victims the option of going to the landlord under court order and having the lease transferred to their name. Indeed, I will go further. With state housing—many of these victims are within state housing—the Department of Housing should immediately transfer the tenancy into the victim's name. Any rental arrears et cetera should not be transferred to the victim but should be the responsibility of the perpetrator. There is not enough accommodation in shelters for many of these women to get to safe harbour, so they must have dominion and control over the family home. I realise that with private residential arrangements it would be a big step for this Parliament to say that a private landlord has to forgive rental arrears or hold them over et cetera. But there could be legislative provision to transfer the lease into the victim's name and the lease payments no doubt would be met pursuant to a Family Court order relating to maintenance provisions for the wife/victim. Of course, that also falls within the new definition in proposed section 5A of —

> unreasonably denying the family member the financial autonomy …

A private landlord could be required to replace the name of the lessee, the perpetrator, with the name of the victim and at the same time a Family Court order could state that the perpetrator pay the rent. That is possible.

The provisions of this bill will be fully supported by the opposition. We just lament that it has taken this long for the bill to be brought in. I do not want to be miserable and labour on that for too long, but we have just missed the opportunity of developing further policy in this area. As I have said, a legislative response is insufficient. When we go through that Ombudsman's report and look at how many interactions between Department for Child Protection and Family Support and victims were never referred on for further action, we think it is lamentable at its lowest.

At the moment the Department for Child Protection and Family Support is the lead agency. However, according to the figures in the Ombudsman's report that I have mentioned this evening, the department did not proceed with further action in 93 per cent of the department's interactions, or 271 of the 290 duty actions, in which family and domestic violence was identified. We have to change that. As I said, if those figures had been based on 20 murders a year by jihadists, we would make the change. This Parliament and the federal Parliament have both passed incredibly stringent laws against terrorism, the planning of terrorism and attempted acts of terrorism, and introduced laws that allow people to be taken into custody and to be locked up for days at a time before they are brought to court et cetera. We take that very seriously. If we look at how many terrorism murders there have been in Australia, they are infinitesimal compared with domestic and family violence murders. It is even arguable that the Lindt cafe murders were an act of terrorism. Some people said they were; others say they were not done in the name of jihadism. It was done by that crazy man because he was facing a murder trial for the murder of his previous spouse, for which I notice his partner has been recently convicted. We would go to war. It is more compelling in this setting that we have a massive shake-up, that the agencies are compelled to go to a common database, and that the police have to get over it and cross-publish on to a database each reported incident of domestic violence. The courts need to know.

I will give an example of the type of men who come before the court by referring to the case that I referred to earlier of a family friend who was a victim of domestic violence and who went to court. We assisted her in going to court but she had to wait all day. When she filed her papers with the registrar, the registrar asked, "Does he still live at", and she gave his previous address. He had been previously involved in circumstances of domestic violence. We need all agencies to have access to a common domestic violence database so that the court can keep abreast of where these people are and can tell whether the police have served an order or whether there have been previous complaints to the Department for Child Protection and Family Support, and the police will be required, legislatively, not by reason of a published or unpublished protocol, to record the offence and issue an incident report number so that it is formally in the system. If that had happened in the death of baby Charlie, the first officer who was spoke to the eyewitness at the intersection where Ms Mullaley was located,

would have had to put it in the database so that back at the station they would have known it was a domestic violence incident and that the woman had been quite heavily assaulted. When she went to hospital, the nurse would have been required to go to the same database and enter the history that she received. Then, when Mr Mullaley—the father of the victim and the grandfather of the deceased—went to the police station to complain about Mr Bell taking off with the child, by going to that same database, the police would have immediately known that this incident involved a child at risk, and fired up everything. They would not have left it until the next day when the story unravelled in its full and gruesome detail.

We will support all aspects of the bill as it goes through. If elected to government next year, we will move swiftly to bring in further legislative reform. If—I say "if" as a great big if—that happened, we would be looking forward to the opposition of the day likewise supporting us because it is not a question of politics; this is a question of the great scourge on our community.

Finally, the Victorian royal commission's report, which I think is the best document that I have read on this, prioritises the first five years of a child's life because if a child in those first five years—those important, early years—is subjected to or witnesses family violence, the likelihood of them engaging in family violence later in life is very, very high; it is amazingly high. Therefore, all efforts should be made and the starting point of a concerted approach on this should be to make sure that all this happens, especially—most importantly—for families with young children. I note that in proposed section 5A of the bill, proposed subsection (2) states —

> Examples of behaviour that may constitute family violence include (but are not limited to)
>
> …
>
> (l) causing any family member who is a child to be exposed to behaviour referred to in this section.

That is because it is perpetuating. Although we have to move swiftly with all the agencies across the board to make a concerted approach to reduce this number of deaths from 50 per cent a year, hopefully to zero, certainly making a substantial reduction and having the departments move more swiftly to protect exposed families is especially important when children are involved.

Finally before I sit down, earlier this year I spent some days down at the Central Law Courts watching a murder trial of an Indigenous man who had been incarcerated for violence. While he was in prison at Hakea, his former partner took up with a new partner in the township of Narrogin. He got on the phone from the prison and threatened her life immediately upon release. This was trialled before Mr Justice Hall. Upon release, the offender caught a bus to Narrogin, and at every bus stop he got out and went into the toilets at the service stations and published his intent to murder her. He eventually disembarked from the bus in Narrogin and committed the most violent murder on this woman; after which, he committed the most heinous acts of sexual assault upon her remains. It was absolutely depraved conduct. He pleaded not guilty and of course was ultimately convicted and sentenced to life imprisonment. This is just another example of the heinous conduct by members of the male community against the more vulnerable members of our community—the female population. It is not exclusively men. I cited earlier the case that was sentenced the week before last relating to the man who was murdered and left in the boot of his car while the car was set on fire. That was at the behest of his former partner and her mother. However, the perpetrators are almost exclusively men against women.

We need a coordinated cross-agency approach and we need to break down some of the departmental barriers. The police like to say that their database is secure and will not be published to anyone, but in the domestic violence setting that has to go by the board. The Department of Health has to have access to that database, as do police. There has to be a common database. We are all working to the same common set of facts and moving in the same direction. The courts and government departments need access to a database of perpetrators. When a perpetrator comes before the court in response to a violence restraining order or a family violence restraining order application, the court itself could go to that database and look at the perpetrator's previous history.

Other members want to speak on particular aspects of this bill. The member for Fremantle will move an amendment tomorrow and that, I think, will be on the notice paper. It is to do with the examination of witnesses. From memory, it is section 106 of the Evidence Act. I will leave it to the member for Fremantle to speak about that.

I thank the chamber at this late hour, on the second last day of this Parliament, for being attentive during my address. It is late and it is deep into the parliamentary session. I am very passionate about advancing the cause of law reform and about advancing policy in this area. This Parliament owes it to all families, and all women and children, to do all that it can to stem this tide of violence. We commend this bill to the house as a good step, but it is a step; it is not a destination. It is one step in the journey. The Labor Party looks forward, if elected to government, to the opposition taking the same approach to this bill. If things do not go as well as I hope they do and I, unfortuitously, find myself on this side of the chamber—heavens to Betsy I hope that not be the case!—the Labor Party will be urging the government to keep on going but at a faster pace than what has happened these

past 18 months. The opposition commends to the chamber the Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016.

MS S.F. McGURK (Fremantle) [9.04 pm]: I would like to speak on the Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016. Like the shadow Attorney General who spoke before me, the Labor Party has considered this bill and supports it, although with some frustration that it is at five minutes to midnight in this term of government that we are considering such an important raft of legislation. As was said previously, this is only part of what should be considered as a comprehensive piece of work that is required if we are to seriously tackle the large, growing and unacceptable number of incidents of family and domestic violence in this state. In June 2014, the Attorney General tabled an extensive report from the Law Reform Commission titled, "Enhancing Family and Domestic Violence Laws, Final Report — Project No. 104". That report followed a very comprehensive discussion paper in 2013 around how our laws could be improved to make them more responsive to the particular circumstances of family and domestic violence. I think we are at a relatively immature part of that debate still in understanding the complex dynamics of violence within family situations and personal relationships and the danger people are in. It is not always women but, by and large, the violence is by men against women and children. Although I have not done so, I would like to look closely at the statistics of grown men who are the subject of family violence, although the point is that any violence is unacceptable and any violence in family situations needs to be addressed; it does not matter who is the victim, whether it is women, children or grown men.

If we really want to understand the dynamics of family violence, we need to understand the way women are viewed in our society and the power dynamics between men and women. Just yesterday when we were discussing the Sentencing Legislation Amendment Bill, I and other members of the house indicated that if we are to address this issue effectively we need to look at primary prevention, education about respecting women in our community generally, increased respect for women in our community and for that message to be not only taken up but implemented by a large number of institutions in our community, including schools as well as community organisations and sporting organisations; in fact, any organisations that might be within this Parliament. They might be political organisations that need to take that message on board and begin to not only send that message within their ranks but also live that message, if you like, in how they deal with conflict. Primary prevention is important and education is important if we are to deal with the root problems that lead to the persistent number of family and domestic violence cases in our community.

This Restraining Orders and Related Legislation Amendment (Family Violence) Bill contains some amendments to the Restraining Orders Act and a raft of other amendments to legislation relating to family violence. This is good; it is an improvement and has been called for by a range of organisations in this state. A lot of work has been done on it and it is great that, in this policy area, the Attorney General has finally started to earn his money and do something about it. As the shadow Attorney General said, I intend to move an amendment that relates to a default position for witnesses in family violence cases. That is, the default position should be that witnesses be regarded as special witnesses and can give their evidence either remotely or by CCTV unless they choose to be in the court for particular circumstances. The default position would be that they be regarded as special witnesses rather than the other way round. When we were debating the Criminal Laws (Domestic Violence) Amendment Bill 2016, which I think was the member for Armadale's bill, and which the government voted against for no good reason, I relayed a story about a woman I used to work with about 10 years ago and then knew her through other professional associations and some social associations. Earlier this year I was contacted by her, and I did not realise it, but she had moved to Melbourne. The reason that she had moved to Melbourne was that she had been very seriously assaulted in the middle of the night by her partner, who attacked her with a wrench and nearly killed her. It was only after hearing her screaming that neighbours, whom she did not know, managed to get into the house and interrupt the assault. Her partner took off, was on the run from police and changed his identity for, I think, a couple of weeks before he was caught by the police. In those circumstances, the woman I knew was moved interstate by a women's refuge and is now living in Melbourne. As a result of those circumstances, she is coming back to Perth to give evidence. She was given the option of giving evidence remotely because she had moved interstate, but she said that she wanted to come back and face the court. She wanted to look at a jury and have a relationship with the people who would be deciding the fate of the accused in that case. I think that was a very gutsy move on her part, and from everything I have seen about that woman, she has been pretty gutsy all round. It was a terrible situation, because I know her quite well and had no idea that that had happened to her. It was a very serious assault and caused upheaval throughout her whole life. I imagine there are many other circumstances that occur in our community of which many of us are just not aware.

Tomorrow, I would like to move the amendment that I mentioned. I do not know what the government's response to that will to be. I know that the amendment has been given to the Deputy Premier; Minister for Police, but I do not know what her response or the Attorney General's response will be. I know that this and other matters were raised by a number of organisations representing legal practitioners working in the family violence area. I contacted the Women's Law Centre of WA. There are a number of organisations such as the

Women's Law Centre and the Community Legal Centres Association WA, as well as lawyers in the domestic violence area advocating for women. They called for a range of suggestions and improvements to the legislation and put them to the Attorney General. I understand that they have been rejected by the Attorney General, and the point about the witnesses is one of those concerns. As I said, I hope that there will be a reconsideration of that by the government because, to me, it seems an entirely reasonable proposition to give protection to witnesses.

The Domestic Violence Legal Workers Network, which is a group of lawyers working on behalf of victims of domestic violence, met to discuss the bill before us today and made suggestions to improve the bill to the Attorney General. One of the more significant issues is what happens when a restraining order is sought, the substantive application is not granted and an interim restraining order is not given. What happens if the matter is simply adjourned for another hearing? That will mean that if the person who is experiencing domestic violence has made the decision to apply for a restraining order, and the magistrate has decided, for whatever reason, not to grant a restraining order and not to grant an interim order, it could take a number of months—I have heard up to six months-plus—before that person could make another application for a violence restraining order. Even if it took only a number of weeks, it would leave that person exposed, with no protection. In fact, the person has signalled to the person from whom they are seeking protection that they are taking out a protective order. Many advocates, including Rosie Batty, have said that actions such as taking out a restraining order, or leaving the family home, may be used by men who are violent or are threatening violence to try to stamp their authority or exercise their control over the victim. That could leave the person who is seeking the restraining order very much exposed. I would be interested to hear what the Minister for Police has to say about how we can provide people who seek a restraining order with some protection during that time. There may be a significant gap. I do know what happens in other states in those circumstances. That issue has been raised not only by the Domestic Violence Legal Workers Network but also Legal Aid Western Australia, the community legal centres and the Women's Council for Domestic and Family Violence Services WA.

A second issue that has been raised as an improvement to the bill is the ability to vary or end a tenancy in situations of domestic violence, at least in line with the law in New South Wales. There has been some discussion about improving the tenancy laws to make them responsive to a situation in which women in a violent situation are compromised because of who has signed the agreement for the tenancy or other situation in which they may reside. The tenancy laws need to be made more responsive to the circumstances of family violence.

Another issue that has been raised by advocates is the legislative requirement that the police record every domestic violence report and provide a victim report number. I think that is recommendation 15 in the Law Reform Commission's report. Although there have been some improvements in how the police deal with domestic violence incidents, from what I can gather, we still have a way to go compared with other states.

Finally, another suggestion that was made by lawyers representing victims of domestic violence is that amendments be made to the criminal laws to make cyberstalking and the publication of intimate images criminal offences. That may have already been picked up —

Mrs L.M. Harvey: It has, member.

Ms S.F. McGURK: — in the Sentencing Legislation Amendment Bill.

Mrs L.M. Harvey: No; this legislation covers technological abuse and cyberstalking.

Ms S.F. McGURK: Is that about the GPS?

Ms M.M. Quirk: That is in the sentencing legislation.

Ms S.F. McGURK: The GPS provision is in the sentencing legislation. Their suggestion is that cyberstalking and the publication of intimate images be made criminal offences. A number of suggestions have been made.

[Member's time extended.]

Ms S.F. McGURK: It seems to me that the question about witnesses and the protection of witnesses is a key issue, as is how we deal with some exposure by people who apply for a violence restraining order or a family violence restraining order but are not given it or are not given an interim order. There was some discussion about whether the refusal to issue an interim VRO could be appealed, but the length of time that that might take could be counterproductive to dealing with the substantive application. On the other hand, it could also mean that magistrates would be forced to give reasons for decisions so that they would be a little more careful about why they did not provide the applicant with some sort of protection, as is recognised is needed under this bill.

Literally kilograms of reports have been written on the sorts of reforms that are needed in the area of family violence. If only that could be translated into action, perhaps we would get somewhere. The Law Reform Commission report, for example, makes the point at page 4 in the introduction —

> It is also vital to acknowledge that the ability of the legal system to reduce family and domestic violence and protect victims and children from harm is limited.

It goes on to refer to the need for preventive mechanisms, which I spoke about before. It also refers to the specific reforms that are needed to the Western Australian legislation, some of which have been picked up here, but many still have not. The Law Reform Commission report also refers to the need for police to be educated and for their systems to be more responsive.

Like the shadow Attorney General, I would like to refer to the Western Australian Ombudsman's recent report "A report on giving effect to the recommendations arising from the *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*". The report was handed down only a couple of weeks ago. The substantive report is important and useful, but sobering on the number of fatalities, the number of Indigenous deaths and the number that occurred in remote communities during the period that this report covers, which I think was 30 months. There is a need for our systems to address the circumstances under which not only fatalities, but also domestic violence incidents occur.

The most recent Ombudsman's report, tabled a few weeks ago, contains an examination of whether the recommendations that arose from the original report have been implemented. I do not know how many members read the most recent report, but one of my concerns is that there seem to be a number of claims by particularly the police but also other government agencies, that they are working towards implementation of the strategies suggested. I think the Ombudsman's office seems to accept that that represents steps commencing to give effect to recommendations. I will give a couple of examples.

Recommendation 2 of the Ombudsman's original report reads —

> In developing and implementing future phases of *Western Australia's Family and Domestic Violence Prevention Strategy to 2022: Creating Safer Communities*, DCPFS collaborates with WAPOL, DOTAG and other relevant agencies to identify and incorporate actions to be taken by state government departments and authorities to collect data about communities who are overrepresented in family and domestic violence, to inform evidence-based strategies tailored to addressing family and domestic violence in these communities.

That is very sensible; we should collect data about where these incidents are concentrated. But looking at the detail of what is being done, it seems to me to have an air of aspiration or intention rather than implementation. For instance, the Family and Domestic Violence Data Working Group has been reconvened and has committed to exploring the opportunities to strengthen and improve data collection, including the exploration of methods to strengthen data collection across the state. But the Department of the Attorney General has informed the Ombudsman's office that data collection continues to improve in this area, including the violence flag—that seems good. That will contribute to a better dataset that will allow analysis. So some measures have been taken. Sorry, I read from the wrong place, but the bit I wanted to highlight reads —

> DOTAG relevantly informed the Office that 'DOTAG will continue to collaborate with DCPFS and WAPOL to identify opportunities for improved data collection within the justice sector in relation to overrepresented groups …

Similarly, in relation to recommendation 5 on Aboriginal family violence strategies—this is in regard to the implementation of the government's Kimberley plan—the Department for Child Protection and Family Support states —

> Implementation of the Kimberley Plan is well underway. An action included in the first twelve month work plan is to work toward formulating partnerships between alcohol and other drug services, mental health services and family and domestic violence services.

Two forums will be held to discuss a trial of an integrated intervention program. I just see the words "forums will be held" and then the government will discuss a trial. The government had 12 months to hold the forums. The trial could have been held since the announcement of the Kimberley plan that the Deputy Premier; Minister for Police discussed at the Council of Australian Governments. I think the government should be ashamed of the small amount of resources that have been put into that plan. It put out a 20-point plan to combat family violence and provided no additional resources, except for additional resources to the Kimberley plan. I ask the Deputy Premier to correct me if I am wrong, but was $3 million put into that Kimberley plan? If it is more, I am happy to be corrected but it is a pretty paltry amount considering the amount of money that gets floated around this state.

Mrs L.M. Harvey: As you are aware, as I understand it, the $3 million went into the expansion of services for victims, but more investment is going into that plan. Obviously, the research needs to be built upon to understand how to better integrate the services.

Ms S.F. McGURK: If it was more than $3 million, I would certainly be interested to hear that.

I do not have time to go through how the Ombudsman's original recommendations are being implemented. A number of those recommendations state that there is an intent to do something, there is a plan to do something,

a workshop will be held to do something, the operation manuals will be reviewed, the internal police policies will be reviewed and the Ombudsman will work with other agencies to develop systems to work in cooperation rather than actually demonstrating that it has done that work. Other people have been a little concerned that the Ombudsman has not consulted outside agencies; he has just worked within the government. What about other service providers and victim advocates? A lot of people do a lot of work in the area of family violence. It would be interesting to hear their views about how the government is going in this area of family violence. The statistics show that, unfortunately, we still have a long way to go.

The Law Reform Commission of Western Australia report stated that external agencies need to assess how we are going in implementing the many recommendations we have in this state and also a lot of good data from other states. Victoria is the obvious one with the work that it did in its royal commission. Good work was also done in other states. For instance, it would be interesting to hear the Deputy Premier explain why WA has not signed on to Our Watch, the national program. I do not know whether she was asked about that when she went to COAG.

There are many benefits to the Restraining Orders and Related Legislation Amendment (Family Violence) Bill. We are glad it is finally before the house. We are keen to see it progress so at least there will be some improvements for victims of family violence after eight and a half years in government.

MS J.M. FREEMAN (Mirrabooka) [9.34 pm]: I rise to speak on the Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016. I do not want to take up too much of the house's time at this late hour that we are debating this very important piece of legislation. I note that the contributions of the members for Butler and Fremantle were very comprehensive. We all know in this place that domestic violence and family violence is the number one law and order issue because of the impact that it has on the wellbeing of our community and our children. If we consider that WA Police attended 75 983 incidents of domestic violence over an 18-month period up to November 2015, we can see that it is a considerable issue that needs to be addressed. Victims of family violence need to have the tools to be able to push back and get themselves to safety.

I note that the Department of Commerce's "Improving the interaction between residential tenancy laws and family violence restraining orders" options paper, released in October, includes in its introduction a definition of family violence —

> Family violence is behaviour which results in physical, sexual and/or psychological damage, forced social isolation, economic deprivation, or behaviour that causes the victim to live in fear.

I understand that the restraining orders in this bill will take into account an extended definition of family violence.

To add to the debate before the house I want to talk about residential tenancy laws and the fact that we are debating the Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016 tonight without the requirement for residential tenancy laws to be addressed. In 2014, the Law Reform Commission released a report, "Enhancing Family and Domestic Violence Laws—Final Report", which brought about the bill before the house. The commission in that report also called for changes to residential tenancy laws. Indeed, when the Residential Tenancies Amendment Bill 2015 was debated in this house, I was the opposition lead speaker and I said very strongly to the parliamentary secretary that if he had one legacy to leave, it should be bringing in changes to tenancy laws to protect victims of family and domestic violence. He seemed to undertake to try very hard in that regard, so it was a great disappointment to me to see only an options paper released in October 2016. We have had a piece of legislation brought in at five minutes to 12, as the member for Fremantle said. One of the most important aspects is to be able to have a safe system for people to be able to continue with a plan for living their daily lives without fear and with the capacity to maintain their routines, and that is not available to people because we have only an options paper.

Even more galling is that the Victorian Parliament is discussing these changes. The Victorian government is actually putting in place changes to its tenancy laws as we speak, while we have only an options paper before us. That seems to me inconceivable, given that the report was handed down in 2014, there is understanding on both sides of the house that this is an important issue and that we had tenancy legislation before this house only a few weeks ago. The parliamentary secretary has just entered the chamber, and he knows that I have raised with him that we need to change the tenancy legislation to protect victims of family and domestic violence.

Frankly, I am really disappointed that the response is not a legislative response. It is not as if there has not been enough time and that there is not enough information and, given what has happened in other states, that there is not the capacity to know what should happen. The Victorian government has enacted the National Domestic Violence Order Scheme Act 2016, which provides for a national recognition scheme for Victorian family violence safety notices, family violence intervention orders and domestic violence orders made in other states and territories and in New Zealand. A Victorian family violence safety notice is the equivalent of a restraining order in Western Australia. This followed on from the Council of Australian Governments agreement in 2015. Is

the minister able to say what the Western Australian government is doing to ensure that someone fleeing from domestic violence in Victoria, for example, to Western Australia has the protection afforded similar to the Victorian family violence safety notice, the family violence intervention order or the domestic violence order, or would someone fleeing family violence there have to deal with the court system all over again? I would be interested to know whether this legislation deals with that. If it does not, how do we ensure that some sort of bureaucratic nightmare cannot lead to a person being put at risk?

We have said that we support this legislation and the introduction of family violence restraining orders. However, we need to understand that that must be in the context of fully supporting and funding the community sector. The Safe Systems Coalition outlined by the member for Fremantle is made up of a number of women's health organisations and community law centres. I note that the coalition is calling on the Western Australian government to commit to improving the system to keep victims of family and domestic violence safe and hold perpetrators to account for their violence. In the lead-up to the 2017 Western Australian election, it calls on all parties to establish high-level cross-government leadership on this issue, utilising a collaborative, coordinated and adequately resourced approach to preventing violence against women, making the justice system safe, supportive and responsive to the needs of women escaping violence, holding violent perpetrators accountable, and keeping victims safe. On this side of the house we have shown our commitment in this area by bringing in private members' bills on two occasions.

Some of the statistics in this consultation paper are worthwhile putting on the record here for people who do not have the opportunity to read it. Nationally, the cost to the community of domestic violence is $13.6 billion each year, and it is likely to rise to $15.6 billion by 2021, if extra steps are not taken to reduce the incidence of family violence. The Western Australian government's framework to implement discussion on these things has detailed some of the critical figures on the impact in Western Australia on people subject to family and domestic violence. One of those research papers stated that Homelessness Australia indicated that in 2011–12, 34 per cent of people assisted by specialised homelessness services required assistance due to family violence. In real numbers, this represents over 7 200 people. We all know the impact in our own electorates of family and domestic violence and people seeking urgent care. It is important for the urgent care to ensure that people have a safe place to seek refuge.

I conclude by noting that this bill includes two anti-violence measures aimed at deterring violent behaviour in general, and these entail amendments to the Criminal Code to address violence against women that harms their unborn child, and increases the maximum penalty for unlawful assault. I want to make clear that I understand that this in no way undermines a woman's right to choose to terminate her pregnancy and in no way places at any risk those fundamental rights that were debated in this Parliament. I understand that if a domestic and family violence situation harms a pregnant woman and her unborn child, clearly, that needs to be taken into account, and this legislation will do that. But this cannot and never should be used as a way to undermine what has come into law—after a very contentious and difficult discussion in this place—to ensure that women in this community have the right to make their own choices around their own reproductive health. I thank Parliament and I congratulate the government for finally bringing in this bill, but I criticise it for bringing it in at such a late time. I also think that the legislation is completely lacking because the government did not bring in residential tenancy laws that could have assisted people who are fleeing family violence and ensured that they would not have to go through leaving tenancies to get new tenancy agreements or being discriminated against or all those things. Part of the importance of setting up a safe system is for victims to maintain their housing and not be left in a situation in which they are expected to bear the cost of damages caused by someone else's violence. I think that the consultation paper is just a paltry excuse for no action and it is a great disappointment.

DR G.G. JACOBS (Eyre) [9.47 pm]: I will not hold up the house for too long at this late hour. I express my general support for the Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016, but I also make some points about why I believe it could have been improved. Of course, we all abhor violence in the family. It is not acceptable or tolerable. It is really important to show protections for family members against violence. "Family violence" as described in clause 7 of this bill is —

(a) violence, or a threat of violence, by a person towards a family member of the person; or

(b) any other behaviour by the person that coerces or controls the family member or causes the member to be fearful.

I am sure we all agree that this legislation needs to be passed. However, I want to make some points about the protection of those family members and the examples of the behaviour from which we attempt in this bill to protect them, which are —

(a) an assault …

(b) a sexual assault …

(c) stalking …

(d) repeated derogatory remarks …

(e) damaging or destroying property …

(f) causing death or injury to an animal that is the property of the family member;

(g) unreasonably denying the family member the financial autonomy …

(h) unreasonably withholding financial support …

(i) preventing the family member from making or keeping connections with the member's family, friends or culture;

(j) kidnapping, or depriving the liberty …

(k) distributing or publishing, or threatening to distribute or publish, intimate personal images …

(l) causing any family member who is a child to be exposed to behaviour referred to in this section.

I would like to direct my comments to the protection of children, which is very important. It is referred to in clause 36, which amends section 30B(c), and states —

(c) delete paragraphs (b), (c) and (d) and insert:

(b) the need to prevent behaviour that could reasonably be expected to cause the person seeking to be protected to apprehend that they will have family violence committed against them;

(c) the need to ensure the wellbeing of children by protecting them from family violence, behaviour referred to in paragraph (b) or otherwise being exposed to family violence;

It appears that there are protections for children except when they are in utero. I draw members' attention to division 4, which makes amendments to the Criminal Code. I make the point, and I think it is really important that I make this point in Parliament, that the protection of the unborn child is viewed in this legislation only as harm to the mother as "grievous bodily harm". Proposed new section 1(4A)(c) states —

(c) a reference to causing or doing grievous bodily harm to a person includes, …

…

(ii) a reference to causing the loss of the woman's pregnancy;

Given my background in a profession that had something to do with and involved exposure to women, pregnancy and babies, I believe that we have provided protection for almost every family member in this legislation. We have prescribed it and even, in proposed new section 5A(2)(l), referred to children specifically. Even in the parameters of the terms used in family violence, and examples of the behaviour that is deemed to be family violence, the bill states at proposed new section 5A(2)(1) —

(l) causing any family member who is a child to be exposed to behaviour …

That is, except when that child is in utero. Call it a foetus or whatever, it is a baby, it is a human and it is a child.

I know the question in people's minds is, will this open up the whole abortion debate? I think the member for Mirrabooka touched on that. I was particularly interested in her comments towards the end of her speech. However, it is not about opening up the abortion debate; it is about those cases—they have been referred to in the other place—around the wilful violence to a woman's abdomen to inflict harm on a baby, and in some cases cause the death of a baby. My plea is that there should be more recognition of the baby and harm to that baby in this bill.

In a previous Parliament that I was part of we were promised a bill around foetal homicide that would protect the baby. There have been unfortunate cases in which violence has been directed at a pregnant woman's abdomen to inflict harm on a baby. It is my plea that if it is not in this Parliament, that we look at that issue, and I am not afraid of opening up the debate on abortion. I understand that the hour is late and that it is late in the parliamentary term. We cannot have the argument tonight, but there are a lot of good things in this bill. If members accept my argument—I am sure that some would not—there is perhaps a way through the suggestion I have put and we could at least reassure ourselves that we could look at having this debate soon. I refer members to the review of certain amendments relating to family violence restraining orders. That section of the bill refers to a review of the legislation. It states that the review date means the second anniversary, so two years after this legislation is passed. It states —

> As soon as practicable after the review date the Minister is to review the operation and effectiveness of the amendments made to this Act by the Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016 Part 2.

Further, the minister is to cause a report of the review within six months after the review date. If I could be reassured by the people who accept the argument about protecting the baby in utero, perhaps I would accept that if we passed this legislation, its operation would be reviewed in two years; however, only part 2 will be reviewed. I have referred to the sections around unlawful violence to a woman who is pregnant. "Division 4—*The Criminal Code* amended" falls under part 3 of the bill. I do not necessarily need an answer tonight, minister, but we probably need to consider why the whole lot would not be reviewed instead of just part 2, leaving out part 3. If the review is into the operation of the bill, let us have a look at the operation of the whole bill in two years, and then perhaps the Parliament might see fit to review the protection of unborn babies.

MR P. ABETZ (Southern River) [9.57 pm]: I want to echo the words of my colleague the member for Eyre on the Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016, but I will not touch on that particular issue. I think one of the things we would all agree on in this house is that domestic violence is a crime and ought to be a crime. I was very pleased to have met with the police in my area a couple of years ago. We talked about what the most common call-outs were for them, which in my area is domestic violence. The police shared with me that they have changed their approach to dealing with domestic violence. When they went to a call-out, if the partner who was attacked said that they did not want the police to arrest their attacker, the police used to back off and let it be. However, if police have enough evidence from what they see when they get there and there is clear evidence of an attack having taken place, they can arrest the guy and take him away. If, the next morning, the lady says, "No, I don't want my partner charged", they can say, "Don't worry about it. We've got enough evidence to charge him. We don't need your evidence in court." I think that is a very positive move to take cases seriously when the evidence is very clear.

In my eight years as a member of Parliament, more people have come to my office complaining about the misuse of violence restraining orders than of VROs not having the desired effect of keeping a violent person away. I have taken quite some interest in that. The Law Reform Commission of Western Australia report titled "Enhancing Family and Domestic Violence Laws: Final Report: Project 104" is an interesting read. When that report is read alongside the bill before us, this bill goes against a significant number of the Law Reform Commission's recommendations. Dr Augusto Zimmermann, one of the law reform commissioners, wrote an article in *Quadrant* dated 1 November 2016—so it is fairly hot off the press—entitled "The Menace of Family 'Violence' Order". His article reflects what the Law Reform Commission report indicated; that is, one of the real concerns about this bill is that it extends the relaxation of evidence rules already available for interim orders to final decisions. I believe that that really erodes the very notion of natural justice and also the right to be considered innocent until proven guilty.

The difficulty with violence restraining orders is that the person making the claim of violence can get a VRO but their claim is not challenged in any way. The person who is the subject of the VRO can lose access to their home and can lose access to their children and so on. I have a whole stack of emails with me that I have received over the years from people who tell their story of how VROs are being used inappropriately. The Law Reform Commission was very conscious of the fact that VROs are often misused. The commission rejects some of the bill's contents because it stated —

> … they were likely to exacerbate the existing problem of overuse and abuse of violence restraining orders, which are known to be used for tactical purposes in family law litigation.

I am sure that those who work in the family law space would be well aware of those issues.

The Law Reform Commission specifically rejected reducing the level of evidence required for final orders. Dr Zimmermann's article stated that the commission —

> … recommended that legislation should provide a fair and just legal response to family and domestic violence. Above all …
>
> > *… as Legal Aid confirmed, this does "not mean that fairness and the protection of individual rights are not important considerations". In this context, it is vital to acknowledge that not every person who applies for a violence restraining order is a victim of family and domestic violence and not every respondent is a perpetrator …*
> >
> > *Although it is true that most applications for violence restraining orders are properly made, sometimes they are unmeritorious or otherwise used for tactical purposes in family law litigation. And yet, many lawyers consider that violence restraining orders, in particular those*

> *applied for after proceedings have been instituted in a family law dispute, may actually exacerbate conflict and decrease the prospects of the parties reaching agreement, with a consequent impact upon legal costs.*

This whole notion of interim violence restraining orders being made on uncorroborated evidence—simply on what the applicant says—leaves them open to abuse. I fully appreciate that in certain circumstances it is necessary, but there needs to be a real speeding up of the process. The time between the interim VRO being granted and the time the person who is the subject of the order can contest it in court needs to be reduced massively. Too much injustice takes place for those who are falsely accused of domestic violence and there are all the consequences of that. Just last week, a former police officer was pensioned off because he was badly injured in police duties. He had been married for over 25 years. He told me that his wife was a pretty fiery kind of person, yet they had been reasonably happily married. They ran a successful business and so on. On a number of occasions she had attacked him. He said, "I never fought back." Some time back, she attacked him and the neighbours called the police. He declined to speak to the police because, being a former police officer, he knew the law, and the police took him away for questioning. He said, "I'm not going to answer any questions because I don't want to say anything." On the basis of that, his wife asked for a VRO and he was locked out of the house. They ran the business from home, so he could not go to work. She was drawing about $300 000 a year from the business and he is an equal partner in the business, so he had no access to any of it. He was basically homeless, living in his car for a few days before a friend allowed him to stay at their house. When we see some of the machinations of that nature, I believe we need to make some provision in this type of legislation so that if anyone is found to maliciously or vexatiously use provisions of a VRO they should face severe penalties. At the moment there are no penalties for that. In one of the emails I have, there is a quote from the Family Court in which the Family Court judge said it was very clear that the VRO had been used to try to gain advantage and was totally unfounded et cetera but there is no penalty for doing it. There is simply no disincentive for a person to use a VRO to achieve their ends because even if they are found out, it does not matter; there are no consequences. I believe that is a serious shortcoming in our VRO legislation.

I will leave my comments at that, given the time, except to mention that in the other house, Hon Nick Goiran gave quite a lengthy speech on the bill. I concur with a lot of the points he made, but they are on the record so I guess that should be sufficient for the purpose of my contribution to the second reading bill.

Debate adjourned, on motion by **Mr J.H.D. Day (Leader of the House)**.

House adjourned at 10.08 pm