RESTRAINING ORDERS AMENDMENT BILL 2013

Second Reading

Resumed from 14 August.

MR J.R. QUIGLEY (Butler) [11.21 am]: I rise to indicate the opposition's support for the Restraining Orders Amendment Bill 2013. It is not a complex bill, but my task is a little complex because I am told that the next matter before the chamber is not ready to be brought on for 19 minutes. It is a bit hard to filibuster on a bill as pointed and sharp as this one, but I am reminded that a senator in the United States, when speaking yesterday on Obamacare, said that he would speak until he could no longer stand! He did not quite make the record in the United States of 24 hours and eight minutes —

Dr K.D. Hames: Not as good as Tom Stephens!

Mr J.R. QUIGLEY: Yes.

He pulled up at 22 hours! He tried to pad his speech out when speaking on Obamacare. I listened to it with interest last night on the radio. He also sent a message to his children, who were at home, to watch the broadcast on television while he read them their evening nursery rhyme, *Green Eggs and Ham*. He read the nursery rhyme in the middle of his speech so that his children could hear it before they went to bed! The senator spoke against Obamacare. The commentator said that he had perhaps drawn upon the wrong nursery rhyme. *Green Eggs and Ham* is a nursery rhyme about something that the child did not like—that is, green eggs and ham. The moral of that story was that if they kept on trying to eat it, they would eventually like it. The commentator said that the parable of that little tale coming from the Senate was: if these senators just be patient and stick with Obamacare, in due course they would like it too.

Dr K.D. Hames: That is what happened with Medicare. We opposed Medicare in its early iterations, and now of course no-one would do without it.

Mr J.R. QUIGLEY: No-one would do without it; that is quite right. There was a bit of a different approach on the National Disability Insurance Scheme, because it was across the political spectrum and everyone decided to support that. Certainly in the days when it came in as Medibank, with Gough Whitlam, there was opposition to it, but after people used it, the political masters realised it was here to stay and we could not live without it.

The Restraining Orders Amendment Bill before the Parliament today is perhaps a little unnecessary, although we do not know what is in the judges' minds down at the court. A restraining order can be sought by a person who is in fear of domestic violence, or against a partner or someone who is misbehaving towards them—otherwise known as a misbehaviour restraining order as opposed to a violence restraining order. These orders can be taken out in the Magistrates Court. Section 68 of the Restraining Orders Act 1997 provides that when a parent, the applicant, seeks a restraining order, the court may also extend the order to the protection of children. It was also argued and contended that the court, under section 68, can make separate orders on the application for the protection of children because the children's circumstances might be slightly different from the spouse's. In other words, they might still have supervised access et cetera, which has to be the subject of a separate order. However, in some cases, depending upon the factual circumstances of the case—often they are quite complex—the adult courts have taken the view that if separate orders of restraint are being sought to protect a child, that child, or the appropriate person making the application on the child's behalf, has to institute proceedings in the Children's Court.

Dr K.D. Hames: Do you understand why magistrates are doing that, when it is clearly not the intention of the government passing the law?

Mr J.R. QUIGLEY: I know; I saw in the speeches from the other place that there was some sort of gently implied criticism of the magistrates for not fully using section 68. It is not a criticism that I want to make because I do not know the factual bases of the particular cases, which I think one would have to know to see whether there were circumstances that discretely involved the child and not the parent.

Dr K.D. Hames: I think the member for Armadale, who is behind you, might have some information.

Dr A.D. Buti: Part of the reason is that some magistrates believe that the Children's Court has a more friendly environment in regard to children's issues. They are concerned that the Magistrates Court will take over the application of restraining orders for children. I do not think it is a very good reason, but I think that is the rationale.

Dr K.D. Hames: But it makes them have to do it twice.

Dr A.D. Buti: That is the problem.

Mr J.R. QUIGLEY: That was a helpful interjection and contribution by the member for Armadale, who of course in the past has written on the subject of domestic violence and shows a keen interest in tackling that problem. I think that is right; some magistrates have thought that the Children's Court is more sensitive to issues involving children. However, the downside has been that the mother—in my experience it usually is the mother, although in some cases it might be the father—has to go through the trauma of two court cases. One court case is in the adult court to obtain a restraining order to protect herself; she then has to gather up all her wits, dust off her emotional baggage and all the traumas that go with those sorts of court cases and do it all again down at the Children's Court, and probably subject the children to two occasions upon which they have to give evidence.

The government has brought forward a very sensible amendment. This legislation puts beyond doubt the question of whether a presiding magistrate can make orders for the protection of not only an adult, but also a child. That question has been firmly resolved by this amending legislation. The bill also protects the right to go to the Children's Court when a child or his or her guardian so elects. A child can have his or her case heard in the Children's Court with all the sensitivities attached to that court and its proceedings. On the other hand, the legislation also protects the situation in which a matter is before an adult court. Magistrates are now under no illusion that they have the power to make these orders, and Parliament expects that the orders will be made and that children will not be subject to dual hearings. For these reasons, the opposition supports the policy behind and the detail of this bill.

DR A.D. BUTI (Armadale) [11.31 am]: I rise to make comments on the Restraining Orders Amendment Bill 2013. The member for Butler has articulated the opposition's support for this bill. It is a commonsense bill on restraining orders. The exchange between the Deputy Premier and the member for Butler mentioned why section 68 is not being used by the Magistrates Court to allow restraining orders to be extended to children who may be subjected to violence or the threat of violence, and therefore need to make applications in the Children's Court. It is interesting that the Restraining Orders Amendment Bill 2013 is a consistent flow-on from the amendments to the Restraining Orders Act 1997 made in May 2012, which came out of the 2008 statutory review of the act. The statutory review examined concerns about the Restraining Orders Act. The review stated —

> … violence restraining order applications for the protection of a child be permitted to be taken out in both the Children's Court and the Magistrates Court jurisdictions.

The review made it quite clear that with regard to children, applications should be permitted to be made in both the Children's Court and the Magistrates Court. The Department for Child Protection and Family Support made submissions to that review in which it referred to how, in normal circumstances, the Children's Court is the best environment and jurisdiction to hear applications for restraining orders regarding children, because the Children's Court has the best interests of the child as its paramount interest. The whole jurisdiction of the Children's Court is that the child's best interests are of paramount importance. That is what is expected of the Children's Court. There is no reason why the Magistrates Court should not also give paramount importance to the best interests of the child. Family law and child protection et cetera have developed over time to the point at which the best interests of the child are of paramount importance. When asking whether a child is to be removed from their parents and placed somewhere, the issue that is of greatest importance is supposed to be the best interests of the child. Of course, we know that that may not always be the case. There are many cases from the Family Court in which we are told that that is not the case. Of course, the view that one takes is always clouded by one's own bias. It is always interesting when people talk about objective analysis, because one's objective analysis is often determined by one's subjective position. There is a view that in matters before the Family Court, the best interests of the child are not always of paramount importance and parental rights come into play. This is often in custody matters whereby, arguably in some cases, it may not be in the best interests of the child to be exposed to both parents in custody or care arrangements. It may actually be in the best interests of the child to remain with one parent. That is why a view is held by some—I do not have empirical evidence on this—that some magistrates who are not working in the jurisdiction of child matters day in and day out may not take the best interests of the child as of paramount importance, and that is why in matters of restraining order applications that apply to children, they may not be utilising section 68. The converse of that is the problem of having to make another application. If the magistrate will not widen the parties to the restraining order to include the children, a separate application needs to be made in the Children's Court, which can be immensely stressful for the adult taking out the restraining order and the children.

This bill seeks to make the situation quite clear. As the member for Butler said, we do not really need this bill because it is quite clear—although maybe it is not quite clear to magistrates—and a proper reading of the law tells us that a restraining order application applying to children can be taken out in the Magistrates Court and/or the Children's Court, but that does not appear to be occurring. The government has brought in the Restraining Orders Amendment Bill 2013, which seeks to make it quite clear and is consistent with the statutory review of 2008. As the member for Butler has stated, the opposition supports this bill.

DR K.D. HAMES (Dawesville — Minister for Health) [11.38 am] — in reply: I would like to start by going back to some of the comments made in the second reading debate on the Restraining Orders Amendment Bill 2013. I note that the member for Kwinana is here now—although he has just briefly left the chamber, I am sure he will return—so we are able to proceed to the conclusion we seek. Until the member for Kwinana returns to the chamber, there are a couple of points I want to make.

First, it is quite interesting that we were discussing the need for prolonged speaking and the delaying of bills, and I happened to mention—is it the member for Mindarie?

Mr J.R. Quigley: I am the member for Butler.

Dr K.D. HAMES: I mentioned Hon Tom Stephens and his propensity for prolonged speech, and, lo and behold, I walk into the corridor and there he is—he is just outside visiting the chamber. I informed him that the member for Butler could not hold a candle to him and only managed nine minutes. I forget what his record was; it was an extraordinary period of time —

Mr J.R. Quigley: I think it was on the abortion bill.

Dr K.D. HAMES: I think he had to fill in one or two days of debate and he managed to do that.

This legislation is important. Even with two lawyers in the chamber, we do not understand exactly why magistrates are not following the intent of the legislation, which is to allow children's issues to be heard in their court, the adult court, and making them go through the process twice. This legislation is critically important for any parent going through the trauma of either a broken marriage or keeping a partner who is the father of the children away from those children. We want to ensure that those children can be easily and quickly protected and not need to go through what has, in effect, become a dual process. Again, I will read the first small component of the second reading speech, which states —

> … since the introduction of recent amendments to the Restraining Orders Act 1997 in May 2012, the government has become aware of a practice —

Whereby some magistrates send a parent to the Children's Court to file a separate violence restraining order to protect their children rather than utilise section 68 of the act that allows for an order such as a parent's order, to be extended to apply to other applicants. The second reading speech continues —

> Consequently, distressed parents need to attend two separate courts in order to gain protection for themselves and their children. This was never intended by legislation and is plainly an onerous and unnecessary burden for a parent already suffering from violent abuse.

The government has determined that it will correct this. This legislation does that. I appreciate the support of the opposition. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Dr K.D. Hames (Minister for Health)**, and passed.