

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

*Second Reading*

Resumed from 16 November.

**DR A.D. BUTI (Armadale)** [12.18 pm]: I would like to make a contribution to this very important Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016. Unfortunately, I was not here to hear the debate that commenced last night, because, as we know, school graduation times have arrived.

**Mr J.H.D. Day:** I was happy to carry the debate over to allow you to speak.

**Dr A.D. BUTI:** Thank you very much. I really appreciate that, Leader of the House. You have always been a gentleman and you showed that last night.

As I am sure speakers on this side of the house mentioned, the opposition supports this bill. It is a shame it has taken so long for it to come before this house. As we know, there have been many reports on family violence. The Law Reform Commission of Western Australia “Enhancing Family and Domestic Violence Laws” final report came down in June 2014. This bill is allegedly the response to the Law Reform Commission report. I am told that the Attorney General has been sitting on this. People in the community involved in family violence have known about this bill for a long time. They have been wondering when it would come before Parliament. For some reason, the Attorney General has waited for the penultimate hour to bring it before the house. It is just a shame that for something this important, the Attorney General waited so long before bringing it to Parliament.

I think members who spoke last night would have mentioned some other reports, including the Ombudsman’s report “Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities”, which was handed down last year. Only last week a report was tabled one year on from that first report, headed “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*”. There has been a lot of work done in this space. What do we have now? We have this bill before the house. As other speakers on this side and I have stated, we are supportive of the bill. However, having said that, we do not see it as being the ultimate bill that should have come before the house—the Rolls Royce version—but it does make some significant inroads into the legislative framework to fight this scourge in our society. If we happen to win the next election, I am sure that we will come back not long after Parliament commences with improvements and further legislative reform. I am sure that if we are unsuccessful, which I hope is not the case, and the government shows a bit more urgency in this area, we would support any measures that deserved to be supported in trying to fight this crime.

The definition of “family violence” in the bill follows the definition in the commonwealth Family Law Act, and that is something we would agree with. However, one has to be a little careful. Although we should have a broad definition of “family violence”, it may be important to also have a sub-definition of “intimate partnerships” or “intimate relationships”. That would pick up on the traditional domestic violence scenario of a husband and wife or de facto couples, which is different from the issue of violence between a father and a grown-up son or between two brothers. That is all family violence, which this bill is dealing with, and we agree with that, but we need to look at the different relationships. I do not think that one bill should treat all family violence as similar issues; we need to also look at the intimate partnership. If one looks at the intimate partnership, it cannot be denied that family or domestic violence is a gender-based crime. There are males who are victims of intimate relationship violence, but generally it is male-on-female violence. I should say that there has been an increase over the years in domestic or family violence in the lesbian, gay, bisexual, transsexual, intersex community. I wanted to make that point because in the Ombudsman’s report that I mentioned, which investigated 30 homicides over an 18-month period, there were, I think, 12 cases in which there was a male victim, which is unusually high. If we look at that, we see that some of it related to grown-up brothers, for instance. Often that was a one-off scenario—there was one argument. Of course that is terrible, and this piece of legislation is trying to assist, but what I am saying is that that is a different factual scenario from what has traditionally been considered to be domestic violence.

Before I go on, I acknowledge the students, staff and parents from Comet Bay Primary School in the electorate of the member for Warnbro. You have an outstanding local member there. Hi. How are you going? I hope they have enjoyed their day in Parliament.

The Deputy Premier, who has responsibility for this bill in this house, mentioned that the bill has four main objectives. I do not think anyone can complain about those objectives; they are things that we need to attend to. The first objective is that the bill introduces a new category of restraining order crafted specifically to deal with family violence. We do not have an issue with the new definition of “family violence”. The minister’s second reading speech referred to the important issue of cyberstalking and the distribution of intimate images, and that

should be applauded. Another issue that was mentioned was risk-management approaches in the courts. That is very important. We will have to see whether more funding needs to be provided for that. The second objective is that the bill includes a range of criminal law amendments aimed at strengthening the criminal justice system response to family violence. Of course, we would not disagree with that. The third objective is to make amendments to the Prisons Act and the Sentence Administration Act. The fourth objective deals with two interesting issues—the first is in regard to amendments to section 281 of the Criminal Code, which I will talk about shortly, and the second is the issue of violence against a pregnant woman, or pregnant person. It is only women who are pregnant, is it not?

**Ms L.L. Baker:** Generally.

**Dr A.D. BUTI:** Generally; well, I think all the time actually!

Before I forget, I seek an extension of time.

[Member's time extended.]

**Dr A.D. BUTI:** One never knows; I might have forgotten.

The amendment to section 281 of the Criminal Code is interesting. Back in 2012, the Leader of the Opposition, Mark McGowan, introduced a bill that sought to amend section 281 to increase the maximum penalty to 20 years. The government said no to that. Only this year, the Leader of the Opposition introduced another bill, one of the clauses of which dealt with amending section 281 of the Criminal Code. The government voted against it. If I recall correctly, in 2012 when the opposition first introduced a bill to seek to amend section 281, the Attorney General lambasted it and said that it was grandstanding. It is interesting that we now have in this bill an issue on which the government seeks to amend section 281 of the Criminal Code, which we commend. This is where I am not sure that the Attorney General gets it when it comes to family or domestic violence. The Attorney General, and, I think, the Deputy Premier, mentioned that this bill before the house is in response to a report by the Law Reform Commission of WA. Recommendation 44 of that report states —

That s 281 of the *Criminal Code* (WA) be amended to provide that if the offence of assault causing death is committed in circumstances of aggravation the maximum penalty for the offence is 20 years' imprisonment.

The issue there is the term “in circumstances of aggravation”. One of those circumstances of aggravation is family or domestic violence. I am trying to make the point that this is different from other murders that are prosecuted under section 281. The minister made the appropriate point that it is erroneously referred to as one-punch homicides. I get what the Deputy Premier was saying, but in effect that was the motivation for the initial section 281, because there was an issue with the situation in which a stranger punched someone and did not intend to kill them but they hit their head and they died. Although we of course supported it—we had been advocating for the maximum penalty to be increased to 20 years—we were actually arguing for it to apply in cases of family and domestic violence. What the government has done in this case is to just make it a blanket 20-year maximum penalty regardless. That argument can be made—I am not saying that it cannot—but it would have been nice in this bill, which has “family violence” in its title, to actually make the distinction that it would be only in circumstances of aggravation such as family violence that the penalty would be increased to 20 years. Unfortunately, the Attorney General did not see fit to do that.

It is of course better that we have the Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016 than nothing; the opposition has been calling for something since 2012. The well-known, sad case of Saori Jones was of course the catalyst. The Attorney General tabled a report in the other house about two years ago on the operation of section 281 that recommended what we brought before the house. This blanket approach to the issue of section 281 of the Criminal Code is a bit strange.

I believe the member for Fremantle will introduce an amendment to provide special witness status to victims of family violence. To tell members the truth, I am very surprised that this bill does not include such a clause. It is a very simple clause—it was in the bill that the Leader of the Opposition introduced a while ago—and I look forward to the member for Fremantle introducing that amendment. Hopefully, the government will support it, because I cannot see how it could be contentious. Surely we want to reduce the trauma that victims of family and domestic violence face in the court system. If the victims have to be in the same courtroom as the perpetrators, it will only re-traumatise them. If a perpetrator is self-represented, they have the right to cross-examine the victims. Surely that is something we should be strongly working against; it is a real problem in the Family Court.

I have not had a chance to look at the speech the member for Fremantle gave last night, but I am sure she mentioned something about housing issues. Granted, they probably should not go in this bill, but it is an important issue. The Labor Party took the issue to the last election, seeking amendments to legislation to provide better housing protection to victims of domestic violence. Often, the mother and her children have to leave the

house. It is very difficult to find shelter, particularly if they have a son aged 15 or 16 because a lot of shelters will not allow males to stay overnight. The policy we took to the last election was to provide protection to victims of family and domestic violence, particularly those who live in public housing, if they were not at fault for a breach of the tenancy agreement. We believe they should be protected and be able to stay in their house because it makes more sense if the children are going to nearby schools et cetera; we would obviously have to ensure the victim's safety. It is very, very important to provide legal protection for the accommodation and housing rights of victims of family and domestic violence. If the Labor Party is elected next year, hopefully we will pursue that.

Another report I have so far not mentioned has come out about family and domestic violence. It is from the Community Development and Justice Standing Committee, of which I am a member. The committee handed down a report titled "A measure of trust: How WA Police evaluates the effectiveness of its response to family and domestic violence". The report looked at how Western Australia Police evaluates its work in the area of family and domestic violence. I am not sure whether it has been improved, but at that time there was only one key performance indicator on this. Also, under the Frontline 2020 model the specialised family and DV units stationed at stations such as Armadale or Cannington were disbanded. I have questioned the minister on this a number of times. She has a different point of view from me, but the evidence presented to the committee strongly suggested that those units need to come back into operation.

On the issue of police, I want to relay a story. On Monday one of my constituents approached me in a panic. She said, "Tony, I need your legal advice." I asked what the issue was, and she said, "My daughter was subjected to violence from her partner on the weekend." She said she could not go to Armadale Police Station, obviously, because Armadale Police Station is not open on the weekend.

**Ms L.L. Baker:** You should do something about that!

**Dr A.D. BUTI:** Where is my T-shirt?

This is a serious matter. She went to Cannington Police Station, which is a 24/7 public access police station. Of course I was not there—I am only relaying what the mother said to me. She said that when they went in seeking a violence restraining order, which of course the police cannot actually issue but they could have issued police orders, allegedly the police officer said, "There's nothing I can do." This woman was a victim of domestic violence over the weekend. She could not go to Armadale Police Station, she went to Cannington Police Station and the police officer allegedly said, "There is nothing I can do." That is an appalling situation. I am more than prepared to give the minister the details if she wishes to follow that up, because I do not think that would be an appropriate response if it did happen.

**Mrs L.M. Harvey:** Is that the same issue that you were talking about before that has been followed up?

**Dr A.D. BUTI:** Has it?

**Mrs L.M. Harvey:** And the officer who gave the inappropriate information has certainly received counselling with respect to that.

**Dr A.D. BUTI:** Very good, thank you.

**Mrs L.M. Harvey:** I believe that the victim in that instance is being cared for appropriately too, now.

**Dr A.D. BUTI:** Great. I thank the minister very much for that.

We need to constantly educate our police officers about this situation. It is very difficult because police have to deal with many different issues, but the rate of family domestic violence assaults has increased enormously. One of the arguments will be that there is better reporting; people are more prepared to report because police will respond, generally, more appropriately than at Cannington that day. That is true; I do not deny that. But last year, I think in a 12-month period, there was a 100 per cent increase in homicide as a result of family violence. That cannot be down to an increase in reporting, because all homicides are reported. If there has been a 100 per cent increase in homicides in a family violence scenario in 12 months, it shows that this scourge is a real problem. That is why we need the legislation that is before the house today. The minister could have brought this legislation in last year, but the minister has waited until not the penultimate day but the ultimate day in the Legislative Assembly. I cannot understand why this Attorney General has been so unwilling to bring this legislation before the house. I understand he has been sitting on this for a long time, and shame on him for waiting so long to bring it before the house.

There is no doubt that this bill will reduce some of the difficulties a victim has in obtaining a violence restraining order, and that is to be applauded; however, issues remain. The Labor Party policy from the last election states —

The only recommendation of the 2008 Review Report of the Restraining Orders Act 1997 not to be incorporated into the 2011 amending legislation was recommendation 8. This recommendation

supported domestic and family violence victims being granted an automatic VRO during criminal proceedings if the offender was charged and convicted of a family or domestic violence related offence against them.

The 2008 Review Report noted a large volume of submissions supporting the intent of recommendation 8, which sought to reduce unnecessary duplication, re-traumatising, anxiety, distress and inefficiency that can result “when violence restraining order applications are not adequately integrated with the criminal offence process where the incident giving rise to both proceedings is the same”.

Although pursuant to section 63 of the Restraining Orders Act 1997 criminal courts have discretion to make VROs during criminal proceedings, the discretion has rarely been exercised. What is needed is legislation providing for automatic VROs for family and domestic violence offences. Such legislation has been in existence in NSW for some time without creating problems.

Granted, this legislation is an improvement, but it does not go to that degree. This brings me to a couple issues raised by government members last night; I managed to have a quick read of these. I thought that the member for Southern River made some interesting comments. He talked about the concern of reducing the evidentiary burden for people seeking to apply for a violence restraining order. He refers to a *Quadrant* —

**The ACTING SPEAKER (Ms J.M. Freeman):** Member, you cannot quote from the uncorrected *Hansard*.

**Dr A.D. BUTI:** I am not going to quote. I am using it just as a reference.

The member for Southern River referred to a report in *Quadrant* by Dr Augusto Zimmermann from Murdoch University raising concerns about reducing the evidentiary bar. He also talked about how that may result in false accusations and people obtaining violence restraining orders when they should not. I think that is worth the risk. I do not think that it happens very often. He mentioned that more people have come to his office complaining about the misuse of violence restraining orders. Of course, his electorate is different from mine, but I will tell members one thing: that has not been the case in my electorate. I have had the victims of domestic violence coming into my office to complain—for example, the woman who came in last Monday or her mother. It is a shame that I was not in the house last night, but I would really like to know how many people have gone into the member for Southern River’s office and complained about having a violence restraining order issued against them when that should not have been the case. Having worked as a lawyer previously, I have to say that one rarely finds anyone who has had a violence restraining order issued against them who believes that they should have had it issued against them. That is not unusual, but they have not come into my office to say that. Victims come into my office. I was very concerned to read that comment from the member for Southern River.

He also talked about the injustice that takes place—I am not quoting *Hansard*, Madam Acting Speaker—when people are falsely accused of domestic violence and the consequences. At this stage, if a VRO is issued, it is not a criminal offence; it is the breach that is a criminal offence. Of course, if a potential employer finds out that a VRO has been issued against a person, it might have some consequences—but it is not a criminal offence at that stage. My view is that maybe it should be, but it is not. It is only the breach that is a criminal offence. The consequences of a wrongly ordered violence restraining order are minuscule compared with the consequences of not issuing a violence restraining order when it should be issued. The member for Southern River has his priorities wrong. If he is more concerned about the possible injustice that might be caused by the issuing of a violence restraining order vis-a-vis the consequences of not issuing a violence restraining order, the difference is chalk and cheese, but the consequences of not issuing are far worse.

The member raised the matter of interim violence restraining orders being issued without evidence from the defendant, but the whole point of an interim measure is that it is used in an emergency. A violence restraining order needs to be issued, then there is a full hearing and a determination is made about whether that violence restraining order should remain in place. The final violence restraining order is not issued without the ability of the defendant to present their case. The member for Southern River must have a completely different electorate from mine if he thinks that the major concern is people being issued a violence restraining order when they should not be issued with one. I am not saying that that it is not an issue, because some people falsely use it as a weapon; I understand that. But the consequences of that are nowhere near as bad as the consequence of not providing the appropriate protection for victims of family violence—although, as we know, VROs often do not protect people. The disgraceful situation involving Andrea Pickett shows that it does not provide foolproof protection, which is why we need GPS tracking. We finally have that provision in the sentencing legislation that has just been passed, although I am not 100 per cent sure about that; I was not involved in that process with that legislation. I presume that that happens only after a person has been incarcerated. Is it right that a GPS will not be issued to a person who has had a VRO issued against them if they have not gone to jail?

**Mrs L.M. Harvey:** It can be somebody who has not spent any time in custody, as I understand it.

**Dr A.D. BUTI:** Okay.

In my final couple of minutes, the member for Eyre raised an interesting issue about this Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016 and the offence that is created when a pregnant woman is assaulted in a domestic violence situation. I know that proponents or supporters of pro-choice—I am also a pro-choice supporter—have concerns about this. I think that some of that concern is mislaid. The Attorney General explained this issue reasonably well in his second reading speech, but there is a difference with this situation: we are considering the greater harm that is inflicted upon a pregnant woman if she is assaulted and it results in some damage to the foetus. This is different from saying that this now leaves what possibly could be the reopening of the abortion debate. That is not really the case because we are talking about the reproductive choices of the victim. In an abortion scenario, the pregnant lady has made that choice. In this scenario, she has not made the choice to be assaulted and for her foetus to be damaged. People are worried about the legal status of the foetus. The foetus does not have full legal status, but we can deny that with the current law that the foetus has a legal status, because even under our abortion law a woman cannot just go and have an abortion; she has to follow certain procedures.

I have run out of time; what a shame.

**MS L.L. BAKER (Maylands)** [12.48 pm]: I have about two minutes before 90-second statements commence. I would like to contribute to this discussion and I will hopefully pick it up again as soon as we come back after question time.

The Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016 covers an area that I am particularly interested in. The law around family violence and restraining orders, as the minister quite rightly pointed out, is challenging and involves a wide range of complex human interactions, behaviours and relationships. In particular, I would like to focus on the coexistence that has been well documented now between family violence and animal cruelty. I would like to talk in some detail about the international and local research into this area and the strategies that we should be progressing to address this coexistence because, clearly, we find that animals are commonly harmed or killed as a form of family violence. A significant number of women and their children remain in abusive relationships due to concerns for the safety of the animals in their family. It is with great interest that I intend to pursue this in some detail after the break and focus on the issues that have come to light from research—in particular a major piece of research conducted in New Zealand several years ago. That report has some very good pointers to the way we might try to understand the role of pets and incidents of animal cruelty, understand the way perpetrators use pets to prevent victims being able to leave a violent home and to identify the barriers and the facilitators to victims of family violence being able to extricate themselves from family violence situations while they are safeguarding animals.

Debate interrupted, pursuant to standing orders.

[Continued on page 8361.]