

## **RESTRAINING ORDERS AMENDMENT BILL 2013**

### *Introduction and First Reading*

Bill introduced, on motion by **Hon Michael Mischin (Attorney General)**, and read a first time.

### *Second Reading*

**HON MICHAEL MISCHIN (North Metropolitan — Attorney General)** [5.35 pm]: I move —

That the bill be now read a second time.

In cases of apprehended violence in a domestic context, an applicant seeking a violence restraining order under the Restraining Orders Act 1997 may have children that he—or more commonly she—is also anxious to protect. Section 68 of the act allows a court to extend the operation of any order made in favour of a parent to also protect the applicant's children. However, since the introduction of recent amendments to the Restraining Orders Act 1997 in May 2012, the government has become aware of a practice having developed among some magistrates of not utilising section 68, requiring a parent to make a separate application to the Children's Court of Western Australia for a violence restraining order to protect their children. Consequently, distressed parents need to attend two separate courts in order to gain protection for themselves and their children. This was never intended by the legislation and is plainly an onerous and unnecessary burden for a parent already suffering from violent abuse.

The bill proposes an amendment to section 25 of the act to make it unequivocally clear that a child applicant, or a person making an application on behalf of a child, or both, may be granted a violence restraining order in the Magistrates Court. At the same time, this amendment retains the spirit and intent of the original 2012 amendment that sought to allow for a child seeking the protection of a restraining order to be heard in the Children's Court, with all the sensitivities of that jurisdiction.

The amendment is consistent with the recommendation of the 2008 statutory review into the act that “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 recommendations of the review were made following extensive consultation with some 189 individuals and organisations involved in addressing domestic violence in our community. This particular recommendation was partly informed by a submission from the then Department of Child Protection, which suggested it would be an improvement should child applicants have their applications taken out in the Children's Court stating, “The department believes that there would be merit in considering developing provisions to enable any application on behalf of a child to be made in the Children's Court notwithstanding the existence or otherwise of protection proceedings. Children's Court Magistrates have the experience to provide a more sensitive approach consistent with the paramountcy of the best interests of the child.”

I am satisfied that this amendment to the Restraining Orders Act succeeds in both allowing child applicants to have their applications heard in the Children's Court and at the same time ensures that magistrates have the legislative power to either use section 68 to extend a parent's order to apply to the parent's children, or to grant separate orders for child applicants in the Magistrates Court.

In addition to the amendment to section 25, the bill proposes a consequential amendment to the Children's Court of Western Australia Act 1988 to allow for all orders relating to children under the Restraining Orders Act to be heard in the Children's Court. The bill also proposes some minor amendments to the Restraining Orders Act to correct references in the act to legislation that has since been amended, leaving those references redundant.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party, nor does this bill by reason of its subject matter introduce a uniform scheme or uniform laws throughout the commonwealth.

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

[See paper 352.]

Debate adjourned, pursuant to standing orders.