FAMILY VIOLENCE LEGISLATION REFORM BILL 2019

Second Reading

Resumed from 27 November 2019.

MR P.A. KATSAMBANIS (Hillarys) [4.30 pm]: I rise as the lead speaker for the Liberal Party to speak on this extremely important bill. From the outset, I indicate that the Liberal Party supports the Family Violence Legislation Reform Bill 2019. The bill deals with a subject matter that is not just serious and important, but also extraordinarily topical. It is a subject matter that should not be treated in a partisan political way. It should be treated as an important aspect that defines a modern society—a society that accepts axiomatically that violence, particularly family violence, has no place in our world. It has no place in people's homes and it has no place anywhere in our community. If we start from that very simple and basic premise, I think we can all work together to achieve great outcomes that change attitudes and change lives. The two go hand in hand in many ways, and I will expand on that as I go through my contribution to this important debate.

The bill before us is the Family Violence Legislation Reform Bill 2019. As the Attorney General pointed out in his second reading speech, it is essentially an omnibus bill that covers a wide range of areas over a series of portfolios. It covers the government's response in this term of office to the issue of family violence in our society. It is an attempt by the government to not only modernise the law, but also make it easier for victims to seek protection and to seek justice, and for perpetrators to both be appropriately punished and have their behaviour changed. Its aims are worthwhile. Its principles are worthwhile. We cannot find fault with that. As we go through the complex operation of the bill, we will highlight some issues that we believe are worthy of at least consideration.

I reiterate that family violence in all its forms is completely and utterly abhorrent and should not be tolerated in any way, shape or form—not in Perth, not in Western Australia, not in Australia and not across the world. We absolutely need to and must protect and assist victims. We need to address the issues relating to perpetrators. As I said earlier, we need to punish them, but, at the end of the day, in this sphere punishment is not enough. We have to effect serious attitudinal change.

There have been many, many reports across Australia on this subject. In his second reading speech, the Attorney General referred to both the Australian Law Reform Commission's 2014 report "Family Violence—A National Legal Response" and the Law Reform Commission of Western Australia's 2014 report "Enhancing Family and Domestic Violence Laws: Final Report". Another report that is at the forefront of achieving that change in attitudes and outcomes is the 2016 report of the royal commission that the Victorian government established, sadly, as the result of a horrific tragedy, the death of Luke Batty. The royal commission made over 200 recommendations. It was chaired by Professor Marcia Neave, who happened to be one of my law professors when I was at law school way too long ago. Interestingly, the Victorian government at the time accepted all the recommendations and started implementing them and has continued to implement them, and I will refer to them quite a bit as I go along. When the Victorian government received that report and realised the enormity of the task before it, it made a fundamental commitment to effect change. Behind that fundamental commitment, it put in an extremely huge sum of money—$1.9 billion in the first instance—and it has indicated that more money will be coming as the first, second and third tranches of the reforms take place.

The Western Australian government has made a reasonable attempt to deal with the complex issue of family violence and it has made a reasonably good attempt at putting together a reform package that will improve things. However, the question that remains as I work through this legislation, and I will try to do so in the time remaining to me, is: what is the actual commitment to provide real resources to effect that change? It is easy to change the way that systems operate, but if those systems are not resourced properly, there will not be capacity to effect real change on the ground. Although this bill is a starting point for the government, the real test for it is in putting some real resources behind what is necessary to effect change and perhaps also—I will suggest this as I go along—looking at future reforms that go further and may make an even bigger difference. I hesitate to criticise the government on this, because, as I said, it should not be political, but I raise the alarm that legislation alone will not fix this problem; it will need a serious commitment backed by serious money that goes to the heart of the issue, and the heart of the issue is addressing victims and perpetrators properly.

We need to resource all elements of the system—from the police, courts, legal aid and victim support services to behavioural change programs all across Western Australia. We cannot just tinker at the edges, and I will talk about what some of the other states are doing in a moment; we have to go all in on this. It is what the Australian Law Reform Commission and the Law Reform Commission of Western Australia have told us in their reports. It is what the groundbreaking royal commission in Victoria, headed by Marcia Neave, told us. It is what the community is crying out for, especially those victims who live in fear and who fear that what they have experienced in the past may happen to them again. We owe it to those victims. I do not think I need to spell it out. In the last month, the

horror of family violence in its most extreme form confronted us again. I referenced Luke Batty, but the funeral of Hannah Clarke and her beautiful young children was held yesterday, so it is fresh in everybody's mind.

I am the Chair of the Parliament's Standing Committee on Community Development and Justice. It is interesting to note that our committee is currently conducting an inquiry into how issues of family and domestic violence are dealt with through our court system, in particular our Magistrates Court, which is the ground zero of our court system, and what we can learn from other places and how we can do things better. I certainly do not want to breach any of the standing orders and conventions around committee deliberations. However, clearly all the members of the committee have heard graphic evidence and have gained a deeper understanding of the complex issues around family violence and how they manifest themselves and impact both the primary victims and secondary victims, and their families. That has been really helpful in informing the members of the committee. Without foreshadowing what the committee might report, and certainly without entering into committee deliberations, I think that the information we have gathered, and the package that will be presented to this Parliament, will be useful in providing a further step forward into the future. I hope that the ministers responsible for this area will appreciate that the committee process and work is always valuable, particularly in this sort of area. This is not a partisan political issue. On this issue, we are all in it together.

This bill is very complex. Therefore, the easiest way for me to address the specific issues in the bill is to go through each part as outlined in the Attorney General's second reading speech. I note that the Attorney General has kindly provided me with a series of amendments that the government proposes to make to this legislation. Some of that has arisen from the fact that since this bill was introduced and laid on the table last year, there has been considerable community consultation, clarification and improvements, and a few other things. I therefore intend to deal with the bill as it is, and remove some of the commentary I might have made about some of the things that will now be removed, and leave the proposed changes to the consideration in detail stage. To be fair, I was presented with the proposed amendments only today; therefore, hopefully, we will get to that tomorrow rather than today so that we can have a coherent and informed debate about that.

Part 1 of the bill deals with preliminaries. Parts 2 to 10 deal with the proposed changes to nine specific pieces of legislation. I will deal first with part 2, which outlines the proposed amendments to the Criminal Code. It introduces the offence of non-fatal strangulation. That is seen nowadays as an additional protection for victims. It recognises that actions of strangulation and non-fatal suffocation against a partner are a very strong indicator of further escalation of the violence into more horrific acts such as homicide. Other jurisdictions in Australia have introduced similar provisions around strangulation and non-fatal suffocation. In our particular instance, in order for an offence to be committed, there is no need for the perpetrator to completely stop the victim's breathing or blood flow; there is only a need to impede either, or both, of those. That is obviously sensible. Unlike some other jurisdictions, the offence proposed in this bill does not specifically include the element that the offence occurred without the consent of the victim. It has been brought to my attention—I have not gone back and looked at it—that the issue of consent has been the subject of some complex jurisprudence, particularly in Queensland. As the Attorney General pointed out in his second reading speech, removing the explicit reference to "without the consent of the victim" will spare the need for the victim to give evidence at every single trial when it is not necessary to do so. However, I point out that new section 298, which is proposed to be inserted into our Criminal Code, expressly requires that —

> the person unlawfully impedes another person's normal breathing, blood circulation, or both …

Unlawful impediment is still an issue, and, in some cases, whether it is lawful or unlawful, will involve a question of consent. I think that is unavoidable. However, it will depend upon the facts and circumstances of each case. Irrespective of that, I hope that unscrupulous perpetrators will not try to make spurious claims in these sorts of charges that would then require a victim to give very intimate and harrowing evidence when they otherwise would not need to do so. We need the reference to "unlawfully impedes". I just hope it is used in the right way and not the wrong way, because we do not want to re-traumatise or further traumatise victims when giving evidence in these sorts of cases.

Part 2 of the bill also introduces an offence of persistent family violence. This builds on the findings of the Australian Law Reform Commission in its 2014 report that I referred to earlier. It deals with a circumstance in which the violence was ongoing; however, the victim is not able to detail the individual acts of abuse to a level that would enable multiple charges to be laid. As we learn more about the behaviour of perpetrators and the insidious and ongoing nature of family violence in some extreme circumstances, we understand why we need to protect victims by the introduction of this offence. We cannot expect victims to remember dates and times, especially when we know that in many cases, be it for cultural or other reasons, victims may hesitate to report family violence for quite a long time. Also, the very fact that a victim is enduring family violence may of itself make it difficult for them to particularise and remember every single incident in chronological order. We do not want a perpetrator to face fewer or less serious charges and end up with a lighter sentence than they ought to for the violence that they have inflicted upon a victim just because the victim is unable to identify each particular crime and sequence of events.

The offence that is proposed to be created requires that the offender commits three or more acts of family violence against a person with whom they are in a designated family relationship over a period not exceeding 10 years. That will apply to both current and former partners. It could be violence against a person who is still a partner of the perpetrator, or a person who was a partner of the perpetrator. However, it will apply only to offences against a single victim. It will also apply only to victims who are in an intimate relationship. That includes a marriage or de facto relationship, or some other form of intimate relationship. It will not apply in circumstances in which a perpetrator might have caused harm to other family members, including their children.

The new offence created through this bill will be partially retrospective, because it will apply to acts committed before the bill came into force, if those acts were unlawful at the time they were committed. The alleged perpetrator will be liable for this new offence if the actions that count up to the offence—that is, the three or more actions in 10 years—were unlawful at the time they were committed. I do not particularly like retrospective legislation, but I am comfortable with it in this instance because we know the harm we are trying to avoid and we also know that the nature of this type of offending causes victims horrific re-traumatisation every time they have to relive what has gone on. It is similar in some ways—not in all elements—to section 321A of the Criminal Code, which relates to persistent sexual conduct with a child. Just like section 321A, this provision will ensure that perpetrators do not get away with their crimes simply because their traumatised victims cannot particularise every single detail of every single attack. I will point out—perhaps we will deal with this in consideration in detail—that the provision in proposed section 300(7) in relation to what juries need to be satisfied of appears to be a little convoluted and confusing. I note subsection (6) is being removed but subsection (7) is staying. Having read and reread this proposed subsection, it does seem to be logical and makes sense to me as a lawyer, but I think we probably need to work through it in consideration in detail just to make sure that if those wiser minds in the legal fraternity look at this in the future, they at least know what the government was intending with this particular provision in relation to what each juror needs to be satisfied of in order for a charge such as this to stick if it is heard in a District or Supreme Court.

The changes in part 2 also implement the recommendations made in the Law Reform Commission of Western Australia's 2014 report around aggravated penalties. I do not see any great issue with that; I think that is an area our law has expanded into. It is worthwhile ensuring that a crime of the type that constitutes family violence is exactly the sort of crime for which we have aggravated penalties.

In part 3, changes are made to the Sentencing Act 1995 and the Sentence Administration Act 2013. The first of those is the serial family violence offender declaration, which will allow a court to declare a person a serial family violence offender. Once a declaration is made, it will apply indefinitely, but a person will be able to apply to have the order cancelled after 10 years. That makes sense to leave it up to the person. If they want the order to be lifted, they can apply. To be declared a serial family violence offender, a person needs to have committed three prescribed offences, or at least two prescribed offences that are indictable offences only, within a 10-year period. Again, it is the counting up rule. Interestingly, this is different from the previous provision in relation to persistent family violence, as it can apply to offences against a single partner or multiple and successive partners. I think that makes sense, because we are saying that a person is a serial family violence offender—they can do it against one person and then against another. I note that it applies again only to partners or people in intimate relationships; it does not apply to offences against children, parents or elders. I am not criticising that, but perhaps we can see how this offence operates. I think this is the first time that any Australian jurisdiction has had this sort of offence. As we see some jurisprudence develop around it and how it develops, perhaps we could consider extending it in the future beyond just partners. Extreme family violence does not stop at partners; we know that it can involve children, siblings or, increasingly and sadly, parents. I offer that as a suggestion. I think it is something we need to look at in the future.

The declaration needs to be made prior to a court sentencing an offender, and if a declaration is made and then the court sentences the offender to a community-based order—it does not sentence them to jail—the court must consider an application for an electronic monitoring requirement. If the offender is in prison, when they appear before the Prisoners Review Board, the board will need to consider an order for electronic monitoring as part of a parole order, re-entry release order or post-sentence supervision order. The High Risk Offenders Bill is in the other place and we will see what happens to it when it comes out of there. That is as it is; the operation of that is logical. I will discuss some of the issues around it in a minute. If one of these declarations is made, it will prohibit an offender from holding a firearms or explosives licence. I think there is some provision, of course, for the court to vary that. If someone needs a licence to operate explosives on a site, they will probably be allowed to do that. We do not want to deny people the right to work, but they cannot hold explosives outside of a site. We will need to see how that operates in practice. We do not want people to be denied the right to work, but we know that perpetrators of family violence will often use the threat of access to explosives as one form of pernicious family violence against their victim. We do not want that to be open to them.

The declaration of a serial family violence offender also means that, upon arrest for a further family violence offence, a declared offender will be subject to a presumption against bail, and if bail is granted, consideration must be given

to imposing a home detention condition with electronic monitoring. There will be different views around whether this provision is good, bad or indifferent. My personal view, based on my experience and the information I have gathered in my current committee investigation, is that it is a welcome addition to the tools that are available to deal with perpetrators. However, several issues of concern should be discussed, and I welcome the minister's response in his summing up of the debate. I think there is a fear in the community that when provisions are introduced around the electronic monitoring of offenders, the monitoring and the existence of monitoring is often used as an excuse to avoid sentencing people to custodial sentences. That is a general concern and we can debate that up hill and down dale, but in the area of family violence, I think that feeds directly into the concerns in some sections of society, particularly among victims and victim support services, that family violence offenders are often not treated by our judicial system as the serious criminals that they are. A lot of that has to do with a lack of understanding, which I will get to in a minute when we talk about some of the other issues. We do not want to perpetuate the fear in the community that family violence is dismissed as less serious than some other serious offending. We need to watch the impact of the existence of electronic monitoring in practice. I raise that concern. I do not think it is a major concern at this stage, but let us see how it is implemented in practice.

Another perennial question is: Why is it only a presumption against bail if an offender commits a further family violence offence and they are deemed to be a serial family violence offender? Why not extend that to all offences, rather than just further family violence offences? We know that perpetrators might start a pattern of offending that leads to family violence. There may be an assault against a friend or family member of the victim—it might not necessarily be family violence—and eventually it gets to an assault of the person who is the victim. I think we need to look around it. Why is it simply a presumption against bail? If someone is declared to be a serial family violence offender and commits another family violence offence, why is it not simply a case of no bail? I think they are fair questions. They are the sorts of questions that victims ask, that people who support victims also ask and, I think, that the community increasingly asks. We do not want this revolving door of justice for perpetrators of family violence.

The provisions in part 3 deal with improvements to electronic monitoring of high-risk offenders. Improvements are always welcome, but, as I said earlier, there is a fear in the community that the use of electronic monitoring will become a default position and that fewer perpetrators will be jailed for family violence offences. That is something we need to guard against, because we do not need to send a message to victims that we do not treat these crimes seriously enough. If someone deserves to go to jail, they should go to jail. The fact that electronic monitoring exists should not be a reason not to send them to jail. It should be a reason to monitor them after they serve their appropriate sentence. That is all I am arguing here. I am not suggesting that we throw them into jail and throw away the key, although sometimes, with the events of Queensland last month in our minds, that might not have been a bad thing. We do not want to make things inadvertently worse for victims. We know also with electronic monitoring that some family violence offences, perhaps not the ones that lead to fatal consequences but still lead to serious consequences, do not even require proximity. They can be committed online or by telephone, so electronic monitoring is not going to stop that type of family violence from occurring in all of its forms. Also, the most serious types of family violence do not need a lot of time for the act to occur. Murder or serious harm can happen in a split second, as we saw with that horrific incident in Queensland last month. It is okay to have electronic monitoring, but unless there is an absolutely immediate response, a risk still remains, which is why we have to be careful that we do not use electronic monitoring as the default position but we use it as an addendum to our other processes and not as the process itself. This will monitor more people in the community. There are going to be more people being monitored in the community, make no bones about it. To monitor more people in the community, to monitor these dangerous offenders, we need additional police officers, additional community corrections officers, and where will they come from? How will this work in remote areas? How is electronic monitoring going to work in remote communities, both from a practical point of view and simply from a technological point of view? That is especially the case with offenders who may commit to living in an area, a large regional centre, where electronic monitoring is easy, but the fear is that they could go offline into a community where they could perpetrate the violence. Again, I understand that the Attorney General will say that the court will weigh all this up and that the considerations of the court will take all this to account, and make the right decision. I hope so, but I am flagging unashamedly that we should not treat electronic monitoring as the be-all and end-all. It is a good tool, but it is one more tool. It is not something that should give us absolute certainty. That was part 4, which amends the Sentence Administration Act.

In part 5 of the bill, we see changes to the Bail Act. It makes some welcome changes. It deletes 13A(3) so police will no longer be able to grant bail for breaches of family violence restraining orders and violence restraining orders in open areas. That reinforces the point I made earlier that victims often see family violence not being treated with the seriousness it deserves. Police can just grant bail for a breach of a restraining order. That will be gone when this comes into law, and that is a good thing. It elevates breaches of family violence restraining orders and violence restraining orders more generally into the seriousness that they deserve. But this will place additional resource implications on our already overworked court system. What additional resources will the government make available to courts and police prosecutors who will have to deal with these cases and this additional workload?

The changes to section 9 make it crystal clear that consideration of bail can be deferred for up to 30 days in circumstances of family violence to consider what bail conditions are necessary to enhance protection of the victim. In reading the existing section 9, it appears that this is already permissible, even though it is not expressly stated. I do not see anything wrong with the clarification that is being made by this amendment, but I seek from the Attorney General in summing up whether he is aware of any instances in which the current section 9 has been interpreted so narrowly that it would not allow or has not allowed this deferral and has led to a detriment to victims of family violence. I am not aware of any, but I would be interested to see whether the Attorney General is. As I said, it is a clarification rather than a new provision, but it is a good clarification to make it crystal clear. There are changes made to clause 2 of part D of schedule 1 to the Bail Act, and they are intended to clarify what a judicial or authorised officer needs to consider when deciding whether to insert protective bail conditions, apply for a restraining order or a combination of both for the protection of the victim. I understand what this clarification is aimed at; I just do not think that it addresses a concern that is often expressed by victims and victim support groups that when it comes to family violence, the Western Australian system comes almost exclusively to rely on protective bail conditions at the expense of seeking an FVRO or VRO, as the case may be. Although in our system judicial and police officers can apply for FVROs on behalf of the victim, the culture in Western Australia has been one of allowing victims themselves to make the application. In contrast, in a state like Victoria, around three-quarters of all family violence intervention orders, as they are called over there, are commenced by police on behalf of victims. It is going to be about the work done in breaking down that culture.

In a minute I will get to the lack of training for a lot of our judicial officers in what family violence really is. The breaking down of that culture will really assist victims, so what additional resources are being made available? What additional training is going to be made to people in our courts and to police prosecutors to allow this change of culture to happen so they stop relying only on protective bail conditions and they start recognising that an FVRO or a VRO could be more appropriate in a lot more circumstances than they are being used today through our court system?

In part 6 of the bill, the Restraining Orders Act is amended to allow conferencing for family violence restraining orders. It allows a form of shuttle mediation conference to be held in front of a registrar for contested family violence restraining orders. It is similar to a model that has operated for quite a while now in the Australian Capital Territory. Shuttle mediation is also used in different contexts in many Family Court proceedings. The concept of shuttle mediation is well known, and the idea is to have a less adversarial approach to family violence that will not further traumatise the victim and will hopefully allow perpetrators to gain a better understanding of the FVRO that will be issued against them, leading to better compliance. That is all well and good. As I said, the ACT has used this model for up to 20 years in some cases, and it reports a 95 per cent settlement rate at conferences and also a relatively low breach rate of 20 per cent. However, we are not comparing apples with apples here, because in the ACT all matters go to a conference, including matters that in Western Australia would never end up in a court because the respondent agrees to the order. In a large chunk of applications made in Western Australia, the respondent, the perpetrator, simply says, “Oh, well; I have been served an order. I’m not going to court; I’ll cop it”, and they walk away. Of course, that process saves time and it also saves victims further trauma. We are not comparing apples with apples with the ACT when we look at those clearance rates. Our model is slightly different, but it is based on the ACT model. There has been some significant criticism of the ACT model from victims and victim support services. Some of that criticism is around the fact that victims end up agreeing to conditions that would be less protective than those that a court would impose, and I think that is a legitimate concern. That feeds into concerns that manipulative perpetrators use the shuttle mediation process to further traumatise the victim through comments and by playing games. I have been in shuttle mediation conferences and non-court-mandated mediation processes in civil jurisdictions—remember, this is a civil jurisdiction—and games can be played even though people are not in the same room.

In the ACT there is also a concern that the deputy registrars used to mediate at these conferences appear to guide, or steer, parties to a settlement that leads to an agreement but may not necessarily lead to the best protection for victims. A culture seems to have built up of: “Churn it through quickly. Get them to agree to something. Sign on the dotted line. Send the parties away.” I do not think our victims deserve that. I do not think that Western Australia deserves that. I think our victims deserve a better hearing than that. I am happy to trial shuttle mediation. I know the Attorney General and his good officers in the Department of Justice have gone around and looked at the various schemes, but it is interesting that Victoria has gone completely the other way. It has gone away from shuttle mediation and has fully resourced specialist family violence courts as part of that $1.9 billion injection that I spoke about. It has specially trained magistrates and staff. In particular, it has one magistrate who deals with a whole matter. They deal with the civil parts of it, like the restraining order, and any criminal charges that arise. They look at the matter holistically.

Victoria has also gone further than that. It makes legal representation and support workers available for both victims and perpetrators. That is really important for a person coming up to things like cross-examination or simply being there and giving evidence. The existence of a legal practitioner for a perpetrator—a respondent—is critical in ensuring a smooth process. We know that. It also takes away a lot of that angst that sometimes comes

from self-represented parties. Victoria has specifically designed its courtrooms to include screens that allow a victim to give evidence without seeing the perpetrator. It has modified its court buildings to allow separate entries for parties, to avoid contact between the victim and the perpetrator. Critically, what Victoria also does is to use the magistrate and the authority of the court to effect a change of behaviour on the part of the perpetrator, including court-mandated behaviour change programs. To back all that up, Victoria has made a strong investment in support services for victims and a strong investment in behaviour change programs to actually try to change the behaviour of perpetrators. Whether those programs are delivered in the community or inside the prison estate, changing that behaviour is critical to the success of combating family violence.

Queensland is also trialling this intensive court-based approach with a specialist court at Southport, and it has already agreed to roll that out to more courts. After what happened there in the last month or so, it is even more critical. I have seen these courts in operation and they really do utilise the authority of the court to deal with offenders. The critical difference between Queensland and Victoria is that in Victoria, one magistrate deals with both the civil and criminal issues. That is not always at the same time, but that person has a full understanding of the case. They can issue orders that carry the full weight and authority of the court, to make it clear to perpetrators that what they are doing is not on and if they do not change, things are going to get even worse for them. At the same time, the magistrate gives the victim the satisfaction, again, that the court has heard them. They have not had to sit in a little room and sign a piece of paper, shuffling around; they have gone into the court, spoken to the magistrate or heard the magistrate, and the magistrate has assisted them in a proper way. Also, of course, there is provision to give evidence off site so that the victim does not even need to go into the courtroom; they can do it by video from a separate room if they so wish.

I fear that in this critical area we have gone with the cheap option rather than weighing up best practice and really going for best practice. We will see how it goes in operation. Shuttle mediation is certainly a lot cheaper than creating specialist magistrates, training them up and resourcing specialist courts and the like, but I do not think —

Mr J.R. Quigley: Can I interject?

Mr P.A. KATSAMBANIS: The member can interject.

Mr J.R. Quigley: Especially when you're dealing with the East Kimberley, and things like this, to try and get the magistrate specially trained.

Mr P.A. KATSAMBANIS: Whether we get a specially trained magistrate or registrar in the East Kimberley, it is the same issue.

Mr J.R. Quigley: It's not like Victoria where you can get to a central —

Mr P.A. KATSAMBANIS: It might not be, but I do not think we should use distance as an excuse for not implementing something. I think we need to be cognisant of our remote areas, including the Kimberley, and that they need special treatment and special consideration, but it does not mean that we simply say: "Because we've got remote areas, we're not going to go to the best possible option; we're going to go to another option." Whether we train a magistrate or a registrar, we still have to get specially trained people; otherwise, the system is not going to work.

As I have said, sending people off to a conference can have negative effects. I will not labour that point. What I will comment on, though, is that the Attorney General made the point in his second reading speech that his reforms will allow perpetrators to enter into an unenforceable undertaking to attend the behaviour change program as part of any agreed outcome at the conference. That, in itself, rings a strong alarm bell for me. It is an unenforceable undertaking. Is it not about time we made these perpetrators really accountable and have some enforceable undertakings, with the authority of the court behind it? If someone does not want to go to a behaviour change program, there will be consequences. It should not be unenforceable; it should be enforceable. That is another area that we have to look at. We need to improve it. This is a start. If this is one step along a time line on a continuum, we need to look at that and improve it.

Irrespective of that, the system that is being put in place still has question marks around resourcing. Has the government committed the resources to train court staff? Has it committed the resources to make sure enough conference rooms will be available at all courts in Western Australia? What is it going to do with the remote communities? How is it going to work there? Has the government committed resources to make sure that every court has separate entries and waiting areas for the victims and the perpetrators? Whilst we are at it, some criticism of the other places is why they keep making the victims come in through the tradesman's entrance. Why do we not make the victims walk in the front and make the perpetrators take the walk of shame through the tradesman's entrance? As we start remodelling our courts, maybe someone will take that in mind and make the victims walk in with their heads held high and the perpetrator walk in with their tails between their legs.

Has the government committed resources to providing legal representation and support services for all victims and all perpetrators who want that in the court system? Has it committed sufficient funds to make behaviour change

programs available to every perpetrator who needs one, when and where they need one—not on the never–never or when a place becomes available in six, 12 or 18 months' time? If we are going to effect real change, that program has to be available in close time proximity to when the perpetrator is ordered to have it. As I said, the Victorian government committed $1.9 billion. How much has this government committed? It has committed some money, and good on it for that, but I am not sure that there is enough there to make this work.

I do not have a lot of time left, so I am going to run through some of the other provisions. There is a provision around dowry abuse. For me, it beggars belief that dowry abuse is still a problem in a civilised nation like Australia in 2020, but we know it is. In 2018, the Senate's Legal and Constitutional Affairs Legislation Committee highlighted that it is a continuing problem, and perhaps an escalating problem, that needs to necessarily be treated as a form of family violence. We are doing that through this bill but perhaps, again, we need to go further. Perhaps we need to consider having a specific criminal offence relating to this archaic, demeaning and uncivilised practice. It may require some form of national agreement and it may need to be backed up with some targeted and culturally appropriate education campaigns, but as a society we need to send the strongest possible message that dowry abuse is completely unacceptable not only in Australia, but also anywhere in the world.

There are some provisions around less traumatic ways to obtain restraining orders. These changes are welcome because we want victims to freely seek protection without fear that the process will add to their trauma. The system needs to help victims rather than add to the harm and trauma they have suffered. I ask the Attorney General and the government to clarify why they have not looked at some practices in other jurisdictions that assist victims. For instance, our laws allow police to take out applications for family violence restraining orders but the practice in Western Australia, as I said earlier, is for police to issue a 72-hour notice and then rely on the victim themselves to make an application. Has the government given active consideration to allowing a 72-hour notice to automatically trigger an application for a VRO or, at the very least, to allow a police officer to make a decision at that time if they think the matter needs to be escalated? If the government did that, why did it reject it; and, if not, why did it not consider it?

I wrote these notes yesterday and I note there are new provisions for electronic lodgement, so I will leave that to be discussed at the consideration in detail stage. If utilised properly, electronic lodgement can be of significant assistance to victims so I will be interested in what the Attorney General has to say about the amendments on the notice paper.

Making it easier and more efficient to obtain restraining orders: proposed section 13A will give courts more power to obtain restraining orders in circumstances in which one may not have been made at the time a perpetrator was convicted of a criminal offence. These amendments are well intentioned and will assist victims but it will be critical for all judicial officers—I keep stressing this because it has been heard at our inquiry and from all the research in other jurisdictions—to receive appropriate training to ensure that they are fully cognisant of family violence issues. As well intentioned as they may be, there clearly has been a lack of training for judicial officers in the past in this critical area of the law. When we look at some of the changes made to the Evidence Act about the sordid jury directions that are given, we see a list of some of the things that juries are to take into account. That is also something that judges and magistrates need to be trained in so they can also understand those issues. It is not good enough to say they will find it out for themselves and that there are resources available right around Australia that can assist with that.

New section 66 will place the onus on the court to find out whether any Family Court orders have been made before the court can issue a restraining order. Previously, the onus was on the applicant. This is an area of concern across all Australian jurisdictions and is clearly an area in which gaps and inconsistencies may lead to horrendous outcomes in the worst-case scenarios. It is good that the court itself has to initiate things. However, as I said earlier, knowing more about the pernicious nature of family violence will help equip judicial officers to make the right decisions around whether they should process restraining orders, what conditions they should place on them and how they can best protect victims. We need to train all court staff, from the counter staff to the registrars who are going to be dealing with conferences now, to the magistrates and judges.

There are good improvements to the service arrangements. The ability to advise a victim of the service of an order by text or email will certainly give victims some peace of mind. Substitute service is also a worthwhile initiative and will certainly assist our overworked police officers in their duties. With such service, there is always the potential for the rare case when a substituted service may lead to a genuinely inadvertent breach by a perpetrator, but we must balance that risk against the greater risk of what a devious perpetrator could do should they deliberately avoid service. Therefore, we should err on the side of caution and utilise the substituted service, so I think the provisions of proposed section 60 are worthwhile. Obviously, courts can take into account whether there has been a genuine, inadvertent breach because a substituted service was used and the perpetrator really did not know. However, I think that would be rare.

I do not have the time now so I might take up in the consideration in detail stage the amendment to no longer allow a person under the age of 18 to be used to explain the meaning of a restraining order to a person who does not readily

understand English. It is a principle worth supporting, but I can tell members from my own experience and that of many ethnic communities that there sometimes is no other opportunity to provide an interpreter in the absence of using a teenager to explain things to someone who does not understand English. This will put more pressure on interpreter services so, again, the question remains: what sorts of resources will be committed to interpreter services to make sure that there are not any unintended consequences if we can no longer use people under the age of 18 to explain things to people who are being served at the time?

I discussed earlier the explosives prohibition. I have absolutely no problem with that at all. It gives the court power to allow the possession and licensing on restricted terms, so someone could potentially use explosives on a worksite, for example. We know what devious perpetrators can do sometimes.

In holding perpetrators to account, there is an increase to $10 000 in the maximum penalty for a breach of a restraining order and the bill maintains the term of imprisonment at two years. The limitation for the prosecution of breaches has been increased from one to two years, which is a good thing. Aggravated stalking will be included as one of the offences that triggers the presumption of imprisonment. Again, I think that is a good thing.

The changes to the Police Act will mean that the police will need to record every alleged incident of family violence that is reported to them or observed by them. They will also be required to provide the alleged victim with a report number. That is well and good and I think it is a good thing but, again, the government has done some work in resourcing specialist family violence teams within our police service but family violence is the core business of every frontline police officer in this state and I think we need to provide them with more training around the understanding of family violence and what they can actually do to assist victims, because they are the first responders in almost all instances. When someone dials an emergency number because of family violence, unless they are dialling an ambulance they are dialling the police, and they are the first people on the scene. We need a real commitment to give them the resources they need.

I might leave for the consideration in detail stage the proposed changes to the Road Traffic (Administration) Act. The changes to the Evidence Act improve how evidence can be given in family violence matters. It includes specific jury directions so that jurors have a better understanding of the drivers and dynamics of family violence. They are worthwhile changes that will hopefully give comfort and support to victims. It raises the old chestnut of when we might see a uniform Evidence Act in Western Australia.

Mr J.R. Quigley: I hope you'll support it when it appears.

Mr P.A. KATSAMBANIS: The Attorney General knows my position on it. It has been clear since 1996 and I have not changed it.

Mr J.R. Quigley: It's got a drafter assigned to it.

Mr P.A. KATSAMBANIS: We will see how that goes.

A question the bill also raises is: why did the Attorney General not consider best-practice changes from other jurisdictions to allow initial statements made by victims, especially video statements that are used in jurisdictions like the ACT, to be led as evidence-in-chief?

Mr J.R. Quigley: That will happen in the uniform act.

Mr P.A. KATSAMBANIS: Yes, we will wait for that. The Attorney General says it will happen in the uniform act. Let us wait and see. I think that is important.

Mr J.R. Quigley: Those instructions are with PCO.

Mr P.A. KATSAMBANIS: I understand that.

They are the provisions of the bill. As I said, it is a good start and we do not oppose the bill. However, my questions are around the level resourcing available to make this work in practice to help victims and to change the perpetrators. My broader question is around the issue of shuttle mediation—the conferencing. Is it a second-best option? Why is shuttle mediation better than what the Victorians are doing with their fully resourced specialist Magistrates Court with specialist magistrates? Sometimes it can be either/or. We are trying this; I just hope that this government and future governments do not close their minds to the fact that there might be a better system than what we are introducing and do not close their minds to the fact that we can amend legislation to make things even better. I hope that this bill goes some way in providing more support for victims. I hope it goes some way towards stopping family violence, because that is what we want to see. Again, I indicate the Liberal Party's support for the bill.

MS S.F. McGURK (Fremantle — Minister for Child Protection) [5.30 pm]: I rise to support the Family Violence Legislation Reform Bill 2019 and thank, in advance, all members of the chamber and parties who are supporting this very comprehensive legislation. I particularly thank the Attorney General, his staff and office, and the departmental staff who have done a considerable amount of work putting this bill together, as have its advocates. For many years,

people working in services across the state in many forms have been tireless in not only their service to victims over many parts of those victims' journeys, but also their advocacy for improved policy.

As has already been mentioned, the funeral for Hannah Clarke and her children was held just yesterday, the day after International Women's Day. I cannot imagine anyone in this chamber not knowing about the circumstances and what happened to Hannah and her children on 19 February, so I will not go into the details. I remember sitting in this chamber as we heard about it, and people were rightly horrified, as they have continued to be. International Women's Day, celebrated on Sunday, is the day when across the world we collectively focus on the long fought for rights of women and girls to participate fully in public life, community life and private life—for them to be independent and safe in their lives. But Hannah's murder and extent of the abuse and control that she and her children lived with has held people's attention across the Australian community and in the national Parliament. Experts and family members alike have said that she was doing everything to keep herself and her children safe, and to protect them. We should make no mistake that unlike what happened at Camp Hill last month, the reality is that family and domestic violence often goes unremarked in our community. Unfortunately, WA has had its share of sickening partner homicides in the last six months. I would like to briefly draw the chamber's attention to some of those.

In January this year, a man was charged with the murder of a woman in a home in the northern suburbs. The reports are that the person charged was the victim's husband. The case is before the courts, so I cannot say much more, and the media reporting on this incident has been brief, so we do not even know the victim's name, but reports indicate that she was in her early 20s and police found her with serious injuries. She was taken to hospital where she then died. The circumstances of that death are not known to us at this stage, they eventually will be, but we take pause to think of that victim, just as we do other victims, and know that it is no less tragic than what happened to Hannah Clarke.

There is another case, and its sentencing details were reported and known to people in February this year. The Supreme Court brought the case of Regina to the public's attention. Regina's partner was sentenced to a non-parole period of 17 years. Regina was the mother of their two children, a 14-month-old and a one-month-old, when she was killed. She was the offender's domestic partner. The evidence presented at trial was that Regina died from a traumatic brain injury caused by blunt force trauma. I will read from the 25 February media report of that sentencing by Hannah Barry in WAtoday. It states —

> … Ms Munroe —

That is Regina —

> was drinking with a group of people on Wittenoom Street —

In Kalgoorlie —

> when Argent stormed over to them and attacked her, repeatedly punching and kicking the woman as she lay on the ground.
>
> Argent then grabbed Ms Munroe by the hair and dragged her to a bush camp near the Kalgoorlie Train Station, where he continued to attack her and at one point hit her over the head with a 1.6 metre branch and a brick paver.
>
> Argent stormed off from the camp after Ms Munroe fell unconscious, returning about two hours later to find she was not breathing, at which point he called triple-0.
>
> Ms Munroe was declared dead by paramedics, —

It was thought that she laid unconscious for about two hours before she died —

> but Argent denied doing anything other than "slapping" her on the walk home.

The third case, like all these cases, is no less tragic, but I have had cause to meet this victim's family, including her mother and sister. Jessica Bairnsfather-Scott was allegedly killed by her husband in their home in metropolitan Perth in September last year. She was 32 years old. She was a strong Aboriginal woman, whose sister described her as the life of the party and a beautiful soul filled with kindness and love, and a smile that would light up a room. She would do anything for her family. Jessica was much loved by her family, friends, co-workers and community. There was a coming together of her community in a vigil. I think she may have been a constituent of yours, Acting Speaker (Ms J.M. Freeman). We were sitting in Parliament that afternoon. Jessica was a healthcare worker supporting her community, and she supported family and domestic violence survivors as part of her work. Their heartbreak at finding out about Jessica's alleged murder is unimaginable.

They are but three victims in Western Australia to whom I draw member's attention. I make the point again that Hannah Clarke's and her children's death was incredible, and every now and again there is particular brutality to this

violence—as has been mentioned today, Luke Batty was another—that wakes the country up and appals people. But the reality of one death every nine days by a partner is that those tragedies occurring, are, as I said, sadly sometimes going unremarked in our community. That is why we are here today, legislating for more change to protect victims. As frustrating and as urgent as this issue is, there is no quick fix. That is acknowledged by all the considered commentary since Hannah Clarke's murder. It does not mean that we sit back and wring our hands. It means that we get on with doing the work to make changes and to be informed by good practice, evidence-based solutions and the coming together of government, service providers and the community itself to effect change. We make changes in our policies and practice for our first responders. We work with survivors to give them a safe place and support for recovery. We push for community awareness and actions through our campaigns and programs. All of this is designed to send the unequivocal message that family and domestic violence is unacceptable, that survivors need to be believed and they need safety and protection. This bill is to honour our women and the children living with family and domestic violence. They are survivors. Women such as Regina and Jessica, as well as Hannah Clarke and her children, are no longer with us because of men's violence. Those lives and memories spur our action to make meaningful change to stop the murders and to save lives.

I will talk specifically about some of the issues that were raised by the lead speaker for the opposition, the member for Hillarys, but I want address some of the components of the bill here today, and obviously the Attorney General did that in his second reading speech. A number of elements are significant. We took to the last state election key components of a policy that showed we were serious about addressing family violence. We said that we would make a range of legislative, community and resourcing changes. If I get an opportunity before my time is up, I will address those. I am proud of the changes that we have been implementing and the resources that we have backed up those changes with. We have been keeping a close eye on the reforms that are working in other states so that we can pick up what is worth replicating. As I said, we are looking at evidence-based responses.

This bill is about strengthening our legislation by addressing the recommendations of the 2014 Law Reform Commission report, "Enhancing Family and Domestic Laws: Final Report". It is also about implementing changes to make it easier and less traumatic for victims to obtain violence restraining orders and introduce an electronic monitoring trial for family violence offenders. I was proud to stand alongside the Attorney General and Angela Hartwig from the Women's Council for Domestic and Family Violence Services to announce the introduction of our bill last November. The Attorney General talked about needing more legislative change to address the war on women in our community. Angela Hartwig said that the bill was an opportunity for the transformational change that services working on the frontline, including women's refuges, have been calling for many years. She said that they have been calling for this change for more than 40 years. She said —

> "We totally support the Bill and believe it will address a lot of victim blaming responses women have experienced when they do come forward," …

Again, I want to acknowledge the tireless advocacy of the sector, particularly those working in fields such as strangulation prevention. We have a better bill today because of their advocacy and expertise.

The Family Violence Legislation Reform Bill is designed to deliver on key policy pillars—holding perpetrators to account, safety for victims, delivering a responsive justice system and improving the Restraining Orders Act 1997 and making it easier and less traumatic for victims to obtain protection from family violence. The bill places WA at the leading edge of justice responses to family violence and is unashamedly victim focused. It introduces a range of reforms that go to the heart of family and domestic violence because this violence is persistent. It is based on a pattern of power and control to instil fear in victims.

An indication of significant reform that is represented in this bill is the new standalone offence of suffocation and strangulation. This can cause significant harm to another person, including physical injury, loss of consciousness and death and can have a range of psychological and emotional health impacts. These acts can have a serious health consequence, even in the absence of overt physical injury. The lack of obvious signs of injury can make it difficult to identify when an act of strangulation or suffocation has occurred and can result in a seriousness of the act being downplayed. The new offence that we will create in this bill has general application. However, aggregated penalties are available when the offence is committed against a family member. The penalty loading recognises that strangulation is a common act in family violence. It is not just the physical act that impacts the victim; strangulation is also an act of psychological control whereby the perpetrator is telling the victim, "I can take your life away." The act of strangulation is an act of power and control over another person. It is also an indicator of escalating violence and in some studies has been found to be a predictor of future homicide. The odds for homicide increase over seven times for victims who have previously been strangled than for those who have not. It is a key risk indicator that we need to take notice of. The introduction of this new offence says to victims that we recognise the nature of this act, and that we recognise that when done in the context of family violence, it is another way for power and control to be exerted, to scare, intimidate and silence.

The introduction of this standalone offence tells perpetrators that we will not accept these crimes continuing to happen in homes across our state. The new offence is strongly supported by stakeholders working in women's support services. Again, I would like to particularly recognise the work of the women's council in advocating for this offence as well as the clinicians working in the sexual assault resource sector, one of whom was recognised in the WA Women's Hall of Fame on International Women's Day on the weekend.

A new offence—persistent family violence—will be introduced via this bill. It recognises that for many victims of family violence, the offending is ongoing; it occurs on a daily, weekly or monthly cycle and it is persistent in the life of the victim. The offence recognises that family violence offending often forms the course of conduct that becomes so routine and so normalised that when a victim takes steps to come forward and report the abuse, it can be difficult to recall the specific dates and circumstances of the offending against them. This offence ensures that perpetrators of family violence are held to account for their persistent acts of family violence committed against a partner, even when a victim cannot specify exact dates or particular locations where the offending occurred. This is the first criminal offence in Western Australia that contains the words "family violence" in the title. It therefore takes prominence in our statute book that family violence is a criminal matter.

I have previously spoken in this place about the need to protect victims in the justice system, and to reduce the level of distress and trauma that can result from attending and appearing in court. This bill focuses on measures aimed at promoting safety and minimising distress for victims navigating the justice system. These proposed changes are about making it easier and less traumatic for victims to obtain protections from violence. For example, victims of violent personal offences will now have the benefit of being granted mandatory lifetime restraining orders, regardless of whether they are in a family relationship.

[Member's time extended.]

Ms S.F. McGURK: This bill includes a clear direction to the court that it must take reasonable steps to ensure that any person who has, or may have, experienced family and domestic violence feels safe and is not subject to physical or verbal intimidation by the perpetrator. This includes but is not limited to the court limiting cross-examination when appropriate; actively directing, controlling and managing the conduct of the proceedings; allowing a victim to have a support person present; and, when a victim is giving evidence, using technology such as closed-circuit television or providing a screening arrangement if no other protections are available.

I also refer to the conferencing model contained in this bill that addresses the challenges associated with applying for family violence restraining orders. The new model will be introduced for these restraining order applications, which will involve the registrar negotiating a mutually agreed outcome at the court with the attending parties. It is premised on a safety first approach for the victim. The conferencing is about supporting parties to the application to reach a mutually agreed outcome. It is about avoiding the need for further litigation and court appearances in contested applications, which are often distressing experiences for family violence victims. The registrar will conduct the conference with a focus on the safety of the applicant and the need to protect from further family violence. It is about reducing the likelihood that the applicant will need to attend a disputed final order family violence restraining order hearing and undergo cross-examination, which can obviously be traumatising for victims. It will also enable respondents to agree to attend behaviour change programs as part of a negotiated outcome. It will be an opportunity for perpetrators to participate in programs to address their behaviour and to stop their abuse, alongside complying with the conditions of the restraining order because they have a better understanding of what they have agreed to. In this regard, I will address two questions that were asked by the member for Hillarys. One was about the concept of mandating behaviour change programs in these proceedings. There is quite a bit of evidence that this is not an effective means of driving behaviour change amongst perpetrators, so I think we need to keep an open mind about what is going to drive effective change in perpetrators and look at the evidence around that.

Mr P.A. Katsambanis: It is really more about the enforceability of any undertaking to do it than about whether it is mandated. You can only lead the horse to water, but what happens if they say that they are going to do it and they simply do not? That is the issue. I am not expecting you to have a full answer, but that is really the point I was trying to make.

Ms S.F. McGURK: I think the point about behaviour change programs is to have the perpetrator participate in those programs willingly and effectively so that the chances of effecting real change are maximised. That is what we all want. We fund a peak body, Stopping Family Violence, to make sure that we are informed by good practice and evidence in relation to perpetrator change programs. The whole sector, not just in Western Australia or Australia, but internationally, still has a long way to go to understand what are effective programs, and this government is well aware of the challenges with that.

Similarly, the member expressed frustration that we may go to shuttle conferencing as, as he put it, a cheaper option to specialist family violence courts. The opportunities that we have to continue to build our system to ensure that court officers who participate in the court system are well placed, educated and informed to provide opportunities

for less traumatic and, hopefully, genuinely mediated outcomes between the parties are important. I felt a little frustrated when I heard the member talk about those specialist family violence courts, because I do not remember him speaking out when the previous Attorney General abolished them. We say for the record that the previous Liberal government abolished those courts. It was a poor decision by the previous government on top of a very poor record in this policy area. It does get a little frustrating. I know we are trying to have a bipartisan approach, and I welcome that, but it gets a little galling to hear criticism from the other side about the level of resourcing that we have put in, which has been significantly more than what was put in by any other government and certainly more than that put in by the previous government. In fact, the two governments that the member showcased as doing good work in this area were two Labor governments. There is a lot of work to do; there is no doubt about that. But, as I said, I am proud of the work that we are doing to not only bring the community along in this work that is needed in Western Australia, but also make sure that when we implement change, we do it in an evidence-based, thoughtful and effective way so that we maximise the opportunities for real change.

There are a number of elements of the bill I could speak to. The new serial family violence offender declaration will be the first of its kind in Australia. It is about identifying high-risk repeat family violence offenders, and this was spoken about in the second reading speech and also by the member for Hillarys. The court will be given the power to declare an offender to be a serial family violence offender if they have committed at least three prescribed offences on different days or two prescribed indictable-only offences on different days. The offences can be against the same victim or multiple victims and there will be a time period of within 10 years. Being declared a serial family violence offender recognises that the offender is at risk of committing further family violence offences and they should be subject to greater supervision when they are in the community, so there is the presumption against bail, a ban on possessing firearms and/or explosives, and the need to consider the imposition of electronic monitoring. Similarly, the evidence on the efficacy of electronic monitoring is still building. It needs to be one of the tools in our armoury against perpetrators of domestic violence and other serious violent offenders, not a replacement for a suite of measures to make sure that victims are safe. I certainly agree with that. Whether that is incarceration or other effective means of monitoring victim safety, I think it is important.

The new serial family violence offender declaration is about protecting victims, because the court will be given the power to identify those offenders who are high risk. This bill is a comprehensive program of change and strengthened provisions to keep victims safe. It reaches across the Criminal Code, the Bail Act, the Evidence Act and the Sentencing Act, and seeks to deliver timely protection through our restraining order regime. When such applications may be considered, it seeks to make sure that the court has more measures at its disposal to support victims through these proceedings so that the courts can be another safe place for victims.

This government's commitment is to break the cycle of family and domestic violence. This requires a whole-of-government effort. It requires a whole-of-community effort. As I said, the bill reaches across a number of areas—the Criminal Code, the Evidence Act, the Sentencing Act, the Bail Act, the Restraining Orders Act, the Road Traffic (Administration) Act, the Dangerous Goods Safety Act and the Police Act. It is an exceptional demonstration of collaboration across government and again I thank all those who have been party to its creation. It is a demonstration of how seriously this government is taking family and domestic violence. The bill was developed in consultation with a wide range of stakeholders. I have spoken about women's services, community organisations, legal services, Aboriginal-controlled organisations, the judiciary and the police force, to name a few. They are all working tirelessly for better protections for victims in the community and in the justice system.

On Friday night, I spoke to Queensland's Minister for the Prevention of Domestic and Family Violence. We had just had a hook-up of state and federal women's safety ministers. We all felt a little frustrated at the lack of cooperation between us and our federal counterparts and we called upon everyone to try to step up that level of cooperation. When I spoke to my Queensland counterpart, she was preparing herself for the funeral of Hannah Clarke and her children on Monday. We discussed how people across the community are frustrated and appalled that these deaths are still occurring and want to know what we can do to address the high rates of domestic violence and such atrocities occurring in our homes, in our suburbs, in regional centres and in rural and remote areas across the country. The sad reality is that there is not one change that we can enact that will make the difference. Legislative change and improving our statutes is part of the answer. Improving our services provision so that they are firmly focused on victim safety is certainly part of the answer. Victims should not be expected to have to traverse a range of different services in a range of different organisations. We should wrap ourselves around those victims. Our focus is very much on their safety and also on understanding the risk indicators and the red flags that pose a high danger, and this bill addresses some of those indicators that we have taken notice of. It is about not only raising awareness in the community to prevent that violence, but also community members being on alert for what they can do to be active bystanders—to ask whether someone needs a hand or to put people in touch with specialist services. All those things are needed if we are going to drive the generational change that is needed to stop family and domestic violence. I commend this bill to the house as a significant step in that journey.

MS C.M. ROWE (Belmont) [5.59 pm]: I rise to speak in support of the Family Violence Legislation Reform Bill 2019, which, as the minister has just outlined, is the most comprehensive family violence law reform package ever seen in Western Australia. I would like to take this opportunity to sincerely congratulate the minister for her tireless work in this field to protect victims of family and domestic violence across WA and, of course, acknowledge the hard work and dedication of the Attorney General on this reform package.

According to the Australian Bureau of Statistics, in 2018 WA recorded the largest number of family and domestic violence–related homicide offences—victims right across WA. Nationwide, family and domestic violence is still the leading cause of death and injury for women under 45 years of age.

Sitting suspended from 6.00 to 7.00 pm

Ms C.M. ROWE: Prior to the interruption for the dinner break, I had risen to speak in support of the Family Violence Legislation Reform Bill 2019. As we have heard from the Minister for Prevention of Family and Domestic Violence, this bill is the most comprehensive family violence law reform package ever seen in Western Australia. I would like to take this opportunity to sincerely acknowledge the dedication of the minister in bringing this important bill to the chamber, and of course the work of the Attorney General in bringing this bill to fruition.

As I mentioned before the dinner break, in 2018, Western Australia recorded the largest number of family and domestic violence–related homicide offences across Australia. It is a pretty horrifying statistic that Western Australia has the highest rate of homicide against women. Nationwide, family and domestic violence is the leading cause of death and injury for women aged under 45. Each and every week, one woman in Australia is murdered by her current or former partner. To quote from one of the many articles that is saturating the internet at the moment about the tragic death of Hannah Clarke —

> We know that the time of greatest risk is when a woman is attempting to leave her partner, with more than 50 per cent of homicides occurring within three months of separation.

I speak today in support of the bill for the victims. I speak for our friends, our sisters, our mothers and our children, and for our community. To quote ourwatch.org.au —

> … violence against women is any act of gender based violence that causes or could cause physical, sexual or psychological harm or suffering to women, including threats of harm or coercion, in public or in private.

Victims of family and domestic violence almost always also experience economic and emotional abuse, or controlling, coercive and intimidating behaviours, at the hands of their partner. This is at the hands of the person who is meant to love them the most. Australian women are nearly three times more likely than men to experience violence of some kind from an intimate partner. This is definitely a gender-based issue. According to the Australian Institute of Health and Welfare, this figure means that approximately one in six women have experienced physical or sexual violence by a current or previous partner.

Undoubtedly, violence against women is a very complex, multifaceted and widespread issue. Moreover, many women do not feel comfortable potentially opening up to their experience of family and domestic violence. Certainly a large part of that has to do with what the minister touched on around societal attitudes towards domestic violence victims and often the tendency to victim blame. We need to make sure that that changes and that we are a victim-focused society. However, the complex, insidious and often anonymous nature of family and domestic violence does not diminish our obligation, especially as legislators, to prevent this fundamental violation of human rights.

Domestic violence impacts women of all ages and all backgrounds. It simply does not discriminate. Violence against women and their children has a profound impact and takes a long-term toll on the mental and physical health and wellbeing of women and children, their families, and the community and society as a whole. The impacts of family domestic and sexual violence may also have serious and long-lasting consequences that affect an individual's education, their relationships more broadly than just their intimate relationship, and, most definitely, their financial situation and housing outcomes. For instance, statistics from White Ribbon Australia and the Australian Bureau of Statistics show that domestic and family violence is the leading cause of homelessness for women and their children. Nationwide, 72 000 women and 34 000 children sought homelessness services in 2016–17 due to family and domestic violence. I dare say that the figure is probably about the same now, if not higher.

Children who witness family and domestic violence experience higher rates of social and emotional problems. They are at increased risk of mental health issues down the track and often have behavioural and learning difficulties throughout their school years. Moreover, children who witnessed family and domestic violence against one of their parents are two to four times more likely to experience partner violence as adults compared with those who did not. On average, the Western Australia Police Force responds to a family and domestic violence–related matter every eight minutes.

To illustrate the gravity, significance and impact of domestic and family violence, and thus the importance of this bill, I would like to take a moment to mention some of the experiences of victims of this insidious violence across our community. I apologise if I do not pronounce this woman's name correctly. Mother of four Roia Atmar spent three months in hospital with second-degree burns to more than a third of her body after her ex-husband poured turpentine on her and set her on fire while she was holding their eight-month-old baby. Roia shared her story through an article in *The Guardian Australia* titled "The most dangerous time: Five women tell their stories of leaving an abusive relationship". Shortly after marrying at the age of 14—she was a child bride—Roia moved to Australia from Afghanistan with her then husband. She was completely isolated in a new country, and separated from all her family bonds back home and her support network. At first, her husband controlled her by forbidding her from attending school, or even from having a job. With the birth of her first child, her husband turned violent and physically abusive. It was not until Roia was in hospital following her being set on fire that a social worker approached her and involved the police, and her husband was eventually sentenced to 12 years in prison.

Unfortunately, Roia's story is not an isolated incident. We know that from recent events. Back in January 2018, 38-year-old Margaret Indich was brutally bashed to death by her former partner. Margaret was a constituent of mine in Belmont. Her mum is actually a very good friend of mine. Needless to say, the impact of her daughter's death was traumatic for her, and still is to this day. Margaret had been repeatedly and violently assaulted throughout her 18-year relationship with the perpetrator. Ms Indich died in hospital at night from a traumatic head injury, after she had been repeatedly punched, bashed with a pipe and had her head smashed on the ground. Again, that is not the only incident. It is one that is particularly close to home, which I want to acknowledge in this place. I think yesterday all members would have seen the image of the single coffin in which Hannah Clarke and her three children were laid to rest. It was hard to escape. Her estranged husband doused them all in petrol and set alight the car they were travelling in. I will share a little of what happened. An ABC news article stated —

> … she suffered burns to 97 per cent of body and only the soles of her feet were left unburnt.
>
> …
>
> Hannah's brother, Nathaniel Clarke, said she suffered horrific injuries.
>
> "My sister was so badly burnt the only thing they could do for memorabilia of her was a footprint because the soles of her feet were the only part of her body that weren't burnt," he said.

When an ambulance arrived at the scene, Hannah was dragged from the car. She was still alive and was apparently able to tell the ambulance crew what had happened to her. One of the paramedics stated —

> "He ambushed her as far as we know," …
>
> "She managed to give a detailed report to the first responders on what he did, before they could sedate her for 97 per cent burns to her body."

Tragically, in her final moments she would have known that her three kids were, at best, in agony and, at worst, dead. I feel quite emotional at the thought of that. As the mother of two children, I cannot bear the thought of a mum, or any human being, having to go through that. If I could be indulged another quote, in another article, Nathaniel Clarke, the brother of the late Hannah Clarke, said in his words —

> "It wasn't quick. It was planned and executed," Mr Clarke said.
>
> "He had a plan that night when he called the kids and he was a blubbering mess. He knew what he was doing then. He had it all planned out, he knew what he was doing the following morning.
>
> "He couldn't even do it quick. That's the worst thing. He made them suffer, and her."

Just as traumatic as what I have read, the article also states —

> … women's legal service warns there has been an increase in calls from women saying their partners have threatened to kill them the same way.

The murder of Hannah and her three beautiful young children—they were six years old, four years old and three years old—has prompted a huge national outpouring of grief and anger, not only at her estranged husband, but also, and probably fairly, at politicians for how we let this happen again. How have we continued to fail these victims? I think that is how it should be; there should be outrage. We cannot continue to let this go on. The system genuinely failed to protect Hannah. As I have mentioned, Ms Clarke had ended her relationship with Mr Baxter. She had taken out a domestic violence order against him and was taking steps to rebuild her life away from the controlling and coercive behaviour she had suffered at the hands of her former partner. We know that from articles in the press in which her parents, brother and close friends have spoken about her experience. It goes back to how difficult it is for women to leave those violent situations. This is the time to take stock. We cannot let another woman die at the hands of a partner. This bill and these amendments will surely save women's lives.

Of the variety of amendments, I would like to take a moment to acknowledge the importance of some specific amendments in this bill. The first is clause 6. The minister has gone into great detail about this, but I would like to talk about it a little. The clause will create a new criminal offence of suffocation and strangulation. Suffocation and strangulation in a family violence context, as we have heard, has been found to be indicative of an increased risk of escalating and potentially fatal violence. Making suffocation and strangulation a specific offence is a proactive and critically important step in ensuring that an offender's violence or aggression is prevented, hopefully, from escalating. That is the point of clause 6 and I hope that it will save lives.

These proposed reforms, which will amend nine pieces of legislation across six portfolios, also include new aggravated penalties for offences that commonly occur in circumstances of family violence; expanded access to electronic monitoring of offenders; the introduction of jury directions to counter stereotypes, myths and misconceptions about family and domestic violence; and requirements for police officers to record every individual family violence incident.

Lastly, the bill and these amendments will increase the responsiveness of the justice system and the safety of victims by making it easier, more efficient and less traumatic for victims to obtain protection from violence, specifically through family violence restraining orders and violence restraining orders. This bill will ensure easier access to restraining orders for victims of specified criminal offences and that all victims of violent personal offences will have the same access to mandatory lifetime restraining orders. The bill will also allow applicants to all family violence restraining orders to have a support person present, and will enable the use of CCTV and other screening arrangements such as one-way glass and so forth during the giving of evidence. I think that is critically important.

[Member's time extended.]

Ms C.M. ROWE: That speaks to the minister's focus on making sure that this is, indeed, a victim-centred approach. We want to make sure that victims' safety and wellbeing is always at the forefront of our minds. All of us here today have a sister, a mother, a daughter or a friend. Even if we do not, women deserve and need to be protected. We in this place and the broader community need to do better. That is what this bill and these amendments aim to do—that is, protect women across Western Australia, both in the city and the regions. These amendments will hold perpetrators to account. They will also improve the process of obtaining and enforcing restraining orders, which I think is very important. When I speak to victims of domestic violence in my community, they tell me that is something they need and want. It will also ensure a more responsive justice system. Most importantly, it will keep victims safe. This bill will save lives, and for that reason I am proud to stand in support of it. I commend it to the house.

DR A.D. BUTI (Armadale) [7.18 pm]: I rise to make a contribution to the second reading debate on the Family Violence Legislation Reform Bill 2019. As other speakers have mentioned, this is a very comprehensive bill, which seeks to amend nine acts and runs across six ministerial portfolios. That shows what is needed to try to tackle the scourge of family and domestic violence in our society. It cannot be siloed under one portfolio or one piece of legislation. The Minister for Prevention of Family and Domestic Violence has the major responsibility for this area, and the Attorney General has responsibility for the drafting of the bill before the house. It has to be understood that this has to be a whole-of-government approach, because it is a very complex and complicated area. Although we will never eliminate family and domestic violence, we need a whole-of-government approach to reduce the obscenely high rates of it. It is fantastic that the government has a dedicated Minister for Prevention of Family and Domestic Violence, but it has to be understood that the whole government, the whole ministerial team and parliamentarians on both sides of the aisle have to take responsibility to address the issue before us. This bill coming before the house has been a long process. As the Minister for Prevention of Family and Domestic Violence mentioned in her second reading contribution, many advocates in the community have fought for the day that we would have a bill before the house like the one today. Of course, there have been a number of law reform reports at a state and federal level. The member for Mount Lawley will address some of those law reform issues, so I do not think I need to go into them. I also do not intend to go into the minutiae of this legislation, which has already been addressed by members of this house. There was quite a thorough contribution from the member for Hillarys, and of course there will be further examination in consideration in detail. I congratulate the Minister for Prevention of Family and Domestic Violence and also the Attorney General for bringing this bill before the house, and obviously the whole government, because, as I said, it crosses many ministerial portfolios.

As was mentioned, this bill needs to be dedicated to all the victims who have died from domestic violence. We had the very recent tragic scenario of Hannah Baxter and her three children. Hannah Baxter was only 31 and her children were aged six, four and three. Their murderer's name should not be mentioned ever again, so I do not intend to mention it. Australia as a society and all levels of community was shocked at this behaviour, but one person by the name of Bettina Arndt happened to tweet that she was congratulating the Queensland police for keeping an open mind to try to determine what drove this individual to commit this despicable act. That is an absolutely appalling comment. It was encouraging that politicians from all different persuasions criticised Bettina Arndt and have written to the Governor-General. Has the minister written to the Governor-General?

Ms S.F. McGurk: Yes.

Dr A.D. BUTI: The minister has just notified me that she has also written to the Governor-General seeking the revocation of the Australia Day honours that Bettina Arndt was awarded. It is just deplorable. How anyone could even utter or think those words is absolutely beyond comprehension.

Let us move on. The member for Belmont said that the murder of Hannah Baxter and her three children received a lot of attention, and rightly so. We were all disgusted with it. But as we also know, and as was mentioned, over the last two or three years there has been roughly one murder a week through family and domestic violence. Although the Hannah Baxter episode received a lot of attention, overall, we have to consider that there is one murder a week. Compare that to how many shark attacks there are a year. Of course, every shark attack that results in a fatality is a tragic scenario, but compare the media attention given to victims of shark attacks with the fact that there is one murder a week in Australia from family and domestic violence. The attention given to family and domestic violence pales into insignificance. Then we have coronavirus. As of yesterday, there have been three deaths in Australia. These are three tragic deaths, but it is three deaths compared with three deaths in the last three weeks, going on the averages, from domestic violence, and that will continue for the rest of the year. We need to galvanise the attention that is the result of the despicable murder of Hannah and her three children and ensure that it does not fade due to the obvious and natural attention that has now been put onto the coronavirus situation. Of course we have to address that. Governments and all sections of society have to address that, but let us put it into perspective. Three people have died from coronavirus, and we know there will be more, but I hope it will not be at the rate of women who have died at the hands of their partners over the last few years in situations of family and domestic violence. We need to give it much greater attention.

I mentioned the statistics. I want to refer to a newspaper article about a report released quite recently by the federal Department of Social Services and published by the University of New South Wales on family and domestic violence. In response to that report, the commonwealth social services minister, Anne Ruston, who I think is a South Australian senator, mentioned some things in response to that report. I quote —

> … in Australia every two minutes police are called to a domestic and family violence matter, and every day 12 women are hospitalised …
>
> According to White Ribbon Australia, on average, one woman is murdered by a current or former partner every week.
>
> Joanne Yates, the … executive of Domestic Violence New South Wales, highlighted that disturbing statistic on ABC News Breakfast this morning.
>
> "The prevalence of domestic violence across Australia is incredibly wide," Ms Yates said.
>
> "The statistics tell us that at least one woman dies every week at the hands of a partner or former partner. Seventeen people are presented to hospital across the country every day as a result of physical assaults by partners or former partners."
>
> And that only accounts for physical violence. Domestic abuse comes in a variety of forms.
>
> "We know that domestic violence is a whole pattern of behaviours and a whole series of different coercive and controlling behaviours that occur between partners," said Ms Yates.

I think this legislation that has been drafted by the Office of the Attorney General recognises the different ways that domestic violence takes place. We know from research on homicides that the time just after a woman leaves their partner is the most critical for their safety. As I said, there has been an appalling lack of attention given to family and domestic violence in Australia, if we take into consideration the statistics, but of course, things are much better now than they were years ago. That is encouraging, but we need to galvanise that attention to ensure that the legislation we are discussing here becomes the norm across Australia and we even introduce further legislation and government policies that will assist in this area.

Being the member for Armadale, the issue of failure domestic violence is very close to home. Unfortunately, the south east metro area has one of the highest rates of family and domestic violence in Western Australia and also in Australia, and the Armadale region is very high in the statistics. In *The West Australian* today there was a report of a domestic violence scenario in Armadale, and I just want to read from this article, which is titled "Cheek bite in brutal DV claims", an exclusive by Rourke Walsh. I quote —

> A violent husband allegedly bit a chunk of flesh out of his wife's cheek during a "ferocious" and "sustained" attack launched after she told him she wanted to separate.
>
> James Kia Gatluak, 56, appeared in Armadale Magistrate's Court charged with unlawful wounding and aggravated assault over the shocking domestic violence allegations.

> A police prosecutor told the court on Friday that it would he alleged Mr Gatluak attacked his 34-year-old wife about 4pm on Thursday at their Armadale home after she tried to speak to him about her desire to leave him.
>
> The victim had surgery at Royal Perth Hospital but is likely to be permanent scarred.
>
> She remains in hospital in a stable condition.
>
> The court was told the couple's four children—aged between four and 11—were playing in the front yard when Mr Gatluak started repeatedly punching his wife in the head without warning midway through a discussion.
>
> When she grabbed his arms to protect herself, police say Mr Gatluak bit a chunk of flesh the size of a 50¢ piece from her face before spitting it on the ground.
>
> He then struck her with a chair while she laid injured on the floor before walking to the backyard and picking up a set of plastic stairs to continue the assault.
>
> It was only then that the woman ran onto the street screaming for help, where a teacher from a school across the road came to her aid. Police say the couple's children were left screaming and distressed by the incident.
>
> …
>
> The court was told the victim—who was a 15-year-old child bride when she wed Mr Gatluak in an arranged marriage in Egypt 20 years ago—had previously made attempts to leave him but was prevented through physical or verbal attacks.
>
> Mr Gatluak had shown no remorse after the alleged assault, with police finding him tidying up his yard when they arrived at the property.

Armadale police have told me that they spend up to 60 to 70 per cent of their time dealing with family and domestic violence issues. As a community, the amount of resources that we have to spend in this area is incredibly high. Even though this legislation is incredibly comprehensive and will have a significant effect—it will amend nine acts across six ministerial portfolios—we should not be under the illusion that, on its own, it will rid our society of the scourge of family and domestic violence. There is no doubt that legislation can change behaviour, but legislation on its own is not sufficient to change the behaviour of some people. We have to continue with education programs and ensure that we do not tolerate family and domestic violence under any circumstances and we do not accept that there is a justification that people are driven to commit this crime. It can never be justified. It is not a rational way to deal with conflict in a domestic or family situation.

I do not intend to take up any more of the house's time. I congratulate the Minister for Prevention of Family and Domestic Violence and the Attorney General for their part in bringing in this bill. Of course, it is all the other ministers and government as a whole because a whole-of-government approach is needed to deal with this very important public policy area. Let us hope that this legislation has a significant effect on reducing this scourge in our society.

MR Z.R.F. KIRKUP (Dawesville) [7.33 pm]: I, too, rise to speak on the Family Violence Legislation Reform Bill 2019. I echo the sentiments the member for Hillarys made earlier today in his contribution in support of this legislation. I would like to recognise the member for Hillarys' extensive effort, as he often does in this place, in lifting quite a heavy load on behalf of the Parliamentary Liberal Party in response to the Attorney General, who continues to bring into this place a significant number of bills; it is far in excess of any other minister. I have lost count; I think it was 34 or 35 bills, but we have passed that at this point.

Ms A. Sanderson interjected.

Mr Z.R.F. KIRKUP: That is true, member for Morley.

In their contributions, the member for Armadale and the minister spoke at length about specific cases. I find similarly remarkable, member for Armadale, the numbing way in which this issue is approached in media reports. The reality is that this heinous act is constantly committed right across our community. I am surprised at how often it occurs. The prevalence of this act is more significant than I had anticipated prior to coming to this job. I have been privileged, I suppose—that is one word to use—to have sat at the back of a courtroom a number of times for business I have been on whilst a member of this place. I quickly realised how often family and domestic violence cases come before a court. The sheer volume of cases is remarkable. On the member for Armadale's point, how many cases are not reported? I think it takes terrible circumstances that are very, very tragic, such as the case in Queensland with Hannah Baxter and her family or the example the member for Armadale rightly pointed out of

the young woman who had flesh the size of a 50¢ piece bitten from her face before it was reported, before people reflect that family and domestic violence is not reported as much as it should be. When we have legislation before the house that reflects on those types of incidents, it is important that we all are aware of and continue to speak to this issue. Undoubtedly, we will hear from the two former serving police officers who are now in this chamber—the members for Burns Beach and Kalgoorlie—who I suspect have attended numerous incidents in their long, storied careers.

It was shocking to realise just how constant family and domestic violence is. It was not until I was preparing for this contribution to the debate that I realised the sheer volume of these types of incidents. Data from the most recent report of the Australian Institute of Health and Welfare gives a summary of the level of physical and sexual violence experienced by individuals across the country. The Australian Institute of Health and Welfare is a federal government–funded body. The data shows that since the age of 15, one in six women have experienced physical and/or sexual violence by their current or previous partner. That figure is one in 16 for men. One in four women have experienced emotional abuse by their current or previous partner. That figure is one in six for men. One in five women have been sexually assaulted and/or threatened. That number is one in 20 for men. That means that between 2012–13 and 2013–14 one woman a week and one man a month were killed as a result of violence from a current or previous partner. Obviously, every death is a tragedy and that number should be as close to zero as possible, but an almost consistent undercurrent of behaviour exists in certain groups in our society. I find the frequency and regularity of abuse remarkably shocking. More recent statistics reported by the Western Australia Police Force, which I think I read in an ABC article in 2018, show that the number of family and domestic violence fatalities is increasing markedly. To me, that shows that these crimes are not only being committed, but also getting far more severe. While we are elected to serve, any measure that we can implement that contributes to arresting family and domestic violence is an important step to take.

We know that family and domestic violence is a leading cause of homelessness. In 2016–17 alone, 72 000 women, 34 000 children and 9 000 men found themselves homeless due to family violence. For women aged 25 to 44, intimate partner violence is the greatest risk factor to their lives. I note that the Minister for Prevention of Family and Domestic Violence, in her contribution to the debate, spoke about choking and strangulation as measures to control and effectively bring about a sense of impending death. The victim is then released from that. It is a very obvious control mechanism and I think the new penalty that relates to choking and strangulation is a very important way in which we can try to respond to this. Until I read the contributions in preparation for this debate, I did not realise that the greatest risk factor to the lives of women aged 25 to 44 was intimate partner violence. I am in that age category—I am 33 years old—so that is a risk factor for most of my female friends. The fascinating thing is that I have never in my life witnessed anything like family and domestic violence in my family. That is not to say that there is no history of that in generations before mine and what my family have experienced and witnessed themselves, but it is something I have never seen before, and before coming into this place, I was not particularly familiar with it. But I have since realised that there is the propensity for this to occur in our society, and something needs to be done. Again, working around all the contributions that the member for Hillarys has made here today, I support the legislation and look forward to seeing any measure that can help reduce the incidence of these heinous acts continuing; we need to do something to respond to it.

I will talk very briefly about the impact on Aboriginal communities, because in Aboriginal communities in particular, the rates of violence and family abuse that occur to Aboriginal people is far higher compared with non-Aboriginal people. This is data from the Australian Institute of Health and Welfare. It unfortunately shows that compared with non-Aboriginal Australians, Aboriginal Australians are twice as likely to be killed by their partner as a result of an intimate partner homicide. For an Aboriginal person—this is not specific to gender in this case—they are 32 more times likely to be hospitalised than a non-Aboriginal person as a result of family violence. Unfortunately, what comes with that is seven times the rate of child abuse and neglect as a result of these types of circumstances for Aboriginal communities. That means that there are terrible outcomes in communities that need more support than ever before. The data, from 2012–13 and 2013–14, shows that two in five Aboriginal homicide victims were killed by a current or previous partner. That is twice the rate of non-Aboriginal victims. In 2014–15, Indigenous women were 32 times more likely to be hospitalised due to family violence, and men were 23 times more likely to be hospitalised as a result of family violence, compared with their non-Aboriginal counterparts. In 2015–16, Aboriginal children were seven times more likely to be the subject of substantiated child abuse and neglect than non-Indigenous children. My mind turns for a moment, when we think about the impact this has on children and young people, to the Aboriginal community. The coroner's inquest into the deaths of 13 children was tabled 56 weeks and five days ago, and it still stands without a response from this government. I met with some people yesterday who were told that they were expecting a response from the government in October last year. Through FOIs I have submitted I have found that the government was expected to release a response by the end of last year. We are now months past that point. I realise that these issues take time and I realise that they are very complex, but enshrined within those 12 findings of suicide and one finding of suicide or misadventure, many of them were unfortunately subject

to substantiated child abuse. The rates of family violence we have spoken about are much higher in Aboriginal communities. The coroner's report is before us. I will quote from the coroner's inquest so I do not get this wrong. Recommendation 18 states —

> **That measures be introduced aimed at increasing the prospects of complaints of domestic violence being reported and maintained; and** …

It also recommends that it allows for testimony to be added in a video-like conference setting. That is recommendation 18 from the coroner's inquest, which stands without response from the government at this point in time. I look forward to that and hope that soon we will find that. I get increasingly distressed at the time it has taken. I think all of us in this place would be aware that, as I have said in this place before, the coroner's inquest should be treated as a watershed moment. I am sure it will have a substantial response. We should get that response sooner rather than later. It has been time; the government cannot tell communities that are vulnerable and experiencing this right now to expect a response by October, which did not come, then expect a response by December, which did not come. We are now in March and still waiting.

Mr P.A. Katsambanis: It's not good enough.

Mr Z.R.F. KIRKUP: It is not good enough, member for Hillarys, and I hope there will be a comprehensive response from this government at some point in time. I hope it will be sooner rather than later.

I think in the past I have raised a local issue with the Minister for Prevention of Family and Domestic Violence about one of the suburbs I represent in my district. It is Falcon. Falcon is unfortunately known for having a very high rate of family violence in the south east metropolitan catchment, as it would be considered.

Mr P.A. Katsambanis interjected.

Mr Z.R.F. KIRKUP: Yes, that is true, member for Hillarys. Unfortunately, in both cases, the area of Falcon has a higher rate than the Mandurah average, and certainly a higher rate than the city average for rates of reported family violence. There are terrible circumstances there, but fantastic local organisations are doing great work to try to combat some of this as well. Of course, the minister is aware of Pat Thomas House and has visited it, as the primary refuge service in the Peel region. It does an outstanding job. There is a fantastic new CEO, and of course the board chair, Paula Downing, who both provide fantastic leadership for what is a very oversubscribed refuge. The government has recognised that, and, I have said before, to the credit of the member for Mandurah for recognising that, there is a commitment to provide a second refuge. I understand that a tender has gone out and will close sometime in March for the provision of services there. The government has started that work to try to provide the second refuge. I appreciate that the work has been done. It is important for that service to be delivered by a local agency that is already there, rather than one from out of Perth, because I think it needs local relationships. I realise that the government has to go through a tender process for the refuge's operation, and that the refuge will be operated on a therapeutic model as well. It is really important that we encourage local service providers to be the operators of that second refuge when it comes. In the past I have been critical of the delay; I do not think that is worth re-canvassing. I am pleased to see that it is getting ahead. Any measure that we can do to help find another refuge is good. I hope it is in Mandurah and relatively near services. I realise we are not specifically talking about suburbs, but I am encouraged that a local service provider wants to try to operate that therapeutic service there, and I hope we will have someone with a local connection. The last thing I would want is an operator from Perth or even further afar who does not have a local relationship with all the other service providers in Mandurah, providing that much needed service. The reality for Pat Thomas House at the moment is that it is turning away somewhere in the order of 10 families a week. I could be wrong. Regardless, a substantial number of families are being turned away from Pat Thomas House at the moment. Of course, that unfortunately peaked in December and January, more recently.

Ms S.F. McGurk: They do go through a central intake, so even though people might approach the local refuge, there's a range of different opportunities to house people and often people won't go to their local refuge anyway—just the nature of the events.

Mr Z.R.F. KIRKUP: Because of the proximity. I appreciate that. Thank you for the interjection, minister.

I think it is one of those cases in which, unfortunately, Pat Thomas House is constrained. I appreciate that other measures are in place. The member for Mandurah is the patron of Mandurah Primary School. It does a fantastic job with families who are fleeing from family and domestic violence and making sure that the children are really well catered for. The minister is right; a number of people from Perth are coming into Mandurah because of the separation and that proximity. There is some great work being done in Mandurah, because Falcon, in my district, and Mandurah, perhaps more broadly, have higher than average rates of family and domestic violence.

I would like to talk about an initiative that was funded locally by WA Police Force, which had a role in part of it, together with the Peel Community Legal Services. I was at the launch of one of these projects it did recently to provide more information to people about how they might respond if they witnessed an incident of domestic violence. I was there with the member for Murray–Wellington. It was fascinating as an insight, I have to say, to contemplate how I might respond if I witnessed this myself. I have never seen that type of violence, but the Peel Community Legal Services' fantastic work effectively put together material as a guide of what could happen if a person witnesses it, making sure the right steps are taken. Truth be told, I would probably panic if I saw something like that. If I saw someone—in this case, it is much more likely that it will be a female—attacked, possibly viciously by a male partner on the street, my initial response would be to jump in and try to do anything. I think any of us would try to do anything, but of course, we need to be aware of a range of aspects, and that is what the Peel Community Legal Services, with funding from WA Police, put together as guides. Another of its initiatives was to put this information in restaurants and venues right throughout Mandurah to inform people so that they can be aware of what is going on around them if they witness family and domestic violence. It is a reflection of the fact that this is widespread in our community and will take a community response as part of that. The Peel Community Legal Service does fantastic work and should be applauded for this project in particular.

Mums Cottage, of which Kaye Seeber is the chair, is a fantastic venue and a place for mothers and children to go, not overnight, but as a measure to get away during the day, to be in a very safe environment. I have been very pleased to be able to support Mums Cottage and Pat Thomas House also, financially, by helping them to fundraise in a range of initiatives. Again I recognise the importance of these facilities in our community. Mums Cottage does a great job and, hopefully, it will get the opportunity to expand and continue to provide an outstanding service to our community.

I have two more organisations that I would like to mention. I would like to also recognise the efforts of the family and domestic violence team based at the Mandurah Police Station, led by Sergeant Paul Trimble. I, together with the member for Mandurah, had the good fortune of meeting Sergeant Trimble when we toured the police station two or three weeks ago. His team is small but they guided us through their day. They get in and in some cases have all these calls on an answering machine or all these cases that are open. A lot of work is being done by the Western Australia Police Force to try to respond to this issue. The member for Kalgoorlie and the member for Burns Beach have spoken a number of times about what they witnessed as part of their lived experience as police officers. I cannot imagine seeing what they saw on a regular basis. This dedicated team in Mandurah responds to family and domestic violence and other incidents in our community. Sergeant Trimble and his team do an amazing job and, hopefully, they will have an opportunity to expand their services and bring more police officers on board to help combat what is an insidious issue in our community.

Lastly, I would like to talk about Mettle Women Inc, founded by Bron and Alesha. It is an organisation that sells gifts online that can be sent to anyone in Perth, the profits of which go towards helping women who have experienced homelessness as result of family violence. Not only do they employ women who have experienced homelessness as a result of family and domestic violence, but the profits are returned to help fund services to make sure that those women find a safe place to live and recover. I think that I bought all my Christmas gifts from Mettle and every time I possibly can, if there is a birthday, I send gifts from Mettle. It is a really amazing organisation, started by two women whom I recognise, as part of International Women's Day, have done a great job leading and supporting other women, in particular vulnerable women in Western Australia. Their business is a really good example of not relying on government funding. They started out by themselves and have now been operating for two years, but they are having a substantial impact. It is a good example of how people can unite to help people in desperate circumstances. They are doing something to try to improve the lives of women, particularly those who experience homelessness as a result of family and domestic violence.

With that I will close, but again I recognise the work of the member for Hillarys in representing the Parliamentary Liberal Party's position on this matter. The Liberal Party supports this legislation. It is important in the steps that we take to try to reduce the incidence of family and domestic violence in our community.

The ACTING SPEAKER: Thank you, member. You should share the details of Mettle with everyone as well. That would be a good thing to do.

MR M.J. FOLKARD (Burns Beach) [7.53 pm]: I rise to speak to the Family Violence Legislation Reform Bill 2019. Before I do that I want to read to the house a list of names: Zaraiyah–Lily Headland, Andreas Headland, Peta Fairhead, Sarah Thomas, Phaea Lightfoot, Ruth Vella, Felicity Park, Tereringa Kayden Wetere, Andrea Pickett, Joanna Corcoran, Dan Sun, Darshika Withana, Jessica Carter, Barbara Chokolich, Victoria Robinson, Danica Perich, Beverly Quinn, Mara Harvey, Charlotte Harvey, Alice Harvey, Beatrix Harvey, Annabelle Chin, Hannah Sesay, Lisa White, Faye Silich, Robert Silich, Ah Bee Mack, Florence Cumming, Anastasia Hand, Ruby Yen, Deborah Boyd, May Baldwin, Fatima Yusuf, Margaret Indich, Ester Hall, Stella Farnworth, Shionah Carter and her unborn child, Jody Websdale, Noah Downing, Margaret Mitchell, Roxanne Wilkinson, Cara Hales, Isabella Martin, Julie Kuhn, Charlotte Dillon, Alexander Dillon, Stacey Thorne, Jane Cuzens, Jessica Cuzens, Destiny Thompson, Susi Johnston, Rachel Ball,

Shane Ball, Charmaine Winmar, Zach O'Kane, Tania Marshall, Sarah Heath, Holly Heath, Jak Heath, Kaleb Heath, Baby Rijal, Charma Annear, Roberta Chapman, Charlie Mullaley, Maureen Charles, Amanda Wood, Bella Elmore, unnamed for cultural reasons an Aboriginal woman, unnamed for cultural reasons an Aboriginal woman, unnamed for cultural reasons an Aboriginal woman, unnamed for cultural reasons an Aboriginal woman, unnamed for cultural reasons an Aboriginal woman, unnamed for cultural reasons another Aboriginal woman, unnamed for cultural reasons another Aboriginal woman, unnamed for cultural reasons another Aboriginal woman and unnamed for cultural reasons another Aboriginal woman.

This is the rollcall of women and children who have been murdered in circumstances of domestic violence in Western Australia in recent times. I have come to know many on that list through my previous career in policing. For six of the names on that list, I was a part of the investigative team that led to the apprehension of the perpetrators of those hideous crimes. I have mentioned their names so that they can be taken down in *Hansard*, so that they can be remembered and not forgotten. That is a rollcall of evidence in this place that our community needs to be doing better to stop this scourge.

On average in this country, one woman a week is murdered by her current or former partner. Intra-partner violence is one of the leading contributors to illness, disability and premature death of women aged between 18 and 44. One in four women have experienced emotional abuse by their current or former partners since they were 15 years of age. One in five women have experienced sexual violence since the age of 15. Forty per cent of women continue to experience violence from their partner while temporarily separated—40 per cent! One in six women have experienced stalking since the age of 15. According to current statistics, domestic violence rates are higher in rural and regional communities than they are in the city. Just reflect on that list I read out earlier. One in six women have experienced abuse before the age of 15. Children of mothers experiencing domestic violence have higher rates of social and emotional problems than other children.

One in four young people think it is pretty normal for guys to pressure girls into sex. That is just wrong. One in five students have been sexually harassed in a university environment. That is a positive culture, is it not? One in three women aged between four and 18 have experienced some form of sexual harassment. One in three young people do not think controlling someone is a form of violence. One in three young people presenting alone to homeless services have experienced domestic violence. Violence against women is estimated to cost the Australian economy $22 billion a year. Indigenous women are 32 times more likely than non-Indigenous women to be hospitalised due to family violence. Domestic and family violence is the leading cause of homelessness for women and their children. Most women leaving their violent relationship move out of their own home. Reflecting upon the policing space, that is so true, and so wrong.

I have been speaking for seven minutes, and in that time there would have been eight police call-outs. Police are called to a domestic violence incident in Australia every two minutes; the figure in Western Australia is about one every five minutes. I am not sure about the member's figure of eight minutes; I reckon it is about five minutes. Women seeking help and support after leaving their partner are most likely to ask their friends and family for help, but often the answer will be a vacant look. More than 60 per cent of women who experience violence at the hands of their current partner are working.

I do not know if all members in this place understand what domestic violence is, so I will try to explain it in a very simple form. Domestic violence is a pattern of assault and coercive behaviours, including physical, sexual and psychological attacks as well as economic coercion, that both adults and adolescents use against their intimate partners. Let us unpack that definition. It is conduct carried out by adults or adolescents against current or former married or de facto intimate partners, or family members. When we talk about economic coercion, I have known women who have been stripped of all their financial assets, and the controlling partner uses that as a way of forcing them into doing what they want them to do. It is a pattern of behaviour that is characterised by a variety of strategies, including physical assault, that occur on multiple occasions and often on a daily basis. It is a combination of physical attacks, terrorising acts and controlling tactics used by perpetrators, resulting in fear and physical and psychological harm to their victims.

I remember dealing with an individual who was the ex-partner of a woman. He used to break into her home and move the furniture around inside the house. It occurred so often that we as police officers did not believe her, and I feel ashamed about that. In the end we set up a camera at the front door of the house. The woman would go to work, the offender would come around, break into the house and move the furniture around, leave the house, lock the door and leave. She would get home and would call the police to say that someone had been in her home. We would look around, and we could not see anything, until we put that camera up outside the house to watch what this individual was doing. Several times over the space of more than six weeks he would enter the house—I do not know how he got through the front door—and, again, would move furniture around in the house, and he was doing it to psychologically abuse his ex-partner. It was horrific.

Ms S.F. McGurk: Member, that's what the expression "gaslighting" refers to.

Mr M.J. FOLKARD: Yes, they have put a name to it, but back then when I was dealing with it, there was no name for it. It is unfortunately just a trendy phrase, and that is what is sad about this space—that we give trendy names to things rather than dealing with the actual issues.

It is a pattern of purposeful behaviour directed at achieving compliance and control over the victim. The Family Violence Legislation Reform Bill 2019 introduces the offence of non-fatal suffocation and strangulation, and that is overdue. This crime is a tell; it is a red light that the offender is on his way down the path of murder. Having charged offenders with assault knowing that the offence was very serious but not having laws available to deal with it at the time was frustrating as a police officer. This charge should ring alarm bells with all government services, and the greater community, to act. To take no action on this issue is not acceptable. When the community sees someone with marks around their neck, it is time to act; we need to do something.

The bill also introduces a new charge of persistent family violence. This charge is aimed at continuous, ongoing violence. When the perpetrator commits three or more acts of family violence within a 10-year period, it triggers the offence. I have read the bill, and my interpretation is that it will give the police greater opportunities to charge offending individuals without further traumatising the victims by softening the need to identify the time, date and place of the offences. I think that is a good thing; I really do.

This legislation is a positive step forward, but I would also like to have seen the introduction of offences relating to coercive control. That is taking it to the next step. We have done some good work to date, but coercive control is one of the most hideous things I experienced as a police officer. It is a deliberate course of conduct that is used to psychologically abuse victims. To me, it is one of the most hideous sides of domestic violence, and for a police officer it is one of the hardest convictions to achieve. We used to call it a "deliberate course of conduct". We would always say to complainants that they should start a notebook and write everything down. Some said that we would not contemplate minor breaches, but we could build a picture of the intimidation that these individuals perpetrated. It could be a combination of stalking, breaking into victims' houses, being around them when they pick the kids up from school, and being abusive to their friends. If we could show a deliberate course of conduct and then produce that diary to a magistrate, we had a chance of getting a proper, decent conviction. It was one of the hardest convictions to achieve with the laws as they are at the moment, but it was one of the only ways of putting these monsters back into the box where they belong.

The legislation also improves our ability to electronically monitor high-risk offenders. I recall an incident in which I served a violence restraining order on the ex-partner of a woman. We served the VRO on the perpetrator, and then within the next few hours he broke into the victim's house, tied her up, and repeatedly raped her while her children were in an adjacent room. Had we had the ability to tag the individual upon serving the VRO, we could have put better support around her, to protect her safety and her children's sanity. I see this as a positive step in hopefully breaking the coercive behaviours of these offending individuals.

The legislation also introduces a shuttle conferencing process for family violence restraining orders. I was recently privileged to travel overseas and saw that there was absolute merit in this model. I would like it to be introduced in situations in which perpetrators can enter into enforceable undertakings, hopefully to undertake behaviour change programs. That is a positive thing that should be encouraged. The Family Violence Legislation Reform Bill 2019 also introduces the ability to serve restraining orders via electronic means. I can recall an incident in which we tracked an individual for months to try to serve a restraining order on him. We had the ability; we knew where his phone was and we knew that he was answering his phone but we were not able to get near him to physically serve the restraining order. After months of frustration, we had a chat to a magistrate, who gave us permission to serve the restraining order via a text. I do not know whether that has been replicated. I am glad that we had an open-minded magistrate.

[Member's time extended.]

Mr M.J. FOLKARD: We served the restraining order via a text. I believe it was one of the first to ever be done that way. I thank the magistrate for having the forethought to say that was a good thing.

I also note that the bill provides the opportunity for applicants to make application for family violence restraining orders online. That should definitely be pursued with vigour and introduced as a matter of urgency. This method is utilised extensively in the eastern states and we should seriously look at having it here in Western Australia. Should we utilise this process, I believe it would be less traumatic for victims and I hope that it would streamline the process and make it far faster and more efficient and effective. I also note that the legislation allows for victims to be advised by electronic means immediately upon the service of a family violence restraining order. I do not understand why we have not, before now, texted the complainants, the victims, immediately upon service that their VRO has been served. During my time as a senior officer, if my young officers did not come back to me and say

that they had advised the complainant immediately on service, they would receive an almighty boot up their backside. But I was one of not many officers who took that stance. It is well and truly overdue that we make that the norm rather than the exception. I also think that that will provide a fantastic opportunity for victims of this hideous crime to be empowered.

The last thing I want to say is that this is substantive legislation. I would like to see some sort of training packages in the magisterial space. In recent times, I had the privilege to meet with a lot of non-government organisations that are working in this space, particularly those that have an interface with the judiciary. All of them would roll their eyes in unison when I asked about consistency, so I hope that the Attorney General will provide some form of training for magistrates so that they are better aware of this important legislation. I commend the bill to the house.

MR K.M. O'DONNELL (Kalgoorlie) [8.13 pm]: Greetings, Mr Acting Speaker. I, too, would like to talk about the Family Violence Legislation Reform Bill 2019. I have made the comment before, similar to the member for Burns Beach, that our history as police officers holds us in good stead, because every time the Attorney General introduces a bill, we have something to say about it.

Back in the 1980s when I first joined the police department, domestics were the worst job that a police officer could go to. We would go to help a woman—I would say that more than 99 per cent of the time it was a lady—but there was a good chance that before we ended up leaving, the woman would whack us, having gone from holding her face and bleeding to, "Don't touch my husband", and, "I love my husband." Many women are stuck in a rut and cannot get out. We did not have the same services back in the 80s. There were no shelters to take a woman to. Before we attended a domestic, partners would talk about how they were going to do it. Most of the time it was, "Right. One takes the wife and one takes the husband." Invariably, we would try to persuade the husband to walk out the front door, down the footpath and out the front gate. Once we got him out the front gate, he was on public property and it was, "Bang, you're gone." We would grab him and throw him in the back of the van. Ninety-nine per cent of the time, we would charge him for being drunk. We do not have a drunk charge anymore, but it was one of the best tools we had at the time to allow a wife and her kids to get respite. The husband would not get out of his cell until the morning or when he had sobered up. We do not have those tools anymore, and nor should we. Things have changed.

The ACTING SPEAKER: Sorry, member. Excuse me, Attorney General. If you want to have a conversation, perhaps you could take it outside. Thank you.

Mr K.M. O'DONNELL: He is missing out on my speech!

The ACTING SPEAKER: He should be listening to you, but he is not.

Mr K.M. O'DONNELL: I will put my hand up. Back in the 80s, we tried to use commonsense. One gentleman kept whacking his wife, and over the months we turned up numerous times. One day I said, "That's it. I've had this bloke." I was the senior officer in the van at the time. We put him in the van and drove one kilometre down a gravel road just out of Kalgoorlie. I took his shoes off and said, "Get out of the van." He got out of the van. We drove 400 or 500 metres down the road. I stood there and showed him his shoes and, boomph, I threw them in the bush. He was barefoot and it would have taken him hours to walk on the gravel to get home. Prior to leaving, I said to him, "If you ever hit your wife again, I will take you further out and you can walk back." Good luck doing that in this day and age—a police officer would be in big trouble. Back in those days, we did not have anything for domestic violence—nothing. It was difficult trying to keep records. Back in the 80s when someone rang and we had a job, we would write it down on a piece of paper and then we would go to the telephone message book and transcribe it in. Kalgoorlie did not have many police officers in the 80s. Sometimes we might have one van with two coppers and a sergeant to run the city. The sergeant had to look after the prisoners, man the counter and answer the phone and the radio while the two coppers were out. We were flat out one Friday night. We came in just before we knocked off. When the next shift came in, they looked at us and said, "Jeez, you've had a quiet night tonight." I said, "What do you mean a quiet night? We haven't stopped since we started at three." They said, "There's no jobs in the telephone message book." The sergeant said, "Sorry, guys, I couldn't keep up. I was writing out job after job after job." When it came time to change shifts, he threw all the bits of paper in the bin. We did the jobs but there was no record of them. We had no record or tally of how many domestics there were or how many people were arrested. In this day and age, the police have a very good system to deal with and record family domestic violence. Further, police officers are asked, "What did you do at the scene?", and, "What advice did you give?" It is very good.

Prior to finishing in the police department, I served a violence restraining order on a de facto couple. They loved each other so much in the bedroom, but, once they left the bedroom, they had nothing in common and they would argue and fight. But they did love each other. I served a restraining order on the bloke one day and I said to him, "Can I give you a bit of advice? You keep getting arrested; you keep getting charged." He said, "What is it?" We looked up. It was daylight and the sun was shining; there was not a drop of rain. I said to him that if his wife says it is raining right at the moment, he should just say to her, "Yes, dear." He looked at me strangely, and I said to

trust me and just try it. I saw this gentleman six or eight months later. He thanked me and I asked him what for. He said for the advice I gave him. I was worried about what advice I had given him, because I have been known to give advice on nearly anything. He told me, "You said if she says it is raining, I should say 'yes, dear' every time. We haven't had a fight or an argument, the police have not come, and she hasn't taken a restraining order on me again." We try in our own way to do our bit, but sometimes there are basic things we can do to help.

The Minister for Prevention of Family and Domestic Violence mentioned Adrian Argent. He is well known to me. I was asked to attend a program at the prison in Boulder where they were trying to do anger management courses. They asked me to sit in, participate and go through it with the prisoners. It has never been done before in Kalgoorlie, so I said I would give it a crack. Adrian was one of those prisoners, but, even then, he had no interest whatsoever. It was a prison program whereby all the prisoners had to do was sit there, and they gave them a little certificate at the end of it. It is a shame, because when Adrian is sober, one can have a conversation with him, but he went down the wrong path. There was a lady in Kalgoorlie–Boulder who suffered from domestic violence. I do not know if members have ever seen something like a metal crowbar, about this long, which has a fork at the end and a hook at the other end.

The ACTING SPEAKER (Mr I.C. Blayney): A jimmy bar.

Mr K.M. O'DONNELL: Yes—a jimmy bar. This bloke decided that that jimmy bar was not for a door or a car. He proceeded to insert it into this lady, his partner, and twist it. That is one of the most disgraceful acts I had ever come across. We just do not want people like that in our society at all. I felt so sorry for that lady for the horror and terror that she must have been put through. Personally, I would love it if the judge said, "Right, your turn", and it was his turn to receive it. But we are a civilised society; we cannot do that.

When I was in the police back in the 1980s, a police woman turned up for work with a black eye. Domestic violence is not just for low socioeconomic people or the rich; it is for anybody and everybody. We had a magistrate in Kalgoorlie–Boulder called Kieran Boothman. I wish all magistrates and judges had the same motto that he had. He told anybody who turned up to court charged with assaulting a woman, "When you come back, bring your toothbrush." Many people would have no idea what that means. However, to the magistrate, the lawyers, the offender and the police, that means the person is going to jail. He stood hard and fast. If someone strikes a woman, they are going to jail. A defendant had to do so much back-pedalling to try to get out of that. I take my hat off to Magistrate Boothman for his beliefs; he was doing his bit for the community to try to stop domestic violence.

Some women obviously feel they have no option but to stay in a situation. We need to ensure that we have the services to help them to leave that situation. We need more support services, shelters, housing options and counselling. I am sure that no regional or metropolitan area of Western Australia has enough. Again, when we had to deal with domestic incidents in the 1980s, we tried to take the wife and family to another location. It is their house, but, if we could not get the husband out of the house, we had to try to take the family away, because many a time the wife would not prosecute the husband for an assault.

I would like to talk about proposed new section 299(5) of the Criminal Code that defines a person who persistently engages in family violence. If a person does an act of family violence on three or more occasions within 10 years, they can be prosecuted. I think that is fantastic. There are so many times that a person just keeps going. He is charged; they give him a community service order. He is charged; they give him a community work order. He is charged; they give him a fine. This proposal is good—put them in jail. Another one is clause 83, which seeks to amend section 45 of the Restraining Orders Act. That clause deals with an application to vary or cancel a restraining order. People who make an application on behalf of another person can now apply to cancel or vary that order on that person's behalf, which is fantastic; it is great. The current requirement that such an application can be made only at the court that made the original order makes it very, very hard. Now, the court must not vary or cancel a restraining order unless the person bound is present and that person and the protected person have had an opportunity to make submissions on the matter. Basically, out of that, they can vary a restraining order in another location if the other person is present. A husband and wife may move. A husband can have a restraining order on him and still live with his wife. Kieran Boothman used to say, "I will give her a restraining order on you, but if you cause any problems to your wife, you're going to jail."

Part 5A of the bill deals with conferences under the Restraining Orders Act. That is a good one. Many a time, a police officer serves a restraining order on someone. The wife might take it out on the Monday; we get the restraining order, try to get it that afternoon, then try to serve it first thing in the morning. We can do it there and then that day or it could take a while. Once we serve it, that person has 21 days to say that they want to object to it. Then we get a summons to go and serve it on that bloke and tell him when the court date is. It can take weeks and weeks or even months. This proposed change is good. The conference can be convened only if the applicant has indicated that they wish to proceed, the court has made an interim family violence restraining order and the respondent has indicated an objection to the interim order. That is great. Then, under proposed section 49D(3), the registrar convening

a conference is to fix a day, time and place for the conference. That is short listing and getting things done quick. However, I point out to the minister that it does not put down a time frame. My personal opinion is that when there is a registrar and the applicant and respondent both agree, why not get it done within seven days? Do not just let it drag out. The registrar is doing it, and they should be able to do it within seven days. I cannot see why they could not.

Under clause 90, proposed section 60(1A)(b) would allow substituted service without application to the court if a person attempting to serve the order has failed to achieve personal service. The member for Burns Beach brought that up. Trying to serve restraining orders is a policeman's nightmare. When everything is going well, it is fantastic; we get it done. But whenever someone tries to work out the statistics, if a restraining order is not served, it can sit there for years. As it has not been served, it expands the time. When we ask how long it takes to serve a restraining order, we have to take all the ones that are not served into account, which balloons out the time frame. We cannot say that we get most done within a couple of days. The time span kicks it out, even though we serve a lot within days, because the other ones that sit there for years are included and the time is added in. They ruin the statistics.

I love the provision for substituted service. The explanatory memorandum states —

> This subsection allows regulations to prescribe the manner in which substituted service may occur, for example, orally in accordance with section 55(5A). The use of regulations to prescribe the methods of substituted service enables the methods to be expanded in the future with improvements in technology.

Yes—fantastic! It is getting up to date. When I was a policeman, if we could not find a person, and if we wanted to substitute it, get a substituted service for them and just leave a copy for them, we had to apply to the court, get a court date, go back and then stand before a magistrate and say what we had done. It was a waste of time and energy for everybody. If the coppers cannot do it, service should be substituted straightaway, without going back to court to get permission. That is ordinary.

Part 7, which amends the Police Act, defines designated persons who can receive reports of family violence. It is great that it will not be only police officers. It will include police officers, any other person appointed to an office under this act, or any person whose duties of office involve or include interacting with members of the public. That includes auxiliary officers, public sector employees, and police officers. The designated person can take the report and give the number.

Mr Acting Speaker, I do not know whether I will need an extension, but can I have one just in case?

[Member's time extended.]

Mr K.M. O'DONNELL: Many a time we would have a public servant come to the back of the station and ask us to come to the counter because they had received a domestic violence report. This change is getting with the times. I think it is great. If I had not been a policeman, I have probably would not think so, but it is a step in the right direction. The less police officers have to deal with people at the front counter, the better. It does not matter what we do. It is a very good change.

I am nearly finished. I will finish up by saying that this bill is a good bill. I am very keen on it getting through, as is the rest of our party. I asked one question. I think that when a registrar is organising a conference, it would be good if the bill stated that he has seven days to arrange that conference. Some people may say that is not needed, but many bills state that things have to be done within a certain time. I think that would ensure that the registrar does it correctly. If both parties are in agreeance to having a conference, that means they want to have it done and dusted quickly, and it should be.

It is a shame that although restraining orders were designed for husbands, wives and de facto partners, they have ended up being used for schoolchildren versus schoolchildren, and neighbour versus neighbour. Their use has ballooned, which I do not think anybody envisaged. That will do me for now. I want to say thank you very much for the chance to speak.

Mr D.A. Templeman: Are you enjoying sitting over there?

Mr K.M. O'DONNELL: Yes. I feel like—am I on the outer, or closer to the front bench?

The ACTING SPEAKER (Mr I.C. Blayney): I wondered that when they put me there!

MR S.A. MILLMAN (Mount Lawley) [8.32 pm]: I rise to add my voice to the chorus speaking in support of the Family Violence Legislation Reform Bill 2019. I will start by commending the Attorney General for introducing this legislation. I particularly want to express my support and gratitude to the very first Minister for Prevention of Family and Domestic Violence for the work that she has done in this cabinet. I do not want to quote him out of context, but in his contribution the member for Armadale said that here we are changing laws, but that attitudes need to change. I think that the laws we introduce in this Parliament act as a guiding light for the attitudinal change that needs to take place in society. I am incredibly heartened to have heard the contributions from the members for

Hillarys and Dawesville, and other opposition members who have contributed to this debate, indicating their support for this legislation. That attitudinal change is imperative. Having regard to the contribution of the member for Burns Beach who listed, seriatim, all those tragic victims, or listening to the contribution of the member for Belmont, who outlined the mind-blowing statistics associated with family and domestic violence, it is unquestionable that we need an attitudinal change. We can drive that attitudinal change by introducing legislation, because we can be held up as a pillar of society—a shining light saying that this is an important issue in our community that must be tackled.

The taboo around family and domestic violence is abating. In significant sections of society it still exists. It is a scourge and is still prevalent, but it is abating. It is abating because people are taking up the challenge. These ministers, both the Attorney General and the Minister for Prevention of Family and Domestic Violence, are grasping the nettle to tackle this important issue in our community. I do not propose to speak for a long time because most of what I was hoping to cover has already been covered by earlier speakers. I note, when it comes to attitudinal change, that I am the fifth or sixth male to contribute to this debate. The only women who have contributed to this debate have been the Minister for Prevention of Family and Domestic Violence and the member for Belmont, which I thought was unfortunate in the shadow of International Women's Day last Sunday. However, I have reflected on that sentiment and think that perhaps the onus to tackle this issue should be just as much on men as on women. I thank all the men who have contributed to this debate.

This legislation will achieve excellent results. It introduces new offences and sentences, and picks up the recommendations of the Law Reform Commission of Western Australia's 2014 final report—a report that was authored six years ago—titled "Enhancing Family and Domestic Violence Laws". The legal process in this field of endeavour can be very alienating. This legislation will improve the efficacy and the operation of that process to protect victims. It will introduce amendments to the Evidence Act that will allow for the gathering of evidence by curial bodies, judicial bodies and the courts. It will increase some penalties and introduce new penalties for breaches of violence restraining orders.

This has been a collaborative effort that shows the unity of purpose of the McGowan Labor government to tackle this issue. However, as the member for Armadale said, this issue will not be solved by legislation alone. I will use a short part of my brief contribution tonight to highlight some steps that we need to take as a society to achieve attitudinal change. A good friend and constituent of mine is a well-respected family law practitioner. Over the last couple of weeks she has used social media to share what I think are three highly relevant articles on the issue of family and domestic violence. I will start with the global, then bring it down to the most immediate. All three of these articles are from *The Guardian*. The first article that I will refer to is by Liz Ford, dated Thursday, 5 March 2020, titled "Nine out of 10 people found to be biased against women". The article is introduced with —

> Analysis of 75 countries reveals 'shocking' scale of global women's rights backlash
>
> Almost 90% of people are biased against women, according to a new index that highlights the "shocking" extent of the global backlash towards gender equality.
>
> Despite progress in closing the equality gap, 91% of men and 86% of women hold at least one bias against women in relation to politics, economics, education, violence or reproductive rights.
>
> …
>
> The figures are based on two sets of data collected from almost 100 countries through the World Values Survey, which examines changing attitudes in almost 100 countries and how they impact on social and political life.
>
> …
>
> Of the 75 countries studied, there were only six in which the majority of people held no bias towards women.

That is just the majority—not 100 per cent.

> But while more than 50% of people in Andorra, Australia, the Netherlands, New Zealand, Norway and Sweden were free from gender prejudice, even here the pattern was not one of unmitigated progress.

My first observation about this article is that Australia falls within the category of countries that have done great work already to achieve equality and militate against gender discrimination, but there is more work to be done.

That brings me to the second article that my friend posted on social media. It is an interview with Jess Hill, who is referred to in the third article I will quote. In this article "Patriarchy and power: how socialisation underpins abusive behaviour" from Sunday, 8 March 2020, Jess Hill is asked a number of questions. Ms Hill is asked —

> **Hannah Clarke's family described her husband Rowan Baxter as controlling, coercive and obsessive.**

I interrupt the quotation to pick up on the point about coercive control made by the member for Burns Beach. The article continues —

> **His abuse appears to have followed a familiar script known as coercive control. Can you explain this?**
>
> Coercive control is a very particular kind of domestic abuse. It's not a "reaction" to stress, nor is it triggered by alcohol or drugs. It's an ongoing system of control, in which the abusive partner seeks to override their partner's autonomy and destroy their sense of self …
>
> Coercive controllers may use extreme physical or sexual violence; or, as was reportedly the case with Rowan Baxter, no physical violence at all. For more than 40 years, women and children have been saying that except for extreme violence, the coercive control is the worst part.

Ms Hill is then asked —

> **If domestic abuse cases almost always follow the same script, as you write in your book, why is it so hard to stop them?**
>
> … Many women don't know they are experiencing abuse until they are already in situations that are incredibly dangerous—partly because coercive control is so poorly understood, but also because the perpetrator makes it invisible.

They are placed in an invidious position of not knowing what to do or what the best course of action would be. The article continues —

> If they do report to police—if something reportable actually occurs—they are making a terrifying gamble … Will reporting their partner make him more dangerous? What if child protection gets involved? What if he contests for custody?

Ms Hill is then asked —

> **How do some men come to feel so entitled to their power over women?**
>
> Thousands of years of patriarchy has laid pretty good groundwork for this—and it's not so long since a wife was considered her husband's property, and had no legal rights whatsoever. It was only in the 1980s that new laws against marital rape recognised that men didn't have the right to demand sex with their wives anytime they wanted …

We can see that coercive control and patriarchy in society underpins what then gives rise to family and domestic violence. I will finish by quoting an article by Ben Smee titled "Malcolm Roberts criticised after claiming 'many' domestic violence allegations made up" published on *The Guardian* website on Tuesday, 10 March. With people like Malcolm Roberts and Pauline —

Mr P.A. Katsambanis: Can I get you to elaborate on who you are speaking about—as in Malcolm Roberts—so it is on the record and we know who it is, because plenty of people in Australia are called Malcolm Roberts.

Mr S.A. MILLMAN: I thank the member for Hillarys for the interjection. Malcolm Roberts, together with Pauline Hanson, are Pauline Hanson's One Nation senators. I am so pleased to hear that the Liberal Party—the sensible voice of the right wing as opposed to One Nation—supports this legislation, because there is no guarantee we would get that sort of support from One Nation, particularly when one has regard to the attitudes of Malcolm Roberts and Pauline Hanson. Ben Smee's article states —

> The One Nation senator Malcolm Roberts has told a parliamentary inquiry into Australia's family law system that "many instances" of domestic violence allegations are made up by parents to gain custody of their children.

Obviously, this scandalous allegation was immediately called out in the public and in the media. Ben Smee notes that Pauline Hanson also made a series of unsupported statements about parents lying to the Family Court. He then clarifies the situation by saying —

> The claim that women frequently make up abuse claims is a prominent grievance among men's rights groups, but has been widely discredited in multiple studies. According to researcher Jess Hill —

That is the person interviewed in the article I just referred to —

> who has authored a book on domestic abuse called See What You Made Me Do, one of the most thorough studies on false abuse allegations from Canada found that non-custodial parents, usually fathers, made false complaints most frequently, accounting for 43% of the total, followed by neighbours and relatives at 19% and mothers at 14%.

I will conclude my contribution by leaving the last words to Rosie Batty and her response to Robert's and Hanson's comments. The article states —

> Last year anti-violence campaigner Rosie Batty denounced Hanson for saying women made up false allegations of violence during custody disputes.
>
> Batty said such remarks were "incredibly damaging" …

I return to the point at which I started: this legislation is important not because it delivers on an election promise, it demonstrates the unity of purpose of this government or it puts victims at the centre of our criminal justice system; it is important because it will help drive the necessary attitudinal change for us as a society as a whole to tackle what is a terrible scourge. With that, I commend the Minister for Prevention of Family and Domestic Violence and the Attorney General. I commend this bill to the house.

MR I.C. BLAYNEY (Geraldton) [8.44 pm]: I will speak briefly on the Family Violence Legislation Reform Bill 2019. I want to talk mostly about a program we run in Geraldton called Community, Respect and Equality. The minister for domestic violence will probably remember the Community, Respect and Equality program.

The ACTING SPEAKER (Mr S.J. Price): Member, can I correct that reference; it is the Minister for Prevention of Family and Domestic Violence.

Mr I.C. BLAYNEY: Sorry; it is the Minister for Prevention of Family and Domestic Violence.

The minister was in Geraldton in 2017, I think, and spent a full morning with us at a conference on the subject and launched the program. The other day I went to a consultation group meeting for the group, so I can advise the minister that it is still working steadily as intended, there is a lot of positive support in the community for it and a lot of work is going on. I understand the program is federally funded and is intended to run for about 12 years; is that right? If the feds are bringing in a program that will run for 12 years, I think that tends to reinforce that they understand the depth of the problem and how long it takes to have an impact on it. The minister may correct me, and I will wait for that.

It is of course incredibly difficult to do something about this issue. When I was looking through the material just then, it was hard to find evaluation material that conclusively says that programs work. It becomes intergenerational, and that is even harder to change. We all know there are clear linkages with alcohol and drug abuse, and unemployment. In my electorate, as in a lot of electorates, those problems exist as well. Along with most of the other members of Parliament who have an office in Geraldton, I think I am signed up to support this program. The five state MPs with an office in Geraldton jointly sponsor a round of the Great Northern Football League and I suggested at the meeting the other day that we should have someone on each of the gates at each of the matches over the round we sponsor handing out literature. I think that is something we will do.

Over my time as the member for Geraldton, this issue has been brought to me quite regularly. I think I have accessed royalties for regions money three times for extensions and improvements to our main refuge in Geraldton. I have also accessed funds for Sun City Christian Centre. It has built some transitional housing for people who need to move out of a refuge because they cannot be there forever but are not really ready to go into a normal rental. There are six units at the Sun City Christian Centre building in Rangeway that people can live in. They have help and support while they are there.

It is often said to me that it would be far better if we could take the man out of the environment and leave the women and children in place. We had a trial in which an Aboriginal group established such a place to put the men in—it cannot be called a refuge—but unfortunately that did not work and has since closed.

I would like to give credit to the police for the work that they do in this area. It is an incredibly difficult part of their job. The police have told us about some of the problems that they have. A couple of weeks ago, I got half an idea of what police and women confront when a brawl erupted in the supermarket that I usually go to in Geraldton. Everyone was standing around when people started to put the boot into a bloke they had on the ground. I was actually the one who went up to them, remonstrated with them and tried to talk them down. To my great surprise, I was actually successful. I was surprised at how angry and strong they were. If we take the strength of that person versus the average female, she probably would not have stood a chance. With that combination of anger, especially if alcohol and drugs are involved, a propensity to violence and all these terrible things that we read about, I am afraid they just happen. I also took a stand—along with the police, local schools and a local community group—against a liquor barn that someone wanted to build in Utakarra. That did not make me very popular with some of the people in the local building industry or the person who wanted to build the liquor barn, but sometimes we have to do what is right. The person who wanted to build the liquor barn is the only person who has ever come to my office whom I have refused to meet, because all I could see was that person bringing more misery into a part of town that has its fair share of it, as it is.

Personally, in my family situation, I have never been exposed to domestic violence, but my sister married a violent drunk and the whole thing was quite foreign to me. When I was quite young I witnessed him hitting her, and I found that really quite difficult to comprehend. She eventually left him with three little kids, and, obviously, we supported her as much as we could. She went on to study social work, became a social worker and she has put that behind her now.

What is the solution? I do not know. It cannot just be booze and drugs, because there are some societies in the world where alcohol cannot be bought and there are no drugs, and there is still a lot of abuse of women. One of the keys, as I said, is that it is intergenerational; it cannot be solved overnight, in a year or a couple of years. The first thing we have to do is get kids to go to school. That is a simple, basic thing, but every time I drive around some parts of Geraldton when school is in, there are kids who should be at primary school who are not at school. We used to have truancy officers whose job it was to round these kids up, find out why they are not going to school and where they are supposed to be going to school and they would intervene. I am told that that is now the job of the police. I think the police have got enough other things to do without being dragged in to become the truancy officers that we should have anyway.

That is my contribution. I am proud of what Community Respect and Equality is doing in Geraldton and the level of community support it has. The only parting shot I have is that I commend the government for the actions it has taken in this place, but, probably with quite a few other people, find that in strange contrast to its lauding of cage fighting, which just glorifies violence. It is proud that it has brought that into Western Australia, and I find the two things are a bit hard to rationalise and understand.

MR J.R. QUIGLEY (Butler — Attorney General) [8.53 pm] — in reply: I rise to respond to contributions to the second reading debate on the Family Violence Legislation Reform Bill 2019, and in doing so I wish to thank all members for their contributions. There have been many contributions, and I will not refer to them all in consummate detail, as a number of them dealt with not stories, but the recounting of events that led them to their passion to support this bill. I do not think I really need to go into those events again, except for this one, which was the event that really propelled me into this space. That was attending where we have our afternoon tea in that dining room—I forget the name of it.

Mr P.A. Katsambanis: The Centenary Room.

Mr J.R. QUIGLEY: The Centenary Room; I thank the member.

The Ombudsman did a presentation several years ago on police response to domestic violence incidents. The Ombudsman had made a big inquiry, and during that presentation he explained that in the year that he was studying the police response to domestic violence—I think this was about 2016—there were 42 murders in Western Australia. The Ombudsman explained that of those 42 murders, 22 of them were intimate partner murders. Over half the number of murders in Western Australia were intimate partner murders. The Ombudsman went on to break those figures down further and explained to us all that of those 22 intimate partner murders, 12 of those murders were of Indigenous women living in regional or remote areas. They were coming from only 2.1 per cent of our population. That is the Indigenous population. If we take only the women, 1.05 per cent of our population in Western Australia was delivering us 12 murder victims a year, equating to over 25 per cent of all murders in Western Australia. This was just breathtaking. What has been happening since is no slow down at all. Those figures really got me into this space in a very, very committed way.

Whilst members have anecdotally recounted events in this chamber, they have all supported the legislation through that recounting of events. However, I have tried to distil the opposition's questions concerning legal aspects of the bill currently before the chamber, being the Family Violence Legislation Reform Bill 2019. If I go to those, I will distil those down. The lead speaker was the member for Hillarys, and he raised the first question: what is the commitment to provide real resources, not just system changes? I would like to respond by saying that since 2017, this government has focused on a comprehensive package of reforms totalling more than $53 million of additional investment to keep victims of family and domestic violence safe and hold perpetrators accountable. It is a whole-of-government effort across communities, justice, health, education and WA Police. Key initiatives include, but are not limited to, the respectful relationship teaching support program in WA schools, in partnership with the Department of Education; adding two women's refuges to the existing network; a second residential behaviour change program for male perpetrators; establishing two family and domestic violence one-stop hubs; increased financial counselling services, because as we recall, financial counsellors were cut under the Liberal government, and we have reintroduced those; supporting services to deliver culturally appropriate support to Aboriginal women and women from culturally and linguistically diverse backgrounds experiencing family and domestic violence; a three-year program to improve screening rates for family and domestic violence during pregnancy; and, delivering and training frontline police officers and development of a family violence code of practice for WA Police. I do not want to make too much of this, because it is historical and I cannot exactly pin it on his chest, but we had

family and domestic violence courts, which the member for Hillarys now urges. But as the member for Fremantle pointed out during her erudite address this evening, the previous government, the Attorney General or the Barnett government, cancelled those courts. We now have domestic violence lists in our existing courts.

The next thing that the lead speaker for the opposition raised was the suffocation and strangulation offence. He posed the question—I am doing this so that it might speed up the consideration in detail stage—why does it not include a lack of consent as an element?

Mr P.A. Katsambanis: No, I did not ask that—I commented on it. I improved on it.

Mr J.R. QUIGLEY: Okay, but I will deal with it, if I may comment in response. The victim not being required to give evidence at trial is only one reason the lack of consent is not included as an element. It is true that not including the lack of consent as an element also provides the protection for victims of family violence from being coerced to recant their evidence and means the prosecution of an offence can continue when a victim becomes reluctant to continue. The prosecution will not necessarily be required to call a victim to prove the offence if it is witnessed by another person or captured on CCTV. The victim will not be required to go into the witness box to swear lack of consent.

Lack of consent is not an element of the suffocation offence as this conduct is inherently dangerous. The offence recognises the very severe nature of the potential consequences of suffocation and strangulation from a medical point of view, the frequency of this conduct in the family violence context and its significance as an indicator of future extreme violence and, in particular, homicide. Having a go at strangulation once is an indicator that that extreme violence might be repeated in the future.

As a matter of policy—this is a separate issue—a person should not be able to consent to a life-threatening act of this nature. This is consistent with section 304 of the Criminal Code, "Act or omission causing bodily harm or danger". That offence does not require a lack of consent to make the act of endangering life unlawful. Not including a lack of consent as an element also removes the ability to raise section 24, "Mistake of fact", so they cannot raise that and say, "I honestly and reasonably believed that the victim was consenting," because consenting is not an element of the offence. Consent is also not available as a defence for the same reason. I said "she" because 99 per cent of victims are female.

It is noted that the member for Hillarys referred to the inclusion of the requirement in the offence that it was carried out "unlawfully", which has its ordinary meaning of being prohibited by law or contrary to law and not otherwise being excused. In this regard, I rely on Houghton v The Queen [2004] WASCA 20 in which former president Justice Steytler and Justice Wheeler wrote at paragraph 121 that "unlawfully" has its ordinary meaning of being prohibited by law or contrary to law and not otherwise excused. This allows for the operation of the exculpatory provisions contained in part I, chapter V of the Criminal Code, such as an accident—if someone fell into someone—or an unwilled act or omission, which is the defence of autonomy. Requiring the offence to be committed unlawfully does not enable a general defence on the basis that the conduct was consensual.

The next issue raised was persistent family violence. I ask the rhetorical question: what does each juror need to be satisfied of? Section 300(7) of the Criminal Code simply provides that jurors do not have to agree on the same acts making up the offence. The offence under section 300(1) requires the court or the jury to be satisfied that the accused committed three acts of family violence, those being the prescribed offences listed in section 299(1). Each member of the jury might individually decide that he is guilty beyond reasonable doubt of committing three acts of violence. They might be relying upon different acts, but he is still —

Mr P.A. Katsambanis: We will deal with that very briefly in consideration in detail.

Mr J.R. QUIGLEY: Okay, but I thought I would explain that bit.

It may be, and often will be, that a charge contains more than three acts of family violence. One jury might rely on acts one, three and five and another jury might rely on acts two, three and four, but if a jury overall is satisfied beyond reasonable doubt that the perpetrator has committed three acts, which are set out in section 299(1), it can return a guilty verdict. This is consistent with existing section 321A in relation to persistent child sex offences.

I pose the rhetorical question: why is this offence restricted only to intimate partners and not other family members? This was raised during the course of the member for Hillarys' response earlier this afternoon. Violence within an intimate partner relationship is a distinct form of violence, often characterised by power and control, and is the most common and pervasive form of family violence. The evidence base around the issues facing victims of prolonged family violence, such as the inability to recall specific incidents or particularise the violence sufficiently to succeed in a prosecution, is predominantly in relation to intimate partners. It is anticipated that the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability and the Royal Commission into Aged Care Quality and Safety may shed further light on the issues facing these groups of people, which might then prompt

a further legislative response that adequately recognises those issues in the future, once we have the benefit of the royal commissions' inquiries and detailed reports. I also note that the review clause will facilitate the review of this offence and consideration of whether it would be appropriate to extend the offence beyond intimate partners. That review clause is in the legislation, as the member for Hillarys knows, and it will mandate that review in due course.

I turn to the Sentencing Act 1995. This was true when we were in opposition—I have to be quite candid here—and now that the Liberal Party is in opposition the same question is being raised: will the use of electronic monitoring become the default position and not an extra tool? The expansion of electronic monitoring allows for an additional level of oversight on offenders who receive suspended prison terms or community-based orders if ordered by the court. It is for the judiciary to decide the appropriate sentence in these circumstances, and, after deciding the appropriate sentence, to then consider whether electronic monitoring ought to be applied. During sentencing, the risk to community safety is a primary consideration for the court when placing offenders on community orders. Community corrections will provide reports to the court assessing this risk. These reports will make recommendations regarding the suitability of the offender for electronic monitoring.

As the member for Hillarys rightly said, electronic monitoring is an additional layer of security on top of existing conditions imposed by judicial officers for offenders in the community, such as community corrections case management, curfew requirements and regular supervision. There are limitations to electronic monitoring in some remote areas—because they are not covered by GPS—both in terms of the technological functions of the devices and the ability to respond to breaches. If the breach is out in Balgo, how do we respond in five minutes?

Mr P.A. Katsambanis: You've got to have a dozen police officers sitting there, waiting for that.

Mr J.R. QUIGLEY: Yes, but wherever they are in the remote areas, we have challenges.

Community corrections will provide the court with an assessment of the suitability of the offender for an electronic monitor. Suitability incorporates issues of risks such as conditions that might apply, any relevant potential victims, the person's criminal history, mental health issues, previous response to supervision and practicalities such as does the person have a place to reside and will the monitoring technology work in the area where the offender lives. The member also raised an interesting point about funding commitments for electronic monitoring. In May 2019, I announced the McGowan government's $52.3 million investment in electronic monitoring, including additional police officers to work with the Department of Justice's electronic monitoring team, which has been moved to the state operations command centre at the police complex in Maylands. I might just add that that these bracelets are leased, like in other jurisdictions, particularly in New Zealand, and there are up to 2 500 of them. By leasing and not purchasing them, at the end of the lease and as technology advances, they can be rolled over into even more advanced technology. So far we have invested $52 million into that program.

Offenders are tracked in near real time. Remember the sex offender who went to urinate in a laneway? He was there for only two minutes and they were onto him, so offenders will be tracked in almost real time and there will be an almost immediate response. An exclusion zone will be put around a victim's house or a suburb and if the GPS device enters that exclusion zone the alarm will go off at police operations command headquarters in Maylands. Any offender who breaches restrictions placed on their movements or tampers with the tracking device will trigger an alert that will immediately be received at the state operations command centre, allowing for a swift and appropriate response from the police. I also note the member's comments that electronic tracking will not prevent all family violence, as offending is not always due to proximity to the victim. The government recognises this fact. Last year, we introduced intimate image abuse criminal offences, which will also protect family violence victims against distribution of their image without their consent. From 1 July 2017, family violence victims in Western Australia can also make an application for a family violence restraining order, restraining the person from distributing or threatening to distribute an intimate image.

We also have included in the bill the presumption of bail for declared offenders. The member for Hillarys, who is the lead speaker for the opposition, asked why that is limited to only family violence offenders. Having raised that question, the member queried why a serial family violence offender would not be subject to a presumption against bail for any future offence; that is, why does the presumption apply to only family violence offences? The serial offender declaration will be made by the court in recognition of the risks of the offender committing future family violence offences. It is not based on the likelihood of the offender committing any further offences across the statute book, but only the assessment in relation to family violence offences. For offences that are entirely unrelated to family violence offending, the court will be able to take into account the offender's criminal history, including their repeated family violence offending when they present for bail on the unrelated offence.

We were also asked rhetorically why there was only a presumption against bail and not a ban against bail entirely. The first reason is that some victims rely upon the family of the victim. The victim and—I refer to the female gender again—and her children often rely upon the income of the offender by way of family support payments, collected

by the Australian Taxation Office. A ban on bail could also have the unintended consequence of victims losing their housing because no income is coming in to pay for it. I highlight that a serial family violence offender who is arrested for a family violence offence will have bail considered only by a judicial officer and not by a sergeant at the station, the police or a justice of the peace. It is a very serious matter to be arrested as a serial family violence offender and, therefore, it is appropriate that only a magistrate, a judicial officer, consider bail.

The way the amendments work is that to be granted bail, the accused must demonstrate to the court exceptional reasons to justify granting bail. The exceptional reasons test already exists in section 3 and 3A of schedule 1, part C of the Bail Act, which deals with a murder accused and persons accused of a serious offence while on bail or a serious offence, respectively. The courts are well used to applying the exceptional circumstances test. It is well accepted by the courts that whether exceptional reasons exist entirely turns on the facts of the case. I have alluded to the fact that it might be that the victim and her three or four children are relying upon family support payments to keep them in housing. We all know what happens when they find themselves in homeless circumstances and suddenly they go to their local member, like the member for Hillarys or the member for Belmont, saying "Can you get me on the emergency housing list?" We know that there is a considerable waitlist even for emergency housing. The court might take that into account when granting bail so that the payments keep on coming through whilst putting an ankle bracelet on the person and an exclusion zone around that person's house.

Mr P.A. Katsambanis: Which they have just breached.

Mr J.R. QUIGLEY: Then they will be arrested again and an exceptional circumstance test will not get up. But we do not want to doubly punish victims; we want the court to have the option of considering that. Nevertheless, exceptional reasons, of their nature, are something out of the ordinary. The presumption, in the case of a declared serial offender, is plainly against the granting of bail. It is an offender who has been assessed as at high risk of re-offending yet continues to show a disregard for the law. That is a matter best left to the judiciary to determine.

Further, I have significant concerns, following advice from the former Solicitor-General about the constitutional validity of completely depriving a court of the ability to consider bail. That concern was raised by the former Solicitor-General who, of course, these days is now the Hon Chief Justice of Western Australia.

The member for Hillarys referred to the prohibition from holding explosive or firearm licences and highlighted that a large number of employees and others in Western Australia have explosive and firearm licences. There may be circumstances in which an absolute prohibition of the holding of an explosive or firearm licence may not be necessary or appropriate. The obvious example is when an offender requires access to explosives or firearms in the course of their employment; for example, they are a shotfirer on a mine site or an agricultural protection officer who must have a weapon when they go out in a helicopter to do runs to cull vermin. Therefore, there will be some exceptions rather than a blanket ban. If the offender requires a licence for their employment and there is no risk that that person will use their licence to carry out acts of family violence whether by way of threats, intimidation or physical violence, the court will under proposed section 124G(2) be able to grant an exception to the licence disqualification. This is a matter, once again, to be appropriately considered by the judiciary when all the facts are before the court.

I turn for a moment to the issues of bail. A question was raised about the resources available to courts and police dealing with the bail workload. I refer to the member's query about whether the repeal of section 16A(3) of the Bail Act would result in additional people being arrested and brought before the courts for breach of restraining order matters, and whether that would increase the courts' workload. If I may, I will clarify the effect of the amendment. The amendment is to allow police to grant bail for breaches of family violence restraining orders, or violence restraining orders, in an urban area. Section 16A(3) currently provides that police officers do not have jurisdiction to grant bail to an accused who has been arrested and charged with breaching a restraining order in an urban area. In such cases, bail can be considered only by a court, and an accused may be kept in custody overnight or until he—or, rarely, she—can be brought before the court.

Most of these amendments are driven by the 2014 "Enhancing Family and Domestic Violence Laws: Final Report" of the Law Reform Commission of Western Australia. That 2014 report came out during the second term of the previous Liberal government, and here is the McGowan government dealing with it during its first term. The Law Reform Commission observed in the report that this provision had the unintended consequence of encouraging police, in some cases, to use the summons process for the offence of breaching a family violence restraining order instead of arresting the offender. A further issue is that it is inconsistent that accused persons in the metropolitan area must be brought before a court for bail to be considered, whilst persons in regional locations can have their bail set by the police. The repeal of this subsection means that police in urban areas will have the same discretion that is currently available to police in other areas to consider whether it is appropriate to release an accused on bail for breaching a family violence restraining order or a violence restraining order. That is quite separate from a person who is declared a serial offender.

It is anticipated that this will have the practical consequence of decreasing the extent to which the accused are summonsed in order to circumvent the restriction on granting bail in situations in which police consider it to be unfair or inappropriate to remand an accused in custody to appear the next morning. Some police might subjectively conclude, "It would be unfair to keep this bloke in jail overnight; we could just summons him." This provision will stop that. Furthermore, police are currently able to grant bail in cases of criminal matters involving family violence, but not for a breach of restraining orders.

I turn to section 9 of the Bail Act. There was a question about the narrow interpretation of section 9 not permitting deferral of bail. The member asked whether I was aware of any circumstances in which a court had narrowly interpreted section 9 of the Bail Act, such that the court would have missed an opportunity to obtain bail risk information. I am not aware of any examples in which courts have adopted such a narrow interpretation. This amendment is provided for clarity, and to ensure that family violence risk considerations are in the forefront of a decision-maker's mind when considering bail.

I refer now to the Restraining Orders Act 1997 and the use of children as interpreters. The member pointed out that the amendment requiring that only persons over the age of 18 years be permitted to explain police and other orders may result in delays in service. During the Law Reform Commission of Western Australia's consultation for its 2014 report, the Commissioner for Children and Young People stated that children were not appropriate interpreters in any context, but particularly in response to family and domestic violence. In the course of consultation for the bill, sector stakeholders overwhelmingly supported this amendment. The use of children and young people as interpreters inappropriately places them in positions of responsibility, can undermine relationships, and may expose them to the risk of negative consequences from a perpetrator.

The next part I would like to talk about is shuttle conferencing, which was an issue raised by the member for Hillarys. The member raised some concern about the possibility—I will not put it higher than that—that a registrar in shuttle conferencing might impose fewer protective provisions than would a magistrate in a court case.

Mr P.A. Katsambanis: It won't be imposed by the registrar; it would be agreed to through the process.

Mr J.R. QUIGLEY: If I can just come to that for a moment, the model is based on conferences being facilitated by registrars who are trained to recognise the complex dynamics of coercion and control that can underpin family violence relationships. In addition, the bill places statutory obligations on registrars to consider the matters contained in section 10F of the Restraining Orders Act prior to making an order by agreement. This expressly requires the registrar to consider the need of the person who is seeking to be protected to be protected from family violence.

The member also asked why behaviour change programs are unenforceable. The use of programs in a shuttle mediation model allows the perpetrator to agree to attend a behaviour change program. As Minister McGurk, the member for Fremantle, said, research tells us that mandated programs do not necessarily deliver the most effective outcomes. The shuttle conferencing model will be reviewed by the department after a period of operation. That will include reviewing the effectiveness of the behaviour change programs, but these programs are not the only programs available to perpetrators. A range of programs exist for offenders on community orders and in prisons. These include an enhanced version of the Not Our Way program for Aboriginal family and domestic violence offenders and, importantly, Banksia Hill Detention Centre recently commenced the Disrupting Family Violence program for young offenders. There are also a number of programs in the community not directly connected to the criminal justice system.

In addition, Australia's National Research Organisation for Women's Safety is leading a significant research agenda on the effectiveness of perpetrator programs and interventions, including research that involves WA's Stopping Family Violence and Curtin University. In particular, this research is developing a dedicated outcomes framework for men's behaviour change programs that will guide the development of effective programs both in the community and in custody. Frameworks like these are evidence based and informed by professionals.

I was asked why police do not more frequently take out family violence restraining orders on behalf of victims. This is a matter of balancing police resources and the needs of victims. It is relevant to note the resourcing imposition if police were required to apply for restraining orders, gather evidence for hearings, appear in court and attend to any subsequent variations or cancellations of the order. It would be an enormous extra workload on police. The amendments in this bill do, however, go some way towards making it easier and less traumatic for victims to obtain restraining orders.

The additional amendments circulated today will provide for restraining order applications to be lodged electronically. This will be rolled out initially to organisations that may assist victims in restraining order matters, such as Legal Aid WA, women's refuges, community legal centres and the Women's Legal Service WA. With the assistance of one of these organisations, victims will have a new opportunity to make applications without being required to

attend a courthouse. The bill makes amendments so that the Family Court can issue restraining orders on an ex parte basis, which it cannot do at the moment, in the course of Family Court proceedings. It also extends the operation of section 63A of the Restraining Orders Act 1997 to non–family violence offences, meaning that a criminal court can make an automatic final restraining order for a wider range of offences. The conferencing regime will mean that victims are not required to face a perpetrator of violence against them to obtain a restraining order. In the event a matter proceeds to a final order hearing, this bill will ensure that protections are in place for victims, including enabling the court to limit cross-examination and put measures such as closed-circuit television in place. In his contribution, the member for Hillarys referred to people having to front up and see them in court. We already have provisions for protected witnesses and sex assault cases in which evidence is given in another locality and the respondent in restraining order cases will be able to listen to the evidence on closed-circuit television.

The member for Hillarys raised a very good point about the access to courthouses and said that victims and perpetrators accessing the courthouse from the same entrance is a concern. I inform the member that all new courtrooms have been built with the needs of victims in mind and the designers consult with victim support staff in the development of the plans, including the Commissioner for Victims of Crime. For example, in designing the new Kununurra, Carnarvon and Armadale courthouses, the government has taken into account the needs of victims, with separate entrances and waiting rooms. These are not simply added to a court as an afterthought but are a fundamental design consideration. It is not possible to change all existing courthouses, many of which are old and were built when we did not consider the needs of victims. In these cases, staff at the court work to ensure that, when possible, the safety of victims is paramount.

The member also referred to the use of the first statement by a victim. We know that often the first statement taken on the night is perhaps most reflective of exactly what happened. All things can come into play after the first statement, not only with the elapse of time. We all know that over time a witness's memory diminishes a little and that pressure can be brought to bear on the victim. Very often the pressure brought to bear on the victim is done so by the perpetrator. There have to be new evidentiary rules to allow first statements to go in and it is the government's intention to incorporate those in a new uniform evidence act. Similar legislation operates in other jurisdictions. I have specifically instructed parliamentary counsel to ensure that the video taken by the attending police officers—we know from the Commissioner of Police that all police officers will be issued with lapel cameras, which will be left on—will be admissible in court as the evidence in chief of the victim. The member's concerns will be addressed but it is appropriate that they are addressed in the Evidence Act 1906 rather than in the Family Violence Legislation Reform Bill for fairly obvious reasons and that is why, of course, we are going to a uniform evidence act for which the member for Hillarys has already indicated his support.

I thank Minister McGurk, the member for Fremantle, for her contribution. I thank the member for Belmont, who touched upon Hannah Clarke and the community outcry for legislation. I thank the members for Armadale and Dawesville for their contributions. I also thank the former police officers in this chamber who gave evidence—sorry; gave evidence! They gave real life accounts of their experience in dealing with the victims and perpetrators of domestic and family violence. I was particularly impressed by the account given by the member for Kalgoorlie about the delays that can happen in service and, overall, from his experience as a police officer, how happy he is with this bill. He gave his approval of this bill. The Liberal Party is happy with this bill and it joins with women's groups and sectors that are all happy with this bill and who note that they have waited some 40 years for a bill of this nature to be presented to the chamber. I regret that it has been necessary to bring in three areas of late amendments, which are on the notice paper, but the bill was introduced last year and as it sat there, the Solicitor-General and the Chief Justice looked at it and saw that it needed some little amendments, including the one the member for Kalgoorlie referred to as a game changer—that is, electronic service, because they will not have to go back for substituted service applications and all that. That is a game changer for the police. There are two other amendments on the notice paper, so obviously we will have to move into consideration in detail to deal with them. I will not take the chamber's time to go through those because they have to be dealt with in consideration in detail.

I thank all members for their contributions. This bill is not a bill of political ideology. We in this chamber are all as one. We have to do all we can in this chamber to contribute to stem the flow of this insidious practice that is happening in our community as evidenced by the tragedy of Hannah Clarke in Queensland and the incident referred to by the member for Armadale in which someone bit out a chunk of a victim's cheek. It is just revolting. I thank all members and I commend the bill.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

The DEPUTY SPEAKER: This is the Family Violence Legislation Reform Bill 2019. There are 113 clauses and I believe there are a number of amendments that have been circulated rather than tabled. Where would members like to start?

Mr P.A. KATSAMBANIS: I am happy to work through the Attorney General's amendments. Apart from the Attorney General's amendments, which I have some issues with, the only other clause I would like to debate is the last clause, clause 113.

Clauses 1 to 5 put and passed.

Clause 6: Sections 298 to 300 inserted —

Mr J.R. QUIGLEY: I move —

> Page 7, line 29 to page 8, line 2 — To delete the lines.

Mr P.A. KATSAMBANIS: Just to speed things up a bit, I will talk generically about the proposed amendments. These amendments were provided to the Liberal Party this morning. We have had an opportunity to look at them now, and the Attorney General's office has provided some explanation of the nature of the amendments. Given the procedures of the house, I have not had an opportunity to look at the mark-ups in the bill. The amendment to clause 6 is pretty simple. We are probably more concerned about the range of amendments to all the other clauses and the additional new clauses and their inherent consistency. I flag at the outset that, conceptually, we probably will not have too much debate about what the Attorney General is trying to achieve here, but on the inherent consistency, it may well be that the effluxion of time between the houses might shed some more light on it.

Coming back to clause 6, I would appreciate the Attorney General explaining the genesis of this amendment, which essentially removes proposed section 300(6) of the Criminal Code. I believe it came out of a briefing that the opposition received from the Attorney General's office and the Commissioner for Victims of Crime. Could the Attorney General outline what this amendment is intended to do and the impact it will have on proposed section 300, which is the section that introduces the new offence of persistent family violence and will be inserted into the Criminal Code?

Mr J.R. QUIGLEY: I will do my best. Proposed section 300(6) as it is presented in the bill provides —

> The court (including a jury as the trier of fact) is not required to be satisfied of the particulars of any acts of family violence that it would have to be satisfied of if the act were charged as a separate offence but must be satisfied as to the general nature or character of those acts.

The proposed section states that a person does not have to particularise in detail every single act that they are relying upon, but, at the end of the day, removing this proposed subsection means that the trier of fact must be satisfied beyond reasonable doubt of the actual acts of family violence. They do not have to particularise that it happened in the bedroom or that it happened on Thursday and not Tuesday. It was pointed out to us after the bill was tabled that the proper statutory interpretation of this proposed subsection could have the effect of meaning that a trier of fact would not even have to find beyond reasonable doubt that a particular act of family violence occurred. The trier of fact has to be satisfied beyond reasonable doubt that there was an act of family violence, but does not have to be satisfied beyond reasonable doubt that it was on Tuesday and not Wednesday or that it happened on the porch and not in the bedroom. In these traumatic situations, victims are often left a little bit confused, especially if they have been assaulted, and by the time they report it, they might be a little bit muddled as to the exact location or day. By removing this proposed subsection, the overall obligation is thrown back on the court, which is what we were all taught in criminal law 101—that the golden thread that runs through it is proof beyond reasonable doubt, borne by the prosecution. That will remain.

Mr P.A. KATSAMBANIS: I thank the Attorney General. I think it was pointed out by Hon Michael Mischin in a briefing that this was the case, and I am glad that the Attorney General has taken this up. It clarifies a concern that the broad nature of proposed section 300(6), as well intended as I think it was, cast doubt as to whether the facts needed to be proven beyond reasonable doubt. What we should all emphasise—as I did in my second reading contribution and the Attorney General did in his second reading speech and again just now—is that, yes, it needs to be proven beyond reasonable doubt, but we are cognisant of the fact that in these issues, we are not expecting proof that it happened on a Tuesday afternoon in March or a Wednesday evening in April. It is making absolutely crystal clear that that is beyond what we are looking for.

The only issue that I want to raise is effectively rhetorical, so the Attorney General can choose to respond or not. We are introducing a brand new section 300 into the Criminal Code. We are now removing proposed subsection (6), so we will have section 300(1), (2), (3), (4), (5) and (7), with a skip to it. I know it is a matter solely of drafting construction, but perhaps it might have been better, rather than just removing proposed subsection (6), to remove all the proposed subsections after (5) and simply renumber (7), (8), (9), (10) and (11) to reflect consistent numerical

numbering. I understand that I am being completely pedantic, and I am not suggesting the Attorney General do it, but perhaps for future reference, parliamentary counsel might take that into account, especially when we are introducing brand new sections and they seem as though they have a bit missing.

Mr J.R. QUIGLEY: Point taken.

Amendment put and passed.

Mr P.A. KATSAMBANIS: Post the amendment we have all agreed to, I move straight on to proposed section 300(7), which will be inserted in the Criminal Code. I will try to do my best; I know I spoke about this in my second reading contribution. I picked up on the Attorney General's summing up. He gave a pretty good explanation, and I think we are both on exactly the same page on this one. For the purposes of both the other place and, more importantly, judicial interpretation in the future, particularly because this relates to instructions to juries as well, I thought I might spend just a few moments on this to make sure that the Attorney General's response to me will stand the test of time and inform judges in their instructions to juries of exactly how this proposed subsection will work. Members should remember that we are dealing with the new crime of persistent family violence, which requires three or more acts of violence over a period of 10 years. Proposed section 300(7) reads —

> If in a trial by jury of a charge of an offence under subsection (1) there is evidence of acts of family violence on 4 or more occasions, the jury members need not all be satisfied that the same acts of family violence occurred on the same occasions as long as the jury is satisfied that the accused person persistently engaged in acts of family violence in the period specified.

To paraphrase what the Attorney General said when summing up, this contemplates situations in which four or more occasions of family violence are alleged. It might be four, five or dozens of occasions. We do not expect all the jurors to settle on three charges. It might be charges 1, 2 and 7, or charges 1, 2 and 4. We are not expecting that because it is too restrictive. We are expecting that each juror is individually satisfied that there have been at least three occasions of family violence. If there are only three offences, all the jurors have to be satisfied of all three offences. It will not work otherwise. However, if more than three offences are alleged, we do not need all the jurors to settle on the exact same three. Each juror needs to come to an individual conclusion that there are three occasions that make up the case for this offence. I seek clarification from the Attorney General that that is the case.

Mr J.R. QUIGLEY: I do not need to clarify that. That was a pretty good charge to the jury, and a fair explanation of the law. The member is right, so I agree.

Clause, as amended, put and passed.

Clauses 7 to 65 put and passed.

Clause 66: Section 3 amended —

Mr J.R. QUIGLEY: We will see whether the opposition agrees with this. The amendments to clauses 66, 70A, 70B, 76, 76A, 76B and 80A all deal with electronic servicing. I do not know whether the member, or the Parliament, will allow me to move those amendments en bloc so that we can go through them all instead of doing one word and then moving that amendment because that word is relevant to another proposed subsection. It would make more sense, if I have leave, Madam Deputy Speaker, to move all the amendments.

The DEPUTY SPEAKER: Member, we need to deal with this because we have now moved this one. I need to get a bit of advice on the rest. Hold that thought, Attorney General. Attorney, it is possible.

Mr P.A. KATSAMBANIS: I was about to raise a point of order and say that the Attorney General has not moved any amendments yet.

The DEPUTY SPEAKER: That is quite right.

Mr P.A. KATSAMBANIS: We have started a discussion on clause 66. We are hamstrung a little bit because these amendments are not on the notice paper, so we cannot call them by number. I have a series of amendments in front of me. There is an amendment to clause 66, new clauses 70A and 70B, a series of amendments to clause 76, new clauses 76A and 76B, and two amendments to clause 80A. The Attorney General is seeking leave to move them in toto. I am comfortable with that given an exchange of letters —

The DEPUTY SPEAKER: Member —

Mr P.A. KATSAMBANIS: I will put it on the record and then the Deputy Speaker can rule either way; I do not mind. Given an exchange of letters that we have had indicating that all the amendments are to facilitate a new procedure of electronic lodgement, as long as we have the capacity to interactively debate it, I am comfortable with agreeing to the Attorney General's request for leave. However, I will be guided by the clerks and their instructions.

The DEPUTY SPEAKER: We are sorting that out.

It appears that it would be more correct if we move the amendment to clause 66, deal with it separately, and then look at new clauses 70A and 70B. Are you happy to do clause 66?

Mr P.A. KATSAMBANIS: On that basis, can I suggest that we have a broad debate on clause 66 that incorporates what may be contemplated by the other clauses and then put the other clauses when we get to them sequentially? Does that make any sense at all?

The DEPUTY SPEAKER: We think it might be messy.

Mr J.R. QUIGLEY: I think that could lead to difficulty.

The DEPUTY SPEAKER: Could we just stick to clause 66, Attorney General?

Mr J.R. QUIGLEY: I move —

Page 52, after line 6 — To insert —

affidavit includes an electronic declaration made in accordance with the rules of court;

Mr P.A. KATSAMBANIS: I will try my best to confine myself to clause 66. This amendment is the inclusion of a definition in the Restraining Orders Act 1997 that will introduce a new concept to that act—that is, the concept of an electronic declaration. Not only that, the declaration is to be made in accordance with the rules of court. This amendment contemplates electronic declarations for restraining order applications, which a lot of us, including myself, indicated in our second reading contributions would be a good advance that would build on the eCourts capacity. I seek an explanation from the Attorney General of what is intended here, what can be electronically declared and, when we are dealing with rules of court, which court it is—the Magistrates Court, the District Court, the Supreme Court or all three.

Mr J.R. QUIGLEY: The provision comes in advance of further legislation that we will introduce to deal with eCourts so that we can make the whole process e-lodgements so that wherever people live, they will have equal access. What is contemplated here is that the affidavit can be done by a declaration and each court will have to make its own rule on the nature of that declaration so that the person is bound by the rules of court to be truthful in the declaration.

Mr P.A. KATSAMBANIS: I am in favour of the concept of eCourts and e-declarations. I think there are jurisdictions across the world that are well ahead of us on that and it would be good if we could catch up. Just as an aside, in my committee's deliberations and discussions with other jurisdictions in Australia, the electronic court management system in Western Australian courts has been referenced quite favourably by other jurisdictions. That is a very positive tick for what has happened in our courts over the last decade. Given the Attorney General's last contribution, I seek clarity on what this will mean in the future. We will get new legislation to permit more eCourts, but really, at the end of the day, courts will set their own rules about electronic lodgement. I have no problem with that. Can the Attorney General clarify that people's current ability to walk into a court and go up to the registry to lodge documents and affidavits will continue? Particularly in cases of family violence, for many victims that is the first interaction that they have, and often, unfortunately, particularly with some of the coercion that we know occurs, they may have been denied access to electronic forms of communication as part of the violence they are suffering. Can the Attorney General clarify that e-lodgement will be a facilitative tool, but not the only tool?

Mr J.R. QUIGLEY: This provision is to enhance lodgement, not to displace hardcopy lodgement.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 67 to 70 put and passed.

New clause 70A —

Mr J.R. QUIGLEY: — I move —

Page 54, after line 13 — To insert —

70A. Section 9 replaced

Delete section 9 and insert:

9. Fixing a hearing

The rules of court may make provision for —

(a) fixing, selecting or arranging a day, time and place for a hearing; and

(b) requiring a person to attend a hearing; and

(c) preparing, or arranging for the preparation of, a summons in the prescribed form; and

(d) causing a summons to be served on a person; and

(e) notifying all other parties of the hearing.

Mr P.A. KATSAMBANIS: I made a general comment when we were discussing clause 6 and it applies particularly to new clause 70A as well as further clauses through until clause 112; that is, we have been given these amendments and they refer to amendments to existing acts. I have been sitting in here all day, so I have not had a chance to compare them with the act that is being amended. I am relying quite heavily on the Attorney General's indication that this is all about tidying up some wording in the existing act to facilitate electronic lodgement of applications in restraining order matters. I would welcome a brief explanation about what is different between this new section 9 to be inserted and the one to be deleted. This will apply to all the other new clauses that are being introduced. I am happy to take the Attorney General at his word, but between the houses we will have an opportunity to compare the current act with the proposed changes to make sure they are inherently consistent with what they are meant to do. I have no doubt the draftspeople have this right. However, the opposition has not had an opportunity to properly look at this and see exactly what it will do.

Mr J.R. QUIGLEY: Thank you. As I say, these amendments came through rather late. I have here section 9 of the Restraining Orders Act 1997, which is to be deleted. Section 9(1) states —

If a registrar is to fix a hearing and summons a person to the hearing …

Subsection (2) starts in the same way —

If the registrar is to fix a hearing that is to be held in the absence of one party …

(a) fix a day, time and place …

I can pass this page to the member so that all the things —

The SPEAKER: No, no.

Mr J.R. QUIGLEY: It is just the Restraining Orders Act.

The SPEAKER: You can get a clerk to do that.

Mr J.R. QUIGLEY: Sorry. The member for Hillarys will see in section 9 of the Restraining Orders Act what is set out to be done. New section 9 refers to fixing the date and the same sorts of things, but it is not prefaced by the words "If the registrar". Taking that out allows the facility for the eCourts portal to do those things that it would have required a registrar to do manually on hard copy.

Mr P.A. KATSAMBANIS: It does. I have had an opportunity to look at the old section on the page passed to me by the Attorney General. It looks like it is tidying up some wording. It will make it all subject to the rules of court. The rules of court may make provision. That is all well and good. The whole principle of our justice system is that courts make their own rules for their internal operations. They have served us well. I have no doubt they will be utilised well in practice. The general point is that these amendments came late. We are trying to facilitate the passage of the legislation. It will get further scrutiny in the other place, so I am very happy to say at this stage that we are happy to let it go through. If anything crops up when we look at this in the light of day, I am sure it will be fixed in the other place.

New clause put and passed.

New clause 70B —

Mr J.R. QUIGLEY: I move —

Page 54, after line 13 — to insert —

70B. Section 10 amended

Delete section 10(1) and (1a) and insert:

(1) A restraining order may be prepared in a manner authorised under the rules of court and the rules may make provision for —

(a) serving the respondent's copy and the respondent's endorsement copy (if 1 is required to be served) of the order on the person who is bound by the order; and

(b) delivering the applicant's copy of the order to —

(i) the person seeking to be protected by the order; or

(ii) the parent or guardian of that person, if the parent or guardian made the application for the order on behalf of that person;

and

(c) delivering the police copy of the order to the Commissioner of Police; and

(d) placing the court copy of the order on the court's records.

(1A) If a restraining order is taken to have been served under section 55(3a), the respondent's copy and the respondent's endorsement copy are not required to be served under rules of court made under subsection (1)(a) but are to be —

(a) delivered to the respondent; and

(b) if rules of court make provision for delivery under paragraph (a)—delivered in accordance with those rules.

Mr P.A. KATSAMBANIS: We take on face value the Attorney General's indication to us in correspondence that this is another provision that facilitates the opportunity to have electronic lodgement. Again, it will be scrutinised in due course. I point out, for all these sections, that from what the Attorney General said in one of his earlier contributions, he has foreshadowed future legislation that will enable electronic lodgement more generally. If anyone reads these consideration in detail debates, and if that foreshadowed legislation introduces terms of concepts that are currently contemplated to be in that legislation but may change or the words may be varied, there may be need for us to revisit these provisions that we are inserting tonight. I am sure that the drafters and Parliamentary Counsel's Office will bear that in mind, but that is always a risk. I take it from what the Attorney General said, and he can correct me if I am wrong, that these are the sorts of words that are contemplated being used in broader legislation to facilitate electronic lodgement, so we are copying those proposed words and putting them in here. If those words tend to alter in the future, we may need to revisit this. That is the only point I am making. I am not criticising it in anyway. I think if we are amending the Restraining Orders Act, and we think something is coming up that will be good and useful, we may as well add those amendments, but it runs that risk that those words get tweaked into the future, not necessarily in Parliament, but in further consultation before they are even brought into Parliament in the foreshadowed new act.

Mr J.R. QUIGLEY: I will deal with that last sentence first: "in the foreshadowed new act". The words before the chamber at the moment are consistent with the drafting instructions that have gone to Parliamentary Counsel's Office for the new act. The drafting instructions are consistent with this, that is the product that comes out, and I will be surprised if it carries. When the member says that he is talking about the correspondence, I am at a disadvantage, because the member has our hard copy that I have passed over this evening. That is okay, I have it here on the iPhone.

Mr P.A. Katsambanis: No, this is the email that I got.

Mr J.R. QUIGLEY: The member will see that the old section 10(1) starts off again and states, "If a registrar is to prepare and serve".

So we are replacing the registrar. We are taking out that need. Subsection 10(3) of what the member has —

Mr P.A. Katsambanis: I do not have that. It only goes up to (1a).

Mr J.R. QUIGLEY: Subsection (3) goes on —

The registrar of the Magistrates Court to which the copy of the order is delivered …

Again, we are taking out the requirement for the registrar. It is the same matters going in but we have taken it out so that it can work with the portals. I wish to reassure the member again that the model here is consistent with the drafting instructions for the eCourt legislation.

As I bounce up from my seat, I should say, do not forget —

The SPEAKER: Excuse me, I did not call your name. It could have been anyone getting up. The Attorney General.

Mr J.R. QUIGLEY: I was thrown there.

This legislation will have a statutory review clause that will necessarily require those matters that the member is concerned about—the possibility of something changing in the eCourt legislation—to be reviewed.

New clause put and passed.

Clauses 71 to 75 put and passed.

Clause 76: Section 24A amended —

Mr J.R. QUIGLEY: I move —

Page 57, after line 24 — To insert —

(1A) In section 24A(1) delete "in person".

Mr P.A. KATSAMBANIS: Again, the deletion of "in person" obviously relates to the opportunity for electronic lodgement. I do not have any objection to that at this stage.

Amendment put and passed.

Mr J.R. QUIGLEY: I move —

Page 58, after line 29 — To insert —

(3) In section 24A(3) delete "made in person is to be made in the prescribed form" and insert:

is to be made in accordance with the rules of court (using, if the regulations so require, the prescribed form)

Mr P.A. KATSAMBANIS: I need some clarification because this seems to merge a couple of concepts. The idea is that we are not necessarily making applications in person anymore. They can be made in accordance with the rules of court, which the Attorney General has clarified will allow personal or electronic lodgement, or electronic lodgement in some circumstances as the rules suggest. However, there is also the concept of using, if the regulations so require, the prescribed form. Is it suggested that there will be a potential conflict between the rules of the court and the prescribed forms in the regulations? Is it not axiomatic that if the rules of the court provide for certain information to be provided, it would be the rules of the court that would specify the forms rather than a prescribed form? It seems to conflate two concepts. I seek some clarity on that.

Mr J.R. QUIGLEY: I refer to page 48 of the Restraining Orders Act 1997, which deals with applications for family violence restraining orders. Subsection (3) reads —

An application for an FVRO made in person is to be made in the prescribed form to —

The existing legislation says that the application for a family violence restraining order has to be made in person and it has to be made using the form prescribed by the regulations. We are preserving all that, but removing "made in person" because it is an e-portal now. Therefore, the amendment before the change reads —

(3) In section 24A(3) delete "made in person is to be made in the prescribed form" …

That is what exists already, not in the bill but in the Restraining Orders Act. We are amending the Restraining Orders Act to insert —

is to be made in accordance with the rules of court …

The member has agreed that it is appropriate that applications be made in accordance with the rules of court, but —

(using, if the regulations so require, the prescribed form)

That is exactly what is in the existing legislation. There are prescribed forms that everyone is using at the moment. The effect of this amendment is that people will still be using the prescribed form, but they will not be doing it in person and they will be doing it in accordance with any rules of court—I am not trying to lock the member in—but on which the member has already commented, throughout the commonwealth.

Mr P.A. KATSAMBANIS: I think that that highlights my point. Currently, the Restraining Orders Act does not say people must lodge forms that are made by the rules of court. It says people must lodge forms prescribed by the regulations. That is all well and good. We have not said it is going to be done by rules of court. I am not a person who is tickled by the whole separation of powers and the ability of courts to make their own rules, but I used to sit on the Joint Standing Committee on Delegated Legislation when I was in the other place and I know that our courts sometimes do get tickled by these things. We are now saying that the court can go away and make their own rules but if we have prescribed a form, they can use that prescribed form.

Mr J.R. Quigley: Must use.

Mr P.A. KATSAMBANIS: They must use that prescribed form if one is prescribed. Therefore, it is allowing the process to happen partly by rules of court and partly by regulation. Perhaps at this late stage at night, maybe I will seek a commitment from the Attorney General. I am not sure what sort of consultation the Attorney General and his office have undertaken with the courts in relation to this. If the court suggests that giving them the power under the rules of court should also give them the power to do their own forms, would the Attorney General contemplate a further amendment between the houses to clarify that? It just seems as though we are merging two concepts and there is a body—the courts—that may not necessarily like these two merged concepts. That is just my fear here.

Mr J.R. QUIGLEY: I am happy to respond. The principal stakeholder who was consulted in relation to this particular amendment was the Chief Magistrate, who is the head of jurisdiction before all these applications are made. I will

take the member back to new clause 70A, which we have already passed. The member may remember that he had old section 9 in front of him and we removed the requirement of the registrar to do all of what was listed below, which we inserted and then —

Fixing a hearing

The rules of court may make provision for —

We have already passed in this chamber the sort of things that the "rules of court" can encompass, including the fixing, selecting or arranging a day, time and place for a hearing; requiring a person to attend a hearing; preparing or arranging the preparation of a summons in the prescribed form; causing a summons to be served on a person; and notifying all other parties of the hearing. That is the rules of court. Then we say on top of that, when one is going forward under those rules of court, one must do it in the prescribed form.

Amendment put and passed.

Clause, as amended, put and passed.

New clause 76A —

Mr J.R. QUIGLEY: I move —

Page 58, after line 29 — To insert —

76A. Section 25 amended

(1) In section 25(1) delete "in person".

(2) In section 25(3) delete "made in person is to be made in the prescribed form" and insert:

is to be made in accordance with the rules of court (using, if the regulations so require, the prescribed form)

Mr P.A. KATSAMBANIS: This appears to be consequential. We have debated it. The same points I made earlier stand.

New clause put and passed.

New clause 76B —

Mr J.R. QUIGLEY: I move —

Page 58, after line 29 — To insert —

76B. Section 26 amended

(1) In section 26(2) delete "the registrar is to fix a hearing for that purpose." and insert:

a hearing for that purpose must be fixed in accordance with the rules of court.

(2) In section 26(3) delete "the registrar is to fix a hearing and summons the respondent to the hearing." and insert:

a hearing must be fixed, and a summons served on the respondent, in accordance with the rules of court.

Mr P.A. KATSAMBANIS: Again, this seems to be following the same pattern as the other new clauses that are being inserted into the Restraining Orders Act to facilitate electronic lodgement and the making of rules of court to assist in that. It appears to be non-controversial.

New clause put and passed.

Clauses 77 to 80 put and passed.

New clause 80A —

Mr J.R. QUIGLEY: I move —

Page 61, after line 9 — To insert —

80A. Section 38 amended

(1) In section 38(1) delete "in person"

(2) In section 38(4) delete "in the prescribed form" and insert:

in accordance with the rules of court (using, if the regulations so require, the prescribed form)

Mr P.A. KATSAMBANIS: This amendment makes an amendment to section 38 of the Restraining Orders Act that is identical in wording and in operation to the amendment to section 25 of the substantive act that was made by new clause 76A, so there is no point in debating the issue. It is a similar one, so we will leave it to stand as it is.

New clause put and passed.

Clauses 81 to 111 put and passed.

Clause 112: Sections 37 to 39G inserted —

Mr J.R. QUIGLEY — by leave: I move —

Page 95, line 25 — To delete "the accused is unrepresented and"

Page 96, line 19 — To delete "the accused is unrepresented and"

Mr P.A. KATSAMBANIS: I am going to seek the indulgence of the Attorney General. One rarely gets an opportunity in opposition to claim a victory; I am going to claim this one! We had a very useful briefing from the Attorney General's office on this legislation. One of the issues I raised related to clause 112, which inserts sections 37 to 39G into the Evidence Act. My issue was around the directions judges can give in jury trials. The original wording of the bill suggested that the prosecution could request a jury to be directed in relation to the sorts of things a jury should contemplate about family violence—all the learnings; all the knowledge we have about family violence. I am using criminal law terms; the applicant could request it, and the respondent could request it. If there was an unrepresented respondent, judges could take it upon themselves to give these jury directions, but there was a gap: if there was representation on both sides, and neither the applicant's representative nor the respondent's representative had requested it, the judge could not, of their own volition, give jury instructions. I must state that they are quite comprehensive; I know there will be different views on this, but my view, particularly guided by the knowledge I have gained in my current committee inquiry, is that these are really, really good directions, and could constitute a sort of mini bench book, if you like, with regard to these types of directions across broader jurisdictions than just the one we are contemplating today.

There was that little gap, so if no-one had bothered contemplating asking the judge and all parties were represented, the judge could not, of their own volition, decide that this was a good idea to brief the jury about. That little loophole, if you like, or inadvertent omission will now be closed. As I said, I highlighted it at the briefing and I am really glad that that has been covered in the amendments that have been brought to the house today. It was probably inadvertent and someone just missed it at the end of a very complex piece of legislation. This is a good set of amendments. The two amendments really apply to the same thing. This will ensure that when there are jury trials in these sorts of matters, the judges are not fettered in any way and they can utilise these really good directions to the jury in the way that they see is best in those proceedings.

Mr J.R. QUIGLEY: The comments of the member for Hillarys, who is the lead speaker for the opposition, on these amendments give voice to what I said in my summing up of the second reading debate, and that is that this bill is not ideological. It is not an ideology-driven bill. It is not a Labor Party bill. It has been presented by the Labor government of course, but we in this chamber bring, as it were, an independent viewpoint to this and make our contributions. I recognise the contribution that the member for Hillarys has made in this regard and it evidences that this is by no means driven by ideology but by the genuine attempt by members of the Legislative Assembly to pass laws that will assist in stemming the torrent of domestic violence that exists in our community. I thank the member.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 113: Section 134 inserted —

Mr P.A. KATSAMBANIS: This is the last clause in the bill and I indicated at the outset that I would ask a few questions about it. It is the review clause. Reviews are good. The Attorney General has indicated that a number of issues will be reviewed. It provides for one review on the third anniversary of the passage of this bill but it does not provide for any further reviews. Is there any reason it provides for only one review after three years rather than further reviews in the future?

Mr J.R. QUIGLEY: That is not unusual and exists in most legislation in which there is a review clause, and even when the Council has inserted a review clause but we have not. The Criminal Organisations Control Act, which is pretty far-reaching legislation, had a five-year review period. This clause provides for a three-year review period. When the review comes up after three years, I think there will probably be enough data to inform this chamber of the effectiveness of the legislation. If we have to bring any further amendments forward, it would be appropriate at that time to insert a further review clause if it is appropriate.

Mr P.A. KATSAMBANIS: I could have raised this during the second reading debate, but I think it fits in well here. We are contemplating a statutory review. In other jurisdictions, apart from statutory reviews, there have been independent evaluations of legislation introduced in the family violence space. A great example is the Southport specialist family violence court in Queensland, which has now had two independent evaluations.

The Victorians conduct independent evaluations as well. One of the criticisms about the Australian Capital Territory model and the shuttle mediation that is being introduced—similar mediation is being introduced here, but not exactly the same—is that no independent evaluation has been published. Apart from the statutory review, is there any contemplation of an independent evaluation or review outside of the statutory review of any particular provisions? Is there any prohibition on heads of jurisdiction, such as the Chief Magistrate—the Attorney General indicated the Magistrates Court deals with a lot of these matters—calling on some form of independent evaluation of what will be implemented through this bill after a period?

Mr J.R. QUIGLEY: No. There will be a statutory review in three years. Might I remind the member—I am not criticising him—that a review of the legislation was conducted by the Western Australian Law Reform Commission in 2012–13. It handed down its report in 2014 and here we are in 2020, six years later, before the Western Australian Law Reform Commission's recommendation have come to this Parliament. There has been a general election in the meantime, a change of government et cetera. No, there will be one statutory review, but I wish to point out this to the member. As part of the Labor Party's policy going into the last campaign, we said that we would collate statistical crime figures to guide the department and the government on these matters. At the moment, we are setting up the Western Australian crime statistics and research unit within the Department of Justice. The Western Australian crime statistics and research unit will be gathering data in real time so that we can look at the legislation in a dynamic way. We will not have to wait six years to activate reviews. There will be a review in three years and there will be data gathering all the way through.

Clause put and passed.

Title put and passed.

As to Third Reading

The SPEAKER: Attorney General.

Mr D.A. Templeman interjected.

MR J.R. QUIGLEY (Butler — Attorney General) [10.43 pm]: We will negotiate.

The SPEAKER: You will talk to me, not the Leader of the House.

Mr J.R. QUIGLEY: Mr Speaker, I take that admonishment. I move that the third reading of the bill be made an order of the day for the next day of sitting.

Question put and passed.

House adjourned at 10.43 pm