

FAMILY AND DOMESTIC VIOLENCE — VICTIMS — CROSS-EXAMINATION

782. Hon CHARLES SMITH to the Leader of the House representing the Attorney General:

I refer to the 2017 commonwealth parliamentary inquiry entitled “A better family law system to support and protect those affected by family violence” and the comments by Family Court Chief Justice Diana Bryant stating that her court does not “have the resources it needs to protect parents and children from violence”.

- (1) Does the Attorney General support introducing or amending Western Australian legislation to stop those suffering from family violence offences being personally cross-examined by alleged perpetrators so the court can stop survivors of family violence suffering further trauma?
- (2) If no to (1), why not?
- (3) Is the Attorney General also considering criminal legislation aimed at protecting those who are victims of false allegations of domestic violence offences?
- (4) If no to (3), why not?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question.

- (1) The Attorney General supports measures aimed at preventing victims of family and domestic violence from experiencing further trauma when giving evidence in court, including the prohibition of direct cross-examination. Section 44C of the Western Australian Restraining Orders Act 1997 already prohibits the direct cross-examination of a person seeking the protection of a family violence restraining order and any child giving evidence in restraining order proceedings under section 53D. In relation to criminal matters, section 106G of the Western Australian Evidence Act 1906 prohibits the direct cross-examination of children, victims of serious sexual offences and prosecution witnesses in criminal organisation offences, and section 25A gives the court discretion to prohibit the direct cross-examination of other witnesses. The government is currently considering options for strengthening these provisions of the Evidence Act, including in relation to their coverage of victims of family and domestic violence.

In the family law context, the commonwealth Parliament is currently considering amendments to the Family Law Act 1975 that would prohibit direct cross-examination in proceedings that involve substantiated allegations of family and domestic violence. It is customary for the Western Australian Family Court Act 1997 to be amended in line with amendments to the commonwealth Family Law Act. The Attorney General will continue to monitor the progress of the proposed commonwealth amendments and associated commonwealth funding proposals.

- (2) Not applicable.
- (3) No.
- (4) The Criminal Code already criminalises the making of false allegations. Section 171 of the code makes it an offence to create a false belief that an offence has been committed. The maximum penalty for this offence is two years’ imprisonment. In addition, a person who knowingly gives false testimony in judicial proceedings may commit the offence of perjury under section 124 of the code. The maximum penalty for this offence is 14 years or, in limited circumstances, life imprisonment. In view of these existing offences, the Attorney General does not perceive a need to introduce additional offences that are specific to false allegations of family and domestic violence.