

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

First Reading

Bill read a first time, on motion by **Mrs L.M. Harvey (Minister for Police)**.

Explanatory memorandum presented by the minister.

Second Reading

MRS L.M. HARVEY (Scarborough — Minister for Police) [2.49 pm]: I move —

That the bill be now read a second time.

This bill is part of the government’s overarching family violence response reform plan titled “Freedom From Fear: Working towards the elimination of family and domestic violence in Western Australia—Action Plan 2015”. It amends the Restraining Orders Act 1997 and related legislation to improve the overall legal response to family violence, and also addresses several more general violence issues that go beyond family violence.

The bill has four key objectives. First, the bill introduces a new category of restraining order crafted specifically to deal with family violence—the family violence restraining order. The new FVROs will be based on a contemporary understanding of the nature of family violence and a risk-management approach in the courts. The new FVROs will be supported by a contemporary definition of “family violence” that largely replicates the definition of “family violence” in the commonwealth Family Law Act 1975. It removes the concept of an “act of abuse” and instead provides that family violence means violence, or threats of violence, by a person towards a family member, or other behaviour by the person that coerces, controls or causes the family member to be fearful. Significantly, the new definition also includes cyberstalking and the distribution of intimate images—colloquially referred to as revenge pornography—as examples of behaviour that may constitute family violence. In addition, the new FVROs will be supported by new objects and principles clauses, and the grounds for refusing to make a restraining order will be narrowed; that is, if the grounds for making an FVRO have been established, the court must grant the order unless there are special circumstances that would make the order inappropriate. “Special circumstances” is intended to include a situation in which the primary aggressor is in the relationship and is seeking an order against the victim.

The new FVROs will also be supported by a risk-management approach in the courts. The courts will be required to have regard to risk-relevant information made available to them, such as police incident reports, police orders and risk assessments. To support this approach, the courts will also be able to consider their own records in relation to matters such as a respondent’s previous criminal convictions, previous restraining orders or any legal proceedings that may be on foot. As a condition of an FVRO, the bill also proposes to empower the court to restrain a respondent from distributing or publishing intimate images of a person, and cyberstalking. A breach of such a condition could result in a sentence of up to two years’ imprisonment. The bill also provides for a new type of conduct agreement, allowing a respondent to consent to a final order FVRO on a no-admissions basis. This will be enforceable if it is breached, but is aimed at encouraging more respondents to consent to the order in appropriate circumstances rather than contest the matter at a final order hearing.

Importantly, the bill will also enable the court to make a behaviour management order as an adjunct to an FVRO. If a respondent is assessed as eligible, the court may make an order that the respondent attend a behaviour change program or other perpetrator intervention program. This signals a significant step for the justice system in dealing with the causes of family violence, as opposed to simply dealing with the consequences of family violence. The objective is to maximise the opportunity to engage with the perpetrator when they come before the court to encourage them to accept responsibility for the violence they have committed and thereby prevent further family violence from being committed. The bill allows for the capacity of courts to make these orders to be developed over time as suitable programs become available.

Finally, the new FVROs will also be supported by a new duration clause to put it beyond doubt that such orders can be made for a period of longer than two years; a relaxation of the rules of evidence during final order hearings to minimise additional stress in conducting such proceedings; and a new mechanism for substituted service of FVROs aimed at ensuring a safety-focused approach to service.

The second objective of the bill is to include a range of criminal law amendments aimed at strengthening the criminal justice system response to family violence, such as encouraging greater use of FVROs during criminal proceedings, expanding the range of offences for which an automatic lifetime FVRO will be granted, and strengthening the legislation in relation to repeated breaches of restraining orders.

Third, the bill amends the Prisons Act 1981 and the Sentence Administration Act 2003 to give family violence victims notice of, and capacity to be heard, when an offender with whom they have been in a relationship may be released from prison.

Fourth, the bill includes two anti-violence measures aimed at deterring violent behaviour in general. These entail amendments to the Criminal Code to address violence against women that harms their unborn child, and to increase the maximum penalty for unlawful assault causing death under section 281 from 10 years' imprisonment to 20 years. This applies to what are commonly, although frequently erroneously, referred to as "one-punch" homicides, whether resulting from circumstances of family violence or violence in general.

The bill thus aims to reduce levels of violence in both the home and the community at large. In particular, it aims to improve the safety of victims of family violence or other violent offending and to make perpetrators of family violence accountable for the violence they have committed. The law in relation to family violence and restraining orders is particularly challenging. It often involves a wide range of complex human interactions, behaviour and relationships. The law must ensure that there are effective methods for victims of family violence to seek protection when they need it most, particularly in times of crisis. The law relating to restraining orders that result from civil proceedings in the courts must also provide all parties with procedural fairness and protect people from unfair and false allegations. The government has a responsibility to get this balance right. This bill strives to achieve that balance. I commend the bill to the house.

Debate adjourned until a later stage of the sitting, on motion by **Mr J.H.D. Day (Leader of the House)**.

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