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

Second Reading

Resumed from 10 November.

HON LYNN MacLAREN (South Metropolitan) [5.22 pm]: Cultural change and addressing the root causes of violence are vital for turning around our state's and our country's domestic violence crisis but, of course, that is not the whole picture. The community sector must be adequately funded to support the whole range of services that contribute to supporting victims of violence and other programs that seek to change the behaviour of perpetrators. In Western Australia, we have not only an increasing number of women who seek assistance from police for family and domestic violence, but also an increasing demand for legal centres and homelessness centres, a huge problem with drugs—meth, in particular—and an increasing number of children going into care. The community sector is struggling under the weight of increased demand, yet it is not getting increased funding to support Western Australians who are in dire need of assistance. A great number of people who seek assistance are doing so because of family and domestic violence. The Australian Institute of Health and Welfare reports that one-third of clients who access specialist homelessness services are escaping violence. The government's Freedom from Fear campaign action plan seeks to present a framework to strengthen the whole-of-government and community sector response, which, of course, is a positive step. However, I question how effective any strategy will be if the community sector is not adequately resourced to perform its roles effectively. If agencies that provide frontline services are in constant doubt over continued funding and are struggling with high case loads, they will not be able to actualise their potential to assist people.

The core issue of funding, along with service and policy silos, has also been identified as a significant barrier to the provision of effective responses to domestic violence by the Safe Systems Coalition. The Safe Systems Coalition comprises a number of organisations across the community sector that call on the WA government to commit to improving the systems that are meant to keep victims of family and domestic violence safe and hold perpetrators to account for their violence. I want to take this time to thank all the members of the coalition: Shelter WA; the Domestic Violence Legal Workers' Network; the Community Legal Centres Association (WA); the Women's Council for Domestic and Family Violence Services (WA); the Health Consumers' Council; UnionsWA; the Women's Community Health Network WA; the Gosnells Community Legal Centre Inc; SCALES community legal centre; Street Law Centre WA Inc, homeless persons' free legal advice clinic; Curtin University Centre for Human Rights Education; Towards Freedom; Carnarvon Family Support Service; Albany Community Legal Centre Inc; the Women's Law Centre; Communicare; Linkwest, community learning and development; the Citizens Advice Bureau; Zonta House Refuge Association; People With Disabilities WA; the Australian Services Union; Fremantle Women's Health Centre; and Nardine Wimmin's Refuge.

The Safe Systems Coalition contends that it is vital in Western Australia that we do not make assurances that the system will provide a safety net that women and children need and then fail to deliver because resources are spread so thinly. The Safe Systems Coalition has compiled a list of key asks that are designed to improve the systems that are meant to keep systems safe. I want to briefly summarise the Safe Systems' list of key asks. It should be clear by now that the coalition is quite diverse and powerful. It developed these asks and it is currently sending them to all the different political aspirants. It hopes that they will demonstrate accountability and leadership in preventing violence against women and their children by putting family and domestic violence at the top of their agendas. The coalition has called for the establishment of a high-level cross-governmental leadership by appointing a designated minister for the prevention of violence against women. It asks us to widen the remit of the family and domestic violence unit to become the office for the prevention of violence against women and their children, and to be located in the Department of Premier and Cabinet to demonstrate that it is a priority. The coalition also asks us to establish a committee of cabinet for the prevention of violence against women. It asks for the establishment of a high level, adequately resourced advisory group to the government that is comprised of representatives from all relevant sectors. It asks for the creation of an assistant commissioner of police position with a designated portfolio for the prevention of violence against women.

Under the category of utilising a collaborative, coordinated and adequately resourced approach to preventing violence against women, the coalition specifically asks for a significant increase in funding for frontline services, including refuges, advocacy services, community legal centers, and Safe At Home programs. In addition, the coalition asks for the revision of the "WA Family and Domestic Violence Prevention Strategy to 2022" and future action plans to align with the outcomes with the national plan of action to reduce violence against women and their children and the national prevention framework, "Change the Story"; address the root causes of violence against women and expressly refer to gender and intersecting inequalities that contribute to violence against women; include interventions across individual, community, institutional and societal levels to address men's violence against women, such as "Respectful Relationships Education" in all schools; and ensure effective

monitoring and evaluating mechanisms are built in and transparently communicate who is responsible for what actions. The Safe Systems Coalition also asks us to ensure that future state strategic planning concerning violence against women is informed by broad consultation across sectors and the community.

Under the category of making the justice system safe, supportive and responsive to the needs of women escaping violence, the coalition has these four asks: to implement the recommendations from the enhancing laws concerning family and domestic violence inquiry, including non-legislative recommendations; to ensure that any legislative reforms are backed with adequate resources and training to ensure that they will be properly implemented; to distribute an exposure draft of any bill proposing to enhance laws concerning family and domestic violence so that broad feedback can be sought; and to ensure that the judiciary, court staff and the legal profession receive regular and appropriate family and domestic violence training.

The last category is holding violent perpetrators accountable and keeping victims safe, and the coalition asks us to adequately resource WA Police, including ensuring that police receive adequate and ongoing multidisciplinary family violence training and that police are largely responsible for applying for violence restraining orders on behalf of victims; to increase the availability of and attendance at evidence-based men's behaviour change programs that meet minimum standards; to implement recommendations from the 2015 Ombudsman's investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities; and to be a leader in ensuring adequate leave provisions and entitlements in the public sector for victims of family and domestic violence.

In conclusion, the coalition states —

> The above details the specific actions we are calling on all parties to address in the lead-up to the state election. To sustain women's safety, we must ensure that income support, employment, housing, financial, legal and other systems work more effectively together to prevent, identify and respond to the economic, social and legal impacts of domestic violence.

As representatives of political parties, we all need to take responsibility to show leadership in preventing family and domestic violence and ensuring that income support, employment, housing, financial, legal and other systems work more effectively together to prevent, identify and respond to the social, economic and legal impacts of domestic violence.

I completely agree with what the Safe Systems Coalition is asking for, but I want to turn my attention to the specifics of this bill, which has been drafted to make the restraining orders regime more responsive to the issues associated with family violence. As I flagged earlier in my comments, we are generally in support of this bill. We are particularly supportive of the introduction of family violence restraining orders and the expanded set of principles that set the context for decision-making in the bill, the provisions for revenge porn, the ability for a court to compel perpetrators to undertake an approved behavioural change program, and better protection for victims.

Notwithstanding our recognition that this bill represents a step in the right direction, during my consultations with the sector and with victims of domestic violence, a number of omissions in and queries about the bill have been raised. For example, I understand that the Domestic Violence Legal Workers' Network has written to the Attorney General about the lack of a right of appeal of a decision made by magistrates at hearings held in absence of respondents not to make an interim family violence restraining order and to instead adjourn the matter to a mention hearing. Furthermore, the bill does not address some of the issues that were canvassed during the submissions process, and I know the sector is keen to hear what the government intends to do about these issues. These issues are drawn from some of the recent DV reviews and reports from Western Australia and other states, including recommendations from the Western Australian Law Reform Commission's final report.

In addition to the provisions in this bill, legislation should clearly allow appeals of refusals of interim violence restraining orders when a summons only is issued, and that was in the submission from Legal Aid WA, the community legal centres and the Domestic Violence Legal Workers' Network to the Attorney General. Legislation should introduce an ability to vary or end a tenancy in situations of DV, at least in line with what is in place in New South Wales, and this was referred to in a number of the reports that people made. Legislation should also make giving evidence remotely by closed-circuit television the default position for victims of family and domestic violence for VROs and criminal charges, unless the victim wishes to give evidence in court with the abuser present, and that was from the Victorian Royal Commission into Family Violence. Legislation should include a requirement that police have to record every domestic violence report and give victim report numbers, and that is from the Law Reform Commission's final report. Legislation should also amend criminal laws so that cyberstalking and the publication of intimate images are criminal offences, and that was in the Legal Aid WA submission and it is also in place in a number of other jurisdictions—for example, the United Kingdom, Japan and New Zealand.

The Aboriginal Legal Service of Western Australia also has written to me detailing a number of concerns with the bill, particularly in the context of how some provisions may unfairly disadvantage Aboriginal people. I will

briefly outline these areas of concern. It is vital that we consider any disproportionate impacts on Aboriginal people. I believe Hon Robin Chapple may well expand upon these, but I intend only to summarise them.

Although the introduction of general principles into this bill to guide decision-making is a positive step, the ALSWA is of the opinion that the principles do not fully implement the recommendation of the Law Reform Commission of WA in that the new principles do not recognise that Aboriginal people and other groups may experience and understand domestic violence differently and may have different needs, as well as different or additional barriers to seeking assistance and reporting violence. Therefore, the legislation does not reflect the realities of the circumstances for many people, especially those living in remote areas. The LRCWA recommended that it should be a standard condition of every family violence restraining order that the person bound is not to commit family violence against the person protected. ALSWA agrees with that approach. Flexibility is needed to accommodate different circumstances. Family violence restraining orders should not be used solely as a response for a person who wishes to have no further contact with the person with whom they are in a relationship.

Again in line with the LRCWA recommendation, provisions for explanations of family violence restraining orders and violence restraining orders by the court and police should be strengthened to ensure that an interpreter conveys information to those unable to understand the standard explanation due to an inability to understand English, age, disability or other factors. Clearly, the consequences of a person failing to understand the nature of a family violence restraining order or violence restraining order are substantial.

Hon Michael Mischin: What's that got to do with the legislation? Why does that have to be put in the legislation?

Hon LYNN MacLAREN: The Attorney General has had submissions to include provisions in the legislation, so if he could address why he chose not to address it in the legislation, I think these constituents will consider themselves heard and we will see whether there is a law reform agenda yet to do.

Hon Michael Mischin: It's something that is part of the court process to ensure that people in the court can understand what is being discussed. It doesn't have to be put in legislation.

Hon LYNN MacLAREN: Perhaps some guidelines should be put in place to ensure that interpreters are made available. These people work with victims and survivors, and perpetrators, all the time, so they know what the problems are. They want the Attorney General to know that there needs to be a firmer requirement that translators and interpreters be made available. Sometimes, VROs are misunderstood. The bill before us does not provide for that. It would be helpful if the Attorney General would articulate whether there is a process to ensure that interpreters and translators are made available. In many remote communities, people often have to travel long distances to access an interpreter or a translator. It should be possible to ensure that that service is provided.

The Law Reform Commission of Western Australia believes that the introduction of a conduct agreement order is a change in name only. It does not go as far as the LRCWA recommendation that there be a family violence protection undertaking. That is a stronger option than the existing informal undertaking. However, it is not as robust as a family violence restraining order. Therefore, an intermediate option should be further explored and amendments put forward. The Aboriginal Legal Service of Western Australia considers that the introduction of behaviour management orders is positive and notes that their use would be further enhanced if coupled with an interim order as I have described. The undertaking of a behavioural management program may provide an incentive to avoid a family violence restraining order. However, in order for behaviour management programs to be effective, culturally appropriate programs need to be made available. Given that a child aged 10 years and over may be subject to a family violence restraining order, the ALS proposes that a child of a similar age should also be entitled to apply for an order in his or her own right.

The ALS is concerned that the changes proposed in this bill will result in oral service being considered the default position. Oral service may be problematic, because it is important that the person who will be bound by the VRO understands the content and consequences of the order. It may also be difficult to verify who is on the other end of the phone. The Law Reform Commission has made recommendations about how to expedite the process of serving an order, but not to the same extent as proposed in this bill.

The ALS is gravely concerned that the proposed amendments with regard to a breach of a VRO are likely to result in increased imprisonment of Aboriginal people. In the experience of the ALS, many people do not understand that they will be convicted for breaching a VRO if the person protected under the VRO initiates contact with them. They often perceive the order as being dependent upon the wishes of the person who is being protected. ALSWA opposes the tightening of the counting rules for the presumptive sentencing regime for breach of a VRO. The maximum penalty for assault causing death is currently imprisonment for 10 years. Under the bill, this will increase to imprisonment for 20 years irrespective of the circumstances. The ALS contends that this is out of line with other offences, for which the maximum penalty is imposed only in circumstances of aggravation. An offence that is committed in a family and domestic relationship would be considered in this context. The ALS suggests that the penalty should be in line with that contained in other legislation.

During my preparations on this bill, I met with a constituent who had left a domestic violence relationship in May 2015. She took some time to outline to me that from her experience, the current violence restraining order regime is inadequate. Although this bill will improve the response to victims of domestic violence, it does not serve to address one of my constituent's primary concerns, which is how breaches of a VRO are counted. Her ex-partner breached his VRO on 90 occasions. However, he was charged with only 28 breaches, and he negotiated early guilty pleas for 13 of those breaches and received a suspended sentence. My constituent discovered during her time in refuges that her experience is not an isolated example. I raised this issue with the department and was advised that under section 61 of the Restraining Orders Act, for a single serious breach of a restraining order, such as an assault, the court can impose a fine of up to $6 000 or a sentence of imprisonment for up to two years, or both. I acknowledge that this is the likely intended practice. However, this response is not reflected in the bill. Proposed section 61A(2B) states —

> For the purposes of subsection (2)(b), convictions for two or more previous offences committed on the same day are to be treated as a single conviction.

There is no mention of the seriousness or otherwise of the offence. In the experience of my constituent, although the current legislation allows for fines of up to $6 000 and/or imprisonment for up to two years, it is routine for sentences to be inconsistent and lenient. This is the experience from my constituent as imparted to me. I know the Attorney General will not be able to answer this in his second reading reply, but I would like to know whether it is possible to chart the sentences for domestic violence to see whether there is a trend towards leniency. Obviously, one of the key factors in ensuring that we break the cycle of domestic violence is ensuring that the sentence is appropriate to the offence. I know the Attorney General agrees with this, because we have discussed that several times. It is certainly the experience of people who are in refuges that all too often sentences are inconsistent and lenient. Often one perpetrator is sentenced lightly and another perpetrator is sentenced more heavily. I am well aware that we need to know the circumstances of each case in order to measure it up. However, I would like to know whether it is possible to review whether the sentences imposed are too lenient.

I conclude by saying that the Greens are supportive of the advances made by this bill. There are many advances, as other members have said. However, more work needs to be done. This can best be achieved in collaboration. I have outlined the need for systemic changes. I have also represented the position of key stakeholders in this area.

HON NICK GOIRAN (South Metropolitan — Parliamentary Secretary) [5.47 pm]: I rise to make some brief remarks on the Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016. At the outset, I congratulate the Attorney General for bringing this bill to the house. This is a very important bill for our consideration. I also thank those members who have spoken on this bill.

It may assist members to remember the genesis behind these reforms. At the heart of these reforms are two very important matters. The first is the work of the Law Reform Commission of Western Australia. Members may be aware that in August 2013, the Law Reform Commission received the following final terms of reference from the Attorney General to consider—namely, the benefits of separate family and domestic violence legislation; the utility and consequences of legislation for family and domestic violence restraining orders separate to their current location in the Restraining Orders Act 1997; and the provisions that should be included in such legislation were it to be developed, whether in separate legislation or otherwise.

In December 2013, the Law Reform Commission of Western Australia published its discussion paper, presenting 53 specific proposals for reform and raising 29 questions for discussion. The paper was followed by consultation, with more than 150 individuals both within and outside government expressing their concerns about family and domestic violence. The commission ultimately received 43 written submissions and conducted a number of additional consultations to resolve matters arising from the submissions. That is the history of the Law Reform Commission's involvement in this matter. That was the commission's final report on project 104, and it is entitled, "Enhancing Family and Domestic Violence Laws, Final Report—Project No. 104". I encourage members to familiarise themselves with the Law Reform Commission's report if they have not done so already.

In light of that, I congratulate the Attorney General for bringing forward the Restraining Orders and Related Legislation Amendment (Family Violence) Bill. I will provide analysis of a couple of clauses, and no doubt we will have an opportunity to do that more in-depth during the committee phase. I notice that supplementary notice paper 210 has been issued. It is the second supplementary notice paper that has been issued for this bill. We will have an opportunity to consider the two proposed new clauses. From what I can see, there is an amendment to clause 75. However, before we get to that stage, I would like to make some remarks about a couple of clauses that I think members ought to consider as we pass this piece of legislation this week and also when we consider it again in the future. Specifically, at this point I refer to clause 49, the intent of which is to amend section 44A by inserting new section 44A(2A), which reads —

> Except as otherwise provided in this Act, at a final order hearing for an FVRO, —

That is a family violence restraining order —

> the court may refuse to admit, or may limit the use to be made of, evidence if —
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> (a) the court is satisfied it is just and equitable to do so; or
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> (b) the probative value of the evidence is substantially outweighed by the danger that the evidence may be unfairly prejudicial to a party or misleading or confusing.

I earlier referred to the Law Reform Commission's final report on project 104. In that report, the WA Law Reform Commission rejected such an approach and recommended that legislation should provide a fair and just legal response to family and domestic violence. Relevantly, the commission's final report expressly states —

> As Legal Aid confirmed, this does 'not mean that fairness and the protection of individual rights are not important considerations'. In this context, it is vital to acknowledge that not every person who applies for a violence restraining order is a victim of family and domestic violence and not every respondent is a perpetrator.
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> As noted in the Discussion Paper, the current restraining order system is not without its critics in terms of its overuse or abuse. Although it is true that most applications for violence restraining orders are properly made, sometimes they are unmeritorious or otherwise used for tactical purposes in family law litigation. And yet, many lawyers consider that violence restraining orders, in particular those applied for after proceedings have been instituted in a family law dispute, may actually exacerbate conflict and decrease the prospects of the parties reaching agreement, with a consequent impact upon legal costs.
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> Because an interim violence restraining order can be made on the uncorroborated evidence of the applicant, the potential for abuse is very real. One example repeatedly mentioned to the Commission during its consultations is where the person protected by a violence restraining order is the perpetrator and the person bound is the victim. Further, it is important to acknowledge, from the respondent's perspective, the potential consequences of a violence restraining order: exclusion from the family home; prohibition of contact with children; inability to work; and general restrictions on day-to-day activities. Additionally, a respondent is liable to serious consequences under the criminal law for failure to comply with the order (including an interim order).

I quote from pages 18 and 19 of the Law Reform Commission's final report, in which the following remarks were made by the commission —

> For these reasons, the justice system must ensure that the legal rights of all parties are respected and, in particular, that respondents to violence restraining order applications have a right to be heard within a reasonable time. Additionally, the importance of ensuring that the legal system responds to family and domestic violence in a fair and just manner supports the provision of better and more reliable information to decision-makers at the outset, thus enabling more accurate and effective decisions to be made.

With respect to that particular portion of the bill, which is outlined at clause 49, I support the Attorney General in his endeavours to reform the system to strengthen our family and domestic violence laws, which is an issue of concern to all of us. I thank him for the work that has gone into the bill. In particular, I think we can be encouraged that the Law Reform Commission has spent obviously a significant period of time considering this issue and presented a comprehensive report, which has no doubt been very instructive and helpful to the Attorney General as he prepared this bill and brought it forward for our consideration.

I also wish to draw to members' attention to a couple of other important clauses. The entire bill is, of course, important, but nevertheless I now bring members' attention to clause 7, hopefully with a view to spending less time considering these matters when we get to the committee stage. Clause 7 of the bill proposes to insert new section 5A into the Restraining Orders Act 1997. New section 5A will define the phrase "family violence". It reads as follows —

> (1) A reference in this Act to ***family violence*** is a reference to —
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> (a) violence, or a threat of violence, by a person towards a family member of the person; or
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> (b) any other behaviour by the person that coerces or controls the family member or causes the member to be fearful.
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> (2) Examples of behaviour that may constitute family violence include (but are not limited to) the following —
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> (a) an assault against the family member;
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> (b) a sexual assault or other sexually abusive behaviour against the family member;
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> (c) stalking or cyber-stalking the family member;

(d) repeated derogatory remarks against the family member;

(e) damaging or destroying property of the family member;

(f) causing death or injury to an animal that is the property of the family member;

Sitting suspended from 6.00 to 7.30 pm

Hon NICK GOIRAN: Before the dinner break I was congratulating the Attorney General on bringing this bill before the Parliament. It is a very comprehensive piece of work. I had outlined for the benefit of members some of the history, including the final report on project 104 of the Law Reform Commission, titled "Enhancing Family and Domestic Violence Laws". I know that there is a fair degree of enthusiasm for this bill to proceed at some pace, so I will try to restrict my remarks as best I can. In doing so, before I continue with the remainder of my second reading contribution I flag for the benefit of the Attorney General something to which I would like some consideration to be given. Before the dinner break I was looking at clause 7 of the bill, which seeks to insert in the Restraining Orders Act 1997, as new section 5A, a definition of family violence. Before I continue with those remarks, I want to speak specifically about clause 80 of the bill, which seeks to insert into the Restraining Orders Act 1997, as new section 73A, a requirement for a statutory review. I congratulate the Attorney General for incorporating this review provision into the bill. The proposed new section is titled "Review of certain amendments relating to FVROs", which is family violence restraining orders. It states —

(1) In this section —

review date means the second anniversary of the day on which the *Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016* section 3 comes into operation.

I note that this proposed subsection provides for a review two years after legislation comes into effect. I think that is an excellent proposal by the Attorney General. The proposed section continues —

(2) As soon as practicable after the review date the Minister is to review the operation and effectiveness of the amendments made to this Act by the *Restraining Orders and Related Legislation Amendment (Family 16 Violence) Act 2016* Part 2.

I agree that the review should be conducted as soon as practicable after the legislation has come into operation, but I note that this proposed subsection seems to restrict the review to amendments made to this act, which is a reference to the Restraining Orders Act 1997. I wonder whether there may be an opportunity in committee to consider widening that particular clause to take in all the consequential amendments made in part 3 of this bill to other acts, including the Criminal Code, for reasons that I will outline in a moment. The final proposed subsection states —

(3) The Minister is to cause a report of the review to be laid before each House of Parliament within 6 months after the review date.

That would mean that, within two and a half years of the act coming into effect we will have a report outlining the outcome of the review. That has my full support, and I thank the Attorney General for the inclusion of this provision in the bill. As I continue with the remainder of my remarks, I ask that some consideration be given to proposed section 73A(2), and whether it might be possible to consider all the amendments captured by this bill, rather than only amendments made to the Restraining Orders Act 1997.

As I continue, I will outline two further clauses, one of which is addressed by the Law Reform Commission in another matter that I will talk about in a moment, and both of which I am grateful that the Attorney General has given strong consideration to. They are good examples of matters that will benefit the statutory review clause I have just spoken of. Specifically, I was talking about clause 7 of the bill—the insertion of new section 5A. The bill proposes to insert this section that, amongst other things, creates a concept of financial abuse as a form of domestic violence that allows for the proper application for a restraining order. Prior to the dinner break I was reading the various examples given in proposed subsection (2) that could be considered to be family violence. I had read as far as proposed section 5A(2)(f), and I now continue —

(g) unreasonably denying the family member the financial autonomy that the member would otherwise have had;

(h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or a child of the member, at a time when the member is entirely or predominantly dependent on the person for financial support;

(i) preventing the family member from making or keeping connections with the member's family, friends or culture;

(j) kidnapping, or depriving the liberty of, the family member, or any other person with whom the member has a family relationship;

(k) distributing or publishing, or threatening to distribute or publish, intimate personal images of the family member;

(l) causing any family member who is a child to be exposed to behaviour referred to in this section.

In large part, this is an excellent list of examples of behaviour for which the Attorney General seeks our concurrence. It is helpful that such a range of examples of behaviour that may constitute family violence is listed in the legislation. Of course, it is a non-exhaustive list. It is explicitly stated that these are examples that may constitute family violence, but the definition is not limited to these examples. I would imagine that members would be entirely comfortable with the idea that, if there is an assault against a family member, that family member should be in a position to apply for a family violence restraining order. Equally, if there was a sexual assault, stalking or cyberstalking, repeated derogatory remarks, damage or destruction of property, or causing the death or injury of an animal, these would all be appropriate circumstances in which members would be entirely comfortable with a person applying for and receiving a family violence restraining order.

Members may recall that, prior to taking up my seat in this chamber, I had the privilege of working for a substantial number of victims of crime, in fairly haunting circumstances in each instance, so the work of the Attorney General in looking to strengthen and support victims of crime has my utmost support.

I note, and I am hopeful, that in the statutory review to be undertaken in a couple of years' time, some consideration will be given to whether it remains appropriate for an individual to apply for a violence restraining order in circumstances that might described, as stated in proposed section 5A(2)(g), as "unreasonably denying the family member the financial autonomy that the member would otherwise have had". I look forward to seeing what the statutory review will reveal about that in a couple of years' time, because there is no doubt that when that set of circumstances occurs in conjunction with some other kind of violence—for example, assault, sexual assault, stalking or cyberstalking, repeated derogatory remarks, damage to property, or causing death or injury to an animal—that would be an entirely appropriate circumstance for a violence restraining order to be issued. I am not currently persuaded that if the only—I use that word carefully—circumstance in which that has occurred is an applicant alleging that they have been unreasonably denied the financial autonomy that they otherwise would have had, that would be an appropriate circumstance for a violence restraining order. I am not presently persuaded that that would be appropriate. I recognise that if this bill passes unamended in its current form, that would be a possibility; it may result in the granting of a family violence restraining order. Members who have had any experience of the difficult conflicts that arise in family law debates would know that, typically, two circumstances are brought to their attention. One, typically—again I am using generalisations here, and I hope members will forgive me for that—and generally speaking, is that there will be circumstances in which a female applicant will apply for a violence restraining order and will continue to fear for her life. She will say, quite rightly, that the violence restraining order is hardly worth the paper that it is written on. It is for those people that we, as members of Parliament, have a responsibility to do what we can to strengthen our laws to support them in very trying circumstances. Parliament cannot control people's behaviour, but it can send a very clear message about what kind of behaviour is inappropriate and provide hefty penalties if that inappropriate behaviour occurs. However, Parliament cannot physically restrain a person from flouting the law.

Equally, members will be familiar with the circumstance in a family law dispute—again I generalise with some caution—in which, typically, a male has had an interim restraining order applied for and granted against him. In Western Australia it is not difficult to obtain a restraining order. In the legal industry, it is known that these are used as strategies and tactics in Family Court battles. Of course, it is abhorrent that people would manipulate the law in such a fashion; nevertheless, we need to be mindful that it occurs, and we would not want to exacerbate the capacity of individuals to be able to do that. I note, as I say, that, courtesy of proposed section 5A(2)(g), it would be possible for somebody to apply for a violence restraining order against another person on the grounds that they have been unreasonably denied the financial autonomy that they would otherwise have had. That no doubt will be subject to appropriate scrutiny by the statutory review, which our hardworking Attorney General has provided for in this bill and for which he has my full support. I am looking forward to the statutory review occurring in a couple of years' time and seeing its outcomes. Hopefully, any concerns that anybody has, including the Law Reform Commission and me, will be allayed at that time.

The final section I raise relates to the consequential amendments. They are listed as consequential amendments to the Criminal Code, although, I think, as outlined in the second reading speech, the Attorney General kindly draws to our attention that they are not so much consequential amendments pertaining to the main purpose of this legislation but are more related amendments. In particular, I draw to members' attention clause 97 of the bill, which is the provision that amends section 1 of the Criminal Code. It is for this reason that I am glad that there

will be a statutory review and why I have flagged in advance with the Attorney General that I hope that this provision will also be captured by the statutory review clause.

Before I outline that, I remind members of the event that first led to our consideration of this provision, which is more commonly referred to as the foetal homicide law in Western Australia. In October 2009, Matthew Silvestro was driving dangerously in a Nissan Pulsar and his heavily pregnant girlfriend, Vanessa De Bari, was in the passenger seat, and their two-year-old son was in the back seat. He turned the car into the path of a Jeep on Wanneroo Road in Woodridge, causing a collision that resulted in severe injuries to Vanessa and the tragic death of her unborn child. Fortunately, the toddler survived. Vanessa spent eight and a half months recuperating in hospital, learning to walk again, and she has permanent brain damage from the collision.

The clear injustice in the Silvestro case with regard to this person who had a history of domestic violence offences and had seven restraining orders against him by six different partners is that he received only an $8 000 fine for dangerous driving occasioning grievous bodily harm. This was because currently under Western Australian law no penalty exists for the harm or death of an unborn child as a result of an unlawful assault or dangerous driving. The former Attorney General, Hon Christian Porter, was rightly outraged by this loophole and the inadequate penalty and he announced plans to strengthen and clarify Western Australia's foetal homicide laws by creating a new offence of causing death or grievous bodily harm to an unborn child through an unlawful assault on its mother. This offence, he stated, based on one in operation in Queensland, would carry a maximum penalty of life imprisonment. In regard to dangerous driving offences that cause the death of an unborn child, such as in the case of the death of Vanessa De Bari's unborn child, the then Attorney General announced that this would be dealt with in the District Court and carry a maximum period of imprisonment of 20 years. Additionally, when there was a history of domestic violence against the mother by the offender prior to them harming or causing the death of an unborn child, the offender would face a presumption of imprisonment.

I need to draw to the attention of members of this house that those intentions, as I understand, have not been realised through the inclusion of clause 97 in this bill. It will not achieve what shadow Attorney General John Quigley said at the time, which was that any unlawful act that caused the loss of a child, even if it caused no other injuries to the mother, should attract a charge of grievous bodily harm and be defined as being in aggravated circumstances so that it will attract the higher maximum penalty. No clause in this bill attracts a higher maximum penalty for the death or harm of an unborn child when caused by a person with a history of domestic violence, or by upgrading the grievous bodily harm to being in aggravated circumstances. For the sake of clarity, clause 97 will amend section 1(4) of the Criminal Code by inserting as bodily harm or grievous bodily doing harm to a pregnant woman's unborn child. This provides recognition of the harm or death of the unborn child as bodily harm or grievous bodily harm to the pregnant woman, and in some circumstances this may increase the penalty. Even though this Restraining Orders and Related Legislation Amendment (Family Violence) Bill achieves something meaningful for pregnant women who suffer the tragic loss of an unborn child through an unlawful assault or dangerous driving, it does not achieve what was intended following the clear injustice suffered by Vanessa De Bari and her unborn child. Whilst I acknowledge that this amendment to the Criminal Code is a step in the right direction, I believe that consideration needs to be given to honouring the original intent of this reform by providing greater clarity to Western Australia's foetal homicide laws by stating in law the reality of what has occurred and providing an appropriate penalty. Would any member of this house dispute the medical evidence that Vanessa De Bari's unborn child was killed as a result of this car crash? I very much doubt it. We use the phrase "killing an unborn child" because, simply stated, that is what has occurred. That is the fact of the matter, yet out of fear of contradicting other laws in Western Australia, we deny the facts and call the killing of an unborn child grievous bodily harm to the mother.

The law has a compounding effect. It began in 1913 when the Western Australian Parliament passed the Criminal Code, which states in section 269 that a child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not and whether it has independent circulation or not and whether the naval string is severed or not. Perhaps in the past, before ultrasound technology, it was difficult to confirm the death of a child in utero, and, without confirmation, it was perhaps impossible to prove cause and effect. That is understandable. However, in 2016 a woman can have an ultrasound in the morning showing a moving, unborn child sucking its thumb, and the woman could then experience an assault to her womb, and the medical team could quickly assess the effect on the unborn child, thus placing beyond reasonable doubt that the assault caused the death of the unborn child. A post-mortem examination could further confirm these things. There was perhaps once an issue of cause and effect that led to the creation of section 269. However, in 2016 we can understand and even prove that an unborn child is capable of being killed. Indeed, I might say that when a martial arts expert kicks the womb of his pregnant girlfriend with the intention of harming the unborn child, as occurred in Queensland in 1996, and the unborn child dies as a result, is this not killing the unborn child? Would the woman not grieve the death of her unborn child? According to our proposed amendment, her grief is misplaced and her grief should be directed towards the grievous bodily harm she has suffered. I am entirely uncomfortable with that notion. The grievous bodily harm

she suffered would be of minimal significance to her compared to the loss of her unborn child. Yet our proposed amendment provides no greater significance to her own harm and no separate recognition of the death of the child that once lived within her.

What might be of interest to members is that the Queensland Parliament recognised this misdirected justice and changed the law as a result. Twenty years ago, its state's Criminal Code was amended to recognise that a child that is capable of being born alive is also capable of being killed, and the penalty for intentionally killing an unborn child is the same as murder—imprisonment for life. That, of course, is what the former Attorney General meant when he referred to basing our foetal homicide laws on Queensland's law. However, in going this far, he would have had to recognise, and he did, the elephant in the room, which is legal abortion; yet he justified that foetal homicide laws could co-exist with legal abortion by stating that the proposed legislation would be drafted to require an unlawful act to be done to the mother before any penalty could apply. Obviously, in Western Australia, performing an abortion within the defined parameters of the law is not an unlawful act, and hence would not be affected by this new offence. I hasten to add that I am not attempting to ignite a debate about the right of women to have an abortion. I am simply attempting to draw to members' intention the original intention of this law reform and to ask that we remain true to that intent to afford women who experience the tragic loss of a child in utero the dignity they deserve by acknowledging the gravity and the reality of the crime that occurred, that being the killing of her unborn child.

It is for those reasons that I have asked for some consideration to be given to the statutory review clause to ensure that it most definitely capture clauses 96 to 99 of this bill, which are recorded as consequential amendments to other acts, being the Criminal Code and which, if I am incorrect and it is captured by the current review clause, I am delighted by that, otherwise I would be grateful if a modest amendment could be made to the statutory review clause to ensure this important matter retains some further consideration in 24 months when the statutory review clause is implemented.

With those remarks, I thank members for their indulgence on this matter. I concur with the other members that domestic and family violence is a significant issue in our community. As I indicated earlier, courtesy of my work prior to becoming a member of this place, I have a big heart for victims of crime and believe that anything we can do to strengthen and support their rights ought to receive strong consideration by members of this place. Equally, I distance myself entirely from those who would seek to misuse the law and use it as metaphoric weapons in Family Court proceedings. I am sure I am not alone in distancing myself from such individuals who try to pervert the course of justice in that way. I am grateful that the Attorney General has included a statutory review clause, and that shows great consideration on his part. I ask just that there be consideration to ensuring the statutory review clause is as complete as we intended it to be.

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [7.57 pm] — in reply: I thank members for their contribution to the debate. In particular, I thank Hon Sue Ellery for indicating the opposition's support to this very important reform to our restraining order laws, and more generally. I will come to some of the elements of that in a moment. Thank you to Hon Lynn MacLaren for her support. I note Hon Nick Goiran's contribution to the debate and the issues he has raised. I will not go into detail on all the matters that have been raised. Some of it is covered specifically in the bill anyway or in the explanatory memorandum and the like, but I will touch on a number of the issues that have been canvassed and on a number of amendments that appear in the supplementary notice paper on which the house is entitled to an explanation. The bill itself is not standalone legislation; it is not a standalone element; it represents just one of something like 20 action items under the government's overarching plan on family violence entitled "Freedom From Fear: Working towards the elimination of family and domestic violence in Western Australia—Action Plan 2015" and the Freedom from Fear action plan is a comprehensive and multifaceted strategy under which the government is delivering a range of measures to address family violence on multiple fronts, which includes, by way of example, the increased capacity and improved access to women's refuges in the metropolitan area; new expanded information sharing provisions in relation to family violence under the Children and Community Services Act 2004, which came into force on 1 January this year; minimum standards for men's behaviour change programs; development of a peak body for men's behaviour change programs; the use of GPS tracking to monitor serious family violence offenders, which was an element of the Sentencing Legislation Amendment Bill 2016, which was passed by this house last week; and the dedicated Kimberley family violence plan, which aims to reduce the unacceptably high rates of family violence in that region.

There has been considerable investment by the government by way of funding efforts to combat family violence. The overall increase in funding for family violence services since the government came to power has been some 58 per cent, representing an additional total spend of more than $229 million since 2008–09. As part of this, there has been an overall increase by the government in funding for family and domestic violence counselling of some 57 per cent since 2008–09, and an overall increase in funding for accommodation services of 32 per cent

since 2008–09. I note the comments that Hon Lynn MacLaren made about funding on behalf of several groups connected with family violence—the "coalition" I think it was termed. Funding is all very well, but that is not the only solution to the problem. The funding element has been addressed and no doubt more can be done, as can be done in every area of human endeavour, but the government has not been lax in attending to this important area of concern. In this term of government alone, the state government has provided $3 million for the expansion of victim support services in regional areas; $600 000 a year to establish and run a metropolitan legal service for Aboriginal victims of family violence, the Djinda Services; and $3 million from royalties for regions funding to provide culturally appropriate support for Aboriginal victims of crime in regional and remote communities, for which the services funded by that grant are ongoing. The state government has invested a further $3 million over three years in the Safer Families, Safer Communities Kimberley Family Violence Regional Plan 2015–2020 to protect some of the state's most vulnerable women and children. The government also established the new office of the Commissioner for Victims of Crime, with the commissioner taking a lead role in ensuring that victims' voices are heard in developing family violence laws and policies. I am delighted to say that the commissioner, Jennifer Hoffman, has contributed enormously to the development of the Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016. She has mentioned the Law Reform Commission of Western Australia's work in this area, for which work I am grateful. It did a considerable amount of work in developing some of the directions that the state ought to be taking in this particular reform, and others, but it must be said that the Law Reform Commission report is not the start and finish of the process. Much of what the Law Reform Commission reported on was not amenable to legislative amendment or legislation at all. It involved processes that can be dealt with behind the scenes and amendments to the manner in which authorities and agencies deal with family violence. Some of those were raised by Hon Lynn MacLaren as missing from the bill. They are in fact things that are being attended to but are not appropriately the subject of legislation. I finalise that in the 2015–16 budget papers the estimated actual spend on family and domestic violence service for this year is $39.2 million in the Department for Child Protection and Family Support alone.

The bill before us plays an important part in this overall response. It is crucial that our legal system is properly geared to understand the complex nature of the violence that it is dealing with, and that is what this bill seeks to achieve. On some of the issues that Hon Lynn MacLaren raised, for example, the Safe Systems coalition and the Aboriginal Legal Service contributed to the content of her debate. Some of those issues are already addressed in the bill or in other reforms. She mentioned, for example, that there was nothing in here about varying tenancies, and that is right. The Residential Tenancies Act covers the management of residential tenancies, and tenancy law reform is currently being considered in the context of a consultation paper that was released by the Department of Commerce on 28 October this year to consider precisely that issue. It will require the input of not only the agencies concerned with dealing with the victims of family violence, but also those involved in managing rental tenancies—the landlords themselves—so that their interests are protected satisfactorily and are balanced against allegations that result in a violence restraining order being issued in a family violence context of evicting someone from their property, for which they are responsible under a lease. It is not a simple matter at all and involves several levels that need to be properly considered before a change in that area can be made. The issue of automatic special witness status for victims of family violence is also being considered as part of a broader review of that scheme. That is currently contained in the Evidence Act, which covers the categories of witness for whom special witness status can be granted. Broadly speaking, automatic special witness status applies to victims of sexual assaults and the like and for children, but there is a capacity to apply for special witness status in other cases. Making it automatic presents its own problems. Not all courts are equipped with closed-circuit television facilities. The government's investment of something like $150 million over the last several years in rebuilding court infrastructure in country areas has resulted in a number of state-of-the-art court facilities being established as far away as Kununurra, Carnarvon and Kalgoorlie—all sorts of places across the state. That work continues and many other court facilities in major regional areas have been upgraded over the years to allow for special witness facilities. However, not every court has them and it would be pointless and counterproductive, one would suggest, to apply an automatic special witness status when the facilities are not there to allow for it. In any event, in some cases, witnesses may not require that status as a matter of personal choice. Some are empowered by confronting the people who they are taking orders out against, and so on. A number of issues are involved in that element alone.

This bill takes into account cyberstalking, and cybercrime more generally. In the context of family violence restraining orders, however, I am currently examining what other reforms can be sensibly introduced. The process is continuing. As Hon Nick Goiran mentioned, there is a review period in the legislation. The changes to the Restraining Orders Act occasioned by this bill need to be reviewed two years after the commencement of those provisions. That is not to say that no changes can be implemented before that, if necessary. As to the other elements of the bill that are peripheral to it but are part of a more general anti-violence package—that includes raising the penalty for breaches of section 281 of the Criminal Code and the provisions relating to unborn

children—I do not consider it necessary to have a fixed statutory review period. The provisions will be contained in the Criminal Code, and the Criminal Code has, from time to time, when it was being amended, had particular review periods for certain reforms that were particularly controversial or required some careful analysis. However, the Criminal Code is almost constantly under review, and changes as the requirements of the criminal law necessitate. I do not see that it is necessary to do that. One would hope that there were no prosecutions at all for either of the unborn child provisions. Whether there are any in two years, one cannot tell, but those cases come up quite infrequently. On that subject, I should add that different approaches could be taken to that problem. Fundamental to it, of course, and one of the reasons that it was not pursued in the manner that was originally foreshadowed by my predecessor in the role of Attorney General, was that people need to be punished, if we are talking about justice, for what they actually do, not what they may have done in other circumstances unrelated to the actions that are the subject of the criminal charge at hand. The Silvestro case was rather a bad vehicle—no pun intended—for this particular type of reform. He was being punished for dangerous driving and the quality of that driving. The fact that Silvestro may have had a horrible history of doing other nasty things to other people had nothing to do with the quality of his driving on the day. He was punished for the quality of his driving, although the elements of family violence seem to have clouded the quality of his character more generally. There are a number of factors—I will not go into them all—that militate against the sort of approach that has been taken in some other jurisdictions. The recognition of an unborn child as being a human being prior to birth raises evidential problems, it raises a conflict in principle with the issue of being able to choose an abortion and it raises issues as to the concurrency of sentences. It was necessary to make it quite plain that harm to the child was harm to the mother, and to punish accordingly. I am confident the courts will be able to take that into consideration when dealing with cases when there is some harm to the mother or child that results in the foetus being injured or the pregnancy being otherwise terminated.

I will refer to another element broadly; that is, the financial autonomy that Hon Nick Goiran commented on. I should point out that the legislation does not prescribe any particular consequence for that particular paragraph in the Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016. It identifies indicia of what may constitute family violence. It does not say that once that particular element is met, it is family violence. But it does guide a court into the sort of behaviour that has now become widely recognised as constituting coercion, control, oppression and family violence, in order that the court can assess whether, in the circumstances, it amounts to family violence within the meaning of the legislation and can be the basis for a violence restraining order. It cannot be read alone and isolated from the other elements of the bill and what a court must have regard to in determining whether to make a particular order or not. So, the fears that Hon Nick Goiran has voiced are, I think, unfounded in the circumstances.

As to the question of punishment and the like, it is not a question of how many breaches occur; it is the conduct that gave rise to the breach that is most relevant. The maximum penalties set for breaches are simply the maximum penalties. They provide an adequate sentencing range for a breach. If there is a more serious offence committed as part of the breach—for example, an assault— that is punished separately. It is the breach of the order that is being looked at, and the court is able to imprison even for a first breach if that breach is serious enough.

Interpreters are matters of pragmatism for the court. I hear complaints about the legislation not providing for interpreters; it does not need to. The police can provide interpreters as necessary, and a court would not, I would have thought, deal with someone it knows cannot understand the orders it is making.

I turn to the rights of appeal against interim orders. That matter is being examined; however, one must appreciate the practicalities. If the application for an interim order is refused, the application for a final order is still to be determined. If people start appealing interim orders, they may find their appeal against the refusal of an interim order takes place after they have already been given a final order. There is no particular merit in that idea, to my mind, but I have asked the department to look into whether there is any value in it that I might not have picked up on at first glance.

I turn to increases in penalty for section 281 Criminal Code offences to a 20-year maximum. That will provide an adequate sentencing range, depending on the circumstances. It does not need to be hedged about with identifying circumstances of aggravation. Simply, the gravity of the offence and the circumstances will govern a judge's decision as to what penalty to impose. I think that that basically covers the major areas that have been identified, although no doubt if members ask specific questions they can be answered during Committee of the Whole.

I turn now to the three amendments. They involve addressing a number of issues that have arisen since the bill received approval to print. One is an amendment to section 135 of the Criminal Investigation Act to, essentially, give the police the power to search a person for weapons and so forth when conveying that person to a police station for the purpose of serving an outstanding restraining order under the amended section 62F of the act. The bill proposes to amend section 62F to provide police with a new power to order a person to accompany them to a police station for the purpose of serving an outstanding restraining order. The aim of the amendment is to promote victim safety by ensuring that more restraining orders are served sooner. But noting that the restraining

order does not come into force until it is served, the amendment has been requested by WA Police as a safety measure and is consistent with other similar procedural powers of the police under the Road Traffic Act 1974. There is a proposed amendment to section 64 of the Restraining Orders Act by way of proposed new section 72A. That is to deal with a more recent case that has taken a very narrow view of the ability to appeal a decision of a court. I will speak more about that in committee, but it addresses that. There is, otherwise, a clause 75 amendment to section 70 of the act; that is, to accommodate exchange sharing on a national basis by the police and other authorities in order to deal with family violence. I will go into more detail on that as well. I thank members for their support for the bill, and I now move that the bill be read a second time.

Question put and passed.

Bill read a second time.

Committee

The Chair of Committees (Hon Adele Farina) in the chair; Hon Michael Mischin (Attorney General) in charge of the bill.

Clauses 1 to 60 put and passed.

Clause 61: Section 61C inserted —

Hon LYNN MacLAREN: I have a question about multiple offences committed on one day that are considered to be one offence. I wonder if the Attorney General could address that for me. The amendment we are considering is to section 61A and it states, in part —

> For the purposes of subsection (2)(b), convictions for 2 or more previous offences committed on the same day are to be treated as a single conviction.

It is on page 93 of the marked-up copy.

The CHAIR: Members, I think we have a problem. The member is actually speaking on clause 60, not 61. The clause amends section 61A, but it is clause 60, and on the member's instruction I moved that clauses 2 through to 60 stand as printed. I need to seek some advice.

Members, the only way we are going to be able to consider clause 60 is for me to report to the house and re-commit clause 60 for consideration of the committee.

Hon MICHAEL MISCHIN: To save time and effort, I am happy to give an answer to that, notwithstanding that we have passed clause 60.

The CHAIR: I am here at the service of the chamber, and if the members of the chamber are happy to proceed on that basis, I am happy to proceed on that basis.

Hon LYNN MacLAREN: Thank you very much; I appreciate your helpfulness in this regard. I seek clarification on that one point. There is a concern that if, for example, somebody texted multiple times on that day, it would be considered a single breach. I wonder if the Attorney General can just explain how that works and why it is that the amendment before us should stand, and the rationale behind it. In the situation I outlined in my contribution to the second reading debate, there were multiple breaches of violence restraining orders in a single day. If that were to be considered as one offence, the concern is that it would not really pay attention to the gravity of the situation.

Hon MICHAEL MISCHIN: It is the sort of bloke I am to allow this sort of indulgence, but do not do it again!

We have to be careful; the counting rule has been changed in order to align it with those for strikes under the burglary legislation and the like. It is not that three breaches on the one day are counted as one offence; they are only counted as one offence for the purposes of calculating strikes, and whether there have been three strikes. If, for example, in a rush of blood to the head an offender makes three trivial breaches of an order in one day as part of a course of behaviour, that would be counted as only one breach or one strike, if we are looking back at strikes. Otherwise we would end up with a situation in which a person may be immediately jailed at a much earlier stage than otherwise and for far more trivial offending. The purpose of strikes is to discourage people from repeated breach behaviour. It loses its effect if we immediately punish them for those breaches, as opposed to trying to change their behaviour by them realising they are running out of chances. The amendment creates a presumption of imprisonment in sentencing for the third breach of a restraining order within a two-year period. The idea is to find a balance between the presumption of imprisonment for the third breach and a sensible calculation of the number of breaches. If those breaches are committed on separate days, there is an incentive to not breach a third time. If, on the other hand, because of a particular course of conduct on the day there have been three individual breaches, or the police have charged three individual breaches—although they could have exercised their discretion to charge only one, or whatever it happens to be—we lose that incentive and we

immediately have the presumption of imprisonment. It is a balancing exercise, and it was also done to accord with what is currently the case in the burglary amendments that were made to the Criminal Code, so that there is a simpler regime that is consistent across legislation, rather than the old counting rule, which caused apparent absurdities, in that previous strikes were not regarded as breaches for the purposes of calculation.

Clause put and passed.

Clauses 62 to 72 put and passed.

New clause 72A —

Hon MICHAEL MISCHIN: I move —

Page 69, after line 13 — To insert —

72A. Section 64 amended

Delete section 64(1)(b) and insert:

(b) to do any of the following —

(i) make, vary or cancel a final order;

(ii) refuse to make, vary or cancel a final order;

(iii) make any other order in relation to a final order,

New clause 72A amends section 64 of the Restraining Orders Act, which deals with appeals. The amendment was necessitated by the recent Supreme Court decision in the case of BV (on behalf of M, N and O) v TP [2016] WASC 228. In that case, the applicant sought leave to appeal a decision of the Children's Court of Western Australia to dismiss an application for a final violence restraining order. The Supreme Court refused to grant leave on the basis that such a decision does not fall within the categories of decisions that are appealable under the current section 64(1). Section 64(1) is currently worded to provide that an aggrieved person may appeal a decision of a court to dismiss an application for a telephone order or an interim VRO, or in relation to a final order. The Supreme Court interpreted this provision to mean that while there is clearly an ability to appeal against a decision to grant a final order, there is no ability to appeal against a decision to dismiss an application for a final order. This raises the question of whether it runs counter to the protective objectives of the Restraining Orders Act as a whole, but we are bound by that decision. The substantive effect of the proposed amendment is to ensure that a decision of a court to refuse to make a final restraining order may be appealed. In addition, the wording of section 64(1)(b) has been adjusted to enhance clarity. The amendment addresses the gap identified by the Supreme Court decision without otherwise altering the scope of the appeal provisions. I commend the amendment to the chamber.

Hon SUE ELLERY: I indicate that we agree with this amendment; an applicant should be able to appeal if the application is dismissed. I thank the Attorney General for his explanation and for providing me with some notes earlier today so that I could discuss this with the shadow Attorney General. We are happy to support this amendment.

Hon LYNN MacLAREN: I also support the amendment.

New clause put and passed.

Clauses 73 and 74 put and passed.

Clause 75: Section 70 amended —

Hon MICHAEL MISCHIN: I move —

Page 70, after line 6 — To insert —

(1) In section 70(1) delete "subsection (3)," and insert:

subsection (1A) or (3),

(2) After section 70(1) insert:

(1A) Subsection (1) does not apply to a disclosure of information to a person who is, or who is in a class of persons that is, prescribed in the regulations for the purposes of this subsection.

(1B) If the information is disclosed to a person referred to in subsection (1A) —

(a) no civil or criminal liability is incurred in respect of the disclosure of the information; and

(b) the disclosure of the information is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by any written or other law; and

(c) the disclosure of the information is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.

The background of these amendments is as follows. In December 2015 the Council of Australian Governments agreed to the establishment of a national domestic violence order scheme. Under the scheme, an order made in one jurisdiction would automatically be recognised and enforceable in every state and territory. Commencement of the scheme is contingent on the introduction of enabling legislation in all jurisdictions and the development of a national information-sharing system. The Australian Criminal Intelligence Commission is understood to be on track to deliver an interim information-sharing system by the end of this year, well in advance of the commencement of the legal scheme. The interim information-sharing system will leverage the existing national police reference system. The early establishment of the information-sharing system will facilitate testing and troubleshooting while also offering practical benefits by enabling court support staff to obtain information about interstate orders for risk assessment purposes.

The present amendment provides for the removal via regulations of a legal impediment to the release of certain information about Western Australian restraining orders to the ACIC for the purposes of the interim information-sharing system. It does this by providing that section 70(1) of the Restraining Orders Act, which prohibits the release of court information in certain circumstances, does not apply to the disclosure of information to a person who is, or who is in a class of persons that is, prescribed in regulations for the purpose of the proposed subsection. That is set out in proposed subsection (1A). Proposed subsection (1B) provides that such disclosure is lawful and does not constitute unprofessional conduct or a breach of professional ethics or standards. The amendment also makes a consequential amendment to the cross-reference in section 70(1).

The government intends to introduce the enabling legislation for the national scheme after Parliament has completed its consideration of the bill. Obviously, that will not happen this year, but it has taken some quite considerable work. This sequence is due to the fact that this bill, and in particular the creation of a distinct class of family violence restraining order, will help facilitate Western Australia's participation in the national scheme. The enabling legislation will include comprehensive information-sharing provisions and, as such, the present amendment is an interim measure. However, until now, because we have had only violence restraining orders that embrace not only family and domestic contexts, but also other matters, it has created practical difficulties in being able to communicate the right information under a family violence information–sharing scheme. The purpose of these amendments is an interim measure to facilitate the exchange of information and to test out the new system pending a more comprehensive legislative package being introduced in order to participate in the national scheme of interjurisdictional recognition.

Hon SUE ELLERY: I rise to indicate that we will be supporting the amendment. I again thank the Attorney General for providing me with some information behind the Chair so that I was able to discuss the amendment with the shadow Attorney General. We support it. We think this is a good move forward; there should be cross-jurisdictional information sharing.

Hon LYNN MacLAREN: I also support the amendment.

Hon MICHAEL MISCHIN: I am obliged to the Leader of the Opposition and the Leader of the Greens.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 76 to 79 put and passed.

Clause 80: Section 73A inserted —

Hon NICK GOIRAN: This is just a quick question to the Attorney General. This is the clause that I raised earlier. I just want to confirm my understanding of the response in reply to the second reading that the consequential amendments listed in the bill from clause 86 onwards would not form part of the statutory review outlined in proposed section 73A.

Hon MICHAEL MISCHIN: That is right. The statutory review that is being inserted into the Restraining Orders Act is limited to a statutory review of the changes to that act introduced by this bill and does not apply to the various peripheral consequential amendments made to other statutes. I should point out that some of those other statutes have their own review clauses in them. I have not gone through to identify all of them, but, for example, the Criminal Investigation Act has its own review clause at section 157. It may be that some of the others also have their own review clauses, so on the review of those pieces of legislation at the appropriate time, any consequential amendments that have been made by other acts would also be the subject of that review. To a degree, the review of the amendments to the Restraining Orders Act may of necessity take into account the operation of the scheme of family violence restraining orders, so consequential amendments to other legislation would fall, as a matter of course, under consideration if elements are not working properly, such as the changes to the Criminal Investigation Act. Those would be identified as part of the review of part 2 of this

bill. As for other elements, a review may not be necessary, because those statutes are constantly under examination in any event, in responding to particular cases that create problems, one of those being the Criminal Code. If a particular case gives rise to concern about its operation, that would be addressed as necessary rather than the legislation being reviewed regularly, which may be unnecessary.

Clause put and passed.

Clauses 81 to 96 put and passed.

Clause 97: Section 1 amended —

Hon NICK GOIRAN: I have another quick question for the Attorney General, following on from his response on clause 80. Is there any provision that would, in either this bill or the Criminal Code, ensure that clause 97 of this bill would be reviewed by some statutory mechanism?

Hon MICHAEL MISCHIN: Not of which I am aware. Some review provisions are incorporated into the Criminal Code as a result of particular statutory schemes. For example, when the mandatory sentencing regime for doing bodily harm to public officers was introduced, a requirement for a statutory review was also introduced. I think the homicide amendments some years ago also involved a statutory review of the operation of those provisions. Generally for the code, however, that is not the case, and I think that is probably for the reasons that I have outlined. It is one of those particular pieces of legislation that is not amenable to a full-scale and broad review, and issues that arise in respect of the operation of particular provisions and offences would be dealt with as they are drawn to the attention of the government of the day, or particular members may be moved to introduce their own private members' bills in respect of reforms.

Clause put and passed.

Clauses 98 to 101 put and passed.

New clause 101A —

Hon MICHAEL MISCHIN: I move —

Page 78, after line 23 — To insert —

101A. Section 135 amended

In section 135(2):

(a) in paragraph (b) delete "place." and insert:

place; or

(b) after paragraph (b) insert:

(c) the person is complying with an order under the *Restraining Orders Act 1997* section 62F(1)(c) or (2)(a).

By way of explanation, new clause 101A makes a consequential amendment to section 135 of the Criminal Investigation Act 2006. The amendment will ensure that police officers have the necessary power to search a person for weapons and other articles when conveying that person to a police station for the purpose of serving an outstanding restraining order under the amended section 62F of the Restraining Orders Act. As I indicated at the conclusion of my second reading response, the amendment to section 62F provides the police with a new power to order a person to accompany them to a police station for the purpose of serving an outstanding restraining order. The aim of the amendment is to promote victim safety by ensuring that more restraining orders are served sooner, noting that a restraining order does not come into force until it is served. The amendment that has been asked for by Western Australia Police is a safety measure. Under other elements of section 135, police are entitled to search people whom they are dealing with to ensure that they have no weapons or other harmful items on them, and likewise if police are taking someone who may be in a volatile state of mind in order to serve a restraining order on them at a police station, and it is prudent that they be given a clear power to search that person to ensure their safety and also the safety of the respondent to that order. There is a similar power in respect of the Road Traffic Act 1974, for example, currently in section 135 of the Criminal Investigation Act.

Hon SUE ELLERY: As with the other two amendments, I rise to indicate that the opposition will agree with this one. I thank the Attorney General for providing me with some information so I could discuss this with the shadow Attorney General. We agree that the person is not under arrest, so unless we pass this amendment, when the police bring someone into a police station for the purpose of serving an outstanding restraining order, they would not be able to search the person to ascertain that they will be safe while they are serving the outstanding restraining order.

Hon LYNN MacLAREN: The Greens will also support the amendment.

Hon MICHAEL MISCHIN: I am obliged.

New clause put and passed.

Clauses 102 to 110 put and passed.

Title put and passed.

Report

Bill reported, with amendments, and, by leave, the report adopted.

Remaining Stages — Standing Orders Suspension — Third Reading

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [8.49 pm] — without notice: I move —

That the standing orders be suspended so far as to enable the bill to be read a third time.

Question put.

The DEPUTY PRESIDENT: There being a dissentient voice, it is necessary for the house to divide.

Division

Division taken, the Acting President (Hon Liz Behjat) casting her vote with the ayes, with the following result —

Ayes (27)

Hon Martin Aldridge	Hon Kate Doust	Hon Peter Katsambanis	Hon Helen Morton
Hon Ken Baston	Hon Sue Ellery	Hon Mark Lewis	Hon Simon O'Brien
Hon Liz Behjat	Hon Brian Ellis	Hon Lynn MacLaren	Hon Martin Pritchard
Hon Jacqui Boydell	Hon Donna Faragher	Hon Rick Mazza	Hon Samantha Rowe
Hon Paul Brown	Hon Adele Farina	Hon Laine McDonald	Hon Sally Talbot
Hon Robin Chapple	Hon Nigel Hallett	Hon Robyn McSweeney	Hon Phil Edman *(Teller)*
Hon Peter Collier	Hon Col Holt	Hon Michael Mischin	

Noes (1)

Hon Nick Goiran *(Teller)*

Question thus passed with an absolute majority.

Third Reading

Bill read a third time, on motion by **Hon Michael Mischin (Attorney General)**, and transmitted to the Assembly.