

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

Second Reading

Resumed from 14 September.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [3.46 pm]: I rise to indicate that the opposition will support this bill. The Restraining Orders and Related Legislation Amendment (Family Violence) Bill is in response to the Law Reform Commission's report into matters related to restraining orders and family law. Most recommendations from that report were accepted by the government. We certainly support that. I am advised that half of all murders in Western Australia relate to family and domestic violence. That is a shocking statistic. In recent weeks there have been a number of murders that appear to have a family violence correlation. If those murders were linked, for example, to organised crime, outlaw motorcycle gangs or terrorism, I think there would be a much stronger policy response and a much louder call for action from the community.

The ACTING PRESIDENT (Hon Liz Behjat): Order! There is far too much audible conversation and moving around the chamber. Could members either resume their seats or take their conversations outside.

Hon SUE ELLERY: Thank you.

I want to make that point again because I think it is important. In recent weeks there have been a number of murders that appear to have a family violence correlation. I am advised that about half of all murders in Western Australia relate to family and domestic violence. The point I am trying to make is that if those murders had been linked to organised crime, outlaw motorcycle gangs or even terrorism, I think there would be a much stronger policy response and a much louder outcry from the community to demand a response.

I have spoken in this place before about the focus and spotlight given to the tragic death of Rosie Batty's son, Luke, which was a direct result of ongoing family violence concerns. In response to the campaign waged by Ms Batty, the Victorian government established a royal commission, the wide-ranging recommendations from which set a high but entirely appropriate and necessary bar for all state governments. I want to briefly refer to part of the royal commission's report. One of the important things to note about the Victorian government royal commission is that court-based responses—the bill we are dealing with today is a court-based response—are just one part of a full range of necessary responses. All other necessary elements need to be funded with real and new dollars. The Victorian royal commission's executive summary states —

Family violence can occur in a variety of contexts, the majority of which are intimate partner relationships, with the violence being perpetrated by a man against a woman. Family violence differs from other forms of violence: it is generally underpinned by a pattern of coercion, control and domination by one person over another. In the case of intimate partners, the coercion may begin immediately after a relationship begins; in others it creeps up, sometimes masked by flattery and charm. Family violence can involve emotional, psychological or financial abuse as well as physical abuse. Among the tactics used by perpetrators can be limiting access to money, isolating a woman from family and friends, threatening to publish private information, and exercising excessive control over a woman's activities or even her general appearance. These measures are designed to erode the victim's self-confidence and make them unduly dependent on the other person.

That is a really important point to understand. I am sure it is not the case in this chamber, but it is the case that from time to time in public conversations about family and domestic violence, people will say they do not understand why a woman does not leave. The point made by the Victorian Royal Commission into Family Violence and by many others over many years is that the violence is often the end point of a pattern and a consistent approach to completely erode the victim's self-confidence and make them unduly dependent on the other person, so that their capacity to make what might seem to someone on the outside an entirely rational decision to get out is in fact not possible after years and years of isolation, emotional abuse, financial abuse and generally cutting the person off, usually the woman, from any form of support. Those of us who have not experienced that may form the view, originally out of a sense of frustration, that we do not understand why the woman does not just leave. It is very often the case that she has been subject to a consistent pattern of isolation and emotional and financial abuse over many years, and her capacity to make the seemingly rational decision to leave has been deliberately eroded and she is not in a position to make that decision.

The Victorian royal commission report goes on to say —

For most victims, family violence is part of a longer-term pattern, rather than a one-off event. The pattern often involves an escalation of the violence, so that unacceptable behaviour becomes 'normalised' over time or a person's mental wellbeing is eroded to the point that they come to believe they deserve the violence.

Family violence has long-lasting and serious effects. Physical injuries can be debilitating and lifelong. But the violence also takes an enormous toll on a person's mental health and wellbeing; It can be very difficult to recover and rebuild after being belittled, denigrated and made to feel worthless, sometimes for years.

The negative effects of family violence can be particularly profound for children, who can carry into adulthood the burden of being victimised themselves or witnessing violence in their home.

I have mentioned before in debates on this subject in this house the research that now makes it clear that exposing children to trauma and violence has not only an emotional and psychological impact that they carry for their lives, but also a physiological impact; that is, it has a direct impact on the development of their brains and that affects everything else that they do in their lives. All of those reasons are reasons for us to take this matter very seriously and to say that this is an appropriate piece of legislation for us to be passing, but also to make the point that we should have done a lot more a lot earlier and that there is still much more to be done.

The Victorian royal commission also states —

The following are some of the main trends that emerge from existing family violence data:

- Family violence disproportionately affects women and children, and the majority of perpetrators are men.
- Female victims are more likely to be a current or former partner of the perpetrator, while men are more likely to experience violence in different familial relationships—for example, as a son or a sibling.
- Some groups are at greater risk of family violence or experience it at increased rates. This includes Aboriginal and Torres Strait Islander peoples and women with disabilities.
- These and other groups face particular barriers in seeking and obtaining help; they include people from culturally and linguistically diverse backgrounds and people living in rural, regional or remote areas.

The report focuses on a range of recommendations, and I will talk about one of those. The report states —

Sharing information about risk within and between organisations, is crucial to keeping victims safe. It is necessary for assessing risks to a victim's safety, preventing or reducing the risk of further harm, and keeping perpetrators 'in view' and accountable.

I want to particularly focus on that because if members read Rosie Batty's book or listen to her speak about the tragedy that resulted in the incredibly violent death of young Luke, her son—it is not just that he died, which is a terrible thing, but the way he died was particularly vicious—they will see that she makes the point that a number of agencies and a number divisions within agencies, for example, within the police, knew that the risk existed and, indeed, that the risk was increasing, and they did not act to share that information. If they had, who knows whether Luke's life would have been saved? It was clear that one of the major contributing factors to his death was that the agencies involved did not act on what was, if all the information had been put together, a clear pattern of risk to that child and, indeed, to Rosie herself. The royal commission report goes on to say —

Despite the importance of information sharing, agencies in the family violence system do not share information routinely or systematically. A number of barriers impede organisations from sharing information, among them the complex legislation that governs privacy and information sharing, current information-sharing practices, and outdated information technology systems.

If members think about the capacity for information sharing now using technology, the fact that we are still not able to share it properly is staggering. The Victorian royal commission report contains a lot of information and I could talk about it for hours, but I do not want to. My reference to it is to make the point that a court-based response out of the royal commission was only one part of the response, and we need to make sure that we step up and try to meet the bar, if not do better than the Victorian government has.

The bill before us is an important step, but by itself, and even in conjunction with sentencing changes made in the bill we passed earlier this week, it is not enough. If ever we needed evidence that the government wheels on the policy on this issue are moving too slowly, it is in the Ombudsman's report tabled in this place today, which I will now refer to. The report is titled "A report on giving effect to the recommendations arising from the Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities". The report is a follow-up to the Ombudsman's report tabled in November last year. That earlier report identified a number of policy and program initiatives that were recommended to the government to adopt. The report that was tabled today explains this to us in the Ombudsman's foreword, which reads —

On 19 November 2015, I tabled the *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities* (**FDV Investigation Report**) in the Western Australian Parliament. Through that investigation, I found that a range of work had been

undertaken by state government departments and authorities to administer their relevant legislative responsibilities, including their responsibilities arising from the *Restraining Orders Act 1997*. I also found, however, that there is important further work that should be done. This work, detailed in the findings of the FDV Investigation Report, —

That is the family and domestic violence investigation report —

includes a range of important opportunities for improvement for state government departments and authorities, working individually and collectively, across all stages of the VRO process.

I also found that Aboriginal Western Australians are significantly overrepresented as victims of family violence, yet underrepresented in the use of VROs. Following from this, I identified that a separate strategy, specifically tailored to preventing and reducing Aboriginal family violence, should be developed. This strategy should actively invite and encourage the full involvement of Aboriginal people in its development and be comprehensively informed by Aboriginal culture.

When reading the Ombudsman's report, one needs to decode what he tells us to understand whether he found that agencies had actioned the recommendations. On pages 15 to 83 of the report tabled today, the Ombudsman lists each recommendation that he made in the previous report. He concludes his analysis of each recommendation with a form of words that says either "Accordingly, steps have been taken to give effect to recommendation X", or "Accordingly, steps are proposed to be taken to give effect to recommendation X". In a couple of his conclusions he says both things. It is disappointing to me that there was not a bit more light and shade or depth in the Ombudsman's assessment of progress. There is no analysis comment in which the Ombudsman's office expresses a view about whether progress is reasonable, whether progress needs to be qualified by certain contextual events, or whether it is satisfactory or reasonable that so little or so much progress, as the case may be, has been made.

Hon Nick Goiran: Does the member know that there was a briefing on it today?

Hon SUE ELLERY: Yes, I do. I could not get there but my colleagues did.

Hon Nick Goiran: They did not raise any of those points.

Hon SUE ELLERY: I am making the speech here, so I am raising the points that are relevant to me.

I will stand corrected if I need to be, but it appears to me, from the document that has been tabled today, that the Ombudsman does not appear to have sought external, non-government feedback on whether, for example, service providers or organisations such as the Women's Council for Domestic and Family Violence Services have a point of view about what barriers might be preventing the progress of recommendations made by the Ombudsman in November last year or whether they have suggestions about how agency X and agency Y could do this a little differently and maybe progress would be quicker. It appears that the structure of the report is each agency self-reporting on its progress and the Ombudsman reporting what they had reported without testing independently, or digging behind, to provide additional information in the report.

Hon Nick Goiran: That is not correct. At the briefing today he specifically explained how they obtained a sample and they checked, with regard to WA Police, whether there had been improvements or not.

Hon SUE ELLERY: Yes. After reading the report, there is no evidence of an analysis about whether they said they could do only this, and that the Ombudsman checked and found that actually if they had done X, Y and Z—whatever that might be—that would move it along a bit quicker, or whether they were concerned about self-reporting in respect of recommendation X, they had a proper look and saw the context and understood that there were certain procedural barriers, or whatever. The point I am trying to make, Hon Nick Goiran, is that I have a certain sense of frustration—which I have taken up directly with the Ombudsman and, I suspect, I will again—that these reports could provide a lot more analytical material than they do to assist policymakers and ministers, for example, to know what levers need to be pulled a bit harder or what action needs to be taken. That is what is disappointing to me about this report. A lot more detail could have been provided on what the barriers were and why, a year later, some agencies are only just preparing to respond to recommendations while others have started to respond.

Hon Nick Goiran: I think you raise a fair point.

Hon SUE ELLERY: Thank you.

The bill before us is still important, despite my frustration with the Ombudsman's report tabled today. The explanatory memorandum tells us one of the central parts of the legislation is —

... the creation of a new class of order, the family violence restraining order (FVRO), which is separate from violence restraining orders (VROs) and misconduct restraining orders (MROs).

The new class of order, the family violence restraining order, will be established under new part 1B of the Restraining Orders and Related Legislation Amendment (Family Violence) Bill. It is important to note that the provisions that will be inserted for family violence restraining orders have a new set of objects and a new set of

principles and definitions. Those things are really important. Sometimes people take the view that the words in the “Objects” of legislation or the principles to be applied in legislation are just fluff. Because they are not enforceable or prescriptive, but are descriptive in providing context, people think they do not serve a purpose. In this case they serve a very real purpose because a whole lot of society’s response to family and domestic violence is cultural. It is about changing the way people think about reporting; it is about how police officers respond when somebody says, “I think I need to get some kind of violence restraining order”; it is about how agencies decide whether to share information with each other; it is about whether they choose to interpret the privacy arrangements that sometimes preclude them from sharing this information; and it is about whether they choose to interpret those in the narrowest sense or whether they choose to interpret them in the widest sense. Setting the objectives and the principles around this new form of VRO is a really important step because it goes to changing the things that have to be ticked off as agencies put in place the procedures to deal with these new forms of orders, particularly those in proposed section 10F.

I will refer to the matters to be considered by the court generally in respect of family violence restraining orders. Proposed section 10F states —

- (1) When considering whether to make an FVRO and the terms of the order, a court is to have regard to the following —
 - (a) the need to ensure that the person seeking to be protected is protected from family violence;
 - (b) the need to prevent behaviour that could reasonably be expected to cause the person seeking to be protected to apprehend that they will have family violence committed against them;

That is really important. The victim or potential victim’s state of fear has to be taken into account—the state of fear at which they think they might be at risk. It continues —

- (c) the need to ensure the wellbeing of children by protecting them from family violence, behaviour referred to in paragraph (b) —

That is the fear that they will be a victim —

- or otherwise being subjected or exposed to family violence;
 - (d) the accommodation needs of the respondent and the person seeking to be protected;
 - (e) the past history of the respondent and the person seeking to be protected with respect to applications under this Act, whether in relation to the same act or persons as are before the court or not;
 - (f) hardship that may be caused to the respondent if the order is made;
 - (g) any family orders;
 - (h) other current legal proceedings involving the respondent ...
 - (i) any criminal convictions of the respondent;
 - (j) any police orders made against the respondent;
 - (k) any previous similar behaviour of the respondent whether in relation to the person seeking to be protected or otherwise;
 - (l) any police incident reports relating to the respondent;
 - (m) any risk assessment, or risk-relevant information, relating to the relationship between the respondent and the person seeking to be protected;
 - (n) any other matters the court considers relevant.

That is a really useful set of additions to put around the court’s thinking about the new form of family violence restraining orders. I could say a lot more about this. I wish that the government in its last eight or so years in office had acted sooner on this matter. I think opportunities have been missed. There is much more to be done in the area of family and domestic violence, and court-based solutions, which is what we are debating today, is just one important part of how we respond to family and domestic violence. I know that we are all being watched now. The sector in Western Australia is looking to us. It is looking to the two major parties in particular to set out their plans for a comprehensive approach to dealing with family and domestic violence, particularly in the context of the high bar that was set by the Victorian state government. With those comments, I am happy to indicate that the opposition will support the legislation.

HON LYNN MacLAREN (South Metropolitan) [4.10 pm]: I am pleased to be able to make a contribution on such an important piece of legislation as the Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016, and particularly one that seeks to increase the safety of victims of domestic violence. The appointment of Rosie Batty as Australian of the Year last year was, and continues to be, instrumental in raising awareness of family and domestic violence in our country. Rosie continues to be inspirational as a leader seeking to bring an end to violence in our homes and communities. Stopping family and domestic violence should be at the forefront of our minds.

As we all know, family and domestic violence is a pervasive problem in Western Australia. To quote from statistics from the government's Freedom from Fear action plan, WA has the highest rate of reported physical and sexual violence perpetrated against women in Australia, second only to the Northern Territory. In 2013–14, WA Police responded to over 40 000 calls for assistance in the case of family and domestic violence. In over 65 per cent of these cases, children were present or known to reside with the victim or perpetrator. Somewhat staggeringly, the number of people seeking assistance from police for family and domestic violence has increased by more than 40 per cent in five years. The Greens are generally supportive of this bill and see many aspects of it as a step in the right direction, but note that more broadly there is clearly much more to be done as evidenced by the terrible statistics to which I have just referred.

The complexity of societal and cultural structures that create an environment in which domestic and family violence is more likely to occur means that domestic violence is clearly what many in the social policy realm call a “wicked” problem. The Australian Public Service Commission's 2007 report entitled “Tackling wicked problems: A public policy perspective” includes the following overview of wicked problems —

Tackling wicked problems is an evolving art. They require thinking that is capable of grasping the big picture, including the interrelationships among the full range of causal factors underlying them. They often require broader, more collaborative and innovative approaches.

This is why it is so important that we invest in initiatives that seek to address the root causes of domestic violence. Violence against women is preventable and gender equality is at the heart of the solution, along with funding our vital frontline services. A country that is free from violence against women and their children is a country where women are safe, respected, valued and treated as equals in private and public life. In WA the gender pay gap is currently 23.9 per cent, compared with 16.2 per cent nationally, and we have the second highest rate of domestic violence in the country. Clearly, as I have acknowledged, domestic and family violence is a wicked problem and pay equity is not the only measure of this status between men and women. Nonetheless, it is a strong indicator of the disparity between men and women in this state. We need to keep challenging the deeply ingrained attitudes, social norms and gender inequalities that give rise to men's violence against women. Recognising the importance of cultural change should be accompanied by adequate resourcing to ensure that programs are developed and adequately funded to improve the status of women and the relationships between men and women. Gender awareness and relationship skills programs should be included in the school curricula to eliminate the stereotyping of females and males to eliminate all forms of violence against women, including sexual violence. Young women and men should be educated in their reproductive choices and to increase critical understanding of how gender shapes our lives.

Debate interrupted, pursuant to standing orders.

[Continued on page 7851.]

Sitting suspended from 4.15 to 4.30 pm