

RESTRAINING ORDERS AMENDMENT BILL 2011

Second Reading

Resumed from 18 August.

HON COL HOLT (South West) [4.14 pm]: I rise briefly, on behalf of the Nationals, to provide our support to the Restraining Orders Amendment Bill.

I have never been involved with any violence restraining orders or restraining orders, so it is a bit difficult for me to talk about this bill from a personal perspective, which I think is sometimes lucky but I am not sure that it is helpful. However, I would like to reflect on a situation that occurred not long ago when a man came into my office and told me his story about, I guess, being on the receiving end of a restraining order. He said that he felt hard done by, and that he felt he was being targeted by a system that really is about protecting the family and protecting the spouse in those sorts of situations. I could not offer him any real comfort, because I believe that we should have legislation that protects people who are subjected to domestic violence. He was pretty cordial about that. I think he had been caught out on the wrong side of the legislation. But the legislation stands, and so it should. I think that any legislation that can help protect people in domestic violence situations should be encouraged and supported.

We often speak in this house about how legislation is just one tool that a government can use to address issues. Although we often talk about enacting legislation—which is really what this house is about—there is a range of resources, programs and projects that can be, and are being, put in place by government to address all those other issues that are outside the legislative field and all those other issues that can help families and other people who are caught up in restraining orders. It does not need to be solely about legislation. I will, therefore, continue to encourage governments and our responsible ministers to keep providing those resources for people who are caught up in these situations.

The man who came into my office was really just asking for help. I think he understood that he had done some things that he should not have done, and he regrets that. He understands that the legislation is there to protect others. But I also think that he was there to ask for help. I think he wanted to try to amend his ways. He wanted to see his children, who are part of the restraining order. He basically wanted someone to talk to so that he could find out the best way to manage his situation and get a good outcome in gaining access to his children, without stepping over the line again and breaching the restraining order.

I think there are always two sides to the job that we have. Obviously, it is about legislation, but it is also about projects and programs that can be put in place by government to assist with the legislative outcome.

With those brief words, the Nationals will support the legislation.

HON LINDA SAVAGE (East Metropolitan) [4.16 pm]: I also rise to speak in support of the Restraining Orders Amendment Bill 2011. A number of speakers have already said a great deal about the scourge that is domestic violence.

The PRESIDENT: Order! It is rather difficult, I think, to hear in the chamber, and also for Hansard to pick up remarks, so if members could try to restrict their audible conversations, and if the member could speak directly into the microphone and perhaps project her voice, it would make it easier to hear.

Hon LINDA SAVAGE: Thank you, Mr President. I have not before had that trouble of not being heard in the chamber!

Several members interjected.

The PRESIDENT: You can be heard, but you do not necessarily get listened to! I understand!

Hon LINDA SAVAGE: This bill is not restricted just to orders in the context of domestic violence. But the brief comments that I will make will focus on that aspect. I notice that the second reading speech was also focused, and with good reason, on domestic violence, and particularly for women and children. Of course the biggest risk factor for becoming a victim of domestic and family violence is just being a woman. We know that although in other categories of serious crime incidents have been decreasing, domestic and family violence is the one category that is increasing. That is put down to the fact that more people are reporting domestic and family violence. However, this is one of those areas of crime where, as the Commissioner of Police has said, what we are aware of is probably only the tip of the iceberg. Some of the figures that I have looked at in recent times include the estimation by the WA Police family violence unit that it has 4 000 open case files related to victims of domestic and family violence; and a case file is opened only if the police have been called out to a victim at least six times. It has been mentioned that the cost to the economy of violence against women and children is estimated to be \$14 billion a year. Given that the stimulus package, in the face of the global financial crisis, was

\$10.4 billion, that is a shocking figure. In addition, domestic violence contributes more than any other factor to ill health and early death by women aged 15 to 44.

I note the comments made by Hon Col Holt. I understand that the government recently gave \$55 000 to the Crime Research Centre at UWA for its research into why men use violence in their homes. Of course the greatest predictor of perpetrators of domestic violence, or a victim, is growing up in a home where there is domestic violence. That is an issue that I will find an opportunity to speak about at another time. It is in that area, obviously, that we can make a difference in breaking the cycle.

A couple of issues have been raised with me by people who work at the coalface with restraining orders. Firstly, I would like to thank Angela Hartwig—whom many members know—who has kept this issue in the public eye for many years. I would like further explanation from the parliamentary secretary of these issues raised with me. Given that restraining orders will now have a presumption of imprisonment at the third breach, what is the evidence or the basis upon it will be decided that that breach is the one to involve a presumption of imprisonment? In the context of that question, research indicates that the first breach is usually the most serious; it is like a red flashing light because of course there has been an order and the person who has breached it has immediately shown they are prepared to take no notice at all, even with a court-imposed order which could include a penalty of imprisonment even at the first breach. That was one issue raised with me—the basis for waiting until the third breach.

Another concern raised with me was: by making the third breach the one for which there is a presumption of imprisonment, there may be some confusion or it may send some sort of message that until the third breach imprisonment was not to be expected. As I understand it, a person could be imprisoned after the first breach. Is the government not sending the message that until the third breach, a person will not be dealt with by the court and the breach will not be considered serious?

The third issue relates to when someone is imprisoned not only on the third breach, but also at any time. I would like the parliamentary secretary's comment on whether the government will ensure that a person imprisoned under those circumstances is not released before they have undertaken a program specifically aimed to address issues of anger and violence. Such programs would need to be at least 100 hours long and of high intensity. According to the research I have seen, these are the only programs for which there is evidence that it makes a difference to subsequent behaviour. I say that because my understanding, from some of the questions I have asked, is that if people are imprisoned for fewer than two years, and given that it can take some months to ascertain when a program will be available, it is possible that someone could leave prison without having done not just a program but a high-intensity program of over 100 hours. I suppose it makes sense to me that if we have a presumption of imprisonment for the third breach and people will be imprisoned, we should ensure they definitely have access to a program for which there is some evidence that it will make a difference when they are released. We know that once a person is imprisoned the likelihood of recidivism is very high. With a specific piece of legislation involving an area such as this, it is not unreasonable that we ensure that those people receive a program. With those brief comments, I will finish there.

HON MICHAEL MISCHIN (North Metropolitan — Parliamentary Secretary) [4.26 pm] — in reply: I thank the opposition, the Greens (WA) and the National Party for their support of the Restraining Orders Amendment Bill 2011. As was pointed out during the course of the second reading speech, the bill involves an incremental approach. The question of restraining orders and the restraint on people in the community who may not have necessarily committed an offence but for whom there is an apprehension of future conduct is an awkward one. One must, with this sort of legislation, always balance the interests of the individual against the interests of potential victims or those who fear violence. The government is entirely aware of the problems of domestic violence, but I think it is broadly accepted that the area of restraining orders and the like, and violence restraining orders in particular, is one that needs to be worked through on an incremental basis and with due attention to not only what might appear to be a good idea at the time, but also what actually works.

I will deal with a couple of specific issues. Hon Giz Watson has before the house several proposed amendments on the supplementary notice paper. I will deal with the three propositions reflected on the supplementary notice paper that was before the house on the last occasion this bill was debated. The first proposition concerns the proposed amendment to clause 8. Clause 8 proposes to introduce a new section 30D, which continues the immunity as respondents of children from having imposed upon them police orders and the like, unless the child is in a family and domestic relationship with the person for whose benefit the order is made. It is true that in the explanatory memorandum the scope of that amendment is somewhat more restricted and limited to spousal relationships involving children. Quite frankly, that was an error in the explanatory memorandum. There is a long and complicated reason for that. Part of it involved taking on board the recommendations in the review of the act, and a combination of several recommendations that proposed certain things but not other things. Eventually, the amendment was the subject of the bill, but there was confusion in the course of that about specifying that children, other than those simply in spousal relationships, could also be respondents to orders.

I understand the proposition that Hon Giz Watson is putting forward about the risks to children of having a police order placed against them; however, the government is of the view that even outside a spousal relationship, children—that is, anyone under the age of 18—can nevertheless prove to be a threat to the families they are living with.

Debate interrupted, pursuant to temporary orders.

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