DOMESTIC VIOLENCE ORDERS (NATIONAL RECOGNITION) BILL 2017

Second Reading

Resumed from 17 August.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [8.14 pm]: I rise as the lead speaker for the opposition on the Domestic Violence Orders (National Recognition) Bill 2017, and to indicate the opposition's support, although I have a few questions about the bill and the scheme that it implements. Two amendments, which I will come to later, are on the supplementary notice paper. One results from the recommendations of the Standing Committee on Uniform Legislation and Statutes Review, which was obliged, under standing orders, to prepare a report on whether this bill affected parliamentary sovereignty in any way. The other amendment has been proposed by the Leader of the House as a rejoinder, I suppose, or an answer, to the committee's amendment, and has been recommended by Parliamentary Counsel. I will come to those shortly.

This bill was introduced in the other place on 9 August. It was accompanied, as is routinely the case, by a media release announcing its introduction and, as is customary for the current government, claiming credit for initiatives inherited from the previous Barnett government. I will come to that shortly too. The media release of 9 August, bearing the features of both the Attorney General and the Minister for Child Protection; Women's Interests; Prevention of Family and Domestic Violence; and Community Services stated, amongst other things —

> The McGowan Government has today introduced legislation to improve victim safety and perpetrator accountability by providing consistent, instantaneous legal protection across Australia.
>
> The introduction of the Domestic Violence Orders (National Recognition) Bill 2017 is symbolic of the priority that the McGowan Government is giving to addressing family and domestic violence in Western Australia.

Comments attributed to the Attorney General include an assertion that this bill will provide victims of family and domestic violence who move interstate with "seamless" legal protection. The minister, Hon Simone McGurk, commented —

> "Due to the previous Liberal National Government's inaction, WA was lagging behind other jurisdictions and remains the only State that is yet to enact enabling legislation to join the national scheme.
>
> "The McGowan Government's action to position WA to join the national scheme at the earliest possible opportunity highlights the importance this Government places on supporting and protecting victims of family and domestic violence.

Since Hon Simone McGurk needs a history lesson, I will provide it for her. The National Domestic Violence Order Scheme was one of three Council of Australian Governments priority work areas in the field of family violence, the others being the development of national outcome standards for perpetrator interventions, and strategies to keep women safe from technology-facilitated abuse. The coag communiqué announced that leaders agreed that —

> By the end of 2015 … a national domestic violence order … scheme will be agreed, where DVOs will be automatically recognised and enforceable in any state or territory of Australia;

As is not uncommon, the aspirational aims are often frustrated by the mechanics of reality. Nevertheless, the commitment was reinforced at a COAG meeting on 11 December 2015 that Premier Barnett attended, which committed Western Australia to work towards introducing laws to give effect to the National Domestic Violence Order Scheme before June 2016. That necessarily required exploring the parameters of what was involved in such a scheme from Western Australia's perspective, with reference to the model legislation that had been prepared in draft, and the preparation of drafting instructions geared to accommodating Western Australian legislation and its needs. In fact, cabinet gave approval to draft a bill to introduce the National Domestic Violence Order Scheme on 14 March 2016. It was based on the national model law framework, but it was modified to suit Western Australian law and practice. As it happened, and as I think has been acknowledged, this bill does not adopt the model law in full, but has some variations designed to accommodate Western Australian needs, and to ensure that it operates to the benefit of those finding refuge in Western Australia. It was not simply a matter of picking up on the model laws and enacting them without regard to ensuring that what we ended up with was not only suitable for Western Australia, but also best practice within the model framework. The first draft of the bill was received by the Department of the Attorney General on 24 August 2016 and, quite properly, I think people would agree, circulated to other agencies with a very direct interest in the manner in which the scheme would function—namely, Western Australia Police Force, the Department of the Premier and Cabinet and to the then Department for Child Protection and Family Support—for their advice and input. As I recall, the Department for Child Protection and Family Support did not have any issues with the draft bill. Unfortunately, feedback from Western Australia Police Force was not received until early November 2016, some six weeks later than had been requested. As I understand it, a further impediment to the development of the bill was that in accordance with Parliamentary Counsel's Office

practice and policy, work on the bill was suspended when Parliament entered the summer recess and of course Parliament prorogued for the March 2017 election, so further work on the bill did not proceed, as with the change of government further and different drafting instructions may have been issued and some changes made to accommodate the philosophy and policy of whichever government happened to be elected.

It is true that by the beginning of this year the National Domestic Violence Order Scheme legislation had been passed by other jurisdictions—New South Wales, the Australian Capital Territory, Tasmania, Queensland and Victoria—but although legislation had been introduced into Parliament, it had not been passed in South Australia and the Northern Territory. It is true that Western Australia was the only jurisdiction yet to introduce the bill into Parliament and whether one wants to categorise that as a lagging behind is a matter of judgement and politics. However, one important impediment to its worthwhile introduction was the need to advance a far more significant piece of legislation last year and something that involved family violence reform that was critical to what we regarded as the effective operation of any national scheme, and that was the Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016, or the ROAR bill for short. Given that the Restraining Orders Act 1997 was the basis for our domestic violence restraining orders regime, it was important that it be put into that legislation and those amendments be put into effect and properly implemented before we completed drafting a bill that joined it to a national scheme. Apart from any other consideration, our restraining orders regime did not differentiate between violence restraining orders made in respect of domestic or family circumstances and those that covered other circumstances. Under our Restraining Orders Act, prior to the amendments, there were only two types of restraining orders—a misconduct restraining order and a violence restraining order. Although violence restraining orders could be applied to family and domestic circumstances, misconduct ones could not. That meant that an awful lot of circumstances that had nothing to do with family or domestic violence might be captured under the violence restraining order regime. If we are going to look at consistent, as it is described, and instantaneous legal recognition across jurisdictions and automatic protection for those looking for security from family or domestic violence, we need to be able to know which orders to recognise. The amendments to the Restraining Orders Act implemented by the ROAR bill were in our view critical to the effective operation of that legislation and the national scheme and something of immediate effect. It would be of less benefit to Western Australians to have a national scheme rather than to reform the system that protected them. Furthermore, the reforms introduced by the ROAR act broadened the bases that might give rise to a family violence order and introduced new and broader indicia of what might constitute family violence. Apart from that, I should mention that the term "domestic violence" was eschewed for the now more current term "family violence" to categorise the sort of conduct that had previously been lumped under the heading of "domestic" and also, as I have mentioned, to extend the sorts of things that might give rise to an order. Rather than showing an act of abuse, there were other categories of conduct that have come to be accepted as maybe indicating an oppressive and dysfunctional relationship, and the person subject to the behaviour may need the protection of the courts by way of a restraining order.

There are a number of other very significant reforms implemented by the legislation such as different means of dealing with applications for family violence restraining orders more dedicated to a holistic approach by which the courts can obtain input from various agencies in order to craft orders that would suit the particular relationship before them. Also, there is the opportunity to craft consent orders to defuse situations and the like. There was a major and significant overhaul of the restraining orders system so far as it applied to family or domestic situations. That is what exercised the mind of the government and was the focus of attention—that is, ensuring that that was properly crafted, implemented and would be able to take effect. Indeed, the regime established under that legislation was the product of an enormous amount of consultation and work. I think it was ahead of its time for any Australian jurisdiction. It was passed at the end of last year and took effect only from 1 July this year. Rather than showing inactivity in the field of family violence, the changes wrought by that act were the most progressive and advanced of any jurisdiction in Australia, and it is a pity that Minister McGurk, like Minister Quigley—it is typical of the current government—cannot give credit where it is due. That is more of a reflection on them than us and just demonstrates a smallness of character. I should add that one disturbing feature about that is that an industry seems to have grown around family violence. By illustration I use the fact that last year the then opposition put up some rather superficial amendments to the restraining orders regime such as declaring breaches of restraining orders crimes—an idea that a first-year law student would indicate was flawed—increasing penalties from two years' imprisonment potentially to three years and things of that nature. There was a certain senior member of a family advocacy group who applauded that as being an important protection for those suffering from family violence. I happened to run into that person at a White Ribbon Day event later that year and asked them what they thought of the new amendments to the restraining order regime. I got the answer that that person had not actually read it but they thought there were some good things in it. Essentially, that person had a political bent against the government. I find it impossible to believe that this person had not read the bill, given the position that this person occupied, but it goes to show that for some it depends on who is doing it rather than what is being done. It was very disappointing.

Turning to the bill before the house, what does it do? Currently, parts 7 and 7A of the Restraining Orders Act operate to enable the registration and subsequent enforcement in Western Australia of all interstate and some foreign restraining orders. Presently, the foreign restraining orders consist of those of New Zealand, Canada, Ireland and the United Kingdom. In each case, the legislation requires that an order be registered through an application to the registrar of a Magistrates Court. There is no requirement that the respondent to an order be served with either the application to register the interstate or foreign restraining order or be notified or served with any subsequent notice of recognition of the interstate or foreign restraining order. In a sense, that puts a potential respondent at a disadvantage. However, there is plainly a sensible reason for that prohibition, which is to prevent those who may be inclined to target someone who has obtained either a family violence restraining order or a violence restraining against them from knowing the whereabouts of the victim. In fact the Restraining Orders Act specifically prohibits the person bound by the order of the registration from being notified of the registration of the order unless the person seeking registration has requested in writing that such notice be given for, as I say, security reasons.

Once registered, the interstate or foreign restraining order operates in Western Australia as if it were a final order that originated in this jurisdiction, meaning that it is enforceable if it is breached and capable of being varied and/or cancelled in accordance with provisions contained elsewhere in the Restraining Orders Act. In a real sense, the protections currently in place are very sound and sufficient and capable of protecting beneficiaries of an order.

The National Domestic Violence Order Scheme is the result of intergovernmental work, which I have alluded to, that began following the release of a 2009 report by the National Council to Reduce Violence against Women and their Children that was entitled "Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009–2021". Although it did not use the terminology, it recommended the establishment of an NDVOS but would overcome some of the barriers identified by it as preventing the optimum use of state and territory regimes.

It was in 2015 that Prime Minister Hon Tony Abbott, MP, elevated the issue of family violence to priority status on the Council of Australian Governments' agenda and it was Prime Minister Hon Malcolm Turnbull, MP, who chaired the 11 December 2015 meeting at which first ministers committed to implement the laws giving effect to the national scheme. First ministers also committed to develop a comprehensive national domestic violence restraining order information-sharing system that the police and courts will be able to use for evidentiary purposes or to enforce domestic violence restraining orders, noting that this will take several years to fully implement. In the short term, they committed to establishing an interim information-sharing system that will provide police and courts with information of all domestic violence restraining orders that have been issued but will not have the same evidentiary or enforcement capacity as the permanent system. In fact, this was one of the matters that was, as I recall, the subject of continuing discussion at the ministerial level. From time to time Attorneys General of the state and commonwealth met under the banner of the Law, Crime and Community Safety Council, which was a development of what previously had been SCAG—the Standing Committee of Attorneys-General—and has gone through a number of other name changes over the last few years. It was at that forum that commonwealth, state and territory Attorneys General discussed these sorts of schemes. One feature exercising our minds and those of police ministers, who would also from time to time participate in those fora, was the question of the database and information-sharing system; in particular, who would have responsibility for establishing and integrating it with other state and territory systems and who was going to pay for it. I think Victoria voiced Western Australia's reservations and, as I recall, those of other jurisdictions quite well in the course of the second reading speech on its equivalent legislation to this bill, the National Domestic Violence Order Scheme Act 2016, when the Victorian Attorney-General, Hon Martin Pakula, said —

> … although this initiative is one that the commonwealth has promoted, and is one that we support, the commonwealth has not provided the necessary infrastructure to allow this to happen seamlessly. Under the proposed interim scheme, police have no quick and reliable way of seeing the content of a domestic violence order made in another jurisdiction, which will hamper efforts to enforce these orders.

In fact, he went on to say that although Victoria was introducing its bill in line with the COAG commitment, it would not commence "until we are satisfied that it will not jeopardise the safety of victims, or impose an unreasonable burden on our police and courts". That appears at page 2942 of the *Hansard* of the Victorian Legislative Assembly on 16 August 2016. One of the questions I have of the minister in due course—I would appreciate her clarification—is whether those concerns have been addressed and whether there will be any risk to victims by reliance on a scheme that cannot be fully operational as intended, and about which the Victorian Attorney-General voiced reservations and concerns. As I understand it, up until this point the only two parts of the Victorian act that have been proclaimed and are in operation are parts 1 and 9. I think part 1 deals with the title to the act and a few preliminary introductory sections and the like, and part 9 is a glossary of terms and things, but nothing operational. I may be wrong about that. They are also presumably waiting for the scheme to come into effect. I will come to that in a moment. I would appreciate the minister's advice about whether those concerns

have been addressed and whether there will be any risk to victims by the reliance on a scheme that cannot be fully operational as intended and which plainly will not be seamless. Furthermore, I would appreciate the minister's advice about what obligations the police and the courts will need to discharge, as alluded to by Victorian Attorney-General Pakula. That will be dependent on a fully operational system.

The key provisions of the National Domestic Violence Order Scheme will be that a family violence restraining order made in one participating jurisdiction will be automatically recognised and capable of enforcement in every other Australian jurisdiction. The key difference, therefore, from the current arrangements in Western Australia is that the person protected by the violence restraining order will no longer be required to take the order to a court to register it. Recognition will be automatic and it will be behind the scenes. It will not require any action on the part of the beneficiary of the order. It would be of value to the house if the minister could confirm what orders will be captured by the scheme. For example, will the scheme capture orders from the date of proclamation and operation of the act, or will it involve some back-capture of orders passed since the enactment of the Restraining Orders and Other Legislation Amendment (Family Violence) Act? Will there be a mechanism by which existing orders can be incorporated into the scheme; and, if so, how will that be done? I also ask the minister to confirm that in the case of a breach of an order, the Western Australian penalties will apply rather than the penalties applicable in any other jurisdiction. I understand from the definitions clause in the bill that New Zealand will be the only foreign jurisdiction whose domestic violence restraining orders will be recognised by the NDVOS. I also ask the minister to confirm whether any other jurisdictions are contemplated to join that scheme, and the time frame, particularly in light of the fact that Canada, Ireland and the United Kingdom have been recognised as foreign jurisdictions whose orders can be registered in this state.

As I have mentioned, it has always been foreshadowed and expected that in order for the NDVOS to operate effectively, it requires information-sharing technology that will enable jurisdictions to reliably inform each other about the existence of VROs from other jurisdictions. The interim information-sharing system was established in late 2016. However, it provides only basic information about orders and is not intended to be relied upon for enforcement purposes. I understand that the Australian Criminal Intelligence Commission is not due to deliver the final national information-sharing system until November 2019. I ask the minister to confirm whether that time frame is still current, and what impediments will arise from an inability to use the interim information-sharing system for evidentiary and other purposes.

I would also like the minister to advise the current estimate of the number of interstate orders that are likely to be captured by this scheme because of the fact that the protected parties live in Western Australia. It is my understanding that the number is about 30, but perhaps that can be confirmed. Likewise, does the minister have any idea how many Western Australian orders that are not currently recognised will be captured in other jurisdictions? I am also interested to know how this act when passed will interact with Family Court orders. If a Family Court order is obtained in one state and a violence restraining order is obtained in another state, how will conflicts between those orders be resolved, and will Family Court orders be recognised? What protections will be afforded to respondents if a vexatious application to vary an order is brought in another jurisdiction and the respondent is not able to attend and present their case? I will leave the remainder of my questions to consideration by the Committee of the Whole.

I come now to the element of urgency that this bill has attracted. The government has used the rhetoric that Western Australia is lagging behind in implementing this legislation and has blamed that on the former government. There were sound reasons for this bill to take second place to the ROAR bill. Furthermore, because Parliament was prorogued and did not resume until May this year, the bill could not have been introduced before that time—although it was not even introduced at that time. I understand that the decision to launch the national scheme, such as it is, on 25 November this year, was not made until 19 May this year. Therefore, the necessity to pass this bill was resolved only towards the end of May, and although that seemed to galvanise the government to take action, the bill was not finalised and introduced until August. Therefore, although Minister McGurk might like to puff herself up by saying our government was inactive in this matter, I do not think she would have been able to get the bill into this Parliament in August had it not been for the considerable work that was done by our government in preparing a draft bill before Parliament was prorogued last year and the government went into caretaker mode. I would be interested to know what Minister McGurk was doing between March and August, other than arranging the furniture in her office. Despite all the urgency that has been impressed upon us, the debate on the bill in the other place occupied time over three sitting days. Much of the debate on the bill was from government members, who spent their time talking about how important it was that the government do something about family violence, rather than actually doing something by passing the bill.

When the bill finally came to this place, it was delayed further because it had to be considered by the Standing Committee on Uniform Legislation and Statutes Review to see whether any elements of the bill offended against parliamentary sovereignty. The Leader of the House read the bill in on 17 August and acknowledged, quite properly, that in accordance with standing orders, it was a uniform legislation bill and required referral to that

committee. There was no debate about that and the bill was referred to that committee that same day. The committee dealt with the bill with expedition. The committee's findings and recommendations are the subject of its 107th report. The report was presented on 10 October. Members will see from the report that there was a delay in the committee's ability to deal with the bill. The Attorney General argued that the bill should not have been referred to the committee in the first place, and it took the committee a little time to get some information from the Attorney General that we required. Nevertheless, the committee discharged its responsibilities as expeditiously as possible within the time frame prescribed by the standing orders. I would like to thank not only my co-members on the committee but also the legal adviser, Felicity Mackie, and the committee clerk, Mr Mark Warner, for their work on the bill.

The report confirms that the bill had the potential to affect parliamentary sovereignty. The committee found that the time frame set by the decision on 19 May would put pressure on Parliament to expedite consideration of the bill. The committee found that the decision to draft the bill in terms that would allow the executive to determine the commencement date was reasonable and justified in the circumstances. The committee recommended that the bill contain a review provision. That was put to the Attorney General, who said that there was an intention to review the scheme. As far as the committee was concerned, that might be all very well from the point of view of the national objectives. However, that would not necessarily focus on whether the scheme was in Western Australia's interests and working to the advantage of Western Australia as opposed to the national advantage.

Although from time to time there may be a review of the national objectives, it was important that there be a focus on seeing whether this bill was working within the Western Australian context as well and, if necessary, opting out of the national scheme or modifying our position within it. I am pleased to say that the government appears to have adopted that recommendation and has drafted a proposed amendment on advice from parliamentary counsel, which I can indicate that the opposition and I will support. The two amendments that have been proposed—that of the committee and that of the government—are much of a muchness; they achieve the same ends. I am quite content to take parliamentary counsel's advice on that and it may form the model for future suggestions and recommendations by other committees that seek to introduce review clauses.

A couple of other features are worthy of mention that I draw the house's attention to. One of them is the difficulties with clause 9 of the bill in two respects. Clause 9(1)(a) and (b) refer to an act of family and domestic violence as defined in section 6(1) of the former Restraining Orders Act. That is the act prior to the amendments implemented by the Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016. Given that those provisions have now been deleted from the Restraining Orders Act in its current iteration, it means that anyone wanting to work out what that meant would have to get a reprint of the act prior to the passage of the ROAR bill and the incorporation of the amendments affected by that bill. The Attorney General gave some advice about the reason for drafting the legislation in that fashion, which appears on pages 10 and 11 of the report. It is a matter of style, I suspect, as much as substance. It is, however, unfortunate that those seeking to understand their rights and obligations need to try to find a version of the pre-amendment legislation in order to do so. We suggested that the Attorney General insert a note in the Restraining Orders Act as it currently stands to reflect the pre-amendment ROAR bill so that it would assist people seeking to know what an act of family and domestic violence was pre-amendment, rather than leave them to search it out. That is particularly because the indicia of family and domestic violence as outlined under the current legislation are significantly different. Otherwise, clause 9(1), (2) and (3) set out what orders are taken to address a domestic violence concern for the purposes of the proposed act and clause 9(4) provides that regulations may prescribe circumstances in which an order made in a participating jurisdiction is taken for the purposes of the proposed act to be an order that addresses a domestic violence concern. A literal reading of that clause suggests the possibility that regulations could prescribe any order made in a participating jurisdiction regardless of whether it relates to an act of family and domestic violence. The Attorney General, in an answer to our queries on the matter, gave an explanation, essentially pointing out that there needed to be some flexibility, and we accept that. However, it remains a concern that an order that is made in a participating jurisdiction that is taken for the purposes of the proposed act to be an order that addresses a domestic violence concern will be left to subordinate legislation.

Another element that we picked up on is the prescription of bodies to which there can be information sharing and to which authority may be delegated. Currently, the Australian Criminal Intelligence Commission is intended to be that body. Otherwise, as prescribed by regulation, we accepted that it was desirable for the exchange of information to be focused on the objectives of public safety that are sought to be achieved by the bill and that they should not be impeded by the necessity to amend the proposed act from time to time to accommodate organisational name changes or reallocations of relevant responsibilities. We caution against the use of subordinate legislation for those purposes.

Otherwise, as I have indicated, the bill implements a scheme that has been worked on for some years. It is unfortunate that it is not in a position to be launched with anything like the effectiveness that one would hope for. However, it will involve an improvement in the manner in which interstate violence restraining orders focused on

protecting victims of family violence will be managed and recognised. I have little doubt that problems will be revealed from time to time. That is not the fault of any government; it is simply a recognition of the complexity of these sorts of schemes and trying to make them work as seamlessly and effectively as possible across jurisdictions that may have different practices, laws and procedures. I commend the government for introducing the bill. I will have to give some of the credit to our government for having done considerable work on the bill that this government was able to inherit, but I give credit where it is due. The government should be commended for having taken action on the matter and I seek some advice only on those mechanical features and wish the government luck in getting a sufficient contribution from the commonwealth to ensure that this national scheme will not be a burden carried by each of the jurisdictions. That is not a reflection on any particular colour of commonwealth government; it is a recognition that the commonwealth likes coming up with these ideas and leaves it to everyone else to make them work. On that note, in due course I will support the proposed government amendments that are on the supplementary notice paper.

HON ALISON XAMON (North Metropolitan) [8.58 pm]: I rise on behalf of the Greens to indicate that we will also be supporting the Domestic Violence Orders (National Recognition) Bill 2017. The bill before us seeks to establish a National Domestic Violence Order Scheme and we welcome this next step in improving the situation for victims of family and domestic violence in Australia, no matter in which jurisdiction they choose to reside. Currently, if a person takes out a restraining order in WA and moves to another jurisdiction, they have to take out another order at their new jurisdiction. Applying for an order can be quite a traumatic experience and having to repeat the process is not just a matter of convenience; it can also be extremely upsetting and may involve recounting incredibly distressing details. By establishing a National Domestic Violence Order Scheme, we will eliminate the need for domestic violence orders to be registered across Australian jurisdictional boundaries. This is a really important way to ensure that we are providing seamless legal protection to victims of family and domestic violence who choose or need to move interstate. People may leave their home as a result of domestic violence, and these protections will help to support their efforts to establish a new safe home. We know that far too often, regrettably, some perpetrators will follow their victims and seek to continue the violence. This legislation is, therefore, very important to help mitigate that. It is a cross-recognition scheme with domestic violence orders being upheld by police and courts in every other Australian state or territory. Existing powers of police to issue an order, despite an order already being in existence, will be upheld. I note that in this particular provision, the Domestic Violence Orders (National Recognition) Bill deviates from the model law framework. That is particularly important in WA where situations in rural and remote areas might hamper timely access to information about possible existing orders. This provision will therefore ensure that protection of a victim is maintained. Bear in mind that we are talking about legitimate concerns about safety. I remind members that a woman in Australia is more likely to be killed in her own home than anywhere else and more likely to be killed by her male partner than by anyone else. One in four Australian women has experienced physical or sexual violence by an intimate partner. In Australia, on average, at least one woman a week is killed by a partner or former partner. I note that domestic violence deaths are ultimately preventable and that a national recognition scheme applies only to family violence restraining orders. Family Court orders will not be included in the regime and I understand that the Council of Australian Governments working group is looking at including Family Court orders by 2019, as the system progresses. It is important to have national recognition across other types of orders and I look forward to other orders being included as soon as practicable.

The scheme will apply only to orders made on or after the scheme commences. Assuming this bill is passed, orders obtained after 25 November will go onto the register automatically and I understand a person can apply to have their old order declared under the national scheme. I would like to know how people with existing orders that will not automatically come under the scheme will be advised that they can apply for this to occur. For example, if a person in WA obtained a violence protection order in September and decided to move to Adelaide, how will they be advised that they can make an application that their order be recognised under the national scheme? Under the proposed scheme, a breach of an order in WA, no matter where the order was issued, is treated as a WA breach and our legislation will apply. I note that, generally, there is a level of consistency between WA penalties and those in other jurisdictions, so that is good.

The legislation operationalises an interim scheme until the development of systems that will enable instant recognition of interstate orders. The information technology to support the full scheme, which will be a dedicated information-sharing platform, is not due to be delivered until late 2019. The interim scheme will therefore depend on manual information exchange. As I noted earlier, I am pleased this bill contains some safeguards for cases in which there is some lag in information sharing. I urge the minister to do all in her power to ensure that the commonwealth sticks to the scheduled time frame so that the full scheme can be up and running as soon as possible. This is a really important issue because without development of the necessary IT, the benefits of this scheme will not be fully realised. I think the last thing we want to see is the failure of this scheme to meet its potential simply because of a lack of federal will. I am interested in the indicative costs of setting up this new system and we

welcome advice from the minister regarding the total anticipated cost of establishing these systems and what WA's share might be—whether we or the commonwealth have contributed any money.

I want to make some general comments about domestic violence. In WA over 50 000 cases of family and domestic violence have been reported to police each year for the last couple of years. This is a really unacceptable and devastating statistic. I strongly believe that preventing family and domestic violence is a shared responsibility that should be borne by the whole community. It needs to be a priority. It requires a shared understanding that family and domestic violence must not be tolerated under any circumstances. We need to prioritise the importance of protecting people, including by the legislation before us, and ensuring that there is an adequate number of refuges to meet the need.

I note particularly the impact of family and domestic violence on children and young people, and that a high number of family and domestic violence incident reports involve children. By that I mean children being either offended against or witnessing the violence, which is incredibly damaging. As members will be aware, the Ombudsman is required to review the deaths of certain children as well as family and domestic violence fatalities. The Ombudsman noted in his recently released 2016–17 annual report that family and domestic violence was associated with 70 per cent of child deaths reviewed over the past eight years. That is a horrific statistic.

We are increasingly recognising the importance of holding perpetrators accountable. Although I welcome some investment by the government, we still have a long way to go in this area because we know that family and domestic violence does not know any boundaries. It is not limited according to age, income, education, ethnicity or geography. However, it is important to note the particular needs and vulnerability of Aboriginal women, women from culturally and linguistically diverse backgrounds, and women with disability. Research has found that Aboriginal women are less likely to apply for a violence restraining order, despite being over-represented as victims of family and domestic violence. Clearly, we need to be doing a lot more work in this space. I draw members' attention to a report recently facilitated by the Metropolitan Migrant Resource Centre and undertaken by a multi-agency local family and domestic violence working group. The report notes anecdotal concerns about increased family and domestic violence in the multicultural community and that victims were unlikely to report incidents, seek support or access services. The report is highlighting the difficulty faced by women from multicultural backgrounds who experience family and domestic violence and who find themselves having to navigate a confusing and alien legal framework and service delivery system. Clearly, we still have much to do to address family and domestic violence across the community.

I will make some comments about the Standing Committee on Uniform Legislation and Statutes Review report. As has been mentioned, the Standing Committee on Uniform Legislation and Statutes Review considered this bill and its report was tabled on 10 October. The committee found that the bill is consistent with the COAG communiqué that outlines the agreement to introduce a national domestic violence order scheme. The committee also noted that although it identified some issues that may affect parliamentary sovereignty and Parliament's law-making powers, it was of the opinion that they had been adequately explained and justified. The committee also, importantly, recommended amendment of the bill to include review of the operation and effectiveness of the act after it has been in operation for three years. I indicate that the Greens will support the proposed amendments.

The legislation before us seeks to enable cross-jurisdictional recognition of domestic violence orders, and this is a very positive step. However, it is important to acknowledge that although these orders are an important and useful protective mechanism for victims of family and domestic violence, the research literature identifies that in high-risk cases, restraining orders are insufficient if they are used alone and need to be supported by additional protective actions from police or social services. This is of particular concern in the prevention of fatalities because we know that perpetrators who are likely to commit fatalities are less concerned about the impact of an order. Nevertheless, the Greens are very happy to support this move to better protect victims of family and domestic violence. I note that it has been declared an urgent bill by the government and that the scheme was agreed to by Council of Australian Governments members back in 2015. We know that WA is lagging behind and we are now the only jurisdiction that has not yet enacted legislation to enable the national recognition of domestic violence orders. I agree that not prioritising this issue does not send the right message. It is extremely important legislation. We need to have it in place by November in order to comply with the COAG agreement. COAG is seeking to have the legislation operational in time for International Day for the Elimination of Violence against Women, which will coincide with National White Ribbon Day on 25 November. It is symbolic timing and good to be able to have a positive message to give on that day and to show that the system is improving. The Greens support this bill and look forward to a fully functional national recognition scheme being in place as soon as possible.

HON CHARLES SMITH (East Metropolitan) [9.10 pm]: May I say how refreshing it is to see commonsense bills coming through this house. I note that the Domestic Violence Orders (National Recognition) Bill 2017 originated under the last government.

It is good to see government looking at domestic violence. The crossbench members happily support the passage of this bill and its associated amendments. I am glad to say that the overall scheme of this legislation favours the protection of vulnerable restraining order applicants and the recognition of their orders by being registered in a national information technology architecture system. This is welcome and long overdue.

I will say a few words about domestic violence as it is an issue I remain deeply concerned about and involved with in the community. As members doubtlessly know and just heard, statistically, every week in Australia one woman is likely to be killed by her partner or ex-partner. Domestic violence is predominantly a male issue and one that I have some experience in dealing with as a family protection officer of some years standing. As a society, we will not make the scourge of domestic violence disappear by introducing administrative bills such as this into Parliament. Domestic violence will disappear only when the perpetrator is held responsible for his actions and behaviour and changes his attitude towards women. Wrong action must be followed up by swift and real consequences. I wrote to the appropriate minister some months ago outlining our support from the crossbench should she and the Attorney General decide to introduce future legislation to combat or reduce domestic violence. Disappointingly, I have not received a reply.

Violence restraining orders, or VROs, are an important part of keeping a woman and her children safe from violent and controlling men. However, it relies on the woman's confidence in the police and the criminal justice system to be functional, which is when problems arise. Police have extreme difficulty persuading many women who they have welfare concerns for to take action and apply for a VRO. The doubt in the system comes from the idea that the man will receive no help or assistance in changing his behaviour and that the woman will be left by herself when, in all probability, she knows that she will get double the abuse when her partner comes home following an order's completion—especially police orders that provide 24 to 72 hours' protection.

I implore the government to re-examine how the police deal with victims of domestic violence, how the courts—in particular, the Magistrates Court—deal with victims of domestic violence, and how the Department of Corrective Services deals with the perpetrator. I suggest that there is currently very little consequence for men who repeatedly commit acts of violence and that minimal support is offered to those who wish to address their violent behaviour. Victims also need to be far better educated or informed by the police about what happens when the man is removed from the property. To conclude, domestic violence does not limit itself to physical violence. It includes, but is not limited to, psychological or emotional violence, financial abuse, sexual abuse, spiritual abuse and social abuse. Domestic violence is a huge issue in our society. It cuts across class, race, gender and ethnicity. I encourage the government to introduce bold and robust legislation to deal with the issue rather than skirting around the edges but achieving nothing of real consequence.

HON NICK GOIRAN (South Metropolitan) [9.14 pm]: I rise to lend my support to the Domestic Violence Orders (National Recognition) Bill 2017. Like all members, I believe that it is the right of every Western Australian to live in a safe and secure environment that is free from fear. I believe that it is our role as members of this place to do our utmost to ensure that all Western Australians are given that assurance. I commend the government for creating the portfolio of prevention of family and domestic violence. I am pleased to see that it said it would do it and it did it. I commend the government for fulfilling its commitment. It is an incredibly important portfolio that encompasses some of the most critical social issues within our state. My view is that the sensitive nature of these issues only highlights the need for a bipartisan approach. It ought not be an area that is treated like a political football. It is an issue that needs to be tackled with the full united force of Parliament. I am pleased to see that that is consistent with the spirit of the debate this evening.

Indeed, I note that both the Liberal and Labor Parties went to the election this year promising to pass legislation that would give effect to the National Domestic Violence Order Scheme. This bill does exactly that, which is why I am pleased to lend it my support. As has been mentioned this evening already, domestic and family violence is an extremely important social issue in Western Australia. Some statistics have been provided. I concur and sadly note that we have the second highest level of family violence in Australia, second only to the Northern Territory. The Department for Child Protection and Family Support's 2015–16 annual report indicated that 34 524—over 65 per cent—of these cases involved children. That was a 27 per cent increase on the 2014–15 year. I also note that WA Police figures for that same fiscal year showed that there were over 53 500 reported incidents of domestic violence to police. I note from the same annual report that, tragically, 19 people died as a result of family violence. Consistent with the comments made earlier by Hon Alison Xamon, I think this type of statistic is shocking and is the very reason that, in my view, we ought to take a bipartisan approach towards the issue of the prevention of family and domestic violence. We often hear figures and statistics thrown around in this and other policy areas and it is very easy for us to become desensitised to them because we hear them so often. At some level it just becomes another statistic that we hear. I think it is important for us to remember that in each of these instances we are talking about the lives and safety of individual Western Australians, most often women and children. It is very sobering to be reminded that these figures represent a life and the story of a Western Australian.

Family and domestic violence is an issue that disproportionately affects our most vulnerable residents. I have heard it said that it has been considered a taboo topic throughout much of history, which is why it is important that there be an increased level of awareness of this important issue than has previously been the case. It has often been the case that domestic violence has left countless women and children in our state in hopeless and helpless situations, so it is heartening to note that over the past few years there has been both a national and a state-based push to address family and domestic violence.

To that end, I want to take a moment to recognise the efforts of the previous government, which invested in strategies to combat family violence, of which I will name a few. I start in the area of refuges and support services for women and children escaping violence. Since the last election, in my role as shadow Minister for Child Protection; Prevention of Family and Domestic Violence, I have had the opportunity to visit some of these facilities. One in particular was the South West Refuge. I note that this refuge not only offers a safe place to stay for women and children experiencing domestic violence, but also runs the Safe at Home program. This program enables women and children to stay in their home when it is safe to do so. Importantly, this program prevents children from missing out on school, avoids disrupting their everyday schedule, gives women the ability to stay within their community, and helps keep families in a home that is familiar and secure to them, which is of course particularly important for children. I also note that the previous government continued funding for regional family violence outreach services and implemented the "Safer Families, Safer Communities Kimberley Family Violence Regional Plan 2015–2020". It also addressed other changes, including the establishment of a Commissioner for Victims of Crime and the victims of crime reference group.

The National Domestic Violence Order Scheme—as has been noted by members and as is mentioned in the report tabled a few weeks ago by the Standing Committee on Uniform Legislation and Statutes Review—was agreed to by the Council of Australian Governments in December 2015. As I understand it, once our state begins participating in the National Domestic Violence Order Scheme, the need will be eliminated for domestic violence orders to be registered across jurisdictional boundaries. Indeed, if family and domestic violence survivors feel the need to travel interstate in order to flee violence, this legislation will provide them continuous legal protection throughout the relocation process. It will allow them to start a new life with the same legal protections, no matter their location. It would seem that removing the need to register an order across state boundaries will understandably result in reduced stress for those individuals in what is already a stressful situation. It also will ensure security and safety for those who need it most.

I want to touch on three things with respect to the Domestic Violence Orders (National Recognition) Bill 2017. It does three key things, about which we have heard from the Leader of the House in the second reading speech accompanying the bill, and in other members' contributions to the second reading debate. Of the three things outlined, one in particular is significant, which is that the bill seeks to depart from the model law framework. The model law intends for there to be only one order in place at one time throughout Australia; however, in Western Australia we have what I understand to be called a police order, which is a short-term restraining order used in emergency situations. I am informed that these can be obtained without consent from another person for a period of 72 hours in an emergency situation, especially in remote communities where it may be near impossible for a police officer to confirm the full terms of an interstate order. This could mean that even if there is an order in place, it is practically unenforceable until it can be confirmed. Omitting this part of the model law will afford survivors of family and domestic violence an added layer of protection. I note, in looking at the bill and the work of the committee that we are also not the only jurisdiction to remove this part of the model law; indeed, both Victoria and the Northern Territory have decided to omit this recommendation. I therefore recommend that honourable members of this place support the government's decision to depart from the model law framework in this particular part of the bill. I think it shows that the government has considered the unique circumstances of our large state, rather than following the model law without question.

The scourge of family and domestic violence in our state must be addressed, and this bill will aid in doing that by providing national protection for survivors to move freely between states without changes to their domestic violence orders, and ensure safety and security for some of our most vulnerable residents.

I conclude by noting the work of the Standing Committee on Uniform Legislation and Statutes Review. I thank it for its work on what I found to be a helpful report. I particularly ask it to continue this format throughout this term of Parliament. I specifically refer to the manner in which the committee makes findings that, for example, a part of a bill might impinge on parliamentary sovereignty, but then goes on to give its view as to whether that impingement is appropriate or not. I find that to be a most helpful approach taken by the committee.

I also note in closing that the committee has recommended the insertion of a statutory review provision. I lend my support to the work of the committee on that. I note that the government has elected to propose an alternative to that, and I anticipate that we will discuss that at a later stage, but I indicate that I concur with the committee that

a statutory review clause would be appropriate to the establishment of this new scheme. With those words, I commend the bill.

HON SUE ELLERY (South Metropolitan — Leader of the House) [9.28 pm] — in reply: I thank members of the house for their contributions to the second reading debate on the Domestic Violence Orders (National Recognition) Bill 2017 and for their indications of support for the bill. A couple of questions were asked during the course of the second reading debate and I will now provide answers to those that I am able to; if there are any that I am unable to answer, we can do that when we go into Committee of the Whole. As members will have noted, there is an amendment proposed.

I will start with the questions raised by Hon Michael Mischin. The first were in respect of information-sharing arrangements—the amount of time it is going to take the commonwealth government to deliver the dedicated information-sharing system, and what will happen in the interim. The commonwealth government is due to deliver a dedicated information-sharing system in late 2019; it is to be jointly funded. Prior to the delivery of the dedicated system, the orders will be supported by an interim information-sharing system that relies in part on manual information exchange. Under protocols agreed between the jurisdictions, the interim system will provide for information about a recognised DVO to be provided within an hour of an urgent request being issued. WA Police will retain the power to issue a police order, when the protection order is needed on an urgent basis. Although it would be preferable for the dedicated information system to be in place from the commencement of the scheme, the government is confident of the workability of the interim arrangements. Hon Michael Mischin referred to some comments from the Victorian minister, who identified in his speech some implementation concerns. That was some time ago, and those comments were largely in the context of moving away from the model law framework around police orders. It is the same departure that WA has taken. It is true that the scheme is unlikely to reach its full potential until the final information-sharing platform comes online. However, we acknowledged that in the second reading speech, and we are hopeful that the interim arrangements will work satisfactorily.

Other questions were asked about why all existing WA orders are not automatically recognised. Only those WA orders made on or after the commencement date will be automatically recognised under the national scheme. Older orders may be brought within the scheme via an application and declaration process, and the question is whether we would back-capture any older existing orders. No, we will not. Consideration was given during the drafting process to doing that, but the advice from the court administrators was that this would substantially complicate information technology preparations for the commencement of the scheme. Because we are already behind some other jurisdictions in the legislative preparations, we did not want to introduce a system that, while desirable and well-intentioned, would further jeopardise our capacity to join the scheme with other jurisdictions on 25 November. This is also a safety issue for victims. We want to provide assurances that new arrangements would be put in place, and we did not want to be irresponsible, I guess, by providing assurances that all existing orders would be recognised when the operational arrangements did not support that. Ultimately, this is a compromise between the practical challenges inherent in putting this automated cross-jurisdiction recognition scheme in place. It is important to note that older orders will be able to be brought within the scheme on a case-by-case basis, via an application and declaration process.

With regard to safeguards and misuse provisions, the bill directly addresses risks through the safeguards contained in clause 26. Specifically, clause 26(4) provides that a court may decline to even hear, let alone grant, an application to vary or cancel an interstate order if there have been no material changes in circumstances, and the application is effectively in the nature of an appeal against the original decision. That directly goes to the question of forum shopping. In addition, clause 26(3) sets out a number of other factors that the court may have regard to when considering whether to hear an application to vary or cancel an interstate order. They include the normal place of residence or employment of the parties; any difficulty the respondent would have in attending the hearing; whether the court has sufficient information available to it to make a decision; and the interests of any children who would be affected by a decision.

A question was raised about the likely number of orders to be captured. The best guide that we have is the number of interstate orders registered under current arrangements. I am advised that there has never been more than 30 at any one time. On the question of whether this scheme reveals a previously unmet demand, we are guessing. That is a hypothetical proposition. We are not going to know until the scheme commences, but on the basis of what has been done so far, there has never been more than 30.

A question was also asked about what jurisdictions outside Australia might be captured. Initially, New Zealand orders will be the only foreign orders recognised under the national scheme. United Kingdom, Irish and Canadian orders will continue to be registerable in Western Australia. These orders may be included in the national scheme at a later date, subject to a national agreement being reached. That may provide the answers to the questions that were raised. If there are others, I am happy to tackle them in committee.

I thank the Standing Committee on Uniform Legislation and Statutes Review in particular for the work that it did on this bill. I thank the previous Attorney General for spelling out his role in the preparation of the legislation. I thank all members for their contributions. I note the comments that have been made. This is one part of the range of measures that are required if we are to seriously tackle the scourge that is family and domestic violence. By itself, the bill cannot solve all the issues. A whole range of things need to be put in place. I am pleased to be part of the government that is tackling this. With those comments, I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Matthew Swinbourn) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 1: Short title —

Hon MICHAEL MISCHIN: I thank the Leader of the House for her advice in her reply to the second reading debate. This, I suppose, is a question aimed at clarifying for the chamber the operation of the scheme in an interim fashion. Correct me if I am wrong, but once the data-sharing system is in place, police officers and courts in various jurisdictions will have ready access through the database and through some information-sharing platform to check whether a violence restraining order of a family or domestic character is in existence for a particular person. The minister mentioned that the idea of the interim system is to have a rapid response of something like within an hour. How will that work? If a police officer attends an incident, are they the ones who are then going to ascertain whether there happens to be a family or domestic violence restraining order in some other jurisdiction, and how do they find this out as a mechanical process? Is it intended that they ring a central point or communicate with them by email? Do they have to phone around every jurisdiction? Do they have to act on the advice of the person whom they are summoned to protect? How is it meant to operate?

Hon SUE ELLERY: In respect of the mechanics, which I understand the member is asking about, each jurisdiction, including WA, will have a central control centre that will contact the other jurisdictions. In the first instance a police officer will be able to check from wherever they are whether there is an order in existence. They will then contact the WA control centre, which will be able to check with other jurisdictions about the detail of that order. That is why we are confident in saying that we have in place a system that will be able to provide that information within an hour.

Hon MICHAEL MISCHIN: I am not diminishing the importance of a seamless system, once it gets going, but it tends to suggest that there are advantages, at least in the interim, for people to have their orders registered by the more formal process simply because there is then a copy of that order available to the courts and police in Western Australia that might be more readily available in times of crisis, rather than having to go through that other process. Would I be correct in the assumption that until the interim system is made more permanent, effective and instantaneous, there can be disadvantages to people in relying on the national scheme when there is an element of detective work involved in determining whether there is an order, where it is held and what the details of it might be, rather than going straight to the police?

Hon SUE ELLERY: I guess there are a couple of response points to that. One of the most obvious advantages of relying on the automated system is that, of course, domestic violence does not limit itself to occurring in the hours that courts and police stations are open. The advantage of this system is that it would be available 24 hours a day and we know that most family and domestic violence happens in the dark hours. So, there is that.

Hon MICHAEL MISCHIN: I do not mean to interrupt the minister, but I might focus by way of example. As I say, I am not quarrelling with the importance of having a national scheme; I am just concerned that there may be a false sense of security among those who seek to be protected by family violence orders from various jurisdictions via a system that is not ready to go in the manner it is meant to operate. If I understand correctly—please disabuse me of this if I have it wrong—the ultimate aim is that if I have, say, a domestic or family violence restraining order that protects me in New South Wales and I move to Western Australia and complain to the police that the person who is the respondent of that order is harassing me, the police will be able to check on their database with the records that they use to search out people's criminal history and the name of the person who is the potential abuser will come up with the details of that order. Under the current system whereby an order is registered with a court, that information would be available to the police in that fashion. In the interim, however, if there is no locally registered order with the details and any evidence of the terms of the order or anything of that nature, a police officer has to contact headquarters and police communications, which will then have to sound out whether any order is in existence anywhere else in the country. That can involve a delay that may impede police action for

a time until they can ascertain whether an order is in existence and the terms of that order. Do I have it wrong or is a potential delay and risk involved in that?

Progress reported and leave granted to sit again, on motion by Hon Sue Ellery (Leader of the House).