

CRIMINAL INVESTIGATION AMENDMENT (VALIDATION) BILL 2023

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Stephen Dawson (Minister for Emergency Services)**, read a first time.

Second Reading

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Emergency Services) [2.08 pm]: I move —

That the bill be now read a second time.

The Criminal Investigation Amendment (Validation) Bill 2023 will amend the definition of “serious offence” in the power of arrest provisions of the Criminal Investigation Act 2006 with retrospective application. The bill will address unintended impacts on the power of arrest resulting from family violence legislative reforms progressed on an urgent basis in 2020 in response to the COVID-19 pandemic.

The power of arrest provisions in section 128 of the CIA authorise police officers to arrest persons without warrant in certain circumstances. The requirements for arresting a person for a serious offence are less stringent than for a non-serious offence. A police officer may arrest a person for a serious offence if the officer reasonably suspects that the person has committed, is committing or is just about to commit the serious offence. A police officer may arrest a person for a non-serious offence if the officer reasonably suspects that the person has committed, is committing or is just about to commit the offence, and one or more specified circumstances apply; for example, the officer reasonably suspects that if the person is not arrested, they will continue or repeat the offence or will endanger another person’s safety.

Since 2012, the definition of “serious offence” under the power of arrest provisions of the CIA has included an offence under section 61(1) of the Restraining Orders Act 1997. Until recently, that section provided that it was an offence to breach a family violence restraining order or a violence restraining order. The breach of either a FVRO or a VRO was therefore a “serious offence” under the power of arrest provisions in the CIA. In early 2020, the government progressed urgent family violence legislative reforms as part of the response to the COVID-19 pandemic. The Family Violence Legislation Reform (COVID-19 Response) Act 2020 enabled changes to the in-person and manual methods of operation used by the justice system. Those changes, among other things, improved access to restraining orders so that social distancing requirements would not be a barrier for victims of family violence who were seeking orders. These reforms commenced on 7 April 2020. As part of these reforms, section 61 of the Restraining Orders Act was amended so that the offence provisions for breach of a FVRO or a VRO were split into two subsections. The offence provision for breach of a FVRO remains in section 61(1) of the Restraining Orders Act. However, since 7 April 2020, the offence provision for breach of a VRO has been contained in new section 61(1A). As a result of the offence provision for breach of a VRO having been moved to a new section of the Restraining Orders Act, breach of a VRO is no longer a “serious offence” under the power of arrest provisions in the CIA. As a result, a police officer cannot arrest a person for breach of a VRO under the power of arrest for serious offences. Instead, the more stringent requirements for non-serious offences must be applied. That is, in addition to the police officer reasonably suspecting that the person has breached the VRO, the police officer must reasonably suspect that other specified circumstances apply, such as the person will commit or repeat the offence or will endanger another person’s safety.

This is an unintended consequence of the family violence legislative reforms made in 2020 that has only recently come to light. The WA Police Force has advised that between 7 April 2020 and 8 January 2023, the day before police officers were alerted to this issue, over 900 distinct offenders were arrested in respect of a total of over 1 500 breaches of VROs. Not all these arrests are impacted by the amendments made in 2020. The figures include offenders who were processed by police for additional offences at the same time as breach of a VRO. The figures also include incidents in which the more stringent requirements for exercising the power of arrest for non-serious offences might have been met. That said, legislative amendments are necessary to address the risk that a number of arrests for breaches of VROs might have been made without legislative authority. Associated risks that might arise include potential civil claims, including for assault and false imprisonment, in respect of the unlawful arrest of persons for breaches of VROs. These might be matters when an arrested person resisted arrest and was subsequently charged with offences arising from that resistance; however, it might subsequently be held that the persons were acting in self-defence to guard against an unlawful arrest. Further, there might be issues surrounding the valid exercise of powers by police officers on arrested persons, including the carrying out of searches and forensic procedures on persons while they were in custody, the seizure of items found as a result of those searches, and the imposition of bail conditions prior to their release.

To address the risk of claims in respect of unlawful arrests, and to ensure that police officers will have appropriate powers of arrest in the future, legislative reform is required to retrospectively reinstate breach of a VRO as a serious

Hon Stephen Dawson; Hon Sue Ellery; Hon Dr Steve Thomas; Hon Peter Collier; Hon Wilson Tucker; Hon Dr Brian Walker

offence under the power of arrest provisions in section 128 of the CIA. The Criminal Investigation Amendment (Validation) Bill 2023 will amend the definition of “serious offence” in section 128 of the CIA so that it will include the offence of breaching a VRO under section 61(1A) of the Restraining Orders Act.

The bill will also have retrospective application by providing that for the period beginning on 7 April 2020 and ending on the day the legislation receives royal assent, the definition of “serious offence” will be taken to have included the offence of breaching a VRO. The bill will ensure that anything done, or purportedly done, on or after 7 April 2020 will be taken, and will always have been taken, to be as valid and effective as it would have been had the definition of “serious offence” in section 128 of the CIA included the offence of breaching a VRO. This will remove the risk of claims in respect of the unlawful exercise of the power of arrest or other powers that might be exercised in relation to arrested persons. This includes, for example, powers to conduct searches of, and seize items from, arrested persons.

The bill will also ensure that an act done on or after 7 April 2020 that would have been an offence had the definition of “serious offence” included the breach of a VRO will be taken, and will always have been taken, to be an offence. This will address the risk that persons who have committed an offence while resisting an arrest, such as assaulting a police officer, could claim that the arrest was unlawful. The bill will give appropriate legislative authority for police actions in response to a breach of VROs and the apprehension of offenders.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to a bilateral or multilateral intergovernmental agreement to which the government of the state is a party, nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table an explanatory memorandum.

[See paper [2119](#).]

All Stages — Standing Orders Suspension — Motion

HON SUE ELLERY (South Metropolitan — Leader of the House) [2.15 pm] — without notice: I move —

That so much of standing orders be suspended as is necessary to enable the Criminal Investigation (Validation) Bill 2023 to be taken forthwith and proceed through all stages at this day’s sitting.

This is not a normal course of events. This is not a step that I take lightly. It does go, though, to addressing a validation bill. Members will be aware that they have all been offered and received a briefing. It goes to addressing unintended consequences in legislation considered by this house in 2021. It goes to the legislative authority for police to exercise certain powers. It goes to the valid exercise of those powers by police, and it goes to retrospectively reinserting those powers. It is a serious bill. It is not normally the case that this house would proceed immediately to deal with any bill, never mind a bill of this nature, but there are particular circumstances, which were just laid out in the second reading speech. Therefore, I moved the motion to ask the house to consider dealing with this bill immediately.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [2.16 pm]: The opposition is more than happy to support the motion before the house that we move immediately to debate the Criminal Investigation Amendment (Validation) Bill 2023. We understand the reasons. There has been a little history here of the government providing some early indications last week that this was an urgent situation that needed to be addressed. The opposition has done its very best to accommodate the government’s intent. I note that the bill passed the other place in a very rapid manner and has arrived here.

The Leader of the House said that this is not normal and it is not the way that the government or the house conducts its business, and I think that is absolutely true. My point is simply that in the rush of COVID bills, the original bill that separated these bills was a COVID bill. I simply place a concern on the floor of the house that rushed bills are always something of an issue. This is a very simple bill. It is a five-clause bill. It has one clause that will make a substantive change to a piece of legislation and then a second clause in four or five parts that will have a validation effect. When we rush bills through and do not give them the full and proper attention they need—that is not specifically a criticism of the government because obviously, in these circumstances, the opposition did not pick this up either—that happens sometimes. It is very tough sometimes.

For all those people who think the Legislative Council in particular takes its time with bills and looks at them in great detail, this is the sort of thing that the Legislative Council is designed to pick up. We do so perhaps imperfectly; we do not get it right every time. Rushing through this process is not necessarily to the benefit of anybody. Good and proper scrutiny is important on all sides of Parliament.

Question put and passed with an absolute majority.

Declaration as Urgent

On motion by **Hon Stephen Dawson (Minister for Emergency Services)**, resolved —

Hon Stephen Dawson; Hon Sue Ellery; Hon Dr Steve Thomas; Hon Peter Collier; Hon Wilson Tucker; Hon Dr Brian Walker

That the bill be declared an urgent bill.

Remaining Stages — Time Limits — Motion

On motion without notice by **Hon Stephen Dawson (Minister for Emergency Services)**, resolved —

That pursuant to standing order 125A, the following maximum time limits apply to the following stages of the bill: second reading, 55 minutes; Committee of the Whole, zero minutes; and third reading, zero minutes.

Second Reading Resumed

HON PETER COLLIER (North Metropolitan) [2.20 pm]: I stand as the lead speaker for the opposition on the Criminal Investigation (Validation) Bill 2023. I say at the outset that we will be supporting the bill and the intent of the bill. We see that it is eminently sensible that the house supports it in a very expeditious fashion. A piece of legislation has unintentionally gone through this chamber in, dare I say it, a flawed fashion. When legislation is rushed through, these things often happen. Unfortunate as it was, it did happen and we now have a situation in which people who have been arrested for breaching a violence restraining order—900 of them, in fact—are potentially vulnerable due to their arrests not being authentic and valid. That is why it is important we expedite the process of this bill, and the opposition will certainly not stand in the way.

I have a concern about this process and I will articulate it in a moment. Suffice to say it would have been very, very helpful for the opposition to have had a copy of the second reading speech when we had our first briefing last Thursday. I like to think I value my role in this place as much as anyone. Certainly, the role of scrutinising legislation is paramount; that is our role. The fact that the opposition was provided a briefing was very much appreciated but I personally, and members of the opposition, did not appreciate the lack of clarity behind the bill. Having said that, I would like to thank most sincerely the three advisers—two from the Western Australia Police Force and one from the minister's office—for the time they put in for us on Thursday and in our party room today. It was very much appreciated. The manner in which they provided the briefing to us was as expansive as it possibly could be, and we really appreciated that.

I will not go through the second reading speech again because it has been read into *Hansard*, but, essentially, amendments were made to the Restraining Orders Act in 2020 to separate family violence restraining orders from VROs and put them into two categories. As I understand it from the briefing, the intent of separating those orders was to ensure that the figures provided for breaches of those two categories would be a more accurate representation of those two crimes. I understand that was intent, and that is fine. Unfortunately, there was not a consequential amendment to the Criminal Investigation Act. As a result of that, VROs did not fall under the gamut of a serious offence under the changes made in 2020, and that brought into question the lawfulness of police officers making arrests for breaches of those VROs. In fact, 900 people have been arrested for over 1 500 offences. We have to close that gap, and that is why the opposition will most definitely support this legislation.

I say to the senior constable from Midland Police Station who identified the issue on 9 January this year: well done, mate. They are an outstanding police officer. I mean that generically, whether it is a male or female police officer. Well done. I like to think that that shows the professionalism of our police officers. If it were not for that police officer, these pretty much unlawful arrests would still be being made. Well done. Ideally, after the next 20 minutes or so, we will allow the Minister for Police and the Commissioner of Police to breathe more freely because that consequential amendment will be rectified and police officers will be able to go about their duties and ensure that arrests for breaches of VROs and FVROs are made lawfully.

Having said that, the second reading speech expresses quite clearly why we need this validation amendment bill. I will just say this: none of us likes to usurp the processes of the Legislative Council; we do not. I know that the Leader of the House is sincere in her comments that she does not do it lightly. She does not do it often, as I never did when I had her role, but we do it sometimes when we have to. Unfortunately, it is essential.

Having said that, during the entire COVID period, the opposition was very cooperative with the government on expediting pieces of legislation that were necessary to deal with the once-in-a-multigenerational pandemic. We always did that in good faith to ensure that the integrity of Parliament was retained while necessary laws were passed in an expeditious fashion. That is why we support this bill. We on this side of the chamber were taken into the government's confidence, and I am sure that the crossbench was as well. We had a briefing last Thursday, as I said, and I very much appreciated that briefing. Having said that, we were provided with the bill itself and the explanatory memorandum but not the second reading speech nor the briefing notes. It was very difficult to get one's head around the issues when we were provided with a limited briefing and no second reading speech. I expressly asked for a copy of the second reading speech. I do not think that was too much to ask, unless the minister did not trust us. But of course we had a copy of the bill. I have looked at the second reading speech now, but I really would have appreciated having a copy last Thursday. I really do not like coming into this chamber to talk about legislation when I feel unprepared, and I do with regard to this bill.

Hon Stephen Dawson; Hon Sue Ellery; Hon Dr Steve Thomas; Hon Peter Collier; Hon Wilson Tucker; Hon Dr Brian Walker

I note the minister's comments in the other place did not in any way satisfy my concerns. In fact, at one stage, he said there were some briefing notes and then corrected that by saying we got the bill. That is right. But there was no explanation of why we could not have a copy of the second reading speech. I asked the advisers whether we could please have one. The advisers checked with the minister. Ultimately, it was up to the minister to make the decision on whether we could have a copy of the second reading speech. I would not mind if the minister in his response could explain why we could not have a copy of the second reading speech. We got the bill, so in terms of confidence, if we really wanted to, we could have shunted it off to a journo. Of course we were never ever going to do that. In fact, no-one in my party room got a copy of the bill. Hon Dr Steve Thomas and I were the only ones who got one. We said, "No, we won't." I asked for permission today from the advisers whether I could please provide a copy of the bill to members of my party. I waited until I got that permission from the adviser at lunchtime today before I provided a copy of that bill to opposition members. On every occasion, we have adhered to the doctrine of confidentiality. If the government wants to take us into its confidence, and it wants us to cooperate to expedite an essential piece of legislation like this, at least give us the courtesy of providing us with a copy of the second reading speech. We had the bill; all we wanted was a copy of the second reading speech to explain it in a more fulsome fashion. Having said that, I do not feel angry, frustrated or disillusioned enough to make any more of this. Suffice to say, if this happens again—it is highly likely that it will—can members opposite at the very minimum please give us the courtesy of a copy of the second reading speech? Alternatively, as I asked, if we cannot have the second reading speech, can we have a briefing note on the bill? That is all I asked—nothing more, nothing less. To this point, I have not had any explanation as to why the second reading speech or short briefing notes could not have been forthcoming. Can I please get that explanation? I will not get it from the other place, but I expect that. If we could get that explanation from this place for the benefit of the Legislative Council, I would appreciate it. Having said that, this is an essential piece of legislation, it is an essential bill, and the opposition will support it.

HON WILSON TUCKER (Mining and Pastoral) [2.30 pm]: I rise to make a very brief contribution to the second reading debate on the Criminal Investigation Amendment (Validation) Bill 2023. I would like to state from the outset that I support this bill, the mechanics of the bill and what the government is trying to achieve with it, but I think that any validation bill raises several questions, at least in my mind, to at least try to avoid the situation that we find ourselves in today—that is, having to put in legislation to retrospectively fix something that has occurred in the past. I have two concerns. I would certainly appreciate it if the Minister for Emergency Services could add some commentary in his reply to address my concerns.

My first concern is about putting in place a process to try to avoid the situation that we now find ourselves in. I think that as part of any good root analysis process, we first have to understand the problem, which I think the government does. This legislation will amend the definition of "serious offence" to include the offence of breaching a violence restraining order. We need to understand why this happened and how it happened, and then put in place a process or some actionable items to ensure that it will not happen again. That is the point that I am curious about. How do we or the government put in place a process to ensure that we will not fall into this same situation again? In the last two years that I have been in this place, I believe that this is the second validation bill we have had to deal with, which brings me to my second point. There is obviously a cost associated with dealing with this bill. There is a time cost for having to move this legislation through this place and the other place. Certainly, both houses are, in a sense, gatekeepers for our democracy. It is a bit of a bottleneck for the legislative agenda for the government. Having to deal with legislation by passing it through this place is a finite resource. There is also a more tangible dollar cost associated with the drafting of legislation. I would be curious if the minister could help us to understand what is the dollar cost associated with actually having to draft this legislation; obviously, drafters on the government's side are responsible for that. I think that part of understanding a problem is understanding what is the damage or impact, and that comes with a dollar sign in our society and economy.

That is it from me. I would like some commentary on those two points to ensure that we at least try to put a process in place that will ensure that we will not be in this situation again. I understand that with the drafting process for not only this but any bill, there is a lot of opportunity for human error, one could say. Once legislation is introduced into the wild in our society, it is really hard to get feedback to ensure that it is working as intended and is not having any unintended consequences. I know that it can be hard for our judicial system to make interpretations of the legislation we have dealt with in this place, but I would be curious to hear any commentary from other jurisdictions that have been more successful in putting in place a mechanism or process to ensure that we do not end up in this situation again and have to take up time in the future to deal with validation bills.

HON DR BRIAN WALKER (East Metropolitan) [2.34 pm]: I rise to indicate that I support the Criminal Investigation Amendment (Validation) Bill 2023. It is a very sensible approach. If you like, it will close a door that had been opened in some form or other; that door will now be safely closed, and that can only be supported. But I want to take the opportunity of speaking about violence restraining orders in general. I mentioned this at the briefing, and I thank the government for the opportunity for the briefing.

Hon Stephen Dawson; Hon Sue Ellery; Hon Dr Steve Thomas; Hon Peter Collier; Hon Wilson Tucker; Hon Dr Brian Walker

I have some ongoing concerns with the concept of a VRO. It is an admirable concept for protecting vulnerable people who are at risk, and it is something we need to support, by all means; however, as my honourable colleague indicated earlier, the questions are: Is it actually doable? Are we succeeding? Does it meet the intent of what we wish to do, which is keep the vulnerable in our community safe from violent offenders and people who are liable to do harm? I beg to suggest that it does not actually perform as we hoped it would. In a society in which we assume that people do their best to do the right thing, this type of legislation would be perfectly good. However, I have a number of examples that I would like to bring before the chamber. One example is a situation in which an offender had a VRO out against him and he blithely ignored that, turned up at his wife's property, stabbed her six times thus causing her death, and was then surrendered to the police having, if you like, restored his so-called honour. That is totally unacceptable. A VRO was in place and he found a way to access his ex-partner. He did not find a way; he just rocked up. There was no barrier or prevention and no protection for the woman concerned. That is quite unacceptable, is it not? In one sense, we could regard the VRO as simply a piece of paper that can be acted upon only after the event of a breach. I would put to members that our intent to keep women safe—it is mostly women—is not being met here.

On the other hand, we also have examples—I would point out that this is a very common example—of VROs being used in marital disputes when there is a separation. This is from my experience within medical practice, and it seems to be a very common experience. Lawyers are determined to extract the maximum benefit for their client, the woman, and that means money, property and access to the children. I am happy to be corrected if I am wrong, but my experience is that one of the first things they seem to do is apply for a VRO, whether the husband has been vicious or a danger or not. A VRO seems to carry some weight with the court, and then the children are used as a tool of blackmail so that the husband or soon to be ex-husband is placed in a very difficult situation. Members might think: so what? It sorts itself out in the wash. The end result has been that this has led to suicides. In my particular clinic—just me alone—I know of two men who are no longer with us. They ended their lives because after receiving a VRO and being banned from accessing their children, they found themselves in a very difficult position and therefore killed themselves. That may be an extreme example of a response to a VRO that was inappropriately applied for, but it exists. The problem I have is if a number of VROs are applied for, some for serious cases but a lot for very minor cases, our police force will be unable to properly police the VROs because they will be overwhelmed with VROs that are simply not necessary. They are there for the purpose of helping a lawyer to gain an edge in court to secure the maximum benefits for his or her client. I think that this undermines the whole concept of a VRO. Therefore, although I support this bill and entirely support the intent behind it, I would also ask the government to consider that if we are not meeting the intent of a VRO, some consideration should be given in the not-too-distant future to how we can really keep people safe, because it is our function to help keep society safe. If VROs are not meeting their intent, I suggest that we ought to reconsider how we can better craft this law.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [2.39 pm]: I take this opportunity to make a few comments on the Criminal Investigation Amendment (Validation) Bill 2023. In response to Hon Dr Brian Walker's comments, I would say that violence restraining orders and family violence straining orders are imperfect, but then so is almost every law. It is very difficult to legislate against evil. It is as difficult as it is to legislate against stupidity. Neither is easy and there will always be breaches. There have been a few famous examples of that. Unless we completely control people, the sorts of outcomes the member talked about will always occur. In my view, today is not really the day to debate the effectiveness of restraining orders in the family setting or any other setting. I note the member said that was a debate for another day.

The bill before the house is a consequence of inadvertent lawmaking, if we will. Back in 2020, as members are aware, we were obviously in the COVID period when a number of bills were declared COVID bills and were treated very rapidly when they came through. I remember that one of those was the Bail Amendment Bill and that the then shadow Attorney General, Hon Michael Mischin, picked up this sort of mishap and corrected it with an amendment that was accepted by the government. I am not referring to the ongoing Mischin amendment that we know so well. In this case, he picked up that there would have been an unintended consequence. As I said in an earlier debate, one of the issues when legislation goes through quickly is that it sometimes limits the capacity of the opposition, the government and members of the backbench to pick up some of these particular issues. That is the risk that we take sometimes.

For those who seem to think that this is a relatively complex process, it is a little so. It becomes somewhat complex. Back in mid-2020—in June or July, from memory—as well as amendments to the Bail Act, we had the Family Violence Legislation Reform (COVID-19 Response) Bill. That bill made various changes, one of which was to insert into acts the unintended consequences of a breach of bail and therefore how police could operate in the circumstances of a breach of bail. Today we are addressing that and whether a police officer is validly able to arrest a person or a suspect without a warrant. As the explanatory memorandum and the second reading speech identified, a police officer can arrest a person for a serious offence. Basically, they can make an arrest if they think that the person either has committed, is about to commit or is committing a serious offence. The police can arrest

Hon Stephen Dawson; Hon Sue Ellery; Hon Dr Steve Thomas; Hon Peter Collier; Hon Wilson Tucker; Hon Dr Brian Walker

a person in the case of a non-serious offence if the person has committed a non-serious offence, the police think that the person will commit a non-serious offence or the person is in the process of committing a non-serious offence, as long as a series of other boxes are ticked in relation to this, basically. Officers must have a suspicion of other things. It is the definition of “serious offence” that we will need to correct today. The definition of “serious offence” under the powers of arrest is found at section 61(1) of the Restraining Orders Act, and that act will need to be amended to include a proper reference to the definition of “serious offence”.

The government has said both in the briefing and in the second reading speech that some 1 500 offences are attributed to 900 offenders who will be picked up in the period between the middle of 2020, when the amendment was proclaimed, and, I think, 8 January this year when, ultimately, police operations were altered so that the police would not be in breach of this legislation. One would not think that 900 offenders was an unusual number over that time. My understanding is that the Commissioner of Police issued a directive to police to make sure that they complied with the existing legislation; that is, to make sure that they had an “other cause” that would come under the definition of a “non-serious offence” when arresting someone who had breached a violence restraining order. The police needed to fulfil the requirement that currently exists for an other cause to be considered and suspected. For most of those circumstances, we would think that was a perfectly reasonable outcome. We now have a validation bill that will ensure that all those actions will include the arrest of perpetrators for potentially non-serious breaches of the Bail Act, and, potentially, without the additional show cause and requirements that would be added on top of the breach in its own right. A police officer might, for example, suspect that a perpetrator is carrying a dangerous weapon. That is what we are seeking to address today.

Of the 900 offenders who were picked up previously, we can assume that none were arrested since 8 or 9 January this year under the circumstances that might have put them at risk under the change, potentially. No-one should have been arrested for a breach of bail while under a violence restraining order when the police had not considered those extra causes and therefore they considered that they could act appropriately under those extra causes. I am assuming that the minister can confirm that nobody should have been arrested under those circumstances. I imagine that most people who were potentially arrested without those extra causes being considered prior to 8 or 9 January have proceeded through the courts. If they have proceeded through the courts, I would have thought that the court would have assessed the cases on their merits and therefore the impact of not having the power of arrest on a non-serious case would be somewhat subsumed by that fact. Therefore, the arrest itself was probably largely irrelevant to the outcome of the case. I assume that most of those cases would fit under that category. Some cases when the arrest was made before the 8 or 9 January cut-off date may be current and may not have gone through the court process. Sometimes these things drag out. That would be interesting to know. Probably more importantly is whether there is a group of people who were arrested between mid-2020 to 8 January 2023 and the arresting officer did not consider all those extra causes. Effectively, they were arrested for only the breach of the violence restraining order. Is there a subgroup of those people whom the court ultimately determined were not guilty or were not convicted of that offence? There may be none, but there may be a group of people who were arrested and, completely unknown to the officer at that stage, the arrest was potentially unlawful. I would have thought that the vast majority of the 900 people who have been caught up in this would have gone through the court process that would have justified the outcome one way or another and that if they were found guilty and convicted, that would have subsumed the process of the arrest, in my view. I have absolutely no problem with supporting the legislation in that regard.

There may be a small group of people whom the minister can potentially identify or indicate to us were ultimately acquitted of the charge and whose arrest was potentially unlawful and they were acquitted. They might not exist, but can the minister confirm that? It is theoretically possible that some of them may have been unlawfully arrested. My good friends from the hemp party might have had some of that product in their pockets and as a result of being arrested, it was discovered they had that product, which would have resulted in an alternative charge. That charge of possession, then, does not necessarily relate to the breach of the violence restraining order but is only picked up through an arrest without warrant by an officer completely unaware that all these additional things are needed to justify the arrest. There may be no known examples of that, which would leave us very much reassured that there are really no untoward outcomes from what has gone on. If there are no cases with that criteria, there is no issue with the legislation before the house; it simply progresses because courts have made that final determination. If such cases exist, the opposition is still inclined to support the bill. We are not suggesting that this should block the bill. It is only that it is worth knowing and the government might take mitigating steps, for example, if this has occurred. If it has occurred, it would be interesting to know and the government might look at that, hopefully, very small number of people who have been caught up in those circumstances and address those issues. The minister may not be able to give us the information today; this bill is going through very quickly. If the minister cannot provide the information today, could he provide it to the house at some point in the future so we know what the impact is?

Obviously, every member in the chamber takes the issue of violence very seriously. It is anathema in the community. Violence appears more and more prevalent, certainly low-level violence. Part of the issue is us losing respect for each other and the way we treat each other—the way we speak to each other and the fact that we have become much

Hon Stephen Dawson; Hon Sue Ellery; Hon Dr Steve Thomas; Hon Peter Collier; Hon Wilson Tucker; Hon Dr Brian Walker

more self-centred. That we are less cognisant of the feelings and emotions of the people around us ultimately leads us to excuse ourselves—the royal we, not any individuals in the house—for violent acts, which are the ultimate outcome of disrespect. Disrespect eventually leads to violence. We all take it very seriously and we do not want to see it in the Western Australian community. The opposition supports the intent of the government to maximise the effect of violence restraining orders. We know they are imperfect and do not always work, and we cannot always make people do the right thing, but it is really important that they are in place. It is less than ideal that we are rushing this bill through, but we would hate to think that a perpetrator could take advantage of the fact that this loophole exists, and as far as I am aware that is the reason we are putting this bill through as quickly as we can. In that, the opposition is absolutely 100 per cent in support of the government's intent.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Emergency Services) [2.53 pm] — in reply: At the outset, I thank honourable members who have made a contribution to this debate on the Criminal Investigation Amendment (Validation) Bill 2023 today: the shadow Minister for Police, Hon Peter Collier; Hon Dr Steve Thomas, Leader of the Opposition; Hon Dr Brian Walker; and Hon Wilson Tucker. I am very grateful not only for their support of the legislation before us, but also their agreement behind the chair to facilitate the quick passage of the legislation, noting it is important and deserves rapid consideration. As the Leader of the House pointed out, we do not take such action in this place very often, and it is not our intention to make decisions or bring similar legislation forward in an expedited fashion. However, in this case there was a real need to do it.

I touch on the comments of, or questions asked by, honourable members in their contributions. I am not aware of the reasons why Hon Peter Collier could not get a copy of the second reading speech. I give an undertaking to him to raise this matter with cabinet, and should we find ourselves in a similar situation in the future, a briefing note should be provided at the very least. I will take that issue on board.

Hon Peter Collier interjected.

Hon STEPHEN DAWSON: I understand the member's concern. I do not know the reason for him not getting a copy of the second reading speech, but, as I said, I will make sure the issue is raised with cabinet.

To Hon Wilson Tucker, who is away from the chamber on urgent parliamentary business, I am not aware how much drafting costs generally. However, there is a cost. Whether or not there is a monetary cost, there is certainly a cost to other ministers who have legislation they want drafted, and as a result of the need to draft this legislation, they will have been slowed down. There is no issue with being drafted; as has been pointed out, the matter was brought to our attention by police and the bill needed to be drafted swiftly. However, there is certainly a cost. In money it might be thousands of dollars, but there is a cost the government more broadly because many ministers have legislation in the queue that has been slowed down, so it is in no-one's interest to have to do this stuff.

I turn to the process. I am aware that better processes are being considered by WA Police Force and the Department of Justice, the respective ministers' offices and Parliamentary Counsel's Office to ensure that such issues do not arise in the future. This includes regular meetings with agency heads dealing with legislative reforms. It is important to remind ourselves that the genesis of this issue came from legislation considered during the COVID-19 pandemic. As honourable members who were in this place at that time remember, the COVID-19 pandemic was a period of great uncertainty and all of us had to make decisions on the run to deal with it. We certainly hope not to find ourselves in a similar situation again.

Hon Dr Brian Walker had questions about the validity and value of violence restraining orders. I think Hon Dr Steve Thomas responded to them in his contribution. VROs are only one avenue that the justice system can use to deal with violent offenders. The government has legislated for high-risk serious offenders legislation and changes to restraining orders legislation to deal with persistent family violence offenders. It would be open to the member to address his concerns with the Attorney General. Obviously, this is a police bill but the Attorney General has carriage of violence restraining orders policy more broadly. There is nothing to stop the honourable member from engaging with the Commissioner of Victims of Crime. The member would be welcome to talk to the commissioner at the statutory office about his concerns if he had issues more broadly related to the policy that he wanted to address.

I turn to Hon Dr Steve Thomas. Regarding the information he sought about whether any of the prosecutions in question had been acquitted, because this is a police bill and I have police advisers, I do not know, and I am not even sure whether that information is tracked by the Attorney General's department.

Hon Dr Steve Thomas: It may not be. If it could be provided at some other time.

Hon STEPHEN DAWSON: I will certainly take up the issue. I cannot provide it as the minister representing the Minister for Police. I will certainly raise it with the Attorney General. I am not sure that it is tracked by the justice system. I will ask the question.

It is my understanding that no-one has been arrested for a breach under a VRO after 9 January this year.

Hon Stephen Dawson; Hon Sue Ellery; Hon Dr Steve Thomas; Hon Peter Collier; Hon Wilson Tucker; Hon Dr
Brian Walker

Hon Dr Steve Thomas: No-one has been arrested on a VRO or no-one has been arrested who has been impacted by that?

Hon STEPHEN DAWSON: No-one has been impacted by the decision that we made after that date. A circular was issued on 9 January by the assistant commissioner of standards and legal portfolio on behalf of the Commissioner of Police. That essentially announced the issue to police officers. It was circulated around the police department so officers were aware of the issue from that date.

I think they were all of the concerns and comments raised by honourable members. I raised Hon Wilson Tucker's comments and I am happy to give the member a copy of what I said afterwards rather than repeat myself. I again congratulate—thank honourable members, not congratulate!

Hon Dr Steve Thomas: You can congratulate us if you like!

Hon STEPHEN DAWSON: You are all wonderful! More importantly, I thank members for the contributions they have made to the debate this afternoon, again, for their consideration of the legislation and for their work and allowing us to proceed with the legislation in a swift manner. As I said, it is important legislation and it is important we get on with it. With those comments, I commend the bill to the house.

Question put and passed.

Bill read a second time.

[Leave granted to proceed forthwith to third reading.]

Third Reading

Bill read a third time, on motion by **Hon Stephen Dawson (Minister for Emergency Services)**, and passed.