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<http://www.theaustralian.com.au/opinion/wa-domestic-violence-laws-pose-an-insidious-threat/news-story/959df15ff5103c723d19d349b070b380>



WA domestic violence laws pose an insidious threat

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The West Australian parliament is introducing new laws regarding domestic violence which pose an insidious threat to fundamental rights of citizens in this state. Current laws ensure that if a woman alleges violence has occurred she will usually be issued with a restraining order without any evidence to support that claim. These proposed new laws take this even further. If the new legislation passes through parliament it will be enough for a woman to simply claim she fears violence may occur in order to be issued with a restraining order.

Such restraining orders can be used to evict a man from his home, to deny contact with his children. These orders lack the proper application of due process and they are often granted on a “without admissions” basis which means no evidence needs to be produced. If these so-called “reforms” become law they will inevitably lead to the further undermining of basic rights to natural justice, property rights and parental rights in this state.

The WA government is taking this action despite having received explicit advice against it from the WA Law Reform Commission. In 2013 the WA Law Reform Commission was asked to consider various proposed legal changes including introducing separate domestic violence legislation and expanding the types of “emotional abuse” included in the definition of domestic violence and adding banking and financial abuse.

The final report from the Commission rejected such moves, noting they were likely to exacerbate the existing problem of overuse and abuse of violence

restraining orders which are known to be used for tactical purposes in family law litigation. The Commission's report commented that the inclusion of emotional and psychological abuse within the definition of family violence is contentious, referring to Sydney University law professor Patrick Parkinson's conclusion that the concept of economic abuse "has very little potential to be helpful and much potential for the opposite".

Yet the legislation before parliament not only includes these problematic moves but as the Attorney-General Michael Mischin stated "will be moving away from the need for establishing evidence of an act of abuse as is currently the case, towards one of behaviour to intimidate, coerce and control".

So under the new laws it will not even be necessary to demonstrate domestic violence has occurred. Action can now be taken before that point, simply on the basis that someone fears that the alleged control or intimidation could escalate into violence. That's an extraordinary shift, undermining one of the foundations of the rule of law, namely that one is innocent until proven guilty.

The West Australian Police Minister Liza Harvey has been quoted in the media as saying: "We're sending a message to the courts that we would prefer them to err on the side of the victim and err on the side of granting one of the violence restraining orders in these scenarios because they do protect women."

Of course it is extremely important to protect women who are at risk of violence and it is commendable that such strenuous efforts are finally being made to ensure victims are given every possible legal support to ensure their safety.

But many in the legal profession and elsewhere take issue with the notion that laws should be tilted to favour victims without any consideration for traditional legal protections to ensure fair treatment for the alleged perpetrators. These protections are already being severely undermined in this state. The WA police have a deeply problematic pro-arrest policy for domestic violence. "Arrest is the preferred option," according to the relevant police manual (COPS Manual, DV 1.1.4.1.), even in situations where there is no evidence that violence has taken place. The Chief Justice of Western Australia Wayne Martin told the WA Law Reform Commission that such a presumption of arrest "will almost inevitably produce injustice and hardship in some cases".

Indeed many such cases have ended up in our courts where allegations of violence have ultimately been disproved years after the alleged offender found himself arrested, evicted from his home, suffering immense damage to his personal and professional reputation, and facing huge court costs to defend himself.

The police commissioner Karl O'Callaghan has stated these reforms are necessary because the number of reported incidents of family violence in WA has "risen dramatically in recent years." Incidents of violence have substantially increased but this is largely due the definition of domestic violence being expanded in 2004 to include behaviour that is 'emotionally abusive', 'could intimidate a person', etc. That year WA police recorded 17,000 incidents of violence, but by 2012 this had almost tripled (to 45,000).

Clearly the government believes these moves will have popular support particularly from women voters. But judging from the submissions received by the Commission there are many in our community, including many women, who are already uncomfortable with gender politics being used to undermine essential legal rights. This is certainly a step too far.

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