

1. Burden of Proof.

The question on notice came from Senator Brandis and concerned my assertion that intervention orders require a *criminal* or *civil* burden of proof.

We have suggested that a criminal burden of proof is preferable for Control orders, under division 104 of the *Anti-Terrorism Bill (No. 2) 2005* ('the Bill'), should they be extended beyond the first year of operation.

I was mistaken to suggest that intervention and similar orders operate on the criminal standard of proof.

In Australia, intervention and apprehended violence orders operate on the civil standard of proof. For example, the Victorian *Crimes (Family Violence) Act 1987* and New South Wales' *Crimes Act 1900* employ the language 'on the balance of probabilities'. It should be noted however, that the burden of proof and use of evidence in these matters is informed, in part, by the unique nature of the proceedings, typically involving violent and abusive domestic relationships where prolonged and hostile court proceedings are undesirable.

I agree with Senator Brandis that control orders in division 104 of the Bill share the same philosophical basis as intervention and apprehended violence orders.

However, we remain concerned that the possibility of the imposition, for ten successive years until the sunset provision sets in, of control orders that may well go beyond those envisaged under the existing State and Territory intervention and apprehended violence orders.

Whilst we acknowledge that the majority of the prohibitions imposed by section 104.5(3) are not especially onerous or different from those that can now be imposed by the states, there are prohibitions that go beyond what is currently imposed by the States on the civil burden of proof.

We believe that there remains an argument for the more onerous prohibitions to be imposed after the initial 12-month period, a criminal burden of proof be required. We would note especially that section 104.5(3)(c) can require a person to 'remain at specified premises between specified times each day, or on specified days' and thus goes beyond the prohibitions that are imposed currently under intervention and apprehended violence orders.