

ADMINISTRATION AMENDMENT BILL 2021

Second Reading

Resumed from an earlier stage of the sitting.

MRS J.M.C. STOJKOVSKI (Kingsley — Parliamentary Secretary) [2.59 pm]: Before the luncheon break, I was about to wrap up my contribution to the Administration Amendment Bill. I was relaying to the Attorney General some of the comments made by a couple of people in the legal fraternity, who will have to implement this legislation once it is through. They were saying that the bill provides some practical and legitimate means by which partners of recently deceased persons will receive a just portion of the deceased estate. This is particularly pertinent to spouses who are not the breadwinners. I was also highlighting the fact that recently we heard from my colleague the Minister for Housing that the increasing demographic on our social housing list is women between the ages of 55 and 60. This type of situation—that is, women not getting a just proportion of their deceased spouse's estate—can contribute to that increasing demographic. This bill is particularly important for women who are not the breadwinners, or full-time workers, to ensure they are entitled to receive an adequate amount of security at a time of significant bereavement. When someone passes away, there is a fair amount of distress and grief associated with that time. To be able to provide a little financial assistance or relief during that situation is very important. I commend the Attorney General on bringing this piece of legislation to the house and the fact that this will provide those people with a little relief.

Some comments were made about clause 5 of the bill and how it shows the ongoing commitment of the Western Australian government to accommodate economic norms by allowing for inflation and increasing the thresholds, which will prevent the problems we have seen for the last 39 years. This feeds back to the comments I made earlier about the Attorney General continually striving to contemporise legislation to ensure that we are able to be a bit more flexible and nimble in our legislative reforms, so that we are not constantly having to come back to amend bills when they can be managed via regulations or reviews.

Given that the previous limitations were set in 1982, the amendments are reflective of the current economic status and will align Western Australia with other Australian jurisdictions and other common law countries, such as Ireland. I, and the lawyers I spoke to, have an Irish background. The lawyers also wanted to point out that these laws are indicative of the Labor government's genuine sympathy for partners and children of recently deceased persons, allowing them the opportunity to persevere economically in such tragic times. It furthers the work that we have done in this space, particularly around payments related to people who were killed at work.

I thank the Attorney General for bringing this bill to the house back in 2018. On a personal level, it was the thing that got my family going and made us do our wills. It also provided an opportunity for my electorate to engage with this important issue through our wills workshop that was hosted by Vibe Legal. It is also just very good legislation. I commend the bill to the house.

DR J. KRISHNAN (Riverton) [3.03 pm]: I rise to commend to the house the Administration Amendment Bill 2021. I will relay a personal story from 2013. My mother-in-law passed away after a fungal infection in her lungs. My father-in-law and brother-in-law owned a small piece of property together. Because there was no will, the legal advice to my father-in-law, brother-in-law and wife was that as half the property belonged to my father-in-law, the other half belonged to the three others. It was a very messy situation to divide the property. The simple solution was to give it to my brother-in-law, but we had to go through a lot of legal paperwork to get that done, which cost money and time.

This bill is about making sure the statutory legacy payment matches the costs of current-day living. Imagine if someone was not given a pay rise for 39 years. That is how long it has been since the act was revised. The figures are not nearly enough. This bill relates to a surviving spousal partner; sometimes the parents survive when someone dies intestate.

This bill was introduced in 2018 and passed the Legislative Assembly on 3 April 2019. Unfortunately, it did not go through the upper house in the last Parliament and we hope we have sufficient time this time to get it through.

The bill also provides a formula for future calculations. What is the formula based on? It is based on a denominator, which is the average weekly total earnings of an adult working full-time in Australia. Based on that number as a denominator, a figure is calculated that is way, way higher than what it was 39 years ago. The bill will also allow the Attorney General to review this amendment once every two years. Apart from that, it will allow the Attorney General to review in between these regular review times, if he has to amend the statutory legacy payment amount. For a surviving partner to be eligible to receive at least a portion of the estate—the children and blood-line relatives as well—in 1982, the statutory amount without children was \$75 000, and with children it was \$50 000. The proposal now is \$472 000 with children, and \$705 000 without children. When the bill is enacted, that will make a significant difference. It will create security for those people who have lost a dear one. They will not have to deal

with the legal and financial mess involved in sorting things out, and will be provided with decent financial support to live the rest of their life.

I have a few examples. When the sole owner of a property died, his surviving spouse had to access the property, but to do that this particular partner had to go through a deed of family agreement, which meant undergoing a legal process with his or her own children. The last thing someone would want to do when they have lost their partner is negotiate with their own kids to access the home. In another example, two people equally owned a house. After one died, the surviving partner took on the whole mortgage but did not have ownership of the property. This is, again, not fair. The third story relates to two minors. Trustees have to be employed to take care of the expenses of minor children until they become adults and can handle the finances. What does it mean for a single parent who has lost a partner? Does it mean more expenses, more responsibilities? This bill will help circumvent all of that. Sometimes the beneficiary may be a kid. There was a story of a drug addicted kid who abused their parents but was still entitled to a share of the estate, causing more legal problems.

In conclusion, this bill is about updating the statutory legacy amounts. The revised amounts will be in the *Government Gazette*. As discussed before, the nominated amount will be the average weekly total earnings for a full-time adult employee in Australia. The review will be every two years. I commend the bill to the house and I hope every member of the house supports it. Thank you for the opportunity to speak, Mr Deputy Speaker.

MS C.M. ROWE (Belmont) [3.12 pm]: I, too, am pleased to rise today to make a contribution to the Administration Amendment Bill 2021. I note that this is a very short bill, nonetheless it is a very important bill as it deals with statutory legacy amounts payable on intestacy. As other members noted, in essence, the bill will change and update the prescribed amount payable to a surviving spouse or de facto partner when a person dies intestate; that is, when they die without a will or, indeed, without a valid will. Before coming to this place I was a financial planner and would often speak to clients about the necessity to have a will in place. This is something I feel particularly passionate about. I have had a will in place for many, many years because I saw firsthand how detrimental it can be when people do not have a will in place. There are a variety of reasons people choose not to have a will. The member for Kingsley outlined a number of those clearly. It might be perceived, or in fact a reality, that some people do not have the requisite assets to necessitate a will. However, some people—I think it is 16 per cent—just do not want to face their own mortality. Whether people feel they have assets or not, it is important to have a will. As the member for Kingsley outlined, often people do not consider things such as superannuation in their day-to-day life. As a financial planner, I know that superannuation can have significant life insurance as a component.

It is really important that people do have a will. Incredible stress is caused when somebody loses a spouse or a de facto partner. Added to the stress that their loved one has just died, the absence of a will compounds that process of grieving, and can be even more distressing for them because they often have to go through extensive legal costs. Also, winding up the assets and distributing the estate can be incredibly time-consuming. That can also exacerbate the financial pressure on the remaining spouse. I want to point out that something I noticed through my previous career as a financial planner is that often, because of the difference in life expectancy between women and men—from an actuarial point of view, not just an anecdotal point of view—it is often the woman who is the surviving spouse. Another thing I was sad to note over the course of my career as a financial planner, and something that is well documented, is the huge discrepancy between the superannuation that men have versus what women have. Often women will be grieving the loss of a spouse or partner and they will not necessarily have other assets to fall back on because they have potentially taken time out from work to raise children and be a caregiver. They find themselves in the awful situation of not having sufficient assets on their own to continue to support their lifestyle and continue to pay bills and so on. They lose their spouse, who dies without a will, and they are in a really difficult situation. I was particularly moved to speak on this bill because I feel as though the amendments that pertain specifically to the amounts payable to a spouse and a de facto under the legislation will have a beneficial impact largely on women, particularly older women who, as I said, through my own experience—but it is also well documented—already do not have enough in their superannuation to support them throughout their retirement years. I was very pleased to speak on this bill.

That is a nice segue into acknowledging the work of the Attorney General to bring this small, technical but very important bill to this place. For whatever reason, many people do not have a will. One of the key elements of this bill is to make sure that people do not continue to be disadvantaged by the current level of statutory legacy amounts that are prescribed under the act. The bill looks to dramatically increase those statutory amounts that are payable when somebody dies intestate. As other members indicated, the amounts that are prescribed under the act have not been amended in nearly 40 years, so they do not reflect the current financial situation and the reality in which we find ourselves in Western Australia, where house prices are particularly out of reach right now for many people. It is important that that is addressed in the legislation by increasing the amounts. At the moment, it is only \$50 000 when a person dies intestate and the deceased—the person who has died without a current will—has children or any other lineal descendants. It goes up to only \$75 000 when the person dies and there are no children or lineal descendants.

They are quite small amounts. Most of us here would agree that that will not be sufficient if someone needed to buy out a property that they were living in with their spouse, who is now deceased. It is well overdue that we are looking at that because these amounts result in serious hardships for the spouse of the deceased. It can really thrust the grieving spouse into a situation in which suddenly their standard of living is impacted. That might not mean anything elaborate; it just means that they will not be able to maintain their current standard of living. The current rates are completely inadequate.

I will touch on another element but will not go into too much detail. The government has also increased the parental statutory legacy amounts from \$6 000 to \$56 500.

I would like to go back to focusing on the amount for de facto partners and spouses of people who die intestate. We are increasing the amount from \$50 000 to \$472 000 in situations in which the person who has died intestate leaves a child. When there is no child and a person dies without what is called “issue” in legal terms—that is, a child or legal descendant—the amount will increase from \$75 000 to \$705 000.

Another really important factor, in my view, is that there is now a clause in the bill that provides a formula for calculating the amount of the statutory legacies for the future. This is important because clearly this legislation has not been looked at for 39 years. We can see that it has not kept up with inflation and it is not reflective of current economic circumstances. Including a formula will ensure that there will not be a huge lag between what is an acceptable and appropriate amount now and the amount into the future. The formula will use the average weekly total earnings of full-time adult employees in Australia as published by the Australian Statistician in November 2020 as the denominator. Importantly, as the bill has been amended, there is now a requirement that every two years the relevant minister, the Attorney General, must review the economic factors and the economic climate of the day to see whether it is necessary to apply the formula that I have just mentioned to adjust the amount to make sure that it remains appropriate and keeps up with inflation and the cost of living. That will be reviewed in Parliament every two years. That does not mean that the formula will necessarily be applied, but I think that is a really important element as well. Introducing a statutory formula will ensure that the beneficiaries of someone who dies intestate will still receive the benefit of the deceased person’s estate.

This bill recognises that, essentially, the surviving partner of a deceased person should be entitled to a portion of the estate. As such, a certain sum, being the statutory legacy, is passed to them, and any children or other blood-line relatives of the deceased share in the balance of the deceased person’s estate. It is clear that the amounts prescribed under current legislation—\$50 000 and \$75 000—really have not kept up with the pace of inflation or retained the purchasing power of the amount prescribed when the legislation was originally established all those years ago. It should be noted that when someone dies intestate and they owned a home jointly as joint tenants with their spouse or de facto, the deceased person’s share of the family home will automatically transfer across to the spouse or de facto and is not included in the above amounts. However, the increased statutory legacy payment amounts will benefit a spouse or de facto if they owned the home as tenants in common with the deceased person, because there will now be provision for them to be able to buy out the deceased person’s share or, alternatively, buy their own property using the legacy payment. Under the current legislation, if the family home were in the sole name of the deceased person, for example, the surviving spouse may have to enter into a deed of family arrangement with the remaining children just to retain and stay in their home. Ultimately, this results in unnecessary and excessive legal costs and increased stress for the person who is grieving, and they could end up grossly out of pocket. This bill will address that situation.

Another example of surviving partners being detrimentally impacted by the legacy amounts under the current legislation is the situation in which the family home is owned as tenants in common in equal shares. The deceased person’s share forms part of their estate; the surviving partner may not be entitled to it and it may go to the deceased person’s children. If there is a significant mortgage on the house in joint names, which is very common, the surviving partner becomes solely responsible for the debt on that house, despite the fact that they do not now own the whole house. This is clearly an unintended consequence of the existing legislation; nonetheless, it is not equitable and it is certainly not fair. I think that if we asked any member of the public, they would recognise that that is not fair.

The changes that we are putting forward in this bill are very much overdue, as I have mentioned. They will mean that grieving spouses are not left in financial hardship if their partner dies without a will. The changes proposed in this bill will mean a more equitable outcome for the spouse or de facto of the person who has died intestate. As I said at the beginning of my contribution, I think that because so many people in our community do not have a will, unfortunately, this is something that impacts a lot of people. As much as I would like to see everybody make a will, go and get a will kit from the post office or whatever, it is probably not going to change overnight. With that in mind, I think it is fantastic that we are making these changes so that when someone dies intestate, their surviving partners are not detrimentally impacted.

I again take the opportunity to congratulate the Attorney General, and I commend the bill to the house.

MR J.R. QUIGLEY (Butler — Attorney General) [3.26 pm] — in reply: I thank all members for their contributions to debate on the Administration Amendment Bill 2021. There has been emphasis on the importance of this wee little bill that will have a disproportionately beneficial impact upon surviving spouses and children of a deceased person. When I say “disproportionately”, I mean that the size of this bill is small, but the beneficial impact to surviving spouses and children will be large. As members have pointed out, the reserved amount will increase dramatically. The statutory legacy amounts had not been increased in 40 years and were as low as \$50 000 and \$75 000 depending upon whether the deceased left a spouse. That will now increase to \$472 000 and \$705 000 respectively. We can see the huge uplift in this.

As the member for Central Wheatbelt pointed out, this bill passed through the Assembly in 2018 and then sat in the other place whilst other matters were considered, and then Parliament prorogued. This must have given a lot of people frustration. However, I point out that I notice that under the previous Liberal government, there had been nine drafts of the bill prepared, but agreement could never be reached between the government members on how the statutory amount would be calculated, whether it was the median house price or the consumer price index et cetera, and these sorts of arguments bogged it down. This bill has been a long while in the making. A working group has worked on this very necessary and long-awaited reform, and I thank all those who participated in the working group for both their efforts in the working group and their patience in sticking with the task until we have been able to deliver this bill to the chamber.

Having said that there were nine drafts of this bill in the previous government, we consulted on our draft and I want to thank the opposition on this occasion for its contribution, not just to this debate, but during the briefings on this bill. I also thank the opposition for its suggestion that we build into the bill a review of the statutory amount. That came from the briefings. I thank the opposition for its suggestion and agreement to support both the bill and the review of the statutory amount. Because that will require an amendment to the bill as it was second read, we will need to go into consideration in detail so that I can move the necessary amendment agreed with the opposition prior to today. When I say “agreed”, it was suggested by the opposition during the briefings when the shadow Attorney General asked why we did not include a statutory review period.

Ms M.J. Davies: Just so that we are clear, we have not seen the amendment yet.

Mr J.R. QUIGLEY: Is it not on the notice paper?

Ms M.J. Davies: It was not given to us before it was put on the notice paper.

Mr J.R. QUIGLEY: It is on the notice paper.

Ms M.J. Davies: We did not see it before it came onto the notice paper.

Mr J.R. QUIGLEY: I thank members for their contributions to the second reading debate. I also thank the opposition for its suggestion that there be a review of the statutory amount.

Question put and passed.

Bill read a second time.

[Leave denied to proceed forthwith to third reading.]

Consideration in Detail

Clauses 1 to 4 put and passed.

Clause 5: Section 14A inserted —

Mr J.R. QUIGLEY: I move —

Page 7, after line 9 — To insert —

14B. Minister must review sums for specified items

(1) In this section —

relevant sums means —

(a) the original sum for each specified item (as those terms are defined in section 14A(1));
or

(b) if an order under section 14A(2) is in effect — the sums declared by that order.

(2) The Minister must review the relevant sums and decide whether or not it is appropriate to make an order under section 14A(2) —

(a) on or before 30 June 2023; and

(b) on or before 30 June in every 2nd year after that.

Extract from *Hansard*

[ASSEMBLY — Thursday, 19 August 2021]

p3164c-3168a

Mrs Jessica Stojkovski; Dr Jags Krishnan; Ms Cassandra Rowe; Mr John Quigley

- (3) As soon as practicable after completing the review, the Minister must —
 - (a) prepare a report based on the review; and
 - (b) cause the report to be laid before each House of Parliament.
- (4) Subsection (2) does not limit the times at which the Minister may make an order under section 14A(2).

Amendment put and passed.

Clause, as amended, put and passed.

Title put and passed.