FAMILY COURT AMENDMENT BILL 2022

Second Reading

Resumed from 6 April.

DR J. KRISHNAN (Riverton) [4.29 pm]: I rise today in support of the Family Court Amendment Bill 2022. Often, I get asked this question: why am I in the Labor Party?

Mr P.J. Rundle: Why are you in the Labor Party?

Dr J. KRISHNAN: I will answer you now, member for Roe. I strongly believe in the values of equality, opportunity, community and responsibility. This bill is about equality, and that is close to my heart.

In my inaugural speech here in this house, I spoke about the contribution of partners and families in the war. When men were at war, the women here, who were uncertain whether their husbands would return home and uncertain about how they were living, still contributed 80 000 socks in wartime for their husbands who were struggling in a cold environment. That contribution should never be forgotten. This bill is about equality in a relationship in which both partners have contributed to building assets, going through hardship, putting food on the table and giving their best to the family. If those partners unfortunately separate, there must be fairness in how things are divided. The Family Court Amendment Bill 2022 will amend the Family Court Act 1997 to facilitate that fairness.

In 1992, superannuation became compulsory. That has resulted in many families having superannuation as their main asset. On many occasions, superannuation is their only asset. Sometimes, when it comes to dividing the assets due to separation in a marriage or de facto relationship, the only asset left is the superannuation savings. People tend to keep that as a long-term saving, and sometimes it is their only saving. In 2001, the commonwealth Parliament amended the Family Law Act 1975. What did this amendment mean? It meant that a court that is considering the division of financial assets during a separation process needs to include superannuation savings as an asset as part of the deal. However, that amendment was restricted to parties to the breakdown of a marriage and did not include de facto relationships.

The Family Court Act 1997 of WA is amended periodically. In that act, there is no material difference between a marriage and a de facto relationship; the entitlements under that legislation are the same. However, unfortunately, the state government has no control over superannuation, which is controlled by the commonwealth, so the Family Court in Western Australia cannot implement a fair share or a fair deal with the amendment that was brought by the commonwealth Parliament. Eventually, in 2006, the WA Parliament passed the Commonwealth Powers (De Facto Relationships) Act 2006 to enable it to refer legislative powers to the commonwealth Parliament, and for the commonwealth Parliament to give effect to those referrals. The legislation was intended to enable the state-managed Family Court to make decisions to give a fair share of superannuation when dividing assets during a separation process. Initially, the commonwealth government refused to accept the WA legislative referral because it was too narrow. The reason it was too narrow was that in 1975, when Western Australia established its own Family Court under section 41 of the Family Law Act 1975, it was the only state to have its own Family Court. It took years of advocacy and particularly strong advocacy by our Attorney General, Hon John Quigley, who took up the matter with then commonwealth Attorney-General, Christian Porter. Eventually, in 2018, the referral was accepted and the amendment was made allowing the WA Family Court to take superannuation into consideration. It is only fair that when a commonwealth law is passed, we are able to implement it here in WA. To have those powers, the referral had to be accepted, and we were fortunate that it was eventually accepted in 2018.

In summary, two things will be affected by this amendment. One is superannuation. This legislation will amend the law to allow the Family Court to take superannuation into account as part of the property when it comes to the division or separation process or allocation. This process is sometimes so complex that the family is already struggling to come to a decision, negotiations are going on, the Family Court is giving orders, and, in spite of this amendment, the Family Court still faces challenges whereby it is governed by the federal laws of superannuation when deciding how to divide that asset. To go back to the basics, if one person in the relationship is a member of a superannuation fund, and the other person is not a member but has directly or indirectly on a daily or regular basis contributed towards building the wealth in that superannuation, that person deserves a fair share when it comes to the point of separation. That is what this legislation is about.

The second part of this amendment bill refers to bankruptcy. Sometimes, bankruptcy can occur for one partner, who is part of the title of a property and is being dragged into a controversy. That may not be the responsibility of the other partner, who has worked hard to contribute towards the wealth. That can result in the non-bankrupt partner, who was not part of the title, not getting any share of the property. The other complexity is that the Family Court affairs are being dealt with by the WA Family Court, and the bankruptcy as such is dealt with by the federal courts, which makes things even more complex. This amendment will allow the Family Court to also deal with the bankruptcy

issue as part of the family dispute or Family Court settlement issues, so that both issues are dealt with in the same place, taking into consideration the partner who has not been declared bankrupt and who has kids to take care of after the settlement, so that they get a fair share for their contribution to building the wealth. This is about equality, for the points mentioned, allowing superannuation to be shared equally and taking bankruptcy into consideration. In a situation in which one person was not involved in the bankruptcy or is a non-bankrupt partner, this legislation will enable them to get a fair share of the deal, rather than having another court deal with it and thereby being deprived of the benefits. I commend this bill to the house, and I thank you for the opportunity, Mr Acting Speaker.

MR M. HUGHES (Kalamunda) [4.39 pm]: I rise to make a contribution to the debate on the Family Court Amendment Bill 2022. This bill will amend the Western Australian Family Court Act 1997 to facilitate the exercise of federal jurisdiction that has been vested in the Family Court of Western Australia by the commonwealth Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Act 2020. The member for Riverton has gone through some of the history behind this development. As the law stands, when dealing with financial matters in the Family Court of Western Australia, the nature of superannuation and how it is treated is different depending upon whether one's partner and oneself are married or in a de facto relationship. The bill effectively addresses this anomaly and, as the member for Riverton said, it has been in discussion since at least 2006. Unlike the rest of the commonwealth, under the WA Family Court Act 1997, superannuation entitlements of separating de facto couples are considered a financial resource and are not able to be subject to a superannuation splitting order unless and until their superannuation is vested in them. Effectively, this means that each party to a de facto relationship must retain their full superannuation entitlements. Again, although in the rest of Australia separating de facto couples may execute a superannuation split to adjust their superannuation entitlements in the same way they may divide the rest of their assets pool, this is not the case for de facto couples in Western Australia.

What is the problem with the current system? It has been criticised as capable of being abused. A party may divert or seek to divert assets or income into their superannuation fund during the relationship or after separation in order to protect it from being divided during settlement. Clearly, this position is inequitable. Why? It is because in Western Australia, superannuation for de facto couples is considered a financial resource of the person whose name it is in, rather than a joint asset of the de facto relationship. This has increasingly led to inequitable outcomes for many de facto couples in Western Australia when the superannuation, as we have heard, makes up the majority or at least a large portion of the asset pool. I can give members an example. If the asset pool is made up primarily of superannuation in one of the party's names, let us say $200 000, and all the other assets have a combined value of $100 000, that is 33 per cent. Although the court may allocate all the combined assets to the party whose name the superannuation is not in, the party whose name the superannuation is in would still receive $200 000. That is 66 per cent of the asset pool by retaining all the superannuation, because in Western Australia it is not currently capable of being split. This inequitable result gets further compounded in circumstances in which the party who only received the $100 000—that is, 30 per cent of the asset pool—is in fact at law entitled to more than 50 per cent. Why? It is because of their future needs requirements under section 75(2) of the Family Law Act 1975; for instance, when they have the majority care of children of the relationship who are under the age of 18 or have been the major contributor of the homemaker and parenting contributions, while their ex-partner was able to advance their career and now has a greater earning capacity because of that. As we have heard, superannuation is usually a party's second largest asset beyond the home. The inability to order a superannuation split for de facto couples in Western Australia can lead demonstrably to injustices for many people who are separating. The inability to obtain a super splitting order in Western Australia also sometimes leads to a party who resides in Western Australia to have their property matter decided in another state so that a superannuation split can be made. This is not always appropriate, for very obvious reasons.

Statistics reveal that up to 33 per cent of all Australian marriages are expected to end in divorce, and countless more relationships will go by the wayside. Although I do not have the figure at hand for de facto couples, we might reasonably assume that more or less a similar rate applies in those types of relationship. Such a reform, as outlined in the proposed legislation—the bill under discussion—would potentially benefit a large number of people, as over 200 000 Western Australians declared their relationships as de facto in the 2016 census. Statistics also indicate that, on average, women retire with only around half the amount of superannuation as men. Changes in the law should go some way towards addressing this gender pay gap, providing greater flexibility and an additional option for separating de facto couples in Western Australia in order to resolve their financial matters in the Family Court. As the member for Riverton indicated, Western Australians in de facto relationships have waited 16 years for this reform and I, too, would like to congratulate the Attorney General for bringing this about. He is a reforming Attorney, prepared to methodically tackle some of these hard chestnuts, unlike the previous Attorney General under the Barnett Liberal government—but we will not go into that. Correcting this anomalous situation whereby separating de facto couples in our state fall outside the superannuation splitting arrangements available to separating married couples

will be a relatively small, nevertheless important, step in addressing the inequitable financial position many women find themselves in.

I would like to stray a little further than perhaps the details of the bill to remind members present that this year's International Women's Day theme invited each of us, not just women, but men and women in this chamber and around the globe, to think of a world free from inequality, bias and discrimination. Although deep-rooted inequality is experienced by women worldwide, it has drawn particular attention to the plight of many older Australian women. I would like to refer members to the latest gender pay gap report by the Australian Workplace Gender Equality Agency, published in February 2022. It found that women typically earn $7.72 for every $10 that a man earns. Women also typically earn $25 792 less, to be precise, than men every year, with men twice as likely as women to be in the top earnings quartile, earning more than $120 000 a year, while women are 50 per cent more likely than men to be in the bottom quartile, earning $60 000 or less. Over 85 per cent of Australian employers still pay men more than women on average. It is an astounding figure. Current data also demonstrates that, as I mentioned, women retire with substantially less super than their male counterparts, approximately 24 per cent less; 34 per cent of single Australian women over the age of 60 live in income poverty; and 59 per cent of those accessing homeless services are women. Older women are most at risk of poverty and are more likely to experience homelessness at retirement.

What underpins these statistics? The answer lies in cumulative inequality. Women's cumulative inequality is upheld by social systems that create inequality over a person's entire lifetime. It is not just at the time that they in fact are earning, but before that, in terms of the choices available to young women and girls, and the kinds of occupational stereotypes that still prevail within our community. A good example is that of unpaid work. Although we may not value unpaid work from a monetary perspective, it is still a form of work that satisfies an important need. More women undertake unpaid domestic or family caring work, taking on more of life's mental load or emotional unpaid labour. Research from the Australian Human Rights Commission has found that women spend twice as many hours each day than men doing unpaid work, like raising children or offering support for an elderly parent or unwell loved one. These dynamics form part of the social structure that maintains the economic insecurity of women. We continue to accept, and even expect, women to take on this role. Noticeably, it is no coincidence that it is women who perform low-paid and part-time work. During the matter of public interest debate, the Minister for Water described the circumstances of a woman who had to hold down two jobs to keep her head above water. I cannot remember the woman's name, but he did. That is just one example.

As I have said, we continue to expect women to take on the role of carer. Australian women form 67 per cent of part-time workers and earn 14.1 per cent less than men. Even typically feminised industries, such as health care, social services and education, have persistent gender pay gaps in favour of men. If we include in the equation unequal pay, the promotion gap and superannuation, the result is gendered poverty. The experiences of women, which include career disruptions, unpaid work and caring responsibilities, compound in a bizarre opposite way with what the superannuation system seeks to achieve over the lifetime of many, many women, resulting in poverty in retirement. This shows us that our current social and economic structures lead to and maintain inequality. More importantly, we ought to acknowledge and appreciate that that inequality is fundamentally not the result of individual choices and actions but is multifaceted and structurally generated. Elizabeth Broderick, the former Australian Sex Discrimination Commissioner, commented that "there is no one single point where the gap begins and ends". Understanding the accumulation of inequality helps us to understand how social and economic structures fail women on a systemic basis. Although we may not have all the answers to solve this problem, what we can do, with the election of a progressive national Labor government, and this progressive state government, is advocate for fundamental reform.

Although women make up close to 50 per cent of the workforce, only one-third occupy key management positions across all industries. Even fewer women are represented as chief executive officers and chairs of boards. The longstanding espoused view that women do not aspire to the higher ranks of organisations has contributed to this view and has to be called out for what it is: the defence and perpetuation of attitudes and biases that mitigate against equality.

Dr Bomikazi Zeka, an assistant professor in finance and financial planning at the University of Canberra, puts it in this way —

> Inclusive policies that acknowledge and consider the career patterns of women is a central part of correcting gender inequality. More so, policy should incorporate and demonstrate *how* the cumulative disadvantage of women is considered in the design of gender-neutral policies. Because if we can identify, acknowledge and address how and why women are slipping through the cracks, then we can develop policies that addresses the gender income inequality gap.

She calls for a streamlining of what would otherwise be independent policy areas of employment, health care, social protection, housing support and pensions. She argues that this would encourage a minimum universal social

protection threshold for all women throughout their life cycle and address the issues that are central to the eradication of poverty, because poverty is not just a matter of monetary deprivation; it permeates every aspect of a person's life.

Last year, the World Economic Forum released its annual report of its global gender gap index. The 2021 gender gap index measured the gender-based gaps of 156 countries among four key dimensions—namely, economic participation and opportunity, educational attainment, health and survival, and political empowerment—and tracks progress toward closing those gaps. In 2006, when the index was commenced, which interestingly was when this whole debate about reforming the Family Law Act took place, Australia ranked fifteenth. By 2013, Australia had dropped to twenty-fourth place. In the intervening eight years, Australia fell another 26 places and is now ranked fiftieth, putting it behind the vast majority of comparable Organisation for Economic Cooperation and Development countries.

It may come as a surprise to some members present that Australia was the first country in the world to legislate a Sex Discrimination Act. That was driven by the late Susan Ryan in the Hawke government. At the same time, Australia pioneered gender-responsive budgeting processes and began publishing an annual women's budget statement through the federal Office for Women. In the 15 years since the global gender gap index was first launched, Australia's commitment to achieving gender equality has been diminished, with the federal architecture that measured and promoted gender equality in Australia effectively having been dismantled.

[Member's time extended.]

Mr M. HUGHES: In 2006, the federal government stopped funding the Australian Bureau of Statistics to undertake the Time Use Survey, which measured the hours of paid and unpaid labour performed by men and women in Australia. In 2013, the women's budget statement was abandoned by the Abbott government, and the Office of Women was drastically downsized. Australia once led the world in the development of policies and legislation to promote gender equality. Australia is now far behind. Australia is now one of the few developed nations that does not actively set targets for gender equality and measure progress towards nationally agreed goals. As it stands, there is no escaping the fact that Australia is a society in which women continue to be actively marginalised and held back. The most telling statistic from the 2021 global gender gap index is that Australia ranks equal first for educational attainment among women and girls but is seventieth for economic participation and opportunity. How bad is that! Australian women are world leaders in terms of their skills and abilities but are not being given the opportunities to realise their full potential outside of the home.

In the workplace and in public life, women are at significant and entrenched disadvantage compared with men. I am not talking about the professional women whom I encounter. I am talking about the limitations placed upon all young girls and women in reaching their full potential. It is a staggering statistic that Australia is first for educational attainment among women and girls, but seventieth for economic participation and opportunity for women. Australia now ranks fifty-fourth on political empowerment, well behind most developed nations, and at ninety-ninth on women's health and survival, which includes measures of violence and harassment, so we are firmly at the bottom half of countries on that measure.

Per Capita has published a landmark report, *Measure for measure: Gender equality in Australia*, that shows the causes of women's economic, social and material disadvantage in Australia begin shortly after birth and compound across the duration of a girl's and woman's life. Australian women begin to fall behind their male peers as soon as they leave school. They earn less; take on more unpaid domestic work; work fewer hours; interrupt their careers to care for others; work in underpaid feminised industries; are overlooked for promotions; encounter systemic ignorance of their health needs; are vastly unrepresented in the media and on the sports field; work twice as hard to achieve positions of leadership in business; struggle to break through the ranks of political power, particularly in the Liberal Party; experience harassment, abuse and violence both in the home and in the workplace; and, ultimately, retire in their old age into much greater levels of poverty than men do.

This failure of national policy must be brought to an end. We need to break significant gender inequality. We need to repair this gap. We need to do something to overcome it. This was a bit of stray from the bill before us, but it underpins the small step that changes to our Family Court Act will bring about in enabling women in de facto relationships to have a fair share of the proceeds of their relationship when it comes to an end and is dissolved. In the end, it is a much bigger issue that we undertake significant reform to the structural imbalances that give rise to gender inequality. I commend the bill to the house.

MS M.J. HAMMAT (Mirrabooka) [5.00 pm]: I am delighted to rise and have the opportunity to speak on the Family Court Amendment Bill 2022. Before I come to my comments, I want to congratulate the Attorney General for his work on the bill. This is a very important piece of legislation that, as others have outlined before me, has been some time in the making. These laws will allow separating de facto couples to split their superannuation. More than 200 000 Western Australians are in de facto relationships, and this bill will allow for there to be a fair division of assets in the event that that relationship breaks down. This reform has been pursued for some time. Once passed

in this Parliament, this legislation will bring WA into line with the rest of Australia in providing de facto relationships the same ability that currently exists in marriages to split superannuation.

As it currently stands, the Family Court of Western Australia is unable to make an order to split superannuation assets, but it can do so for married couples. In other parts of Australia, superannuation can be split between married and de facto couples. Therefore, this bill is a really important piece of legislation that will ensure that de facto couples receive a fair division of assets and the same rights as married couples as exists elsewhere in Australia. This is an important issue because superannuation is often among one of the biggest assets in a marriage after the family home—sometimes, it is even a more valuable asset than the family home. Over the time of a marriage, superannuation often becomes a very significant asset, and the fact that it has not been able to be included in the division of property has disproportionately disadvantaged women.

I will talk a little more about women and superannuation. Women retire with substantially less superannuation than men. Often, during a marriage, particularly if children are involved, it is the woman who will have reduced her work hours or perhaps stopped working altogether and therefore stopped the accumulation of their own superannuation as part of that marriage. Consequently, this bill is a significant development. This issue has required the commonwealth Parliament to legislate. Other members have outlined before me that the state government first asked the commonwealth government to attend to this matter in 2006, so this legislation has been some time coming. As I said, this legislation is a very important development because it goes to the question of fairness, particularly at the point of separation in de facto relationships.

I wanted to make a few general comments about superannuation—how could one not? It is such an excellent policy initiative and a very significant achievement of the Hawke and Keating Labor governments. We in the Labor family are incredibly proud of this excellent policy initiative, which introduced, for all working Australians, universal superannuation. It is hard to recall that once upon a time people did not have superannuation paid on their behalf as part of their employment benefits. For so many years, it was something that only the most privileged in the workforce received from their employers. Saving for retirement was left to individuals to manage, most of whom did not, so their only option was to rely on an age pension to continue to support their lifestyle once they had retired.

It is a very simple concept but visionary in recognising the importance of making it universal for all working people to save a small amount of money, with the employer contributing every week, which we all know now adds up to a significant amount of money over a lifetime in the workforce. As that significant amount of money grows, it provides people with security and financial certainty as they approach retirement. It also, over time, decreases the reliance on government-provided age pensions. It also provides a significant pool of investment funds. The most recent figures that I found are from the Association of Superannuation Funds of Australia, which estimated that as at the end of the March quarter this year, $3.4 trillion was held in Australian super funds. Significant funds have been saved on behalf of Australian workers since that reform was introduced in 1992.

It is also important to note that the introduction of universal superannuation would not have happened without the Labor government and the accord between that government and the Australian Council of Trade Unions. It was one of the key planks of a series of accords whereby working people exercised wage restraint in return for an improvement in the so-called social wage. Rather than receiving take-home pay, workers would receive a range of benefits that improved living conditions without having money paid directly to them. Superannuation was one of those great initiatives and it was agreed to in that accord. Fairly modest increases were sought in national wage cases at the time to allow for the introduction of employer-supported superannuation, which we now call the superannuation guarantee charge. It was introduced at a rate of three per cent, which we know is an inadequate rate to save for retirement, but it was a significant development at the time. I think it is hard for us to imagine now not having universal superannuation because it has been a fundamentally important reform for not only working people, but also, more broadly, our economy.

As I said, several trillion dollars are now held by superannuation funds around Australia. From its inception at three per cent, superannuation steadily increased so that working people now receive 10 per cent of their salary paid into superannuation; although, according to many in the industry, this is still insufficient to be able to save adequate funds to support people in retirement. Work still needs to be done to increase the rate of contributions to ensure that people have adequate retirement savings.

It is impossible to reflect on superannuation without also reflecting on the fact that it has always been Labor governments that have supported it, strengthened the system and extended its universality. Of course, we have had to do that in the face of attacks from federal Liberal–National governments, which have a long track record of trying to unwind and dismantle our outstanding superannuation system. It is worth remembering that the Abbott government froze the increase in the superannuation guarantee contribution rate. Superannuation guarantee contributions were slowly adjusted over a long period to meet the objective of having adequate superannuation in retirement. The Gillard

government legislated a series of increases, staged over a period, so that we would have reached an SGC rate of 12 per cent on 1 July 2019. However, the Abbott government rejected that legislation, changed it and froze the rate. Even now, we are well below that 12 per cent that we would have been at three years ago if the Abbott government had not meddled with the system.

I think it is also worth reflecting that the federal Liberal–National government contemplated deferring statutory increases again in 2020, which was during the pandemic. It had two policies. One was further deferrals and the other was allowing people to withdraw money from their superannuation funds. People could withdraw up to $20 000 in two tranches of $10 000. That was taken up by about 3.1 million Australians who collectively withdrew $32 billion from their superannuation accounts under that early access to superannuation scheme introduced during the pandemic. Withdrawing superannuation early is just bad policy. The principle of the system is that money is saved over a long period. The whole rationale behind the scheme is longevity of the funds because that is what contributes to long-term growth. There are regular, small amounts of savings but, importantly, the compounding effect of interest. Anyone who has completed year 7 maths will have done an exercise in compounding interest and learnt how important that is to those funds growing significantly. It was a very disappointing development, but, of course, the federal government did not stop there.

It is hard to forget the disastrous policy announcement at its launch during the most recent federal election to allow first home buyers access to 40 per cent of their superannuation accumulation, up to a maximum of $50 000. This was shockingly bad policy. It would not only drain superannuation accounts, but also was widely criticised for driving up house prices. It would have had the opposite effect of what was intended, which was to make housing more affordable for people. One of the industry super bodies suggested at that time that allowing people early access to super could add up to 16 per cent to the cost of a home in Sydney, or $134 000. Many first home buyers would not have enough money in their accounts to make a material difference to how affordable a house was, because actually all that policy was doing was driving up prices. It is interesting to note some of the criticism at that time and interesting to see who had things to say about it. They did not all say it at the launch recently, but, over many years, several people have had scathing things to say about allowing superannuation to be accessed for the purposes of first home buying. I want to share some of these. I quote —

> Increasing the amount of money going into real estate by facilitating access to super savings pre-retirement will not improve housing affordability. It would increase demand for housing and … would actually drive up house prices by more.

This was the then finance minister Mathias Cormann in 2014. He was clearly not a fan of the policy. In 2016, former Prime Minister Malcolm Turnbull called access to super for housing a "thoroughly bad idea". Sussan Ley had something to say on it in 2017. Her take on the scheme was —

> Young people need their super for retirement, not to try to take pressure off an urban housing bubble, better solved by decentralisation.

It is interesting to observe that that thought bubble from former Prime Minister Morrison clearly did not have support in his own party over many years, but it keeps coming back because Liberal and National members cannot help themselves but try to trash universal superannuation.

Mr D.J. Kelly: They've always hated it.

Ms M.J. HAMMAT: They have always hated it; that is quite correct, minister. They have always tried to dismantle it. It has been up to Labor governments to ensure the integrity of that world-class arrangement—that excellent policy initiative—remains intact.

Mr D.J. Kelly: I'll tell you who doesn't support the universal super, and that's the member for Moore.

Ms M.J. HAMMAT: I look forward to his contribution on the subject.

Several members interjected.

Ms M.J. HAMMAT: You will have your chance, member for Moore.

The ACTING SPEAKER (Ms A.E. Kent): Continue, member for Mirrabooka.

Ms M.J. HAMMAT: Universal superannuation is an outstanding policy initiative. It has always been up to Labor governments to protect it, to advance it and protect it from Liberal–National governments that have sought, at various times and in various ways, to dismantle and weaken it. In my contribution tonight, I have made a few observations about that. I want to move on to another issue, but I am quite certain there is a long list of examples in that area and I hope other speakers will come to some of them.

I also want to talk this evening a little bit about the gender pay gap in super because I think it is an important issue. I said in my opening comments that women's superannuation accumulation is often interrupted because of their caring and family responsibilities, but it is more complex than that. I think it is an important topic to spend some time reflecting on. We know that women experience a gender pay gap in the workforce. In Western Australia, the gender pay gap hovers around 25 per cent, but women also endure a gap in their superannuation accumulation. There have been some important bits of research on this and, this evening, I want to talk a little bit about a 2018 report that was done by AustralianSuper and Monash University called *The future face of poverty is female: Stories behind Australian women's superannuation poverty in retirement*. The report talks about how women will retire with 42 per cent less superannuation than men. It is around the figure of about half the rate that men accumulate over their working life. The report gives an example of what that means in real terms: if a man retires with $270 000-odd, a woman would then receive only $157 000, so 42 per cent is a substantial amount. What is really interesting about the report is that it does not just analyse Australian Bureau of Statistics data and Household, Income and Labour Dynamics in Australia data, which it does, but also presents qualitative research by interviewing a number of women about their experiences and recording that as well to highlight and explain the problems. It provides a really good analysis and evaluation of some of the things that contribute to women's lower superannuation balances. I want to talk a little bit about some of them because many are embedded in not only a woman's place in the workforce, but also a woman's place more broadly in society.

One of those things is that women have a very different pattern of work over their lifetimes from their male colleagues. Even with women's more recent advancement in workplaces, this still remains the case. The idea of superannuation is really built on the idea of continuous linear work and often an advancing of pay rates during the course of a person's career. That is a typical work model for many working men, but it is not true for many women who often have a career and working life that has many breaks, periods of part-time employment and interruptions by caring responsibilities. I want to share some of the ways that are described by women in this report because I think it is done very well and very eloquently by people who have lived it. Bailey, who was 62 at the time of the report, said —

> *It's a line of ups and downs and rounds and rounds and a bit sort of snakes and ladders.*

I think that is quite a good description. Evie, who was 59, said —

> *It would certainly be a circle that goes around and around with an arrow that basically never stops. It's— I've always said I have had a very non-linear career.*

I think many working women would find that very relatable; their working life does not have that linear, continuous upward financial trajectory that the idea of superannuation is built on.

[Member's time extended.]

Ms M.J. HAMMAT: The other impact that I think is very significant is that women will often take parental leave, certainly more frequently than their male colleagues, and they will often work part time. These two things combine to ensure that fewer superannuation contributions are made during that time—during parental leave or during periods of part-time work—because superannuation is levelled on a person's take-home pay, so their superannuation contributions are lower. Those periods of part-time work and often those career breaks also mean women are less likely to have opportunities for promotions and salary increases. This different pattern of work that is quite typical for working women has a number of impacts on the accumulation of women's financial superannuation over their working life. It is also impacted by what is referred to as the "second shift" or the disproportionate amount of domestic responsibilities that women have. This often means that women are again less likely to achieve promotions. Often they are not able to perform things like overtime and that has an impact on their working hours.

I want to share some of the comments about that, and I am sure that many people will have stories about how, once children are on the scene, work is structured in a way that meets the needs of the children rather than the needs of financial accumulation towards retirement. Again, to quote the report, Rae, who is 67, said —

> *I was one of those people that actually got jobs that revolved around my children's lives, different stages in their lives. Like when I became a TAFE teacher, you know, I did sessional teaching and the moment I dropped them off at school I went and did teaching. So I was home to pick them up etc. etc. I was always there to drop them off and pick them up. My children, I was always there when they were ill.*

Again, many working women will be able to reflect on that. That is about the impact of those domestic responsibilities. It is not just about how work is structured but how families and homes are still structured. The report also outlines the impact of organisational cultures and the effect of cultures hostile to women, which can have significant consequences on career progression and therefore superannuation accumulation. I would like to think that those kind of workplaces and those kinds of cultures do not exist anymore, but there is ample evidence that, indeed, many high-earning industries have work cultures that are not able to be balanced in a way that is meaningful for women,

particularly women who have family responsibilities. There is also some identification about the impact of the experience of older women. Once their years of caring for small children have passed, older women experience what is referred to as "gendered ageism", which makes it difficult for their career progression to happen, even once their workforce participation looks like their male colleagues'.

The final thing the report identified was life events, including divorce, as well as the impact of being a single parent or other things like family illness, which often had a disproportionate effect on women's financial security due to the fact that women are more likely to perform those unpaid caring responsibilities. In particular, illness amongst older parents can have a disproportionate impact on women in families, as they reduce or stop hours at work to be able to care for those older family members.

The report made a number of recommendations. I want to touch on some of them briefly because there is work to be done here. It is clear that this bill is an important development that allows for an improvement in splitting superannuation in a way that is fair, but we need to confront the underlying issue, which is ensuring that women are accumulating adequate financial support in their superannuation funds over their working life. This report recommended a number of things that would help with that. I am pleased to say this change is being implemented this year. It recommended removing the exemption that has existed from paying superannuation to employees who earn less than $450 a month. There has been a longstanding arrangement that compulsory superannuation would not be payable for employees earning less than $450 a month. It is an important change for them and for women, who are often in part-time, casual and lower paid jobs. That is clearly something that would have disproportionately affected them.

The report also outlines the importance of ensuring that superannuation contributions are paid on the government's paid parental leave scheme. It is good that we now have paid parental leave, but, unfortunately, while people are receiving those payments, they are not receiving superannuation contributions. I am very pleased that this is a matter that the McGowan government addressed with public sector employees, ensuring that they did in fact get those superannuation payments, because periods of paid parental leave and ensuring superannuation contributions are paid over that time is significant.

A number of recommendations go to the operations of the tax system and ensuring that the tax system operates in a way that is equitable for women who have genuinely lower contributions than their male colleagues. The report finds that men get twice as many offsets through super as women and it calls for those to be improved. The report also talked about developing options that are better suited for the reality of part-time work, recognising that many women work part time and that there needs to be a better system of superannuation, particularly recognising that people often change jobs and that the ability to have a superannuation fund that works with that concept is very important.

I will not talk on all these points, but the report also outlined avoiding the idea that women should just try harder. There have been other contributions along these lines, but we need to recognise the structural impairments to the accumulation of women's superannuation. These need to be recognised and addressed with good public policy rather than the idea that it is unfortunate but that is the way it is and that maybe if women worked like men, then it would not be a problem. There are a whole range of reasons why women's workforce participation and experience is not the same as men's. Ensuring our systems reflect that reality is important to ensuring we have a system that is robust for women when they reach their retirement age. The report spent a bit of time on the importance of having a community discussion about the adequacy of superannuation for retirement. In the same way the union movement has spearheaded the concept of a living wage and the importance of people receiving a living wage, we should be up for discussion about adequate super or "living super", which was the term the report used. Ensuring that superannuation is adequate is not just good policy for individuals or families, but good policy for the community at large. We really need to break down the idea that superannuation is an individual responsibility and to recognise that it is a social good and something that should be supported. I would very much agree with that.

The report also outlines the importance of compliance. I want to touch on this briefly to say that that remains a significant issue. Although we have legislative requirement for minimum superannuation contributions, in fact, we need to do much better at making sure there is compliance and that that superannuation guarantee amounts are paid. At the time of the report, there was $18 billion in unpaid superannuation—a significant amount of money. The Australian Taxation Office is charged with the responsibility of pursuing those non-payments and many people can attest to a great deal of frustration that employers have not made payments into super funds. It can be very difficult for those things to be rectified. Making sure that compliance is something that people are involved in, particularly recognising that corporations could play a role in ensuring that their contractors and subcontractors are also compliant with paying superannuation would go a long way towards improving compliance and benefiting everyone.

One could say a great deal about superannuation. It is an important initiative. It has been I think a significant public policy achievement of Labor governments in introducing it and protecting it over a long period of time. The

Attorney General should feel rightly proud of the part he is playing ensuring that superannuation for de facto couples is able to be split in a way that is fair here in Western Australia. It is part of the great Labor story of protecting the retirement incomes of working people and the retirement incomes of women. It has always been Labor governments that have strengthened superannuation for everyday people and it has always been Labor governments that have been committed to ensuring women's equality and pursuing women's economic participation. This bill is part of that long legacy. I am delighted that the Attorney General has brought it before the house. With that, I commend the bill to the house.

MR P.J. RUNDLE (Roe) [5.28 pm]: I rise tonight to support the Family Court Amendment Bill 2022. I point out that I am not the lead speaker; the member for Moore will be the lead speaker. I will make a brief contribution and, to be honest, I am not here to score any political points or talk about which government did this, should have done that or whatever. I am here to say that I am pleased that this legislation has come to this place and that it is a really important thing. This matter has been debated over the last 25 to 30 years by the Hawke, Howard, Rudd, Gillard, Rudd, Abbott, Turnbull and Morrison governments. This legislation is a great opportunity for Western Australia to get back into line on looking after de facto couples, who go through quite a few traumas at different times. I commend the Attorney General. In the previous term of government, he put in, I think, 57 pieces of legislation. Unfortunately for me, at the time I was the shadow Attorney General for the Nationals, so trying to cover all those pieces of legislation was a challenge. Along with his legislation on the statute of limitations for victims of child sex abuse, I think this is one of the most important pieces of legislation that has come through. I congratulate the Attorney General for bringing this legislation to the fore.

The main reason it is important to me is that I have seen a relative go through the traumas of de facto separation. As we know, there was no solution until this potential legislation came along to the trauma that that family went through and the challenges with the superannuation asset. As other speakers have pointed out, superannuation is usually either the largest or the second largest asset for a couple. It is pretty important. Another reason it is important to me is that my sister-in-law who is a lawyer has constantly spoken to me about this subject over the last five years since I was elected as the member for Roe. She has talked about how unjust it is. Once again, my sister-in-law knows several de facto couples who have been through the trauma of separation. Those are the two main reason from my perspective. I have a relative who went through the process and I have a sister-in-law who is very passionate about the issue and keeps reminding me about it, and rightfully so.

The Keating government brought in compulsory superannuation in 1992 and made it compulsory under the Superannuation Guarantee (Administration) Act. Since that time, as the member for Mirrabooka pointed out, increasingly superannuation has become a valuable financial asset. Over time, those contributions have increased. In many cases, it is the largest single asset of a separating couple. I looked back on the history of superannuation. This bill will amend the Family Court Act 1997 to allow separating de facto couples in Western Australia to split their superannuation by agreement or court order and for bankruptcy proceedings to be held concurrently with family law proceedings in WA. Western Australia is the only state that has not fully referred family law matters to the commonwealth. We continue to have a Family Court in WA, which is governed by the Family Court Act 1997. In some cases, that has not been an ideal arrangement. It is good to have a Family Court in WA to sort out issues close at hand, but the problem with the commonwealth and the state laws is the courts' inability to deal with bankruptcy, and that has been a bit of a challenge. Certainly, from my perspective, this legislation to allow separating de facto couples to split their superannuation will bring WA into line with the rest of the country and is a step in the right direction. Married couples have been able to split their superannuation for two decades in WA. It seems strange that de facto couples have not been able to do the same thing.

The Family Court Amendment Bill will amend the Bankruptcy Act 1966 so that the Family Court of Western Australia can hear bankruptcy and family law matters concurrently. Whereas, at the moment, bankruptcy proceedings have to be heard by the Federal Court of Australia or the Federal Circuit Court or the Family Court of Australia separate from proceedings in the Family Court of Western Australia. As was pointed out in the second reading speech, the expense of proceedings and the equitable distribution of assets is a real challenge for couples when they are operating under two different jurisdictions. That was summed up well in the last paragraph of the second reading speech where it says —

> For example, the Family Court of Western Australia will have jurisdiction to take into account the contributions of the non-bankrupt de facto partner to the property that may not be evidenced in formal ownership documentation. Before the Federal Court, the claim of the non-bankrupt de facto partner may have less priority than that of the creditors of the bankrupt.

That is unfair and has not helped with the preservation of property or with the children of the relationship. I think the bankruptcy provisions in the legislation are very, very important as well. I know the shadow Attorney General has met with the Family Law Practitioners Association WA, which is the leading body for specialist family

lawyers, and it is very supportive of the bill. That is good to hear. I believe that in the past, in cases in which couples had made a financial agreement, superannuation would have already been taken into account. This bill will allow superannuation splitting for de facto couples only when a financial agreement has not yet been made. Certainly, that is my understanding of it.

I have a couple of other points. I think it is important to point out that one de facto partner may have contributed to superannuation while the other person may have contributed in many other ways, including bringing up children. As has been mentioned, the pattern of work changes and things evolve in couples. Who does what—who brings up the children and the like. In many cases, both people in the relationship have not had the ability to make equal contributions to superannuation. That is fairly straightforward. A member made the point earlier that a party in a de facto relationship may have diverted funds to superannuation in the past to protect their assets, if you like, in the background knowing that it would come back to them under the current arrangements in Western Australia. The legislation will short-circuit that type of behaviour.

It is also important that people's future needs are taken into account. In the majority of couples, one person in the relationship has done the majority of caring for children in the past and potentially in the future. Hopefully, this legislation will allow for future needs.

It was interesting that the member for Kalamunda pointed out that at the time of the 2016 census, 200 000 Western Australians were in a de facto relationship. That is not a small number. That is why this is important legislation. As we know, unfortunately, quite a large percentage of relationships do not make it through these days. That is why it is very important that these changes be made.

One final comment I would like to make is that I believe the Attorney General needs to continue looking at boosting the resources of the Family Court of Western Australia. I know of couples whose proceedings have dragged out over a long time, whether they were married or a de facto couple. That is not a healthy scenario for anyone and it certainly is not healthy for the children in the relationship. I urge the Attorney General to make sure that he continues looking at boosting resources, the number of judges and all the other requirements and resources that will allow for those judgements to be made as quickly as possible so that the grief to those families, de facto relationships and separating couples is not extended for any longer than it needs to be.

As I said at the start of my contribution, I certainly commend the Attorney General. I think this is one of his best pieces of work. I want to point out my support, given that people either within my family or among my close friends have had to undergo a separation at different times, and they have pointed out to me the injustices they have gone through. I give my support to the bill.

MS L. METTAM (Vasse — Deputy Leader of the Liberal Party) [5.41 pm]: I rise to make a very brief contribution to this debate and illustrate the support of me and my colleagues for the Family Court Amendment Bill 2022 and what it represents. It will amend the Family Court Act 1997 and allow separating de facto couples in WA to split their superannuation by agreement or through a court order and for bankruptcy proceedings to be held concurrently with family law proceedings.

Many comments have already been made in this place about the value of superannuation and how it can be of increasing value. However, we have seen, and it certainly is the case at the moment, inequity in the system. De facto couples are unable to access and split their superannuation, which clearly unfairly disadvantages women, largely, but not in all cases. We appreciate and understand that the reality is women have less superannuation, in general, compared with men. That is the result of women having a less linear working life than men and of bringing up children and being working parents. For that reason, it is important to see this legislation brought into this place to bring Western Australia in line with the rest of the country. It is quite extraordinary that it was back in 2001—well over two decades ago—when the commonwealth Parliament first introduced legislation to allow superannuation to be split. That benefit has been experienced by married couples and it is good to see that it will be in place for de facto couples as well. That will lessen the burden of what might already be a very difficult experience. It is recognised that superannuation is very significant. It can be one of the largest, if not the largest, assets that a de facto relationship shares. It is very clear that the status quo is unjust, and that is why we certainly support this proposed legislation.

Allowing bankruptcy proceedings to be held concurrently with the family law proceedings in WA is an important next step. I note that in 2020, the commonwealth Parliament passed a law that allowed the Family Court of WA to exercise federal jurisdiction in WA family law court matters to allow separating de facto couples to split their superannuation. However, in order for it to take effect in WA, the WA Parliament must now pass amendments to the Family Court Act 1997. I understand also that this bill will allow the Family Court of WA, as I have stated, to exercise bankruptcy matters and for them to be handled concurrently. As an opposition, we have consulted with the legal industry. I understand that the Family Law Practitioners' Association of Western Australia is particularly positive about what this piece of legislation represents. I can only imagine some of the concerns that it has heard.

Importantly, this bill this will allow for a fairer system to support de facto couples who are looking at separating and ensure that those who would otherwise have challenges accessing their fair share of superannuation, which they may have indirectly contributed to by supporting the family or the relationship unit, will be able to access that superannuation.

I will leave my comments there. As I said, it is just a brief contribution to illustrate the importance of addressing what has been an unjust situation in Western Australia for de facto couples and in particular for women who overwhelmingly have not been able to obtain the same level of superannuation. That is well recognised as a great and significant value asset to families and couples. I will leave my comments there and commend the bill to the house.

MR S.A. MILLMAN (Mount Lawley — Parliamentary Secretary) [5.48 pm]: I also rise to make a contribution to this debate on the Family Court Amendment Bill 2022. I thank the member for Vasse for her contribution. In fact, both the opposition speakers on the bill so far have covered off the important role that superannuation plays in society. I think they also touched on the unique nature of the Western Australian family law system compared with the way family law operates in the other jurisdictions as a result of the limited referral of lawmaking powers that was made by the WA state government. The member for Riverton has already traversed that issue, so I do not propose to go into too much detail about the referral of powers. In any event, on 27 November 2018, in the fortieth Parliament, I spoke at length on this in my contribution to the Child Support (Commonwealth Powers) Bill 2018 and also in the debate on 28 November 2019 on the Family Court Amendment Bill 2019.

I want to commend the contributions that were made by the member for Mirrabooka, touched on by the member for Roe, and also the member for Kalamunda on the gender pay gap and the consequences it has for retirement savings for women in Western Australia. This is a point that I made in my response to the budget on 17 May, in the lead-up to the federal election, because I was so concerned about the policy that the federal coalition was taking to the election on accessing super that I felt compelled to speak on the gender pay gap, but because that issue has been covered by the members for Mirrabooka and Kalamunda, I do not propose to go into any detail on that.

In the context of the Family Court Amendment Bill, I want to talk about how important it is that we recognise the important role of compulsory superannuation in society, because this bill will allow de facto couples to split what will become a significant asset over the course of the life of the relationship. I want to go through compulsory superannuation first, and the way that, in response to the growing role that superannuation plays in our economy, this legislation will keep pace with changes in the economic landscape in Australia. I want to talk about the way in which superannuation is an important feature of the infrastructure investment landscape, and I want to talk about the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. I think the way in which courts deal with superannuation—particularly the way in which the Family Court in Western Australia will deal with this legislation—needs to be influenced by the recommendations of the royal commission into how superannuation operates. They are some of the points that I will go through, and I will be referring each of those items back to the bill.

Far be it for me to say—I suspect that the Attorney General will make the point in his second reading reply speech—but there was a point made by the member for Roe on resourcing for the Family Court of Western Australia. I want to let the member for Roe know that, in fact, the Family Court of Western Australia is currently advertising for additions to its pool of magistrates. An email was sent around to the Family Law Practitioners' Association on Friday advising people that the Family Court is seeking expressions of interest for its magistrates pool, and that they should get their applications in.

Mr P.J. Rundle: I'm pleased to hear it!

Mr S.A. MILLMAN: Yes. If the member's sister-in-law is interested in applying, she should make sure she does, and I am sure she will be recommended to the Attorney General.

I would also like to commend a terrific colleague of mine, Kathy Bromfield, who is a constituent and a family law practitioner, and who regularly provides me with advice on family law matters when they come on for debate in this place.

I want to talk about compulsory superannuation—it is good; it works—and why we want more of it.

I refer to an article that was published in online magazine *The Conversation* written by Trevor Cook, who was awarded a doctorate by the University of Sydney. Dr Cook says —

> Compulsory super is one of Labor's greatest achievements.
>
> …

> The Keating Government introduced compulsory superannuation in the form of the Superannuation Guarantee … in 1992 with two objectives in mind. Then Treasurer John Dawkins said it would increase private provision for retirement and increase national savings.

That private provision for retirement—that pool of money that is available to couples—is exactly what this legislation is directed to. Dr Cook says that, in fact, the policy was a success on both counts. The article continues —

> Just over a century ago, Australia was one of the first countries to introduce old age pensions. The scheme was designed to alleviate poverty for a relatively small number of people who lived … past 65, not to provide an adequate income for most of the population for a long period of time.
>
> Life expectancy in Australia has jumped by more than twenty years for men, and by nearly thirty years for women, during the last century. Many people can now expect to live a quarter of their life span in retirement.
>
> What's more, the numbers entering retirement will increase dramatically during the next few decades as the baby boomer demographic, over 5 million people, steadily enters retirement.
>
> No national government can provide a decent living for that many people for that long entirely from taxation revenues.

Further, Dr Cook says —

> According to the OECD, Australia has one of the highest private expenditures on old age pensions, in excess of 3.5% of GDP, and one of the lowest public expenditures, less than 3.5% of GDP. Private spending is negligible in a third of OECD countries.

The sums of contributions that have been made to compulsory super, according to Dr Cook, are enormous. In this article, written a decade ago, he states —

> At the end of 2010, total superannuation assets, arising from both compulsory and voluntary super contributions, were around $1.3 trillion, or about 100% of annual GDP). With the proposed increase in the SG —

That is, superannuation guarantee —

> to 12%, total superannuation assets have been projected to grow to over 160% of GDP by mid century.
>
> Compulsory superannuation has also contributed to savings rates in Australia that are high by international standards. In a paper last year, two Commonwealth Treasury economists argued that the current boost to private … saving is about 1.5% of GDP, and they expected this level to rise significantly over the next decade, as the contribution rate rises gradually to 12%, and to reach 3% of GDP in the next few decades.
>
> A higher savings ratio means we have a reduced need to draw upon the savings of foreigners. It means that our foreign debt is lower than it would otherwise be. That increases Australia's capacity to withstand shocks to the global financial system.

I have to say that this article and that particular comment from Dr Trevor Cook is prescient. If we have seen one thing in the last 24 months, it is shocks to the global financial system, whether they be through the COVID pandemic or the Russian invasion of Ukraine. We can see that having the right regulatory framework—which this bill will achieve—governing the way in which superannuation works as between couples maintains a system that the community has faith in, so people will continue to participate in the compulsory superannuation system, which is a good thing for Australia because it improves our ability to withstand global financial shocks. It continues —

> Just as importantly, the expansion of the superannuation system saw employee coverage rise … from around 40% of total public and private sector employees in the mid 1980s, to more than 90% a decade later.

I cannot think of anyone now who does not have a superannuation account. I will leave that point there.

In this article, which was written in the lead-up to the 2013 federal election, Dr Cook goes on to say —

> Despite the rantings of some of its more ideologically driven members, an Abbott Government would retain the Gillard Government's increase in the SG rate, just as the Howard Government kept the SG itself. Wonder why? Well, Australian Institute of Superannuation Trustees —

That organisation has been quoted by other members —

> research released this week found 75% of all Australians supported an increase to … the SG rate.
>
> Compulsory superannuation, like universal health care, is here to stay and so it should.

I just make the comment that, unfortunately, he was not correct in his prediction that the increases in the superannuation guarantee would be maintained by the incoming Abbott government when it was elected in 2013. It froze those increases, so we have lost a decade of increases to the compulsory superannuation scheme. Nevertheless, public and community support for superannuation remains as strong as it was a decade ago. That is why, as I said earlier, it is important that this bill maintains public confidence by bringing our family law up-to-date from a regulatory perspective to say that it does not matter whether a couple are de facto or married. As the member for Vasse said, it is about generating equality across the system.

The next point that I want to make in the context of this debate is that people do not talk about superannuation enough. Not only is it a really important part of the way in which we fund retirement savings to give people a dignified retirement, but also there are now billions of dollars in accumulated savings across the country that can benefit the community. My next point is about having a broader discussion amongst us as members of Parliament and the community more generally about the important role that superannuation plays.

I want to refer to a more recent article written by Bernard Keane in *The New Daily*, an online newspaper, dated 27 October 2019. It is called "Super is changing our economy—and the way power works in Australia". The article starts —

> Superannuation is one of the most crucial areas of public policy in Australia—and it has the lowest profile.

The ACTING SPEAKER (Ms A.E. Kent): I am sorry to stop you mid-flow in your quotation, member for Mount Lawley, but, given the time, I will leave the chair until the ringing of the bells.

Sitting suspended from 6.00 to 7.00 pm

Mr S.A. MILLMAN: Before the break, I was referring to an opinion piece by Bernard Keane published on *The New Daily* website, which states —

> Superannuation is one of most crucial areas of public policy in Australia—and it has the lowest profile.
>
> There is no issue that will have as great an impact simultaneously on the economy, on every Australian's retirement, on infrastructure and its funding, and on how power is used in Australia.
>
> …
>
> The industry super model is a direct threat to the Liberal Party business model, which is to represent the interests of its corporate donors …
>
> Industry super represents a rival form of political power, created via substantial holdings of the shares of major Australian companies and being a major source of investment for infrastructure.
>
> And that power is growing rapidly: Not merely has the industry super sector dramatically expanded as a result of the well-deserved smashing of retail super by the royal commission, but compulsory super means the entire sector will continue to expand at a rate of knots.
>
> One recent estimate projected the super sector would reach over $5 trillion by 2029; another that super would own 20 per cent of all Australian listed companies by 2034.
>
> …
>
> That's why the Liberals have been panicking about so-called "activist" industry super funds and threatening regulation, cheered on by the *Financial Review*.
>
> …
>
> Industry super threatens to undo entirely the success of Coalition governments since the 1990s in attacking and undermining the union movement.

It goes on to state that for the Liberal Party —

> It's bad enough that compulsory super was created by Labor, but what if it cements the trade union movement into the very heart of Australian capitalism, putting—in the nightmare scenario conjured by one Liberal earlier this year—the ACTU president in every boardroom?
>
> However, while no one doubts the Liberals' hatred of industry super—the current minister for superannuation, —

Now former —

> Senator Jane Hume, has repeatedly attacked industry super as "unholy"—it's their strategy that has been the problem.

The Liberals were dragged kicking and screaming to a banking royal commission during the term of the last government, with Kenneth Hayne as the royal commissioner, together with the Productivity Commission. Their findings about how industry super outperformed retail super completely put the kibosh on the Liberal Party's strategy to try to undermine industry super.

The final reason I want to address why industry super is so important is the significant infrastructure investment it makes in Australia. I quote from the Industry SuperFunds website on a page about infrastructure investment. It states —

> Every modern society needs safe, reliable, up-to-date infrastructure, and Australia is no exception. But in order to build and maintain this infrastructure—from transport links to digital communications—a large amount of investment and support is needed.
>
> For many years, Industry SuperFunds have recognised the value of investing in critical infrastructure—not just financially, but also for the jobs that are created and the benefits that good infrastructure provides to communities, businesses, individuals and industries.

Members, it reads a lot like the McGowan government's program for investing in the Western Australian economy. It continues —

> **The benefits of infrastructure investment**
>
> As well as creating valuable and useful assets for Australia, investing in infrastructure has other less obvious benefits. Biggest among these are the vast numbers of people employed in bringing these projects to life—from planners, engineers, accountants, administration staff and design, communications, HR and legal teams, to the people on the ground actually building the project.
>
> Of course, all these people in turn spend their incomes in their communities, further stimulating the local economies …
>
> New infrastructure also makes it easier to conduct business and grow the economy. More freight can be moved quickly, communication is more efficient, travel is faster, utilities are cheaper and more reliable, medical services can be expanded, business operations become more cost-effective, and communities and individuals can enjoy a higher standard of living.

Whilst the Liberal and National Parties continue their coordinated and concerted attacks on industry super funds and on compulsory superannuation more generally, members can rest assured that the Labor Party, proud of its heritage and of its history in implementing super in the first place and the legacy of the work of the trade union movement in the 1970s and 80s, will always stand up for workers and superannuation. Key to that, and what brings me back to this evening's legislation, is making sure that our regulatory framework is completely up to date and adapted for modern purposes, because that will lend credence and strength to the idea of superannuation being an important part of the conversation around how economies function. If we have a family law system that allows for de facto couples to split superannuation, or court orders from the Family Court that will allow for the splitting of superannuation, that will serve to not only improve access and equality for participants in those legal proceedings, but also reinforce the important role that superannuation plays in our community. For those reasons, members, I am more than happy to support this legislation and I commend the Attorney General for bringing it before the house.

MR D.A.E. SCAIFE (Cockburn) [7.05 pm]: I rise tonight to speak in support of the Family Court Amendment Bill 2022. Many great contributions have been made by members of the government, but it has also been good to hear support for this bill from members of the opposition. Superannuation should have bipartisan support in this country. Unfortunately, as many of the speakers before me pointed out, it does not enjoy genuine bipartisan support in this country because the Liberal Party, and, to a lesser extent, the National Party, has always been hell-bent on getting rid of our system of compulsory superannuation. But it is at least heartening to have heard members of the opposition backing some of the things that members of the Labor Party have said on this issue in this place.

I want to echo what members have said, which is that this reform is long overdue. It has been in the pipeline for a long time, and the hold-up has not been with the WA state government; unfortunately, it has been with the commonwealth government. This bill finally brings the long sorry saga of allowing superannuation splitting in the Family Court of Western Australia to a close. I remember the days when the Rudd government was newly elected in 2007 and the Labor Party in government embarked on a series of reforms to ensure that same-sex couples were treated equally through a number of different laws. One of those ways was to strip out some of the discriminations against people in de facto relationships. It seems perverse to me that 14 to 15 years down the track we still have a system in WA whereby de facto couples suffer a disadvantage compared with married couples when it comes to superannuation splitting. I got married just over three years ago, but before that I was in a long-term de facto relationship. It is such

a perverse thing to think that if I had split from that relationship in the 2010s, we would have not been able to settle through the Family Court of Western Australia the issue of splitting superannuation, because, as many speakers have pointed out, superannuation is often the most significant asset that a couple will have, certainly next to the family home.

I am pleased to see this reform come through. It is inescapable that this reform is particularly important to women, because women have historically lost out on our system of compulsory superannuation since it was established in the 1990s. Superannuation is an important support for people in this country in their retirement. It was, essentially, the first of its kind when it was introduced by the Keating Labor government, but it has not served women as well as it has served men since it was introduced. I give the example of my mother who was a public servant for many years but did not receive any superannuation during that time because it was not a concept when she was in the workforce. She then left the workforce to raise me and my sister and, as a result, has next to no superannuation to retire on.

Fortunately for my mother, my father retired on a very old type of superannuation scheme, a defined benefit scheme, and she has entitlements under that scheme. However, other people are not as fortunate as to be in the situation that my mother is in. Had it not been for that, my mother would have had no asset to her name other than the family home and would have been wholly reliant upon the pension, whereas she is now reliant on a part pension and her entitlement under my father's defined benefit scheme. The reason that my mother was not able to accrue superannuation at the time was obviously due to her generation. Superannuation was not a national compulsory scheme at the time she was in the workforce. She exited the workforce when she had children, as many women do, because the work of raising children has historically fallen, and continues to fall, disproportionately on women. We know that caring work—which the member for Mirrabooka referred to as the second shift—has always been undervalued in our society. We are taking steps towards valuing that more when it comes to things like paid parental leave, and ensuring that child care is affordable, but we have many, many more steps to take.

I want to tease out from that example a number of reasons why our system of superannuation has not served women as well as men. The first is that women often exit the workforce to undertake caring responsibilities. Other members have pointed out that under the commonwealth government system, superannuation is not paid on parental leave. It may be paid under a workplace policy, but that is entirely up to the entitlement that has been negotiated in that workplace. Women are also disadvantaged in the payment of superannuation because, as I have said, caring work is often devalued. We know that women are disproportionately more likely to work in caring industries such as aged care, or as an education assistant, for example, and are likely to be paid lower wages and as a result receive lower superannuation contributions.

One feature of our superannuation system that means that women are more likely to miss out on superannuation contributions completely is that employers are not subject to the superannuation guarantee charge if their employees are paid less than $450 a month. A person may be working in multiple different workplaces, but if at each of those workplaces they are earning less than $450 a month, they will not be paid superannuation from any of their employers. That can particularly disadvantage women in our workforce. This bill will not fix all those issues, and there is a long road to go down, but it is a step forward, and long overdue.

The member for Mirrabooka and the member for Mount Lawley have commented on the Liberal Party's aversion to superannuation. I listened earlier to the member for Roe and I was heartened, as I said, to hear his comments in support of this bill. However, the member for Roe made a glib comment at the start of his contribution when he said, "I'm not here to talk about what governments of the past, whether they were Labor or Liberal, have done; I'm just going to talk on the merits of the bill." That fails to appreciate that it is impossible to talk about superannuation without also talking about how it is constantly under attack by the Liberal Party. That is not a luxury that the Labor Party has. The challenge that the Labor Party always has is that we build things like Medicare and superannuation, yet they are constantly under attack. That is quite different from what the Liberal Party does. The Liberal Party does not build anything; it just tears things down. Therefore, for the Labor Party, the work is never done. Once we have built Medicare and once we have built compulsory superannuation, we then have to spend the rest of time defending the principle and the concept.

That is why members of the Labor Party in this place need to put on the record their opposition to the attacks that have been levelled by the Liberal Party. These attacks are not letting up. It is extraordinary that we have just seen the Liberal Party wiped out at the federal level, having already been wiped out here in Western Australia. I do not know whether other members of the chamber have seen it, but Senator Andrew Bragg, a Liberal senator for New South Wales, has said that his prescription for where the Liberal Party should go now is to get rid of compulsory superannuation. That is his recipe for how the Liberal Party should take the country forward and revive its electoral prospects. What is shocking about that is that Senator Bragg is supposed to be a member of the moderate faction of the Liberal Party. That is unbelievable. This is apparently not the extreme right wing of the Liberal Party. The moderate wing of the Liberal Party is saying that its path back to government is to dismantle our retirement system.

I take particular issue with some of the things that Senator Bragg has said. He is obviously against the system of compulsory superannuation. In the course of making his arguments, he bemoans the fact that the current rate of superannuation is not enough to support most people in their retirement, yet he belongs to a political party that opposed the previous Labor government's legislation to progressively raise the rate of the compulsory superannuation guarantee to 12 per cent. He says that the rate is not enough to support people in their retirement, and he uses that as a reason to advocate for the dismantling of our superannuation system, when, if he is right about that, the answer is to increase the rate of the super guarantee charge. Senator Bragg is not saying that now, but it is interesting that he did once advocate for that. This is what Senator Bragg said before he was elected to Parliament —

> Although Australia moved ahead of most OECD nations to implement super in 1992, the contribution rate is not yet high enough to provide fully-funded retirement incomes. At 9.5 percent, the rate is lagging behind the 15% required over a working lifetime to get the majority of Australians to a privately funded retirement.

At one point in time, in 2015, Senator Bragg was in favour of not only compulsory superannuation and the superannuation system generally, but also raising the rate to 15 per cent. Curiously, Senator Bragg at the time was on the payroll of the Financial Services Council, which is the peak body representing retail superannuation funds. I think we can tell from that where Senator Bragg gets his views about superannuation. It appears to be from whoever's payroll he is on at that particular time. Senator Bragg is in an absolute war against superannuation funds and has been over the last few years. He says that industry superannuation funds are complacent, and gives examples of their largesse. We never heard Senator Bragg when he worked for the Financial Services Council raise any concerns about the conduct of retail superannuation funds.

We know from the Hayne Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry that the behaviour of retail super funds was utterly appalling. I believe it was referred to in the royal commission's report as pure greed. If members cast their minds back to that time, we all knew that rorts were going on, but I do not think any of us imagined that the rorts in the retail superannuation industry were as bad as was pointed out by the Hayne royal commission. People were being charged for advisory services that they never used. Worse than that, the funds did not have an adviser allocated to clients to give them advice on those matters, yet they were still charging them exorbitant fees for those services from year to year. Funds were also charging people for products that they did not need. The worst of the worst is that it turned out that people who had died were being charged for services through their superannuation fund. Senator Bragg had nothing to say about that at the time he was on the payroll of the Financial Services Council, which, as I have said, is the peak body representing retail superannuation funds. Now that Senator Bragg is a Liberal senator for New South Wales, he has only negative things to say about industry superannuation funds. Superannuation funds are not controlled by trade unions; they are bodies that are jointly controlled by employee and employer associations, yet people like Senator Bragg have turned superannuation funds into some kind of left-wing bogeyman, when they are actually the result of the accords between employers and unions that were reached during the Hawke and Keating years.

One of the other things that Senator Bragg has been a great champion for, and that other members have talked about, is to allow Australians to access early withdrawal of their superannuation. Early withdrawal is available to people in very, very limited circumstances. Senator Bragg and other Liberal Party members are advocating to allow people to withdraw their superannuation to pay for housing. It is a ridiculous idea. Allowing people to do that would create a demand surge into the property market, which would drive up property prices; it does not actually help people to get into the market. As a result of that early withdrawal of super, people will often become worse off over time because they lose the compounding benefit of that money being in their superannuation fund. I take an example from an article by the McKell Institute on the early withdrawal of superannuation. The McKell Institute estimates that if an individual makes the average withdrawal of either $7 728 or $7 536, within about a year they will have forgone $2 420 in returns from market growth, which is an incredible amount of money in such a short period.

It is good to hear that the government and the opposition are on the same page with this bill. But we cannot let an opportunity like this go by without putting on the record the Labor Party's and my very strong support of our compulsory superannuation system. There is more to do, and there are a few things that I hope to see the federal Labor government do in the coming years. The first is that I would love to see the federal government pay superannuation on the paid parental leave scheme. That was a commitment that the Labor Party took to the 2019 federal election, and I know that the Assistant Treasurer, Hon Stephen Jones, has said that the federal Labor government wants to do that; it is just about finding the way to do it. I say to the federal Labor government members that I am looking forward to them finding that way because it is really important to ensure that women, in particular, who access parental leave get superannuation during that period away from the workforce.

I also want to see the rate increase to 12 per cent, which, thankfully, is back towards being progressively raised to that level. We also need to find a pathway beyond that to raise the rate to 15 per cent. I would also like to see superannuation added as an entitlement in the national employment standards. When I was an industrial relations lawyer, superannuation

was very hard to recover because it is not a workplace entitlement; it is an entitlement through the superannuation guarantee charge. But it could be recovered for people who were covered by modern awards because modern awards have a protection that requires employers to make superannuation payments, so a claim could be made for breach of the award and recover the superannuation through that type of claim. But if a person is not covered by an award and they do not have a term saying an enterprise agreement that gives them an entitlement to superannuation, their only recourse to recovering underpaid superannuation is to make a complaint to the Australian Taxation Office. I say this without criticism of the ATO, but the ATO is not a beast that spends its time recovering industrial entitlements or workplace entitlements for people; it is not its core business. Understandably, a couple of years ago, the Australian National Audit Office found that although the ATO was using partly effective methods to recover super, they were not all effective. Therefore, putting the entitlement to super in the national employment standards would mean that it would apply to absolutely every employee in the national system of industrial relations. That would mean that when someone is underpaid wages and, as a result, also underpaid super, they have a way of pursuing that claim. They can go through the industrial tribunals with an industrial claim, say, with the assistance of the union, rather than going through the ATO.

On that note, I reiterate that this is a good bill. It will take us one long overdue step forward. There is more to do. I look forward to a federal Albanese Labor government delivering on those steps forward in the years to come.

MS E.L. HAMILTON (Joondalup) [7.25 pm]: I rise in support of the Family Court Amendment Bill 2022. This is an important piece of legislative reform. Although technical in nature, it will ensure equity and justice in the Family Court processes in the state for separating de facto couples to split their superannuation. This reform is a matter of social injustice that disproportionately affects women and will have a significant and positive impact on women who have a financial matter before the Family Court of WA.

I must say that it is about time that laws on splitting superannuation for de facto Western Australian couples were updated to be more equitable and be administered by a Western Australian court rather than a commonwealth court. It has been almost 21 years since the then Attorney General, Hon Jim McGinty, a member of the Gallop Labor government, began the process to secure a fairer financial outcome for de facto couples who separate. We heard during the introduction of the bill why this process has taken time, with jurisdiction over marriage, de facto marriage and superannuation being divided across commonwealth and state law.

In 2006, the Carpenter state government asked the commonwealth government to pass corresponding legislation to allow for the introduction of this bill, but the commonwealth wanted Western Australia to hand over responsibility of all aspects of de facto relationships, meaning the end of the Family Court of Western Australia. In 2018, after strong advocacy by the McGowan government, particularly Attorney General Hon John Quigley, the commonwealth agreed to accept and implement a narrow change, which meant that the Family Court of Western Australia, rather than the commonwealth, could make decisions on WA de facto couples splitting superannuation and bankruptcy where relevant to proceedings.

The government had to go through a process with the commonwealth to bring the bill to this point. WA is the only state to have its own Family Court. The Family Court of Western Australia was established under the Family Law Act 1975 for reasons including to deal with the division of commonwealth and state jurisdictions and the impact of that on those before the court as well as a desire to keep the judicial system close to its people. For Western Australian family law, proceedings are dealt with under two pieces of legislation; first, the Family Law Act 1975 covers married people wanting to divorce and make arrangements for children and property, as well as spousal maintenance; and, second, the Family Court Act 1997 covers unmarried people wanting to make arrangements for their children only.

It is important to note that lots of families have only superannuation assets and, under the current law, there is no power to impose an order on superannuation to provide the money as part of a settlement. For many couples, super is their most valuable and one of their single largest assets. The inability to obtain orders to split super can lead to an individual having their property matter decided in another state, perhaps even making the decision to split it, and it may not be an appropriate result and outcome for both parties. Under the current arrangement, both men and women can be disadvantaged by not being able to split their super at the end of a de facto relationship, but the reality is that women are predominantly the hardest hit.

That leads me to the topic of women's participation in the workforce and the importance of equal pay for women. Western Australia has the largest gender pay gap, which creates complexities in Family Court disputes. According to the Workplace Gender Equality Agency statistics from February this year, Western Australian women earn an astounding 21.2 per cent less than men. It goes on to state that the gender pay gap is influenced by several factors, including discrimination and bias in hiring and pay decisions; women and men working in different industries and different jobs, with female-dominated industries and jobs attracting lower wages; women's disproportionate share of unpaid caring and domestic work; the lack of workplace flexibility to accommodate caring and other responsibilities, especially in senior roles; and women's greater time out of the work force, impacting career progression and

opportunities. We know that this is a serious social issue affecting women who may have worked during a relationship, or who want to go back into the workforce. They most likely will never catch up to their male partner's level of superannuation. It is generally women who take time out of the workforce to raise children, working around school hours and women often return to work on a part-time basis. These factors result in women retiring with, on average, half the superannuation of men. Women deserve equality in all aspects of their life and our government is committed to gender equality in this state. We recognise that a society where everyone is empowered and supported to participate is not just the right thing to do, it makes sense.

The Economic Security for Women's alliance is concerned about economic security for all women in Australia. A few years ago it, produced a white paper titled *Defining the concept of economic security for all women: Policy recommendations to boost women's economic security*. On superannuation in particular, it noted that there was a case for women and issues of lower economic security than men. I quote —

> Australia is a high-income country, with most measures of lifestyle and well-being amongst the highest in the world. Continued economic growth and rising wealth have been the hallmarks of the economy over many decades.
>
> The benefits of these favourable economic fundamentals have not been evenly shared, with women continuing to lag men in terms of jobs, incomes and superannuation balances …
>
> The evidence for Australia confirms that women are persistently and overwhelmingly less economically secure than men.

The paper went on to discuss superannuation and the pension —

> Superannuation savings levels provide another stark contrast in the economic and financial security of women relative to men. According to estimates from the Association of Superannuation Funds of Australia, the average superannuation balance of a 50-year-old woman is $99,520, some 73 per cent below that of a 50-year-old man. For a 65-year-old entering retirement, the gap is still a wide 44 per cent with the slight narrowing attributable to women rejoining the paid workforce after having … children.
>
> According to Industry Super Australia, current trends in wages and workforce participation will mean that by 2030, men will retire with an average superannuation balance of $432,000 which is 39 per cent above the $262,000 average balance for women …
>
> According to research from The Grattan Institute, the superannuation balances of women is below men in all age groups.

These are just some of the reasons why it is so important to get this bill passed.

This bill also includes bankruptcy legislation. Bankruptcy and family law can combine during a separation either as the reason for the separation or as a result. COVID-19 has impacted people's economic stability, leading to increased financial stress. If one person becomes bankrupt, complications may arise in considering the financial entitlements of the non-bankrupt spouse alongside those of creditors. This bill will allow separating de facto couples to have both their superannuation split and the bankruptcy case to be handled in one court, rather than one being handled by the Family Court of Western Australia and the other by a commonwealth court. According to the Australian Bureau of Statistics, over 200 000 people are in a de facto relationship in Western Australia. Although we may not know how many will end up in the Family Court system, this is still a potentially significant amount of people who will be treated more fairly by this legislative reform.

Passing this bill is the right outcome for this and future generations, and will bring Western Australia in line with other states where de facto couples have had the ability to split superannuation since 2008. It means that de facto couples living in Western Australia will be treated equally to those in the rest of the country. It has always been Labor governments that strengthen superannuation and Labor governments that ensure women's equal representation in the workplace. I commend the Attorney General on his advocacy in bringing this legislation to our Parliament and I commend the bill to the house.

MS S.F. McGURK (Fremantle — Minister for Women's Interests) [7.35 pm]: I rise to make a contribution to the Family Court Amendment Bill 2022. It is unusual for another minister to speak on a bill but I am particularly interested in this bill. Since I have been the Minister for Women's Interests, I have advocated for the federal government to make the necessary amendments to its legislation and I am proud to speak on this important bill before the house as a result. I would like to start by acknowledging the Attorney General for his partnership and commitment to this reform.

Since I have been the Minister for Women's Interests, I have been very aware of the injustice that results from the Family Court in Western Australia currently being unable to split superannuation for de facto couples. As other

speakers on the bill have noted, Western Australia is the only jurisdiction where de facto and same-sex couples are unable to split superannuation in Family Court proceedings. Many women, including family and domestic violence survivors, have raised concerns with me about this issue. It can leave Western Australians with no assets or no prospect of financial recovery in the long-term. This inequity dates back to 2006 when WA tried to make limited referrals of powers to the commonwealth regarding de facto superannuation splitting. Again, as many other speakers have outlined, all other states at this time have referred all legislative powers regarding de facto relationships to the commonwealth, but essentially, the commonwealth wanted a full referral of Western Australia's powers on these matters and so refused the narrow referral. The Attorney General and I have continuously advocated to the commonwealth to accept the referral in the terms that Western Australians required. This was finally accepted in 2018. We continued that advocacy until the commonwealth passed the Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Act 2020 in the commonwealth Parliament. This gave effect to the referral that would allow Western Australia to give effect to the changes made to the Family Law Act 1975.

This bill is a vitally important piece of law reform that will ensure equity for women across Western Australia who are already disadvantaged when it comes to superannuation income. It will ensure that our state has modern laws that reflect the society we live in. Again, as other speakers certainly from our side have outlined, WA has the highest gender pay gap in the country; at the moment it is 21.9 per cent. It has been stubbornly present and, for as long as I have been aware, certainly coming up to three decades, Western Australia's gender pay gap has consistently been on average about eight to 10 per cent higher than the national average. That is for a number of reasons but I will not go into detail. I want to spend a minute talking about the gender pay gap, as other speakers have, because it means a disadvantage during working life, but it also translates to a disadvantage into retirement as well. Of course, that is the case because of the superannuation contributions that are made and legislated for now. Although the mandatory superannuation system is very welcome and important for working Australians, including Western Australian women, it does amplify the disadvantage that many women face during their working lives. Many of us, as I said before, are frustrated at the persistent, stubborn and very real pay differentials that women in the twenty-first century still experience. The gender pay gap is not a theoretical construct that is suspended above women's everyday lives. Women are still largely concentrated in low-paid industries and their skills are often unrecognised. I am pleased at the efforts of the Albanese Labor government, very quickly after its election, to support real increases in minimum pay and that this was delivered with the recent Fair Work Commission decision. The pandemic also brought an increased appreciation of care and service industries, although time will tell whether that translates to higher wages for workers in those sectors, many of whom are women.

I note the member for Kalamunda pointed out the fall in Australia's ranking in the global gender gap index. We are in the dubious position of our ranking continuing to fall. We now sit at 50 in international terms between Georgia at 49 and Suriname at 51—incredible! In those global ranks, the USA sits at 30; Canada, 24; France, 16, South Africa, 18; and Mexico, 34. Australia sits below all those countries. As I said, in the contribution of the member for Kalamunda that I listened to, the member pointed out what is frustrating is that we would naturally like to think that we are improving on gender equality measures, the gender pay gap and a range of different indicators towards increased equality. But, we know that on that measure, in 2006, Australia was fifteenth, so we are continuing to decline on those measures. We do well in education, at number one, but poorly in economic participation, sitting at seventieth. The index in economic participation and opportunity includes the women's labour force participation rate, wage equality, earned income, the number of women in managerial positions and the number of professional or technical workers. In the five and a half years that I have been Minister for Women's Interests, I have met with many industry leaders, different individual companies and representatives of industry groups where women have joined together to network to try to advance their participation in industries. These barriers to women's full participation and equal acknowledgement in all of those areas still exist throughout many, if not all, industries that women work in in Western Australia.

It is the case that women's concentration in low-paid industries is one reason for the gender pay gap, but, make no mistake, there is still good old-fashioned sexism rife in our labour market. The Social Research Centre publishes a national graduate outcome survey. In 2020, it confirmed earlier findings that in 15 of 19 areas of study, men's undergraduate median salary was greater than women's. I will repeat that: in 15 out of 19 areas of study, men earn more on average than women in graduate salaries. I find that extraordinary in 2020. It is as staggering as it is outrageous.

The gender pay gap is important and, of course, that translates into superannuation savings. Then we have the family law system that is required to manage an equal distribution of wealth in the event of divorce and a splitting up of assets. Of course, we have seen inequity in the de facto system on many measures, whereby those proceedings are used to divide assets so that they are shared equally between partners, when one partner, usually the woman, will take time off for caring responsibilities; and, of course, that equality has been frustrated when it comes to superannuation. That is what this bill addresses. It will enable the court to properly consider the distribution of superannuation assets. We have heard before from other speakers that the average woman in WA retires with almost 40 per cent less superannuation than men. It is quite remarkable. As we know, superannuation balances are also impacted by the time

taken out of the workforce on family and caring responsibilities and, as I said, the burden unfortunately falls largely on women. This can leave women in a precarious position if separation happens, especially if this occurs later in life.

Women's economic security is intrinsically tied to safety. Without full economic independence, ensuring women are safe in all aspects of their lives cannot be guaranteed. All women and girls deserve to live their lives free from violence and assault. The McGowan government is committed to supporting Western Australian women and in March 2020 we launched a 10-year plan to drive gender equality. *Stronger together: WA's plan for gender equality* is a framework for government, community and business sectors to work together to create a better, fairer and more equitable community here in Western Australia. We have set a target of 50 per cent women in senior top-level positions in the public sector. When we came to government, only 34 per cent of senior executive service positions were filled by women. As at December 2021, women now make up 44.5 per cent of the senior executive service. We are well on track to achieving parity. This is an incredible turnaround, as just two years ago we were not looking at parity until 2035. This demonstrates that the McGowan government is serious about making inroads within our own employment ranks in the public sector. This is significant if we are to be credible when we send these messages publicly; and, of course, we are the largest employer in the state. We have also improved representation of women on boards and committees. Women now make up 52.5 per cent of positions on government-controlled boards and committees. This is an achievement we are very proud of.

One of the reasons that women get so angry about persistent inequality and a number of the measures we have heard about in debate on this bill is that this inequality is quite personal. In my case, some members in this house may have heard me speak about the debt I owe to my own mother, who effectively raised five children on her own. She divorced my father the year before the Whitlam government enacted fundamental change to Australia's family law framework under the Family Law Act 1975. That legislation came into effect in January 1976. As a result of the disastrous timing in my parents' divorce, my mother had very minimal maintenance payments to raise five children; in fact, these payments ceased altogether when I, as the youngest, left home after high school, and mum was forced to sell the family home and only got a portion of the proceeds. Despite working almost continuously throughout her adulthood, while raising five children—she often worked two jobs—she retired with almost no retirement savings and certainly very little superannuation. Although the bill before us today relates to de facto relationships, not those in divorce proceedings. we know as a result of our world-class superannuation system that superannuation assets today can be quite substantial. Although these improvements seem a world away to the situation my mother faced after her divorce in 1975, what is before our Parliament today is another step in the crucial work to remove legal barriers to equality for many women. My mother's own experience, and likely the times, has driven my own economic independence, which I am very grateful for. Her experience, and my observations as a union official for many years, has also driven my determination for change in these fundamental areas of injustice.

I note others in this discussion have acknowledged our compulsory superannuation system—one of the many reforms for which we owe a debt to a Labor government. The member for Mirrabooka spoke about the improvements that have been made, and continue to be made, to ensure access to decent superannuation contributions, while at the same time we have an increase in precarious employment. These improvements are crucial, and I simply acknowledge the profit for members' industry superannuation funds we have in Australia. These funds have survived repeated efforts by conservative governments to attack and undermine them, so frustrated were those conservative governments at the industry funds' success on nearly every metric.

I served for two years on the board of Australia's largest industry fund, AustralianSuper. That fund now has a staggering $209 billion in funds under management, placing it at number 22 in the world by size of funds under management. One in 10 working Australians are members of that fund. Performance league tables consistently show that larger funds, particularly not-for-profits, are among the best performers in the nation. I am not the first to observe that it is not only the legislated compulsory superannuation system, but also the industry funds, or profit-for-members model, whereby unions and employee representatives are represented at a board level, that have succeeded at scale for the benefit of everyday Australians.

It is time we ensure that women in Western Australia are not disadvantaged in separation proceedings. It is long overdue implementation of reform for Western Australia to ensure that these protections are available to all women in our community.

DR K. STRATTON (Nedlands) [7.51 pm]: I stand to speak in support of the Family Court Amendment Bill 2022. I stand here to support the principles and the practice of fairness and recognition embedded in the key proposed amendment dealing exclusively with superannuation splitting for separating de facto couples in Western Australia. As we have heard, this change will see the value embedded in a superannuation fund divided between the two parties, noting, of course, that the split is on paper until the superannuation asset is realised according to superannuation law, such as when somebody retires from the workforce. As we have also heard, since the introduction of compulsory superannuation, it has become a major component of people's property. It is often either the most important

asset or second only to real physical property. Therefore, in a division of property after a relationship breakdown, superannuation has become an increasingly important consideration.

Previously, the lack of power in the Family Court of Western Australia to make orders for an equitable distribution of all assets, including a superannuation fund, has been considered to have the potential to work unfairly for the non-member of the fund. Given the gender superannuation gap, this works unfairly most commonly for women. The Australian Human Rights Commission points out that, fundamentally, our current superannuation system is linked to paid work and paid work only. It therefore disadvantages women, who are more likely to move in and out of paid work to care for family members—children and parents. We do not specifically recognise or reward unpaid caring contributions to family, the community or the economy in many of our social structures, superannuation included. Further, women are much more likely to be engaged in casual and part-time work, which also contributes to the gender superannuation gap. We already know that many women live out their older years in poverty and older women is one of the largest growing groups of people experiencing homelessness.

Can I add, then, as a woman who worked part time for 12 years to take primary responsibility for child rearing, I also welcome this change in its recognition of carers' contribution to family life and the very, very real financial sacrifices they make and the risks they take now and for their future selves when they do so. I have had the opportunity to work full time for the last seven years and have watched my superannuation nearly triple in that time. That was at once comforting and quite terrifying. It was terrifying because I think it was the first time that I really confronted or experienced the loss of the compounding interest that my superannuation balance had not benefited from. I am acutely aware that I stand here and say this as a woman of extreme privilege, particularly having worked primarily in universities, with their generous superannuation contributions. Although I have the privilege of having much more superannuation than most women my age, there remains quite a significant relative gap for me compared with most men in academia.

As outlined by my colleague the member for Mirrabooka, in 2019 Monash University and AustralianSuper published the research paper *The future face of poverty is female*. At the time of that report's publication, women's superannuation balances were on average 42 per cent less than those of men. The report notes that commentary surrounding these statistics often focuses on individual-based solutions and choices—what could or should I do as a woman to improve my superannuation—which actually denies the really complex cultural, structural and economic reasons across women's entire life spans that can lead to superannuation poverty, let alone a gender superannuation gap. It outlines some of the key contributors to superannuation poverty for women and that the superannuation gap itself begins with the gender pay gap. A percentage of less is a lesser percentage, funnily enough. Women who take parental leave and work part time are subject to a superannuation double penalty. Firstly, lower or no superannuation contributions made as a direct result of reduced or no paid work and, secondly, the impact on career and therefore the opportunities for promotion and higher paid work. Superannuation projections and structures are also built on a model of continuous, linear and upward financial trajectories, quite different from women's work pathways.

Again, I reflect on my own experience of working in universities. It was many, many years of casual work with no sick leave. I had no parental leave for either of my children. I never had long service leave or annual leave. I had many periods of interrupted employment between semesters and no opportunity therefore to apply for promotion. Further, at that time casual work—I have to say this has not changed at all universities—meant that I was not eligible to apply for study leave either. Study leave is a major opportunity for career-building activities in academia such as research and publishing.

Women also then complete the second shift at home of bearing the disproportionate burden of domestic responsibilities, meaning that we are often in a difficult position to build up a superannuation balance on par with our male counterpart. When returning to the workforce after child rearing, which often coincides with the time when our own parents require our additional care, women must not just smash the glass ceiling but smash back through the glass ceiling. There is a particular gendered ageism that further denies women the possibility of attempting to catch up on retirement savings later in life.

Adverse life events such as divorce, family illness or single or sole parenthood have a greater impact on women's financial security. Women are more likely than men to experience financial hardship after separation, especially those women who have experienced family violence, as this compounds their ability to access services and lawyers and to have the courts resolve their family law disputes fairly and therefore have their rights fully realised. Research published by the Australian Institute of Family Studies in 2020 based on a longitudinal study of separated families found that when parents separate, compared with fathers, mothers experience greater financial losses after relationship separation and a slower rate of recovery. The research notes that some Australian studies have found that fathers' financial circumstances change little or even improve slightly after separation, while women are much more likely to experience entrenched poverty. Despite the many social and structural changes in Australia over the past decades, female-headed single-parent families continue to be among the most financially deprived of all families, although I note that I stand here as a sole parent delighted and proud to see the son of a single mother as the Prime Minister.

Finally, as someone who has never been officially married, I welcome the equal recognition of de facto relationships. When my de facto partner died 10 years ago, the engagement with his superannuation fund, which was where his life insurance also lay, was simply awful and traumatising. Our relationship began when we were flatmates in our early 20s. We were essentially in a de facto relationship from the very beginning. We were lucky enough to buy our first house together when we were 24. When he died, we were in our third forever home. We had two gorgeous children together when we were in our 30s. But apparently neither of these things were a demonstration of a committed relationship to his superannuation fund. Fortunately, we did have a water authority bill that was in both our names. That was apparently the proof that was required. Our relationship was long term, committed and loving, yet I was treated unfairly and unkindly because we had not formalised our relationship in one particular way.

It is perhaps odd to say that it is important to recognise de facto relationships as equal to legal marriage when we are talking about those relationships ending; however, equality provides protections and structures for those relationships and is therefore meaningful and important. I very much welcome this amendment for what it will do to make some dent in the superannuation gender pay gap and the superannuation poverty experienced by women and to recognise de facto relationships. I commend this bill to the house.

MR R.S. LOVE (Moore — Deputy Leader of the Opposition) [7.59 pm]: I rise to make a contribution to the Family Court Amendment Bill 2022. I advise that I am the lead speaker for this bill in this house, but, of course, the shadow Attorney General, Hon Nick Goiran, is in the other place and he will be able to interrogate the bill much more fully and examine the issues much more than I will be able to. I would like to put on the record that the opposition will support this bill. We think it is very worthwhile. It will bring an end to a system that has, for many years, as the member for Nedlands just outlined, discriminated against people who have been in a long-term relationship as a de facto couple rather than as a married couple.

We are talking about a couple of matters here: the superannuation split and also the ability to simultaneously work through the bankruptcy matters in a relationship when arriving at a settlement. Of course, many people will be looking at their superannuation at the moment wondering whether there will actually be anything to fight over. I just had that conversation with a Labor member of Parliament on the way into the chamber who announced that she did not want to talk about superannuation at the moment because her superannuation account was not looking good! I hope that people hang in for the long haul and understand that when talking about retirement, there will be ups and downs on the way through, and that it is important to leave the super in there so that it can accumulate and grow. One of the things that really hurts women, mainly, I think, being the carers in family relationships, is they come out of the workforce fairly early on in their lifetime and are out of the workforce for a considerable amount of time. The cumulative compounding growth of superannuation over time hurts them if they have not participated in a big way at that point in their life.

We know that the system has been unfair and, as the opposition, we are keen to see that change. It seems to me to have been a bit of a Mexican stand-off at some point between the two entities—the state and the commonwealth. This could have been fixed in a sense that the commonwealth would have, I think, allowed Western Australian couples in a de facto relationship to have been given access to super splitting, but the price to pay for that was handing over pretty well all the powers of our Family Court, and that is not something that either the current government or the previous government wanted to do. That led to a stand-off between the two Parliaments, which has dragged on to the detriment of the people caught up in that, which is those who have not been able to access superannuation splits in that time. We know that the Family Court Amendment Bill will finally resolve the stand-off between the state and federal governments. The federal government has already enabled that situation and we are now putting this legislation through the house to complement that to enable us, as I understand it, to use this power on behalf of the federal system within our court system. I am referring to the conferral of the narrow right to deal with those matters—the bankruptcy and superannuation matters.

I am told that more than 200 000 Western Australians are in a de facto relationship. That number increased by 30 000 between the published censuses, which are taken every five years. A considerable number of Western Australians are in that situation. The opposition asked for some information around some matters to do with this bill. I will refer to some answers that were supplied to Hon Nick Goiran, who asked questions in this regard at the briefings. He got some answers fairly recently, I think. They are to do with the proportion of matters currently before the Family Court of Western Australia dealing with de facto couples and the proportion dealing with married couples—or not married couples, I suppose. The split of matters currently before the Family Court is 47.28 per cent are de facto matters and 52.72 per cent are matters involving married couples. That is a significant number. Almost half of the matters that go to the Family Court relate to de facto couples.

Further, and pertaining to de facto couples only, the percentage of children's matters before the Family Court of Western Australia is 79.6 per cent—I would expect they are already being handled—and the percentage of financial and property matters before the Family Court of Western Australia is about 20 per cent. Even so, a very significant

number of the issues before the Family Court revolve around de facto couples, and a significant number, but not a majority, are based on the financial matters that we are discussing here. That is a significant number of people who have not been able to avail themselves of splitting their superannuation in that time.

Since about 2002, de facto couples in Western Australia have been allowed to enter into arrangements similar to married couples, but not in regard to the final matter of the superannuation split. I understand that under the current law, a large number of people in de facto relationships who have until now been seeking to reach a settlement, have been disadvantaged compared with those who have been married. We have heard from many, many speakers that superannuation is a major asset in many relationships. If it is not the biggest asset, it is certainly the second biggest asset after the family home.

As I said, time out of the workforce works negatively, particularly for the woman in the relationship, usually, and thus we see that their career paths—I have been hearing this term throughout the discussions—are non-linear. Their workforce participation is staggered and there are gaps therefore in both their superannuation and the amount of pay they might be receiving because they are a bit behind on the promotional ladder than they would otherwise be if they had stayed in the workforce. We heard from some of the speakers tonight that even if those women were at the same level of participation, they would probably still be a little bit behind because of the real gender pay gap between males and females in the workforce even when they are in the same sorts of roles. As I said earlier, that time when they are out of the workforce, with the impact it has on the cumulative growth of their nest egg, means that, on average, as we have heard, women tend to retire with less than half the amount of superannuation that men do.

Until now it has not been possible for the Family Court of Western Australia to actually split the super. It is able to take it into account, and I believe it will do so when trying to reach a fair settlement between couples, but that is able to be achieved only if there are other significant assets that can be offset against the one-sided superannuation arrangement that might exist. If a couple does not have those other major assets, although some technical things can be done, it is actually pretty hard to arrive at a fair settlement. When a couple does not have those other major assets, it becomes particularly difficult for the couples to be treated, not necessarily equally, but fairly.

We know that all the other states moved away from having their own Family Court systems and that in Western Australia we stubbornly kept to the idea that we should have our own system. That has led to the situation whereby for many years now de facto couples have not been able to split their super because it went back to the stand-off between the federal and state governments.

Again, some questions were asked by Hon Nick Goiran in the briefings, and these answers have only just come back in the last day or two. I will just read a little bit from these because I think they are instructive and quite insightful on some of the issues we are talking about here. One question asked was —

> What is the advantage of maintaining that balance of financial matters (that is, those not relating to superannuation and bankruptcy) and children's matters to be dealt with under State law in the Family Court of Western Australia, as opposed to a full referral of powers to the Commonwealth?

That goes back to why we have that Mexican stand-off, if you like, between state and federal. The answer was provided through the Attorney General. The Attorney General unfortunately cannot be here tonight, and I hope that he is well. The Minister for Finance is here, listening. The answer that came back was —

> **Children's Matters**
>
> As a State Court the Family Court of WA exercises not only federal and state family law jurisdiction but also state jurisdiction under the *Adoption Act 1994*; the *Surrogacy Act 2008* and the *Children and Community Services Act 2004*.
>
> The Family Court of WA has extensive powers to ensure the welfare of children including, where a child the subject of proceedings appears to the court to be a child in need of care and protection all the powers of the Children's Court's Care and Protection jurisdiction (subsection 36(6)) *Family Court Act 1997* (WA).
>
> Facilitated by its structure as a State specialist integrated Family Court, the Family Court of WA has information sharing protocols with the Department of Communities, Legal Aid of Western Australia, the Magistrates Court of Western Australia, and the West Australia Police.
>
> The Department of Communities also has two officers co located at the Family Court which enables the Court to quickly access information from the Department for Communities which is shared with Legal Aid about children.

Presumably, if it were the Federal Court of Australia, those integrated activities would not be possible. That is the explanation that is given on children's matters. On financial matters, it states —

> The *Family Court Act 1997* (WA) governs proceedings between de facto couples and is amended periodically to maintain consistency with the provisions of the *Family Law Act 1975* (WA) to ensure that de facto couples in WA are in the same position as married couples in WA.

Except, sadly, for a long time—this is not part of the explanation but I will break in to say—in the case of being able to take advantage of those superannuation arrangements that the rest of Australia has been able to take charge of. The explanation continues to give some justifications, and I will leave others to judge whether they think they are worthwhile or not, but I will read them anyway. It continues —

> One of the obvious benefits of the State having its own Family Court and jurisdiction to deal with matters involving de facto couples under the provisions of the *Family Court Act 1997* (WA) was the legislation by which the *Family Court Act 1997* (WA) was amended in 2002 to extend the property provisions to de facto couples in WA.

There was an earlier adoption in Western Australia of some of the aspects of the principle of equality, but not superannuation, because Western Australia had no power to deal with superannuation. That is an example of being a bit ahead of the game, but then, because of the effluxion of time and the importance of superannuation over that time, it began to have a negative effect, in some ways, on couples trying to come to fair arrangements. The answer continues —

> Prior to that the only remedy for the unmarried was partition proceedings in the Supreme Court which were costly and the Supreme Court had no power to invoke principles of family law.

I will not go through the rest of it, because it goes on to refer to constructive trust and all sorts of things. Historically, it would appear that there was a bit of an advantage in being free from the federal situation for de facto couples, but I think that over time the rest of Australia has enabled those types of arrangements plus the ability to deal with superannuation matters.

I will read one final extract from these questions. I will leave the rest for Hon Nick Goiran, because he asked the questions, so I think it is probably better that he outlines them all. He asked —

> If this full referral of powers were to occur, would this mean the Family Court of WA would cease to exist?

In other words, if we referred all powers to the federal system. The answer reads —

> No. The Family Court of Western Australia was established pursuant to section 41 of the *Family Law Act 1975* (Cth) on 21 October 1975. Further action by the Commonwealth in cooperation with the state government would be required before the Family Court of Western Australia could possibly cease to exist.

Just referring the powers would not necessarily mean that the court would cease to exist.

As I say, there has been a history here for quite some time. These proposed state laws were introduced almost 16 months after the federal Parliament had passed the laws that closed that loophole and potentially conferred those powers to the state Family Court, subject to us actually enabling that from this side of the Nullarbor.

This bill also refers to bankruptcy proceedings, which means that they can be held concurrently with family law proceedings. One can imagine, if there were a bankruptcy and a property settlement in place and a court could not deal with the two together, it would be very, very difficult to come to a fair arrangement between the parties to ensure justice for all concerned.

We have recently raised concerns about the lack of action on this issue. A number of other bills seem to have been brought on, but nothing on this issue has come into this chamber until very recently on 6 April, when this bill was first read by the Attorney General. Back in June 2021, Hon Nick Goiran asked a question to the parliamentary secretary representing the Attorney General on whether the Attorney General was aware that de facto couples were not subject to superannuation splitting laws, and—I am paraphrasing here—whether the bill would be introduced soon. The short answer was that the government is aware of the injustice stemming from the Family Court being unable to split superannuation, and that the matter would be introduced in the Parliament as soon as practicable. That was back on 24 June 2021, so that was nearly a year ago. Mia Davies, Leader of the Opposition and shadow Minister for Women's Interests, raised this matter again on 16 September 2021. She said —

> I refer to the injustice in Western Australia's legal system that means that when a de facto couple separates, they are unable to divide their superannuation entitlements when finalising a property settlement. Why has the Attorney General's government been able to fast-track ticket scalping legislation and prioritise electoral reform legislation to rip regional representation from the Parliament, but is yet to introduce this much-needed legislative change?

That is a very fair question, because we know that there are people who are waiting to achieve a settlement. They do not want to lock that away if they cannot change their situation. Of course, some people simply cannot wait. They really do need to get the matter resolved.

In his answer, the Attorney General noted that the legislation had priority at that time, but it was still months before it was actually introduced into the house in April. I am looking here at a press release from April in which the Attorney General said —

> Western Australian de facto couples will soon be permitted to split their superannuation to achieve a fair division of assets in the event that their relationships break down.

We really do want to see that happen. The opposition is keen for that to progress quickly. We hope that once this goes through the proceedings of this house, it will make its way up to the other place as quickly as possible. It has arrived when we now face the winter break, which means it will be quite delayed by the time it is enacted, compared with what could have happened if it were put ahead of things such as ticket scalping, electoral reform and a whole range of other matters that this government decided to prioritise. I also note the big list of matters that the government decided should be put into this place as urgent. Very little notice was given to the opposition on, I think, 11 occasions, and those bills were rammed through in a few days. This is a worthwhile bill that should have perhaps had more priority in its progress since the federal government agreed to confer the powers on our state court system.

Again, regarding the lack of action, Mia Davies, shadow Minister for Women's Interests, Leader of the Opposition and Leader of the Nationals WA, wrote to the Attorney General about the de facto superannuation splitting laws and outlined that the matter was raised at a recent policy forum she had attended. I am probably not at liberty to name the group that she had been dealing with, but it was a group of very influential and interested women who, at their heart, need to see this legislation go through. She was asking for some urgency to this matter and the letter states —

> This matter was raised at a recent policy forum I attended in the context of providing greater financial security for women. The forum was canvassing solutions to reduce the prevalence of women over the age of 55 becoming homeless, and it was put forward as one of the suite of remedies that may assist in addressing this wicked problem.
>
> I understand the Commonwealth passed legislation to extend superannuation splitting to de facto couples in Western Australia on 3 December 2020 and the next step in this reform process is for the Western Australian Government to introduce and secure passage through the WA Parliament of its own legislation to support the operation of this reform.
>
> Noting that the Shadow Attorney General has raised this in Parliament (most recently in June 2021), and the broad support from practitioners of family law and other legal representatives, I write to encourage you to bring the legislation to the Parliament as soon as possible.

There you have it. In September 2021, the Leader of the Opposition not only outlined support, but also urged the Attorney General to bring this matter to Parliament as quickly as possible.

Obviously, the opposition is extremely supportive of this legislation. We will go into consideration in detail because we want to explore some of the facts around the bill, not because we want to hold up the process; it is important. I know the Minister for Finance is not the Attorney General, but I understand he has a doctorate and his professional qualifications revolve around his knowledge of the law. I dare say, if pressed, he will be able to provide a very reasonable account of the reasons behind many of the facts we are looking at here.

In closing, I would like to reiterate the opposition's support, as outlined by not only what I have been saying, but also the actions of Mia Davies, the Leader of the Opposition, who in bringing this to Parliament and raising this with the Attorney General directly via letter has shown that we really want to see this happen. We understand that although it will affect couples generally, it has particular importance for the partner who may have not been as active in the workplace and may have provided more support for children and the family and therefore does not have access to the same level of superannuation as the other partner. With that, I commend the bill to the house and look forward to the closing comments from the Minister for Finance.

DR A.D. BUTI (Armadale — Minister for Finance) [8.24 pm] — in reply: As we know, the Attorney General is not here. A number of speakers have mentioned and congratulated the Attorney General for bringing the Family Court Amendment Bill 2022 to the house. The member for Roe mentioned our reformist Attorney General and considers this as one of the most important pieces of legislation brought before the house. The Attorney General has brought a lot of legislation before the house; it is hard to rank them. This is very important legislation. I thank the members for Moore, Roe and Vasse for their support and also all members of the government side who have spoken in support, including the Minister for Women's Interests, because, in many respects, this bill tries to alleviate inequities that are often experienced by women in de facto relationships that, of course, previously happened in marriages.

In regard to the issue of delay, I think the member for Moore talked about the vesting of jurisdiction and the vesting back of jurisdiction; it is an incredibly complex issue. Advice had to be granted by the Solicitor-General and the State Solicitor's Office in regard to appeal pathways and federal jurisdiction. Also—I am not trying to be political here—the former federal government sat on its hands for a long time, particularly when it came to the bankruptcy provisions. The Attorney General has been trying to bring this to a head and bring this legislation to this place for some time. It is very complex and there was a considerable delay until legislation was passed in federal Parliament.

I have to say that the member for Moore did a pretty good job for someone who is not a lawyer, talking about federal jurisdictions and so forth. As we know, the commonwealth Parliament has the ability to legislate for only matters under its constitutional powers, and one of them is marriages. It does not have the power in its original jurisdiction in regard to de facto relationships. I think the member mentioned the ironic situation that we are allowed to have our own Family Court under section 41 of the commonwealth Family Law Act 1975, which was a great reform of the Whitlam government. It allowed each state to set up its own Family Court. We are the only state that did so. The Solicitor-General at the time was Sir Ronald Wilson, who became our first High Court judge. He was offered the position previously and knocked it back and then took it on the second time. I think he is probably the only person who was given two opportunities to join the High Court, and he was our first High Court justice. He was a prominent "state rights–er" who believed that states should retain all the powers that they had and that is why he was dubious about handing over federal jurisdiction to issues in regard to marriage. But because we had our own Family Court and we were not constrained by the federal constitutional lack of power, we could deal with de facto relationships. Our Family Court had greater powers to deal with de facto relationships than the federal Family Court had.

I think the member mentioned amendments made in 2002 to the Western Australian legislative framework that allowed the Family Court of Western Australia to deal with property matters in de facto relationships. Prior to that, we had to rely on the common law. That is what happened at the commonwealth level. There were a couple of High Court cases in the mid-1980s when Justice Wilson was one of the judges. There was Muschinski v Dodds and Baumgartner v Baumgartner. They set up a doctrine called the joint endeavour constructive trust, which basically said that a de facto couple is working on a joint endeavour to improve the family home or property assets, and if there is a split, one partner holds a constructive trust for their partner. That therefore allowed a more equitable outcome, but it involved expensive and prolonged litigation. The courts took it on themselves to try to rectify the inequalities that we had due to a deficient legislative system and the lack of constitutional power at the federal level.

This bill seeks to allow the Family Court of Western Australia to deal with superannuation and bankruptcy matters. That is as a result of a federal piece of legislation that will become operational and proclaimed at the same time as this bill is proclaimed. These acts will become operational at the same. The bill contains transitional provisions that will ensure that any litigation that is currently on foot will be able to obtain advantages as a result of this piece of legislation.

Various speakers have spoken about how unfair it has been when a de facto relationship is dissolved, particularly when superannuation is at stake. Another great reform of the Hawke–Keating Labor government was the instigation of universal superannuation in 1992. The value of superannuation assets can be quite considerable. Even though the courts have sought to take into consideration property assets, our Family Court system has not been able to deal with superannuation assets in a legislative format, and that has led to inequitable outcomes. That is why this piece of legislation is so important. This bill will enable Western Australian de facto couples to take advantage of the superannuation outcomes as a result of the commonwealth Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Act 2020.

It is interesting to look at the history. The Whitlam government set up the commonwealth Family Court in 1975 under its constitutional powers with regard to marriage. There is also a provision in the commonwealth Constitution that allows states to transfer state jurisdictional issues to the federal Parliament. Western Australia was prepared to refer some matters, but the commonwealth government legislation was considered to be a bit too narrow; therefore, the issue of superannuation was still a problem in Western Australia. The establishment of the federal Family Court under section 42 of the federal Family Court Act allowed Western Australia to set up its own Family Court, and because we were not constrained by the constitutional limitations, we were able to deal with de facto relationships. Therefore, we were ahead of the curve as far as that was concerned. However, over time, and with the superannuation changes that have come about as a result of Labor governments, that has become a major problem. We have also had to rely upon the common law of bankruptcy, which is basically about adjoining debtors and constructive equity; that is, they would hold that debt in trust for the other side, so basically it would be split evenly. It is unconscionable that a person could be in breach for the adjoining debt of their partner. That could be very problematic and result in expensive and prolonged litigation.

Over time, Western Australia has been put at a disadvantage. The 2002 amendments allowed the Family Court of Western Australia to deal with property issues among de facto couples, but it could not deal with superannuation and bankruptcy, which are commonwealth matters. I know that the Attorney General has been hoping for a number of years that the commonwealth Parliament would pass an act that would allow us to bring in an act to give effect to what has been granted to us as a result of the commonwealth legislation. Under the commonwealth Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Act 2020, Family Court of Western Australia magistrates will be invested with federal jurisdiction in respect of matters arising under new part VIIIC, which deals with superannuation splitting in respect of de facto couples in Western Australia under the Family Law Act 1975. That will create a new section 39J that will be inserted into the Family Law Act 1975. The commonwealth act also amends the Bankruptcy Act 1966 to enable bankruptcy matters related to de facto couples to be heard by the Family Court of Western Australia concurrently with family law proceedings. That will make proceedings quicker and less expensive.

I thank the opposition for its support. I also thank all the members on the government side who have spoken in support of the legislation. I thank the Attorney General for the work that his staff and the State Solicitor's Office and the Solicitor-General have done to ensure that this legislation could be brought in, because it is incredibly complicated. That concludes my comments on the bill.

Question put and passed.

Bill read a second time.

[Leave denied to proceed forthwith to third reading.]