

FAMILY COURT AMENDMENT BILL 2019

Second Reading

Resumed from 16 October.

MR P.A. KATSAMBANIS (Hillarys) [12.38 pm]: I rise as the lead speaker for the Liberal Party on the Family Court Amendment Bill 2019. I know the Attorney General, who introduced this bill, is not here today because he is representing the interests of our state at a ministerial meeting of Attorneys-General. It used to be called SCAG—Standing Committee of Attorneys-General—but I think it is now called CAG, the Council of Attorneys-General. I am never quite sure with all these acronyms —

Dr A.D. Buti interjected.

Mr P.A. KATSAMBANIS: I will leave that to the member for Armadale’s thought processes!

I am sure that he is doing a good job representing the interests of our state in that national forum. I indicated to the Attorney General that the Liberal Party supports this bill, as we support all bills such as this that come to this place. If the Attorney General were here, he would almost be able to recite word for word what I would say.

I still think that in 2019 it is a real failure of this Parliament that 44 years after the introduction of the commonwealth Family Law Act and almost 44 years since the commencement of the commonwealth Family Court, we are still using arcane methods to update the Western Australian version of the Family Court legislation so that it stays contemporary and in line with the commonwealth jurisdiction. We are the only state that has a separate jurisdiction. I understand the arguments about maintaining sovereignty, not only in a theoretical sense, but also over the operation of the court itself, particularly given the size of a state like Western Australia and its limited population. We need to make sure that the Family Court jurisdiction as well as other jurisdictions that come under direct state control are accessible to people right across the state. We do not want to leave that to Canberra.

Mr B.S. Wyatt: There’s an interesting quirk in WA —

The ACTING SPEAKER (Ms M.M. Quirk): Excuse me, Treasurer?

Mr B.S. Wyatt: Just by way of interjection.

Mr P.A. KATSAMBANIS: I am happy to take it.

The ACTING SPEAKER: That is fine.

Mr Z.R.F. Kirkup: She heard “quirk”.

The ACTING SPEAKER: Yes. You woke me up!

Mr B.S. Wyatt: An interesting —

Mr P.A. KATSAMBANIS: Anomaly?

Mr B.S. Wyatt: Anomaly. I apologise, Madam Acting Speaker.

Do you get lobbied by lawyers about changing our system to hand the powers to the commonwealth?

Mr P.A. KATSAMBANIS: Yes, I do. I have talked about this in other amendment bills, but it creates a serious time lag problem. This is more about procedure than it is about victims of domestic violence. But in some cases around child support, in which it takes a long time for our system to catch up, I think it is a real problem. I am not suggesting that we hand over powers holus bolus. But, really, there has not been a situation since 1975 when we have not amended our legislation in line. If we do not want to hand over the powers, perhaps we can implement some sort of system by which a decision of the Attorney General or a subcommittee of cabinet can be made immediately, laid before both houses and be able to be disallowed. I am sure we can come up with a mechanism. I have not turned my mind to the mechanism, but there are ways we can do this.

Let us look at what we are dealing with now. We are dealing with an amendment that the commonwealth passed on 3 December 2018 and came into force on 10 September 2019. We still do not know when it will come into force in Western Australia. If we pass it here today, it will sit over Christmas, the Legislative Council will come back and eventually get around to it, and it will get royal assent. In 2019, that is not good enough. During debate on the previous bill, we talked with the Minister for Police about how long it takes to get legislation through. The public expect us to work better. If we lose the faith and the trust of the public in doing our job and doing it expeditiously, we are doing ourselves a disservice as well as the public of Western Australia. I used to say this when I was a government backbencher in the other place. It is not a new road to Damascus for me. The Treasurer and others in this place know that I do not sit on the ceremony of “my party versus your party”. If I think something is wrong, I will say that it is wrong, whether it is the Treasurer’s party, my party, or someone else’s party. This is not party political anyway.

The commonwealth passed legislation called the Family Law Amendment (Family Violence and Cross-examination of Parties) Act 2018 in December last year. We have had the opportunity to deal with it since then and are dealing with it now. I do not question why it has taken so long. That is just our process and the government had other priorities. This came into effect on 10 September 2019. I think it is great law. It provides that in any Family Court proceeding, whether it is in relation to parenting orders or property hearings—that is important—if there is an allegation of family violence between the parties, the parties will be prohibited from directly cross-examining each other if one of a series of things has happened; that is, if one or either of the parties has been convicted of or charged with an offence involving violence or a threat of violence towards the other party; if there is a family violence order other than an interim order that applies to both parties; if an injunction has been made under the Family Court Act 1997 for the personal protection of a party and that application for an injunction is directed against the other party; or if, in the court's discretion, on an application from a party or on its own initiative, it thinks it is a good thing to stop direct cross-examination. In those circumstances the only cross-examination that will be able to take place must be conducted by a legal practitioner. In my opinion, that is a good thing. Everyone should be able to reserve the right to represent themselves in court and to cross-examine witnesses if they wish, but that right needs to be read down by other people's rights—in particular, in this case, people who have been victims of family violence. It is usually women and children, but not exclusively. As our jurisdiction broadens, we recognise that courts will increasingly be dealing with family violence matters between same-sex parties as well. It covers the whole gamut.

Irrespective of that, a victim of family violence does not need to be further traumatised by a direct cross-examination by someone who is not only a participant in the proceedings who was the perpetrator of the family violence, but also someone who, because of their lack of legal training and because they cannot be responsible to the court as a legal practitioner or as an officer of the court, can delve into issues that are completely irrelevant, so it is up to the judge to ask them to pull back. I see that the Treasurer, who is representing the Attorney General today, is nodding. I know that the other legal practitioners here understand exactly what I am saying. Whenever there is an unrepresented party, judges try to help them rather than hinder them. It is almost like asking the judge to do what they usually would not do in order to get them to stop asking inappropriate questions. If it were the Treasurer or me in an advocacy role, the judge would come down on us like a tonne of bricks, but it is in the nature of judges to assist unrepresented parties through the process, not to stop them. But in this case, they should stop them, so we are bringing in a prohibition. It is a good and positive prohibition, and we should bring it in as expeditiously as possible. The commonwealth made a sum of money available to Legal Aid to deal with this issue because unrepresented parties who want to cross-examine someone in court and are not able to because of this issue should not be able to cross-examine, but they should not be denied legal representation.

The commonwealth has provided additional funding over three years. I think that \$7 million was provided across the commonwealth. We have had our fair share and hopefully that will be sufficient. If it is not sufficient, I hope that the commonwealth, which funds this jurisdiction, will make further funding available. This is an important protective mechanism for victims of family violence. We know how family violence matters later play out in courts, particularly in the Family Court jurisdiction. We hear reports about it in all our electorate offices. I certainly do; I am sure everyone else in this place does as well. This is one small step towards protecting victims of family violence in those contested matters, whether it is a parenting hearing or a property hearing, because those same issues around family violence can be dredged up in a property hearing as well. With those words, I support this legislation.

Debate interrupted, pursuant to standing orders.

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