## FAMILY COURT AMENDMENT BILL 2021

*Second Reading*

Resumed from 11 August.

**MS C.M. ROWE (Belmont)** [10.03 am]: I wish to continue the contribution that I began yesterday to this very important legislation, the Family Court Amendment Bill 2021. I would like to reiterate some of the comments that I made yesterday. I feel this is really crucial legislation because any measure that seeks to improve assistance for victims of family and domestic violence is absolutely of paramount importance in our society. Every single day, our newspapers are littered, terribly, with examples of violence and abuse that is directed towards mostly women. I would like to remind the chamber of the example that I drew upon yesterday, which was heard in the news only about seven days ago. It related to a number of private Catholic schools that were involved in an incident whereby multiple students from a private Catholic boys school sexually assaulted students from a private Catholic girls school at a combined school event. These teenage girls were subjected to sexual assault, which will no doubt leave a terrible and indelible imprint on their lives and will vastly impact their view of themselves and have a terrible consequence. It will no doubt be a major trauma for them to deal with. This incident really speaks to the need for us as a community, but certainly for us as a government, to continue to drive the conversation around consent. Sadly, in 2021 we have teenage boys who clearly do not understand that concept. It is incredibly important.

I noted this yesterday, and would like to note again, the really important work of Minister McGurk around respectful relationships, which is a program we have introduced in some of our state primary schools to teach schoolchildren about the importance of respectful relationships so that we can, hopefully, intervene and we do not see again the incident that occurred seven days ago to those teenage girls. The work the minister is doing in this space is fantastic, but I really hope that our government will continue to support such programs. There is clearly a dire need to include such programs at not only primary school level, but also high school level. I hope that the Catholic education system will look at this example and say, "Enough is enough; we need to be serious about teaching our boys, in particular, about consent and respect when it comes to how they deal with sexual relationships." That will clearly be an indication of future actions and activities. If it is not stopped and addressed at that age, where will that lead down the track? It is very, very troubling.

I would like to reiterate that there is also no indication that violence towards women in a family and domestic violence sense is abating in our community. In fact, there is daily evidence that this continues to be incredibly prevalent. One woman a week is killed at the hands of an intimate partner. Unfortunately, this was brought to our attention in a tragic example by way of Ruqia Haidari, who was brutally murdered by her husband of only two months, Mohammad Ali Halimi. He slit her throat twice with a kitchen knife before leaving her to bleed to death on the kitchen floor whilst he called her brother. I quote from a WAtoday article of 29 July this year. He said to this poor woman's brother "come get your sister's dead body". This absolutely speaks to the need for us, as a government, to use every single possible lever available to us. In the schoolboy example that I drew upon, we need to make sure that we are gearing up our children to be able to recognise what is appropriate behaviour and certainly try to combat that absolutely abhorrent behaviour—sexual assault. We need to address, attitudinally, how children, who are still in a high school situation, view consent so that we can try to address these behaviours before they snowball into more terrible behaviours as adults. It also points to the fact that much work needs to be done at the other extreme of this, which I have just talked about, which is that women are still dying at the hands of their partner. We need to make sure that every possible safety mechanism is put in place to protect women. That is why, although I was disappointed that we were not able to see the transition of this bill through the Legislative Council in the last Parliament, I am really pleased that we are now dealing with this bill and that I have the opportunity to talk on it.

As I said yesterday, this bill builds on the commonwealth legislation that was passed in December 2018. In essence, that legislation bans the use of direct cross-examination of victims by their abuser in a family and domestic violence situation. The practice of direct cross-examination of victims by the perpetrator is clearly unacceptable. It would no doubt be an incredibly confrontational experience for the victim. Given that one in six women is a victim of physical or sexual violence from an intimate partner, we have to recognise that this is entirely a gender issue. I understand and appreciate that men can sometimes be the victims of domestic violence, but in the overwhelming majority of cases women are the victims. As victims, women go to court seeking protection and assistance. However, the fact that they can then face cross-examination and direct questioning by their abuser opens them up to the prospect of being re-traumatised by that experience. That would be incredibly upsetting for those victims.

There is also evidence that in addition to this distress and re-traumatising, victims who are cross-examined by their abuser may be more inclined to unnecessarily seek to expedite the proceedings in order to limit their exposure to their abuser. However, in their haste to do so, they may settle the carving up of property, and their parenting arrangements, in a way that is detrimental to not only their welfare and wellbeing, but also that of their children. That may also lead to, as the converse of that, preferential treatment of the perpetrator.

[Member's time extended.]

**Ms C.M. ROWE**: Allowing the perpetrator to cross-examine the victim also has the real potential to affect the victim's testimony and the result of the overall trial. The desire by victims to settle their matters prematurely, which may lead to unfavourable outcomes for the victim, has been witnessed by many experts in this field for a long time. It is one of the causal factors that has highlighted the need for this bill, which has been brought forward by the Attorney General, and also the commonwealth legislation. We need to remember that we are talking about a Family Court situation. The people who are impacted by those proceedings are not only the victims, who in most cases are female, but also the children. Children are obviously incredibly vulnerable and in a situation in which violence is involved their safety is potentially at risk. Therefore, removing the ability for the perpetrator to cross-examine the witness is really important, because it will give victims the capacity to respond to the cross-examination questions, which is an important part of any court proceedings, in a way that is not done in haste. Hopefully, that will lead to fairer and more just outcomes. It will also mean that in cases of family and domestic violence, fewer children will be exposed to risk. That will obviously be a better outcome, not only for the women victims, but also for their children. Ensuring that a fair outcome is reached in a court is clearly something that we should strive to achieve, no matter what. The cross-examination process is an integral part of testing the evidence in a court proceeding and allowing the court to make evidence-based findings. That is critically important. Putting an end to victims being cross-examined by perpetrators will improve this process and the ability of victims to give clear and cogent responses, which will enable the evidence to be assessed in a better way. Furthermore, the cross-examination of perpetrators by legal practitioners will ensure that evidence is appropriately tested, which will obviously mean that it will be more reliable. This in turn will enable judicial officers to make better-informed decisions and judgements.

I would like to take the opportunity to again read from an article in the *Sydney Morning Herald* in 2015 about a woman called Eleanor. Her name was altered for the purposes of the reporting. The article is about her experience in the Family Court system, and it speaks to the necessity of the changes that we are looking to make in this bill. The article states —

> A week after Eleanor's former partner was ordered not to come within 200 metres of her by a Magistrates Court, she faced him in a Family Court dispute over the custody of their children. It was then she learnt that he had dismissed his lawyer, which meant he could question her directly about her parenting of their children in the witness stand.

The article quotes Eleanor directly —

> "That day I wanted to end my life … I just wanted the trauma to end. I couldn't believe they'd allow him to do it. It was like they'd given him permission to have power over me again."

The article continues —

> Eleanor, who fled their home with her children, said he had raped her twice and beaten her in front of their daughter. She began to hyperventilate.

The article quotes Eleanor again —

> "He could have asked me the colour of the sky … There was a point where I could not understand the words coming out of his mouth," she said.

The article continues —

> Her partner had initially argued for sole custody, and was ultimately awarded weekly visits with their children. After the trial ended, he moved six hours away from them, and now rarely sees them in person. She believes the exercise was another form of abuse.
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> Years later, she testified against him in a criminal case from another room. This time, she said she was able to think clearly about her responses to his lawyer's questions because she was not forced to look at his face or listen to his voice.

I have tried to imagine what it would have been like for Eleanor to go through that cross-examination by her former partner. I obviously cannot imagine what that trauma would have been like, because I have not experienced that, but without doubt it would have been nothing short of horrific. It is very clear—if it had not been before hearing about Eleanor's personal experience—that this bill will be an important mechanism to protect victims in family and domestic violence court proceedings. I would like to note that victims such as Eleanor must have incredible strength to be able to go through that experience in the first instance. I would like to acknowledge the work of the Attorney General in bringing forward this legislation. It was in part the advocacy of Eleanor and other victims who came forward to express how difficult those experiences were that contributed and led to the federal government's decision to enact its legislation in 2018. I was inspired to read Eleanor's experience.

The article in the *Sydney Morning Herald* again quotes Eleanor directly —

> "This is going to give hope to parents that they're going to have a level playing field, not further victimised by being in a situation where the perpetrator has full and complete power over them".

In October 2016, the Council of Australian Governments' National Summit on Reducing Violence against Women and their Children recommended that a ban be put in place on the personal cross-examination of victims by perpetrators of family violence in a family law proceeding. As I mentioned, that was enacted by the federal Parliament in 2018 to ensure that that does not happen in federal courts.

Given time restrictions, I will just indicate that many of the speakers before me went through a number of other provisions of the bill. I think it is fair to say that by amending the legislation to ban only cross-examination of the perpetrator against a victim, that in and of itself is very powerful and will be very effective in achieving greater protection of victims and ensuring vastly improved outcomes for them because, as I mentioned earlier, there is a lot of evidence to speak to the fact that people are moving through these trial proceedings in haste simply to end the distress of having to be cross-examined by the perpetrator—being their abuser. I wanted to make the point that this legislation is very important. If we speak on that alone, it is clear that this legislation is of great importance and will be very beneficial. I am always incredibly proud of being part of the McGowan Labor government, because it is very clear that through the work of the Attorney General and the Minister for Prevention of Family and Domestic Violence, Simone McGurk, we are taking real steps to protect women and wherever possible—wherever levers are available to us—making it easier for women who are victims of family and domestic violence to get the protection that they need. I would like to end my contribution by congratulating the Attorney General and thanking him for bringing this very important bill to the house. I commend the bill to the house.

**DR J. KRISHNAN (Riverton)** [10.21 am]: I rise to commend the Family Court Amendment Bill 2021 to the house. Most Family Court disputes are due to domestic violence. I recently had a conversation with a senior sergeant from Cannington police station who covers my electorate. I was looking at the crime rates in my electorate. I was told, looking at the five-year average, the crime rate has come down by 25 per cent. But when we take a deep dive into the numbers and look very carefully, we see that domestic violence numbers have increased in the current year compared with other crimes. We need to take into consideration that there is a huge under-reporting of domestic violence.

I recently had a conversation with the Minister for Mental Health in support of the organisation Multicultural Futures. These people have been in the industry for 20 years. They go to breakfasts, particularly in the culturally and linguistically diverse community, to talk about domestic violence and offer people help by means of reporting. It is very horrible to see someone who is a victim of domestic violence, Madam Acting Speaker. I have seen patients in situations in which they do not even have their shoes on because they did not have the time to put them on; they have escaped to save their lives in fear of being killed in grave situations. These people do not have clothes to change into for the next day or a single dollar in their hands when they leave. I take this opportunity to thank Zonta House, in my electorate, for doing a great job to support such victims—rehabilitating them and helping them to get back into their lives.

This amendment bill is mainly about preventing the perpetrator cross-examining the victim. Broadly, how does domestic violence happen? It is not a one-off incident; it is a repeated cycle. What happens in that cycle? There are four elements in the cycle. First, there is tension; second, there is the incident; third, there is a reconciliation and calm; and fourth, the cycle repeats. What happens at the tension stage? There is fear, frustration and anger. Tension keeps building and then the incident happens. The incident can be verbal abuse, emotional abuse or physical abuse, which can be quite dangerous. After the incident, there is a reconciliation process. The perpetrator tries to put the blame on the victim and find excuses for why the incident happened. The cycle moves on to the calm period—what we call the honeymoon period—when the victim believes everything is settled. But it is only a matter of time before the cycle starts again. With repeated cycles, eventually the victim realises that they cannot put up with this anymore. That is when various support organisations intervene and help these victims to leave.

How would a victim who has undergone this cycle various times and has been severely emotionally abused feel being cross-examined by the perpetrator himself or herself? This amendment bill clearly goes towards changing that particular issue. The perpetrator will not be allowed to cross-examine the victim. What is the purpose of cross-examination? The member for Cockburn very clearly explained cross-examination and its purpose for non-legal people in this house, like me. It is to reemphasise or strengthen the victim's statement or evidence given. Cross-examination is critical to the judgement and cannot be jeopardised by the perpetrator. The member for Dawesville in her contribution mentioned the narcissistic behaviour of a person standing and interrogating their victim to jeopardise the cross-examination effect.

Madam Acting Speaker, imagine a situation in which a victim is trying to give evidence and the perpetrator comes in. The scenario changes from the victim providing evidence to having to defend new allegations that the perpetrator puts on them. This amendment bill will prevent such a situation occurring.

*Visitors — Alinjarra Primary School*

**The ACTING SPEAKER (Ms M.M. Quirk)**: Member, before you go on, I want to acknowledge the students from Alinjarra Primary School in my electorate. Enjoy your visit.

*Debate Resumed*

**Dr J. KRISHNAN**: This amendment bill will also protect the rights of the perpetrator because he or she may not be an expert in cross-examination, have professional knowledge or a calm mind to really do the job. They might also benefit from having an expert doing that job for them.

A person involved in domestic violence is three times more likely to get a minority share when it comes to the division of property. After being abused and going through the trauma, the chance of getting a minority share is three times higher because they generally try to run away from the situation when it comes to evidence and cross-examination. They have had enough and do not want to go through it anymore. They are not in a frame of mind to think about money; they fear for their lives. They have post-traumatic stress rethinking the episodes that have traumatised them quite badly.

I will move on to the provisions. One or both parties need to be represented. This amendment bill will also provide protection. It will allow for evidence to be provided from a remote venue. It will allow for a support person to be present with the victim, which is very critical on many occasions because it is very sad and most stressful to be alone in a court; it is a devastating situation.

That the questions could be directed through the presiding judicial officer is also a protection mechanism being offered by this amendment. What are the implications of this amendment? The commonwealth government will spend $7 million over three years to support the scheme. There is no means test to access the scheme. This amendment will also provide for late intervention dispute resolution, particularly for parenting rights and financial issues. Private practitioners with Legal Aid are also allowed to participate in this scheme. What is the feedback from the Family Court on the implementation of the scheme so far? It has said it is working well and it cannot wait for unmarried people to start accessing the scheme. It also mentioned that the commonwealth Attorney-General is undertaking a review of the whole scheme at the moment, and it hopes for ongoing funding and support for the scheme. The Family Court is saying that the scheme is working well.

I take this opportunity to thank our enthusiastic Attorney General, who has brought various bills to this house. This is an important bill that will protect families and young kids from violence in the future. I commend the bill to the house.

**MR J.R. QUIGLEY (Butler — Attorney General)** [10.31 am] — in reply: It was yesterday morning when the second reading debate on the Family Court Amendment Bill 2021 began, in response to my second reading speech earlier this year. I shall not be long in my second reading response. I just feel part of a team. I do not want to traverse all the matters that have been raised. The speakers in this matter were the member for Central Wheatbelt, the Leader of the Opposition, and I thank her for indicating the opposition's support for the bill in this chamber; the member for Nedlands; the member for Collie–Preston; the member for Mirrabooka; the member for Cockburn; the member for Mount Lawley; the member for Dawesville, who gave a very moving speech; the member for Belmont; and, lastly, of course, the member for Riverton. All, in my view, made very erudite and insightful comments on this bill. I do not want to stand here and repeat all those comments, but I thank them for their contributions. They made very important points. The central point was that it behoves this Parliament to offer its power to protect the vulnerable in our community. Amongst that cohort of the most vulnerable are victims of domestic abuse and domestic violence, with women making up 97 per cent of those cases.

When such a serious allegation is raised in our courts, in the interests of justice it is only fair that the allegation be tested for its veracity in a way that minimises the re-traumatisation of a true victim. From reading transcripts and press reports, we have heard some accounts of the manner in which perpetrators have used the occasion of a court hearing in which an allegation is to be tested to re-traumatise a victim. As has been noted, in 2018 the federal Parliament amended the Family Law Act to prevent husbands or married spouses from directly cross-examining their spouse or former spouse on an allegation. It is a matter of history, and happy history, that back in 1975, this Parliament decided to retain its own family law jurisdiction. It is the only Parliament in Australia to retain its own curial jurisdiction in Family Court matters. Although the Constitution gave power over marriage exclusively to the commonwealth, we, as a Parliament, leveraged retention of our own curial jurisdiction by refusing to refer matters relating to what is, I think, sometimes almost an insulting term of de facto. When looked at legally, de facto, as opposed to de jure marriage, refers to those people who cohabit without being within the purview of the exclusive power of the commonwealth by marriage.

We have happily kept that jurisdiction. I think that other states are now envious that Western Australia has retained that jurisdiction given the recent amendments in the commonwealth legislation hiving off so much of the family law disputes to the Federal Circuit Court where non-specialist Federal Circuit Court judges hear civil aviation matters one day, immigration matters the next day and child access matters the following day. Western Australia, proudly and wisely, is the only jurisdiction that has an exclusive specialist court for these matters. It was necessary and appropriate that in relation to litigation before the Western Australian Family Court, this Parliament mirrored the legislation brought in by the commonwealth and supported by every state to prohibit a victim of domestic abuse or domestic violence from being cross-examined by her perpetrator. I say "by her" because in 97 per cent of

the cases it is "her" perpetrator. She should not be deterred from raising these matters before the Western Australian Family Court out of fear.

We have heard that some victims will yield to an unfair offer of settlement to avoid the re-traumatisation of cross-examination by the perpetrator. We are very pleased, of course, that there is already a facility in place at the Legal Aid Commission of Western Australia to fund the representation of alleged perpetrators for the purposes of cross-examining, so that the cross-examination is done properly. The commonwealth initially allocated $7 million to fund the scheme across Australia for three years. The Australian government has worked extensively with National Legal Aid to cost the measures in this bill. The average estimated cost of providing legal assistance under the measures of the Family Court Amendment Bill were determined by National Legal Aid. The cost includes the preparation and appearance at final hearing as well as legally assisted dispute resolution where appropriate. The number of matters and parties likely to be affected by the measures are determined by research conducted by the Australian Institute of Family Studies. Legal Aid WA has worked with the Attorney General's department regarding the funding necessary to meet the high demand of this service. Ongoing funding is in accordance with the amended funding agreement. Legal Aid has advised that it supports the funding arrangements and has had no issues with the funding of the scheme by the commonwealth. I hope those comments give some answer to the issue the member for Central Wheatbelt raised about funding. The member for Central Wheatbelt also drew the chamber's attention to the fact that this bill replicates the bill that passed through the chamber but did not succeed in passing through the other place prior to prorogation.

The member for Central Wheatbelt also noted that it is the same bill except for amendments to section 243 and sought my confirmation in this regard. I can confirm that section 243 amendments address an error currently in the Family Court Act 1997 of Western Australia, as identified by the Parliamentary Counsel's Office error reporting process. Section 243 is to be amended to improve the clarity of the section and better set out the respective higher and summary penalties for each crime. Proposed section 243(8)(aa) will be inserted to clarify that the restrictions in subsections (1) and (2) also do not apply to state agencies that oversee the welfare of children and that is prescribed in regulations for that purpose.

The member for Central Wheatbelt also raised the question of review and asked whether it is necessary that the commonwealth conduct the review. I can confirm that this is correct. Under section 102NC of the commonwealth act, the government is required to review the operation of the legislative provisions as soon as possible after the second anniversary of their commencement. The provisions commenced on 10 March 2019. Mr Robert Cornall, AO, and Ms Kerrie-Anne Luscombe have been appointed to conduct the review and will report to the government by August 2021. Mr Robert Cornall, AO, reviewer, and Ms Kerrie-Anne Luscombe, assistant reviewer, have been appointed to conduct the review into the operation of sections 102NA and 102NB of the commonwealth Family Law Act 1975, which implement the government's commitment to ban direct cross-examination of victims of family violence in family law matters. The review will consider improvements to the design and operation of the family violence and cross-examination of parties scheme and propose a future framework for managing demand and funding allocations under the scheme. The scheme provides representation to parties subject to the ban on direct cross-examination for the hearing in which the cross-examination is to occur, including the necessary preparatory work for the hearing. As to the terms of reference, the review will examine and, if necessary, make recommendations for reform in relation to the operation of legislative provisions section 102NA and 102NB of the act, the design and operation of the scheme, and a sustainable and efficient funding model for the scheme. I have already addressed the current funding model for the scheme and Legal Aid WA's satisfaction so far with that funding.

May I conclude where I started by, on behalf of the government, thanking all members for their erudite and insightful contributions to this debate.

I commend the bill to the chamber.

Question put and passed.

Bill read a second time.

[Leave granted to proceed forthwith to third reading.]

*Third Reading*

Bill read a third time, on motion by **Mr J.R. Quigley (Attorney General)**, and transmitted to the Council.