FAMILY COURT AMENDMENT BILL 2021

Second Reading

Resumed from an earlier stage of the sitting.

MR D.A.E. SCAIFE (Cockburn) [2.59 pm]: Prior to question time, I was reflecting on a local example of the need for the reform that is in this bill, being the case of Sampson v North. These proceedings in the Family Court of Western Australia were in relation to the custody of children aged four and two, who were living at the time with the mother. The father sought shared care of the children, while the mother was seeking sole custody.

Several members interjected.

The DEPUTY SPEAKER: Member, just hold on two secs. If members want to have a conversation, please either quieten it down or take it outside.

Mr D.A.E. SCAIFE: Thank you, Deputy Speaker.

The mother was seeking sole parental responsibility, amongst other orders. In that case, there was a very serious history of violence on the part of the father. For example, on 15 April 2013, the mother obtained a final violence restraining order against the father. The father had also previously been convicted of assault occasioning actual bodily harm, amongst a series of other offences. Also quoted in the judgement at paragraph 37 was a police incident report from 19 March 2013, which reads —

> Police attend to execute recovery order. Police advised the father they were there to recover the children. He refused to engage in conversation with the police. He said they were not taking the children and would have to shoot him. The police forced entry. The father attempted to grab a police officer's firearm. He struck a police officer and placed him in a headlock. He struck him several times with his fist. The police charged the father with assaulting a public officer.

In this case, the father had a substantial record of violence, including against public officers of the state. In court, the mother was represented by a lawyer, but the father was self-represented. As a result, during the proceedings the father actually directly cross-examined the mother. The cross-examination was shocking. There is an example given of it in the judgement. I am going to read an extract set out in paragraph 44 of the judgement of the father asking questions of the mother under cross-examination. It reads —

> How was I being abusive to you? — Physically, sexually, emotionally.
>
> What's the difference between threatening to rape you and forcing you to have sex with me? —One's a threat, one's an action.
>
> Okay. And I raped you, did I? — Yes. You were very forceful on several occasions.
>
> Say that in my eyes? — I don't have to.
>
> Just look at my eyes.

At that point the judge intervened, and Her Honour said —

> No, no. She doesn't need to.

The father then said —

> No, no. Fuck this.

The judge responded —

> No, no, no. She does not need to.

The father then said —

> Fuck this. She's calling me a fucking rapist.

Her Honour said —

> She did not say that.

The father said —

> She fucking did.

Her Honour said —

> What she said was you raped her. And no, she doesn't need to look you in the eyes. Now just ask your questions and she will answer them. No. She's not going to look you in the eyes.

The father responded —

> You're fucking shitting me. So I kept you in my home for seven years, or by my side as a friend, by forcing you to be with me? And we were never really friends or anything?

The mother responded —

> You were very controlling in a lot of ways, and manipulative, and basically I guess what kept me there was fear of leaving, because on several occasions you threatened if I ever left you, you would kill me. And you also said —

The father interrupted —

> Same way you did to me?

The mother said —

> No. And you also said that the kids would be taken away, and …

The father again interrupted —

> You know, I only thought there was a problem (indistinct) year. If I'm capable of killing you, how come you're not dead yet?

The mother's solicitor intervened at that point and said —

> Your Honour, my client can't possibly answer that question.

It is plain from that extract from the judgement that the cross-examination engaged in by the father in that case was utterly reprehensible. It should be condemned in the strongest possible terms. It had the effect of re-traumatising the mother, who was the victim of family and domestic violence. In that respect, I make it clear that I make no criticism of the court. Clearly, the judge in that case attempted to protect the victim, but Her Honour was also hamstrung by the fact that she needed to allow the father a fair opportunity to conduct his case and conduct cross-examination. But I really do believe that cross-examination like that in the legal system brings the administration of justice into disrepute.

[Member's time extended.]

Mr D.A.E. SCAIFE: It is difficult to imagine how awful that situation was for the mother, but she at least had the opportunity to give evidence in her case. The fact is that many others would be deterred from giving evidence at all. There is evidence that that is the case. I refer here to a submission from Women's Legal Services Australia to the House of Representatives inquiry that I referred to earlier. In that submission, Women's Legal Services Australia stated that over a three-month period in 2015–16, it surveyed 338 women about their experiences with the family law system. One hundred and forty-seven respondents, or 43 per cent, said that they had experienced direct cross-examination by their abuser, and 77 respondents said that the dispute had settled by consent orders. To quote page 29 of the submission —

> Of that smaller group —

The 77 respondents —

> 44 women said that the "prospect/fear of personal cross-examination by [their] ex-partner" was a factor in their decision to settle …

Later the submission states —

> … participants were asked how significant the prospect or fear of direct cross-examination by their ex-partner was on their decision to settle prior to trial. Of the 60 women who responded, 41 women (68.3%) said that it was very significant, 6 women (10%) said it was of medium significance, and 13 women (21.7%) said it was one of many factors. These findings indicate that the fear of direct cross-examination can directly result in consent orders in family law matters involving family violence that endanger the safety of children and their parents.

What I think is important for members to take from the case of Sampson v North is that the re-traumatising of a victim by their abuser has taken place in our own state relatively recently, and it is but one example of it happening. It is worth reflecting on the variety of effects that this has on the victim and also on the court system generally. The first, as I have outlined by reference to the submission by Women's Legal Services Australia, is that the prospect of direct cross-examination by an abuser pressures victims of family and domestic violence to settle. Obviously, in all likelihood, that results in settlement on less favourable terms than would otherwise be the case. Exposure to cross-examination obviously re-traumatises the victim if they proceed to trial. The prospect of being cross-examined is itself likely to traumatise them. That likely raises just the pure fear of having to face the perpetrator and be questioned by them. I imagine that for victims, actually undergoing cross-examination would be similar to having to relive those experiences all over again.

The other thing that is often overlooked is that allowing perpetrators of family and domestic violence to conduct their own cross-examination very likely does them no favours. These people may have a history of mental illness or substance abuse. They may come from backgrounds in which they were themselves abused. Being in the position of conducting their own case likely means that the best case is not put on their own behalf, while at the same time it causes unimaginable trauma to their victims.

At this point, I note two matters. The first is that family and domestic violence disproportionately affects women and the perpetrators are disproportionately men. It is a gendered issue and there is no shying away from that fact. But I also acknowledge that victims do not belong to just one gender and that relationships come in all varieties, and that, for example, in same-sex relationships there are men and women who are perpetrators and victims of family and domestic violence.

This is a sensible reform in that although it acknowledges the gendered nature of the issue, it ensures that victims are protected regardless of the identity of the victim or the perpetrator. The way that the scheme offers that protection is as follows. I mentioned at the outset of my contribution that the right to a fair trial is a critical consideration here; indeed, the right to a fair trial is a cornerstone of our legal system. The difficulty with banning direct cross-examination in an era in which there are more self-represented litigants is how does that litigant conduct cross-examination. For the non-lawyers in the chamber, cross-examination in our adversarial system of justice is seen as a critical part in testing the evidence, so that when the decision-maker is presented with evidence from one side, the other side has an opportunity to test that evidence in cross-examination and it allows the decision-maker—the judge or magistrate—to make comfortable findings about the credibility of that evidence and about the facts that can be found on the basis of that evidence. It is an essential part of our adversarial system, and as long as that is the case, parties need to be able to conduct cross-examination. This is where the scheme that sits alongside this reform steps in. The scheme funded by the commonwealth government is essentially as follows. If circumstances arise in a case in which direct cross-examination is banned and at least one of the parties is unrepresented, that will trigger the scheme. The scheme, effectively, arranges and pays for the unrepresented party to be represented by lawyers. I understand the legal aid commissions have duty lawyers who will be available for some minor work, but, by and large, that will be by a grant of funding that will be used to retain an experienced family law practitioner in private practice from a panel. Further to that, if both parties are unrepresented, the scheme will arrange and pay for both parties to be represented—so not merely the perpetrator. That is important because of the concept in the justice system that is referred to as "equality of arms", which is the notion that parties should be roughly equally armed or have the capacity to be equally represented when it comes to presenting their cases. That is how this scheme preserves that entitlement.

This scheme therefore allows the perpetrator to test the evidence by having a legal practitioner conduct the cross-examination, but it also allows the victim to be protected from being directly cross-examined by the perpetrator. That has two effects. The legal practitioner, who is familiar with the rules of evidence and who has professional obligations, is going to be able to conduct that cross-examination to the extent possible in a way that is respectful and as forensic as it can be. It also means that the victim will not have the experience of sitting and answering questions asked directly of them by the perpetrator.

Another advantage of the scheme is that the legal practitioner will be appointed to represent the person for the entire proceedings and not just for the cross-examination. That is likely to have advantages in not only protecting victims in cross-examination, but also resulting in generally more efficient and professional presentation of cases. I understand the feedback from the Family Court is that the scheme is working well. As I said previously, the scheme is funded by the commonwealth government. It is a commitment of $7 million over three years to the various legal aid commissions. I am satisfied that the scheme, therefore, strikes the right balance between protecting victims of family and domestic violence and also protecting a person's right to a fair trial. It also facilitates access to justice by ensuring that family and domestic violence victims can continue to pursue proceedings without fear of being directly cross-examined by their perpetrator, and it provides the necessary resources for unrepresented parties to conduct their case where direct cross-examination has been disallowed.

I congratulate the Attorney General on bringing forward this bill at such an early stage in the new Parliament. It is a bill that has been subject to significant consultation and inquiry. I challenge anyone who has heard the cross-examination in Sampson v North to argue this bill is unnecessary.

MR S.A. MILLMAN (Mount Lawley — Parliamentary Secretary) [3.16 pm]: I rise to make a short contribution to this important piece of legislation, the Family Court Amendment Bill 2021. I start by thanking the member for Cockburn for his contribution. He has taken us chapter and verse through the ways this bill will operate forensically to deliver more equitable access to justice. I do not want to go over that, as the argument has been well made by the member in the cases he has cited.

In the time I have, I want to talk about three newspaper articles and three academic works that help illuminate the conversation around family and domestic violence that will help us understand why legislation like this is incredibly important. Before I do that, I congratulate both the members for Mirrabooka and Collie–Preston. I listened to their

contributions before question time, and they covered a lot of the material that forms the context in which this debate takes place. I note they are both new members in this Parliament and their contributions speak volumes for what they will contribute over the course of the forty-first Parliament. I have spoken previously on issues like this in which we as a Parliament work in a collaborative and bipartisan way. When similar legislation came before the fortieth Parliament, I congratulated the former members for Hillarys and Dawesville on their contributions indicating the support of the opposition to legislation that had been introduced by the Attorney General. I am looking forward to opposition contributions that will spell out the extent of their support for the bill. I say that because, perhaps unlike some of my recent contributions in this place, I do not propose for this contribution to be partisan; this is a bipartisan issue.

The first book I refer to is a great starting point for anyone who wants to understand feminism in Australia. It is Anne Summers' classic *Damned Whores and God's Police* written in 1975. Members will know that Anne Summers was a founding member of the women's liberation movement. She set up a shelter for victims of family and domestic violence in the 1970s in Sydney and went on to become a leading adviser to Prime Minister Bob Hawke in the 1980s, as first assistant secretary of the Office of the Status of Women in the Department of the Prime Minister and Cabinet.

I refer members to *Damned Whores and God's Police*, because at the back it has a terrific appendix of the time line of achievements by and for Australian women. I thought it would provide a good starting point for my contribution today. In the past couple of weeks, we have all celebrated the 100th anniversary of the election of Edith Cowan to this chamber, becoming the first female member of Parliament in Western Australia. We have celebrated having the first female Speaker in the Legislative Assembly, and having the first female Speaker in the Legislative Assembly while also having a female President in the Legislative Council. The celebration of these recent achievements comes at the end of a long line of achievements by feminists in Australia since European colonisation. The reason that I quite like the time line of achievements contained at the back of Ms Summers' book is that within it are several subcategories containing the important milestone events of the achievements for women in the areas of equal pay, political rights, fertility control, child care and parental leave, and domestic and family violence. I want to outline those five particular areas because those are the areas I will touch on during my second reading contribution this afternoon.

The first area I will refer to is equal pay. There is a great quote from Justice Mary Gaudron of the High Court of Australia. In 1979, Her Honour said that equal pay was won in 1969, won again in 1972 and yet again in 1974. The fight for equal pay continues, and I defer to the member for Mirrabooka's contribution in this regard, given her experience and background. I was reading a 25 March 2021 article authored by Angela Priestley on the online magazine Women's Agenda, which refers to the gender pay gap. The article refers to the research undertaken by the Workplace Gender Equality Agency and states that at the current rate of narrowing, it will take another 26 years to close the gender pay gap in Australia. The article celebrates the fact that the gender pay gap has moved in the right direction, with the gap between the earnings of men and women having narrowed from 24.7 per cent to 20.1 per cent over the preceding seven years. That is a significant closing of the gender pay gap, but it is still an incredible 20.1 per cent. What is worse is that in some fields of endeavour, the gender pay gap actually increased. The gender pay gap in the managerial classification grew by 5.1 per cent over the seven-year period. To people in this chamber, this will probably not come as any surprise, but the areas in which the gender pay gap is the least narrow are the female-dominated industries, such as education and training, health care and the social and assistance sectors. That is where the gender pay gap ranked the lowest.

During her contribution, the member for Mirrabooka made the point about her affiliation with the Australian Services Union; I am also a member of that union. In 2012 and 2015, the Australian Services Union was instrumental in this with its applications to the Fair Work Commission. I refer here to the time line in Ms Summers' book at page 680, which states that in 2012 —

> Fair Work Australia awards pay rises between 19 and 41 per cent to community sector workers —

This was known at the time as the SACS award —

> and finds that gender is one of the reasons their work —

That is, the work undertaken by women —

> is undervalued.

That was in 2012. The attachment of lower value to the work of women is one of the social constructs in which discrimination against women takes place. The others are, as I said, access to political rights, fertility control, child care and parental leave, and domestic and family violence.

The next thing I want to raise is political rights. I have already mentioned the example of Edith Cowan. We have said it all before, but it bears repeating: if we look around this chamber, we see so many women who have been elected to Parliament; indeed, more than 100 women have been elected to Parliament in WA. But the struggle for

political rights for women is ongoing. It always seems like it is two steps forward and one step back. We celebrate the successes—the appointment of the member for Midland as the new Speaker, a second female President in the Legislative Council and 100 years since the election of Edith Cowan—but I recall so clearly the vilification of Julia Gillard as our first female Prime Minister. There is still so much work to be done to communicate to the broader population that women have an equal role to play in our political and power structures as they do in any other facet of endeavour. The way in which Prime Minister Gillard was attacked with misogynistic, gender-oriented and sexist language perpetuated the social environment in which family and domestic violence takes root. Although we celebrate successes, there is still so much work to be done.

On the question of fertility control—referring again to Ms Summers' book—the Legislative Council is currently debating safe access zones around abortion clinics. That we had to wait until 2021 for that debate to take place when it seems so incredibly straightforward and such an important health and community safety measure just speaks to the amount of work that needs to be done in that particular area.

On the question of child care and parental leave, in a society in which emphasis is still placed on women being the primary caregivers in the house, the issue of access to affordable high-quality child care and paternity leave continues to be characterised as a women's issue. That that is the case demonstrates that much work still needs to be done. As a dad, it was a great joy for me to share parental responsibility. As a society, we have not arrived at the point at which we can say, "Yes, we've reached the point of complete equality."

The next thing I want to talk about from Anne Summers' book is the question of family and domestic violence, which is what the Family Court Amendment Bill 2021 is about. One of the things that I want to bring to members' attention is a report from the New South Wales Parliament by the Joint Select Committee on Coercive Control. This discussion has been had in this chamber both during the previous Parliament and in this Parliament. It is interesting to note that in England and Wales, section 76 of the Serious Crime Act 2015 has been amended to create a criminal offence of coercive control. The New South Wales Joint Select Committee on Coercive Control published report 1/57 in June 2021. I will not quote from the report but I will quote from an ABC news article by Jamie McKinnell from the same day, 30 June 2021, that refers to coercive control. I note that the committee did not use the term "domestic violence"; rather, it used the term "domestic abuse". Jess Hill explains in her book *See What You Made Me Do: Power, Control and Domestic Abuse* why this nomenclature is important. She states —

> In this book, wherever possible, I have replaced the term 'domestic violence' with 'domestic abuse'. I did this because in some of the worst abusive relationships, physical violence is rare, minor or barely present. As Yasmin Khan from Eidfest Community Services writes in an article for *Women's Agenda*, —

That is the online news service that I referred to earlier —

> 'Many women that we support assure me there has been no domestic violence—"he's never laid a hand on me"—but on deeper questioning and reflection, realise they have been abused for many years, in ways that have been more subtle but [are] just as damaging and potent.'
>
> Khan has made it her mission to replace 'domestic violence' with 'domestic abuse' …

That quote is important because the joint committee of the New South Wales Parliament arrived at the same nomenclature or language. The ABC news article states —

> The inquiry heard opinions from domestic violence workers and advocates, police, prosecutors and academics earlier this year, following a discussion paper on the complex issue released in October.
>
> Current NSW laws cover some types of controlling behaviour, but the inquiry was told the justice system was geared to respond to individual incidents of physical violence.
>
> "The pandemic of domestic abuse evidenced through statistics cannot be ignored," the inquiry's findings said.
>
> "It is clear that coercive control is a factor and red flag for the horrific and preventable murder deaths of Australian women and children—some 29 murders in 2020 alone in NSW."

I interrupt myself to thank the member for Collie–Preston for again referring to the statistics and the number of people who are victims of family and domestic violence.

The article refers to the report and states —

> It said the NSW government should propose amendments to the Crimes (Domestic and Personal Violence) Act 2007 to create "a clear and accessible definition of domestic abuse", including such behaviour.
>
> "This should be done as a priority, before criminalising coercive control," …

This is a complicated issue that requires a great deal of examination and investigation. I think that a discussion about the work of the New South Wales Parliament in undertaking this inquiry will, hopefully, prompt a broader discussion nationally about how we tackle the issue of coercive control. Based on the runs on the board of the McGowan government, I know that we are committed to tackling family and domestic violence in all its forms, not least because

we have the first minister responsible for the prevention of family and domestic violence; not least because we have implemented the 16 Days in WA campaign, which other people have spoken to; not least because the Attorney General brings forward legislation such as this to tackle the scourge and pandemic of family and domestic violence; but also because we have all these members, many first-time members, who will stand to speak in support of this legislation.

I think I have covered off *Damned Whores and God's Police* by Anne Summers and I have already referred to *See What You Made Me Do* by Jess Hill. I will come back to Jess Hill because she is quoted in one of the articles I propose to refer to now. I want to commend a friend of mine, a constituent, who is a family law practitioner. She is very active on social media and she is always sharing articles. I referred to this in my last contribution, but I wanted to go through and remind members of some of the debate that has taken place. My friend shared a number of articles on social media from last year. They are all from *The Guardian*. The first is an article by Liz Ford from 5 March 2020, titled "Nine out of 10 people found to be biased against women". This is on a global survey. It reads —

> **Analysis of 75 countries reveals 'shocking' scale of global women's rights backlash**
>
> Almost 90% of people are biased against women, according to a new index that highlights the "shocking" extent of the global backlash towards gender equality.

[Member's time extended.]

Mr S.A. MILLMAN: The article continues —

> Despite progress in closing the equality gap, 91% of men and 86% of women hold at least one bias against women in relation to politics, economics, education, violence or reproductive rights.

Unsurprisingly, these are the same five issues that were identified in 1975 by Anne Summers. It continues —

> The figures are based on two sets of data collected from almost 100 countries through the World Values Survey, which examines changing attitudes in almost 100 countries and how they impact on social and political life.

This is the most staggering statistic —

> Of the 75 countries studied, there were only six in which the majority of people held no bias towards women.

That is just the majority, and not 100 per cent. There were six countries in which the majority of people held no bias against women. It continues —

> But while more than 50% of people in Andorra, Australia, the Netherlands, New Zealand, Norway and Sweden were free from gender prejudice, even here the pattern was not one of unmitigated progress.

It is fair to say that Australia should be proud that we fall within those six countries that are leading the charge, but so much more work still needs to be done, which brings me to the second article that my friend posted on social media. This is the interview with Jess Hill, who is the author of *See What You Made Me Do*. The article is called "Patriarchy and power: how socialisation underpins abusive behaviour". This is essentially the whole point of what I am saying this afternoon about the context in which we are operating, where the scourge of family and domestic violence persists. It refers to Hannah Clarke and Rowan Baxter and reads —

> **Hannah Clarke's family described her husband Rowan Baxter as controlling, coercive and obsessive. His abuse appears to have followed a familiar script known as coercive control. Can you explain this?**
>
> Coercive control is a very particular kind of domestic abuse. It's not a "reaction" to stress, nor is it triggered by alcohol or drugs. It's an ongoing system of control, in which the abusive partner seeks to override their partner's autonomy and destroy their sense of self.
>
> …
>
> Coercive controllers may use extreme physical or sexual violence; or, as was reportedly the case with Rowan Baxter, no physical violence at all. For more than 40 years, women and children have been saying that except for extreme violence, the coercive control is the worst part.

Jess Hill is then asked —

> **If domestic abuse cases almost always follow the same script, as you write in your book, why is it so hard to stop them?**
>
> …
>
> Many women don't know they are experiencing abuse until they are already in situations that are incredibly dangerous—partly because coercive control is so poorly understood, but also because the perpetrator makes it invisible.

They are placed in an invidious position of not knowing what to do or what the best course of action would be. The article continues —

> If they do report to police—if something reportable actually occurs—they are making a terrifying gamble. Will they get an officer who's sympathetic and proactive? Will reporting their partner make him more dangerous? What if child protection gets involved? What if he contests for custody?

The circumstances that prevent action are highlighted. The article continues —

> **How do some men come to feel so entitled to their power over women?**

This response prompted me to posit this hypothesis in my contribution to this debate —

> Thousands of years of patriarchy has laid pretty good groundwork for this—and it's not so long since a wife was considered her husband's property, and had no legal rights whatsoever. It was only in the 1980s that new laws against marital rape recognised that men didn't have the right to demand sex with their wives anytime they wanted …

This point brings me, sadly, to the last article that I am going to refer to. I said I was not going to politicise this contribution, but, unfortunately, there is a stain in Australian politics that we have not been able to expunge and that is the stain of One Nation. An article titled "Malcolm Roberts criticised after claiming 'many' domestic violence allegations made up" by Ben Smee was published in *The Guardian* on 10 March. The article states —

> The One Nation senator Malcolm Roberts has told a parliamentary inquiry into Australia's family law system that "many instances" of domestic violence allegations are made up by parents to gain custody of their children.

Obviously, this scandalous allegation was immediately called out in the public and in the media. Ben Smee notes —

> Pauline Hanson … made a series of unsupported statements about parents lying to the family court …

He then clarified the situation by saying —

> The claim that women frequently make up abuse claims is a prominent grievance among men's rights groups, but has been widely discredited in multiple studies.
>
> According to researcher Jess Hill, who has authored a book on domestic abuse called See What You Made Me Do, one of the most thorough studies on false abuse allegations from Canada found that non-custodial parents, usually fathers, made false complaints most frequently, accounting for 43% of the total, followed by neighbours and relatives at 19% and mothers at 14%.

As a community, we need to do what the Attorney General is doing and what Parliament is doing, and pass legislation that tackles this issue. We also need to listen to those voices that are now speaking up. We need to listen to Grace Tame, Rosie Batty and Brittany Higgins. Rosie Batty responded to Pauline Hanson's comments and was quoted in the same article. It states —

> … Rosie Batty denounced Hanson for saying women made up false allegations of violence during custody disputes.
>
> Batty said such remarks were "incredibly damaging" …

I do not think anyone in this chamber is motivated by the perverse incentives of people like Pauline Hanson and Malcolm Roberts. One of the things I am fearful of is the rise through social media of ultra-right-wing organisations, racist organisations, and anti-scientific and anti-vaccination organisations. I am fearful of their pernicious influence on the political discourse in Australia. Malcolm Roberts and Pauline Hanson and others give oxygen to that.

We, as a community, need to call that out when we see it and we need to tackle it. Although this legislation should enjoy bipartisan support, everyone who speaks in support of it, from whichever party they are in, should also call out the ultra-right-wing political fundamentalism that now seems to be creeping into the discourse in countries in North America and Western Europe and in Australia. Unless and until we do that, we are going to struggle to get the equality that women are entitled to and we are going to struggle to rid our society of the scourge and pandemic of family and domestic violence.

As I said, the Family Court Amendment Bill 2021 is an important contribution to the work we can do as a community to alleviate that, and I commend all the speakers who contributed to the debate. The member for Collie–Preston is back in the chamber so I will say to her while she is here: I am incredibly grateful to you for your contribution to this debate; it was outstanding. I commend the Attorney General for the work he has done and I commend the McGowan government for tackling this issue as a priority. Thank you.

MRS L.A. MUNDAY (Dawesville) [3.41 pm]: I rise to speak to the Family Court Amendment Bill 2021, which supersedes the Family Court Amendment Bill 2019 that lapsed in the previous Parliament. This bill will mirror in Western Australia the commonwealth Family Law Amendment (Family Violence and Cross-examination of Parties) Act 2018. That legislation bans the personal cross-examination of victims by perpetrators of family violence. Personal cross-examination occurs during a court hearing when a party is not represented by a lawyer, so they must perform the cross-examination of witnesses themselves. This amending legislation will allow equal opportunity

for representation, with the opportunity for alleged perpetrators and victims to have court representation. I take this opportunity to thank the Attorney General for bringing forward this important legislation.

Firstly, I would like to relate a bit of personal experience. Approximately 45 000 people are divorced every year in Australia, and in 2004 I was one of those statistics. Divorce was probably the hardest thing I have ever done in my life. I made the decision to leave my husband; my kids were six and eight at the time. My husband was very, very angry. He said it came out of leftfield. I did not think so, but you know. A lot of counselling was done prior to that. While I was researching this, I was thinking about having been one of those women sitting in the Family Court. There was no sexual abuse or domestic violence involved, apart from the worst part, during the time of separation, when there was a lot of yelling. We were both very angry and he was very, very hurt. I understand that now—probably not so much back then, because a lot of words were said that can never be unsaid. We both spoke poorly of each other and I am not very proud to admit that I did a lot of that in front of my boys. They are now 24 and 26, and they still remember the divorce, how it went and how terrible it was. When I look back, I like to think that I did not do too badly, really, so I can only think, as I have followed on with my research, how important this bill is for people who actually have endured sexual and domestic violence, so that they are not put into the situation of having to ask questions of their ex-partner in court.

The member for Nedlands spoke very well in this debate. I am pretty much here from a more personal point of view. I want to talk specifically about the type of person who would actually prefer to self-represent. They are coercively controlling–type people or people who show signs of narcissistic behaviour. From my point of view as a psychologist, some of the things that would be red flags in court of narcissistic behaviour or of people who are trying to coercively control people would include grandiosity, with the expectation of superior treatment. Such people in a court situation would expect the judge to rule in their favour and would be absolutely gobsmacked if rights were taken or moneys were limited in terms of access to children. They fixate on fantasies of power and believe that they are very successful, intelligent and attractive people. That goes for either gender. I know that gentlemen are over-represented in this situation, but there are quite a few females I know who would tick the narcissistic box. With regard to self-perception, they would see themselves as unique, superior and high status. Again, if we can imagine them sitting in court and taking on their victim, it would be almost an exciting event for them to bring someone down, especially in an open forum with other people watching. They would actually get a great deal of satisfaction from that, which again comes back to the point that removing this ability will be awesome.

They have an unwillingness to empathise with the feelings and wishes of other people, so they would not even consider that what they do or say could be incorrect. They are pompous and arrogant and would probably recognise that being in court would be a source of embarrassment for their victim, and would accordingly make them pay. This legislation is therefore very timely. Victims should be given the opportunity to not have to sit in front of an ex-partner and go through that. A narcissistic person is very averse to responsibility, so they systematically stage their life to avoid responsibility and become very masterful at denying and projecting everything back onto their partner or the other person. If they are losing their wife or husband and children, that would be even more reason to win in court.

Lastly, they do not forgive. If there is a potential threat to be defeated, or if they feel that they are under attack, they will always frame it as life being a battle zone in which they are fighting for their survival. They regard any kind of hurt or retaliation as revenge. If they see someone apologising or showing what they regard as weakness, they regard it as proof of their superiority and will probably take the opportunity to further punish the person for whatever he or she has dared to come to court for.

I will illustrate that by way of an example. Unlike the member for Cockburn's example, which was a very raw and detailed account of a court action, my example is more about what happens in an everyday event. Therefore, it is more from the female's point of view as to why she would not take on her partner and would prefer to settle out of court, becoming one of those statistics of people who settle for less—not because she feels that she does not deserve it or because she feels that she got herself into this situation, which is actually really sad in itself, but just because it is the easier path for getting away.

An order of a court might state that the husband and wife take turns spending each alternate birthday with their kids. A court might ask specifically that they do this because joint events have not in the past been particularly nice. Making it alternating years means that a special day can be created for the child without any drama, danger or humiliation. They are putting their child's needs first, and they are protecting themselves from harm. The ex might feel entitled to contact the person, regardless of what the court order says; they feel protected by the Family Court. They will now use the occasion to exert control and cause frustration, anxiety and fear. Seeing these emotions makes them feel superior and powerful. The person's ex knows their deepest fears and uses them to hurt them.

A WhatsApp message sent by the ex-partner may say that they will contact the daughter on a non-contact day. They say they will drop by at the daughter's birthday party because "I should see my daughter on her birthday". Panic is felt by the victim when they know what is ahead. The victim knows it will end in tears. If there is a fight, the

daughter's birthday will be ruined. The victim decides to text back and say something like—something I would have probably written back in the day—"Don't you dare show up at this birthday party. I'll call the police. You know we have orders. Don't contact me again", and take it back to court. This works in well with the ex because they respond, quite cunningly, "There's no need to be angry all the time. I just wanted to see our daughter for an hour on her birthday. It's not too much to ask. I just want to give her a present. She told me on the phone last night that she wanted me to come. I think what you're doing is going to upset her more." After reading that message, the victim realises what they have done. They become more terrified because they have to deal with the judge. They are thinking, "The judge is going to read this. He's going to think that I'm being a mean and nasty person and that I'm trying to hold my daughter back when really that's not the case at all." They feel as though they will be condemned and the judge will favour the side of the ex. Fear and anxiety is created all because the victim is standing up and keeping boundaries, but on the other hand this manipulative person has been able to make the victim do things that they did not want to do.

That was an example. It is quite a basic example that a victim can fall into if they do not know what they are up against. It is an example of why people should be represented by lawyers in court. Generally, lawyers are trained to spot coercive control. They are trained in how to deal with narcissistic people.

In closing, people who live in fear because of these types of examples—which are basic day-to-day examples—should not be cross-examined by alleged perpetrators, especially victims who have had to endure physical and sexual abuse. It increases the importance of banning the opportunity for these people to self-represent. I commend this bill to the house.

MS C.M. ROWE (Belmont) [3.51 pm]: I rise today to make a contribution to the Family Court Amendment Bill 2021. I would like to take this opportunity to acknowledge the hard work of the Attorney General and thank him for bringing this very important bill to this place.

In my view, any measure to provide assistance to victims of family and domestic violence is of critical importance. It seems that every single day our news is littered with examples of abuse and stories of violence, mostly perpetrated against women. Last week, we learnt of the sexual assault by a number of students at a private Catholic boys school of over a dozen students from a Catholic girls school who were at a combined school event. The girls were groped by the boys. This would have led to an incredibly distressing experience for the teenage girls, and no doubt will stay with them for many years to come, which is really quite tragic.

In 2021, the concept of consent is non-existent in much of our community. This speaks to the amount of work that still needs to be done to educate our boys on the topic of respect and consent. This serious issue needs to be addressed. Furthermore, there is no evidence that the horrors of family and domestic violence is abating in our community. This is evidenced in our news on what seems to be a weekly basis. On 29 July this year, WAtoday reported on the brutal murder of Ruqia Haidari by her husband of only two months, Mohammad Ali Halimi. Using a kitchen knife, Halimi slit his wife's throat twice. As his wife was left to bleed to death on the kitchen floor, Halimi phoned his wife's brother and told him to "come get your sister's dead body".

Those two examples really point to the fact that this is, and will continue to be, a blight on our society until the government does everything within its power to make sure it provides safety for victims of family and domestic violence. On the other hand, I would like to note that it is clear that a lot needs to be done around the conversations that need to occur, most critically with our young boys, about respectful relationships. The Minister for Women's Interests is doing great work in this space. The conversations need to continue about consent and respectful relationships well into adolescence. The incident that occurred recently at a Catholic boys school is disgusting.

This bill aims to protect some of the state's most vulnerable people—victims of family and domestic violence. Although it is disappointing that the bill did not proceed through the Legislative Council during the last Parliament, I am pleased to be able to contribute to this very important legislation. This bill builds on the commonwealth legislation that was passed in December 2018 to ban the direct cross-examination of victims by their abuser in family court settings. The practice of direct cross-examination of victims by the perpetrator is clearly unacceptable. Imagine how confronting that experience would be for victims. One in six females has been a victim of physical and sexual violence from an intimate partner. I note that it is not always women who are victims of domestic violence. I agree with the member for Cockburn that this is a gender issue as it is overwhelmingly an issue that affects women.

As victims, women who come to court, seeking protection and assistance, can face cross-examination—direct questioning—by their abuser. This, of course, can lead to further trauma to the victim, and would no doubt be deeply distressing. In addition, because this experience is so distressing, victims may be more inclined to expedite the proceedings to limit their exposure to this type of questioning by their abuser. In their haste, however, they can be settling property matters or parenting rights that are detrimental to their welfare and that of their children, and their overall wellbeing, which would be preferential to the perpetrator. Further, allowing perpetrators to cross-examine the victim has the potential to affect the victim's testimony, and hence the result of the trial.

The prospect of direct cross-examination can be so daunting that it causes victims to accept premature and very unfavourable settlements. This has been witnessed by experts in the field for far too long and formed part of the push for change at a commonwealth level. The acceptance of these unfavourable settlements can have really devastating effects on children who are involved in court proceedings. It can place vulnerable children in situations in which their personal care and safety is ultimately at risk. The ban on direct cross-examinations will remove this daunting prospect for victims and the potential avenue to premature and unfavourable settlements for women who are experiencing family and domestic violence.

The real-world consequence of this is, obviously, fewer children in unsafe environments. Fewer children will be exposed to domestic and family violence. It also provides victims with the security of knowing that they can pursue a fair outcome without putting their own mental health in jeopardy and being re-traumatised during the process. Ensuring that a fair outcome is reached in any court is pivotal. The cross-examination process is an integral element of having evidence tested in a proceeding and allowing the court to make evidence-based decisions and findings. Putting an end to victims being cross-examined by perpetrators will improve their ability to give clear and cogent evidence. Furthermore, the cross-examination of perpetrators by legal practitioners will ensure that their evidence is appropriately tested and therefore more reliable. This in turn will enable judicial officers to make more informed decisions and judgements.

In 2015, the *Sydney Morning Herald* reported on the case of Eleanor, whose name was altered for the purpose of reporting. Eleanor's experience in the Family Court system is an alarming example of the necessity to ban these types of cross-examinations by a victim's perpetrator. I quote from this article —

> 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.
>
> 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.

Debate adjourned, pursuant to standing orders.