

FAMILY COURT AMENDMENT (FAMILY VIOLENCE AND OTHER MEASURES) BILL 2012

Introduction and First Reading

Bill introduced, on motion by **Hon Michael Mischin (Attorney General)**, and read a first time.

Second Reading

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [7.45 pm]: I move —

That the bill be now read a second time.

Successive Western Australian Parliaments have enacted legislation relating to exnuptial children. That legislation, as a general matter, corresponds with commonwealth legislation relating to children of a marriage. This legislative arrangement has been adopted because the Western Australian Parliament, unlike the Parliaments in other states, has not referred to the commonwealth Parliament the power over exnuptial children. As a result, the Western Australian Parliament, not the commonwealth Parliament, has legislative power in the Family Court of Western Australia in relation to exnuptial children.

The Family Court Amendment (Family Violence and Other Measures) Bill 2012 addresses a matter of paramount concern to the Western Australian community. The bill mirrors the Family Law Legislation Amendment Act 2011 of the commonwealth, which relates to the children of a marriage. The commonwealth act commenced operation on 7 June 2012. Therefore, as of 7 June 2012, the law substantially changed under the commonwealth Family Law Act 1975 in relation to children of a marriage. Until the appropriate amendments are made to the Western Australian Family Court Act 1997, exnuptial children in Western Australia will be subject to quite different laws from those to which all other children in Australia are subject in determinations regarding their best interests.

The amendments in this legislation very significantly affect the law to be applied when determining the best interests of children the subject of proceedings, particularly the relevance of protecting children from being subjected to or exposed to family violence. The principal components of the legislation include: prioritising the safety of children; changing the meaning of “family violence” and “abuse” to better capture harmful behaviour; strengthening the obligations of lawyers, family dispute resolution practitioners, family consultants and family counsellors; ensuring that courts have better access to evidence of family violence and abuse; and making it easier for state and territory child protection authorities to participate in family law proceedings where appropriate.

This bill is about the safety of our children. The bill seeks to protect children and families within the family law system from family violence and child abuse. Children are the most vulnerable members of our community. Most children thrive in happy and cohesive families that put the best interests of their children first. Unfortunately, some children are not so lucky and experience significant conflict, fear, isolation and harm. Their experiences often occur within the confines of the family home and involve trusted family members. Conflict may escalate during family breakdown, increasing the risk to these children. Often there are strong intergenerational effects. The government does not accept that it is in any way proper or moral or beneficial to allow a child to suffer, to witness, or to hear or learn about, violence. As a government, we cannot tolerate family violence or child abuse in any form.

The damaging effects of family violence and child abuse have been recorded in a range of reports commissioned by the commonwealth government in recent years. In an evaluation of the 2006 family law reforms released by the government last year, the Australian Institute of Family Studies found that two-thirds of separated mothers and over half of separated fathers reported experiencing abuse, either emotional or physical, by the other parent. The AIFS also found that one in five separated parents surveyed reported safety concerns associated with ongoing contact with their child’s other parent.

A report by the Family Law Council highlights data that victims of family violence receive more psychiatric treatment and have an increased incidence of attempted suicide and alcohol abuse than the general population. Violence is also a significant cause of homelessness. These are disturbing findings. Perhaps more importantly, various research reports by leading social scientists and academics clearly show that exposure to family violence and child abuse leads to poor developmental outcomes for children.

It is unacceptable that our laws place people in this predicament. There is no dilemma for this government. This bill will encourage disclosure of family violence; it will improve the understanding of what family violence is by clearly setting out the types of behaviour that are unacceptable; and it will ensure that appropriate action is taken to prioritise the safety of children. The bill will positively address family violence and child abuse in the family law system in Western Australia as it relates to exnuptial children. The bill will amend the Western Australian Family Court Act 1997 to promote safer parenting arrangements for children.

First, the bill will prioritise the safety of children in family law proceedings. This government continues to support shared care and a child's right to a meaningful relationship with both parents. However, where family violence or abuse is a concern, the courts will be required to prioritise the safety of the child over maintaining a meaningful relationship with each parent.

Second, the bill will change the definitions of "family violence" and "abuse" to better capture harmful behaviour. Family violence takes many forms and can affect any family member, be it adult or child, male or female. The definition of "family violence" is consistent with the recommendations of the Australian and New South Wales Law Reform Commissions. Behaviour such as assault, sexual assault, stalking, emotional and psychological abuse, and economic abuse are explicitly referenced in this definition. The definition of "abuse" in relation to a child will include serious psychological harm as a result of exposure to family violence, and also serious neglect. This is a vital step in helping the family law system to identify these problems and to respond appropriately to them.

Third, the bill will strengthen the obligations of lawyers, family dispute resolution practitioners, family consultants and family counsellors to prioritise the safety of children. Under the proposed reforms, advisers must encourage families, in reaching parenting arrangements, to focus on the best interests of the child and in doing so to prioritise the wellbeing and right to safety of their children.

Fourth, the bill will ensure that courts get the information they need to make safe parenting arrangements. To this end, courts dealing with children's matters will have to ask the parties to proceedings about family violence and child abuse; parties will have to report their concerns about those matters to the courts; other people interested in the proceedings will be able to make similar reports to the courts; courts will be relieved of considering the extent to which a parent is "friendly", according to the current definitions; and families will no longer need to fear being saddled with a costs order for reporting family violence to the courts. With all relevant information being made available, the courts can ensure that parenting orders will protect children from harm.

Finally, the bill will make it easier for commonwealth, state and territory child welfare agencies to participate in family law proceedings—in the case of Western Australia, the Department for Child Protection. Given that the bill mirrors laws operating across the commonwealth insofar as they relate to exnuptial children, the government has taken the view that the bill introduces a scheme of uniform laws within the meaning of standing order 126(1).

I commend the bill to the house and I table the explanatory memorandum.

[See paper 4983.]

Debate adjourned and bill referred to the Standing Committee on Uniform Legislation and Statutes Review, pursuant to standing orders.