

Mr Jim McGinty; Mrs Cheryl Edwardes; Dr Elizabeth Constable; Ms Sue Walker; Mr Pendal; Mr Matt Birney;  
Mr John Bradshaw; Mr Colin Barnett; Deputy Speaker; Mr Mark McGowan; Mr Norm Marlborough

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**FAMILY COURT AMENDMENT BILL 2001**

*Third Reading*

**MR MCGINTY** (Fremantle - Attorney General) [10.45 am]: I move -

That the Bill be now read a third time.

**MRS EDWARDES** (Kingsley) [10.45 am]: We have debated this Bill over the past couple of weeks. Last Tuesday I quoted a section of the Marriage Act that highlights exactly how marriage is regarded in the laws of Australia; that is, it is a solemn and binding relationship. According to law in Australia, marriage is the union of a man and woman to the exclusion of all others.

Many people deliberately choose not to marry because they do not feel that they are ready for the legal and moral obligations attached to marriage. Where there are no children involved, many couples do not believe they are in a marriage-like relationship. It is wrong to force upon them those obligations if they choose not to do so. Further, it is not appropriate for de facto partners to be treated exactly the same as if they were married. The definition of de facto relationship in this legislation goes so far as defining those relationships as marriage-like.

Heterosexual couples can choose to marry if they wish. However, same sex couples cannot because the law does not permit that. This Bill equates de facto relationships with marriage, which it should not do. It seeks to prevent the property settlement injustices that arise out of a former trusting partnership that result in unfavourable treatment of one person by another when both have contributed to the property but only one partner benefits. The Opposition supports that, but not in the way the Government proposes. We do not support those disputes being settled in the Family Court or by creating further injustices.

Western Australia is the only State that has its own Family Court. For constitutional reasons, we did not refer our powers to the Commonwealth. The Government has chosen to use the Family Court - although it could have chosen any other court - purely as a matter of convenience for itself, and for no other reason. There may be some justification for de facto couples who have children to resolve their property settlement in the Family Court. However, perhaps because of the constitutional basis, all other States have legislated for disputes in de facto relationships to be settled in the civil courts. As such, that does not create a new legal status for de facto couples as being the equivalent of married couples.

Those States have never had the debate we are having. They have debated the de facto laws dealing with property settlements, but they have never had the debate we are having about equating de facto relationships and same-sex relationships as marriage-like and giving them a legal status before the Family Court. That is what this Government should not have done. It should have introduced a separate Bill to provide for relief through the Supreme Court or another court by creating another equity division. Families and married men and women have a legitimate right to access to the Family Court. However, they will now share the court's limited resources with de facto couples.

There is never enough money for the Family Court; its resources are already stretched. The Government has not indicated that it will provide the extra resources necessary for the court to deal with its increased workload. The court will not cope without increased resources, and the time before which cases are heard will blow out. That will affect people currently before the Family Court; those who are legitimately married and have legitimate access to it.

Further, the Government has throughout this Bill allowed the status of the de facto couple to take precedence over a married couple, and, in some instances, equated it to marriage. The amendments to the Administration Act will disinherit the husband or wife left behind, irrespective of the length of the marriage, in favour of a de facto relationship that needs to have been in existence for a mere two years. The de facto partner will have the right to half of what the husband or wife would have been entitled to. After just five years, the de facto partner will be able to access 100 per cent of what the husband or wife would have been entitled to. The most common situation is, of course, that the wife is left behind. This is totally unfair, particularly for those husbands and wives who have not yet reached a property settlement through the Family Court.

This Bill allows for multiple relationships to be recognised, even if a marriage exists. A person can have as many partners as he wishes, even if he is legally married. The Marriage Act does not recognise bigamous or polygamous relationships. This Bill will also allow de facto partners to pay maintenance after separation. It is far wider and more unlimited than other legislation in Australia. There have also been several legal concerns. Importantly, the definition of de facto relationship could lead to a number of disputes. The contradictions in the Bill and the uncertainty over whether living together or sexual relationships are essential criteria open up the

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possibility that coverage could apply to domestic relationships, such as carers, dependants and other family members.

All parties are likely to be present for actions before the Family Court; however, in actions under the Administration Act, one of the parties has died without a will. Therefore, the potential for disputes is greater, especially if multiple relationships exist. That increased uncertainty will lead to greater costs, injustice and unfairness for the de facto partners, as well as the husband or wife who is also caught up in that action.

The other major legal concern relates to financial agreements. We all want to encourage couples to enter into a financial agreement; to determine for themselves how property should be distributed upon dissolution of the relationship. However, uncertainty exists over the validity of financial agreements, as they will need to be certified by an independent lawyer. The Australian Family Law Council has major concerns about such certification and the impact it will have on members of the legal profession. As such, no financial agreements are being signed off by solicitors in Western Australia. People in de facto relationships may, after learning about the impact the Family Court will have on their lives, want to sit down and work out a financial agreement. That will not be possible for them while lawyers in this State are not prepared to sign off on such agreements. The concern of the legal profession relates to the impact this legislation might have on clients. This uncertainty will create greater delays and increased costs. De facto couples may have been given the expectation that this legislation will look after them; the concern is that it may not.

The Government could have removed that uncertainty by responding to those legal concerns, particularly those raised by probate lawyers and others who regularly work in the family law area about the Administration Act amendments. They believe that section should have been withdrawn and rewritten. They would have assisted with that. The definition of de facto relationship should have been tightened. The concern created by the contradiction of whether living together is an essential criterion is valid, particularly as it relates to the Administration Act. It is not an essential criterion for a sexual relationship to be or have been in existence. I have told the House of Professor Wade's comments. The definition of de facto relationship will increase the number of people who can apply to the Family Court for a remedy. The legal profession says that this uncertainty will create delays, and result in increased costs.

The Opposition put forward a number of amendments. We believe the spouse should be recognised in the Bill. That amendment was picked up by the Government. It did not pick up our amendments relating to the former spouse. The spouse is referred to as just "another party" that needs to be added as a party to an application or notified. We believe it is important for the spouse to be properly recognised. Spouses who have not had proper settlement through the Family Court also need to be incorporated as people, not simply "anybody else". The Government recognised the spouse, but it did not recognise the former spouse.

We also believe that the definition of de facto relationships needs to be tightened to ensure the uncertainty is removed. Other than a minor amendment relating to sexual relationships, the Opposition's amendments were not accepted. We attempted to remove the term "marriage-like". That term and the fact that de facto relationships may go before the Family Court give the impression that a de facto relationship equates to marriage. We do not believe that people in de facto relationships should have access to the Family Court to determine property settlements, although we agree that the law needs to be improved to ensure justice in the resolution of property settlements upon dissolution or separation of a relationship. We put forward an amendment to prescribe that only those couples with children can have access to the Family Court. That left it open to the Government to introduce a separate Bill allowing for financial/property settlements between two or, in some instances, three people to be dealt with in another court. That amendment was not accepted.

We also wanted to tighten the Administration Act so that there would be less uncertainty for those people who find themselves in such a distressing situation. We also wanted to insert a clause that ensured that the application of this legislation was fundamental to splitting property to which both parties had contributed. That was specifically spelt out in three areas. The mischief that occurs when both parties have contributed but only one party benefits would have been addressed. Again, that amendment was not accepted. A number of other amendments were put forward by the member for Alfred Cove, one of which was accepted and others which were not.

Lastly, on the issue of consultation, today a rally will be held to support marriage and the family. I suggest to this House that the impetus for that is the lack of public consultation. People have been left out of the debate, particularly those who have a very clear interest in this Bill; that is, de facto and same-sex couples. They have not had a chance to say whether they want the Family Court to be involved in their lives. De facto couples who have children already have access to the Family Court in respect of those children, and that has been the case since the Family Court was established in 1976. Essentially, we are talking about de facto and same-sex couples

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who are without children. They have not been given a chance to say whether, on midnight on the day that this Bill is proclaimed, they are happy for the Family Court to interfere in their lives.

The legislation has the potential to impact on the whole community; that is, anyone who embarks on a relationship. That fact alone should have dictated that there be widespread examination of the Bill's contents and discussion about its consequences. The Labor Government has not allowed that to occur. The number of amendments that the Government has made to the Bill indicate that it was hastily drafted, even to the point of the Government's not knowing what finally occurred in Victoria. The Government's rushing this legislation through the Parliament without the necessary consultation with the community has effectively stifled public debate. I have said in this House that if the Government wants to undertake law reform, it must take the people with it. It cannot take the people with it if it does not go through a public consultation process and does not allow public debate to occur. The Government needs to take the people with it; it cannot do it using a big stick. It cannot stifle public debate or opinion. I am sure that today's rally will be the first of many expressions of opposition to changes that the Government wants to bring forward. If the Government does not allow a public consultation process, it will be judged on that.

This legislation is not fair to marriages and families; it will not achieve the gains for long-term de facto relationships that the Government says it will. It is one of the most significant pieces of legislation to come before the Parliament. It has the potential to impact on everyone in the community; yet there has been no wide consultation. It will place the property disputes of de facto and same-sex couples within the jurisdiction of the Family Court, which is already stretched as an under-resourced facility. That will ensure only that it goes to breaking point. This legislation should not have been rushed through the Parliament. There should have been wider consultation on it. I have no doubt that public debate and opinion on it will continue to be heard for quite some time.

**DR CONSTABLE** (Churchlands) [11.04 am]: I followed the debate and the consideration in detail stage closely. Because this is a long and complex piece of legislation, it has been a long and complex discussion as we have gone through the detail of the Bill. As I was following it, I kept coming back to the number of constituents who have been to see me over the past 10 years, particularly women in de facto relationships who often find themselves left in very desperate financial situations. Those women have been left with no resources to house, feed and clothe their children, because their partners have run out on them and left them to fend for themselves.

Despite what I see as some of the very great weaknesses in the Bill, I keep coming back to that group of women with whom I have had contact over the years. There is no question in my mind that those women require some legal protection. To a large extent, this Bill provides them with that protection.

At present, the only recourse for people such as the women to whom I am referring is to settle their property and financial disputes in the Supreme Court. Some people think that that is enough. Frankly, I do not think it is. I am talking about women who simply do not have the financial or personal resources to access the Supreme Court to try to reach some sort of financial settlement. It is expensive to have a case heard in the Supreme Court. It is also a very time-consuming process with long waiting lists for people to have their cases heard. Few women have those resources or the time for their cases to go through the Supreme Court. By that I mean that those women need financial certainty and relief quickly; they do not have years, or even months, to hang around waiting for a response from the Supreme Court.

Another grave disadvantage for those women is that the Supreme Court amounts to a public airing of personal, financial and emotional issues. I do not think that these issues should be dealt with in the public arena. Putting these matters into the Family Court, which is held in camera and away from the glare of the media, means that these very personal issues can be dealt with privately and without that public scrutiny.

I agree with the point the Attorney General made in his second reading speech that there is a need for legislation to provide de facto couples with a mechanism to resolve financial and property disputes. To a large extent the legislation seeks to accomplish this, and it probably does so within the context of what is available in the community. However, during the consideration in detail stage, a number of very complex and quite disturbing and difficult issues were raised. Probably the most contentious of those issues is the definition of de facto relationship in proposed section 205V(1), which defines a de facto relationship as a marriage-like relationship. To my mind, this definition goes too far in pretending that a couple in a de facto relationship, to all intents and purposes, is in a relationship that is equivalent to a marriage. The definition glosses over the fact that a marriage, by its very meaning, refers to a man and a woman who have entered into a religious and/or civil contract. That in itself sets a marriage very much apart from a de facto relationship. I do not believe that any other personal relationship can be described as marriage-like. It is a misleading description; in fact, it is a misleading description of a de facto relationship. For many people, and for me, this definition devalues marriage. At a time

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when the institution of marriage is being stretched in the community in many ways, it devalues the commitment that is implicit in the decision that two people make when they get married or decide to get married.

Earlier this week I was interested when the Attorney General used the words “finality and certainty” with regard to a legal marriage. He admitted that a de facto relationship could not be described in that way. I was quite pleased that he said that and that those words are on the record. He attempted to distinguish between a marriage-like relationship and a de facto relationship. Quite clearly, any legislation that deals with human relationships by its very nature will be complex, and this legislation is no exception. The legislation raises complex legal and social issues. It attempts to provide a legal process and rules for relationships that break down. In doing so, the most contentious point of the legislation is the definition of a de facto relationship. Members should keep that definition in their minds and it should perhaps be revisited before too long. We should try to improve the way the legislation describes that relationship.

Another contentious issue raised in the legislation and highlighted in the detailed consideration of the Bill was how the legislation attempts to deal with complicated and tangled relationships. For example, when a person who is receiving spousal maintenance enters into a new relationship, when does that relationship become a de facto relationship? In that situation, why should a former husband be required to pay maintenance to his former spouse when she is in a new and de facto relationship? What time frame should be applied to that? Due to the way in which people behave and change their lives and relationships, it is difficult to make straightforward rules and regulations to apply to human behaviour. Similar considerations occur when a spouse who has a de facto partner dies intestate. There was spirited debate on that issue and answers are still needed.

Some curious and serious consequences arise from those examples. For instance, I am disturbed with the way in which this legislation recognises multiple relationships. Quite clearly, and as the member for Kingsley pointed out, on the one hand society and the law does not condone bigamous relationships, but on the other hand, this legislation provides for circumstances in which a person has two or more relationships - one can be married and have other relationships. A tangled web can be woven with human relationships.

I will return to one issue that was raised during the second reading debate; that is, that people living in de facto relationships have at their disposal, as do people in marriages, the ability to enter into legal agreements with regard to property and other assets. Many people use that mechanism to put an arrangement in place for their financial property matters. Once again, I come back to the women who have spoken to me who have found themselves in desperate financial situations. Those people simply do not have the financial resources or personal wherewithal or knowledge to have the foresight to enter into such agreements. Those people, particularly women, were left high and dry and in desperate financial situations. Although legal agreements are suitable for some people, they simply are not an option, or even considered, by others. I was heartened by the discussion about the Government’s intention to undertake an education campaign. This may be one way to get information out to people, so that they will consider those sorts of agreements. Once again, many people will not think those agreements are necessary because they consider that their relationships will last forever. Of course, when they do not, those people end up in difficult situations.

A consequential issue to flow from the legislation, which was mentioned by the member for Kingsley and which concerns me greatly, is the inevitable increase in the workload of the Family Court. The Family Court is already stretched. I think there are five judges in the Western Australian Family Court, but at the moment the court is operating at a capacity of about three and a half judges, because people are on extended leave. I am interested in the budgetary implications of that increase in workload and what additional resources might be required to allow the court to function properly. I would like the Attorney General to address the issue of whether additional judges would need to be appointed, and to provide details of the current waiting times at the Family Court and the anticipated blow-out in waiting times when this law comes into force. I understand that many people are simply hanging on to their de facto relationships and waiting for this legislation to become law. There will be a great rush to the Family Court on the day this legislation becomes law. A new burden will be placed on the resources of the court in the months ahead, which is a serious consequence of this legislation.

Many people will be disappointed with this legislation. Some people in de facto relationships are under the false impression that once this legislation becomes law, they will somehow be able to access the provisions of the Act. People whose relationships have already broken down will not be able to access the provisions of this Act. Many people, particularly the women of whom I spoke who are seeking relief in their financial situations, will simply not be able to access the provisions of the Act. Although I have some reservations about the legislation, some of which I have briefly mentioned this morning, I am hopeful that the legislation will provide some protection to the women I have come across over the years. Those women were in de facto relationships that broke down and were left high and dry financially and in desperate situations in their attempts to support their children. The Family Court will now provide protection to women in those situations. For that reason alone, I support the Bill.

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**MS SUE WALKER** (Nedlands) [11.16 am]: I concur with the eloquent views of the member for Churchlands. I agree that many problems will arise from this legislation. One problem is with the workload of the Family Court. Whichever court was given jurisdiction through this legislation would inevitably have been given an additional workload. During the second reading debate I said that my views on this legislation were tentative. Since that time, I have had the opportunity to research and crystallise my thoughts about the position I should take as the member for Nedlands. When I was elected to the seat of Nedlands, I was put forward by the Liberal Party as a member of some standing - of more than 25 years - and was elected by the people in my electorate, who put their faith in me. I come here, as all members do, with a variety of skills. In areas such as this, I can put to use my legal and analytical skills that I developed during my three and a half years working as research officer for John McKechnie QC and Graeme Scott QC, who are now Supreme Court judges. That is what I should do if I am to do my job properly on behalf of my electorate.

This Bill is only one of a batch of legislation due to be considered by this Parliament. Two of those Bills, I believe, have received bipartisan support so far. It is important that members remember that the Bills are being considered in isolation. My reading of the batch of legislation is that they can be put into about eight categories. The legislation involves amendments to the Equal Opportunity Act 1984 to stop the discrimination and vilification of homosexual people on the ground of their sexual orientation; prevent and eliminate discrimination in the workplace; provide jurisdictional access to property rights, liabilities and benefits; provide access to reproductive technology by lesbian couples or single women; allow adoption of children by same-sex couples; give access to particular medical treatments; allow inheritance by same-sex partners; and, of course, the most contentious legislation, reduce the age of consent for homosexual males from 21 years to 16 years. In this Bill, the Government provides a jurisdictional mechanism for de facto partners to resolve property and maintenance disputes when their relationships break down. I will support this Bill based on the following: first, the fact that the Liberal Party drafted legislation on de facto relationships when in government in 1997. I quote Hon Peter Foss, who, on 14 October 1997, when talking about the Acts Amendment and Repeal (Family Court) Bill, said -

I recognise the need for some substantive law with regard to de facto couples and, as notified by the Leader of the House, the Government intends to introduce that legislation this session. We sincerely hope it will be debated and dealt with this session, but that is in the hands of the Parliament.

Hon N.D. Griffiths: Is it drafted yet?

Hon PETER FOSS: Yes it is.

I have not seen that legislation, but it is clear that, in 1997, Hon Peter Foss said that it had been drafted on behalf of the Liberal Party.

I have considered, in coming to this view, the liberal beliefs of our party, which can be found on any membership form. In particular, the Liberal Party believes in equal opportunities and social justice for all Australians in a tolerant national community. I have also considered the correspondence and representations from my electorate. I have received many letters and visits from my constituents asking me to end the hardship and victimisation that women feel as a result of the lack of access to modern property rights for de facto couples. We do not, and should not live in a time warp. We live in a community in which relationships are no longer just about mum, dad and two kids. Modern reality forces us to recognise that many thousands of couples live outside of marriage, and same-sex couples cannot marry under the commonwealth Marriage Act 1961. I do not have one piece of correspondence from my electorate asking me to oppose this legislation. I have received only one personal representation from a church in my electorate, and as I said in my contribution to the second reading debate, it was from the Anglican Social Responsibilities Commission, which asked me to support this legislation. I was approached on its behalf by Reverend Anna Killigrew, who is the priest at St Margaret's Church in Nedlands. I have also, in supporting this Bill, considered my own reading of my electorate, after living there for nearly 30 years.

This Bill does not detract from the fact that marriage is still a predominant feature of our social landscape. It is important in our society, and is part of the liberal philosophy. In the declaration of Liberal Party beliefs, it is stated that we believe in the importance of the family and that the standards of a free society should support family ideals. These amendments do not diminish marriage, which is safeguarded and untouchable by the State, under the Marriage Act 1961. De facto couples, both heterosexual and same-sex, already have access to the jurisdiction of the Family Court in relation to parenting orders, residence, contact, maintenance of children and other aspects of parental responsibility. That jurisdictional access was given to them by the Liberal Party in 1997. In a second reading speech on 16 October 1997, Mrs van de Klashorst stated -

In the second reading speech to the Family Court Bill I pointed out that in the absence of amending legislation Western Australian children whose parents are not married would be treated not only differently, but arguably unfairly, in that they would not have the same rights as children whose parents

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married, and their parents would not have the same responsibility towards them as married parents have towards their children.

In Victoria, New South Wales and the Australian Capital Territory, where this legislation has been passed, couples whose de facto relationships break down are forced to have disputes about children and property resolved in separate courts. Western Australia is in the fortunate position of having retained the ability to legislate in family law matters when the Commonwealth passed the Family Court Act. The State can now put in place provisions for property rights and children to be contained in one Act so that de facto couples do not need to go to different courts. The States that have enacted de facto legislation separate from the Family Law Act are unable to give the voters in their States the convenience of having child and property disputes settled in a single court. This problem was discussed recently at the Standing Committee of Attorneys General in Darwin in July. On 25 July 2001, the federal Liberal Attorney General, Hon Daryl Williams, issued the following media release -

De facto couples who separate would be able to resolve their parental and property disputes more easily if the States and Territories agreed to a proposal to refer powers to the Commonwealth.

At today's meeting of the Standing Committee of Attorneys-General in Darwin, I will call on the States to agree to refer powers so that there are consistent national laws governing the property of de facto couples.

The Commonwealth currently has power to legislate in relation to matrimonial causes and marriage. All States except Western Australia have also referred power to the Commonwealth in relation to children of de facto relationships. However, the States retain the power to legislate in relation to property rights arising from de facto relationships.

Not only does this mean that de facto couples are forced to have disputes about children and property resolved in separate courts, with the associated inconvenience and expense, but it means they may be treated differently by the law depending on where they live.

The reason I raised this issue, and the reason it is of concern to the Standing Committee of Attorneys General, is because in other States, when women are left high and dry, with no money and no resources, they are forced to go to the Family Court to settle the disputes over children, and they then must go to another court to settle property disputes. Western Australia is fortunate in that it is able to remove that burden from de facto couples with this legislation.

Some mention has been made of the two-year qualifying period. This period can be shortened if a child is involved. My experience in courts is that there can be a thousand cases with a thousand different circumstances. Every one is different. The two-year qualifying period is appropriate. In other States it is either two or three years. As an example, partner A meets partner B, who owns a supermarket in his own name, which is failing. Partner A puts in some money to assist; the couple live together harmoniously, and have a child. The woman works in the business, and does all the books. The couple split up after two years. A different situation may be that of a couple who lived together for two years and did not enter into any financial agreements. For this reason, criteria are included in the legislation for the court to assess whether de facto couples should have access to the jurisdiction of that court. That safeguards the two-year period.

De facto relationships have flourished since 1975, when the Family Law Act came into being. That may have been because some people wanted to escape liability under that Act. Dreadful inequities have occurred since that time, particularly to women, which are well known and have been well publicised in the Press. Under current law, de facto couples have recourse only through the antiquated and costly processes of the Supreme Court. Although much emotion can be generated, when it is all boiled down, this Bill is about giving additional access to de facto couples to a jurisdiction to enable the equitable distribution of property rights following the breakdown of a relationship. It is access to a jurisdiction that de facto and same-sex couples already have for their children. I am not prepared to allow victims to continue to suffer, particularly women, from the lack of legislation. Although there are glitches, and there will be problems, as inevitably happens with complex legislation, this Bill is basically fair, equitable and just, and I support it.

**MR PENDAL** (South Perth) [11.29 am]: I oppose what the House is doing with this legislation. Nothing will be achieved by the passage of this Bill that will be in any way helpful or beneficial to the wider society. The legislation in the form in which it has been presented is unnecessary and comes attached to a range of baggage that is probably the worst excesses of popular legislation that one could imagine.

I pose the rhetorical question: should we protect the property rights of people in de facto and same-sex relationships? My answer to that is yes. I stated in the second reading debate, and again comprehensively, I hope, in the consideration in detail stage, that I have no problem with the notion that anyone's property rights

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should be protected at law. However, I oppose the extension of that protection by way of the Family Court and Family Law Acts. The Family Court Act and, by extension, the federal Family Law Act are the only vehicles that deal with the dissolution and the aftermath of broken marriages. It is therefore a simple equation to me that anyone is entitled to have their property rights and other rights at law protected. I am saying that those rights have no place for protection under the laws that directly and indirectly deal with the marriage laws of the Commonwealth.

The irony is that the rights of de facto couples and same-sex couples are already protected under existing law and are capable of being protected if the people in those relationships use the law that currently exists. I restate, and I shall continue to restate, what I said in another House 12 years ago: it is the perfect right of people to choose to go into a relationship other than a marriage relationship, under which there is protection at law. They have at their disposal a capacity at law, by entering into simple agreements, to ensure the protection of those rights. That then begs the question: why therefore do those people and their advocates want effectively the protection of our marriage laws without seeking the commitment of marriage? It comes down to - it is not exclusive to de facto couples - a general sense among many Australians that there is a better way out when someone else can do a job for them so that they do not need to be put to the trouble to do what they should be doing. It is a better option for them if they can ask the legislators to do for them what they refuse to do themselves. It is effectively a nice way of opting out of a personal responsibility by people who already have the capacity at law to do what most of them choose not to do.

One of the few pluses that I have heard in the debate is the emphasis from commonwealth law that is now reflected in state law of financial agreements becoming an integral part of the family law system in Western Australia. However, the irony, as revealed by the Attorney General, is that a person who chooses to enter into a financial agreement under the legislation that the House is about to pass - albeit without my support - can effectively opt out of the provisions of the Bill that we will pass today. That further emphasises the point that I am making that this legislation should not be before the House. We should be encouraging those people to do one of two things: either formalise the relationship by way of marriage or, if they choose not to do so, which is their perfect right, exercise their capacity at law as it stood long before this amendment came along. Again it begs the question: why do people choose not to do that? For that reason, it appears to me that we are dealing with legislation that is simply unnecessary, as we so often do in this place. The legislation is designed to cater, perhaps pander, to a small section of the community - and it is a small section.

People talk about the growth in the rate of de facto relationships. I do not know the percentage of same-sex relationships; however, we are on certain ground when we know that in the order of 12 per cent of couples live in de facto relationships. By extension, that means 88 per cent choose not only the commitment of marriage but also all the benefits and protections that are extended and afforded to them under the marriage laws of this country.

In the end, why do we have a Bill before us? In the end, what is the agenda? In the end, what does the Government want to achieve? I am left with the inescapable conclusion that the Government, in responding to this small group of people is seeking to ensure that de facto and other relationships are given the same status as formal marriages in our society. That being so, many people find that difficult to accept and many find it objectionable. Again I made a point during consideration in detail of the Bill that evidence exists, not that there are a growing number of de facto relationships but that most people in de facto relationships eventually in one form or another formalise them by a formal contractual marriage under the marriage laws of Australia. That is the real agenda and it means therefore that the Parliament in my view is being misused by a lobby which already has available to it the full protection of the law outside the context of this Bill should its members choose to afford themselves of it.

In some respects the Government has a real dichotomy and a real wedge in its thinking. At one level the Government assures us that it is not intending to give de facto and other relationships the same status as formal marriages. The Government tends to want to reassure us on that matter. However, other things have been said which prove the contrary. In the debate, the Attorney General made perhaps the biggest Freudian slip of all when he was at the Table of the House. He referred to the Bill in respect of "de facto marriages". I interjected, because it was clear that the phrase slipped out unconsciously, and said -

De facto relationships?

He said -

Yes.

I said -

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You said de facto marriages.

For the record, the Attorney General apologised and said -

... in deference to the member, it should be de facto relationships.

In the later debate I said that it is not a question of deferring to me; it is a question of deferring to the marriage laws of Australia or of Western Australia. He cannot have it both ways. His real agenda was revealed by his use of that terminology. One day it will be used, even by the courts, as a reason to legitimise what we currently believe is not legitimate. The courts and Parliaments are often asked to legitimise something because words have become commonly used or have a commonly understood meaning. That is why learned journals, such as those published by the Australian Bureau of Statistics, not only refer to marriage-like relationships but also suffer from the same disease as that afflicting the Attorney General. The ABS refers to "de facto marriages". It is part of the agenda to bring that terminology into common usage. Ultimately, Parliaments and courts of law will be required to legitimise allegedly commonly used terms.

That is why I find it offensive that we are dealing with legislation that is not motivated honestly and with the best intentions of the majority of people in this State. It is designed to appeal to a small portion of the pop culture and a section of society that is not left undefended. I have heard in the course of this debate - indeed it was raised initially by the Attorney General - that one of the reasons we must extend these privileges and the arm of the law to de facto and other couples is that we do not want them going to the Supreme Court because it is so costly. Have members been involved in nasty proceedings in the Family Court? Do they think that is free and that lawyers in that jurisdiction do not charge? I have had people in my office who have been confronted with having to sell their properties to finance drawn-out proceedings in the Family Court. That is no argument to support removing those proceedings from the Supreme Court jurisdiction. It might suggest a travesty and a gross reflection on our society that a person cannot go to any court without finding that he has to sell the shirt off his back to finance the proceeding. That is not a reason to change the laws associated with marriage; it is a reason to do something serious about providing access to the law and our courts so that even those who are not well moneyed can seek justice.

I make a final observation that sits above the issue we have been debating for three weeks. There is a fundamental weakness in what Governments - whether they be federal, state, Liberal or Labor - have done to the institution of marriage in the past 25 years. We spend billions of dollars mopping up the consequences of marriage breakdown but we put in virtually nothing at the other end. We spend millions of dollars in this State - I think correctly - to educate people about the dangers of tobacco smoking. We engage in many and varied education programs to alter people's behaviour and we spend millions to encourage people to do a variety of socially acceptable things. We do almost nothing to reinforce marriage preparation and prenuptial or pre cana counselling, but we are prepared to spend billions of dollars to address those other issues. When I last checked the position in Western Australia, I found that the aftermath of broken marriages costs about \$2 billion a year, and we spend about \$6 million on marriage education programs. Why do we value a person's lungs and keeping people free of tobacco smoke more highly than we do an institution that is the glue that keeps this country together? Even the people who are cynical about marriage acknowledge that.

This society owes a real debt to marriage. Irrespective of whether people like it - they sometimes hide their head and say that they do not subscribe to these views - the institution of marriage is based on our Judaeo-Christian values. Every culture in the world attaches a huge premium to the institution of marriage. Why? The reason is that it confers on those involved a stability and togetherness that no other form of human living has been able to achieve. One can believe in - as I do - the strong value of the spiritual side of marriage, or one can believe - as other people of goodwill do - that there is no spiritual element. However, the common notion is that marriage is a special social and, for many, spiritual compact. There is almost universal respect for that argument. Therefore, it beggars belief that we do so little to assist, nurture and encourage it, particularly when - as happens in most relationships - it comes under stress. We do the reverse; we give nourishment to the destructive aspects of marriage.

This Government and other Governments around Australia will have to spend far more of their time and resources on this issue. We have much at stake. The past 25 years have been difficult for the institution of marriage. That problem has touched us all, so I am not being pious. Many relationships have broken down and that has coincided with record numbers of suicides, a burgeoning of dependence on drugs and an increase in all forms of mental illness. Those issues are costing this country enormously - financially and emotionally and in every other way. Those things are not happening in isolation; they are happening because the people who turn to suicide, illicit drugs and alcohol or who suffer terrible mental illness - which is on the increase - are becoming disconnected from each other.

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They have no anchor, because in reality what has tended to bind that serious relationship that is entrenched in law, which we happen to call marriage, has been downgraded to something as breakable and disposable as irretrievable breakdown after the parties have been separated for a period of not less than 12 months. No matter what members' views are, they would all know of people who, in the past 25 years, have married and have broken apart within a short period. That is because of the notion we have allowed to creep into the equation that, if it does not work, people can go to the Family Court and get a divorce. I am not one who wants to force people to stay together in unhappy environments. However, many people could be assisted to work through those difficulties, just as we have other facilities in our society to enable people to work through other problems. What we signal to people - to young people in particular - as a general community is that they should not worry, because if a marriage does not work, they can head down to the Family Court and, with no more than one year apart, they can end that marriage. That is not acceptable. Even if people do not believe in some fundamental spiritual view of marriage, they must be impressed with the economic argument and the economic consequences of what divorce is costing Australia. Too often people say to me that I should not worry about the breakdown of marriage because social security benefits are a commonwealth cost. One need only ask the Ministry of Housing about the consequences that it confronts now, which it did not confront 25 years ago, because of marriage breakdowns or, for that matter, the breakdown of de facto relationships. The costs that are built in - perhaps unbeknown to us - are becoming immense, and all because we have sent the message to many people that at the first sign of any difficulty there is no reason to keep a marriage together.

It is a sad day, because we are dealing with legislation that we do not need to be dealing with. We are dealing with the problem of people in de facto relationships who want their rights protected. However, those capacities and facilities exist for them without the stuff we have been given today. It is another nail in the coffin of saying to society that a commitment between people should not be taken all that seriously and that a commitment given can be easily withdrawn. It is a grave mistake, particularly because we have other capacities and facilities to offer people to whom this legislation is allegedly directed. It is a bad day for Western Australia and I will oppose the third reading.

**MR BIRNEY** (Kalgoorlie) [11.53 am]: I had a pretty good run at this debate in the second reading stage. I place on record my opposition to this Bill and my support of some of the comments of the member for South Perth; although I imagine I would have some difficulty putting my argument as eloquently as he has. In fact, some members might say that I put things rather more bluntly than the member for South Perth. That might be a reflection on my longevity in this place, and perhaps over time I might become more eloquent.

The crux of this Bill undermines the cornerstone of our society, which is the institution of marriage. One thing that seems to be forgotten in this debate is that when a couple enters into the institution of marriage, they are signing a contract. Few of us would enter into a contract of any nature before seriously considering the ramifications and consequences of signing that contract. The consequence of signing a marriage contract is that the parties, in effect, sign over property rights that each previously enjoyed before entering into marriage. People think about a marriage contract before they go ahead and sign it. A stark contrast can be drawn between that and the so-called de facto marriage contract.

It is important for us, as legislators, to accept and to understand that there has been a move over recent years to de facto relationships. I have no problem with de facto relationships; I recognise and understand that de facto relationships are increasing in modern society, and I do not have any fundamental problem with that. The member for South Perth said in his speech that, as legislators, we should protect the property rights of individuals. I do not have a problem with that either. I draw on the example of two people coming together in a business partnership, with each partner putting in \$50 000. If that partnership subsequently splits up, it would be fair and reasonable for both of those contributors to receive back the \$50 000 they contributed.

A number of people are entering into de facto relationships. However, they do it with less initial thought than people entering into a marriage. Some people move in together on a whim, after knowing each other for only a short time. That is a problem. We need to recognise we have a changing society and people are heading down that path. At the same time, they are not giving the same level of thought to the consequences of forming a de facto relationship. My view, for what it is worth, is that there are some problems with de facto relationships. Based on the example I gave in which two people contribute an equal sum of money and the partnership splits up, those people should be entitled to receive that money back. This legislation should be contribution based. The criterion that the Attorney General has put forward is that when a couple lives together for two years, it is a trigger for property rights to be invoked. My view is that it should be contribution based. I also have a problem with the threshold of two years. I do not necessarily have a problem with the concept, albeit it should be based on the contribution of both partners. However, the trigger should come into play after six or even seven years. Two years is a relatively short time for two people to get to know each year.

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In the second reading debate I put forward the example of an underground miner who enters into a de facto relationship. Let us say that he lives in West Perth and works at Leinster on a fly in, fly out basis. If he worked on a three-weeks-on and one-week-off basis, at the end of a two-year period it would be fair to assume that those two people would not know each other particularly well. Yet, under the Attorney General's legislation, that two-year period of living together is the trigger to invoke those property rights. The settlement procedure should be contribution based and the trigger should come into effect after the relationship has lasted for six or seven years.

I have concerns about the retrospective nature of the legislation. I have a problem with retrospective legislation in any way, shape or form. As I understand the Bill, a couple who have lived in a de facto relationship for two years prior to this legislation being enacted will be caught by it. It is reasonable to assume that if two partners entered into a de facto relationship two years ago, they would not have known that two years down the track their property rights would be caught by this legislation. At the very least, it is only fair and reasonable to exempt those people from being caught in this net.

The Bill refers to superannuation. When a couple come before the court under this legislation, the court would be required to take into consideration any possible future superannuation contribution that one of the partners may or may not have owing to him or her. The Attorney General's second reading speech is not clear on how that provision will apply. A de facto couple who split up and go to court might own a house worth \$100 000 and one of the partners might have a superannuation policy worth \$100 000 that he is eligible to collect in 10 or 15 years. Would the court consider the couple's total assets as being \$200 000? Would it include the \$100 000 future superannuation benefits and the \$100 000 value of the house? If the court were to divide the assets equally, would one partner be entitled to \$100 000 and would the other partner have to hang on to his superannuation benefit that he may or may not get in 10 or 15 years? If that were the case, the second partner with the superannuation benefit due to him in 10 or 15 years would be disfranchised.

In closing, I place on the record that I support the traditional family unit as the cornerstone of our society. I support the traditional family unit that consists of a heterosexual couple with children. It is unfortunate that the Labor Party does not have a concurring view. Over the past couple of weeks I have received an unprecedented amount of mail from different organisations that have views similar to mine. The Australian Family Association issued a press release that was drawn to my attention recently, and it said the AFA had reacted to the introduction of the Family Court Amendment Bill 2001 by labelling it the first salvo in the ALP Government's war on marriage. They are wise words. The ALP has a funny, way-out agenda, the undertone of which strikes at the very heart of the cornerstone of Australia - the institution of marriage.

**MR BRADSHAW** (Murray-Wellington) [12.04 pm]: I have always had grave doubts about the legislation and will not support it. This legislation will throw up anomalies that the Government does not understand. We have tried to amend it to overcome some of those difficulties, but the Government has refused to accept those amendments. The legislation is retrospective. I have said continually that I do not support retrospective legislation. On the odd occasion I might; however, I cannot think of an example off the top of my head. Therefore, I do not support this legislation because of that aspect also.

Mr Johnson: I am sure the member would, if there were a benefit to the whole community.

Mr BRADSHAW: Yes. Anyone who has dealt with the Family Court knows that it takes a long time to resolve disputes. By introducing this legislation and not making any changes to the number of staff or judges provided to the Family Court, the system will become further clogged up. This Bill will make the situation worse. Currently, it takes up to two years to get a case through the system. The extra workload this Bill will add to the Family Court will blow out the time frame to settle disputes to three or four years. During that time people go through stress and heartbreak and the longer it goes on, the more it costs. For some reason, the bills keep coming from the lawyers. It is important that if this legislation is passed - which I do not support - more resources are allocated to the Family Court to ensure that somebody's foot does not step on the hose and slow down the process.

I do not support the legislation; I have always opposed it. We should not denigrate the sanctity of marriage. If people choose to live together in a de facto relationship, they do so under certain conditions that they understand. If they want to get into the Family Court, they should go through the proper process and get married. I do not support this legislation, and I will oppose it.

**MR BARNETT** (Cottesloe - Leader of the Opposition) [12.06 pm]: As the member for Kingsley said, when a change is made to the law to effect social change, it should be made with care and in a way that brings the community along with it. There is a remarkable degree of bipartisan support for what most members would consider to be the prime objective of this legislation. The members for Kingsley, Churchlands and Nedlands all referred to situations in which a long-term de facto relationship failed and typically the woman was left in a

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precarious situation in respect of property entitlements. We all sympathise with that and I am sure that all members of Parliament would agree that appropriate legislation to provide property rights and certainty for people in long-term de facto relationships should be introduced. That is not in dispute. The Liberal Party supports that principle. The starting principle of this legislation is not wrong, but the way in which Labor has put this Bill together is wrong.

For whatever reason, the Labor Party insists on putting extreme elements of its social agenda into legislation that might otherwise achieve bipartisan and wide community support. I am unable to understand why it does not go along with the community at large so that it can introduce legislation that will be unanimously supported in this Chamber. However, the Labor Party decided to take an extreme point of social engineering and it has set about changing values and institutions in society that the majority of people do not wish to see changed. It is beyond my understanding why that approach has been taken. This Bill aims to provide de facto couples with the legal means of resolving property and maintenance disputes when a relationship breaks down. We agree with that basic principle. Everyone in this Chamber would agree with that. Legislation to achieve that outcome could have been drafted in a constructive and positive way. Women, in particular, could have been provided with certainty.

The Liberal Party recognises the diversity and complexity of relationships in our community today. In his second reading speech, the Attorney General said that an estimated 12 per cent of couples in Western Australia live in de facto relationships. It should be said also that 88 per cent of couples live in marital relationships. Why does the Labor Party start with the 12 per cent and not the 88 per cent? The difference between the Opposition and the Government is that we on this side of the House start with the 88 per cent and not the 12 per cent. I understand that the Liberal Party's position is supported by the views and values of a majority of people in our community.

Another relevant point to be made about the Attorney General's second reading speech is that of that 12 per cent of couples who are in a de facto relationship, a strong majority - 56 per cent - are in the 20 to 34 age group. That is hardly surprising because de facto relationships are common among young people. These relationships have varying degrees of commitment. They might be casual relationships that involve the sharing of a flat, house or unit, and they may not even be monogamous. That is okay - I am not making a value judgment about that. However, that style of living is more common among young people. Some of those de facto relationships might ultimately result in marriage. However, the majority of them do not persist. The relationship breaks up, the partners go their separate ways, they find another partner, and life goes on. Ultimately, they often end up in a marital relationship. We should not ignore the fact that only 12 per cent of couples are in de facto relationships, and of that 12 per cent, a significant majority - 56 per cent - are from that group described as young people. Why is this form of legislation being progressed?

The principle of providing legal rights to long-term de facto relationships is not in dispute. That is the great tragedy. If the Labor Party had chosen to build upon what was agreed in this Chamber, and upon what is endorsed by the wider community, there would not be a dispute. Why not build on what is agreed and have a sensible approach to this legislation? The Opposition has an issue with the detail of the Family Court Amendment Bill and the way in which the Government has gone about trying to provide certainty for de facto relationships once they break down. The argument that is almost universally put forward in this debate by the Labor Party - whether we are talking about de facto relationships or the Labor Party's broader agenda for gay and lesbian reform - is the argument of equality, and, to a lesser extent, uniformity. How many times have we heard those terms used, and how many more times will we hear them? This Bill seeks to establish equality between a de facto and a marital relationship. The Government seeks to establish an equality between a heterosexual couple and a same-sex couple. It seems as though if this happens in other States, it must happen in Western Australia. Equality and uniformity seem to be the Labor Party's guiding principles in this area of social change. I would have a different approach. I would look first at what is right and wrong. That is what this Parliament should be doing - it should be debating what is fundamentally right and wrong, and in such a debate we would expect a differing of opinions. I do not accept something on the basis that it is equally wrong or equally right. The criterion that should be used to evaluate change and social measures is whether something is right or wrong. The argument put forward by the Labor Party is about equality. A glaring example - it is not a part of this Bill - is the age of consent of homosexual males. The Labor Party supports an age of consent of 16. I have yet to hear the Premier say that he, as the leading political office-holder in this State, supports an age of consent of 16. The only argument I have ever heard has been about equality. Something can be equally right or equally wrong - it is not the equality measure that matters, it is whether it is right or wrong. As the leader of the Liberal Party, I do not support an age of consent of 16 for homosexual males. I accept age 18 as being a realistic and pragmatic age of consent for homosexual males.

A government member interjected.

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Mr Kucera: You are talking about equality.

Mr BARNETT: I am not talking about equality. I am trying to establish my position. Members opposite may disagree with my position because they have a different set of values.

A government member: What about the age of consent for girls?

Mr BARNETT: I do not support the age of consent of 16 for homosexual males. I will accept 18, but I would prefer an age of consent for girls to also be 18.

Mr McRae: You would prefer 18 - what is your view?

Mr BARNETT: I have just given my view.

Mr McGowan: The member is being gutless.

Mr BARNETT: No, I am not. Talking about being gutless, will the Premier of Western Australia stand in front of this forum, or any public forum, and say that he personally, and as Premier, supports an age of consent of 16 years for homosexual males? I will lay you London to a brick that he is not prepared to do that. Therefore, do not talk about who in this Chamber has guts and courage.

A government member interjected.

Mr BARNETT: I want to talk about this Bill and will happily debate the age of consent at a later stage. I use the age of consent for homosexual males as an example of what is right or wrong. On this side of the House, we will look at the merits of these issues and decide our position after we have considered what is right and wrong. We will not make decisions based on whether issues are equally right or equally wrong. We will look at the merits and the values of the issues. Whether members on that side of the House like it or not, our society is essentially based on a Christian set of values. The member for South Perth will correct me and say that I should be talking about Judaeo-Christian values. He is right because it goes back further than the 2 000 years in which we can trace Christianity. Our system of law, parliamentary government, institutions, customs, language expressions, terms and myths are all based on those Judaeo-Christian values. There is no doubt about that; it is a reality. Out of that is the fundamental Christian value that supports the family and the institution of marriage. That is why 88 per cent of couples in our society have consciously chosen to get married. Twelve per cent have chosen not to. I do not criticise them for that decision - it is probably a wise thing for young people to do. That is quite acceptable - I have no difficulty with that. However, members should recognise that at some stage 88 per cent of people have chosen to get married. This society supports the institution of a family. I recognise all the complexities of a modern family. I recognise de facto couples with children, single-parent families, and so on. However, the basic family unit, albeit somewhat different and changing, is supported by our society. Madam Deputy Speaker, do I have to put up with the continual carrying on of that clown?

The DEPUTY SPEAKER: The Leader of the Opposition has clearly indicated that he is not prepared to accept interjections, so I suggest members keep their comments to a minimum.

Mr BARNETT: I do not mind sensible interjections but that was continuous rabble.

The Liberal Party's approach is to look at what is right and what is wrong.

Mr Kobelke: You are unbelievable! You interject all the time but you cannot take it.

Mr BARNETT: I do not interject in that manner.

The DEPUTY SPEAKER: Order, members! I think we have had this discussion.

Mr BARNETT: Regardless of whether people are religious, the Liberal Party will not in any way discount or reject the basic Christian and family values that underpin our society and institutions. Therefore, when the Liberal Party looks at issues such as these, we will start from the premise of what is right and wrong according to the widely held values of our society. That is not something that the Labor Party does. The Labor Party takes an extreme social position and then seeks to justify it with the argument of equality. That approach has meant that the Government has lost the opportunity to achieve bipartisan support for something that is worthwhile. That is a great pity.

I will say a bit more about de facto relationships. There are a number of matters of detail in this Bill and the member for Kingsley has gone through those matters very well. This Bill essentially defines a de facto relationship as being marriage-like and the key criterion is for a period of two years. I put it to members that people in this community, whether they be young, middle aged or elderly, do not regard a two-year de facto relationship as being marriage-like. A two-year relationship is nowhere near marriage-like. I do not want to enter into a debate about what the period should be in years.

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Ms Radisich: You cannot measure it.

Mr BARNETT: It cannot be measured in two years. A two-year relationship is not marriage-like. It might be a criterion for which there should be some entitlement. However, to say that a two-year de facto relationship is marriage-like is an affront to the vast majority of people in this community; it is not marriage-like. Some might say that it should be five, seven or 10 years, and we could get into an ambiguous argument about that. To the Liberal Party, a two-year relationship is not marriage-like, particularly when nearly 60 per cent of de facto relationships comprise people in their 20s and early 30s. Why should this Parliament have the absolute arrogance to impose upon young couples, who may be living together in a relationship, the duties and responsibilities of marriage simply because they have lived together for two years? We believe in people having the right to make their own decisions. As much as I defend, support and encourage the right of people to make a conscious decision to marry, I equally respect the right of people to make a conscious decision to live in a de facto relationship and not marry. I will not support this Parliament imposing duties and obligations of marriage on people who have chosen not to marry. It is their fundamental freedom to choose not to marry. If the Government is concerned - I believe that the Government is genuinely concerned, as am I - about the interests of particularly women who have come out of long-term de facto relationships, in which the males have disappeared and they have been abandoned, let us deal with that issue. Let us not get into a debate about trying to impose upon people a marriage-like relationship after two years with all the duties, responsibilities and commitments that go with marriage. If people make a decision to marry, they are making a decision at the time to enter into a permanent, lifetime relationship and commitment. When a person rents a flat with a girlfriend or a boyfriend, that person is not making that decision.

Mr McRae: You cannot make that judgment.

Mr BARNETT: How many 20-year-old people out there who share flats and the like - good luck to them - have made a decision to enter into a marriage-like, lifetime commitment? They have not. It may well develop into marriage, but why should this Parliament have the arrogance to impose upon young people the duty and responsibility of marriage when those people have consciously and deliberately made a decision at that stage not to marry? I hope they do marry, but they may well marry someone else in the future. That is the nature of many relationships. Why is the Labor Party seeking to impose that marriage-like relationship on people?

I will now go through the points of difference between the Liberal Party and the Labor Party. First, we stand for the basic principles of a Christian society and the family; that is where we start. Secondly, we come from the perspective of the 88 per cent of couples who are married, not from the perspective of the 12 per cent of couples who are not. Thirdly, we recognise and support the need to provide protection for women who have come out of failed, but long-term, de facto relationships. We support the institution of marriage. The Liberal Party is not about imposing duties and obligations on people who have consciously decided not to enter into a marriage. They are the fundamental differences between the Liberal Party and the Labor Party.

As a little aside, although the Government is saying that this two-year relationship, however intense or casual or however committed or uncommitted it might be, will be marriage-like, it immediately opens up an opportunity for opportunism. That will happen in a limited number of cases, but it should not happen. The Government has allowed for a case in which a person with assets could be opportunistically targeted by another person over a two-year period. If this legislation becomes law, the Government will find some very sad cases of potentially young people, whether they be heterosexual or homosexual, taking advantage of this legislation.

The member for Kingsley also spoke about the Family Court. As everyone would understand, we have a unique relationship in Western Australia; the Family Court is the Family Court of Western Australia. However, the Family Court is there to deal with disputes when a marriage breaks down. It also deals with disputes in a de facto relationship if there is a child, and it can deal with the child and property issues. That is agreed by everyone. The Family Court deals with marriages; that is, the 88 per cent of relationships in which people have made a conscious decision to enter into a marriage. I make no value judgment at all about people who choose not to enter into a marriage.

Mr McRae: Yes, you do.

Mr BARNETT: I have lived in a de facto relationship, and I do not have a problem with that. I am married now, but I lived in a de facto relationship for six or seven years.

Mr Kucera: What would have happened if you had walked out on her? Would she have been protected?

Mr BARNETT: I will not talk about my personal affairs, other than to say that I have lived in a de facto relationship, which developed into marriage. I do not form any value judgments about marriage or de facto relationships. However, I do point out the right of people to make a decision. If people choose not to be married, for whatever reason, and to continue a de facto relationship, options are available to them. If that

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relationship continues and there is a permanency about it, those people have an opportunity to enter into commercial arrangements, financial agreements and the like. If something needs to be done to make that easier, more practical and less costly, that is good and it would have my support.

People can also resolve issues through the civil courts. Indeed, in all other States, the resolution of disputes involving the property of de facto couples is done through the civil courts; it is not done through the Family Court. When the Labor Party comes into this Parliament and argues about uniformity, I point out that we are not being uniform in this case. In every other State, property issues of de facto couples are dealt with outside of the Family Court; they are dealt with in the civil courts.

I will respond to the interjection, "At what cost?" Yes, there are costs. There are substantial costs in the Family Court, if members have ever experienced that. There are also significant costs in the civil courts. If the policy position were to set up a less expensive court process for de facto couples, I would not argue with that. If the problem is the cost, a low-cost procedure through the civil courts should be set up. Then, as the member for Kingsley pointed out, we will not have the argument about whether a de facto relationship is marriage-like. Then we will not have this debate about a two-year relationship. Why did the Labor Party not tackle the issue sensibly? Why did it not set about dealing with the property rights of people in long-term de facto relationships? Had the Labor Party had a broader public consultation, or even referred the Bill to a committee, there would not be several hundred people demonstrating against it on the steps of Parliament House today. The Labor Party would have had broad support for setting up property rights for long-term de facto relationships to be administered at low cost through the civil courts. This legislation would have passed through this Chamber long ago, and it would have had widespread community support. However, no, the Labor Party had to attach to that worthy objective its other social agenda. That is why it failed. That is why the majority of Western Australians will not support the Labor Party on the position it has taken not on property rights for de factos, but on this Bill and the way it has gone about it. That is the point of difference between the two parties.

Many members opposite have strong religious values; however, not one of them has expressed those values. Hundreds of people, including representatives and leaders of the churches, are now on the steps of Parliament House.

Mr McGinty: There are thousands of people.

Mr BARNETT: Okay; there are thousands of people. I thank the Attorney General for that frank comment.

Mr McGinty: I can count.

Mr BARNETT: Okay; there are thousands of people out there. That tells members what mainstream Western Australians think. Western Australians will support property rights for de facto couples. I will support that; everyone will support that. However, they will not support other unnecessary aspects that the Government has brought into this legislation.

Mr Hyde: Nobody out there is saying, "Yes, give de facto couples of the same sex equality." They are saying that they should burn and die. That is what they are saying and that is what you support.

Mr BARNETT: The member for Perth can speak later if he wishes.

Several members interjected.

The DEPUTY SPEAKER: Order, members!

Mr BARNETT: There is no precedence for this legislation elsewhere in Australia. This is not about uniformity but about doing something different, and for a reason that escapes me.

This Bill refers to same-sex couples and allows the resolution of property rights for long-term same-sex couples. I do not have any difficulty with making financial agreements available to those couples. They can already access those agreements. However, they should be dealt with through the civil courts. I absolutely oppose the move to deal with issues relating to same-sex couples through the Family Court. Government members might criticise me for my stance, but that is their point of view. I will never support the issues of same-sex couples being dealt with through the Family Court. I will give my full support to providing those couples with the opportunity to enter into contracts and for those issues to be dealt with through the civil courts in an efficient and low cost way, but I will not support those issues being dealt with by the Family Court. As I said at the beginning, it is not about what is equal or unequal, but about what is right or wrong. I do not consider it right for those issues to go before the Family Court in Western Australia. That view is shared by the thousands of people who are on the steps of Parliament House.

Why must the Labor Party confront the community with something that the community does not support? Why is it using the genuine needs of long-term failed de facto relationships, in which women are often left in harsh,

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difficult positions, to do this? Why is the Government using that strong, proper principle to try to achieve something that the community does not endorse? The member for Swan Hills giggles. I hope she will join me when I stand in front of the thousands of people outside. I hope she will have the courage to do that instead of sitting there and giggling.

Several members interjected.

The DEPUTY SPEAKER: Order, members! Order, member for Perth!

Mr BARNETT: The Liberal Party does not support that. Similarly, it will not support the subsidising of in-vitro fertilisation treatments to otherwise fertile women who are in same-sex relationships. There are other means by which a woman can have a child. That is fine. Similarly, the Opposition will not support adoption rights for same-sex couples and will not agree to the lowering of the homosexual age of consent to 16 years. The outspoken member for Perth is here. I again publicly challenge the Premier, who is the leading political office holder in this State, to say in this Parliament or at any public forum that personally and in his position as Premier he supports the lowering of the age of consent for homosexual males to 16 years. I bet he will not do that.

Mr Hyde: It is our policy.

Mr BARNETT: It may well be the policy of the Labor Party, but it is a matter of what is right and wrong and of the leadership of this community. As leader of the Liberal Party, I say that I do not support those matters. The member for Perth might disagree with me, and I will defend his right to do so, but he will not change my mind. I do not support the lowering of the age of consent for homosexual males to 16 years. That is my position, which I declare personally and publicly on behalf of the Liberal Party. That is a difference. There are important differences. It would be easy for the Premier of Western Australia to come in here or to walk out onto the steps of Parliament House and say where he stands as Premier and as leader of the Labor Party on this issue, but he will not.

Mr Hyde interjected.

Mr BARNETT: The member for Perth can argue as loudly and as boisterously as he wishes about equality. Equality is an important principle, but it is not the sole principle. Members on this side of the House will not consider equality or inequality in isolation. We will consider what is right or wrong and will make a decision that respects the Christian background of this community and reflects the institutions of this Parliament, our laws and our society. That is a point of difference. There is no difference between the Government and the Opposition on what could and should have been a genuine desire to deal with the real problem here; that is, the rights of people, and particularly the women, of failed, long-term de facto relationships. Had the Government done that properly, it would have had bipartisan support for this Bill. Only one thing about this legislation makes me happy. As much as I am dismayed that this Bill will not properly deal with the property rights of women of failed de facto relationships on their merits, I am glad that this legislation has drawn a line in the sand between the Liberal Party and the Labor Party.

**MR MCGOWAN** (Rockingham - Parliamentary Secretary) [12.35 pm]: I will respond to some of the comments made by members opposite about this Bill. The Leader of the Opposition has sermonised about matters of right and wrong and on moral issues. He said that one side was better than another; that is, that some people were better than others in relation to moral issues. That was exactly what the Leader of the Opposition did, which was wrong. I will not personalise this debate.

I support this Bill. It is a valid recognition of reality. It will change the laws of this State to make it easier for individuals in unpleasant situations to sort out their affairs. That is all that the Bill will do. It is not saying that one sort of relationship or one group of people is better than any other. It is merely saying that, subject to certain criteria, if a relationship dissolves, it will now be easier for those individuals to divide property in a fairer and more equitable manner. It enables people to do things. It will not impose rights, duties or obligations on people. It merely enables them to sort out their affairs, subject to certain criteria.

Some people have said that this legislation covers only 12 per cent of the population, so why do we not start with the other 88 per cent? The 88 per cent are governed by the Commonwealth Constitution, which allocates those rights. The proportion is probably less than 88 per cent, but I will accept the Leader of the Opposition's figures. Those people are governed by the Commonwealth Constitution and property can be divided in accordance with the Family Law Act 1975, which is enacted under section 51 of the Commonwealth Constitution. A State Government cannot deal with that segment of the population. The Leader of the Opposition is not a lawyer, but he should have understood that point. What he said was, "Let's forget about the 12 per cent and deal with the 88 per cent first." What is 12 per cent of this State's population of 1.8 million people? It would involve tens or hundreds of thousands of relationships. Maths is not my strong point and I have not done the figures. The Leader of the House is a former maths teacher, so perhaps he could work it out for me. Twelve per cent of

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relationships in this State are de facto relationships. The number is growing because a lot of young people, including many of my friends, have decided to enter into de facto relationships as a way of determining whether they will stay together in the future. Others do not want to get married or do not see the need for it. All the Government is saying is that in those circumstances, if a couple acquires or makes contributions to assets, it should be able to have those matters determined by the courts in a simple fashion. At the moment, as we all know and as has been discussed ad nauseam in this Chamber, there is the concept of constructive and resulting trusts, which have to go through the Supreme Court. That is a very complex and convoluted procedure, which can have a very unfair outcome, as a result of the way in which these matters are dealt with under common law. All the indicators - the length of the relationship; whether the couple is living together and has a sexual relationship; the degree of financial dependence or independence; any arrangements for financial support; the way that property is owned, used or acquired by a couple; and whether the couple cares for or supports a child - must be taken into account in the division of assets. I do not see what is so unchristian about that. Where is there some offence against God in taking into account those factors to determine the division of assets? Young people are increasingly entering into these relationships as a prelude to marriage, or simply as a way of running their lives, and the Government should enable them to divide their assets if they separate in a fair and equitable manner, as every other State in the Commonwealth has done.

The member for Kalgoorlie said that the Government, with this legislation, was somehow offending or threatening the foundation of society. The member for Moore, in his celebrated address a few weeks ago, carried on about how this Parliament was entering into some satanic ritual; how, in the days of the Whitlam Government, girls were ordered onto their backs - I think that was his expression - and that the actions of good and decent people on both sides of this House would somehow continue the evil intentions of Lionel Murphy and Gough Whitlam, begun 25 years ago. I especially want to refer to the remarks of the Leader of the Opposition. I just heard him say "that is the difference between you and us". The Liberal Party believes in a Christian society and in moral values. I do not want to personalise this debate, and I will not do so, but all political parties include individuals who are divorced, separated or in de facto relationships or who are homosexuals. People who come into Parliament and say that somehow, some great moral divide exists between the two sides of politics are, quite frankly, pontificating, sermonising and transgressing the arrangement in place which leaves these personal issues and our private lives outside of the Parliament. Members' private lives should be left outside of this place, and members should not make moral judgments about one another. It is tempting for me, in the same way as the Leader of the Opposition did, to break that tacit agreement, and start naming people and asking them why they are voting in certain ways, considering their personal circumstances. That is just not done. Members should not come in here and start declaring, on personal issues, that they are better than others. There is no moral divide and one side is not better than the other on personal issues, and members should not introduce those arguments into this debate.

The DEPUTY SPEAKER: Members, can the conversation across the Chamber cease? The member for Rockingham has the call.

Mr McGOWAN: This kind of sermonising and generalisation should not be introduced into this debate. The Attorney General has done a good job. If that were not so, I would not be supporting this legislation so forthrightly. The legislation recognises reality. It will be a blip on the political radar, and the media and the general community both recognise that. Members should not come in here acting in the way that some members opposite have. The Bill should be discussed on its merits, without sermonising and trying to demonise each other.

**MR MARLBOROUGH** (Peel - Parliamentary Secretary) [12.46 pm]: I first came into this House on 6 June 1986, and I was then in a minority group in this Parliament. I think I was the only person at the time who was living in a de facto relationship.

Mrs Hodson-Thomas: You would not have been the first and you will not be the last.

Mr MARLBOROUGH: I will not be. I am quite happy to talk about my circumstances. Ros and I eventually married in 1989, but we began living together in 1970. By 1986, when I entered Parliament, having put up with me for all that time, she had no rights to any superannuation entitlements I had, or to any property that I owned. She would have had to argue her position in the Supreme Court. She had no automatic right to any of those things. In 1986, I had to indicate to my caucus that I lived in this de facto arrangement, I had these entitlements which were new to me as a member of Parliament, and a person I had been living with for 16 years had no rights to them. It could have been even worse. In that time we could have had children, but we had decided not to. We do like some old-fashioned traditions, and one of them is that we should be married if we wish to have children. That was one of the key reasons we decided to marry in 1989.

Mr Marshall: That is not old-fashioned.

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Mr MARLBOROUGH: These days many people see it as old-fashioned. I went to a wedding in Geraldton four weeks ago, at which one of the bridesmaids was the three-year-old daughter of the bride.

My partner and I could have been in the position of having had children in the time we were living together unmarried. Under the rules that governed the superannuation payments to members of Parliament in 1986, my children from that relationship would have had no rights either. I was not in those circumstances, but it could have happened. Most of the debate here today has been about some relationship that happens between two people and lasts five minutes. The lowest common denominator is taken as the standard or the norm, and a picture can always be painted of the most evil connotations. The facts are that many people enter into de facto relationships that last a very long time. It is an absolute nonsense that in 1986 I could have said to my now wife Ros, who has put up with me for 16 years, that she had no legal entitlements to any of my assets or any of the gains that I might have picked up as a member of Parliament. This Bill sets out to right that dreadful wrong. There are other ways by which people sort out their problems in a relationship, whether they are married, in a de facto relationship or whatever other circumstances they live in. We should not have legislation that prohibits their rights. That is inappropriate for a modern society and it is a standard that is no longer accepted by the community. This legislation brings us into line with present community standards in Australia and members should support it wholeheartedly.

Debate interrupted, pursuant to standing orders.

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