

FAMILY COURT AMENDMENT BILL 2021

Second Reading

Resumed from 2 June.

MS M.J. DAVIES (Central Wheatbelt — Leader of the Opposition) [12.34 pm]: I rise briefly on behalf of the opposition to contribute to the second reading debate on the Family Court Amendment Bill 2021. The shadow spokesperson for this legislation is in the Legislative Council and, as with all the Attorney General's bills, I suspect there will be considerable debate in the other place and further questions from the shadow, but I will put our views about this bill on record. From the outset, the opposition supports the legislation.

From a background perspective, this bill is a five-clause bill that seeks to amend the Family Court Act 1997, which deals with child and property matters for de facto relationships. The Family Court Amendment Bill seeks to mirror the amendments to the commonwealth's Family Law Act 1975 that were passed in 2018 by providing protections to victims of domestic violence during cross-examination in family law proceedings. Most notably, the bill aims to treat de facto partners in the same way as married couples by, first, prohibiting personal cross-examination in certain circumstances, such as when a family violence order exists between the parties. Under this legislation, each person will need to engage a lawyer to conduct the cross-examination of the other party. They will be able to access a lawyer by applying for legal representation under the commonwealth's Family Violence and Cross-Examination Scheme.

Second, the bill will ensure that the court puts in place appropriate protections for victims in situations in which an allegation of family violence has been made but none of the prescribed circumstances exists. Such protections will be left to the court's discretion, but the explanatory memorandum states that these can include allowing a witness to give evidence from a remote venue, allowing the victim to have a support person and ordering that questions be directed to the presiding judicial officer, who will then relay them to the witness.

The bill further amends section 243 of the Family Court Act, which imposes penalties when a person publishes information about proceedings that identify a party, their relatives or any witness to the proceedings. A new exemption has been created to mirror the commonwealth act, which will allow documents to be shared with a state or territory authority that oversees the welfare of children and will be prescribed by the regulations.

Obviously, the situation that the government is trying to remedy is concerning and distressing for those involved. Personal cross-examination can be difficult and distressing for a victim and it can cause them additional trauma. However, that cross-examination process in our courts is important because it ensures that a party's evidence is appropriately tested and it can prevent untoward circumstances, such as settlements or agreements that are not in the best interests of the children. In banning personal cross-examinations and requiring that a legal practitioner conduct cross-examinations in such circumstances, the bill seeks to provide procedural fairness and make sure that it is enhanced.

Attorney General, it is my understanding that the bill is essentially identical to the Family Court Amendment Bill 2019, which failed to progress through the fortieth Parliament. I understand that it was read a third time in the Legislative Assembly on 12 March 2020 and introduced in the Legislative Council on 17 March 2020, but was never brought on for debate. The material difference—I am happy to be corrected—between the 2019 bill and the current bill is the inclusion of amendments to section 243. The key difference between the commonwealth act and the bill is that the commonwealth act mandates a review of the provisions dealing with the cross-examination of parties when there are allegations of family violence. We understand that the review will take place in September 2021. This bill does not contain a review provision. It is asserted in the explanatory memorandum that this is not necessary given that the commonwealth will be conducting a review. Perhaps that is something the Attorney General might like to comment on in his response.

There has been a number of reports and inquiries about this matter. The stakeholders who have been discussing it, as we would expect, raised concerns about issues of procedural fairness, particularly if one party is unrepresented following an application for a ban. The unrepresented party will not then have a chance to challenge the other party's evidence through cross-examination.

I have not had the fortune, misfortune or opportunity to experience this firsthand but certainly when we speak to those who have been through a court proceeding, particularly when talking about family issues, it is distressing at the best of times. I think from the opposition's perspective trying to make sure everyone has access to procedural fairness without re-victimising people and ensuring they are safe and secure is an admirable outcome.

As I said, questions will be asked by the shadow Attorney General in the Legislative Council. I think the forthcoming questions will be in relation to the financial viability of this scheme and whether funding is adequate so that legal representation can be guaranteed to ensure procedural fairness. I think that is an appropriate question to ask and we ask that the Attorney General perhaps shed some light on how that will be funded in an ongoing way, not just in the set-up, to ensure sustainability and that it will continue to serve its purpose.

Without any further ado, Attorney General, as I said, the opposition is supportive of the legislation. I am sure the shadow Attorney General will have more questions for the Attorney General's team and the minister representing in the Legislative Council.

Mr J.R. Quigley: You can guarantee that.

Ms M.J. DAVIES: There are not many things we can guarantee in this world but I absolutely can guarantee that. With that, I will not take the time of the house any further other than to say that it seems to be a very sensible piece of legislation. It was sad not to see it pass so that families had access to this earlier on in the piece. Unfortunately, it was not progressed in the last Parliament. There should be no reason the government cannot pass this on this occasion with the numbers it has in both houses.

DR K. STRATTON (Nedlands) [12.42 pm]: I am pleased to rise to speak in support of the Family Court Amendment Bill 2021 to ensure that perpetrators of family and domestic violence can no longer cross-examine their victims in Family Court proceedings. I think that to understand the importance of this amendment, it is important to understand the complex dynamics of family and domestic violence. While violence takes place within a range of relationships and takes many forms—physical, sexual, financial, emotional and social—it is characterised by a pattern of abusive behaviour that involves the perpetrator's exercise of control and power over his victim. Victims of domestic and family violence may sustain long-term harm to their physical, mental, social, financial and emotional wellbeing. It is now recognised that children who bear witness to family and domestic violence are themselves victims of child abuse with ongoing trauma and developmental impacts through to adulthood.

Domestic violence is gendered in nature. According to the Australian Institute of Health and Welfare, intimate partner violence is the greatest health risk factor—greater than smoking, alcohol and obesity—for women in their reproductive years. It is the top risk factor for death, disability and illness in women aged 15 to 44. It is also the leading cause of homelessness for women. It is also a significant contributor to women's poverty and a major reason for their involvement with the child protection system. According to one of our national leaders in the primary prevention of violence against women and their children in Australia, Our Watch, violence against women starts with disrespect. When a violent relationship ends in a Family Court hearing where a perpetrator can cross-examine his victim, it ends also in disrespect, a disrespect that is currently institutionalised.

There are times of heightened risk for family and domestic violence to either commence or be exacerbated. Pregnancy is often a time when family and domestic violence starts. Attempted or actual separation is a high-risk time as are actual court proceedings. All of these represent a change in the dynamic of power and, therefore, see the perpetrator work to reassert their control and power over their victim. Imagine, if you will, that you have lived in a home marked by fear, violence, and intimidation. You have been socially and financially isolated and controlled. You have had criminal assaults committed against you. Imagine then that you gather the courage, resources, strength and support to leave, perhaps getting your children out with you as well. You do this despite knowing that leaving is one of the highest risk times in a violent relationship. There are fears of further and even extreme violence, poverty or homelessness if you leave. There are fears of being murdered. Given that a woman dies every single week in this country at the hands of her partner or ex-partner, this fear is very, very real.

For a brief time, I worked on the women's domestic violence helpline, and women would routinely express their deeply held knowledge and fear that separation, that leaving, was a time of great risk and that this knowledge influenced their decision-making about separation. Imagine, again, that you put that fear aside; you gather the strength to leave; the separation proceeds; and you finally get to the point of a legal separation with decisions to be made about property and child living arrangements—decisions that will lay a foundation for your new life; your new life of safety, free from violence and abuse. It is a time of both great hope and great anxiety. The idea of being cross-examined by anyone in a formal court process is daunting. Attending court itself is intimidating and stressful and you know you are exposing yourself to risk of further harm and abuse just by being there. Imagine then that you present to court to find that your perpetrator has the right to cross-examine you. In some cases, a perpetrator may even choose to be self-represented hoping to secure the opportunity to directly cross-examine the victim and reassert their power. The Family Court system in WA currently allows your perpetrator to subject you to further violence and control.

When this amendment was introduced to Federal Family Court legislation, the ABC reported on the experience of a woman they called Eleanor, a mother of four in regional Victoria. She had escaped an abusive relationship and was going through the family court process. Her relationship was marked by repeated sexual assaults. Her husband would repeatedly rape her. She had also been kicked on a regular basis by him while he was wearing his steel-cap work boots. Eleanor's story reminds us of criminal and violent acts that survivors of family and domestic violence have been subjected to, and yet the court allowed his control over her to continue.

In Eleanor's words —

“When I turned up for the Family Court hearing, I found out on the day that he had become a self-litigant, and that he was going to be representing himself, and that he was going to be given the privilege of being able to cross-examine me directly.”

“Why would they give someone the power over their victim like that? Why would they give him the right to cross-examine me in court, knowing the trauma that I had faced?”

The man who had raped and repeatedly assaulted her, was now going to question her in a formal, legal context. She found this out on the day, so she had no time to prepare emotionally, physically or legally for this situation. I repeat Eleanor’s question of disbelief: “Why would they give someone the power over their victim like that?” When a self-represented perpetrator cross-examines the victim, their power is allowed to enter the court, with a direct impact on evidentiary process and its outcomes. Their power is also allowed to continue to traumatise and diminish their victim. It is, I say again, a form of institutional abuse.

Procedural fairness in legal proceedings should mean that the court puts in place measures to ensure that witnesses can provide their evidence comfortably and without fear or intimidation. A self-represented perpetrator’s cross-examination can impact the victim’s capacity to give evidence. This in turn can compromise the quality and completeness of that evidence. Victims are scared about the repercussions for them and for their children after court proceedings have been finalised. The court, as a result, may not get a full picture of abuse because victims hold back on sharing all information. Self-represented litigants may also ask questions that are irrelevant to proceedings. Again, they are questions designed to antagonise and distress. The amendments will not remove the right to cross-examination of someone’s testimony. However, it will improve the quality of evidence and conduct of the hearing itself. These provisions will ensure a fair hearing for all parties.

In 2015 and across 2016, Women’s Legal Service Australia commissioned a survey that was undertaken by Women’s Legal Service Victoria. It aimed to catalogue the experience of women—survivors and victims of domestic violence—engaging with the family law system. The survey was distributed nationally through its networks and gathered 338 responses. The survey formed its submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs’ parliamentary inquiry into a better system to support and protect those affected by family violence. The survey also captured women’s experiences of being personally cross-examined by their abusers in Family Court proceedings. Roughly half the survey participants had the experience of being directly cross-examined by their abuser in the family law courts. Seventy-seven per cent of those participants responded that their family law dispute had settled by way of consent orders and over half that group said that the prospect or fear of personal cross-examination by their ex-partner was a factor in their decision to settle. They outlined reasons that included fears that related to the cross-examination, including —

“The judge pointed out that cross examining me may lead to further decline of my mental condition which could halt proceeding”

“I couldn’t go back in that room and face him”

“We agreed to my having custody of the children, I agreed to visitation with him, even though I was fearful [of] my safety and theirs. I knew I wouldn’t abide by all the orders, but I couldn’t keep going”

In another survey question, the participants were asked how significant the prospect or fear of direct cross-examination by their ex-partner was on their decision to settle prior to trial. Of the 60 women who responded, 41 women said that it was very significant. These findings indicate that the fear of direct cross-examination can directly result in consent orders that do not reflect the wishes or the consent of all parties and that can indeed endanger the safety of children and their parents.

Alongside the legal implications are the human ones. Family Court proceedings are difficult and emotive for any family. When we add family and domestic violence into the dynamic, there are additional layers and complexities of trauma, stress and fear. Being subject to direct cross-examination by their abuser is likely to re-traumatise victims, cause immense stress and be a continuation of the abuse. In the work undertaken by Women’s Legal Service Victoria that I have already referenced, many women described feeling frightened, unsafe, re-traumatised and intimidated. Some also expressed having physical symptoms of stress leading up to and following the event, including panic attacks, weight and hair loss, being physically sick, insomnia and post-traumatic stress disorder. A number of participants described the process as court-sanctioned abuse; as I have already noted, it is institutional abuse. As quoted in the submission, one woman said —

“I felt as though the court was enabling my ex husband to re-abuse me but publically this time. I was so traumatised I lost 10 kilos and lost my hair.”

Another woman said —

"I felt under extreme pressure, I was very anxious and I was trembling whilst I was under cross examination... I felt that the judge was unaware of the extreme stress I was under. I made mistakes when I was being cross examined because I felt so cloudy and confused."

In addition, 38 per cent of the survey participants stated that they had to cross-examine their abuser and additional themes emerged in their descriptions of this experience, including —

"I was afraid to really question him and I felt when I tried the Judge continually silenced me"

Another woman said —

"I was so scared because he has a look in his eye that still intimidates me, and I had the future safety of my child in jeopardy. I just wanted to get down on my knees and BEG the judge to allow me to protect my daughter. It's so hard to appear calm and collected on the inside when you have so much hatred for the person who has hurt you and your child, and so much fear for what lies ahead. And also fear that he might show up at your house later and become violence because he's mad at you standing up to him."

Our Watch says that to stop violence against women from happening we need to look at the bigger picture and address the four key drivers of this violence, which are: condoning violence against women; men's control of decision-making and limiting women's independence in public and private life; rigid stereotyped gender roles; and male peer relations that emphasise aggression and disrespect towards women. When we allow perpetrators to cross-examine their victims, we see all four of these dynamics at play. It condones violence against women by allowing it to continue in the court process and setting. It allows men's control and undue influence over processes of decision-making in a legal public formal setting, decisions that impact a victim's ability to recover and re-establish a life of safety and security for her and perhaps for her children. It represents rigid stereotyped gender roles by continuing to minimise the impact of the trauma of family and domestic violence on the victim. I think it is fair to say that allowing perpetrators to cross-examine their victims demonstrates aggression and disrespect towards women on an institutional scale.

Domestic violence is complex. Preventing and reducing violence requires strong legislation among other measures that hold perpetrators to account. We cannot provide a perpetrator with the opportunity to examine a victim in any court case. That is a simple and powerful action we can take now as a government to protect victims through the courts. We can acknowledge their courage and resilience. We can remove a layer of institutional abuse and ensure everybody's right to procedural fairness. This means, too, that we are no longer active participants in institutional abuse. People at their most vulnerable could and should expect more from us.

MS J.L. HANNS (Collie–Preston) [12.56 pm]: I also rise today to speak in support of the Family Court Amendment Bill 2021, and I wholeheartedly support the contributions from the member for Nedlands. In fact, I have crossed out nearly a page of my notes. It was very succinctly and very personally put to the chamber.

In giving members my contribution to this discussion, I would like to begin by reflecting on the reasons for the amendments to the bill, and I think that speaks a lot to the fabric of society. I would like to really reflect on what that looks like in the context of Australian history. Right across the world, in fact, we can just about pinpoint the point at which society changed and women's rights changed. I look at World War II as one of the major drivers for that change, certainly in the last century. It really allowed the evolution of women's roles in the home and in society. If we examine society prior to World War II, we see that the role of women was really about being the carer for children, doing the bulk of the housework and domestic duties, and belonging to part of a nuclear family, which was generally a husband, a wife and probably several children. The male of that nuclear family was the breadwinner for that particular home. In looking at that from a sociological perspective, we can really reflect on the gender inequality and, therefore, potential power imbalance in situations like those prior to World War II.

The advent of World War II meant that men travelled across the oceans to various fronts to fight the war on behalf of Australia, the United States, the United Kingdom and other allies. For society, it meant that a lot of the men were not present and women were required to step up to perform a lot of the jobs that were normally done by men in those very specific stereotypical roles outside the home. Some women became nurses or took military jobs such as signal-person or radio operator. In the case of my grandparents, my nanna travelled to Geelong and was involved in deciphering and communicating some of the signals that were being sent and received by Australia, and my grandfather fought in the war in New Guinea. Other women were doing what were at the time very clear gender-specific roles. They took up jobs in manufacturing industries producing uniforms, weapons and ammunition, and also stepped into agriculture through organisations like the Australian Women's Land Army, as many men left the land to fight in the war.

In America, the roles that women were stepping into were particularly reflected in professional baseball. Five hundred Major League Baseball players left the league to serve in the military in World War II, most notably Joe DiMaggio. The All-American Girls Professional Baseball League was established in 1943. It was meant to be

temporary, but it actually continued for 12 years. Jean Faut, a player in the league, was asked about her participation in the league in a non-traditional role. She was quoted as replying that those years were the greatest years of her life.

After World War II, it was considered that women holding jobs were taking them from men returning from the war who needed to support their families. Women then stepped back into their traditional roles of caring for and looking after the family and the home. The postwar baby boom also signalled the fact that child-rearing was the domain of women at that time. That was often coupled with caring for husbands who had returned from the war with physical or mental disabilities—the latter being what we now refer to as post-traumatic stress disorder, as a result of what they had experienced during the war. It was a very complex time, when we look at it from the perspective of societal development.

From the 1950s to the 1970s, society progressed again, but the key change was the advent of the contraceptive pill. For the first time, women had control over their fertility and the size of their family—obviously, most of the time in consultation with their husbands—which meant that women had control over what their individual circumstances looked like.

In 1975, the Family Law Act was enacted, which established the system of no-fault divorce. From the 1980s to 2021, our society again changed in that it became more accepting of women's roles changing within the community and the family. The sharing of child-rearing responsibilities was more and more commonplace and is now probably the norm rather than the exception, which it certainly was in the early part of the last century. Sharing household chores and responsibilities is also part of what a functioning family now looks like, and it is now not uncommon for both parents to be working and sharing childcare and household responsibilities.

I ask: what does this mean for our society today? Although society has changed and adapted significantly, I would like to acknowledge that family structures have also changed over time. However, amongst all of this, there is a dark undercurrent in some family dynamics of family and domestic violence. This is certainly not a new phenomenon, but it is now more readily talked about in our society.

I refer to some research that was published in 2017, *Are we there yet? Australians' attitudes towards violence against women & gender equality*. It was conducted by Australia's National Research Organisation for Women's Safety in partnership with a number of universities and bodies, including RMIT University, the Social Research Centre, the University of Melbourne, the University of New South Wales and VicHealth. I took the time to have a read through it because it traces attitudes towards violence, women and gender equality from 1995, so it gives a really good snapshot of where society's values are at this point.

There are some very encouraging and positive findings in this report. It highlights that Australians have an accurate knowledge of violence against women and do not endorse this violence; that most Australians support gender equality and are more likely to support gender equality in 2017 than ever before; and that Australians are more likely than ever before to understand that violence against women involves more than just physical violence. Those are some really positive developments that I think demonstrate how society and people's attitudes have changed, even within the last 20 years.

However, I would like to highlight some of the concerning findings within the report, because I think they speak to some of the issues that relate back to the Family Court system and the things we are considering here today. There continues to be a decline in the number of Australians who understand that men are more likely than women to perpetrate domestic violence. There was actually a decrease in the number of people who recognised that that is potentially the case. That is a worrying statistic because it does not matter which report we pick up; that statistic is absolutely irrefutable.

There is also the fact that a concerning proportion of Australians believe that gender inequality is exaggerated or no longer a problem. I would like to counter that particular argument shortly. Another concerning statistic is that one in five Australians would not be bothered if a male friend told a sexist joke about women. All those things link back to the idea that gender inequality is, sadly, alive and well in Australia today.

I would like to also reflect on some information that was sourced from the Impact for Women organisation. There are some concerning statistics around family and domestic violence, even now, in 2021. In 2020, 156 men were murdered or victims of manslaughter; that is a terrible statistic. In the same year, 62 women and 31 children or teenagers were killed. I find that a staggering statistic and I just cannot understand how, in this day and age, our society can function with those numbers. They are numbers, but they are people. The concerning statistic for me is that, of the 156 men who were killed last year, 18 were killed at the hands of their partner as a result of family and domestic violence. Of the 62 females who were killed last year, 56—or 90 per cent—were killed as a result of family and domestic violence. Of the 31 children, 20—or 65 per cent—were killed as a result of family and domestic violence. I ask everyone in the chamber to reflect on those numbers; they are a national tragedy.

I would like to reflect upon the concerning proportion of Australians who believe that gender inequality is exaggerated or no longer a problem. Women and men in many workplaces around Australia would disagree with that point of view. I look at mine sites and our own federal Parliament and I use, as an example, an occurrence in the federal Parliament on 11 November 2020 when Prime Minister Scott Morrison talked over the top of Minister Anne Rushton as she was responding to a question about what it is like to be a woman in Parliament.

I think the Me Too movement also speaks to this. It also reflects on the concerning proportion of Australians who believe that gender inequality is exaggerated or is no longer a problem. Only two weeks ago, John Coates, the Australian Olympic Committee chair, appeared to order Premier Annastacia Palaszczuk to attend the opening of the Tokyo Olympics. These are only a few examples that are in the public realm, but they demonstrate that there is still a power imbalance in workplaces. Sadly, it is still alive and well.

Notably, the ABC program *Ms Represented*, which is about women in politics, is littered with examples of gender inequality. Reflecting on the third concerning result, that one in five Australians would not be bothered if a male friend told a sexist joke about women, I am not sure what the result would be if we surveyed any workplace in Australia, but I certainly think that society still needs to make some inroads.

I would like to dig deeper into the results of this particular report. I now refer to the knowledge of violence against women. I would like to particularly highlight the understanding of sexual violence. In 1995, 76 per cent of people agreed with this statement: women are more likely to be raped by someone they know than by a stranger. Worryingly, in 2017, 64 per cent agreed with the statement that women are more likely to be raped by someone they know than by a stranger.

I now refer to “Attitudes towards gender equality” and the question about undermining women’s independence and decision-making in public life. People were asked whether they agreed with the statement, “On the whole, men make better political leaders than women do.” In 2019, 23 per cent of those surveyed agreed; in 2017, the number was 14 per cent. That is certainly an improvement, but it is still an interesting fact to reflect on. A significant number of people still think that men are better placed than women to be political leaders.

I have drawn those examples from the research that indicates that we still have an issue with gender inequality in Australia. I would like to take this opportunity to link that information back to the Family Court Amendment Bill by reflecting on Family Court proceedings. There is a significant impact on the relationship between parents and children when a family is involved in court proceedings related to family and domestic violence. I would like to remind everybody that it is still, generally, women and children who are the victims of family and domestic violence. It is our role as legislators to support our community and to protect families.

[Member’s time extended.]

Ms J.L. HANNS: I would like to talk very briefly about family and domestic violence in terms of the types of violence. I would like to raise some examples that I have seen from 30 years of supporting families and children in communities and schools. When I was doorknocking last year, I met a number of women who raised concerns about what was happening in Family Court proceedings, particularly the cross-examination of victims by the perpetrator. Family and domestic violence obviously develops slowly over time, as the member for Nedlands referred to. It may be physical violence, but it also takes in many other examples, such as emotional violence and financial violence. One in five Australians who were surveyed did not believe that financial control was a serious problem in family and domestic violence circumstances, yet, after listening to people tell their stories, one of the barriers to changing the situation they are in is that they cannot afford to move on or seek other accommodation or support for their family.

Coercive control is another example of family and domestic violence that people are becoming more and more aware of. Recently, I was at a supermarket. I saw a man standing at his car. Two very young children were sitting in the back seat of the car. He was yelling and agitated. I was getting out of my car, attempting to get all my shopping bags and things together. He was pacing up and down outside the car and, obviously, was very upset. His words to these very young children, as he screamed through the back window of the car, were, “She needs to effing hurry up.” I have deleted the word because I prefer not to swear in Parliament. I walked in, reasonably distracted at that time, and it was only after about two or three minutes that I heard the car engine revving to the point that everybody in the shop was wondering what was going on. I could not help but reflect on the fact that that was clearly his attempt to control what that woman was doing inside the shop. It was a non-verbal but very obvious way of saying to his partner, “You are taking up time and I do not have time to wait for you.” I reflected on that, thinking this poor woman was probably inside the shop attempting to buy some supplies for her very young family. I decided at that point that I was going to see what I could do, but she had obviously gone through the checkout and the car had disappeared. What can we as a society do to support families in that situation? If family and domestic violence victims get to the point of going to a Family Court, we need to do whatever we can to not allow that power imbalance to be played out within the court system.

I will briefly mention a couple of examples of family and domestic violence situations that were raised with me when I was doorknocking during the election campaign. One woman explained to me that her previous partner had bashed her so badly that she was left with an acquired brain injury. She had significant health issues resulting from this acquired brain injury that prevented her from holding down ongoing employment. She said the reason she had not left her partner before she was hospitalised, and only then made the decision to leave, was that she was scared to leave the relationship, she had no money, and she was unable to care for the children and the pets of her family. She was scared about what her husband would do if she left the children and the pets in his care, so she stayed. There was an ongoing impact on her children. They had observed years of abuse and were left traumatised. One of her children had attempted suicide. Despite the fact that the family was supported after she left that relationship, they really struggled after the separation. It is very important to reflect on what this looks like for people who are in this situation.

Another woman I spoke to told me that it was easier to walk away from the violence. She was a carer for her children, and her husband was the breadwinner. She was a stay-at-home mum. When she left the relationship, she had basic skills and a basic education level. The fact that she was on lower wages was part of her challenge in leaving the family. She was left with no superannuation because the superannuation after separation basically belonged to her husband. She chose to walk away and not challenge a lot of this in court because she did not want to put herself through the trauma of what she had already been through.

In reflecting on children who are part of the family and domestic violence experience, in the classroom we often had to be aware that if we raised our voice with children, we might be modelling what was happening in their own home, and that would trigger a trauma response; or if children acted out in class and were challenged by authority, that might bring back the trauma for those children. Often in a classroom situation, and in fact right across society, when people are in a trauma situation, they either fight or flee. Over the last 30 years, I have seen children leave the classroom because they cannot continue to be there. I have had a scooter thrown at my head. Luckily, it missed. The impact of the trauma that child had experienced meant that although I had questioned that child in a humanitarian way, their response was to pick up the nearest thing to them and throw it at me. That was a very sobering experience. It makes us reflect that if that is what that child is doing in the classroom, clearly they are potentially modelling what they are seeing at home and what their family is doing in response to trauma and family and domestic violence at home.

Imagine, if you will, that you are a woman or a child who has gone to the court system to be protected from family and domestic violence and you are questioned openly in court by the perpetrator of that family and domestic violence. Having to relive that trauma must be a terrifying experience. The provisions in this bill aim to reduce trauma for victims of family and domestic violence by prohibiting cross-examination by perpetrators. That will enable witnesses to give clear evidence. I am particularly heartened by the fact that witnesses will be able to give evidence remotely, perhaps from a nearby room. The bill also provides that support people will be able to sit with the victim during their proceedings, including when giving evidence. Given the trauma that these people have experienced, that is a welcome move in this legislation.

In 2021, sadly, news headlines across Australia continue to report on family and domestic violence incidents and murders at the hands of partners and parents. The statistics are overwhelming. The victims of family and domestic violence are being murdered by people they love, not by strangers. Our role as legislators is to make laws that will protect the victims in these circumstances. Our role is also to make laws that police and the justice system are able to implement to support families in this situation. As a government, our challenge is to fund programs and provide systems to support participants in Family Court of Western Australia proceedings. Importantly, as a community we need to work together to offer support to both the victims and perpetrators of family and domestic violence, because no person is broken. If we work together, we can achieve positive change for people in our community. We all have a role to play in keeping victims safe. This law in particular will help to do so. Thank you.

MS M.J. HAMMAT (Mirrabooka) [1.23 pm]: I also rise to speak on the Family Court Amendment Bill 2021. I want to thank the Attorney General for bringing this piece of legislation to the house, and acknowledge the contributions that have already been made on this very important topic. The two speakers on this bill so far talked about the background to this bill. At face value, this bill is pretty straightforward. The bill seeks to amend our state legislation to reflect the provisions that have been introduced in the federal Family Court Act to protect victims of family and domestic violence during cross-examination processes. In short, this bill will prohibit personal cross-examination between the parties to a Family Court proceeding in circumstances in which there has been an allegation of family and domestic violence. These are very sensible and relatively modest changes to our laws and reflect the changes that have been made to the federal law.

As a number of the speakers before me have reflected, these proposed changes are straightforward and, I hope, uncontroversial. They will have a number of benefits that will, importantly, provide support to victims experiencing family and domestic violence. Putting an end to victims being able to be cross-examined by their perpetrators will

improve their ability to give clear and cogent evidence in legal matters. As we have already heard in the contributions to date, the prospect of a victim being cross-examined by the perpetrator might be so daunting that it leads to the victim prematurely settling their matters on terms that are less favourable to themselves and their children, if they have them, or might even actively discourage victims from seeking to separate from their partner when family violence is involved. It is important to note, as others have done, that the victims of family and domestic violence are predominantly women. It is interesting to note that a woman who is subject to family violence is three times more likely to receive a minority share of relationship assets compared with a woman who is not subject to a family violence situation. Therefore, there is a compelling case for these very sensible and necessary laws.

In making my comments today, I want to spend some time reflecting on not just these changes, but also the many things the McGowan government is doing to put in place practical and significant measures that will hopefully help bring an end to family and domestic violence in this state. Since the McGowan government was elected in 2017, a number of significant achievements have been made to progress this very important end. It is significant that the McGowan government created the first Minister for Prevention of Family and Domestic Violence, Hon Simone McGurk. A number of good works have been done as a result of having a minister with carriage of this area. I also want to acknowledge the work of the Attorney General, who has brought to the house not just this bill, but also a number of other pieces of legislation to provide support to victims of family and domestic violence. I also want to commend all the members of government and cabinet for the excellent work that is being done in this area.

It is important to note that the McGowan government has a 10-year plan to eliminate family and domestic violence. The document *Path to Safety: Western Australia's strategy to reduce family and domestic violence* provides a long-term vision for Western Australia to be free of family and domestic violence. It sets out a clear whole-of-government and community plan that will help reduce the incidence of family and domestic violence and help the community to respond to it. The plan was adopted last year and sets out the work that will be done in this area. It is very important strategy that has been informed by data and research, and by consultation across Western Australia, working with experts from not just government, but also academia, in the family and domestic violence sector in this state. The clear message from all the work that has been done, particularly since 2017, is that if we are to bring an end to family and domestic violence, we need to work across a wide range of different areas and employ a wide range of strategies. The contributions that have already been made underline that ending family and domestic violence is not just a policing issue, a health issue or a court issue. It is also not exclusively a women's issue, although it is important to note that women are disproportionately affected by family and domestic violence. We need to work across a number of different areas. We need to employ a number of different strategies.

I think the focus of the government has been excellent. It has worked across a range of different areas. Importantly, it has worked on three main objectives, which are as follows. Firstly, we should hold perpetrators to account; secondly, we should provide appropriate support to victims; and, thirdly, and I think really significantly, we need to change community attitudes towards women and towards family violence. I note the member for Collie–Preston in her contribution spoke quite a bit about community attitudes and gender inequality. I think that is a really important part of the overall strategy.

Holding perpetrators to account has been an important part of the approach to family and domestic violence, and law reform has been necessary. Good work has been done in this area. I particularly note that non-fatal strangulation and suffocation was made a specific offence last year. There is a sound research base that shows perpetrators who use this kind of violence, or potentially lethal force, are seven times more likely to then go on to kill. There have also been excellent changes to restraining orders over time and importantly to men's programs to provide support for perpetrators to help them to change their behaviour.

Members, there have been a number of good works in the area of supporting victims, and I think this legislation will also do that. We know that it is critical to provide support for people experiencing family and domestic violence—helping them to leave violent relationships and build a new life. It is essential that we do that to provide people with the confidence to leave, because the decision to leave is often very difficult, and for good reason. We know that women are more likely to experience a serious violent occurrence when they are leaving a relationship.

I want to talk about a number of the initiatives that have been implemented by this government that provide very practical support to people experiencing family and domestic violence. In particular, I want to recognise this government's decision to implement 10 days' paid family and domestic violence leave for public sector workers, which it did shortly after winning its first term in office. This leave is becoming more common. More and more employers are recognising that it makes good sense to provide leave for people who are experiencing family and domestic violence; they recognise that this kind of violence does not stop at the front door of the workplace as someone makes their way to work and that, in fact, victims will often experience abuse or other forms of violence while they are physically in the workplace or that it impacts in a wide variety of ways on their work attendance or on their performance. Providing employees with time-off to seek assistance for any family violence matter is a really practical way to give support to employees so that they can arrange their affairs and hopefully begin a new life.

We also know that staying in work and engaged with the workforce is a key consideration for people seeking to leave a violent relationship. Family and domestic violence leave is an excellent way to ensure that victims have the opportunity to seek the support they need in their employment without risking that employment due to being absent or unable to perform their tasks. Being in employment is one of the things that helps to determine people's success in making a decision to leave a relationship. It is also an important initiative because it ensures employers are fully apprised of the circumstances their employees are dealing with so that they can provide them with the appropriate protection at work and, indeed, appropriate protection for work colleagues who might be impacted.

During my former life in the union movement, I was a keen advocate for this kind of paid family and domestic violence leave. Today I want to acknowledge the work of the Australian Services Union—the first union to secure this kind of paid leave in an arrangement with a local government employer in Victoria. The McGowan government, as the largest single employer in this state, has shown great leadership on this issue. I think it provides a very positive example to all employers in this state that it is appropriate to assist employees at this most critical time, if indeed they are experiencing it.

I also want to talk a bit about other strategies that the government has put in place to provide support for victims of family and domestic violence. The McGowan government is providing excellent support in my electorate of Mirrabooka to those who are experiencing family and domestic violence by trialling one-stop hubs. The one-stop hub in Mirrabooka is called Naala Djookan Healing Centre. Naala Djookan provides integrated, wraparound services to enable people experiencing family and domestic violence to get help sooner and to access the services they need closer to where they live. The service operates as a consortium of organisations that deliver services in Mirrabooka. It includes the City of Stirling and a range of health and mental health services, and alcohol and other drugs, legal, housing and financial counselling services. Clearly, there is a wide range of services that people might need to access at the point at which they seek to leave a violent relationship.

I want to acknowledge the consortium partners that are working collaboratively to make this pilot a success. These organisations provide a wide range of important services to many people who live in our Mirrabooka community. These services have chosen to work together and collaborate on family and domestic violence services because they also recognise that partnerships and collaboration to provide these wraparound services to victims is the best way to support people experiencing violence at home. I want to thank all those services for their ongoing work in Mirrabooka and particularly for their hard work in trying to find innovative solutions. The organisations involved are the Australian Childhood Foundation, Ebenezer Aboriginal Corporation, Ishar Multicultural Women's Health Services, Karla Kuliny Aboriginal Corporation, Legal Aid Commission of WA, MercyCare, Metropolitan Migrant Resource Centre, Northern Suburbs Community Legal Centre, Sudbury Community House Association and Wadjak Northside Aboriginal Community Corporation. Naala Djookan is an excellent example of how we can adopt new ways of thinking to address family and domestic violence in the community.

Another excellent example of practical support for victims of family and domestic violence is the changes to tenancy laws enacted in the last Parliament that make it easier for tenants who are impacted by family and domestic violence to leave. They also allow victims the opportunity to change locks and do other practical things if necessary. There is the Pets in Crisis program. The member for Collie–Preston also referred to pets as one of the things on people's minds when they are seeking to leave a relationship. This program provides practical support, again, by offering a temporary home for pets while owners seek refuge or temporary accommodation.

Finally, I turn to the question of changing community attitudes, because I think this is a really significant and important piece of work. I want to reflect on the excellent work that has been done to change community attitudes towards family and domestic violence and women generally. The excellent 16 Days in WA to Stop Violence Against Women initiative promotes community action to address violence against women and to really shine a light on the need to promote equality and respectful relationships. The campaign starts each year on 25 November, which is the International Day for the Elimination of Violence against Women, and runs until 10 December. It brings together under one banner a series of community events and has significantly raised community awareness about the issue. The wearing of, and lighting up a range of key landmarks in, orange are very visible ways to show solidarity in the community about bringing an end to family and domestic violence. I think it provides an excellent opportunity for all manner of conversations in business and professional settings about what is an important community issue. The underlying success of 16 Days is that it is a very powerful way to reinforce the message that family and domestic violence is a community issue—it is an issue for us all—and demonstrating support for this important cause by all in our community is a powerful way that we can begin to make change.

In a similar way, I would like to acknowledge the work of the late Angela Hartwig and the Women's Council, as it was known. As many members in this place would know, Angela Hartwig was a lifelong campaigner for women affected by family and domestic violence. She was a powerful advocate for change and approached that task with patience and tenacity over many decades. Under her leadership, the Women's Council achieved a number of things. It commenced the tradition of a silent march and memorial service each year in November to coincide with the International Day for the Elimination of Violence against Women. I have to say that I have been profoundly moved

on the occasions that I have attended that event, particularly by the personal stories from victims of family and domestic violence that were shared. Every year, someone would share their story. Often these were very harrowing and confronting stories, and I have great admiration for those who are able to tell us a very difficult personal story in quite a public way. But it is a profound way that we can effect change.

The event also recognises those who have died as a result of family and domestic violence in the previous 12 months, with their gender, their age and where they lived being read out. I think that is also an incredibly powerful way to illustrate the reality of those who die from family and domestic violence each year. There are men and women amongst the number; they are very young and sometimes very old. Again, I think it is an important way to illustrate that it is something that impacts on us all.

During my time in my former role as secretary of UnionsWA, I felt very strongly that community leaders should stand up to be counted on this very important community issue.

[Member's time extended.]

Ms M.J. HAMMAT: My own awareness about family and domestic violence came during my time as an organiser with the Australian Services Union some time ago, when I was responsible for organising workers in women's refuges. During this time, when family and domestic violence was not a topic that was regularly referred to in the news and was not a matter that was on people's minds particularly, it became very clear to me that the many excellent staff who worked in women's refuges did very difficult, very demanding and very complex work. They provided practical and emotional support mostly to women who were leaving violent relationships and also provided crisis counselling to women at a time when they were most vulnerable and distressed. I was particularly impressed by the workers in women's refuges. They were incredibly hardworking, skilled and dedicated to the work they did, and I still have to this day great respect and admiration for them all.

It became clear to me that the demands for their services were great in the community, and I began to get an understanding of the extent of family and domestic violence within our community. Up until this time, like many others, I had not thought about it particularly much before. I had never experienced it and was never aware that anyone in my life had experienced it, although statistics would now tell us that that is probably not the case. At that time, for too long family and domestic violence had been carried out behind closed doors in the family home mostly, and for years those who perpetrated violence were protected by the idea that what happened in the family home was a private matter and was nobody else's business. As a society and a community, we tended to turn a blind eye and remain silent. This is one of the reasons why family violence has remained entrenched for so long. I think one of the most important things we can all do as community leaders is to speak up and speak out, in particular to break the stereotypes about whom family and domestic violence affects. Rosie Batty, the campaigner I think we are all aware of, has done excellent work on making the point that family and domestic violence can affect anyone. It does not happen just to people in certain suburbs or from certain socio-economic backgrounds or people who are poor, working class or uneducated; in fact, family and domestic violence is happening in homes right across our suburbs and in our regional areas. It happens to people who are young and old and in families of all income and education levels.

When community leaders speak up about how family and domestic violence can happen to anyone and how it is unacceptable, it sends a powerful message. It normalises the experience of those who might be experiencing it. One of the things we know that acts as a disincentive for people to come forward and seek support is the idea that there must be something wrong with them if they are in a situation in which they are experiencing violence. I think speaking up gives people the courage to step forward. Community leaders can and should call out sexist behaviour that allows family and domestic violence to flourish.

In the time left to me, I want to speak briefly about one event that I am involved in that seeks to do exactly that—to enlist community leaders to speak out about family and domestic violence and to help bring it to an end. The Ride Against Domestic Violence is all about bringing together community leaders from this Parliament, the union movement, business and the community to raise money for our women's refuges, but also to raise awareness about this issue. The first Ride Against Domestic Violence was held in 2016 and was initiated by the member for Armadale and the then member for Darling Range, Hon Tony Simpson. Participants cycle from Busselton to Perth—I note that that is over 260 kilometres—over a two-day period to raise funds for refuges. Since its inception, the ride has raised considerable funds for refuges in Busselton, Bunbury, Mandurah and the Peel region, Rockingham and Armadale, as well as for other services. I know these funds are greatly valued by the services because they allow them to provide a range of supports for their clients.

I think the real power of the event comes from such a disparate group of community leaders coming together on such an important issue. As we progress over the two days, we stop along the way from Busselton to Perth to hold community events to discuss our ride and, most importantly, to talk about how family and domestic violence is never acceptable. Those who participate also hold events within their workplaces and with their friends to raise funds. The point is not just to cycle and then talk about how we did some charity ride on the weekend; the point is for

those who ride to also talk about family and domestic violence, its prevalence and its cost to our community, and, importantly, to make the point that family and domestic violence is never okay and that we all have a role to play in bringing it to an end.

The ride will happen again in September, and I look forward to joining the WA Parliament team, with the member for Thornlie as our captain and the member for Armadale once again participating. I need to confess that I have not done enough training and it will probably hurt quite a lot, and it has been pretty uncomfortable training during the wettest July in living memory, but we all need to be prepared to get uncomfortable to have conversations that will make a difference on this significant issue.

I want to acknowledge Mick Buchan and the Construction, Forestry, Mining and Energy Union for the administrative support they have provided to the event over the years, and Sam Buckeridge and BGC for their support for the administration of the event.

Like many members in this place, I feel strongly that we must work hard to bring an end to family and domestic violence. We all have a role to play in achieving this. We can all speak out about how family and domestic violence affects our communities and we can call out bad behaviour and sexist attitudes when we see them, and I acknowledge that many in this place have done exactly that on occasion. I commend them all for speaking out about poor behaviour and sexist attitudes when they see them, and I particularly acknowledge that, on occasions, that can be difficult when people who are part of your own team might be responsible for the poor behaviour.

Members, we need to do a great many things to bring family and domestic violence to an end. I am very proud to be part of a government that is introducing a very wideranging plan that will help to achieve an end to family and domestic violence. The work that has been done to hold perpetrators to account, to provide support to victims and, importantly, to change community attitudes will help us to shift the dial on this issue. I hope it will bring an end to family and domestic violence in the near future. This bill is an important part of a whole series of strategies and actions that are part of shifting the dial, making change and bringing an end to family and domestic violence in the Western Australian community. I am very pleased to have the opportunity to support it and to speak on it. I commend the bill to the house.

MR D.A.E. SCAIFE (Cockburn) [1.48 pm]: It is a great privilege to rise today to speak in support of the Family Court Amendment Bill 2021. It is particularly a privilege to follow the member for Mirrabooka, who has been a great advocate on the issue of stamping out family and domestic violence in both the community and the workplace. This bill is an important step forward in protecting victims of family and domestic violence, as it will effectively ban perpetrators of family and domestic violence from cross-examining their victims in family law proceedings.

As the member for Mirrabooka pointed out at the conclusion of her contribution, this bill is part of a suite of reforms that have been implemented in this state and this country over the last decade that are designed to stamp out the scourge of family and domestic violence in our communities. This reform has been a long time coming, but it is also a reform that is just one step on the path towards dealing with family and domestic violence. That reckoning with family and domestic violence has forced us to consider how we protect victims in our court system, while at the same time protecting people's right to a fair trial and ensuring that all parties in legal proceedings can be effectively represented and effectively have their day in court. I am satisfied that this bill strikes the right balance between protecting victims of family and domestic violence and ensuring the right to a fair trial.

The intention of my contribution today is to outline a little of the history behind this important reform and the breadth of support this reform has. I will give a local example of why this reform is needed and then I will conclude by discussing how this bill strikes the right balance between protecting victims and ensuring the right to a fair trial.

The last decade has been characterised by our country and our state, and, indeed much of the world, coming to grips with the scourge of family and domestic violence. I pay tribute to those many advocates and supporters of the movements that have brought us to this stage today. As the member for Mirrabooka acknowledged, Rosie Batty has been a shining light in this movement. I also pay tribute to all those involved in the Me Too movement over the last several years who have told stories of sexual harassment and sexual violence in workplaces and in our community. I acknowledge the many unions that have campaigned over the years for the protection of victims of family and domestic violence, such as provisions for family and domestic violence leave. I acknowledge, of course, Brittany Higgins, who quite bravely spoke out against the culture of sexual harassment and violence that unfortunately pervades even our own profession and workplaces in politics.

This reform has a long history. The earliest record I could find of this reform being formally supported was a report of the Productivity Commission from 2014. A number of inquiries since that time have supported this reform. After the Productivity Commission report, the Council of Australian Governments national summit on reducing violence against women and their children was held in October 2016. Coming out of that summit, the recommendation was made that a ban be placed on direct cross-examination of victims of family and domestic violence by perpetrators in family law and family violence legal proceedings. Following that summit on 7 March 2017, the commonwealth

Attorney-General asked the House of Representatives Standing Committee on Social Policy and Legal Affairs to inquire into how the federal family law system could better support people who have been victims or otherwise affected by family and domestic violence. Consequent on that referral, the committee reported later in that year, in December 2017, and produced a report which is titled, *A better family law system to support and protect those affected by family violence: Recommendations for an accessible, equitable and responsive family law system which better prioritises safety of those affected by family violence*. I give my thanks to members of that committee and to the commonwealth Attorney-General for requesting and then conducting that inquiry, because it has led to a range of reforms in the family law system being implemented that protect victims of family and domestic violence.

Today we are considering one of those reforms that was recommended in that report. That inquiry received evidence from a broad range of stakeholders who supported a ban on direct cross-examination by perpetrators of family and domestic violence of their victims. Those organisations included Women’s Legal Services Australia, the Australian Capital Territory Human Rights Commission, the Family Law Council and many family and domestic violence support and advocacy services. It can be seen from this history that this reform has been thoroughly investigated. It has been subject to inquiry by a number of different bodies and it has been supported by a broad range of stakeholders. This bill does not deal with a new concept; indeed, this bill has the effect of harmonising the position in the Family Court of Western Australia with the existing position in the federal Family Court of Australia.

I have spoken before in this place about the growth of self-represented litigants in legal proceedings across the country. This growth in self-represented litigants is often bemoaned by some lawyers, but, as I have said before, and I reiterate, the reason for it is that the cost of legal representation in this country is prohibitive when it comes to retaining legal practitioners in private practice. That surge in self-represented litigants has a direct bearing on the subject of this bill that we are considering today. Indeed, the House of Representatives committee inquiry received evidence that in about 26 per cent of matters that proceeded to trial in the federal Family Court in the 2016–17 financial year, only one party had legal representation. That is more than one-quarter of cases in that jurisdiction in that year. The committee also received evidence that the figure was even higher in the Federal Circuit Court of Australia, which deals with some federal family law matters. The figure in the Federal Circuit Court was that 52 per cent of family law trials in the 2014–15 financial year involved at least one party who was unrepresented. The result of that very high proportion of self-represented litigants in the family law system is that there is a significant risk in family law matters that there will be what I will refer to as “direct cross-examination”. Direct cross-examination is when one of the parties to the litigation conducts the cross-examination of the witnesses for the other side of the litigation. In cases that are affected by family and domestic violence, which, sadly, are too many in the family law courts, the risk therefore arises that that cross-examination will be conducted by a perpetrator of family or domestic violence of their victim.

I will now give a local and a compelling example of why this reform is needed. It is an example of a situation in Western Australia in which a perpetrator of family and domestic violence cross-examined their victim in Family Court proceedings. The case I refer to is Sampson and North, and the citation is [2014] FCWA 75. Prior to descending into the circumstances of that case, I note that this case occurred prior to some other reforms in the Family Court system taking place, such as the Family Court Amendment (Family Violence and Other Measures) Act 2013. That act prioritised protecting children from physical or psychological harm over the requirement to ensure a meaningful relationship with both parents. It repealed what were referred to as “friendly parent provisions”. These provisions essentially gave greater consideration to parents who had a positive view of facilitating the other parent’s access to the child. Those provisions had an unintended consequence in that women—it was predominantly women—who were victims of family and domestic violence were less likely to disclose that there was family and domestic violence in their relationship because they were concerned that that would lead to them being labelled an “unfriendly parent” because they were attempting to restrict their partner’s access to the child. Those provisions had the effect that victims of family and domestic violence were less likely to make very significant disclosures.

Another thing I note about that act is that it was passed by the former Barnett Liberal government. That is worth highlighting because I want to acknowledge in this place that taking action on rooting out family and domestic violence has long been a bipartisan proposition in this Parliament and indeed in Parliaments right around the country, and that should continue.

Debate interrupted, pursuant to standing orders.

[Continued on page 2661.]