**Extract from *Hansard***
[ASSEMBLY - Tuesday, 23 October 2001]
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Mrs Cheryl Edwardes; Mr Paul Omodei; Mr Pendal; Mr John Day; Mr Rod Sweetman; Dr Janet Woollard; Mr Matt Birney; Mrs Carol Martin; Mr Mark McGowan; Acting Speaker; Mr John Bradshaw; Ms Sue Walker; Mr Arthur Marshall; Mr Rob Johnson; Mr John Hyde; Mr Jeremy Edwards; Mr Bill McNee; Mr Colin Barnett; Mr Jim McGinty; Deputy Speaker; Mr Pendal

## FAMILY COURT AMENDMENT BILL 2001

*Second Reading*

Resumed from 29 August.

**MRS EDWARDES** (Kingsley) [2.55 pm]: I will deal first with the non-contentious part of the Bill. The amendments to this Bill follow amendments to the Family Law Act 1975 passed by the federal Parliament. They relate to the operation of the three-stage enforcement regime for parenting orders covering exnuptial children, prenuptial and postnuptial agreements, and a number of technical issues.

The Bill also deals with orders relating to children. It will provide preventive measures at stage 1 to improve the communication between separated parents and to educate parents about their respective responsibilities. Stage 2 deals with remedial measures to enable parents to resolve issues of conflict about parenting. Stage 3 provides sanctions to ensure that, as a last resort, a court can take other action to deal with a parent who deliberately disregards a court order. The second reading speech that accompanied the introduction of the Family Court Bill 1997 outlined the new approach to parental responsibility for the care, welfare and development of children as more important than giving parents any rights to custody and access. That is a new concept. It encourages parents to agree about matters concerning their children rather than seek an order from the court. Obviously, there is a need to ensure that, if a parenting plan is liable to be filed or registered with the Family Court, the Family Court will be able to deal with the matters that then become an order of the court as a result of that plan.

The Bill also deals with financial agreements. This presents a serious legal issue. People can currently enter into prenuptial agreements and postnuptial settlements regarding their property. The use of such agreements and settlements has been limited over the years. The court wants people to make private arrangements and to deal with property settlements outside the Family Court. It is obviously better if parties can agree about splitting up property after a relationship has ended. A concern has been raised by the legal profession about the onerous task of signing off on agreements that require each party to seek their own independent legal advice and that very few lawyers in Australia - let alone Western Australia - will advise on or draw up those financial agreements. That concern is obviously related to lawyers' insurance. For example, when an agreement is set aside or not set aside, who will the person on the other side of that setting aside or not setting aside attack? That person will attack the lawyer. Lawyers are most concerned about this legislation and therefore it is not possible currently for people to enter into financial agreements. The advice I received yesterday from one of the State's top family lawyers puts in doubt the status of any financial agreement being entered into. There is therefore a hiatus in agreements that may have been entered into. I note that discussions have taken place with the federal Attorney General and that the Family Law Council is considering amending the requirements of the signing off provision for lawyers to allow people to enter into private agreements to deal with the distribution of property.

I turn now to some of the more contentious elements of the legislation. In doing so, I must say that the Liberal Opposition opposes discrimination. Members can talk about discrimination in the ways in which they make choices; however, the Opposition is talking about discrimination in its broadest possible sense. We also support the protection of the family, particularly children. We promote long-term relationships and recognise that long-term relationships and families at least ensure the security of children. I am putting forward the position on this Bill for the Liberal Opposition. As a diverse range of views exists among the people of Western Australia, I am sure that as members stand in this place they will express their own views on the legislation. One of the concerns is that it is a shame that no wide consultation took place on the Bill. It is disappointing that the legislation did not get a wider hearing and, therefore, the debate in the community that it should have had. The issue, as with gay and lesbian law reform, is a highly complex and sensitive one, which needs thorough community debate and comment. I have talked to many people who not only did not know that the Bill was in the House, with its implications for them or their family, but also were unaware of the reforms proposed by the Labor Government.

I refer the House to an editorial in *The West Australian* of 30 March this year that highlighted the fact that the changes proposed by the Government touch on major social, moral and legal issues which should be fully analysed and debated in public. The editorial goes on to say that it is evident that the Government wants to push through with its social reform agenda because it is controversial, divisive and will generate opposition. However, that should not override the need for broad public consultation on each Bill that has a social reform agenda. It is not sufficient to send legislation to a couple of stakeholders with a couple of days' notice to respond and to not tell them when the legislation is before the House. The Government should give people an

opportunity and time to make known their views and to have those views considered, and not only after the legislation has been drafted.

Earlier this year, the President of the Family Law Practitioners Association was interviewed on radio by Bob Maumill. Bob asked her if she thought there had been enough broad public debate on the matter, and she replied that she did not think there had been enough. She said that there was an impression that the Bill had not been exposed to a wide consultative process. She further said -

> I don't think there's been . . . education, or exposure about what is proposed in the act. Let's face it, there are going to be people in relationships who don't feel that they're going to be captured by any legislation to do with defacto couples. And all of a sudden, they're going to find that they in fact are.

Mr Maumill said that because it had not been widely debated or publicised, some people would be in for a surprise at some time in the future.

The Government can reform the laws; however, unless people are brought along with the Government, the laws may change but the community's attitudes and opinions will not. In that case, the same concerns will continue to be raised. The Government will not stifle debate by rushing through legislation; it will create a greater level of heat and debate about the matters. The Attorney General must actively sell the idea to the community. The Government is committed to this legislation. However, the community must be given the time and opportunity to respond. The Government must involve the community in broad consultation about any legislation before it is brought into Parliament. A committee of the Returned Services League deals with the progress of the homosexual rights campaign in Australia and in the United States. The RSL will conduct its own broad public debate. The Government must debate the issue with local communities, local schools, local parents and citizens associations and the broader general community, not just interest groups.

Some people do not know what is contained in this legislation, and they will be in for a surprise, given that it is retrospective. A number of people have written to me of their concerns with the legislation. They are aware of what is in the legislation and, in the main, they do not agree with it. In particular, they do not agree with the approach taken by the Government in the creation of a new status of de facto relationship. They believe it unnecessarily attacks marriage, which it need not do. In many cases, they believe that de facto relationships have been elevated above legal marriages.

I will highlight some of the letters and e-mails I have received. One deals with the issue of bigamy and polygamy and the fact that multiple relationships are permitted. Another writes of his serious concerns about the attack on marriage by the Attorney General. He believes that by extending the benefits of marriage to homosexual couples, the Attorney General is demeaning an institution, which has proved in every culture to be necessary for a stable society. An e-mail states -

> This is yet another attack on the family and a continuing erosion of moral standards. I have no doubt that the family plays the main roll, that can't be substituted, when it comes to instilling values and behavioural standards in young children.

Other correspondence refers to the relegation of legal marriage to the level of a two-year homosexual relationship. Another correspondent says that the Government is authorising the stripping of the rights of married people. He says that the Family Court would be able to make property and maintenance settlements in favour of a de facto partner even if a man were still legally married and his wife had not received any divorce settlement. Under the new provisions, the surviving wife of a man who dies without a will would be disinherited by the de facto partner who has lived with her husband for just two years. However, an amendment on the Notice Paper in some way corrects that, although not to the extent that we would like. In some circumstances, this would require the widow to sell the family home, where she may still be living with her children. The correspondent believes that it is outrageous to allow a casual two-year relationship outweigh the public lifelong commitment of marriage, and that the Government is taking away the support from long-term stable relationships to short-term relationships of convenience.

I received a letter from the Social Responsibilities Commission, which supports the amendments to the family law legislation. In fact, that was the only correspondence I received in support of the family law legislation. Most of those who wrote in support of the gay and lesbian law reform touched upon other issues and did not specifically talk about this matter. The report of the committee established by the Attorney General did not address issues that these people would like to have addressed with regard to the distribution of property settlements upon the break-up of a relationship. The committee's report glossed over the issue and said that the current Government would deal with de facto relationships; end of story. It did not go into any great detail.

Another person said -

> . . . this Bill does not accurately represent the views of all the people of Western Australia.

I did not read all the e-mails that I received, but the last one states -

> This bill allows a partner to legally abandon their responsibility to the other partner and any parental responsibilities to any children involved. Partners can be abandoned with the burden of raising up the children on their own. Children can be left fatherless or motherless simply because one abuses this law.
>
> The effect of this bill essentially lowers the value of marriage and is unfair to the other parties.

That gives a brief outline of some of the community's concerns and a strong reason for bringing the community with us if we go down the path of law reform. We may be able to change the laws but we cannot change people's attitudes. We must keep up with the community and not get so far out in front that there is antagonism. That is not to say there is no need for law reform in this area. There has long been a case for law reform with regard to property distribution on the separation of people who live in a de facto relationship in Western Australia. Children of de facto couples have long been recognised by virtue of our Family Court Act and the Commonwealth's Family Law Act.

The present law has caused serious injustice to a significant number of people and has long been criticised. When I was in practice, I met an Italian couple who had been married for around 30 years. He had come out from Italy and left his wife behind. He never divorced, because of his faith, and therefore, did not marry but had four children. He died intestate. Despite the fact that his partner had assisted in the market garden etc, his property was split up between the previous wife and the children. Anybody who examines long-term relationships in which there has been a contribution by the other partner will see that there have been injustices. The instance I have related is an example of what had been a long-term, stable relationship.

What is wrong with the present law? The general rule is that the person whose name is on the title gets to keep the property, even if the other person made a contribution that enabled the property to be purchased or to increase its value. There have been three exceptions to that general rule. In the first, a person who has made a direct financial contribution to the purchase of the property would normally be entitled to a share of that property proportional to the contribution, which is known as a resulting trust. However, it does not protect a person who has made a financial contribution to the home; namely, towards travel, holidays, food and clothing. That person does not acquire an interest in the property. The second exception is when the couple agrees that one contributes to the household and the other to the purchase of the property, and they each get a half share in that property. The court will infer such a half share. It will infer it even if the couple did not make a direct statement to that effect; it will be done from the conduct of the parties. The problem is that very few people sit down and spell out their financial arrangements in this way. Some judges will so infer and other judges will not, and the differences are inexplicable. The third exception is when pooled earnings have paid off the property; this is referred to as a joint venture. However, it does not cover the situation of the homemaker and the parent and, therefore, there have been inequities.

In Western Australia people must go to the court of equity - the Supreme Court - which deals with a complicated area of law dealing with resulting trusts. It is a very expensive process and, therefore, unless the estate has a reasonable sum of money in it, it is often not worth taking such an action.

The Attorney General, in his second reading speech, referred to Lloyd v Tedesco and Whitehead v Pilgrim, and I endorse the comments that he made on those cases. I could go further from the quotes he gave, but I will not do so in those two cases. Rather, I would like to bring to the attention of the House a number of other cases. Hayes v Grayson, from the Supreme Court of Western Australia, CIV 2443 of 1998, is a recent case, which was only heard on 21 and 22 June this year. In this case it was held that -

> . . . the clear intention of the parties was that on settlement they would each equally own the property. Their contribution up to that time had however been unequal for reasons that I have already outlined. The arrangement between the plaintiff and the defendant however was that the defendant would pay 90 per cent of the mortgage repayments while the plaintiff was to pay 10 per cent of those repayments so that their contributions to the purchase price would ultimately balance.

Agreement had been reached between those two parties. The judgment quoted the very important case of Calverley v Green, 1984, 155 of 1984, *Commonwealth Law Reports*, page 242.

> Mason and Brennan JJ said at 263: "In Canada and in some cases in England, the device of the constructive trust has been invoked 'to give relief to a wife who cannot prove a common intention or to a wife whose contribution to the acquisition of property is physical labour rather than purchase money':

In some cases, therefore, that has been considered, but again there is inconsistency between the courts on whether evidence has been able to be led on the intentions of the parties, which is what we are dealing with. In the case of Chapman v Chapman in the South Australian Supreme Court, the parties had been married for 26 years. The presumption of a resulting trust can be rebutted by proof of the intent of the parties which manifests an intention to the contrary. The case again went through the difficulties of getting the evidence which overrides the presumption. This can be quite unfair and unjust. The case of Calverley in the High Court of Australia, even though it is from 1984, goes through the general rules and the number of exceptions that can apply. The subsequent cases apply the individual facts. Some of the cases appear to be inconsistent, and create uncertainty about whether a person has a right to or interest in the property at the separation of the relationship, which is not only expensive, but can create quite a lot of heartache.

The Opposition believes a problem exists in our community, where a trusting relationship has been abused, which results in unfavourable financial treatment of one person by another who owes the first person a duty of good faith. Many in the community would support a law that addresses that problem. The Opposition would also support such a law, but one which does not go any further. The concern with this legislation is that it goes further in addressing the relationship, rather than the particular inequities of property distribution. We would support a law that addresses the problem but does not go further and seeks to create a new marriage-like status, which for simplicity has been called a de facto relationship.

In particular, the Opposition does not support a situation in which that status would take precedence over a proper marriage. I have highlighted a couple of instances so far, and I will highlight further instances in which it takes precedence over the proper legal status of marriage. The legislation accepts and endorses multiple relationships. The Opposition cannot accept a form of de facto polygamy, nor can it accept the status of marriage between same-sex couples. Opposition members have talked with many same-sex couples. They do not accept, nor do they want, the status of marriage. However, I accept that some do, and, internationally, huge debates are going on about marriages between same-sex couples. Nevertheless, the Opposition does not support the status of marriage between same-sex couples.

The Opposition would support a law that amplifies and expands the laws of equity with regard to implied and resulting trusts and advancement, when there had been unjust behaviour over a property arising from a situation of trust, similar to trust in a marriage or a partnership, irrespective of the sex of the couples, because one would be dealing with the inequities and injustices that arise out of the contribution that is made to a property and its ultimate distribution. However, that has nothing to do with the relationship. Theoretically, there can be several examples of unjust behaviour. I give one example to do with administration of an estate: two male persons had been living together in what could be described as a long-term relationship. One of the male persons died intestate. His mother had died something like six weeks before him. At the mother's funeral, he indicated that the family would inherit his property when he said, "Blood is thicker than water." Of course, that left the remaining male partner living in a house or unit that he had been led to believe would eventually be his. That led to a decision on the basis of equity. Therefore, the fact that there has been a contribution may give rise to unfair circumstances that must be determined by a court. It will not assist a court to determine that type of matter by our creating, for the sake of convenience, a separate set of relationships.

The problem with this Bill is that it does not directly attack the mischief; that is, that both parties contribute to a property, but only one party takes it. To simplify the situation, that is basically what we are talking about. This Bill assumes that the mischief can be overcome by creating a status analogous to marriage, in the hope that the laws that exist regarding the relationship of marriage will solve the problems. However, they will not, and I will outline some of the problems with the legislation.

Mr McGinty: I wish to understand the point the member is making. Is she saying that she would support a law that merely distributed the property fairly, but not one that went on to create a marriage-type relationship? Is that the essence of it?

Mrs EDWARDES: Yes. What has been proposed in the legislation creates further inequities. First, it creates a status for people who may have intentionally not acquired that status by not getting married. The Attorney General will recognise that many de facto couples have deliberately not entered into the relationship of marriage. Some have not done that to deny the other party the ability to access expensive pieces of property. At the end of

the day, the parties can determine what they want to do. However, this has given rise to unfairness and inequity, as I have outlined. In 2000, the Australian Bureau of Statistics identified that. It said -

> Some couple relationships, such as that between a boyfriend and girlfriend who live together but do not consider their relationship to be marriage-like, are classified as de facto.

Some people do not want all the rights and responsibilities of marriage; they have made a commitment to not get married. I note that the Attorney General did not have any statistics relating to de facto couples. I found some when I searched the Internet. An article from the Samford Valley Uniting Church on 4 February this year stated that -

> It is worthwhile noting that most co-habitations are short lived, and 60% get married. Of those living together 40% either separate or get married within 12 months. - with less than 30% still living together after 2 years, and only 2% are still living together after 10 years. So it is obvious that cohabitation is by and large a temporary state for most who engage in it.

I do not have the basis upon which those statistics were drawn; however, they were the only statistics I could find.

Western Australia is the only State that has a Family Court. Although other States had the legislation before us, they extended matters dealing with the distribution of properties of unmarried couples to the civil courts. Many people are of the view that if the Government wishes to go down the path of creating laws that relate to the unjustness and inequities involved in the distribution of property upon the separation of de facto partners, it should be done through the civil court. That is what has happened everywhere else in Australia. The Family Court is inappropriate. I refer to the second reading speech of Senator Lionel Murphy on 1 August 1974, in which he said it was the purpose of the Family Law Bill 1974 -

> . . . to eliminate as far as possible the high costs, the delays and indignities experienced by so many parties to divorce proceedings under the existing Matrimonial Causes Act. The main way in which the Bill seeks to achieve this is by replacing the existing fault grounds of divorce with a single, no-fault ground-irretrievable breakdown of the marriage-to be provable only by 12 months' separation of the parties up to the date of hearing of the divorce application.

When the legislation to establish the Family Court was brought into this Parliament on Tuesday, 21 October 1975, the minister in charge of the Bill, Hon Desmond O'Neil, said that the jurisdiction of the Family Court was to have regard to -

(a) the need to preserve and protect the institution of marriage as the union of man and woman to the exclusion of all others, voluntarily entered into for life;

(b) the need to give the widest possible protection and assistance to the family as the natural and fundamental group unit of our society, particularly while it is responsible for the care and education of children;

(c) the need to protect the rights of children and to promote their welfare; and

(d) the means available for assisting parties to a marriage to consider reconciliation or the improvement of their relationship to each other and to the children of the marriage.

It was also to provide a Family Court counselling service. That is what the Family Court is all about. It is not about giving the Family Court the jurisdiction to determine how to distribute the properties of couples who had a partnership-type domestic arrangement but who are now separated. The Family Court was never intended to do that. In his contribution to the debate on the Family Court Bill on 25 November 1997, the current Attorney General raised the question of whether we should keep the Family Court or refer its powers to the federal Government. It is ironic that if he had proceeded down that path, he would not now be bringing into this House the question of the Family Court dealing with the property distribution of parties who are outside marriage, because the Commonwealth would have had that power or jurisdiction. It is ironic that, on the one hand, the Attorney General has used this court as a matter of convenience but, on the other hand, his real view is that we should no longer have a Family Court. His reason for that is twofold. First, he does not believe it is an effective court. Most lawyers in town would strongly disagree with him. They would say that Western Australia is well ahead of the rest of the country, that it was the best decision, and that other States would like to have done the same.

The other issue raised by the Attorney General is a matter of real concern, and that is the delays in catching up consistently with uniform legislation. That is something that I hope the Attorney General will address to ensure that uniform legislation gets through Parliament as quickly as possible. It is ironic that his views of the Family Court are such that this matter should be referred back to the federal Parliament, in which case some of the concerns when dealing with this legislation would be no longer an issue because they would not be dealt with in the Family Court.

I now move to the definition of "de facto relationship". That is one of the major concerns of people in the community and of members on this side. It is a major problem for the Law Society of Western Australia. The members of that organisation are not taking a moral position about this legislation, but are taking a specific legal position, and they regard the definition of "de facto relationship" as far too wide. From their point of view, the threshold test of "de facto relationship" will create a great deal of work for lawyers in this area. They are concerned that it will not address some of the issues that the Attorney General wishes it to address - that is, to make it cheap, simple and quick - because it will be difficult to overcome the threshold test. Proposed section 205V on page 53 of the Family Court Amendment Bill states -

> (1) A de facto relationship is a relationship (other than a legal marriage) between 2 persons who live together in a marriage-like relationship.

Proposed subsection (2) includes a number of indicators on whether a de facto relationship exists between two persons, but they are not essential. I think that is the critical thing. The first is the length of the relationship between the two parties. The second, which is a contradiction of proposed subsection (1), is whether they are living together.

Mr McGinty: There is an amendment to that. The member has picked up a very good point.

Mrs EDWARDES: I think it should be deleted. The Attorney General should not worry about amending it - he should just delete it, because it totally contradicts proposed subsection (1). Proposed paragraph (c) refers to whether there is a sexual relationship between them. This is a major concern when dealing with cohabitation, and I will come to that a bit later. Another concern is whether that is essential. This definition is very wide and will cause major problems. Does "no sexual relationship" cover other familial-type relationships, including dependent relationships, or does it cover a widowed brother with widowed sister? Too many options are being opened up, and when we link this with the amendments to the Administration Act, we have created a huge issue for getting letters of administration in a very quick way. The Attorney General will not succeed. I will refer to some of the administration problems that will arise. My best advice to the Attorney General is to take this legislation away, have a look at some of the more critical issues and not rush it through this House. It is too important to do that. The Bill should be amended so that it comes back to this place in a much better form. We suggest that it be brought back as two separate Bills. The Family Court issues should be dealt with separately from the distribution of property issues. The distribution of property issues should not be hidden in the Family Court amendment.

We must consider the extent of common residents living together. One of the parties could be in hospital for six or eight months of the year, or a husband could be working overseas for six months of the year. Therefore, being together is not the essential element; it is the issue of uncertainty that is created with the inconsistency between the two parts. Therefore, I suggest that these be totally deleted.

I will highlight the concerns of the Law Society of WA. In a letter to the Attorney General dated 27 August, the Law Society said that there should be more certainty in the definition to enable a determination as to whether a de facto relationship exists. The provision, as drafted, will result in considerable litigation in the probate jurisdiction. It lists factors to be taken into account. The problem is that there is no indication of which of these factors are the most important. It is almost like the number of points people require when they want to open accounts at the local bank. How many points do people need to have a de facto relationship? For instance, there must be a sexual relationship between the de facto partners. Although it may be common for de facto partners to become sexually inactive during their relationship, consideration could be given for a requirement that at some stage there must have been a sexual relationship or at least some sort of romantic involvement, otherwise courts and other persons will be required to decide the issue and may have difficulty in distinguishing between platonic friendships and de facto relationships. That happens not only to de facto partners; it happens to married couples as well.

The view in the legal profession is that it is opening it up far too wide. Professor John Wade, a leading academic expert on de facto relationship law, is reported as saying -

> Certainly at some stage of a relationship it would need to be established that a sexual relationship existed between the parties. Without this it would be hard to characterise the relationship as like a marriage.

His advice to the De Facto Relationships Legal Service states -

> It is therefore recommended that affidavits and questions be framed with specific reference to 'sexual intercourse' . . .

In some cases that have been determined in New South Wales, counsel often have been a little prudish about asking questions. It opens up the intimate and private aspects of a personal relationship. Questions are often put in code about emotional relationships or relationships, and the judge does not know how things were and therefore uncertainty arises. That will not be overcome.

The Law Society also said that the number of relationships that will be captured is quite far reaching. The Law Society does not feel that it is in a position to comment about the issues as public policy. However, it is saying that there will be an increase in the number of applications that must go before the court for an initial determination to be made. The threshold question is whether a particular relationship is captured by the definition. The Act defines a de facto relationship and then goes on a shopping list of factors, one of which is whether the parties are living together. The Law Society refers to the amendment the Attorney General has put forward. However, from my subsequent discussion with the Law Society, I know it prefers it to be deleted because it is in contradiction with proposed subsection (1).

An article in *The West Australian* of 13 September quotes a number of people. The Family Law Practitioners Association, which I have already quoted, said that the Family Court Amendment Bill pushed the envelope in relation to the rest of Australia. The group believes that there should be more certainty about what might be considered to have been a de facto relationship and that the Bill allows for the possibility of multiple de facto relationships or other non-conventional relationships to coexist perhaps also with a legal marriage. *The West Australian* also quotes Hon Peter Foss from the other place as saying that, because of its ambiguity, the Bill would cause more litigation than it saved and that some people would be in for a nasty surprise. It also quotes the Australian Family Association as saying that all kinds of casual relationships could be held to be de facto, and people would not know whether they were in one until they went to court. That is the issue that is being raised.

Archbishop Hickey has also put out a paper. He states -

> Among the criteria the court may use to determine whether a de facto relationship exists is the provision that a period of two years is sufficient to establish its existence. The court may make such a finding even if a previous marriage exists and has not been the subject of divorce.

Some people believe that two years is probably not much more than a one-night stand. He goes on -

> There is no requirement that the relationship be exclusive. The legislation allows people to be still married and/or in one or more de facto relationships simultaneously. That is the equivalent of legally recognising bigamy.

I also suggest polygamy; that is, multiple relationships that do not need to be exclusive. Archbishop Hickey also made a couple of other comments.

Cornell University provides a definition of marriage. It is the English common law tradition from which our legal doctrines and concepts have developed. A marriage was a contract based upon a voluntary private agreement by a man and a woman to become husband and wife and was viewed as the basis of the family unit and vital to the preservation of morals and civilisation. I could refer to a couple of other definitions of marriage. However, I will take the problems of the definition through to the Administration Act. Once someone dies intestate, a personal representative has no authority to act until a grant is made. I make a plea to those people who do not have a will: make a will. It removes some of the issues and concerns about which we are now legislating. If people had to make a will, it would make their lives much easier. We would not be dealing with this piece of legislation today. The Law Society says that the Bill will create many difficulties in the administration of an intestate estate if a person or persons entitled to a grant cannot be identified with reasonable certainty soon after the date of death. It lists the persons who will need to determine whether a person who died intestate was in a de facto relationship. If a person goes to the Supreme Court to ask for letters of administration, that person will get requisitions. The requisitions will have to go through the processes of proposed section 205V and the sections under the Administration Act to determine whether another party also has an interest in

the estate. The Law Society determined that, without more certainty, there would inevitably be delay in the commencement of administration.

The Law Society then goes through the extra requirements and again refers to the fact that the Bill will create confusion in the minds of de facto partners about when they can and cannot inherit. They may think that they or their partners are protected by this legislation when, in fact, that may not be the case. In an intestate situation, we must deal with the conduct of the parties. Both parties are not there to corroborate the intentions.

The Law Society also goes through some other issues. There is no requirement that the de facto couple must have lived together for a period. The Law Society gave me the example of a housekeeper who lives in for three days a week and then claims that there was a bit of nipping into bed every now and again. She then makes a claim that she was a de facto partner and the partnership went on for five years. For the purposes of the definition, it may fit; however, that is not the intention of the parties. Whether or not they nipped into bed occasionally can be based only on the word of one person at the time. One section of the Administration Act provides that, under the Bill before the House, the existence of a de facto relationship for only two years means that the person would disinherit the spouse. The Attorney General has put forward an amendment that they be split. How can a 30-year marriage equate to a two-year de facto relationship? I do not think it does. Reference to the Administration Act should be removed from the legislation as it stands. The Bill should be rewritten. It is totally inappropriate as it stands. We will be putting forward amendments to that extent. A person should receive a share at least proportionate to the years that he or she lived intestate prior to the other's death.

I have indicated that the Bill provides for multiple relationships, and at the same time. The concern of the Law Society is that there appears to be no qualification about the length or character of either of the relationships and, therefore, there is major concern.

In certain circumstances in Western Australia it is possible for a de facto partner to commence legal proceedings under the Inheritance (Family and Dependants Provision) Act for provision from the former de facto partner. Therefore, we believe that the Attorney General should remove this administration clause from the Bill and get it right because of the major legal concerns. If it is linked with the definition of de facto relationship under proposed section 205V, the uncertainty will be greater and will not address one of the major factors, which the Attorney General attempted to do.

The Opposition does not support the Bill. We will put forward some amendments to improve the legislation, but we certainly do not support the status of a de facto relationship overriding that of a legal marriage. As I indicated before, we do not support dealing with de facto relationships in the Family Court. For the reasons I have outlined, that is an inappropriate body to deal with the distribution of property; it was never set up to deal with that. First, we will put forward an amendment to change the terminology, similar to what occurred in Victoria, where the term "de facto partner" was changed to "domestic partner". It is then recognised as a form of partnership rather than having a new marriage-like status. As I have said, we would prefer a separate Bill entitled the "domestic partnership Bill", and that it not be part of the Family Court Amendment Bill.

Secondly, we would prefer that the Attorney General separate this Bill from the Family Court Amendment Bill. We will propose an amendment along those lines; however, we do not have the resources of the Government. The third amendment will be that the spouse must be notified of proceedings being taken by the de facto partner. Currently, under this Bill, the spouse is just another party to be advised of any proceedings; there is no requirement to notify the legal spouse of one of the parties. We will move an amendment to elevate the married spouse and bring him or her back into the picture.

The fourth amendment will deal with the provisions relating to the Administration Act. That schedule should be deleted and the provisions should be redrafted. Indeed, the whole Bill should be redrafted and should express the concerns raised by people not only in the community but also in the legal profession. If that does not occur, the allocation of assets should be proportionate to the time the partner spent living together with the intestate. The definition of "de facto relationship" should be amended. Proposed section 205V(2) relating to whether the parties are living together should be deleted - that should be an absolute - and it contradicts totally subsection (1). It is usual for partners who cohabit to have some form of sexual relationship. If that change is not made in the proposed definition section, which would tighten up the meaning, the provision should be inserted in the Administration Act because currently only one party needs to outline the nature of the relationship.

We want to insert another clause that is fundamental to the splitting up of property and relates to the contribution of each partner. I have highlighted three key areas of contribution where problems exist in the law. Again, our amendments would tighten up the situation and ensure that the level of contribution is fundamental to the

distribution of property. The mischief occurs when both parties contribute to a property, but only one party takes ownership. That issue should be addressed, not the issue of relationships.

Disputes over de facto relationships should not be settled in the Family Court unless children are involved or one of the parties is married and would have proceedings before the court in any event. The Bill is an affront to the concept of the family and, as I have highlighted, the Family Court was never established to be involved in this jurisdiction. Those are the key amendments we will introduce, and which are being drafted.

We do not deny that the present law causes inequity and injustice in the distribution of property between parties to de facto relationships, and that must be addressed. If legislation were introduced that dealt with that type of property distribution in the civil courts - even between same-sex couples - it would not be an issue, because that occurs elsewhere in Australia.

The Bill before the House will not reduce the cost of litigation. The definition of de facto is far too wide - not only the Opposition says that, but also the legal profession - for the Family Court's jurisdiction and for the purposes of administration. The Administration Act seeks to provide a simple way to distribute the property of people who die intestate; and that aspect has not been provided for in this legislation. The Family Court is the wrong jurisdiction in which to deal with these matters. If those types of proceedings are determined in the Family Court, it creates a new status of de facto relationship, one that has a marriage-like status.

The lack of consultation is a serious concern. Although the Government has said that many pieces of legislation will deal with the reform - some of which will not be opposed by people in the community - some divisive issues will cause concern. Some changes will not be accepted by the community, including those relating to the age of consent, IVF, adoption and a number of other issues in the gay and lesbian law reform package. The attitude of the community cannot be changed by just changing the law; therefore, law reform that is far ahead of community attitudes will fail. The Government must bring the community with it.

The Bill also unnecessarily attacks marriage when it need not have done so. Those who drafted the Bill forgot to include a provision for the wife to be notified if an action is to be taken. Wives will be disinherited. The Government has said, "Hang on, that is not right, maybe we will give them only 50 per cent." I do not think that it is fair for a wife who has been married for 30 years to be disinherited by a person who has been the de facto partner of her husband for two years. I do not think that most wives would think that was fair either. I say "wives" because, in the main, the legislation will affect wives. A husband and wife who have three children may split. The husband may have been fair to his wife and the wife may then cohabit with a man who, after two years, inherits what was being provided for the wife and three kids. The number of years the relationship has been in place is totally unfair when compared with the situation of parties to a legal marriage. We should address the unfairness of financial dealings, and not create worse problems, which is what has happened here.

I refer to a seminar on the case for law reform for de facto partners in Western Australia. From memory, the first paper was by Marcia Neaves, who is a well-known advocate for de facto law reform. In 1989, she stated that she did not believe it was appropriate for de facto partners to be treated in exactly the same way as they would be if they were married.

Those are the words of someone who has been advocating law reform longer than some people have been in this House. She continues -

> . . . law reform should not equate de facto relationships with marriage. Many people deliberately choose not to marry because they are not yet ready for the legal and moral obligations attached to marriage. It would be wrong to force them to shoulder such obligations if they choose not to do so.

A law is needed that prevents the injustice that has been created. I will quote from the United Nations definition of the family -

> The natural family is the fundamental social unit, inscribed in human nature, and centered on the voluntary union of a man and a woman in the lifelong covenant of marriage.

This legislation strikes at the very foundation of the family, and devalues marriage, on which our society has been built. The usual definition of de facto is some form of emotional, financial or other social commitment. The issue with the definition is the ability for sexual liaison to be caught up in that definition. The definition is too wide. Another advocate for de facto law reform, Moira Rayner, said on 18 March 1989, that, if legal recognition is imposed on de facto relationships, the focus should be not on the emotional tie but on the inequality of the relationship which, on the destruction of the relationship, leads to social problems. People who have been advocating for reform of the law relating to de facto relationships for longer than most members have been in this Parliament do not believe that de facto relationships should be equated to marriage, and that is the

position the Opposition is taking. The Bill before the House goes too far, and does not need to do so. The Opposition does not support the legislation as it is currently drafted. The Attorney General should take it back, pick up the concerns expressed by the Opposition, and rewrite it. At the very least, the changes identified by the Opposition should be made, which would also require the legislation to be split up. As the legislation stands, the Opposition cannot support it. The Opposition will be bringing forward some amendments, which I hope will be made available to the House this afternoon, picking up on points I have made.

**MR OMODEI** (Warren-Blackwood) [3.52 pm]: I congratulate the member for Kingsley on her exposé of the Bill, and for articulating the position of the Liberal Party. Many things need to be said about this Bill, but, most importantly, it appears to change permanently the foundation of our society. I am not sure if that is what the Government wants to do, or whether it has any idea of the possible results of this legislation. The legislation is extremely important, and if passed would do great harm to our society. It has been introduced with no prior debate, and no substantial explanation by the Government, with the result that most of the population is barely aware that it exists, and of the far-reaching changes that are proposed.

Throughout history the family has been the foundation stone of society, and marriage has been the foundation stone of the family. Society has always been dependent upon families to produce, nurture and socialise children, to ensure the continuation of society, in both numbers and in having people with the strength of character to ensure its effectiveness. It is the dream of democracy that members of Parliament would be such people, but looking at this legislation one wonders at that. In its turn, society values, protects and supports the families within. Society's relationship with families is based overwhelmingly on the principle of a couple's lifelong commitment to care for one another and the children they produce. In practice, this principle of mutual care and support extends across generations into broader family networks, but society's legal recognition and support is primarily limited to the immediate family. The Parliament of Western Australia currently is being asked to change this foundation to incorporate, on an equal footing, a variety of other relationships, including transient heterosexual and homosexual relationships. The changes are being introduced on the basis of a misunderstanding of equality, and without proper consideration of the effects on adults, children and society itself.

Marriage and the family have never been considered perfect, but, like democracy compared to other systems of government, they are vastly superior to anything else proposed as the fundamental unit of human society. It has always been the common wisdom of mankind that children draw their identity, personality and socialisation from both of their parents, and encounter difficulties when they do not have that stability. This common wisdom has been confirmed in study after study by social scientists over the past 30 or 40 years. We have now arrived at a stage at which, from an empirical, scientific point of view, there is no basis to argue against this experience. It remains true that statistics do not apply to individuals, and therefore none of this should be regarded as criticism or belittlement of families in other situations. Illness, accident and war have always created situations in which remaining parents, children and extended families have dedicated themselves to ongoing care and commitment. In such times society is called upon to provide even more assistance and support. There have also been times when society has attempted to replace parents, but usually with depressing results. The stolen generation and child migrant schemes are examples in our own recent history of how well-intentioned societies have learnt valuable lessons about the inadequacies of assuming the parental roles. Society therefore has an obligations to its citizens, its children and itself to support those forms of adult behaviour that produce the best results for all concerned. Children, in particular, are entitled to those forms of personal support that are best given by strong, two-parent families. It would be a valuable exercise in accountability if the Government were to present to Parliament and to the community a thorough summary of the evidence which reveals that, by every indicator - mental health, drug abuse, suicide, educational performance and others - children perform much better when raised by two-parent families. It should become part of the common knowledge of our society.

The Family Law Act 1975 has already delivered a very negative message - that commitment to the person to whom one has pledged lifelong support, together with the care for the children of that union, no longer is considered important. Despite this message, the majority of people do remain faithful to their lifelong commitment and to the children and the grandchildren who arise from it. They live out their knowledge of the true value of marriage and the importance of family. Now the Family Court Amendment Bill 2001 seeks to declare that any sexual relationship of two years duration is equal to, and in some cases is superior to, marriage. It is a startling assertion which, if implemented, would irretrievably damage the trust between families and the society of which they are the fundamental unit.

The Labor Party has always been a strong believer in the notion that legislation shapes community attitudes. I wonder what effect the Government thinks this legislation will have on families, in particular on young people

growing up in a society which enshrines in law such a distorted understanding of the value of marriage and family. It has been said that this Bill means nothing to families; that all it does is extend to some other people the benefits families already enjoy. That is wilfully naive at best. The reality is that this Bill will forever change the relationship between families and society. It is a declaration by the society, represented by this Parliament, that the lifelong commitment of a man and a woman in the most natural and complete relationship in human nature has no more value than a transient homosexual relationship. That is so breathtakingly absurd that most people, when told about it, find it impossible to believe that such legislation could be presented to Parliament.

Consider just one aspect of the legislation. Because society knows how important marriage and family are, one of the obligations of the Family Court is to provide reconciliation and counselling services in the hope of preventing the breakdown of a marriage. Will the Family Court provide the same services for de facto relationships, which by definition are not permanent, and, even more ridiculously, for homosexual relationships, which by their nature are neither permanent nor desirable? Will the Family Court treat these relationships differently, despite the fact that the Government's only justification for putting them into the Family Court is the absurd claim that they should be treated equally? This shows what happens when words are allowed to be separated from their real life meaning. Two such words are "discrimination" and "equality". The claim that the different status of de facto and homosexual relationships before the Family Court is discriminatory is based on a false sense of what constitutes equality. De facto relationships exist because people choose something less than marriage. They do not enter the married state because they do not want the legal ties and other obligations that married people freely accept, and that society undertakes to support. By their own free choice, they enter a sexual relationship - not a relationship of the whole person with a commitment to permanence. To their credit, most people in de facto relationships have not asked for this ridiculous legislation, and most would probably resent it if they were aware of its existence.

It is true that some de facto relationships develop into closer approximations of marriage, and, when they terminate, there are cases in which fairness in the distribution of property is not easy to define. If the Government thinks there is a need to create a legal framework for all de facto relationships in order to deal with those cases in which problems arise, it should consult the people involved in them to create a framework consistent with the commitments and expectations that people have when they enter de facto relationships. It may be difficult to produce such a legal framework, because people enter de facto relationships to avoid society's involvement in their affairs. However, nothing is to be gained by deeming de facto relationships to be the same as marriage. Marriage is the foundation of family life, and families are the foundation of society. The State will do itself great harm if it attempts to equate marriage to lesser patterns of relationships.

There are further complications in equating homosexual relationships to marriage. According to all reputable studies, a small percentage of the population - that is, between one and two per cent - experiences same-sex attraction, something that the great majority of people neither experience nor understand. Violence against, and vilification of, people on the basis of same-sex attraction is wrong. The intrinsic dignity of each person must always be respected in word, in action and in law. The origins of same-sex attraction are not understood with certainty, and various explanations are supported by different levels of evidence. However, whether the same-sex attraction originates in hormonal or chemical events in the womb, in distorted parental and other relationships, or in any combination of those factors, it remains only an attraction. It does not change human biology, and it does not make homosexual activity, particularly in its more extreme forms, natural for people with same-sex attraction. The more vocal elements among homosexually active people would desperately like it to be so, and frequently they demand that somehow it must be made so, but it cannot be. The record of physical and mental ill health among homosexually active people, as compiled by homosexual researchers, attests to this reality.

The truth about the impact of homosexual activity on the human person is a matter on which the Government should give a frank report to Parliament, before it attempts to pass legislation giving such relationships the same status as marriage. It is both untruthful and unfair to insist to people who experience same-sex attraction that their identity is defined by their sexuality or, worse still, by their sexual activity.

For Parliament to assert that homosexual activity is equivalent to, or as acceptable as, the sexual expression of married love would be a serious distortion of the identity of people with same-sex attraction, and a gross betrayal of marriage. It would seriously mislead the young and undermine society's understanding of the nature and rights of the family, and put them in jeopardy. It would be a perpetual declaration to our children that their parents' love, which gave them their life and their upbringing, is of no more value than homosexual encounters.

It is right for Parliament to enshrine in law the protection of people who experience same-sex attraction, and proper to expect the community to live up to that principle. It is not right for Parliament to enshrine in civil law the same protection for same-sex activity that is offered to marriage and family, and it would not be proper to expect the community to accept such a law. No amount of civil law can make active homosexuality right, either objectively or in the hearts and minds of the community.

Finally, I will deal with the Government's perverted view of the meaning of equality before the law. I will give just a few examples of the outcomes proposed in the Bill and its cognate amendments to the Administration Act. There is a provision that if a person dies intestate, property rights will pass to any de facto in a relationship, including a homosexual relationship, of two years' duration, even if the spouse of the person is alive and has not been divorced. That is not equality. There is a further provision that if two de facto relationships exist, both partners will share the property of an intestate person, and both will disinherit a legal spouse. That is not equality.

The provision that two or more de facto relationships, including homosexual relationships, may exist simultaneously, and have simultaneous standing before the Family Court, is the legal equivalent of recognising bigamy or polyandry. Of course, despite the alleged need for equality, bigamy will not be allowed for married people, unless this misguided Government attempts to introduce it - in the name of fairness, of course. A further inequality is that people can enter de facto relationships and gain status before the law at the age of 16 years, whereas people are not allowed to marry until 18 years unless they have the permission of a magistrate.

If equality is the sole purpose of and justification for the legislation, why is mere sex the criterion for privileged status before the law? Consider this: if two homosexuals run a business together and one of them dies intestate, the other will inherit the property to the exclusion of other claimants; but if two brothers run a farm together and one of them dies intestate, the other will not have a claim to the dead man's share of the property ahead of any other member of the family. Is that what the Attorney General means by equality before the law? No, it is not equality. It is a distorted assertion that if two people commit sodomy often enough, they should be rewarded by society with special privileges.

As I said earlier, this legislation is the sort that can come about only when words, and the principles they attempt to represent, are divorced from the real meaning of those words and principles in human life. Neither sodomy nor uncommitted heterosexual encounters has any positive meaning for society, and neither warrants legal privileges that are not available to single citizens. On the other hand, marriage and family are the very foundation of society, and the source of identity and development for each one of us. Because of these profound truths, marriage and family deserve the encouragement, protection and support of society. Their privileged status is not a matter of inequality or discrimination. It is recognition of what they are. This legislation will completely overturn the foundation stone of personal and social life. It is a truly terrible document, and should be summarily dismissed by this Parliament.

**MR PENDAL** (South Perth) [4.06 pm]: I want to make a contribution to this debate. I am aware that at the last minute the debate on the Family Court Amendment Bill and the Child Support (Adoption of Laws) Amendment Bill was split, and we will not now have a cognate debate. However, now that the debate on those Bills has been split, I will touch in passing on the second Bill, but in such a way that it will not be a difficulty to the Chair.

Broadly, I suppose the Government's agenda can be broken into two parts. They are part of the State's agenda, because neither of the matters with which we are being asked to deal in the next day or two is constitutionally within the Commonwealth's jurisdiction. Marriage laws, divorce laws and matrimonial causes are within the limits of commonwealth power. The Bill regarding de facto relationships with which we are now dealing, and the second issue relating to exnuptial children, are both outside the Commonwealth's jurisdiction; therefore, by extension, they are state matters.

My first observation is that the Family Court Amendment Bill seeks to make some fundamental changes to de facto relationships. I intend to oppose those changes. Secondly, the Child Support (Adoption of Laws) Amendment Bill seeks to make changes regarding exnuptial children, and those I intend to support.

Before I proceed, I make a general observation about the tone of the Government's approach to these matters. Members will agree that much has been made by the Attorney General of the desire to end discrimination against certain people in our society. In the main, I have no difficulty with that. In the past in this Parliament, but in another House, I supported legislation to end employment and accommodation discrimination against homosexual people. I have no reason to have ever regretted my support for ending that discrimination.

The report of the ministerial committee, on which much of this legislation is now based, was published in June of this year, I think, under the title "Lesbian and Gay Law Reform". The general issue of homosexual vilification is dealt with in section 5, at page 38, under the title "Homosexual vilification".

Although I have difficulty with many aspects of the report, one section with which I have no difficulty is that dealing with homosexual vilification. I have always found it offensive that by virtue of their homosexuality, these people have been subjected to -

> . . . targeted, threatening and abusive harassment, serious ridicule or the incitement of persons to violent and destructive acts -

Vilification, by its very nature, is offensive. It comes from the word all members recognise - vile. The person who uses that word seeks to speak evil of another. That concept must clearly be rejected in a civilised society and I for one reject it. Incidentally, not all discrimination is bad; or, if it is bad, it is endorsed in a bipartisan way almost every day. For example, we discriminate in favour of older people by paying them a pension, when we do not pay the same sort of pension to younger people. Similarly, we discriminate against older people by withdrawing their drivers licences at a certain age. To take my argument a step further, we teach our children to be discriminating; we ask them to exercise care in choosing their companions. Parents are often heard legitimately saying, "I don't want you to go around with Tommy, Helen, Mary or Jack because he or she is a drug user and I do not want you involved." We teach our children to be discriminating. I am putting that forward because the exercise of discrimination of that sort is hardly a bad thing per se. In effect, we strongly encourage our children to detect, draw or make distinctions between people. That definition of "discriminate" comes from *The Australian Pocket Oxford Dictionary*. Discrimination per se can be good, but I hasten to add that the case in the report about discrimination and vilification by threats, abuse, ridicule or violence is clearly and unambiguously bad. Discrimination as discussed in the Bill relates to the matter I will address in a few minutes about de facto relationships.

I will deal briefly with the issue that has been split from the cognate debate; that is, the straightforward second issue concerning the Child Support (Adoption of Laws) Amendment Bill 2001, which relates to exnuptial children. I understand that the legislation seeks to ensure that all children in Western Australia are treated equally under the law. I have no difficulty with that. One would have to live under a rock not to know that, generally speaking, all children, whether exnuptial or not, are the innocent victims in family law matters. The Family Court Amendment Bill refers to the three stage parenting compliance regime for children. I shake my head when I read that because it seems to me that George Orwell is alive and well. The real complaint is that the third stage, as described by the minister, contains punitive sanctions. On the face of it, I do not have any trouble with that. However, it fits uneasily and inconsistently with the Attorney General, who has basically staked his reputation on clearing jails of prisoners who should not be there.

Putting that aside, I make a general observation about the Bill and its drafting, which is true to form. It does not matter which Government is in office, the parliamentary draftsman always wins. We are doing it again with this Bill - we are re-mythologising the law. It is complex and painfully prescriptive, and I shake my head over the procedures that will be used in the law from here on.

I return to the issue with which I have the greatest difficulty and which I will oppose. I am opposing what one can broadly now call the "de facto relationships Bill" because, without being unduly suspicious, there is a surreptitious and underhand quality about it. A fair bit has been said about these moves that will supposedly bring Western Australia into the twentieth century. A fair bit has been said about the need to modernise our law.

Mr McGinty: The twenty-first century!

Mr PENDAL: I said "twentieth century" just to see if the Attorney General was still awake. I report to members that he appears to be. I was of course talking about the twenty-first century. In my view the whole process gently, though cunningly, sidesteps the central issue; that is, whether we are effectively endorsing de facto relationships as de facto marriages. Upon reading the material before me, I conclude that we are being asked to do precisely that. The Attorney General studiously avoided mentioning the term "de facto marriages" in his second reading speech. However, he does everything to equate a de facto relationship with a formal or registered marriage. One indication of that is tucked away in proposed new section 205V(1), in which the agenda sneaks to the surface. In that proposed new section, a de facto relationship is defined as two people in a marriage-like relationship. If members think I am being unduly suspicious, I draw their attention to a little faux pas I found during my inquiries. The Australian Bureau of Statistics journal titled *Australian Social Trends* lets the cat out of the bag. I hasten to say that I am not blaming the Attorney General for the publication of that ABS

journal. I suggest that it is part of this surreptitious activity; however, in the case of the ABS journal, it is not so surreptitious. In its definition of "family", that official commonwealth government publication states what the law is currently dancing around; that is, that a couple/family is a family based on two persons who are in a registered or de facto marriage. The ABS has stated what we are dancing around and what we have been asked to endorse in this legislation. I do not want people to misunderstand this matter. If a de facto couple want to live together, I am entirely of the belief that it is their business. The fact that they do not want to marry is also their business. However, I cannot see that the family law should be the place in which their relationship is given the same status as a formal marriage. In 1990, when I was a member of the other House, I made similar observations. I said that we should, by all means, allow a de facto couple access to laws relating to property settlement and other related issues, but we should not dress it up as a marriage-like existence. That was at the time the Lawrence Government sought to deal with this issue. I said that we should encourage couples who choose to live together in a de facto relationship to protect themselves by entering into a simple, legally binding agreement.

The Attorney General in his second reading speech reminded us of the change in the law since then. The advent of financial agreements in some ways destroys the rationale of his Bill. A de facto couple can opt out of these proposed laws by entering into a financial agreement; the very thing I suggested in 1990. It begs the question why we are conferring on such couples a status that many people say is not deserved. The real consequences of the Bill were openly stated by the Attorney General when he said -

> The rights given to de facto partners under this Bill are the same rights given to married couples.

I argue that I, as one legislator, should not be asked to confer on de facto couples a right that they freely choose not to confer on themselves. It is like passing the buck. I am not opposed to de facto couples having property protection rights. Indeed, I am not against same-sex couples having rights to protect what they enter into freely by way of property and other transactions. They have that facility at law and can choose to exercise it. However, I am against a law that implies, as in proposed section 205V, that a de facto relationship is like a marriage. We are told that 12 per cent of people in Western Australia are in de facto relationships. That means that 88 per cent believe formal marriage has a special significance. Indeed, many of those within de facto relationships later formalise those relationships with registered marriages.

Such a law is not fundamental to a society like ours that, despite all its secularism, is based on Judaeo-Christian values; nor is it part of those societies and cultures in countless other places around the globe that seek to give a special and meaningful place to the institution of marriage. We are sometimes told that we must get with it, that change is inevitable and that we cannot stop progress or turn back the clock. These things are not inevitable. In the 1980s, Western Australia pioneered the Quit campaign. It was a worldwide first. The Government made a judgment that smoking and tobacco products were undesirable for health and social reasons and the like. Millions of dollars were poured into a public education program to make something that appeared inevitable less inevitable.

I finally touch on the reasonable argument that people in a liberal democracy should be able to do as they please. That is not and never has been true. The majority is not always right. A book entitled *The Salinity Crisis* was launched yesterday at the Constitutional Centre. That book about a major ecological disaster shows how the majority over the past 30 or 40 years, both inside and outside this place, was wrong. I suggest that we are in danger of getting this fundamental social issue wrong.

Much effort has gone into giving de facto relationships the status of formal marriages. That is largely no more nor less than a populist political agenda. De facto and gay couples are entitled to the protection of the law, and that should and can be afforded to them, as is admitted by this Bill, by financial agreements between the parties. However, that protection should not be afforded as part of a legislative package that deals with our fundamental marriage and family laws.

For those reasons, I oppose the Bill.

**MR DAY** (Darling Range) [4.25 pm]: The Bill contains some important issues, some of which the Opposition is ready to support and others which it approaches with more difficulty. The measures we are happy to support include improved arrangements for parenting orders for exnuptial children and, although the member for South Perth described it as somewhat Orwellian, the three-stage parenting compliance regime. Those measures appear to be entirely appropriate and sensible. The member for Kingsley has gone through many of the issues in the Bill in great detail. That is appropriate, given her legal background.

As with most issues of a social nature, the community has a wide variety of views ranging from one extreme to the other. That wide range has been reflected in the representations I have had about this Bill and forthcoming social legislation. The majority of people in the community do not regard these sorts of issues as black and white. In most respects, there are no absolutely right or wrong views. However, that majority strongly supports the institution of marriage in our community, in which two people make a very clear commitment that they will provide love and support to each other for the rest of their lives in a way that is not reflected in a de facto relationship. Equally, most people have the view that a de facto relationship is not on as high a level as the institution of marriage and does not imply the same degree of commitment as that made by two people who go through the marriage process, whether it be in a church or non-church setting. Nevertheless, I recognise - as do many, if not all, members of the Opposition - that partners in de facto relationships are sometimes treated harshly when the relationship comes to an end. This applies particularly but not exclusively to women in such relationships. The Attorney General referred in his second reading speech to the example of a woman, Kathleen Lloyd, who was unsuccessful in seeking compensation following the end of a nine-year relationship. That was also reported in *The West Australian* on 26 April. One of my constituents, a woman, has made me aware of her situation, in which she has been in a de facto relationship for a number of years, but that relationship, for all intents and purposes, has come to an end. There are children as a result of the relationship. Her male partner is seeking to treat her harshly and does not want to give her any financial recognition for the contribution she has made to the upbringing of the children and to providing for the home over a number of years. Although in a technical sense she is still in that relationship - they are still living at the same residence - she is waiting for the passage of this legislation so that she can take advantage of it and hopefully get a much more equitable outcome than she would probably achieve under the current legislation. Therefore, it is a reasonable argument for a greater degree of protection to be provided to couples in a de facto relationship, although in no way giving de facto relationships anything like the same degree of status or recognition as couples in a formal marriage situation.

We have major concerns and qualifications in our support for this legislation. It is necessary to ensure that de facto relationships are not given a status that is as high, or higher, than the institution of marriage. We also must ensure that when a de facto relationship ends and legal action is contemplated under this potential legislation, a former spouse is made aware of that. A spouse from a marriage in which the other person has left to enter into a de facto relationship may potentially suffer a great deal by losing some of his or her rights to property because a certain obligation has been created towards the de facto partner.

Major issues must be addressed in this legislation. The Opposition will go through those in the consideration in detail stage. We are supportive of the general intent of the Bill to give greater protection to couples in a de facto relationship - women, in particular - when that relationship comes to an end. However, we must ensure that de facto relationships are not given anything like the same degree of status or recognition as marriage. Marriage needs to be recognised as the ideal situation in our community for the rearing of children, and also for the degree of commitment that it brings from two people who enter into a marriage. That should always be our ideal. However, we need to deal with the suffering caused when de facto relationships come to an end and people are not treated justly or equitably.

**MR SWEETMAN** (Ningaloo) [4.33 pm]: My constituency has raised many concerns about what it sees as a potential breakdown or diminution of the status of the institution of marriage as a result of this legislation. In many cases that overembellishes the argument, or the cases presented, through this Bill. I will commit to record some of the issues that concern me.

I do not want to stand in judgment of anyone who is in a de facto relationship. The Bill provides that a de facto relationship must exist for two years before it is given some legitimacy and before partners can obtain a settlement along similar lines to those available to married couples who each go their separate way. I do not know if one of the amendments to be moved at the consideration in detail stage will be an attempt to increase the two-year period to five years. However, that is a reasonable position to take. Two years will make it too easy for people. The provision is likely to result in the courts being clogged up and it will offer an opportunity to people with malicious intent after what is, to all intents and purposes, only a short relationship. I do not want to elevate a de facto relationship to the same status as marriage; however, the five-year option will give couples a reasonable time to achieve some equality under the settlement provisions in this legislation. Perhaps the Bill could provide that a shorter de facto period be considered on the basis that the partnership was registered earlier in the relationship; that might be an option or a "get out" for people who did not want to commit to marriage for one reason or another. I am not standing here in judgment of those couples. Some people choose to live in a de facto relationship because they have been soured by one or more marriage break-ups; they do not want to

commit to that institution again, due to whatever baggage either of the people in the relationship carries. In the event that the de facto or marriage-like relationship ultimately falters - it may be five or 20 years; regrettably, many de facto relationships outlast marriages today - provisions should exist in state Acts to cover issues such as the distribution of property and custody. The Government has done well in trying to provide some certainty and equality for those people.

My constituents, particularly the members of the various fellowships around my electorate, have been very keen to make their views known about same-sex couples, relationships, or partnerships. I will give passive support to the legitimate sections of this Bill. However, on behalf of my constituents, I baulk, on the basis of conscience more than principle, and express concern about the provisions applying to same-sex partnerships. I do not wish to sit in judgment, but I think the apostle Paul made the point that it is a shame to talk publicly of things done privately by some people. I do not want to buy into whatever acts are committed behind closed doors; however, I am committing to the record that I do not want to elevate in status homosexual couples living in marriage-like relationships, for whatever reasons they choose to live together and for whatever time. The passage of time should not in any way legitimise some of the relationships or partnerships entered into by same-sex couples. This Act does not cover the issues of the right to have children by invitro fertilisation and the right to adopt. As much as this Bill touches on those particular issues, I want to commit my position to the record for myself, and on behalf of my constituents.

I look forward to this Bill going through the consideration in detail stage when, to some extent, it will be further developed, and to see whether the minister and the Government accept any of the amendments that will be moved.

Mr McGinty: I can understand your objection to the definition of marriage-like relationships, including same-sex couples. However, what about a gay couple who have been living together for 20 years and the house is in only one person's name? This Bill simply provides them with a way in which they can access the courts in order to resolve that problem of fairly distributing the property. Do you say that this Bill should not enable that to occur, or that it should not be in the Family Court of Western Australia? What is your view on that?

Mr SWEETMAN: Perhaps it should not be in the Family Court but that is where I want to differentiate. Perhaps the minister is saying that I am splitting hairs, but I am happy to have the relationship called a partnership. I do not want it described as a marriage-like relationship because friends can be in partnership. In Carnarvon a brother and sister live together. I have fought hard and long for them because Centrelink cut off one of their entitlements because they were deemed to be living in a marriage-like relationship. For goodness sake! It took a lot of work -

Mr McGinty: I hope not, because it was a breach of the criminal law if it was a marriage-like relationship!

Mr SWEETMAN: Centrelink defined it as marriage-like and cut off their entitlements. They had to prove their relationship and go about obtaining character references. I intervened on their behalf as I had known them quite well over a long period. It is a matter of convenience that they share a property. Nothing is in common. No bank accounts are common, the house is in one person's name and they each have a motor vehicle in their own name. There is nothing to suggest that it is a marriage-like relationship other than the fact that they live under the one roof. Sure, they share the house duties and probably shop for each other. However, it should not be defined as marriage-like; it is a partnership arrangement. In an attempt to get away from the sexual connotations connected with same-sex and marriage-like relationships, let us call it a partnership of friendship. If the couple just happens to be a same-sex couple, they should have some redress at law. I am not saying it should be described as a marriage-like relationship and given a similar status to marriage or even to de facto relationships.

I still see them being concerned about being given a similar-type status to marriage, but I certainly do not want to see same-sex couples or other friendships that could be defined as partnerships given a similar status to the de facto-type relationships, if I am not being contradictory.

Mr McGinty: I can understand the member's point of view.

Mr SWEETMAN: People should get help under this legislation, but I want to make sure that the wording in the Bill provides assistance to all the people we wish to help, and at the same time does not offend anyone who sees this as some type of an attack on the family and a devaluation of the institution of marriage. If the Attorney General can achieve that at the end of the day, I will be very supportive.

Mr McGinty: The member for Perth spoke to me last week about this very issue. He said that in some other areas the phrase they use is "interdependent relationship", which implies a bit more than a business relationship. It implies a fair measure of sharing, perhaps even a sexual sharing, but it does not use that word "family-like".

Mr SWEETMAN: It is interesting that the Attorney General says that, because that is the feedback I am getting in some situations. Same-sex couples do not want to go to the Family Court for a settlement or disbursement of their rights under the Act. I guess this is an argument from both sides. Anyway, I wish the Attorney General well with this legislation. I encourage him to consider seriously some of the amendments that will be moved during the consideration in detail stage, because at the end of the day they will determine whether I, as a member of the Opposition, or the Opposition in its entirety, support the Bill.

**DR WOOLLARD** (Alfred Cove) [4.42 pm]: I thank the Attorney General for giving me a briefing on the Bill and also for the correspondence that I have received on this Bill. I applaud his efforts in putting this legislation on the Table, because I believe that women in de facto relationships need assistance. Often men who live with a woman and have children with that woman move on to another relationship, and those women have no recourse to support from their partners. I think the Bill should be referred to a committee to allow for greater discussion and for some further principles to be addressed, in particular the outcome for women whose partners or husbands go through a midlife crisis. I also believe the Bill does not adequately address Aboriginal and cultural relationships.

Proposed section 205U refers to de facto partners attaining "at least 16 years of age". I believe that this part of the Bill supports the concept of 60-year-old men or women living and sleeping with 16-year-old girls or boys. I disagree with this, as I will with the equal rights legislation. My local community has made me aware that they believe that 18 is the age for voting, driving and drinking and should be the age for approved sexual relationships in heterosexual, gay and lesbian relationships.

I have spoken with members of the church and members of the gay and lesbian community about proposed section 205V, and I believe the words "marriage-like relationship" should be deleted and substituted with the words "interdependent relationship".

I also believe the Bill discriminates against married women in its efforts to support women in de facto relationships. For example, a man who is going through a midlife crisis may leave his wife, stop work and move into a de facto relationship. He and his wife may have four or more children and she may have given up her career to raise a family and support him in his professional career. His wife may not know about the de facto relationship, but if he dies after two years in the relationship, the de facto partner can claim half of the property and assets built up during the marriage relationship. The same circumstances could apply to a relationship between a man who leaves a long-term de facto relationship and gets married. The assets should be apportioned on a sliding scale to protect the interests of the former wife and/or the former de facto, depending on the circumstances.

In summary, this Bill should be referred to a committee for its consideration.

**MR BIRNEY** (Kalgoorlie) [4.46 pm]: Here it is, Mr Acting Speaker (Mr Dean), the start of the Labor Party's jihad on the institution of marriage. This is the beginning. We have been waiting for it, because the Attorney General has a whole raft of social legislation that will ultimately strike at the very heart of the institution of marriage. The Liberal Party will continue to support the traditional family unit that consists of a heterosexual couple and children. That is what I stand for and that is what the Liberal Party stands for in broad and general terms. When two individuals commit themselves to the institution of marriage, they do so after considering for a long period the consequences of their actions and the commitment that they make to each other at a personal and financial level.

The Labor Party and the Attorney General are seeking to destroy the institution of marriage in favour of what could be loosely termed a de facto relationship, be it same-sex couples or homosexual couples. I note that every time I pick up a Bill that has the Attorney General's thumb prints on it, there is frequent reference to same-sex couples.

I acknowledge that a number of issues need to be considered when talking about de facto couples. A de facto couple may indeed live together for a long period and contribute equally to their financial wellbeing over that period. However, one of the people in that de facto relationship may end up being disfranchised at the end of the relationship, which is basically a breach of trust. Two people may enter a de facto relationship without giving it anywhere near as much consideration as two people who propose to get married and they may contribute financially to their property and other assets over a period. However at the end of 10, 15 or 20 years, all of the assets may end up being in the name of one of the partners, and when the relationship expires, that one partner will end up with a very significant benefit. In reality, that is the issue the Attorney General has attempted to address. He has not done it very well; he has cast a fairly broad net. In fact, this Bill has more holes in it than a pair of fish-net stockings, and I will outline a couple of them.

Several members interjected.

Mr BIRNEY: I am sure the Attorney General might like to get hold of a pair of fish-net stockings, count how many holes are in it and then have another look at the Bill. I am sure that he would find they would have a similar number of holes. We are told that some 100 000 Western Australians exist in a de facto-type relationship. In fact, we are further told that 56 per cent of those 100 000 Western Australians are aged between 20 and 34 years. Young couples in this day and age would be less hesitant to enter into a de facto relationship than would couples perhaps 20 or 30 years ago. Young couples are frequently trying out their relationships. They are moving in together and after two and half years, or one year as the case may be, they decide that they are not suited together and go their separate ways. As I read this Bill, the Attorney General would have those people linked to each other just about for eternity. Every Western Australian has a right to enter into a de facto-type relationship. I do not have any particular problem with de facto relationships. However, every Western Australian has an equal right to terminate that de facto relationship should he or she see fit. This legislation seeks to bind those two individuals together for some time. That is totally unacceptable. Some couples simply want to make a clean break and move on. This legislation will be a bone of contention between those two individuals.

The situation should be looked at somewhat differently when children are involved. It changes the scenario significantly. I will restrict my comments today to a de facto couple who does not have children. That changes the state of play somewhat. If a couple has children, the contribution put forward by the spouse who is charged with looking after the children on a daily basis is significantly higher than the contribution put forward by the spouse who is simply termed the breadwinner.

The biggest problem I have with this Bill is the threshold of two years. It can take two years before people get to know each other, particularly if they have a fly in, fly out-type relationship, which we see frequently around Western Australia. People from West Perth can fly to Leinster, where they spend three weeks. They then spend a week in West Perth and another three weeks in Leinster. Over two years, the couple would see each other on a very infrequent basis. After that period, those two individuals might see fit to have a parting of the ways and go their separate ways. Two years is simply not long enough. I am not sure that I have come to terms with the concept of property rights for de factos, at the very least. The jury is out for me on that concept. Were we to accept the concept, I suggest to the Attorney General that a threshold of seven years, or perhaps even eight years, would be more realistic. To have a de facto-style relationship that went on for seven or eight years would show a true and unhindered commitment to each other.

Mr McGinty: In thinking this through, what do you say about someone who gets married and three weeks later realises that he or she has made a horrible mistake? Should that person have rights to claim his or her partner's property in that situation? That is the theoretical problem I ran up against.

Mr BIRNEY: As I said at the start, the difference is that when people enter a marriage contract - it is a contract - it is the sort of thing that people think long and hard about. They look at the possible ramifications and consequences and they enter into that contract with all of that knowledge behind them.

Mr McGinty: The intention is to stay there forever.

Mr BIRNEY: That is the intention at the time. When people go down that path and get married, they first explore the consequences of their actions. A de facto relationship, on the other hand, does not lend itself to a situation in which the couple would look at all the possible ramifications and consequences of simply living together. People all across Western Australia are doing that. They might have known each other for two weeks. Somebody might have just moved into town and a young couple gets together. One person might have a house and one might not. One of the individuals might say, "You might as well live with me; there is no point in living in a boarding house." Right then and there a de facto relationship has started. The Attorney General cannot tell me that the same level of thought about the ramifications and the consequences has gone into that scenario as would go into a possible contract of marriage. The two are poles apart. It might be the case that the relationship goes on for two years. The fly in, fly out scenario is worth considering. In that two years, the couple might see each other on 100 or 200 nights. In fact, they probably do not know each other that well. They certainly have not made a solid and lasting financial commitment to each other. In fact, one of the persons involved in that relationship may not have made any financial contribution whatsoever. As I read this Bill, after that two years, one of the individuals will be eligible to apply for a portion of the other person's estate, or certainly his or her property assets. That is the first issue. The two-year threshold is too low. It makes a mockery of modern-day Western Australia. I know that the Attorney General likes to portray himself as a modern, forward-thinking individual - I am not sure that I necessarily agree with that. Having said that, I suggest that two years does not

cut it. Seven or eight years is a true commitment. That shows two people who have truly made a commitment to each other. That is the first suggestion I would like the Attorney General to take on board.

The point is that this should not be based on longevity of physical relationship and how long people have lived together; it should be contribution based. If we are to go down this path, we need the courts to recognise the financial contribution made by both parties. Frequently, when a couple gets together, it is the norm that the man goes out to work and the woman stays home and adopts the job of homemaker. I want to be careful to quarantine my comments to a relationship that does not involve children, because that deserves additional consideration. When one of the couple becomes the homemaker and the other goes out and works nine or 10 hours a day as the case may be, what contribution do we place on the role of homemaker? Is it equal to that of the person who works from seven o'clock in the morning to six o'clock at night in the mines, on St Georges Terrace or as the case may be? Is the contribution made by the homemaker, which essentially involves cooking the meals, cleaning the house and doing those sorts of homemaker-type duties, equal to the contribution made by the chief breadwinner, who is working 10, 11 or 12 hours a day?

Mr D'Orazio: Is it or isn't it?

Mr BIRNEY: That is the real question. I put it to the member for Ballajura. I am asking him whether he feels that the contribution made by the homemaker -

Mr D'Orazio: You are the one who is making the comment.

Mr BIRNEY: Does the member for Ballajura feel that the financial contribution made by the homemaker is similar to the financial contribution made by the chief breadwinner? That is what members must come to terms with.

Mr D'Orazio: Is it or isn't it?

Mr BIRNEY: I quarantine my comments to a couple who does not have young children.

Mr D'Orazio: You are just making comments for the sake of making comments.

Mr BIRNEY: When a couple has children, the burden is significantly increased. The assets should be divided on the basis of contribution. If it gets to a dispute in a court of law, the courts should consider clearly the financial contribution made by both partners over that period on a pro rata basis. If they have lived together for only two years but one of the individuals entered into the relationship particularly wealthy, there must be a pro rata system that considers how the assets are to be divided.

I note that in his second reading speech the Attorney General referred to the issue of prenuptial agreements. I am unsure of the figures, but I believe that prenuptial agreements are a thing of the past. The Attorney General might correct me with some fancy figures -

Mr McGinty: There are not many of them.

Mr BIRNEY: That is right. For a host of practical reasons people do not sign prenuptial agreements these days. If one partner in a couple who had lived together and were thinking of sharing the rest of their lives together whipped out a prenuptial agreement from his back pocket, the other partner would run for the hills. Although prenuptial agreements will become valid in the context of this debate, they are not the way to go. I am not sure whether previous speakers have raised the issue of a married person entering into a de facto relationship. What are the rights of the husband who is then engaged in a de facto relationship? My understanding of the Bill is that if a man were married for 20 or 30 years and then entered a de facto relationship, which then split up, the de facto partner would have a legitimate claim to the person's property interest at the expense of the wife who had been married to that man for some 20 or 30 years.

I note further that the Bill fails to deal clearly with the issue of superannuation. It does not explain whether superannuation comes into play when dividing the assets of a de facto couple. However, I note that the court would be required to take superannuation into consideration when dividing up property interests. That is a sleeper issue. If an individual who had ended a de facto relationship was entitled to $100 000 worth of superannuation benefits in 15 years, as I read the Bill, the court would be required to take into consideration that $100 000 as an asset for that individual. I will simplify the issue. If a couple had a house worth $100 000 between them, the court would be required to give $50 000 to the wife out of the sale of the house and $50 000 to the husband and be done with it. However, if the husband were eligible for a $100 000 superannuation policy in 15 years, the court would be required to take that into consideration. The court might then decide to give the

wife $80 000 the husband $20 000 from the sale of the house; therefore, the husband would have nowhere to live until he received his superannuation in 15 years. In my view, that is inequitable.

I am not looking forward to the raft of social rubbish that members opposite peddle. The Bill is an attack on the institution of marriage. It is a sad day when the Government in charge of this Parliament seeks to march against the institution of marriage.

**MRS MARTIN** (Kimberley) [5.04 pm]: I support the Bill. I will give members a quick overview about diversity, marriage and prenuptial counselling, which is available through most of the churches these days. I remind members opposite that it is 2001, and a number of things have changed over the past 100 or so years. I will talk about tolerance, homophobia, xenophobia, choices, cultural variables, de facto relationships, cohabitation with consent, identity and community.

We live in a society that is made up of a number of communities including the Muslim community, the Aboriginal community and self-defined communities; for example, this Parliament. The members of this House are diverse. We are all members of some sort of community and even by being here, we are members of yet another community. We identify where we choose to be. Some of us are defined by our ethnicity or by our religion. I bring members' attention to the fact that there are choices. Currently, there are laws to say who can and cannot consent in a relationship. Some laws define that there is no consent for people under a certain age; for example, for young girls in heterosexual relationships and for young boys in homosexual relationships; there is a clear definition. However, more importantly, people like us make those distinctions. My problem is that there is a distinction, which is a form of bias. We make decisions to separate people because of the choices they make, and I have some concerns about that.

Who defines my relationship? I am a married woman. I live in a cultural context. I go to communities where several of the men are my husbands. Will people accept that there is a marriage?

Mr Birney: Did you say that you had more than one husband?

Mrs MARTIN: In a cultural context I do because there are cultural obligations that go with who I am in my community. Several people in a community are my husbands because of who I am and who they are.

Mr Omodei: Not under the Marriage Act.

Mrs MARTIN: That does not matter. Where are my people represented in Parliament?

Mr Johnson: How are they your husbands?

Mrs MARTIN: Members opposite need to read some books. I am not here to provide them with cross-cultural awareness training.

Mr Birney: I want to know how you get away with it.

Mrs MARTIN: Members opposite have had their go. It is a simple concept. I belong to another community as well as this one, which has a different context. Obligations go with all relationships. However, it is not up to us to decide what part of the community we represent. We have a huge community and we must make sure that we cover as much of it as we can, and de facto relationships are a part of that. We must move on. This is the twenty-first century, and we must do something about the matter. We must consider being more tolerant to the needs of other people in our society. This legislation must not represent only a small group of people; it must represent as many people as it possibly can. Are we talking about making a fairer society?

The legislation provides rules about marriage. Most of the churches that I am aware of provide prenuptial counselling. Most of the people I know who will get married will go to their priest or pastor for prenuptial counselling, which is great because it prepares them for the relationship to which they will make a commitment. That is fine at one level, although others choose not to do that. Some people enter into marriage, then leave and enter de facto relationships. Do people not have rights? We must consider the choices and not just define things as black or white.

I doubt that any two members in this Chamber would have the same views and opinions, which is fine. I am a tolerant person; I put up with intolerance. I put up with the xenophobes and the homophobic behaviour that I see around me all the time. I can handle racism because I know how to deal with that. Xenophobia is a horrible thing, but homophobia has nothing to do with anybody else. What does a person's choice of relationship have to do with anybody else? It offends me when I hear these horrible statements about who is worthy and who is not, who should be recognised and who should not be. I understand intolerance. I have seen prejudice, and if the

Government does not start making the changes our society needs to become more caring and more just, it will be judged. I do not want to be a part of that.

**MR McGOWAN** (Rockingham - Parliamentary Secretary) [5.10 pm]: This Bill will be one of the less controversial of the social measures put in place by the Gallop Government, because it is a measure that has already been accepted and implemented in every other jurisdiction in Australia. It is widely accepted by members of the community. I have had very little correspondence or lobbying about this issue, because most people think this issue should quite reasonably be addressed by the Parliament. It is incumbent upon this Government to deal with social issues with which no Government has had the capacity, the willpower or the determination to deal before. In the past four years, during which I have been a member of Parliament, the Court Government did not have the willpower to deal with the prostitution issue, particularly in the inner city areas of Perth. A Bill was introduced that achieved nothing, and did not solve the problem. This Government will deal with that issue - it has a mandate to do so, in the same manner that other State Governments have dealt with it; that is, by recognising that the situation exists and making sure the difficulties and problems are ameliorated. The Government also has a mandate to deal with the drug issue, as a result of the election, and it has a mandate to deal with the issue of de facto relationships.

Every other jurisdiction in Australia has dealt with this issue. New South Wales legislated on it as long ago as 1984. It is now accepted practice that State Governments legislate on de facto relationships, because failure to do so will result in substantial injustices for individuals in the community. In 1975, the Whitlam Government dealt with the Family Law Act. Since that time, there have been 13 years of conservative federal government, led by Malcolm Fraser and John Howard. In no sense have those governments tried to either repeal or roll back the laws passed in 1975 by the Whitlam Government, with Lionel Murphy as Attorney General. In essence, what the present Parliament is doing is recognising reality, and trying to deal with marital situations by promoting justice between consenting adults. The Government is not trying to impose moral strictures or its own views of what relationships should be. I am a married man, and I live in a conventional relationship. I do not try to impose my morality on others in our community, and it is not the role of the Parliament to do that.

Mr Pendal: We impose our views on people every day of our lives in here.

Mr McGOWAN: The member for South Perth, being an Independent, does not have the capacity to impose his views on anybody. He may be able to lead the two Independents sitting next to him, but I do not believe the member for Pilbara follows his instructions.

The Government is recognising reality in putting in place rules which impose on de fact relationships a system similar to that applying under the Family Law Act, which is accepted by conservative Governments nationally as a right and just structure of dealing with difficult situations. I acknowledge that some people will be unhappy with this arrangement. People have railed about the Family Law Act. However, I believe that when people complain about rules imposed under the Family Law Act, or de facto relationships laws in other States, they are really complaining about their own failure. If a relationship, which has produced children, is dissolved, and the payment of child maintenance is ordered, it is not the Government's fault if someone complains about having to pay that maintenance. The Commonwealth Government has put in place the Child Support Agency to deal with that situation. The property settlements rules under the Family Law Act have been in place for 27 years. Most people make decisions about their lives, and they get themselves into situations. That is not my fault or the fault of the State; it is the fault of the individual. Over 10 per cent of relationships in our community are de facto relationships, in which people live together either in same-sex relationships in the minority of cases or heterosexual relationships. By putting in place these amendments, which apply the same provisions of the Family Law Act to de facto relationships as apply to heterosexual relationships, the Government is doing what has already been done in other jurisdictions.

A couple of the issues have been raised. First, the existing situation for people in de facto relationships is that, if they wish to divide property, they must rely upon the equitable doctrine of trust. The trusts that can apply in this situation are either a resulting trust or a constructive trust. A resulting trust is where a couple buys property and it is placed in one person's name, perhaps due to some view of morality that holds that traditionally a husband should own property and a wife should not. Under a resulting trust it is presumed that a person is buying property on behalf of another, and the first person is the trustee and the other the beneficiary. A constructive trust infers that there is a common intention between two parties that one party will hold property on behalf of another, dependent upon all the things contained within these laws, such as the level of contribution, the period in which the couple live together and the bearing of children. All these things are relevant considerations in the

creation of a constructive trust. In effect, through a convoluted, legalistic process, at the moment there is provision for division of property between people in a de facto relationship.

Mr Omodei: What about in multiple de facto relationships, with which this Bill deals?

Mr McGOWAN: I will deal with that. There is a provision for the division of assets in that manner between two adults. Therefore, people will ask why legislation dealing with de facto relationships is needed. The reason is that in order for people to enforce their rights and responsibilities under the doctrine of trust, they must go to the Supreme Court, the highest court in the State, via a very expensive, convoluted and complex legal process. Some members have experience of family law matters; others do not. The provisions of the Family Law Act are a lot more friendly and less expensive for people who bring family law actions before the courts. Many more practitioners are experienced in the area, and it is a simpler and fairer process in many respects. That is one of the reasons that the State Government is putting these laws in place.

The member for Kalgoorlie said that the courts would somehow not take into account the contributions of a breadwinner or a homemaker - I think they were the expressions he used. In the second reading speech and in the Act, it is plain that they are relevant factors for a court to take into account. The member for Kalgoorlie is standing behind me. He is certainly an interesting character.

Mr Omodei: You can have a drink now. You are safe.

The ACTING SPEAKER (Mr Edwards): The member for Rockingham has the floor.

Mr McGOWAN: I was concerned with the member for Kalgoorlie right behind me. The contribution of the parties in a de facto relationship is a relevant consideration. To say that somehow the contribution, whether it be financial or otherwise, would not be taken into account by the courts is incorrect. The member for Kalgoorlie was incorrect in saying that. The contribution, the way property is owned and acquired, caring for children, the degree of financial dependence or independence of the parties, and the length of the relationship are all taken into account. They are exactly the same factors that are taken into account under the Family Law Act for a married couple under the Marriage Act. However, under this system, in some ways it will be harder to bring a claim concerning property matters between a couple than it is in a conventional marriage. Under this legislation, the laws applied in this State by this Government, and applied throughout Australia, will require that people must have been in a relationship for two years.

In a previous life, I had a lot to do with people who had been involved in relationships of very short duration - six months or sometimes three months - when they got married at a young age. The requirement under this legislation is two years. Normally, in most relationships, people will have had a relationship prior to the commencement of cohabitation. I recall that the member for Kalgoorlie said that people might not know each other because although they had lived together for two years, they had been apart for most of that time. Does he think that the day people start going out together, they move in together? Is that common practice? No, it is not.

Ms Radisich: What is "going out"?

Mr McGOWAN: Again, definitional issues are not my forte. For people in a de facto relationship, two years is often longer than the time for which people are in a marriage. Under the Family Law Act, people have a right to bring an action on the day, in some cases, or on the day after, they are married, yet a two-year period is imposed on de facto relationships, unless there is a child of the relationship, or a substantial or serious injustice would accrue. Therefore, in many ways it is harder for a couple in a de facto relationship to bring a property law claim than it is for a married couple.

I am glad that the legislation deals with the issue of people who live together in same-sex relationships. That is long overdue. That should not offend anyone in the community. It recognises reality. Many long-term, single-sex relationships must be addressed in this way, so that those people have the same rights, responsibilities and obligations as do other members of the community.

Mr Johnson: You said single-sex relationships. Do you mean same-sex relationships?

Mr McGOWAN: It does not matter whether it is a same-sex or single-sex relationship. Definitional issues obviously are not the member for Hillarys' forte either.

These are obviously difficult issues to deal with. There are a number of jurisdictional issues in the Bill - for example, the residence requirement for people living or not living in Western Australia. The Bill deals with those issues in basically the same manner that other State Governments have dealt with these matters. As such,

this is a worthwhile reform in that it applies uniformity across the States, so that people who move between boundaries do not have different laws and obligations applying to them.

I reiterate that this Bill reflects the situation under the Family Law Act. It will make sure that people do not have to go through the expensive compliance and legal costs of enforcing a resulting trust or a constructive trust in the Supreme Court. The same guidelines are put in place for people attempting to enforce constructive trusts. Therefore, the Government is relieving people of legal costs and obligations. That is a good thing. The situation in Western Australia will end up being similar to that in other States. This legislation will not be a big deal in the wider community. It will be seen as a worthwhile reform, and one that, fortunately, the Government has dealt with. It was overdue. We will all get past this and get on with life, because I do not think it will be a huge issue in the wider community.

**MR BRADSHAW** (Murray-Wellington) [5.28 pm]: At the outset, I say that I wish we were in a perfect world, so that we did not have to bring in this sort of legislation. Earlier, I heard the member for Rockingham refer to the member for Kalgoorlie as a young fogy. I guess he can refer to me as an old fogy, because I would like to live in the past, and see things that happened many years ago still happen today. For example, I would like the majority of people to get married. I know that not all marriages survive, having gone through the personal experience of my marriage not surviving. However, I believe in the sanctity of marriage. Therefore, I have a problem coming to grips with this legislation and supporting it. However, I understand that there are different types of relationships and that this is a different time. There are good reasons for this legislation. However, one problem with this legislation is that it contains huge flaws. That will be pointed out during the consideration in detail stage, so I will not go into detail now.

Mr McGowan: Are you going to oppose it?

Mr BRADSHAW: If the member for Rockingham waits and lets me get my words out, I will tell him. Whether I support or oppose this legislation will depend on amendments to the Bill. I support the legislation in principle, but my support for the Bill will depend on what happens to the proposed amendments. One thing I would like to know is whether the legislation will be retrospective. I have a problem with retrospective legislation.

Mr McGinty: Existing relationships will be picked up by this legislation. The controlling factor will be when the relationship finishes. It will apply only to relationships that finish after the Bill is proclaimed. That will take into account relationships that already exist. If a relationship were to finish today, the Bill would not cover it.

Mr BRADSHAW: As I was saying, I have problems with retrospective legislation.

Mr McGinty: I do not think this legislation is retrospective in that sense.

Mr BRADSHAW: It is retrospective because people go into relationships under certain conditions, and the Government is now changing those rules. I have a problem with that. It makes me consider where I stand on this legislation. The legislation should cover anyone who goes into a de facto relationship in the future. People who were in de facto relationships before the legislation is enacted should be exempt. There is a good reason for that; people have relationships for various reasons. If people want to go into a de facto relationship in the future, they will make that choice under the rules and regulations of that time. However, people who entered de facto relationships prior to the enactment of this legislation will not have that opportunity if the legislation is retrospective. I have a problem with this legislation under those conditions.

One reason I have come to believe that there should be some cover for de facto relationships was a case a few years ago that involved a couple of my constituents who had lived together for going on 30 years. They had never married because one of them - I am not sure whether it was the man or the woman - had been raised a Catholic and had separated from a spouse. That person would not remarry because the Catholic Church would not allow it. The male in the relationship died. Everyone thought the lady would die first because she had various medical conditions, but as it worked out, the male died. Within days of the man's death, his two siblings zoomed in to claim the house. I was mortified when I heard how low some people could be. One of the siblings had not had anything to do with the fellow for years. It was only a modest house, worth around $80 000; it was not a grandiose house. I could not believe the greed that prompted those siblings to try to take the house from that woman. They succeeded in the sense that the woman capitulated in the end because the situation was causing her stress and she was suffering from a medical condition. I tried to help her as much as I could; I got her legal aid worth $1 000, which everyone knows goes nowhere in the legal system. She capitulated in the end and gave half the proceeds of the sale of the house to the siblings. She had to find other accommodation. It is dreadful that those sorts of things can happen under those conditions. I believe that if that man had made a will,

the problem would have been solved. He did not leave a will when he died, which provided an opportunity for his siblings to try to claim the property. I realise that there is a need within the community to cover people in certain circumstances.

The member for Rockingham said that it was cheaper to go through the Family Court than the Supreme Court. I know people who have been through the Family Court. It is not a cheap episode if one gets dragged from one end of the legal system to the other. It is an expensive business.

Mr Johnson: It is a good earner for lawyers.

Mr BRADSHAW: What one finds in life is that lawyers do not want to know people who have virtually no assets, but if a person has a pile of assets, it is amazing how the legal process keeps going until it gets to the other end. It is an expensive and time-consuming business. This will put more stress and strain on the legal system in Western Australia. It takes a couple of years to get from one end of the Family Court system to the other if an application is made straightaway. If a person does not apply straightaway, by the time he has mucked around getting to that stage, the case could go on for three years or more. This is another problem. Will the Government work on ways to make the court system work better? People find the system frustrating because they cannot get on with their lives; they do not know what they will have left at the end of their settlement. It is difficult; one cannot get in and out as quickly as one would like. There are two issues; first, it costs a fortune to get from one end of the legal system to the other, and secondly, it is time-consuming.

This legislation will put more pressure on the court system. It does not matter whether a case goes through the civil court or the Family Court, it takes a long time to get through the system. I am reluctant to support this legislation, particularly as I now know that it will be retrospective. I have always vowed that I would not support retrospective legislation.

Mr McGinty: This Bill is about the breakdown of relationships and the provision of a legal remedy or access to a court to resolve it. It will not apply to any relationship that has broken down. It will apply only to relationships that break down in the future. That includes existing relationships. I am not sure whether that can be called retrospective legislation.

Mr BRADSHAW: One of the problems is that some people who have gone through a broken marriage vow that they will not marry again, because they do not want to go through the hoops of losing their property. If a person keeps dividing his property by half all the time, he will not finish with much. Some people make a conscious decision to not marry because of that. Retrospective legislation will make it hard for people in that situation - they cannot just get out of a relationship because this legislation is coming. They can get out of those relationships, but a lot of emotions and other things must be taken into account. It is difficult. I have great difficulty in supporting this legislation now that I know it will be retrospective. I will certainly give a lot of consideration to the legislation before I will support it.

**MS SUE WALKER** (Nedlands) [5.38 pm]: I will contribute my tentative views on what is a contentious issue. Most people do not want to look at this issue; it is difficult. I have received submissions from people in my electorate who are diametrically opposed to all facets of this legislation. I took a bit of time to read the second reading speeches on these issues from the Victorian and New South Wales Parliaments. They point out the different views. I will quote from the second reading debate on the New South Wales Property (Relationships) Legislation Amendment Bill of 25 May 1999. The Bill sought to redefine de facto relationships to include homosexual couples. Hon James Samios said that one of the problems with discussing such legislation was that -

> Community family groups believe that they undermine the essence of the fundamental unit of society, the family, in its most traditional sense. The question, therefore, is whether these amendments reflect current community standards. No doubt, honourable members will have their own individual ideas on this point.

Strangely, I have been inundated with letters and visits from gay and lesbian people about aspects of this legislation. Importantly, I have had representation from the Anglican Church of Australia. The chairperson of the Social Responsibilities Commission of the Anglican Church in Western Australia is a reverend at Saint Margaret's, Nedlands, which is in my electorate. It is my view and, I believe, that of my electorate that a proper mechanism to give all de facto couples access to property rights similar to those of married couples has been needed for a long time. The introduction into the Parliament of such rights should have occurred much earlier.

It is important to consider these issues in an unemotive manner, which many people do not do. When I made an opening or closing submission to the jury in a serious criminal case with emotionally charged facts, I would stress the importance of putting to one side personal prejudices and sympathies and looking at the facts in a rational, clinical and detached way. I am practised in doing that because I have done it for a long time. It is difficult for members of a jury to do that, although they usually managed when it was impressed on them. Judges, defence counsel and the member for Innaloo would also stress this. The batch of legislation before the Parliament has the capacity to be highly charged and emotive. I have been presented with diametrically opposed views from many people in my electorate. People have written to me and threatened to mount strong campaigns against me if I do not behave in a particular way in the Parliament. I am sure other members have also experienced that.

The Social Responsibilities Commission of the Anglican Church is chaired by Reverend Dr Anna Killigrew. The main story of the commission's October 2001 edition of *Justice Perspectives* is "Homosexual Law Reform: SRC sets its agenda" -

> 2. Amendments to family law:
>
> > Purpose (a): to give all de facto couples (heterosexual and homosexual) access to similar property rights and processes as married couples have under Family Law legislation.
> >
> > Purpose (b): to enable superannuation benefits to be retained by homosexual partners and de facto partners upon dissolution of a relationship.
> >
> > *The SRC supports the changes to these family law areas.*

I am cognisant that the chairperson of the Social Responsibilities Commission is the reverend at one of the parishes in my electorate.

The majority of people understand that there is a difference in the level of commitment between a de facto relationship and a marriage. I recognise that marriage is a definitive public statement that two people make about each other. Of course, it should be noted that in this State gay and lesbian couples cannot marry, and therefore will never be able to publicly demonstrate that level of commitment. I make no comment on that proposition at this stage. It is my view that the only reason marriage is a higher institution than a de facto relationship is the professed commitment married couples make to each other. However, I believe that many of my constituents are of the firm view that persons in de facto relationships should not be denied property rights equivalent to those given to partners in a marriage. Many injustices occur when relationships break up, especially with the distribution of property. It is often hard for someone to prove that she contributed financially to a relationship. Such matters currently go through a tortuous process in the Supreme Court. We have seen many reports in the newspaper of inequitable results for mainly women because they are not accorded certain property rights by law. One often hears the word "contribution" in relation to marriage or de facto relationships. We often hear that the homemaker's contribution is less than that of the partner who goes out to work from nine to five. I have been in both positions. I was a homemaker for 20 years, although I ran family businesses at the same time. I was a crown prosecutor for many years, which is a typically male position, while raising two children. There were many nights when I would have loved to have gone home to someone like me when I used to stay at home, who had done all the washing, ironing, cooking and cleaning. The love and warmth that person gives is invaluable. It is not valued, but it is invaluable. I have been on both sides, and I appreciate the contribution of a loving wife and mother - or, if the woman goes to work, father and husband.

Other jurisdictions in Australia have already conferred these property rights on de facto couples. The Australian Capital Territory has enacted the Domestic Relationships Act 1994 and New South Wales has the Property (Relationships) Act. Victoria also has similar legislation. It has been pointed out that Western Australia is putting these provisions into its Family Court Act. That is possibly because Western Australia is the only State that can do that. The Attorney General might be able to tell me the reasons for putting these provisions into that Act. Mr Hartcher of the New South Wales Parliament said during the second reading debate on the Property (Relationships) Legislation Amendment Bill on I June 1999 -

> Marriage of course is a Federal matter, in any event. The New South Wales Parliament under the Federal Constitution has no power to make such a law.

Can the Attorney General shed light on why the Government did not introduce a separate Act for de facto couples, as has been done in other jurisdictions?

Mr McGinty: You are perfectly right; marriage is a commonwealth responsibility, and only the Commonwealth can enact a law relating to marriage. We are fortunate that, having a state family law court, we can give that court powers, which no other State is able to do. It is one of the benefits of our model, which is unique in Australia. The federal Attorney General, Daryl Williams, and others want the States to refer to the commonwealth powers over de facto property for inclusion in the Family Law Act. They would like to do what we, by this legislation, are doing.

Ms SUE WALKER: Is this legislation modelled on any legislation from other States?

Mr McGinty: Model legislation has been drawn up by the Standing Committee of Attorneys General.

Ms SUE WALKER: Does that come from any other State, such as New South Wales or Victoria?

Mr McGinty: Most of the other States have, to some degree, based their definitions and provisions on that model legislation. I will speak about that in my reply. Model legislation has been drawn up. The definition in this Bill of a de facto relationship comes from that model legislation. The Bill goes further in some respects. The model legislation contains options, to which each of the other States looked to inform its legislation.

Ms SUE WALKER: The definition of a de facto relationship in the Attorney General's legislation is different from that in the Family Court Act. I am not sure why that is. However, this is my tentative view of things and I am sure the Attorney General will return to the matter.

I have spoken on my perception of the status of marriage but I do not wish to diminish the status of a de facto relationship. It is a simple and well known fact that people in these relationships are closely committed. Often, married couples stay in relationships for too long because of the fact that the money will be carved up. They stay in loveless marriages - I have seen them - so I do not wish to diminish the status or level of love and commitment in a de facto relationship. However, I am pleased that there are provisions for what could be called prenuptial agreements. This makes more sense - some people do not agree - especially for older members of the community who have acquired assets and wish to ensure that they do not lose them or are manipulated away from them in future relationships.

There would be less criticism of this Bill if the amendments were dealt with separately from the Family Court Act. As I discussed with the Attorney General, Western Australia is the only State that has dealt with this matter by amending family law legislation.

The de facto relationship is given a different status to marriage in these amendments. I have not examined it closely but I will before the third reading because there are certain threshold requirements for a de facto couple that do not exist for a married couple. A married couple would presumably have only to produce their marriage certificate to gain access to the provisions of the Family Court Act. A de facto couple does not have to provide a certificate. However, there must be a serious injustice to a partner or a child under 18 years, or the relationship must have been of two years duration, with a third of the relationship being in Western Australia. They must also establish that such a relationship existed using the criteria in proposed section 205V. However, I am not a family lawyer. Importantly, married persons need only the certification as far as I know.

Although I wholeheartedly support the enactment of the property rights for de facto couples - that includes heterosexual, gay and lesbian couples - I am not concerned as much as other members about the retrospective nature of this legislation. It has been known to be coming for sometime and there has been plenty of warning. In any event, de facto couples have certain access rights to the Supreme Court, and this just makes them more hard and fast providing that they come within the set criteria.

I am concerned that the rights of spouses are not trampled on. Some of my learned colleagues have raised the issue today with regard to the rights of a married man or woman who leaves a relationship with most of the property in his or her name, and then starts a de facto relationship. We must ensure that this legislation does not trample on the right of the person who was prepared to fully commit to a marriage.

I want to determine whether a de facto-type bigamy can exist and whether a person entering a de facto relationship appreciates that the person he or she will be living with is able to have a series of de facto relationships, known or unknown, that can affect property rights without his or her knowledge. That is an important concern and I want the Attorney General to shed some light on that issue because it raises serious questions.

Mr Omodei: The penalty for bigamy is five years.

Ms SUE WALKER: However, it is only bigamy if one is married. In a de facto relationship, one can have 20 partners and any of the partners might think that they have a half equity in certain properties, as may the other de

facto partners. It is very important that that does not happen through this legislation. I will be interested to hear what the Attorney General says on that issue or whether he can, during the consideration in detail stage, point me to provisions that will make that impossible.

Mr Hyde: Does that also apply to someone who has been married three times and whose third wife is not aware of the first marriage?

Ms SUE WALKER: There are penalties for that. No, I do not think so.

Mr Hyde: In a de facto relationship, it must be proved that the relationship has been a two-year commitment.

Ms SUE WALKER: Yes, that can be done. It could be two years. Is there a provision stating that it must be a relationship within a certain time? Does the member understand that if the relationship is broken for two years -

Mr Hyde: I am saying that the same applies to marriage.

Ms SUE WALKER: No, it is not because certain penalties apply. It is an offence to commit bigamy and that is why people do not do it.

Mr Hyde: No, but it is not bigamy.

Ms SUE WALKER: It is bigamy. There is an offence called bigamy for married couples, but someone can have a series of -

Mr Johnson: I think the member means that if the person was divorced and then married for a third time.

Mr Hyde: Yes, it is a divorce situation in which wife or person number three thinks that she is equally sharing with wife number two, but there could be others. It is the same situation, whether de facto or marriage.

Ms SUE WALKER: I do not really understand that.

The Social Responsibilities Commission has written to me seeking my support for the legislation concerning discrimination against homosexual people. I need to take all of these matters on board in my final view. I support this legislation but I will make sure that anomalies do not occur because of a lack of thorough examination of the legislation.

**MR MARSHALL** (Dawesville) [5.58 pm]: I have been married for 41 years and do not agree with what the member for Rockingham said - that there will be little backlash and comment about this legislation - because I have already received some comment. It is usually from people who are from the old brigade - old codgers, as they have been described. In a perfect world we are wrapped around the philosophies of life, religion and morals. Therefore, in a changing world we are inclined to break away from the ethics of religion, or at least the younger community is. Some young people have never had a philosophy of life to help them know where they are going, and the morals of our community are going downhill. I have always tried to live by the philosophy that in a winning team, the champions endeavour to lift the average players to their level, instead of a losing team dragging the champions down to a lower level of performance.

In the amendments to the legislation, there are two issues, one with which I am very happy, and the other that I do not understand enough to agree with. The first, and the most significant, of the changes introduces a mechanism by which de facto partners can resolve property and maintenance disputes in the event of a breakdown in their relationship. I know plenty of people living in de facto relationships who would agree with that. I agree with it because some people say their vows with all of the commitment their religious beliefs and morals can muster, but as soon as things get tough, the relationship breaks down and ends in divorce. When those people re-enter a relationship they are nervous and less optimistic about making vows again. Therefore, they live in a de facto relationship - like a marriage - but they have not gone the whole way as some people would like. Yet, they deserve the right to split the property, if there is something to split.

The Bill expressly provides that it does not matter whether the persons are of a different sex or the same sex, or whether either person is legally married to someone else or is in another de facto relationship. I do not altogether agree with this area of the Bill because it is something that I have had my head in the sand about. That is why there will be an upsurge of comment in the community about this Bill. The younger generation may have to take me aside and fill me in on where their morals, their philosophies and religion fit into that particular statement.

*Sitting suspended from 6.00 to 7.00 pm*

**MR JOHNSON** (Hillarys) [7.00 pm]: I state clearly and firmly at the outset that I oppose this Bill, certainly in its present form. I may have a different view if the Attorney General and the Government are prepared to accept

all of the amendments that the Opposition intends to move during the consideration in detail stage of this legislation. Let me lay open to the House my views, principles and morals. I am a person who I believe lives his life according to Christian values. I am not a frequent visitor to the church, but that does not mean I do not live the life of a Christian with those very true values. I hold, and many people hold, the value of marriage and the family as paramount in our society to enable us to have a stable, fruitful and well adjusted community within Western Australia, and perhaps the whole of Australia and the world.

I can speak from experience of marriage and break-ups. I have been married twice. I am very fortunate that my marriage at the moment has lasted for 33 years and I have four wonderful children - two children from my current marriage and two children from the previous marriage. I know what it is like to live during hard times. I know that some members on the government bench seem to look at me and think that I am a rich man and I am a very fortunate person, but I have not always been in a position where I have considered myself to be comfortably off. I do not consider myself to be rich; I consider myself to be comfortably off. During my lifetime I have experienced what a single parent experiences. I have been a single parent for a period of my life. I know that the values of the family, and of children in particular, have seen me through those very difficult times and have helped me in my vision and my outlook towards life and other people.

I disagree with various parts of this Bill. I have been lobbied by many people in the community of Western Australia, and in my own electorate of Hillarys, and I wish to look at both of those aspects. One of them is fundamental, and the other can be changed with some amendments. I agree wholeheartedly with many of my colleagues who have spoken already. The member for Kalgoorlie pointed out that this legislation is not good legislation. By that he means it is not well drafted. I think he described it as equal to a pair of fish-net stockings because there were so many holes in it. I concur with that. It is not good legislation, and I am surprised that the Attorney General, who has a law degree, would bring such legislation into this House. I know that he is not personally responsible for the drafting that was done by parliamentary counsel, but at the end of the day he has to carry the responsibility for bringing the legislation into this House. If he had had a bit more time to really scrutinise this legislation, it would be a much better Bill in its content and its possible future outcomes.

I totally disagree with the suggestion that same-sex couples should be regarded in the same light as people who have committed themselves to the status of marriage - and that is a legal status, recognised by the Commonwealth and throughout the world. I agree with the member for Kalgoorlie when he said it was like social engineering. The Government is bringing in this legislation to try to help people who are of a homosexual or lesbian nature. I have friends who are homosexuals, and they are good, decent people who lead good, decent lives. I have no problem with that whatsoever. I do not have any friends who are lesbians; at least I do not know of any friends who are lesbians.

Ms McHale: They don't look any different, you know.

Mr JOHNSON: I agree, one never can tell, but if they are, good luck to them. They do not have two heads, I agree. What I am saying is that the people whom I class as my friends, who are either homosexual or possibly lesbian, should never be discriminated against as perhaps they have been in the past. For instance, it is totally wrong - it is immoral - that they should be discriminated against holding a job. Before I emigrated to this country, I had a property which was rented out to two homosexuals, and they looked after that house better than any other tenants. They kept the house clean and tidy and did not trash it. They treated it as I believe tenants should treat a property - with respect, cleanliness and hygiene. So I am not opposed to homosexuals. I want that to be clear. Some people will say I am homophobic but I am not.

It is a fact that homosexuals are a very small minority of our population. Whatever they do is for them to do, as long as they do it in the privacy of their own home. I do not believe they should commit sexual acts in public, just as I do not believe heterosexuals should commit sexual acts in public - so there is no difference there whatsoever. Giving homosexuals and lesbians the same legal status as a married couple who have gone through marriage vows and have formed a union that is recognised by law is demeaning to that marriage and that family unit. Over the years morals and standards have dropped. Many years ago we did not have things like gay Mardi Gras and we did not have the sorts of standards that a lot of people seem to accept these days. They may not agree with those standards but they accept that they exist. I do not believe that we as a Parliament are doing our job properly if our decisions do not include a consideration of moral values. The Attorney General will probably disagree with me and say that moral values and moral thoughts should not enter into legal matters, but I think that is the case.

Mr McGinty: It is substantially for the individuals. In my view, we would not want to have our laws cast to project a monoculture when it came to morality. Obviously, there is a moral underpinning to the legislation that is brought forward. The moral underpinning to this is equality.

Mr JOHNSON: I know that that is the Attorney General's view. I disagree with that view. I believe that we do not have to raise the legal status of people of the same sex who live together and who share relationships, whether they be sexual, financial or whatever. They should not be put in the same category as those people who have entered marital relationships for hundreds of years and who give full-time commitments. That is the norm. The married status of a man and a woman with, hopefully, children is the norm. The situation of same-sex couples is not the norm. Whether or not members agree with it, it is not the norm. It is a very small minority. We should not be changing our laws simply to give same-sex couples the same legal status as married couples. I have a fundamental difference with members opposite, who I know disagree with me.

In relation to de facto couples - by that I mean the normal de facto couple of man and woman - this Parliament has a duty to ensure that they have equal access to the law to divide property once they have formed a stable relationship. I do not agree with two years; two years is a ridiculous time. If members stop and reflect on someone whom they have known for two years and with whom they have lived in an intimate relationship, they will realise that two years goes like that - with a couple of clicks of the fingers.

Mr Barnett: Sometimes it can seem like an eternity!

Mr JOHNSON: It can; it depends on how well people get on. I know many people who live in a de facto relationship. That is their choice. Some of those de facto couples have children. I would not call that a family unit. Although it is a family unit in much the same sense as a normal married couple with two or three children, it does not have the legal status of a marriage with children. Nevertheless, those people should have similar access to the courts and should not have to go to the enormous expense of going to the Supreme Court to sort out their financial situation should they decide to separate. When children are involved, those situations should best be handled in the Family Court, because that is a family. If it is just two individuals - a man and a woman - who have a relationship and then decide to split, there must be another avenue, other than the Family Court, through which they can sort out the division of property.

Most people these days, whether they are a married couple or whether they are in a de facto relationship, normally have their property in joint names. As far as I am aware, they are better off tax-wise if they have the property in joint names should they sell it. I do not know all the tax reasons; I am not an accountant. However, I am told that most couples would have property in joint names, and so they should. I do not know a great deal about trusts, which the member for Rockingham was talking about earlier, because I have never heard of them. However, if a man and a woman buy property, why would they bother to go to the trouble of creating a trust in which one is the trustee and the other is the benefactor?

Ms Radisich: Beneficiary.

Mr JOHNSON: Yes, beneficiary. I cannot understand why they would go to that convoluted degree to buy a property. Why not buy it in joint names? I can immediately think of two people I know who have bought a house in joint names. I cannot understand why they would need to go down that other avenue.

Notwithstanding all of that, two years is much too short. I would have thought a minimum of five years would have been enough time to give people access to a court situation whereby a court can decide. At the end of the day, the general public pays for the court to sit and listen to the application to split the property which those two people have jointly purchased or which one person has purchased, and half of which the other wants to claim. That is a public expense. I would have thought that it was an expense that the public should not have to bear for such a short-term relationship. It should be at least five years. Some of my colleagues think it should be longer, and I do not disagree with that. The minimum should be five years, because two years is much too short.

I am also totally opposed to the retrospectivity of this Bill. At the end of the day, the Attorney General will sit there, make notes and at some stage he will respond. However, I doubt whether he will accept any of our amendments.

Mr McGinty: You never know, do you?

Mr JOHNSON: One never knows, but I would almost put money on it. The Attorney General did the same thing with the one vote, one value legislation. He listened and I thought that he might take on board one or two matters, but at the end of the day he did not accept any of them.

Mr Barnett: How is that Bill going? Not too flash, is it?

Mr JOHNSON: No, not too flash, and this one will go the same way. If the Government uses its numbers to pass this Bill and get it through this House, which it can because it has the numbers, when it gets to the other House, where it does not have quite such strong control over the numbers - I know the Greens (WA) will vote with the Government nearly every time - we will see more commonsense come into play. The Bill will probably go to a committee and we might find that some amendments are recommended. I hope there will be some amendments. I cannot support the Bill as it is stands at the moment. I give the Attorney General notice of that now.

I was looking through the clause notes that came with the Bill. I found quite a few bits with which I would have difficulty agreeing. One of them was the meaning of de facto relationship. It says that a de facto relationship is a relationship other than a legal marriage between two persons who live together in a marriage-like relationship. The Attorney General includes same-sex couples in that definition; however, they do not live in a marriage-like relationship. They are contradictory terms. The Attorney General will have a problem with that. Many people have lobbied me, written to me and e-mailed me, and that is a problem that many of them have. They have a problem with the prominence that the Attorney General appears to be giving to gay and lesbian people. Some people say that it will almost be mandatory; that is, in the not-too-distant future, they will have to be either one or the other.

Mr McGowan: That is ridiculous!

Mr JOHNSON: No, it is not. The member for Rockingham was missing in action. I quoted him a little while ago. He should have been here at seven o'clock, when he is supposed to be here. I said earlier that -

Mr O'Gorman: They are not making homosexuality compulsory.

Mr JOHNSON: Some of us are afraid that they might.

Mr McGowan: Who will make it compulsory?

Mr JOHNSON: That lot over there. Members opposite have such a thing about homosexuality that we are worried that they might make it compulsory one day.

Mr D'Orazio: You are being ridiculous!

Mr JOHNSON: No, I am not being ridiculous; I am using a bit of licence. I have no problem with homosexual people. However, I do not like having it -

Mr McGowan: Living next door to you.

Mr JOHNSON: I have had them living next door to me; they lived in one of my properties, and they were the best tenants I ever had because they kept the place clean and tidy. However, people are sick and tired of it being thrust in their faces. I was going to use a different term, but I thought better of it. Heterosexuals do not have heterosexual parades.

Mr Hyde: Of course they do.

Mr JOHNSON: No, we do not. Yet, the gay and lesbian people want to perform in Sydney and Northbridge. Most Western Australians -

Mr McGowan: You do not have to go there if you do not want to.

Mr JOHNSON: I would not go in a fit. Why would I want to see people prancing around like that?

[Leave granted for the member's time to be extended.]

Mr McGowan: I am sure I saw you in one of the floats; you had one of those masks on!

Mr JOHNSON: No, the member did not see me on one of those floats. I have never been into leather and whips, except when I used to ride horses.

Why do we have to have it thrust upon on us? Why do we have to have such exhibitions of this type of behaviour?

Ms McHale: You are so stereotyped.

Mr JOHNSON: I know that is a stereotypical attitude. The member for Thornlie was in the Chamber earlier when I said that I live with Christian values and pretty high morals. I accept that a small minority of people in Western Australia is either gay or lesbian, which is fine; what they do is entirely up to them. I feel sorry for

them. I feel sorry for homosexual men because they are missing out in so many important areas of normal life. The wonders of marriage and having children of one's own is a wonderful thing.

Mr Hyde: Do you feel sorry for childless heterosexuals?

Mr JOHNSON: Of course I do. If they want children, I hope that we could do everything within our power to ensure that they do have children.

Mr Hyde: Soon we will introduce the IVF Bill.

Mr JOHNSON: I know.

Mr D'Orazio: The debate is about property rights, not about your moral judgments.

Mr JOHNSON: This place makes moral judgments every day that we sit.

Mr D'Orazio: This issue is about property rights.

Mr JOHNSON: I know.

Mr Templeman: Now I know why we should not support cloning!

Mr JOHNSON: I agree with that entirely, because I would not like to see some members of this House cloned. God help us if they were!

Mr Barnett: It is interesting that we are debating part of the Labor Party's social agenda, and yet its members are making fun of it.

Mr JOHNSON: It is the Labor Party's agenda and look at the behaviour of members opposite.

Several members interjected.

Mr JOHNSON: Why were my comments hypocritical? To answer that interjection, I do not have prejudices against homosexual people. Earlier, I said that I did not agree with discriminating against homosexual people in nearly every aspect. However, as my colleague the member for South Perth said, we discriminate every day of our lives. We discriminate against people who commit crimes.

Mr Whitely: Because it hurts other people and infringes on their rights.

Mr JOHNSON: We could argue whether certain homosexual behaviour hurts other people, but we would denigrate the debate and should not go down that path. In the normal sense of the word, there should not be discrimination against homosexual or lesbian people. However, we should not give them the same legal status as people who are legally married; that is, the normal family unit of mum, dad, and one to five children.

Mr O'Gorman: Is that your definition of a normal family?

Mr JOHNSON: Yes.

Mr O'Gorman: Therefore, you are saying that a family like mine is not normal.

Mr JOHNSON: Your family is normal. The member for Joondalup is talking nonsense. I commend him for taking a foster child into his family. I wish he would take two or three; that would be great because there would be two or three fewer children at risk. I am sure that the member is a wonderful foster parent. The member for Joondalup should not muddy the water by saying that I do not believe that a normal family is one that has children of their own and a foster child; that is nonsense. I commend the member for it and I hope that more normal families take foster children because there are plenty of children at risk. However, I do not want children to live with homosexual couples. That would put them at more risk. Certain members will disagree because they have particular interests.

Mr D'Orazio: What about de facto couples who are great parents?

Mr JOHNSON: I do not have a problem with de facto couples who have been in a stable relationship for five years. Two years is nothing -

Mr McGowan: Two years is longer than most marriages.

Mr JOHNSON: The member is talking absolute nonsense. I have been married for 33 years. How many years has the member for Rockingham been married?

Mr McGowan: Nearly five.

Mr JOHNSON: If I were to ask how many members around the Chamber have been married for longer than two years, I suggest that virtually all the members in this Chamber who either are or have been married, have been married for longer than two years. The member's argument is nonsense. We must bring some sense into this legislation. The only way we can do that and the only way I can support it is in the instances to which I have referred. It is important that the legislation must not be retrospective. A couple in a de facto relationship should be defined as having spent a minimum time of five years together to have formed that relationship. They should have equal access to the law in the Family Court if they have children. If they do not have children, they should be dealt with in some court other than the Supreme Court. I hope the Attorney General will listen to some reasonable amendments that will be put forward we because if he does not, I will vote against this Bill.

**MR HYDE** (Perth) [7.37 pm]: I support this Bill in its totality. I commend the members for Nedlands and Kimberley on their comments. There has been a lot of depth to those comments. I share a border with the member for Nedlands. Many of the issues that her constituents raise with her are similar to those that my constituents raise with me. In my electorate, 70 per cent of people are either in a single relationship or are a couple without children. A number of members have spoken of a mythical, perfect past with mum and dad, two kids and the dog. Let us remember the hidden family abuse and problems in those families. The member for Nedlands mentioned how there were and still are people who remain abused within marriages.

This Bill strengthens the institution of marriage. It is important to consider the definitions. I thank the member for Alfred Cove for the discussions we have had. The Bill clearly says that we are talking about marriage-like relationships. This is the legal definition. It is "marriage like", not marriage. It is not equating a de facto, a same sex, transgender, an intersex or an androgynous relationship with marriage. It is not saying that it is the same as marriage. A zebra is a horse-like animal; it is not a horse. A de facto relationship is a marriage-like relationship; it is not itself marriage. Marriage is a particular religious and ceremonial institution which is different. The legal definition is that a relationship must be "marriage-like"; it is not equating the two. This legislation is about human rights. It is affording human rights to people in interdependent relationships. The federal Migration Act speaks about interdependency, and the norm there is a relationship of two years, as it is everywhere in Australia except for South Australia, where it is three years. Those of us who, as local members or mayors, have dealt with immigration cases, will know that, for people to prove that they have been in a marriage-like relationship for two years, a photograph or a piece of paper is not enough.

Mr Johnson: They do not recognise same-sex relationships in that respect.

Mr HYDE: Yes, they do, and the Liberal Party voted for it. The federal Migration Act clearly talks about interdependence, and 180 couples in Australia each year in such relationships are treated equally as being in marriage-like relationships. It is wonderful legislation, and I commend the federal Liberal Party for voting for it many years ago. We have been given some other examples during the debate tonight about what is the norm. When I look around the Chamber I see a predominantly middle-aged, white, heterosexual gathering of law makers -

Ms McHale: They are also mostly male.

Mr HYDE: I thank the member for Thornlie - that was the other important word. This House is talking about Western Australian society, but I am sure that all members know that Western Australian society is not reflected in the make-up of this Chamber. The member for Nedlands, the member for Kimberley and others touched on that. Irrespective of whether a relationship is same-sex or marriage, women are incredibly disadvantaged in these situations. A fly in, fly out relationship was mentioned earlier. Somebody who is being selfish and wanting to protect property rights has no compulsion now to formalise, ceremonialise, or religious-ise a relationship by getting married, because that would confer property rights. This legislation says that if a person is in a marriage-like relationship, he or she will not be able to hide or to avoid responsibility. There is no discrediting of marriage; rather this strengthens marriage for those who are concerned about that institution.

I will finish by reading an article that was published in *The Times* of London this week, written by the Conservative shadow Chief Secretary to the Treasury. I declare a bias in having a cousin who is a member of the Tory front bench, but this is not he.

Mr Pendal interjected.

Mr HYDE: It is very interesting that this is the Tory party that has been through two defeats. There are parallels with Western Australia. I have appreciated the range of views from the members opposite in this place, who are either very progressive and sympathetic towards human rights or perhaps have a more traditional view. I respect

that view, and I know it reflects what is in society. I will briefly quote from this article from the shadow Chief Secretary to the Treasury, John Bercow -

> I began the last Parliament, my first, as a supporter of the differential between the heterosexual age of consent and that for gays. Even when I voted for what was then the status quo, I was not sure that I was right. So I went away and talked to gay people. I discussed the issue with churchmen. I read widely. As a result, I changed my mind. There seemed to be no good reason for statutory discrimination. Ethical and health arguments pointed conclusively to equalisation of the age of consent.
>
> Though that issue has now passed, others on the gay rights agenda demand our attention.
>
> I was delighted by Iain Duncan Smith's commitment to review our party's position on Section 28.

Iain Duncan Smith is the new Tory leader, and a very right-wing man. Section 28 in England was the equivalent of the Foss amendment here, which forbids saying anything nice about gays in schools. To continue -

> Reviewing something does not automatically commit us to changing it, but, manifestly, it presupposes the possibility of doing so.
>
> We must not approach any review in a party political manner. Let us look at Scotland, where Section 28 has been abolished; at Northern Ireland, where the section has never applied; and at the Government's Sex and Relationships Education guidance, issued in July 2000, which is a sensible starting point for debate.
>
> Tories must recognise that in the last Parliament we were widely and justifiably regarded as shrill, homophobic and eerily detached from the reality of the lives of a great many of our fellow citizens. In this Parliament, nothing that we say on this or related subjects should reinforce that image. Instead, we should take all reasonable steps to change our image for the better.
>
> To this end, instead of waiting for others to lead the debate and then simply reacting to them, we should look at discrimination against same-sex partners. For example, lesbian or gay partners are not recognised as next-of-kin for hospital visiting rights or decisions relating to hospital treatment. They have almost no say in the treatment of a partner experiencing mental health problems.
>
> Anyone who registers a death on a death certificate must indicate the capacity in which he or she performs such a task, for example "a spouse", or "a relative". But a same-sex or unmarried heterosexual partner is not able to register as "a partner". He or she must register as a "person present at death" or as a "person who is causing disposal of the body".
>
> In principle, it is hard to see how such examples of discrimination are justified. In practice, it is easy to see how insulting and hurtful such an experience must be for a bereaved partner.
>
> Another issue that has been catapulted into the public debate in recent times is that of the civil partnership register . . .
>
> However, a Conservative argument can be made for such an arrangement. Indeed, such arrangements are becoming increasingly widespread. They exist in Belgium, Denmark, France, Germany, Norway, Iceland, Spain and Sweden. In debating this issue, we must not speak or behave in such a way as to imply that the inception of such arrangements in this country would mark the end of civilisation as we know it. Tory contributions should be constructive, measured and indicative of our respect for others' sexual orientation and for their political views. We must end - once and for all - the "cold war" between the Tory party and the gay and lesbian community.
>
> The party is at its best when it is prepared for change, ready for change, willing to embrace change as an ally. Far from threatening our society, sexual equality can strengthen it by bringing people who feel excluded into the mainstream and removing sources of division.
>
> Conservatives must aspire to lead Britain as she is, not Britain as she was. That, after all, is the essence of the whole Conservative tradition in British politics - enduring principles in a changing context. I believe passionately in the principles of one nation and equality before the law. Those principles should apply as strongly to lesbians and gay men as they do to every other citizen of modern Britain.

I do not seek to convince many of the members opposite.

Mr Johnson: Does the member for Perth believe that homosexuality should be promoted in schools?

Mr HYDE: The issue is about human rights.

Mr Johnson: The article the member for Perth just read is all about section 28, which has to do with the promotion of homosexuality in schools.

Mr HYDE: The member for Hillarys is correct, but it is not a question of promotion, it is about equal rights. In terms of property rights this Bill is purely about equal rights and human rights. Let us not get bogged down in the terminology; let us acknowledge and celebrate the great diversity in our society, and support this Bill as a great step forward for Western Australians.

**MR EDWARDS** (Greenough) [7.39 pm]: I have some difficulty with this Bill. I have always taken the view that I am broad minded in my thinking. I suppose my philosophy is that there but for the grace of God go all of us. I will deal with three parts of the Bill; that is, marriage relationships, de facto relationships and same-sex de facto relationships. I will not go into too much detail on them. I want to keep my remarks reasonably broad and general, because the amendments that will be put forward by members on this side of the House will probably help me to make a decision about where I stand on this legislation.

First, I will deal with the issue of marriage. Marriage is a situation into which two people put themselves. They make vows and a legal commitment for life, or whatever may be the period of their marriage. I am not naive enough to think that all marriages last. Plenty of members in this Chamber have already made that point. However, there is a distinct difference between marriage per se and a de facto relationship. I do not want to get myself too tied up in the qualifications of either of those two issues. However, I believe that there is a distinct difference, and that because of the legality of the vows and the other commitments made in marriage, in comparison with a de facto relationship, certain areas must be defined.

Marriage is a commitment. It is made by two people for a reason. A de facto relationship is different. It is a partnership, but perhaps it is seen as less of a commitment than is marriage. It does not have perhaps the same responsibilities. Although a de facto relationship can be lived as a marriage, I do not believe it has the same requirements as a marriage. Because of that, if there are children from a de facto relationship, that becomes an issue. However, that is a separate issue, and I will probably not follow up on that. I do not know whether that falls under the provisions of this Bill. I question whether that is an area that the Family Court Amendment Bill covers. However, to some degree, it probably can and does cover property, work contribution and those other issues that arise in a de facto relationship.

I do not believe that the time factor of two years is long enough. It should be at least five, six or seven years before a de facto relationship is recognised. I understand that the percentage of de facto relationships is only 10 per cent nationally and 12 per cent in Western Australia. In percentage terms, that is not a great number of people. However, that does not mean that we should not address the issue, and I understand it is important that we do so. Nevertheless, I reiterate that the time factor is not long enough.

I move to the question of same-sex de facto relationships. Again, that issue should stand outside the Family Court Amendment Bill. I respect the way people wish to live. If it is their wish to do so in a same-sex relationship, so be it. It is not for me or anybody else to tell them to live differently. That is a choice they make, but it is different. I recognise that there is a difference, and I suppose that is what I am trying to point out. I believe that there should be recognition of the three areas about which I am talking. There should be recognition of marriage in its place, de facto relationships and same-sex de facto relationships, or whatever they may be. However, I do not think those last two areas should necessarily fall under the provisions of the Family Court Amendment Bill.

I do not wish to be seen as prejudiced or discriminatory. I am not. I have many friends, as do other members in this place, in the gay and lesbian world. Some of them are very good friends. I respect their reasons for being what they are. However, I do not necessarily need that fact shoved down my throat. That point has already been made tonight.

I go back to the small percentage about which we are speaking. I suppose it comes down to minorities, which, by their nature, make a lot of noise and tend to be highlighted in the media, etc. I have a problem with that. Mr Acting Speaker (Mr McRae), you will probably gather that I am speaking a little more from my heart than from my head. However, that is an area with which I have a problem. Nevertheless, I do not want to be seen as discriminatory. Whether we should legitimise same-sex de facto relationships is again a question with which I have a problem, and I must tussle with it.

I know that members on this side of the House have amendments to put forward. At this stage, I will leave my decision on whether I do or do not support this Bill until those amendments are put. I will probably make up my

mind at that time. I do not believe this legislation should be retrospective. That issue has been talked about at some length. If the Bill is to come into force, it should look to the future rather than to the past; that is the way it should be.

I do not have an awful lot more to say on this legislation. A great deal has already been said on it and, if I said anything more, I would only repeat what has already been said. I conclude by saying that I believe there is a difference between marriage, de facto relationships and same-sex de facto relationships. It is important that we keep them in their proper place, if that is the right way to put it. With those words, I think I have covered most of what I wanted to say on the issue.

**MR McNEE** (Moore) [7.47 pm]: As the member for Greenough just said, most things that could be said have been said, and it is not my intention to repeat them. However, this is a confusing Government. It declared war on country people. By the way, the Government is having a few secret meetings in the country. It should tell members on this side about them, because nobody knows about them. Nonetheless, in a couple of weeks the Government will say that it went to the country and consulted the people.

The Government has now declared war on marriage. It thinks that is another good thing on which to start. It thinks it should get stuck into marriage, because it is the last bastion of decency in this country. People can say what they like, but marriage is based on a long-term commitment. People do not rush into a marriage next Wednesday week; they make a commitment.

Mr Murray interjected.

Mr McNEE: I will bet the member for Collie that more of his constituents agree with me than agree with him. However, never mind; he has already thrown himself to the lion's den on the Electoral Amendment Bill. I cannot help him.

Marriage is based on a long-term commitment, love, understanding, and an honest endeavour to get along. I know that does not happen in every case, but marriage cannot be blamed for that. Unfortunately, it is the people who are to blame, and that is what happens. I regret that so many marriages fall apart. In the event that happens, there is a procedure that allows for some sorting out of the problems.

I saw an interesting program a year or so ago - I think in this State - about marriage break-up and what to do when it happens. Not one sentence was spoken about reconciliation. Are we serious about these matters? It is complicated. Like a few of my colleagues, I have been married for more than a year. My wife and I started with not a heck of a lot and we have a bit more today. God bless someone who tried to sort it out, because I do not think anyone could sort out who was responsible for what.

One thing the Whitlam Government did was to declare war on motherhood. The Attorney General might laugh, but that is what happened. He might not have a long enough memory, but I certainly do. The Whitlam Government decried marriage and pushed it down to be not even a profession. Make no mistake - it is the greatest profession any woman in the world can have! It criticised marriage. Members may remember that the Whitlam Government encouraged single motherhood. It said, "Get on your backs girls and we'll support you."

Several members interjected.

Mr McNEE: That is what the Whitlam Government did. Labor members might not like it, but it did. Couples today, whether they are married or in de facto relationships, live under huge pressures. Both partners are expected to work. It is extremely difficult for them, because they are put under huge pressure.

Mr Kucera: Especially since the goods and services tax.

Mr McNEE: It is the sign of a beaten mob when it has to talk about the GST. What a mob! Talking about the GST is the best the Government can do on a serious issue like this. This legislation is worse than that.

Mr McGowan: I have heard that there are a lot of homosexuals around Dandaragan.

Mr McNEE: I do not know anything about that. If the member for Rockingham knows about that, it is up to him. I do not see that it has anything to do with this debate. The Government is authorising the stripping of the rights of married people under the guise of providing smoother legal proceedings for de facto couples. Is that a real attempt to do something? This Government does not care what it is doing; it has no concern about that. Can members imagine a couple who have been married for X, Y or Z years - however long members like - and the man runs off with somebody -

Mr Kucera: Another bloke.

Mr McNEE: That is what the Government is suggesting he can do. After two years, if the man died from whatever cause, his wife could be left destitute. If she were fortunate enough to be still living in the family home, she could be forced to sell it. If that is what the Government calls well thought out legislation, I will go for tiggy tiggy touchwood or whatever one calls it. It is impossible and I could not believe it. Two years is nothing. Government members should think about that. Almost 25 per cent of this Government's term has gone. It has three years left.

Mr Barnett: Do you reckon this Government will last four years?

Mr McNEE: No! It will not because it will probably bring back the premium property tax and will put it on farms once it has taken away our vote. The Government would love to diminish the vote of country people, but it will have a fight on its hands before that can happen. Two years is a short period; the Government is talking about it being a test. I cannot believe that the Government would do that. As many of my colleagues have said, this legislation gives the first official recognition of homosexual relationships in Western Australia. I do not have any quarrel with people who want to be homosexual. I would not know; it has nothing to do with me. However, as my colleagues have said, I do not want them to flash it out at me all the time or to push on to me that I should be in that category. Why should they promote homosexuality? There could be an "I'm about average" parade, but nobody would go.

Mr Johnson: I would go, Bill.

Mr McNEE: That would be good. The worst part of this legislation is that a person in a de facto relationship, whether male or female, could be just 16 years of age.

Mr Johnson: They could have two or three de facto relationships going on at any one time.

Mr McNEE: That is probably the beauty of it, I suppose.

Mr Johnson: A person cannot have two or three wives or husbands, but can have two or three de facto partners. They are not breaking any law and they are happy to do that.

Mr McNEE: That is the ridiculous part about it.

Mr Johnson: They would all be considered de facto relationships.

Mr McNEE: What a mess that would be to sort out. I wonder whether A, B or C would be the current or senior partner? Oh my God, it does not bear thinking about, let alone trying to sort it out. I understand that the State would be paying that bill. I can understand that people want to live in de facto relationships, but if a person was going into one of those relationships, would he not go to a lawyer to sort things out on day one or before he went into that relationship?

Mr Johnson: No, they want the Government to do it.

Mr McNEE: Is that the trick? They want the Government to do it! The test period is only two years, so a person would not waste too much time choosing a partner. It might be a biddy from the nightclub or somewhere like that because he accidentally bumped into her. It would be of paramount importance to seek legal advice, because that would be the sensible thing to do. It is curious that when sodomy was legalised for adults in 1989, we were told that it was a question of privacy.

Mr Johnson: Another Labor Government initiative. They have a thing about this sort of issue.

Mr McNEE: Yes, they have. Homosexuals will now have to go to court and have their sexual relationship investigated. That is not a step forward for those people.

Mr Hyde: It is not about sexual relationships; it is about loving relationships.

Mr McNEE: I am not arguing about whether they have loving relationships.

Mr Hyde interjected.

Mr McNEE: What I am saying -

Mr Johnson interjected.

Mr McNEE: That is right. I do not want to see people disadvantaged in that sense, but I urge the Attorney General to give serious consideration to the Opposition's amendments. They are well thought out, and I am sure that if there were, as the Government likes to say, a bipartisan approach, we could reach some agreement. I am

afraid that if the Government wishes to bulldoze this Bill through the Parliament, I will not be able to find any room to support it.

Having children is a serious matter, and marriage is a serious matter. I have no doubt that entering into a de facto relationship is also a serious matter. However, this legislation does nothing to help anybody.

**MR BARNETT** (Cottesloe - Leader of the Opposition) [8.00 pm]: My comments will be brief because the member for Kingsley and others have outlined the Opposition's position. We have a number of amendments, which have been put forward in good faith and which will substantially improve this legislation. If the Government agrees to those amendments, it will achieve broadly based bipartisan support for this legislation, although some individuals may have differing views. That is the prospect the Government faces. It has been said that most members on this side of the House hold a view about the institution and status of marriage. We object to terms like a "marriage-like relationship", and the elevation of de facto and same-sex relationships to the status of marriage and access to the Family Court. That is our view. The Government can call it what it likes - a value judgment or a moral view - but it is a difference between the members on this side of the House and the members on the other side. Most of the members opposite who have spoken have talked about equality. Members on this side of the House do not in any way condone vilification or discrimination on the grounds of race, religion or sexuality, whether it is against males or females or heterosexual or homosexual people. However, that does not mean that we believe equality should be considered above all other values. It is not a matter of simply saying something is equal. The question is whether it is equally right or equally wrong. This side of the House will give attention to what it considers to be right and wrong. It will do so from a value base. We give precedence to family values and the status of marriage. We have moral views on these issues. It is not about discrimination but about the basic principles for which the Liberal Party and its supporters stand. That is why we approach this legislation in this manner. As the member for Kingsley made very clear, the Government can, if it wishes, legislate to provide for property rights for de facto and homosexual couples. It will probably get the support of members on this side of the House. However, if the Government seeks to do so by elevating those relationships to the standing of marriage and giving them equal access to and status before the Family Court, it will lose our support. It will lose our support not because of a petty principle but because of the basic difference in values. We support the family, family views and the status of marriage. That does not mean that we are naive, and that we do not understand the complexities of arrangements and relationships within our society. We do not disregard or disrespect those relationships, but we do not elevate them to a footing equal to family and marriage. It is not a matter of simple equality. For members on this side of the House, it is a matter of what is right and wrong; it is not about making something equally right or equally wrong. In that sense, the Government will understand our position. The Government has an opportunity to achieve changes to property rights for de facto and same-sex couples. If it chooses to pursue those changes by downgrading the status of marriage and giving de facto and homosexual couples rights before the Family Court, it will not have our support, and it will fail to deliver property rights to de facto and homosexual couples. The choice lies with the Government. It should not expect us to agree with anything or everything based on a simple argument of equality. Members on this side will judge what is right and wrong by the standard of our values.

**MR McGINTY** (Fremantle - Attorney General) [8.05 pm]: I thank members for their contributions to the debate that has taken place so far. We can reasonably expect people to have wildly differing points of view about the objective of this legislation and the way we seek to achieve it.

In dealing with the issues that have been raised during the course of this debate, I remind members that a number of the key provisions in this legislation are derived from the model legislation drawn up by the Attorneys General - from both Liberal and Labor Governments - of all States and Territories around Australia. The term "marriage-like relationship" is taken directly from the model De Facto Relationships Bill, which was presided over by federal Attorney General Daryl Williams, the South Australian Attorney General, former Northern Territory Liberal leader Denis Burke, and various Labor Attorneys General. The model Bill represents the consensus among those people. I assure people that this is not a partisan political argument with the Liberal Party upholding marriage on the one hand and the Labor Party attacking it on the other. Daryl Williams is actively seeking to have the States refer to the Commonwealth power over de facto relationships, particularly those relating to property, so that he can enact for the Family Court of Australia provisions that are very similar to the provisions in this Bill.

Mr Pendal: Are you proposing to go along with that?

Mr McGINTY: No. We in Western Australia can achieve more than Daryl Williams wants to achieve at a federal level. He would like to amend the Family Law Act so that the Family Court in each State is given

jurisdiction to deal with property disputes between de facto couples. He has made it clear in discussions with me that the current federal Government does not want to include same-sex relationships in that legislation. However, it would give the Family Court jurisdiction over de facto couples. He plans to use the definition of a de facto relationship that is contained in his model De Facto Relationships Bill -

> A ***de facto relationship*** is a marriage-like relationship (other than a legal marriage) . . .

The legislation would then list all the indicators contained in our legislation.

Ms Sue Walker: Will that legislation have the two-year provision?

Mr McGINTY: Yes.

Mr Pendal: You mentioned in your second reading speech, and it is referred to in proposed section 205V, that the definition of a de facto relationship is simply "a marriage-like relationship". Daryl Williams is talking about a marriage-like relationship other than a formal marriage. Those definitions send different messages.

Mr McGINTY: I shall give a more comprehensive answer. The model Bill contains three alternative definitions of a de facto relationship. The first picks up same-sex relationships; the second picks up the domestic carer arrangement, which is not what we would regard as a marriage-type relationship; and the third picks up people who are, for all intents and purposes, living in a marriage relationship but who have not been formally married by the State or the church - which is the conventional definition.

The conventional de facto relationship, to be complete, in the model Bill is the first definition which is provided as an alternative for the States to choose how far they wish to go in extending this legislation to different sorts of relationships. We have decided to pick up the de facto relationship and the same-sex relationship but not the domestic carer relationship. The Australian Capital Territory has picked up all three, and there is a bit of a mixed bag around the other States. The first definition states that a de facto relationship is a relationship between a man and a woman who are adults and who, although not legally married, live as husband and wife.

That is the very conventional definition of a de facto relationship. The second definition picks up the same-sex relationship, and the third definition is in similar terms, but it does refer to a marriage-like relationship where there is no legal marriage in each of the definitions, and then goes on to include variations of those. That is the accepted approach throughout Australia for the model that has been developed and agreed by Governments of all political persuasions throughout the length and breadth of the Commonwealth.

I should also say, because I think this is really the nub of a lot of the arguments that have been advanced during this debate, that there is a considerable body of case law on what constitutes a de facto relationship. If one were to rely on the common law, there would be extensive guidance for people in determining what a de facto relationship is when dealing with heterosexual couples. If members are interested in references to this issue, there is the case of Ingamells v Western Australian Trustees, Full Western Australian Supreme Court, 5 March 1993. In New South Wales there was the case of A.A. Tegel Ltd v Madden, and also the case of Lynam v Director General of Social Security, 1983. It seems to be settled that the test for determining whether a de facto relationship exists is whether the man and woman in the relationship live together as if they were a married couple. Indicia of such a relationship have been said to include dwelling under the same roof, sexual intercourse, mutual society and protection, the nurturing of children and mutual affection, caring, and the sharing of material resources. Justice Kirby, when he was the President of the New South Wales Court of Appeal - and this was in the Tegel case to which I just referred - said this of what characterised a de facto relationship -

> . . . the relationship between persons who, though not legally married live together sharing domestic circumstances and bound by affection and, usually, sexual relations.

Whether one looks at the definition coming out of the model Bill, or looks to judicial pronouncements, they all equate it with a marriage and talk about a marriage-type relationship. That is why we have done that and not for any other purpose. While we were looking around for the appropriate way to define this, issues were raised - as they have been in this debate today - about the use of the equation with marriage for definitional purposes. The advice we have received from the Crown Solicitor on this matter, particularly given that the Bill allowed for same-sex relations, is that the definition in some other state legislation is not particularly useful, and I cannot put forward a more appropriate term than "marriage-like"; so it is an issue that we have grappled with, and we think this is the way to best deal with it.

If we adopt - and we will deal with this during the consideration in detail stage in a few minutes - the notion of a domestic relationship, we are dramatically expanding the scope of this Bill to include domestic carer relationships, which as a matter of policy we have decided should not be included because we are talking about

marriage-type relationships where there are sexual relations, joint sharing of property and the usual things that go to make up either a marriage or a de facto relationship. We did not seek to extend this to the live-in housekeeper-type relationship where there is not necessarily the love and affection or the caring that one would normally associate with a marriage or something of that nature. That is the reason we went down that particular path and we relied heavily on the model Bill.

I overlooked the question from the member for Hillarys. I think his question was: is it two years in each of the other States? The member might remind me what his question was after I have done this. In every other State or Territory, two years is the prescription, except South Australia which is three years, and the provision in the model Bill is also two years. I know some people have expressed the view during this debate that it should be five, seven or eight years, but the standard that applies is two years, with the one exception being South Australia.

Mr Johnson: But that does not make it right.

Mr McGINTY: It might be an indicator though, given that this is a fairly subjective matter of what does one accept as being an appropriate length of time. One thing that impresses me about relationships is that they are all different.

Mr Johnson: Of course they are.

Mr Omodei: Two years just allows somebody to have multiple de facto relationships. It makes the legislation even more complicated.

Mr Johnson: And what is your argument? How do you intend to cope with multiple de facto relationships? One cannot be a bigamist, one cannot have more than one wife or husband, but one can have more than one de facto relationship going at the same time. There could be three different de facto relationships all complying with the Attorney General's legislation and they would all be legally upheld, which is groundbreaking.

Mr McGINTY: I will explain why. The approach we took to this legislation, if I can put it bluntly, was to look at the victim. By that I mean generally speaking, although not exclusively, the woman who has been left without assets after a reasonable length in the relationship where she might reasonably have an expectation that some of the joint property of the relationship might come to her. Sometimes it will be a man, but generally speaking it will not. We have questioned why should she be excluded from her claim on part of the property because her partner was a philanderer. I do not think so. When one looks at it that way and comes at it from the point of view of the person who will be dispossessed, I think there is an argument for that woman to say, "Well, what about me? I should have a claim here as well."

Mrs Edwardes: The issue is that there is no qualification for the second de facto relationship as to the time and the extent. You presume the time is likely to be the two years, but it really does lack definition.

Mr McGINTY: There is a definition which is taken, as I have said, from the best legal brains in the country -

Mrs Edwardes: In the second de facto relationship existing at the same time -

Mr McGINTY: The same definition.

Mrs Edwardes: The same definition, but what is the qualification on it? It is too open-ended.

Mr McGINTY: The reason we have done that is the point I made a minute ago; that is, that the nature of relationships continued to impress me with their diversity and that no two are the same in one way or another, and they range from people to people. The member knows the sort of things that might go to make up the full spectrum of relationships. The degree of every element of that relationship will vary. The more prescriptive one is the more one is likely to perpetrate an injustice on someone who might have a completely loving "normal" relationship but it may not quite fit the legal definition.

Mrs Edwardes: But the broader and the wider the definition, and then allowing for multiple relationships to exist together at the same time, means that a level of uncertainty is created. That is the issue which the legal profession is raising; that is, the threshold question will lead to a greater number of applications just dealing with that initial point.

Mr McGINTY: Yes. This is an issue that the best legal brains in the country have put their minds to; that is, the existence of numerous relationships, which would all be caught by the legislation. The first definition of a de facto relationship in the model Bill states that it does not matter whether the man or woman is legally married to someone else or in another de facto relationship. The reality is that some people will be in two de facto

relationships at the same time. Should one of them be disentitled to claim the property of that particular de facto relationship? It is not a question of encouraging polygamy or bigamy -

Mrs Edwardes: I hope you have the extra money for the Family Court; you will need it.

Mr McGINTY: That might be right. We have taken it out of the agreed definition, which has been agreed to be applied nationally.

Ms Sue Walker: It seems that a de facto couple could be together eight years and the man could have been having a weekend relationship on the side with a woman for four years and have four children. Each woman would qualify under the criteria in the Act but in a different way and would be able to have a slice of his property. Are you saying that it would protect both victims?

Mrs Edwardes: Or the wife's property, who is at home waiting for him to stop philandering.

Mr McGINTY: Yes. Although the definition of de facto relationship is broad enough to be able to -

Ms Sue Walker: It also protects the victim of bigamy; doesn't it? Would the second alleged wife of a bigamist not be able to access the Family Court Act?

Mrs Edwardes: She does now anyway.

Mr McGINTY: Yes; it would have that effect, as I understand it. I return to the point that I was going to make. The definition of a de facto relationship contained in the Bill, which has been taken from the model legislation and is on page 53 of the Bill, states that a de facto relationship is a relationship other than a legal marriage between two persons who live together in a marriage-like relationship. The requirement is living together in a marriage-type relationship. If it is only on weekends, it starts to get a bit doubtful.

Ms Sue Walker: Will they still be able to access it because there are children under the age of 18?

Mr McGINTY: People need to be in a de facto relationship. It is not the children who give people that access.

Mrs Edwardes: In terms of maintenance, potentially yes.

Mr McGINTY: Yes, but I am talking only about property.

Ms Sue Walker: Page 55 says that a court can make an order under the division in relation to a de facto relationship only if satisfied there has been a partner for two years or there is a child under the age of 18. You are saying that the threshold for the de facto relationship must be established before there is a child. It does not matter whether the woman has four children; she cannot access the Family Court Act.

Mr McGINTY: A child born of a one-night stand would not bring the mother of that child within the purview of this legislation.

Ms Sue Walker: It would not bring within this relationship a woman who has four children and believes the man is away truck driving all week and he is home just on the weekend.

Mrs Edwardes: Potentially yes, because the court would have to determine whether or not they were living in a marriage-like relationship. If the woman believes that there is a home, a family-type situation, etc, potentially yes.

Ms Sue Walker: I am thinking of the victim's point of view.

Mr McGINTY: I will use the example quoted by the member for Kalgoorlie; that is, the fly in, fly out arrangement. Someone might spend a week in Perth and a week in Kalgoorlie, for instance, and might have a relationship at each end of the flight.

Mr Birney: I did not say that.

Mr McGINTY: That was not quite the example the member gave, but it develops on that notion. I suspect that that would be found to be a couple living together in a marriage-type relationship.

Mrs Edwardes: However, that threshold test will need to be determined. That is the critical issue that the legal profession raised. This will not overcome one of the reasons that you are bringing forward the legislation; that is, to put in place a simpler process for the determination of property interests.

Mr McGINTY: That will not be in contention for the vast bulk of fairly straightforward de facto relationships. When dealing with human relations, there will always be cases in which the nature of that relationship is at the edge. To my way of thinking - I am not offering this by way of a legal judgment on this issue - this legislation would not relate to a casual relationship. It may relate to a three-day-a-week relationship or a week on, week off

relationship; I do not know. Those questions will be determined depending on the merits of the case. In human relationships there will always be those cases that are at the margin which will be required to be argued. Frankly, the more prescriptive we are, the more injustice we are likely to create. That is why we have taken this view.

The basic approach is to look at the essential definition in the judicial pronouncements in the model Bill. This is not legislation about marriage as an institution; it is about the breakdown of relationships. It is applying the same approach to the division of property when there is a breakdown of that relationship. An existing body of case law establishes how property is to be divided when people have a marriage certificate. Whether they have been married for a week or for 30 years, certain rules are applied and resultant division of property occurs. That is why this Bill is not about marriage; it is about the breakdown of relationships and applies the same rules of a breakdown of marriage to the breakdown of other relationships. I say to those people who see this as an assault on the institution of marriage that it is simply dealing with those unfortunate circumstances in which relationships break down. It provides people with access to a court to determine, according to well-established principles, the way in which their property should be divided. I assure those people who see it as an assault on the institute of marriage that that is not the intention. Nothing could be further from the truth.

Mr Birney: That is the net outcome though.

Mr McGINTY: I do not think it is.

Mr Birney: It raises the status of de facto couples and brings that status to a position equal to that of a married couple. That is the net outcome.

Mr McGINTY: In a moment I will tell the member why I think this is a pro-marriage proposition. If members were sitting back and thinking that we need a law to provide for the distribution of property on the breakdown of a de facto relationship, I can tell them that the logical place to look is at the breakdown of another sort of relationship; that is, a legal marriage. What rules are applied to the distribution of property in that situation? That is the logical way to go about this, and that is what this legislation does. I will tell members why I think this is a pro-marriage piece of legislation. The member for Moore is waiting with expectation. At the moment there is an incentive for people not to get married. Let us look at the traditional role. If a man with a house gets married, he runs the risk of losing half his house if the relationship breaks down, so why would he want to get married? If a person lives in a de facto relationship, currently the house will remain the property of that person if the relationship breaks down. By putting the two relationships on the same footing when it comes to the distribution of property in the event of the breakdown of that relationship, it takes away the incentive for people not to get married.

Mrs Edwardes: The converse also applies; why get married? In a de facto relationship the property distribution provision under the Family Court Act applies. If we take your argument, the converse applies.

Mr McGINTY: I do not think the converse applies. I am talking about fairly mercenary people. In my experience, people do not think about property consequences of their relationships, particularly when young people get married; it is the last thing that would ever enter their heads. Older people who have acquired property might be more calculating about it. There is a positive incentive not to get married in a de facto relationship. I do not think the converse is true, because people get married knowing that they are likely to suffer a detriment if they are the owners of property.

Mr Birney: The major difference is that when you do get married, you think about it and consider it; it is like signing a contract. You do not sign a contract until you work out what the contract is. A de facto relationship is something entirely different.

Mr McGINTY: Yes, and no. Substantially, this is a generational issue. Older people - I put myself in that category - would have to think long and hard about this. However, these days, the people who live in de facto relationships are by and large young people. The overwhelming majority of people in de facto relationships are under the age of 34.

Mr Birney: Fifty-six per cent.

Mr McGINTY: Thank you. Did the member get that from my second reading speech?

Mr Birney: Yes.

Mr McGINTY: I thought I remembered the figure. Young people are making a conscious lifestyle decision to live in de facto relationships. I know many people who are married, in their minds and in my mind, but they have not walked down the aisle or stood under the wedding arch and had their union blessed. However, to their

way of thinking, they are as married as you or I. That is the approach young people take. Over time, people will live together in loving, caring, committed long-term relationships. That is the trend, and that is their intention.

Mr Birney: With a view to getting married.

Mr McGINTY: Not necessarily.

Mr Birney: If you tie them up after two years, it throws a spanner in the works.

Mr McGINTY: Some people will do it with a view to getting married -

Mr Birney: It may make some people terminate their relationship or at least it would put it on an uneven keel when the two years is about to expire. Some of those people would start to get cold feet.

Mr McGINTY: Some Labor Party members who represent the Mining and Pastoral Region have predicted a breakdown in relationships as a result of this legislation. In other words, it is their view that people who live in unhappy relationships, who know they can now take some of the assets of the relationship with them, will terminate the relationship. Frankly, that might be a good thing if the quality of the relationship is so poor. Relationships are as incredibly diverse as one can possibly imagine, and this legislation recognises that diversity. Some marriages, although entered into with the best intentions, last just days or weeks, and others last decades. Those people who are in married or de facto relationships that last decades are very lucky.

Mr Birney: Would you consider increasing the term of a de facto relationship from two years to six years?

Mr McGINTY: The standard in every other State is two years, except in South Australia, which is three years.

Mr Birney: That was a snowball effect. The first State came up with the idea of two years, so the second State said that the other State has set two years as being a de facto relationship and we might as well do the same. The third State said that if the other two States have made it two years, we might as well do that also. I suspect that is what this Government has done. That does not necessarily mean that two years is the correct amount of time.

Mr McGINTY: No; however, I am a great believer in a country like Australia doing things as uniformly as possible. The old argument about the different railway gauges is equally true today. That is one of the reasons that some months ago we deferred corporations powers to the Commonwealth. The idea was nonsense in the modern economy. Those powers must be regulated on an international basis rather than on a national basis even. However, the same thing applies here.

Generally, one should forget what members opposite or I might think is a good length of time for a relationship; if one happens to be married, after one week's marriage one can access the Family Court for property distribution. The norm is two years for de facto couples throughout Australia.

Mr Birney: Marriage is like signing a contract. You think about the contract before you sign it and then you sign it. You deal with the ramifications of the contract afterwards. That is the difference.

Mr McGINTY: In my view, the diversity of relationships picks that up. I am not happy about changing from the national standard on this issue, and that is the reason we have it.

That covers most of the issues. This legislation is about providing a legal mechanism to resolve disputes. It is not about the status of those relationships. We are not talking about allowing gay people to get married. We are not doing anything more than saying if a couple have lived in a reasonably long-term relationship that breaks down, this legislation is a mechanism to solve property disputes. That is all this legislation is about. It is practical. It considers the existing models that apply to marriages and applies that model to other relationships that are not legal marriages. That is what this legislation is about. It does not have the philosophical underpinning that some members say it has to downgrade the institution of marriage, nor is it an assault on marriage; it is a legal mechanism to solve disputes. We will have done the community a service if we give people access to cheap, expeditious and well-established principles to resolve those disputes.

Question put and passed.

Bill read a second time.

*Consideration in Detail*

**Clauses 1 to 3 put and passed.**

**Clause 4: Section 5 amended -**

Mrs EDWARDES: This clause puts in place the uniform amendments that the federal Parliament has moved and, as is commonly recognised in this House, we must now legislate so that they have application under the

Family Court of Western Australia. In 1997, we introduced a number of uniform amendments. These amendments are the first to put in place sanctions for breaches and other technical means to enable those changes to be implemented.

Earlier today I said that the Bill provided for a change in parental responsibilities and the notion of the ownership of children. Therefore, we had to deal with the care, welfare and development of children. Parents need to be encouraged to agree to all those matters about children and to establish a parenting plan that can be registered at the Family Court. The parenting plan, which we will discuss in the next clause, deals with a number of matters. However, this clause provides for family and child mediation and family and child mediators, and that is the reason for introducing it before we deal with the parenting plan. Paragraph (c) of clause 4 proposes to insert new paragraph (a) in section 5 as follows -

> a person employed or engaged by the Family Court of Australia or the Court to provide family and child mediation services;

Therefore, the Attorney General is putting in extra resources. How many resources has he put in place; has he put any in place since the 1997 amendments; will these amendments require any extra resources; and how does he see them operating?

Mr McGINTY: I am told that these resources will be in place to give effect to the federal legislation dealing with marriages. I am advised - I might need to get more information for the member on this - that there is no increase in resources consequent upon the federal amendments, which were carried. I will take that argument a little further.

One of the major issues that has been raised by the Family Law Practitioners Association of Western Australia and the Law Society of WA is that of resourcing these amendments. The anecdotal evidence from other jurisdictions in which the Supreme Court is given the jurisdiction to deal with de facto property - if I can extend into that area - was that there was no significant increase in the number of applications made in the other States. This legislation will apply to the Family Court of Western Australia; therefore, it is anticipated that the response will be greater than that in other States. That has raised the question of resourcing and last year His Honour Chief Judge Michael Holden raised the question of an additional judge for the Family Court. It is a long time since the number of judges at the Family Court was adjusted, as the member would be aware. Since the 1970s, when the number of judges was fixed at five, magistrates have been introduced into the jurisdiction and have taken over a considerable amount of the work. However, the number of magistrates has remained the same since 1990 and, therefore, the Family Court is under pressure. I have written to and met with the federal Attorney General on resourcing the Family Court and have raised with him the need for additional resources to pick up the de facto property component of the work and the increase in workload associated with the court in general.

Mrs EDWARDES: The de facto property agreement approach is outside the federal-state financial agreement. It is highly unlikely to be picked up by the Family Court, as all other States deal with it in civil jurisdictions and, therefore, the federal Government does not need to contribute. It is essentially a state matter. Therefore, the Attorney General will be hitting his head against a brick wall on this issue. One question that I will ask the Attorney General a little later is how much resourcing has been provided for in this budget to pick up the extra applications that will go to the Family Court because of these amendments to the de facto provisions?

Mr McGINTY: I will answer that question when the member for Kingsley asks it. The federal Government picks up the costs associated with exnuptial children, which is a state responsibility. This is done because each of the other States has referred power, and in every other State it is a commonwealth responsibility consequent upon that referral of power. In the same way, regardless of the outcome of the federal election, the same pressure will be applied to refer power over de facto property. If that referral of power takes place in the majority of other States, the same argument would be applicable to have the Commonwealth pick up responsibility for de facto property in Western Australia and supply the judicial resources necessary to service that. I have met with Hon Daryl Williams about this.

Mrs Edwardes: Is the minister encouraging his Labor colleagues in the other States to refer power?

Mr McGINTY: They seem more inclined to do it than we have been, historically, in Western Australia. The historical significance, which was overlooked by many observers and commentators on the reference of power over corporations, was that it was the first time any constitutional power had been referred by Western Australia to the Commonwealth since the Second World War. The whole question of resourcing is very much in the melting pot, and the Government will need to work through that with the Commonwealth. The Commonwealth has a view of the State Family Court. A joint working party between the Commonwealth and the State has been

set up to look at workloads and resourcing levels, and I intend to follow up the matter after the working party reports, which will give us a very solid base on which to make comparisons.

**Clause put and passed.**

**Clause 5: Section 78A inserted -**

Mrs EDWARDES: This clause deals with parenting plans, and those people who have to advise and assist in making those parenting plans. I, like many others in this House, am ignorant of parenting plans, and as such I would like to have a bit more information, to be better able to help my constituents. As a new concept it will require more explanation as to what these plans consist of, what has been the progress since 1997 and if they are working well as far as the court is concerned. Proposed paragraph (c) talks about programs. What are the programs to help people who are experiencing difficulties in complying with a parenting plan, which is what the rest of the amendments following are all about? They deal with breaches of orders under a parenting plan.

Mr McGINTY: The parenting plans lay out the responsibilities of each of the parents. Some difficulties have been experienced.

The DEPUTY SPEAKER: Members, I am having difficulty hearing the Attorney General. I would appreciate it if members would have their conversations outside the chamber, or keep the volume down to a dull roar.

Mr McGINTY: There have been ongoing problems, particularly with contact. I suspect that everyone in this House has had constituents come to see them about contact visits. A constituent came to see me only last week about this very problem. This legislation sets in place a three-stage arrangement. The first of those stages is operating remarkably successfully. That covers the provision of information and reinforcing those obligations. It involves sitting down with a parent when a relationship has broken down and placing in writing the obligations of that parent. It reinforces in the minds of those people -

Mrs Edwardes: Does this involve contact hours and whether it has to take place with someone present?

Mr McGINTY: The parenting plan requires that the agreement be in writing, and is made between the parents of a child. The agreement must deal with at least one of the following matters: the person or persons with whom a child is to live; contact between a child and other people; the maintenance of the child; and any other aspect of responsibility for the child. That is essentially what the document contains. Having that written down and agreed makes quite clear what the obligations are. The view of the Family Court is that that component - the first stage - has been very successful. It is covered by sections 74 and 75 of the Family Court Act.

Mrs Edwardes: Have any gone to stage 2 yet?

Mr McGINTY: They have, and stage 2 deals with what happens in the case of non-compliance. Three procedures are laid down. The first is for the person in breach to attend a program; secondly, there is the option of making a further parenting order; and the third possibility is to adjourn proceedings. This is designed to make people aware of their responsibilities. Then comes the third stage, which provides for a fairly heavy penalty of imprisonment or a fine for people who continue to be in breach.

Mrs Edwardes: What kinds of programs are provided for under stage 2?

Mr McGINTY: Essentially, counselling and mediation, often run through community-based organisations such as Anglicare, which often provide assistance to parents who are the subject of parenting orders.

Mrs Edwardes: There is not a lot of change in the substance of the clause; it is mainly in the packaging.

**Clause put and passed.**

**Clause 6: Section 86A inserted -**

Mrs EDWARDES: This clause deals with measures to promote the exercise of parental responsibility. The Attorney General said it was about enforcement. It would appear that the former system of orders has been put into a parenting plan. The programs which were previously available are to assist people to comply with parenting plans. In essence there does not appear to be much difference, except for the clothing, which is in the nature of reminding parents that they do not own the children, and that they have a shared responsibility. As we all know, in dealing with the exercise of parental responsibility, human nature comes into play, and both parties are often in conflict. As such, in some instances, being able to get them around a table is difficult enough, without using the heavy hand of enforcement. Going through these amendments, it appears that the enforcement provisions are somewhat heavy handed - as the Attorney General said, stage 3 could potentially lead to

imprisonment - although the sanctions for breaches were previously fairly strong in any event. Can the minister identify the differences, or is it again just packaging that is essentially being put forward?

Mr McGINTY: The parenting plan is a change of emphasis from what preceded it. Its purpose is to communicate to parents their obligations, and offer them help. That is the emphasis now, rather than an order of the court that must be obeyed. I am told that the most significant change is the inclusion of community service orders as a part of the penalty.

Mrs Edwardes: Who carries out those orders? Are they carried out through the Family Court? Has a whole new unit been established to deal with community service orders?

Mr McGINTY: They are carried out through the Department of Justice, in the same way as other community service orders are carried out.

Mrs Edwardes: Therefore, if a person breaches a sanction of the Family Court, that person is linked with the criminal justice system?

Mr McGINTY: Yes.

Mrs Edwardes: Okay. I will get to that.

Mr PENDAL: I am interested to know how the Attorney General equates what we are talking about with some of the announcements he has made since the election and since he took office. Essentially, he has talked about the notion, to which I am not averse, of emptying jails of people who should not be there. It seems that what he is doing in this legislation is seriously against the spirit of what he has talked about. That is the first point on which I would like him to comment. Secondly, I assume that this provision reflects federal law; therefore, that is why it is in the legislation. If it is in the legislation because of that, that seems to be a mindless reflection of federal law. Earlier tonight, the Attorney General told us that he saw a lot of value in uniformity. Maybe that brings out his socialist principles. I am suspicious of all that stuff. I can never see the value of uniformity of its own accord. The third thing I am interested in knowing is if stages 1 and 2 fail, how many people are expected to be caught up in an imprisonment environment, according to the experience elsewhere in Australia? That helps me to return to the first part of my comments; that is, that this seems to be totally at odds with what the Attorney General has expressed in recent weeks.

I am also concerned - I referred to this in my contributions to the second reading debate - about the Orwellian notion that we have got down to this highly detailed, complex prescription of what happens and how we get parents to comply. It seems that the deeper we go, the more problems we draw out. I empathise with the remarks made by the Attorney General a few minutes ago. We have all been in situations in our electorate office of receiving people, listening to them and going over in painful detail some of the problems with which they are confronted about access and the whole sad front of family law. How much further can we go? The Attorney General might simply shrug his shoulders and say that it reflects federal law. It seems to me that the answer to that is that maybe federal law is bad and wrong; it is too prescriptive and too complex.

I finish on my starting point. How does the Attorney General equate all this with his own recently expressed views about the need to clear from the jails people who should not be there? For people who are suffering and going through the trauma of Family Court proceedings, the last thing we in Parliament should think about is putting them in jail, albeit because they are not complying with something as important as this legislation.

Mr McGINTY: I agree with the thrust of the point made by the member for South Perth; that is, that when people are going through the stresses and strains of the consequences of a breakdown of a relationship, the last thing in the world we should do is to talk about putting them in jail as a consequence of that. I am told that the thrust of the new three-stage arrangement is, hopefully, not to get to stage 3, by means of communicating, and making people aware of and reinforcing their obligations via a parenting plan. I am told that one person has been sentenced to imprisonment in Western Australia, and that was about two years ago. Going back a long way, there may have been others. However, according to the memories of people in this place today, that seems to be the limited application of that provision. The member is correct that these provisions simply reflect the provisions of the commonwealth Family Law Act. There is a provision that relates to marriages. This provision relates to de facto marriages, or children of those relationships.

Mr Pendal: De facto relationships?

Mr McGINTY: Yes.

Mr Pendal: You said de facto marriages.

Mr McGINTY: I am sorry, in deference to the member, it should be de facto relationships. This scheme imposes additional sanctions, short of imprisonment. I would certainly hate imprisonment to be used in a family law context. If we had our way unencumbered, I would rather not see the imprisonment component of stage 3 in this legislation. However, we are not unencumbered. Therefore, for uniformity of treatment within Western Australia, children of marriages and of de facto relationships must be treated the same. Therefore, I am prepared to wear that provision. However, if we find that people are being sent to prison, I will more than happily review the situation. Given the sparse use that has been made of the ultimate sanction of depriving a person of his liberty, particularly with the inclusion of community service orders now for the first time, hopefully all these options, short of the ultimate sanction, will come into play, and this provision will not be used.

Mr Pendal: Although you would agree that uniformity has its limitations.

Mr McGINTY: Indeed.

Mr Pendal: We might get you yet.

**Clause put and passed.**

**Clauses 7 to 11 put and passed.**

**Clause 12: Division 13 inserted in Part 5 -**

Mrs EDWARDES: This clause refers to the appropriate post-separation parenting program or appropriate program, and it must be available within a reasonable distance from the person's place of residence or place of work. That was referred to earlier in some of the other clauses. Again, is this the sort of mediation counselling that has been provided previously? Is something more formal being referred to in a post-separation parenting program? A briefing for members on how the new proposals have operated since 1997 and on the likely impact of these amendments would not go astray. Members have an interest in looking after their constituents in this sensitive area. I will follow that up with the Attorney General if he needs me to. It would be invaluable to all members in this House to get a greater understanding of this matter for their constituents.

Mr McGINTY: I am able to provide information on the nature of the programs that currently apply in Western Australia. If members ever want information, the Government will happily facilitate briefings on any matter through the Family Court or wherever. We would frankly be delighted to have greater parliamentary interest in the operation of this area. Post-separation parenting programs that currently apply in the metropolitan area or across the State include the mums and dads forever program, which is provided by Anglicare. In Perth, Relationships Australia (Western Australia) provides rebuilding after separation counselling and the parents apart, kids place, and new directions programs. The rebuilding after separation, new directions, lone fathers, and survival skills for separated and divorced men programs are offered in Bunbury. Four programs are offered in Mandurah, including the parents apart program. In Geraldton and Exmouth, Centrecare's family services provide family, relationship and financial counselling, and grief and loss programs. Centrecare's marriage and family service in Perth provides domestic violence and men's group counselling. Centrecare also provides the discovering me therapeutic group, breakthrough to a positive you self-esteem workshops, the kit kats and kids program for parents, pizza and parenting: a parenting workshop for men, the before you explode anger management workshop, and the child's play I and II therapeutic groups. They are the organisations and -

Mrs Edwardes interjected.

Mr McGINTY: Does the member have a personal interest in this?

Mrs EDWARDES: I thank the Attorney General for that information. I refer to page 9 of the Bill, which deals with proposed section 205C. Must the other party make a formal application stating that the parenting plan or order has been breached, or is there a simpler process? One concern that often comes through is that the victim must make the application, which costs time and money. That is often inappropriate when dealing with children. What is the process?

Mr McGINTY: The only way to bring a contravention before the court is for the aggrieved party to make a complaint. I am told it is not something that is initiated by the court.

Mrs EDWARDES: I refer to page 14 of the Bill. Proposed section 205H, titled "Powers of court", deals with compliance with the parenting plan and requires the person to attend the provider of the program to enable an assessment of whether the contravening party or any other party ordered to attend is suitable for an identified program. If they are found suitable to attend a program, they must attend without any further court order. Once a parenting plan is up and running under stage 1, that is the order. If there is an alleged breach, an application is

made to determine whether a breach has occurred, but the court does not make another order in relation to that. I do not understand the wording of this section.

Mr McGINTY: The provision is essentially as it says: an order is made for one of the parents to attend the program provider to assess his or her suitability for that program. If that person is deemed suitable, he is automatically included in the order without a further order directing him to do that. This might highlight a shortcoming in the parenting plan. At that stage, there is the capacity to amend the plan to reflect the revealed shortcoming. That is essentially how the two interact.

Mrs EDWARDES: I refer to proposed section 205L(8) on pages 19 and 20 of the Bill. A sanction of imprisonment under that proposed section can be imposed for the non-payment of child maintenance when the contravention was intentional or fraudulent. Imprisonment for non-payment of maintenance is not available under the present law. This is a major and significant change. Whether the contravention was intentional or fraudulent will obviously depend on the facts of the case. How the word "intentional" will be determined will be interesting, because I know of many instances in which one party intended to order his or her affairs in a particular way, which meant that person had no income and could not be ordered to pay maintenance. The court has in the past found it difficult to make such a person comply. Is there any precedent for the use of the word "intentional"?

Mr McGINTY: It would be the ordinary use of the word as it relates to intent. This relates to the issue raised by the member for South Perth a few minutes ago; that is, that the court is prevented from exercising the option of imprisonment in respect of a contravention of a child maintenance order unless the court is satisfied that the contravention was intentional or fraudulent. It requires those elements to be present. I do not know a great deal about the practical operation of this area of the law. From the people I have seen pass through my electorate office, I can think of a number of occasions when it was pretty obvious that the intent was there.

Mrs Edwardes: This seems to be opening the door for imprisonment fairly wide. What is the legal interpretation or precedent that has been established for the word "intentional"? A restriction or qualification of "intention" must have been in the back of the minds of the people who drafted this legislation. It cannot be as easy as I potentially see it to be for the courts to have the power to imprison someone for non-payment of maintenance in the instances the Attorney General and I are thinking about.

Mr McGINTY: My advice is that the word is intended to mean what we all understand it to mean in a legal context. It is also important to bear in mind the provisions of proposed subsections (9) and (10), which immediately follow that proposed subsection. The court is prevented from imposing a sentence of imprisonment in respect of -

> (a) a contravention of an administrative assessment of child support . . .

That means literally what it says. It continues -

> (b) a breach of a child support agreement . . . or
>
> (c) a contravention of an order made . . . under Part 7 Division 4 . . . for a departure from such an assessment . . .

Each of those further limits the option of imprisonment. Proposed subsection 10 will have the effect of a suspended sentence of imprisonment. Every effort is made to ensure the ultimate sanction is not put into place.

Mrs EDWARDES: I move to proposed section 205M, which will allow the imposition of community services orders. I pick up on the Attorney General's comment that the criminal justice system will have responsibility for community service orders. This proposed section refers to the Sentencing Act. I question the placing of people who breach Family Court orders regarding children within the criminal justice system. Although I can think of some nasty breaches in which I would have no sympathy if the offender were put into the criminal justice system, this may not be appropriate in many instances. Can that be taken into consideration when this proposed section and the community service orders are applied?

Mr McGINTY: The clause notes that were presented in connection with this Bill state -

> 205L(8) provides that a sanction of imprisonment (205L(5)) may only be imposed for the nonpayment of child maintenance where the contravention was intentional or fraudulent. Under the present law, imprisonment for non payment of maintenance is not available. The Federal Parliamentary Joint Select Committee in 1992 recommended that imprisonment should be an option and this amendment will give effect to recommendation 67 of its report

I draw that to the attention of the House, because that recommendation was made almost a decade ago.

Mrs Edwardes: What about the application of the community service orders?

Mr McGINTY: It is intended that they will be used more frequently. The clause notes provide -

> 205M - When court is empowered to make a community service order . . . This amendment is based on existing section 229 of the Act. It is hoped that community service orders will be used more frequently as part of the new parenting compliance regime.

The inclusion of this new form of punishment is intended to be another step on the way to imprisonment, and one that we hope will help people avoid that ultimate sanction.

Mrs EDWARDES: I refer the Attorney General to proposed section 205Q on pages 26 and 27, which deals with the sentences of imprisonment. It clarifies that a term in prison does not reduce the liability to make a payment under the child maintenance order, and nor should it. Proposed section 205Q(5) allows a person sentenced to a term of imprisonment to be released once that person has entered into a bond. Subsection (6) states -

> . . . a bond (with or without surety or security) that the person will be of good behaviour for a specified period of up to 2 years.

I bring that to the attention of the House. Proposed subsection (1) states -

> A sentence of imprisonment . . . must be expressed to be -
>
> (a) for a specified period of 12 months or less; or
>
> (b) for a period ending when the person -
>
> (i) complies with the order concerned; -

He can finish his sentence if he pays the maintenance -

> or
>
> (ii) has been imprisoned under the sentence for 12 months or such lesser period as is specified by the court,
>
> whichever happens first.

I refer to the Government's proposal to remove imprisonment requirements for sentences of six months or less. Will there need to be a consequential amendment to this legislation, which would take us out of uniformity with the rest of Australia?

Mr McGINTY: The member could well be right! Although that matter has been determined in principle, I have not yet seen any draft legislation. Now that this has been drawn to my attention, I will make sure that the Family Court Act is also considered in that context.

Mr PENDAL: We have been leading up to the issue of sentences of imprisonment for some time. The Attorney General was gracious enough to indicate earlier by interjection that uniformity has its limitations and that if he were left to deal with the matter himself, he would look at it in a different light. What would be the effect of deleting proposed section 205Q so that imprisonment was not an option? Instead, there would be only the stage 1 or 2 punishments. The Attorney General would argue that it would put us out of step with the federal Act. However, proposed section 205M refers to the Western Australian Sentencing Act, which, as far as I am aware, is different from other state sentencing Acts. We are using a state sentencing regime within a Bill that it is intended to reflect federal provisions. We say we are serious about not imprisoning people for things other than the most serious, heinous and diabolical crimes. We could find those extreme cases in family law, but they are essentially picked up by the criminal law anyway. Diabolical crimes such as kidnapping or perjury are picked up under state law, and we also have access to the federal statutes. Why should we reflect commonwealth provisions when most of us agree that they do not necessarily express legislative perfection? Western Australia is going down the path of depopulating the jails of those people who should not be in them. I suspect that not much would happen if we rubbed out this clause. It might send a message to the commonwealth authorities. The Attorney General said that we are implementing a 10-year-old recommendation of a joint federal parliamentary committee. I have read federal parliamentary committee reports, and on occasion they are no more clever and have no more basis than something from the Tasmanian, Norwegian or Zimbabwean Parliaments. Why does the legislation need to reflect an imprisonment regime when most of us agree that we

should keep prison for only those people who have committed crimes at the extreme end of the spectrum? Even the most sensible and rational people sometimes do stupid things in the Family Court environment. I have seen them in my office with tears rolling down their cheeks. They know they are serious, sensible, rational people, but they also know that what they have locked themselves into on an emotional level is prejudicial to them and their children in the Family Court environment. Why perpetuate something that most of us seem to think should not be perpetuated? I do not think it would make a lot of difference, and it might send a message to people elsewhere in Australia who have also reflected something in their law that they should not have reflected in the first place.

Mr McGINTY: I think in about two minutes the member will agree with me that that is not a good idea. I would like a minute to develop that thought. While imprisonment is already in the Act as an option in certain circumstances, this change does not affect the fact that imprisonment is still available for family law offences. I agree with the member's description of the strange and out-of-character things that people do at times of enormous stress. People who are thoroughly decent human beings come to my electorate office and do absolutely amazing and destructive things because of the breakdown of a relationship and the consequences of that. That is the classic sort of purpose for which prisons should not be used. However, when one reflects on it, the federal Act - the Family Law Act - relates to marriages. We are inserting comparable provisions for de facto relationships and exnuptial children. If we delete from this clause the provision allowing for imprisonment, we will be left with a provision that enables the imprisonment of people who have been married, but not the imprisonment of people who have lived in a de facto relationship and have had a child. Should I rest my case at this stage?

Mr Pendal: You are doing pretty well. Thank you.

**Clause put and passed.**

**Clause 13 put and passed.**

**Clause 14: Section 222A inserted -**

Mrs EDWARDES: This clause deals with proposed section 222A - people not to be imprisoned for failure to comply with certain orders. It states -

> A person must not be imprisoned or otherwise placed in custody because of a contravention of an order made under this Act for the payment of money.

We have just been talking about maintenance, and I would like clarification, for the record, of the difference between the previous clauses about which we have been talking and this one.

Mr McGINTY: I am able to respond in a general sense. I was just looking for some more information. A person can be imprisoned for non-payment of maintenance. This relates to other payments - child-bearing expenses and things of that nature - that might be ordered in addition to maintenance. That is the nature of the distinction, but I was trying to get some more information on what other sorts of money -

Mrs Edwardes: Education, clothes and contributions of that sort.

Mr McGINTY: That is normally maintenance. The only one we can think of now is child-bearing expenses. If we can think of any others we will come back to the member, but that is the distinction as we best understand it.

**Clause put and passed.**

**Clauses 15 to 28 put and passed.**

*Standing Orders Suspension*

**MRS EDWARDES** (Kingsley) [9.35 pm]: I move -

> That so much of standing orders be suspended as would be necessary to enable the following amendment to be moved as one question -
>
> > Page 40, line 1 to page 104, line 20 - To delete "de facto" wherever it appears and substitute "domestic".

I move the motion because in the remainder of the Bill, wherever the word "de facto" appears - in de facto relationships and de facto partners, which incorporates the definition in proposed section 205V of "de facto relationship" - the word "domestic" should be substituted. In ordinary circumstances, if the services of parliamentary counsel were available, we would have been able to provide the House with a complete list of

those section, page and line numbers. However, this is the short version, if I might so describe it. If the amendment could be moved as one, it would save the time of the House, rather than raising it on however many occasions it would need to be raised. As such, it is a shortened version of what would normally be put forward. It allows time to be saved and permits the view to be put forward in the form of a global amendment. The sorts of clauses we are talking about are fairly well identified as dealing with de facto relationships, as referred to in clause 29, and the meaning of de facto relationships in proposed section 205V. I cannot tell members how many times it appears after that, but it again appears in proposed section 43 and under the new part 5A, de facto relationships. We are talking about a child a de facto relationship or a de facto partner when dealing with the definitions, and then we move to the definition clauses. Proposed section 205V refers to the meaning of de facto partner. Under proposed section 205X, the de facto partner of a person who becomes the first person is the de facto partner who is eligible to apply for an order and has a right to certain civil proceedings. It is referred to again in proposed section 205ZC and further on throughout the proposed section.

Question put and passed with an absolute majority.

*Consideration in Detail Resumed*

**Clause 29: Section 5 amended -**

Mrs EDWARDES: I move -

> Page 40, line 1 to page 104, line 20 - To delete "de facto" wherever it appears and substitute "domestic".

As I indicated, the suspension of standing orders allows this amendment to be moved as one on this occasion. The reason for the amendment is what we were talking about earlier; that is, a partnership or a joint venture, to which some of the courts have referred. The concerns we have raised include the way that de facto relationships have been defined and the way they are being interpreted in the Bill, which allows for them to have, in some instances, a status greater than that of a legal marriage. There was some debate about our not getting caught up in semantics, but to deal with the words as they are. The courts look at the intent of the Parliament and what the words mean. The view on this side of the House is that, in this instance, we are not dealing with the distribution of property on the separation of a partnership between two people. We believe that the sections relating to the rights of two people who have contributed to a property that ends up in the hands of one person, which is totally unfair, unjust and inequitable, must be addressed. It is purely a contractual, equity matter. We are not dealing with a relationship matter whatsoever. The change of wording highlights the concern that is being raised. What we are talking about in the Bill is a relationship. What we should be talking about is essentially what the Attorney General said earlier - legal mechanisms to resolve disputes. That is what it is; it is a dispute between two people who have contributed to property that ends up in the hands of one person. The distribution according to the contribution that has been made is unfair. At the moment, the courts have not proved to be very friendly because the area of trusts, particularly resulting trusts, is a very complex area of law. What needed to be done was to uncomplicate that complex piece of law rather than put the distribution of property on the separation of parties into the Family Court, giving it a status that is not necessary. Of course, we will take the issue of de facto marriage further. De facto relationships have been recognised in various pieces of legislation. However, it has always been for other reasons. We are saying that it is inappropriate to put that issue in the Family Court Amendment Bill. It is far more appropriate to have a separate piece of legislation. It should deal with a domestic relationship as opposed to a de facto relationship.

Other pieces of legislation around Australia have addressed these concerns. Victoria uses the "domestic" terminology; it does not use "de facto". The Attorney General previously spoke about the model Bill. Not all States have followed it to the nth degree. The Attorney General indicated that there are some variations of the model. I have been on a ministerial committee that has approved model legislation. That is then taken back to the States to look at in light of their laws and their community. It is not necessarily followed in a rigid fashion. That is always the basis. There is no mandatory status of complying with or following that model uniform legislation. As such, I moved the amendment to ensure that what we are talking about is a domestic relationship and to highlight its significance when dealing with the distribution of properties between parties.

Mr PENDAL: I presume that we had to suspend standing orders because the ruling is that the amendment changes the scope of the Bill. Is that the reason? When I saw the members coming into the Chamber, I thought for a moment that we were dealing with parliamentary superannuation. I assume that we are broadening the scope and therefore we needed to suspend standing orders. Can you clarify that, Mr Acting Speaker (Mr Andrews)?

The ACTING SPEAKER (Mr Andrews): It was moved to avoid multiple amendments to the Bill.

Mr PENDAL: Thank you, Mr Acting Speaker. I hope that we will not go to a vote on this clause tonight. I understand that we hope to rise at 10 o'clock. Whatever time we go to, I hope that we will not go to a vote on this. In the main, I am genuinely in accord with the sorts of views that have been expressed in this debate by the member for Kingsley. She has very amply expressed the concerns of many people in this House about the contents of the legislation. However, I have a reservation, not about her motives, but about the implications of what might occur. It seems to me that the implication can be described by the phrase "a rose is a rose by any other name". Because of the views I have expressed about de facto relationships being accorded some parity with formal marriages, all of a sudden, in the course of the consideration in detail debate, we are asked to consider domestic relationships in the same boat. That seems to present some difficulty for people like I. We are simply trading one undesirable name for another. I am not sure that my concerns are well founded. However, it is late in the day. I am not saying that the amendment has been dropped on us with undue haste. I am simply saying that I do not know that I fully understand the implications of what we will be doing. If we are to finish at 10.00 pm, it would not take all that long for people to talk out that position. I am concerned that we would strike out the words "de facto" where they appear and replace them with the single word "domestic". It seems to me that that has some other implications; and those implications might be equally unacceptable. I do not in any way doubt the motives of the member who has moved them; however, I have some doubt about my capacity at this stage of the day to understand the implications of them; that is, the definition of the word "domestic" versus "de facto".

Ms SUE WALKER: In the Property (Relationships) Legislation Amendment Bill that was debated on 25 May 1999 in New South Wales, "de facto relationship" was redefined to include a "domestic relationship". "Domestic relationship" is defined as a de facto relationship or a close personal relationship, but not a marriage between two adult persons. Close personal relationship had three main criteria, including the concept of carers. That is not in this legislation. It does not cover carers, does it?

Mr McGinty: No.

Ms SUE WALKER: I am not sure whether that is correct in Victoria, although I have the Victorian *Hansard* here. In New South Wales, it had two branches - a de facto relationship and the close personal relationship, which then covered carers.

Mr PENDAL: I am not sure whether that was intended to reassure me or express the views I took. If my wife employed a lady in our home to do different work around the house, that lady would probably go under the term "domestic" employee. I understand the word "domestic" to mean some rapport between me and another person who comes into my house and deals with domestic chores. "Domestic" has a fairly wide -

Several members interjected.

Mr PENDAL: A person who does domestic work is not considered to be doing demeaning work. I am concerned that the word "domestic" has a widely understood meaning in that situation. It certainly does not generally mean a rapport or relationship other than with someone who gets paid X dollars an hour to clean and dust someone's place or to do washing or whatever. Those fears on my part may be unfounded. However, I repeat that I do not doubt the motives of the member for Kingsley. I simply do not understand the implications if we were to change the word "de facto" in the 40 or 50 pages of amendments before us, to the word "domestic". To me, the word "domestic" has connotations other than what might be meant by the amendments.

Mr McGINTY: I am more than happy to accommodate the request of the member for South Perth and not proceed to vote on this issue tonight. However, I place before the House five reasons why I think the amendment moved by the member for Kingsley should not be proceeded with or, if it is proceeded with, should not be supported. Firstly, the phrase "de facto relationship" already appears in the Western Australian Family Court Act and is used to define a marriage-type relationship when someone is not legally married. The definition is already there and the phrase is used throughout the Act - indeed, it must be because we are dealing with exnuptial children. The definition of a de facto relationship, which already appears in this Act, means the relationship between a man and a woman who live with each other as spouses on a genuine domestic basis, although not legally married to each other. If we were now to change that without changing the definition contained in the Family Court Act, it would lead to the sorts of problems to which the member for South Perth has alluded. It is already in the Act and will be used in its proper meaning throughout this Act.

Secondly, if the member asked someone in the street the meaning of the term "de facto", that person would give the member a definition similar to the one I read out. The concept is well understood. The word "domestic"

does not have the same clearly understood connotations. Thirdly, the model Bill includes the phrase "a domestic relationship" as one of the three options so far as the definition of de facto relationship is concerned. Version A, which is designed to include the conventional de facto relationship, is very much like the definition contained in the Family Court Act. It is the relationship between a man and a woman who are adults and who, although they are not legally married, live as husband and wife. That is the popularly understood general definition. The second definition, version B, is designed to include same-sex relationships as well as de facto relationships; that is, a de facto relationship is a marriage-like relationship other than a legal marriage between two adults. It also does not matter whether the adults are of different sexes or the same sex. Version C of a domestic relationship defines it as a relationship other than a legal marriage between two adults in which one or both of them provide personal or financial commitment and support of a domestic nature for the material benefit of the other, and includes a de facto relationship. If one were to look to the model Bill to find out what a domestic relationship was, it would have a different meaning to what we are trying to contain it to in this Bill, which is a de facto relationship including a same-sex relationship but not including a carer relationship.

Fourthly, unless there was a change to the definition as well as a change to the title, the term "domestic relationship" would broaden the scope of this Bill and extend property rights to people even beyond those we seek to extend them to in this legislation. Generally, that would include elderly people or perhaps people who have a live-in housekeeper who looks after a person with a disability. It could include Lang Hancock and Rose before they were married. All types of possibilities present themselves. We do not intend to include those in this legislation.

Fifthly, while the term "de facto" is well understood, in my view, one of the consequences of a domestic relationship being not so well understood is that it leaves open a greater measure of uncertainty than the current Act, which has already been criticised for being uncertain. I suggest that for those five reasons this amendment should not be supported. At this stage, I am more than happy to adjourn the debate so that people can reflect on that overnight.

Debate adjourned, on motion by Mr McGinty (Attorney General).

*House adjourned at 9.58 pm*