ADMINISTRATION AMENDMENT BILL 2018

Second Reading

Resumed from an earlier stage of the sitting.

DR A.D. BUTI (Armadale) [2.53 pm]: I was very eager to get the call because I know there is probably a lot of interest in this Administration Amendment Bill 2018 before the house. I am very interested in this bill. There can often be a lot of emotional energy spent on the part of the surviving members of the family when people die and do not leave a will. As the member for Hillarys mentioned, people think that if a person dies without a will, the money will go to the state. That is not the case, but the issue is how the estate of the deceased is to be distributed among the surviving members of the family. The whole idea of a statutory legacy is that a fixed net sum of the deceased's estate should go to the surviving spouse or civil partner, and it is set out in legislation. This bill seeks to increase the current statutory partner's legacy that is operational in Western Australia. At the moment it is very low, at only $50 000 when the intestate dies leaving issue. That means the person's children are the lineal descendants. It can be as high as $75 000 when the intestate does not leave any issue such as children or other descendants. We are seeking to increase that to something much more acceptable in contemporary Western Australia. This goes back to 2003, when the then Attorney General, Hon Jim McGinty, established a working group to examine the law of succession in Western Australia and to make recommendations for consideration by government. It is interesting, there was a conference in Perth, I think, about two weeks ago on succession law. I was speaking to a retired judge from New South Wales, Thomas Gray, and his wife, who both came here to make a contribution. They were saying that they were interested in the progress of our legislation and were surprised we had not enacted it at this stage. Obviously, they hope we will come into more modern times in order to ensure that people receive something a bit more appropriate in 2019. In this bill before the house we seek to do that by increasing the amount that we are going to statutorily provide if someone dies intestate, which obviously means without a will. That does not take precedence over a will. The will is there to give legal force to the intention of the deceased, but as we know, many people do not get around to drawing up a will. The amount of lawyers who do not get around to drawing up a will is surprising. They draw up a lot of other people's wills, but they do not draw up their own wills. I have to say that I have drafted a lot of wills for people, but for a long time I never had a will myself.

Mr P.A. Katsambanis: I hope you have got one now.

Dr A.D. BUTI: I do have one now, but I am very poor, so there is not a lot to leave to anyone! It is surprising, is it not?

Mr P.A. Katsambanis: I agree.

Dr A.D. BUTI: Yes, we get so busy. We look after everyone else and forget about doing a will ourselves.

Mr P.A. Katsambanis: I have done letters of administration for deceased lawyers.

Dr A.D. BUTI: Yes.

As I think the member for Hillarys mentioned, and the Attorney General got up to agree or shouted from his sitting position, we should encourage people to have a will in place. It is very, very important. As we know, we can encourage and help people to ensure they have their financial matters in place in case they leave this earth, but that is not always the case and that is why it is important that we have things such as statutory legacies, also known as partner legacies, in Western Australia.

The last review of the parental legacy was back in 1982, and it is of course time that we also look at the parental statutory legacy. The parental statutory legacy amounts to the legacy left from the estate of the deceased child. It currently sits at $6 000, so consideration has been given whether to increase that $6 000 to where it is financially beneficial or to abolish the statutory legacy.

We are also changing the statutory legacy of what is to be left to the partner, known as the partner legacy, from the miserly amount of $50 000 if there are children who are still alive, or up to $75 000 when there are no children, to something that is much more acceptable. It will be $435 000 when the intestate dies leaving issue, which means leaving children, or $650 000 when there are no children.

As I said, the parental statutory legacy was last reviewed back in 1982 and it is currently $6 000. That is a small amount and obviously it would not be of any great financial benefit. The question was whether we increase that figure or abolish it. It is a very emotional time for the parent of a deceased child having to deal with that emotional trauma. There are also financial issues to deal with, so it is good to have some statutory guidance. Obviously, children also may not leave wills, which is why we need the parental statutory legacy. The Administration Amendment Bill 2018 seeks to amend the amount from $6 000 to $52 000, because we have decided that it should be increased so that it has some financial benefit. This bill will also insert a new provision into the Administration Act 1903, which sets out a form that will calculate the amount of statutory legacy from time to time in the future.

As I said, if people have legal wills, they do not need to worry about these sorts of matters. People tend to think that wills need to be complicated. The legality of a will is determined by the Wills Act. Basically, a person needs to have beneficiaries and an executor and ensure that the will is signed and dated.

Mr P.A. Katsambanis: And witnesses.

Dr A.D. BUTI: And witnesses, of course. People do not need to go to a lawyer, but it is advisable —

Ms J.M. Freeman: It can end up costing you, though.

Dr A.D. BUTI: It can. It depends.

Ms J.M. Freeman: That's the problem, if it becomes costly.

Dr A.D. BUTI: It will not necessarily become costly. A lot of suburban solicitors will do wills cheaply, but it depends where the member goes. I agree that it can be costly, but not all suburban solicitors are costly. Some of them will do it for a reasonable cost. At my children's primary school, many moons ago when my daughter was in pre-primary school, as a fundraiser, I offered to do wills for the parents. That was about 18 years ago and it was $50 a pop, which was not bad! I said I would do only simple wills; in other words, wills that leave an estate to the wife or the husband.

Mr T.J. Healy: Can you still do that rate? Do you still do wills?

Dr A.D. BUTI: I will not do it at that rate now, member for Southern River, but we could negotiate.

Mr P.A. Katsambanis: Do you have a practising certificate?

Dr A.D. BUTI: That is another problem. I could still draft a will, but members would be aware that I am not doing it as a lawyer.

Mr W.R. Marmion: If they make you a minister, you'll do it for fifty bucks!

Dr A.D. BUTI: I do not think ministerial decisions are going for $50.

We raised a significant amount of money, although there was one person who wanted to keep changing her will. I changed it about three or four times over two weeks. I said, "I'm charging you only $50 here!" If she had gone to a lawyer, it would probably have come to about $1 000 considering the number of times she had contacted me.

Ms J.M. Freeman: And the rest.

Dr A.D. BUTI: Member for Mirrabooka, it may be the case, but a lot of solicitors will do wills for under $500.

Ms J.M. Freeman: No.

Dr A.D. BUTI: Maybe not in the northern suburbs.

Mr P.A. Katsambanis: I will give the member some names and contact details; there are some, including in the northern suburbs.

Dr A.D. BUTI: Yes, they will do simple wills, but not if they are complicated because they are being put into trust for someone else, or a guardian needs to be put in place and the shares have to be distributed and so forth. If it is purely a simple will that states, "I leave my estate to my wife", it can be done quite cheaply. It just depends where people go. The member can even go to the Citizens Advice Bureau of WA. It will do wills for a lot cheaper. The Citizens Advice Bureau in Armadale does not charge $1 000 for a will, I can assure the member. Getting back to it, the member can do it herself if it is a simple will. Obviously, as we said, it has to be witnessed, signed and dated and we need to make sure there is an executor and beneficiaries. That will be a valid will. We should encourage people to do that to ensure that the people whom they want to benefit from their estate—their property when they are alive—should benefit from it.

It is interesting that very few law schools now do succession law as a topic. It is an elective. I am not sure how many Western Australian law schools do it. A lot have incorporated it into equity and trusts or it is sometimes incorporated into property law. It is obviously very important.

Mr P.A. Katsambanis: Back in the Dark Ages when I was at law school, it was incorporated into equity and trusts.

Dr A.D. BUTI: When I taught equity and trusts—that was my staple at law school—we did a bit of succession law but we did not go through the mechanics of wills. We talked about what was needed under the Wills Act to ensure a will was valid.

Although this bill is very brief, it is very important. It is about time that this state comes into line with some other jurisdictions. I think Victoria has amended the legislation to refer to the average price of a suburban home, but I am not 100 per cent sure of that. When I was having a discussion with a former South Australian judge and his wife, I think that was what they were saying. There is also talk about having a national scheme. The problem with that, obviously, is if it is based on the price of an average home. There will be great variation in the average cost

of a home in Perth, Adelaide, Melbourne or Sydney. Although it makes sense at one level to have a national scheme, it is a problem if it is based on the cost of an average home, if people move from state to state. If it were based on a numerical figure, we probably could have national conformity. Obviously, the cost of living is different in different states, but I think that would be pretty agreeable. There is no difference in welfare payments between the states. I assume the Newstart Allowance is the same for people in Western Australia and Victoria. I am not sure whether there is variation in the housing allowance. Everyone would receive the same allowance nationally, but the cost of living is obviously different from state to state. For people on the Newstart Allowance who live in Western Australia or Sydney, it may be a lot harder in Sydney.

Ms J.M. Freeman: Member for Armadale, can you explain this to me? If I owned property in New South Wales and came to live over here but my husband died here and did not have a will, would I get what is paid in New South Wales or would I get what is paid here for an intestate?

Dr A.D. BUTI: I am not sure —

Mr P.A. Katsambanis: I can answer that for you.

Ms J.M. Freeman: Okay, member for Hillarys, would you like to answer that for us?

Dr A.D. BUTI: Go on, member for Hillarys.

Mr P.A. Katsambanis: You would ordinarily prove the will in the state where the deceased died. You would then have to re-present it for a reseal of probate in New South Wales in order to transact on their land registry to transfer the title according to the wishes of the deceased. If you had property in both states, it would be a dual process, but it has become pretty streamlined.

Dr A.D. BUTI: Yes.

Mr P.A. Katsambanis: It's all based on land registries, because the majority of assets are property based.

Ms J.M. Freeman: But if my assets were over there too—that's the thing about the assets—would I get the New South Wales intestate division or the Western Australian division?

The DEPUTY SPEAKER: Members, excuse me!

Several members interjected.

The DEPUTY SPEAKER: Members! Hansard is trying to track who is speaking, so if people want to be on their feet in the middle of the member for Armadale's speech any more than they have already done so, I will need to change the standing orders.

Dr A.D. BUTI: I thought the member for Mirrabooka's question was about fixing the statutory legacy at the cost of an average home.

Ms J.M. Freeman: Yes; that was my question.

Mr P.A. Katsambanis: That would be wherever you did the probate on the will.

Dr A.D. BUTI: It would be where the probate was done.

Several members interjected.

The DEPUTY SPEAKER: Members for Mirrabooka, Hillarys and Nedlands, can we please just let the member speak.

Dr A.D. BUTI: The point is, though, the amendments before the house today will not do that. The Attorney General has set a threshold of financial recompense for the deceased's relatives, whether it is the parental legacy or the statutory legacy for the surviving partner generally. In Western Australia, it is $435 000 or $650 000. With those comments, I think the member for Mirrabooka is ready to make a significant contribution to this debate.

MS J.M. FREEMAN (Mirrabooka) [3.11 pm]: I, too, rise to speak on the Administration Amendment Bill 2018. It is a very important bill. I understand from the brief exchange we just had that one of the issues with the bill, apart from the fact that it will increase the amount of statutory legacy payable on intestacy—that is, when someone dies and they do not have a will and the estate comes under the Administration Act—is that a partner or a wife will get the house and a sum of money straightaway upon their spouse's death. At this point in time, that amount is extraordinarily low, around $50 000, when the intestate dies leaving issue—that is, a person's children or other lineal descendants—and as high as $75 000 when the intestate dies leaving no issue. I gather "issue" is the proceeds after a person's death. Now, people have superannuation payments, so that money will be available. When people die, the families seek the proceeds from that property, income or any financial or other asset. I understand that this bill introduces a none-too-soon change that will increase that payment. However, I will enjoy hearing from the Attorney General—the members for Hillarys and Armadale discussed this—about how this fits Australia-wide, because I gather that WA is way behind other states on this issue.

I am always drawn to the idea that because we live in a nation of many states, residents of Western Australia are often disadvantaged by this dual system. That leads me to ask whether there is some way that we can create harmonisation in the whole issue of dying intestate and not having a will. We have sought to harmonise many laws. Recently we introduced consumer protection legislation that will ensure that changes to the law in WA occur concurrently with changes to laws in other states. That will ensure the laws in WA are current and that people in Western Australia are not disadvantaged. It seems as though this bill is a relic of the past, when we did things very much on a state-by-state basis. I understand it is all bound up in the fact that there is different land administration and property legislation in different states, but it concerns me that such a disadvantage should have existed for such a long period of time.

I note with some cheekiness that these amounts were last adjusted in 1982. Last night members discussed the first concerts that they ever saw. Today, as I was sitting here thinking about this, 1982 was about the time that I, as a 53-year-old now, went to my first concert.

Mr P.A. Katsambanis: And you paid $5 for a ticket.

Ms J.M. FREEMAN: Or whatever. But it seems outrageous that we are only now dealing with something as important as what happens to property when people die without a will. Since that time, the payment of compulsory superannuation was introduced. The reality is that people in stable relationships who have children usually have a property and will have made some sort of will—they will have got their will in order. In my own case, when I entered into my relationship with my partner, there were no de facto laws in Western Australia. It was a long time ago, member for Dawesville! There were no de facto laws in terms of property, so we did not have the same rights as married couples in Western Australia. If one party of a married couple died, the property instantly went to the wife or husband, unless there was a reason to contest that. When my partner and I bought a house together, I ran the risk of his family getting the proceeds of the property if he died suddenly. At that time, I was working at the Welfare Rights and Advocacy Service, a great community legal centre in East Perth. There was a case of a woman who had been in a de facto relationship for something like 20-odd years, but her name had not been recorded on the title of their property or that she had any interest in that title. When her partner died, the family—his children, not hers—claimed that she had no right to that property and sought to evict her from that property, even though she had been in a de facto relationship with that man for 20 years. When I became aware of that I was in a de facto relationship. We wanted to buy a house together so we sought legal advice. At the time we were told that it did not matter whether we wanted to make an agreement. The law would assess it at the time. It was fraught with argument over who contributed what. There was no idea that once a couple had been together for a certain time they agree to share assets, so we went into a tenants in common agreement to purchase our house, which cost us a bit more. Thankfully, that changed.

My son is now 23 years old. At the time, I knew Jim McGinty quite well and had worked for him. I think I have told the story in this house before, but Jim McGinty often asked me when I was going to get married because he liked weddings. I told him that I was a good feminist so I was not going to get married and be a wife. When he changed the de facto laws he said, "See? I knew you'd get married." We had our child about five years after we bought our house together. When my son was in school he asked us whether we were married and we said, "Yes, we're married. Father Jim married us. We didn't go to a church, but Father Jim married us." Years later, when Thomas was much older, he met Jim McGinty. I said, "This is Father Jim." My son said, "You married my mum and dad!" All of those things have to be considered when someone dies without a will.

Mr P.A. Katsambanis: It is very important for the public to know that if they have made a will in a relationship, upon an actual marriage, that will becomes automatically invalid unless it was made in contemplation of the marriage and it is clear that it was. That is another trap. Good legal advice is very important in this area.

Ms J.M. FREEMAN: That is really interesting. Obviously, we made wills at that time so that it was clear where our assets would go. In addition to a tenants in common agreement, we made a will. We made a will when Thomas was born that has stood the test of time. We have looked at it and no changes are required. It is interesting that the member for Hillarys has said that, and I am sure that is the case. If a couple is in a de facto relationship and they subsequently married, does that will no longer apply?

Mr P.A. Katsambanis: Yes.

Ms J.M. FREEMAN: Does that mean that if a person dies, they effectively die intestate?

Mr P.A. Katsambanis: Intestate—yes. Unless they make a new will.

Ms J.M. FREEMAN: That is really important to know. The South Sudanese community have what are called cultural marriages versus Australian marriages. They call them traditional marriages. That is a very complex set of arrangements with the family. It involves how many cows should be exchanged to the parents of the wife—not the wife in law, but the traditional wife—because the father is paid for the investment they have made in their daughter. There are a whole series of issues that have to be negotiated.

Mr P.A. Katsambanis: The dowry negotiations.

Ms J.M. FREEMAN: It is more than a dowry, though. It is whether it is appropriate, what impact it will have on the collective community, and the responsibilities of both sides of the family that will carry through if someone dies. There are many responsibilities and other aspects. Because that process is expensive, many South Sudanese people just do a traditional marriage and then live in a de facto relationship in Australia for a long time. They buy houses and have kids and when they feel as if they can afford it they get married. I went to a wedding of a couple who had adult children.

Mr P.A. Katsambanis: Ditto. I've been to those weddings.

Ms J.M. FREEMAN: Yes. The member is telling me that at that time, if they had a will—they may or may not have—that will would have become invalid despite the fact that, as far as they were concerned, they have been in a marriage relationship for the whole time. I think our concept of wills is very much based on a British cultural heritage. It would be interesting to talk to the member for Hillarys about how that fits into the Greek cultural heritage. In Afghani society, if the husband dies, the brother has a responsibility, if he is unmarried, to marry the wife to look after her. There are big responsibilities for other family members. Who gets those assets?

Mr P.A. Katsambanis: It's a really good point. It rarely happens anymore, but in traditional Greek culture the dowry payment and exchange of property may happen a significant period before the wedding ceremony. If the groom who received the dowry passes away before the marriage, there is no legally married couple and no spouse. Our modern Wills Act has some provisions, but they are clumsy, which is why people need advice. Taking the South Sudanese example, as long as people understand the circumstances and put in the right clauses, a will can be drafted that can survive whether the couple do or do not have a formal marriage in the future. It is complicated.

Ms J.M. FREEMAN: It is quite likely that they are not marrying at the time of their traditional marriage because they do not have the finances. We return to the point we were debating. Despite the fact that I have a very close relationship with the South Sudanese community, I do not have a large South Sudanese community in Mirrabooka and Balga any longer because they have now settled into the community and can afford to buy houses. They have moved to Ellenbrook, Butler, and Mandurah and purchased properties.

[Member's time extended.]

The DEPUTY SPEAKER: You may have an extension, member for Mirrabooka. Would you like one too, member for Hillarys?

Mr P.A. Katsambanis: We need to do some consideration.

Ms J.M. FREEMAN: If the minister would like to go on to the consideration in detail stage, I am happy for him to indicate when I should sit down. I am not sure whether the minister wants to consider that.

De facto relationships changed a very traditional aspect of will writing. If people were married, it was fine to die intestate. This is fixing the amount of money people would get if someone dies intestate. But if people are married, most traditional people would think that if they die their wife or husband will get their assets, because they have that expectation. For a classic working-class family with a house, a car, furniture and a bit of money in the bank—it has been made more complex because superannuation has been thrown into the mix—wills were not really a necessity. People got married and marriages were for life—"'til death do us part"—so people did not need a complex document that distributed assets because their financial affairs were quite simple, but now there are all these different ways of having relationships and different aspects of our financial affairs. We sometimes come into relationships with financial assets that we want to protect. We often have combined families and children from previous marriages and all that sort of stuff. As we become much more of a multicultural community, wills become quite important documents. But they are complex. For example, I have a constituent in Mirrabooka whose wife's will left her son as the executor. The wife now has Alzheimer's, so she is not able to change it, and the son has passed away. The husband would like to change the will, but he cannot, and he keeps getting told that he cannot change the will. I think there is some other reason that he wants to change it, such as there being another family member or some other complexity—I cannot remember exactly, but he basically has to let her die intestate.

Mr P.A. Katsambanis: In that case there would be other provisions that come into play, in which a third party could come in and prove the will and it would be letters of administration with the will annexed, so the intentions allowed for in the will could still be given effect in those circumstances, but, again, it depends on the individual circumstances and you need specific advice. Maybe the member for Armadale and I could come down and run a little clinic one day!

Ms J.M. FREEMAN: People walk into our office every day with very simple queries. I cannot give legal advice—I am not a lawyer—but if I could give advice to them, I would say, "If this is about you and your wife, you don't need a will. It will be fixed." I always understood that assets go to the surviving spouse.

Mr P.A. Katsambanis: That's only if the house is in a joint tenancy. What if it's tenants in common, which it might be; you don't know?

Ms J.M. FREEMAN: No, most traditional marriages were joint tenancies.

Mr P.A. Katsambanis: They were, that's true, but not all of them.

Ms J.M. FREEMAN: In our case, no, but, yes, that is right.

This is a great piece of legislation; it is something that we need to do. It is a problem that we are not keeping up with the rest of the country with provisions that are unfair and unquestionably wrong, but we also have a system that is set up for a cultural group that exists less and less, which is a man and a woman married for years, 'til death do them part, who marry in a traditional church way. In Australia, that is occurring less and less, with different cultural groups, de facto relationships and blended families. People come into my office who say they need to get a will, and we say that the Law Society sets up a caravan in Perth one week a year. People can go there and it will help them out with a will. We know when it is, so we will tell people when that is going to be, but, other than that, the cost is prohibitive on quite a few people. That really worries me.

I will wrap up, but before I finish I would really appreciate it if the Attorney General would tell me the process for separating de facto couples with superannuation, and how we are progressing with changes to that. If he does not have those notes here today, he knows what I am talking about, because that is the additional issue. Now that we have de facto laws, pretty much everything that applies to a married couple applies to de facto couples, but if my partner and I split, we do not get to split our superannuation; I get no capacity. Superannuation gets taken as a whole asset and all of that sort of stuff. When we have assets, that is okay, but it is really unfair for de facto couples because they cannot do superannuation splitting like people in marriages can. It would be worthwhile to get an understanding of where that is at.

I thank the house. It was a very interesting discussion, member for Hillarys. I am still of the view that the idea of the will probably needs a much more contemporary look at it, in how it applies to many of our newly arrived Australians, particularly with their different relationship arrangements, large families and different responsibilities, to ensure it is a contemporary and understandable document. Most people would just make assumptions; that is what happens. For many of the people I represent, the idea of going to a lawyer is not something that they would see as mainstream. Most people do not come into contact with lawyers. We need to remind ourselves that the electorate of Mirrabooka is just above the Kimberley for the lowest socioeconomic indicators. Churchlands is up the top. Many people are struggling with their day-to-day lives and making ends meet. The concept of doing a will is not something at the forefront of their mind, but if they have spent any time in the workforce, all of them now have an asset, which is their superannuation. They may not own a house, so they might not think they need to have a will, but pretty much all Australians will die with an asset, which is their superannuation.

Mr P.A. Katsambanis: Except that superannuation is most often, not always, distributed outside of any estate.

Ms J.M. FREEMAN: Yes, that is true.

Mr P.A. Katsambanis: It's distributed by the superannuation trustees.

Ms J.M. FREEMAN: The superannuation company will distribute it to the beneficiaries, and they will make a decision about what the beneficiaries are.

Mr P.A. Katsambanis: That can get complicated.

Ms J.M. FREEMAN: And horrible! I was at a superannuation company 10-odd years ago that used to have these very sad situations in which people would have $2 000 or $3 000 in their super or insurance—not much; it was very little—and five people were fighting over who got the provisions of that. If the parent had given some indication of where they thought that money should go—in most cases it goes to a dependant, not to non-dependent children—there would not suddenly be people fighting over a small amount of assets. There must be some other mechanism that is not as complex as a will for people like that.

MR J.R. QUIGLEY (Butler — Attorney General) [3.38 pm] — in reply: Some very interesting points were raised during the second reading debate on the Administration Amendment Bill 2018. I understand that there are a couple of questions for the consideration in detail stage, so I will not take the chamber's time for too long in replying. I do, however, wish to stress the initial point made by the member for Hillarys that this bill is dealing with the assets of those who die intestate. Should a living person wish to have their estate divided in another way, not in accordance with this legislation, they can simply make a will during their lifetime.

The bill before the chamber this afternoon is a very small portion of a more extensive reform package of the Administration Act. We wanted to bring this package forward and fit it into the legislative agenda quickly to avoid further injustices to surviving spouses, children or parents. I assure the member for Hillarys and all others in the chamber that a very active working group within the Department of Justice has been working on this issue. That

working group and committee comprises senior practitioners around the city who meet regularly on a wide range of reforms, and I hope to be in the possession of drafting instructions to take to cabinet for approval within a month or two. It has been a complex process, but we have picked out this little area as a discrete area that we could deal with expeditiously in the Parliament.

We will come to this in consideration in detail, but the member for Hillarys said that he would want to ask questions on how we arrived at $435 000 when there is a spouse and issue, and $650 000 in the absence of issue. This came from the working group. I have just adopted what the working group presented to the government in this area. I accept that it has been the subject of extensive inquiry and deliberations by the working group. I refer to the jurisdiction in which the member for Hillarys was first admitted—Victoria. In that jurisdiction the reserved amount under sections 70J to 70M of that state's Administration Probate Act 1958 is $463 308, so $435 000 is a ballpark figure. In New South Wales the reserved amount is $476 000. Some other states have not yet dealt with this issue. In Queensland, where it would be expected that housing would be a bit more expensive than in Western Australia at the moment, the figure is $150 000, with no formula for review. In South Australia, there is no formula for review, but under section 72(g) of its act, $100 000 is the base figure, but it can be raised by prescribed regulation. In Tasmania the figure is $423 000; in the Northern Territory, $350 000, and $500 000 if there are no siblings; and in the ACT, $200 000. There are a range of figures around the nation. It is a bit arbitrary, but we must strike a figure that will see the surviving spouse able to secure accommodation for his or her lifetime.

Mr P.A. Katsambanis interjected.

Mr J.R. QUIGLEY: I do not know that $435 000 would buy a house in Hillarys. It certainly would buy one further up the coast at Alkimos. We are not trying to get a Cottesloe house.

Mr P.A. Katsambanis: It would buy a very good unit in Hillarys or Sorrento. It would almost buy an entire house in a few of the suburbs in my electorate. It is very good buying, and highly recommended—Craigie, Padbury—very good buying.

Mr J.R. QUIGLEY: That is so. We must come to a figure at which the surviving spouse is at least looked after in a situation of intestacy.

We can go into consideration in detail because I have advisers present, and I would like to see this passed this afternoon if possible, but I just want to touch upon the point raised by the member for Mirrabooka about de facto relationships. This Parliament has now passed a referral to the commonwealth, because it deals with marriages, to give it the powers to deal with the splitting of superannuation for de facto couples. I am advised by the federal Attorney-General, Hon Christian Porter, that that matter is in the cabinet process in the federal government. It is attending to that, but I am sure that it has other things occupying front and centre at the moment.

I thank members for their contributions. I am keeping a bit of an eye on the clock because I would like to see this out of this chamber this afternoon, because we want to look after spouses. I will wind up my reply to the second reading debate and we will go into consideration in detail.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clause 1: Short title —

Mr P.A. KATSAMBANIS: With the Attorney General's indulgence, picking up on his comments about the working group that will come up with some drafting instructions for a more complete overhaul of the Administration Act 1903, obviously things could change, but is it the current intention that whatever comes out of the drafting process will be produced as a green bill, or will it be introduced as direct legislation into this place?

Mr J.R. QUIGLEY: It will be introduced as direct legislation. I want to try to get it through in the life of this Parliament, because this has been hanging around for a long while. We do not want to do a green bill that then goes on the backburner. We will bring a bill into the Parliament, and members will have ample opportunity to peruse it.

Mr P.A. KATSAMBANIS: We are already at that ticking clock, even though we are almost two years out from an election, so I welcome that. I thank the minister.

Clause put and passed.

Clauses 2 and 3 put and passed.

Clause 4: Section 14 amended —

Mr P.A. KATSAMBANIS: This is the clause that effectively updates the table to the new figures. The Attorney General rightly pointed out that the amounts he has included in this legislation came out of the recommendations of the working group. He indicated that they roughly approximate the amounts in some of the other states that have addressed this issue. Queensland has not really addressed it as yet, and South Australia, I think, is in the process of doing so. States such as Victoria, New South Wales and Tasmania have addressed the issue and have figures around about that $400 000 to $500 000 mark for the bottom end. Can the Attorney General confirm whether the intention here is really to approximate the cost of getting a decent property for the surviving spouse or partner, and that is why that minimum amount has been set?

Mr J.R. QUIGLEY: That is approximately right, and also to strike a balance between the surviving spouse and other people in the family. The amount was arrived at after consideration, as the member said, of legislation elsewhere. The Law Reform Commission of Western Australia's reports informed the national committee's report. In consultation with the working group, it was considered to strike a reasonable balance between competing claims of family members. We note that it is 8.7 times greater than the current reserved amount. This will provide a lot of relief for surviving spouses of intestate people.

Mr P.A. KATSAMBANIS: For completeness for anyone reading this who wants to be guided by it, can the Attorney General confirm that if the value of a deceased estate is below $435 000 and there are other issue, and below $650 000 but there are no other issue, the surviving spouse or partner gets looked after first and they get the entirety of the estate to the exclusion of any other potential beneficiaries?

Mr J.R. QUIGLEY: The member for Hillarys is quite right, and of course there is that old saying: a river can't rise above the level of its bank. When the estate has only a couple of hundred thousand dollars in it, the surviving spouse will get the couple of hundred thousand dollars. If the estate, however, has a lot greater than these figures, there can also be challenges under the family provisions legislation by other members of the family who feel they have not been adequately provided for. We are not changing the family provisions legislation; that will be there for recourse in large estates. Where the estate only would satisfy that, or a lesser sum, that is what the spouse will receive.

Clause put and passed.

Clause 5: Section 14A inserted —

Mr P.A. KATSAMBANIS: Clause 5, which I spoke about in my second reading contribution, allows for an uplift factor. I note at the outset that the clause relies on the responsible minister of the day making an order declaring that the sum has been uplifted. It is not an automatic uplift; the provision allows the minister of the day to do it without coming back to Parliament and passing specific legislation. I seek from the Attorney General, firstly, an explanation about why this mechanism, which leaves it to the discretion of the responsible minister, was chosen as opposed to, say, an annual, biannual or five-yearly automatic review. Secondly, what is the Attorney General's intention around how often he thinks he will exercise this power whilst he is the responsible minister for declaring these sorts of orders?

Mr J.R. QUIGLEY: For the sake of stability, rather than it just being automatically changed to on an almost monthly basis or a six-monthly basis or whatever, it was left in the hands of the minister with a prescribed formula. I am sure that if this bill were already legislated and the government had not dealt with it for two or three years, for example, a diligent shadow such as the member for Hillarys would ask during question time, "Why have you not used your formula? People out there are suffering." It is also important to draw the member's attention to what will become section 14A(4). In the minister making the declaration, it will be subsidiary legislation and therefore will be subject to disapproval by the Legislative Council.

Mr P.A. Katsambanis: That is a good thing.

Mr J.R. QUIGLEY: I am sure that a diligent shadow would press a minister to review, and attack him if he did not. Once he had struck the amount in accordance with the formula, it would lay on the table of the Council.

Mr P.A. KATSAMBANIS: I will get to the final part that I wanted to make sure we had clarity on, which is the formula itself. First of all, I commend the Attorney General for the fact that it includes an automatic rounding-up to the nearest $500 so that we do not end up with that silly situation in which the amount might be $483 912.73, as happens in some jurisdictions and is really confusing for everyone involved. We need a good, round figure. That is a good thing. The uplift formula is based on the average weekly total earnings of full-time adult employees in Australia, which is sometimes colloquially referred to as AWTE. The sum is uplifted by that estimate that is most recently published by the Australian Statistician. Firstly, why are we using the Australian figure rather than the Western Australian figure; and, secondly, the denominator is a number of 1632.10. I assume that represents the average weekly total earnings of full-time adult employees at a particular point in time. Can the Attorney General

confirm whether that is the case; and, if it is, in which month in which year was that 1632.10 figure of average weekly total earnings determined?

Mr J.R. QUIGLEY: Firstly, the member commenced with a commendation, but the commendation should go to the working group. I cannot claim credit for that. I have accepted the working group's recommendations in that regard. As the member would appreciate, drafting takes a while. To give the exact date, it was the average weekly earnings published by the Australian Bureau of Statistics when the cabinet submission was handed to me to go to cabinet in November 2017—about 16 months ago. It is relatively contemporary having regard to how long ago the statutorily reserved amount was made.

Mr P.A. KATSAMBANIS: I think it is a good idea for the denominator of the formula to be contemporaneous with the time that the amount was struck rather than the time the legislation is passed. Obviously, it will be in the hands of the Attorney General or any other responsible minister in the future to ensure that those orders are made, and, as he pointed out, an adequate shadow would also push for it to happen. Thank you for that explanation.

Clause put and passed.

Title put and passed.

Leave granted to proceed forthwith to third reading.

Third Reading

MR J.R. QUIGLEY (Butler — Attorney General) [3.59 pm]: I move —

That the bill be now read a third time.

MR P.A. KATSAMBANIS (Hillarys) [3.59 pm]: We support the Administration Amendment Bill 2018 and we wish it speedy passage. A couple of points that have been made need to be reiterated. Members of the public, do not rely on this backstop legislation—seek advice and make a will so that you can distribute your assets in the way that you want to see them distributed. We also look forward to seeing the fruits of the working party's group reviewing the Administration Act.

Question put and passed.

Bill read a third time and transmitted to the Council.