ADMINISTRATION AMENDMENT BILL 2018

Second Reading

Resumed from 27 June 2018.

MR P.A. KATSAMBANIS (Hillarys) [1.38 pm]: I rise as the lead speaker for the opposition on the Administration Amendment Bill 2018. It is a very short bill, but an extraordinarily important one, because it attempts to bring into contemporary financial parity the statutory legacies paid to spouses of people who die intestate, as well as, in some more limited circumstances, parents of people who die intestate. An intestacy is when somebody dies without having made a valid will at all, or there can be a partial intestacy when some aspects of someone's estate are dealt with by a will but other parts remain to be dealt with. In certain sections of the community there is a bit of a misnomer that if someone dies without a will—dies intestate—their money supposedly goes to the state. That is an urban myth, but it is out there in certain sections of the community. Over many years—more than a century—legislatures within the Westminster tradition have taken it upon themselves to make a backstop provision for those people who die without a will or when some parts of their estate have not been dealt with by a will for one reason or another. In modern times, there is usually a catch-all provision at the bottom of a will, which usually avoids intestacy. However, the statutory formula does not work for everybody. In fact, it may not work for most people if they fall into the trap.

When we delve into the minutiae of the Administration Act 1903, it simply reinforces the point that if someone wants to make sure their loved ones benefit from their estate upon their passing and that their wishes are respected regarding how their estate is to be distributed, they ought to make a will. They ought to seek advice, make a valid will and keep updating it to make sure that it reflects their personal circumstances.

Mr J.R. Quigley: Hear, hear!

Mr P.A. KATSAMBANIS: Yes, I think I speak for everyone when I say that. I am quite passionate about the subject of reforming our succession laws. I have been involved in succession laws almost from the start when the old Standing Committee of Attorneys-General put together a process in 1991. I was admitted to practice in 1991, after having completed my articles of clerkship. As many people did back then, I did not complete my articles at a law firm; I completed them in a trustee company. I know others—very famous people—who completed them at gas and fuel corporations and the like.

Dr A.D. Buti: I thought you were going to say you completed it at Collingwood Football Club!

Mr P.A. KATSAMBANIS: I probably got different articles at Collingwood Football Club. The terraces of Victoria Park teach us from a very early age how to deal particularly with warring families regarding things like intestacy and the administration of deceased estates generally. We know that, in their grief, people can unfortunately end up in extremely acrimonious circumstances. Although I did not practise exclusively in the area of wills and estates, I could not avoid being involved in the whole debate about how we could do it better. Since 1991, across Australia, various jurisdictions have been talking about it. In his second reading speech, the Attorney General outlined some of these processes, including the processes here in Western Australia. The work that has been done has culminated in some reforms over time. We have had model wills bills and the like. When I was in the Victorian Parliament, I was involved later on in some modernisation of the Wills Act. I have been informed that some of my comments during the second reading debate have been referred to by judges determining matters in the Victorian Supreme Court. My comments were not referred to in jest, so I take that as a bit of a compliment.

Despite all the publicity from legal firms, small firms out in the suburbs and the great work done by the Public Trustee's office to raise awareness about the need to have a will and update it regularly—at the very least, to check it regularly to make sure it still meets your wishes and, if it does not, to update it—there is still a group of people in our community who do not make a will or do not make a valid will. Unfortunately, they die intestate. The only solution the state has in those circumstances is to bring forward legislation that creates a statutory formula for the distribution of someone's estate when they have not left a document—a will—that indicates their desire for how their estate is to be distributed. Effectively, the state takes a guess. At the heart of what the state does in introducing a statutory formula under the Administration Act 1903 is to ensure that the beneficiaries of that deceased person do get the benefit of the person's estate. The starting point is a delineation of the funds that are handed over or the assets represented by funds that are handed over to the partner or spouse of the deceased person, and then any children or other bloodline beneficiaries. I think it has always been an axiom that the surviving partner of a deceased person should be entitled to a portion of the estate.

In Western Australia, although we subscribe fully to that concept and that theory, unfortunately the statutory legacy amount has not kept pace with inflation or the purchasing power of money. Many years ago it was set at $75 000 when someone has died without leaving issue—children of their own. It is as low as $50 000 when the person who

died did leave children or other lineal descendants—children, children of children, or grandchildren of children. These circumstances happen. People can die late in life after their own children have passed away. The money goes to their grandchildren and often it goes to adult children. In those cases, $50 000 or $75 000 to the surviving partner—the widow or widower—is a very small amount. We cannot assess everyone's personal circumstances but, in many cases, that money may have to provide for that person to buy a property. People might have been in a relationship for a long time—married or living de facto—but only one person had ownership of the property. If they need to sell the assets to provide some money for the surviving partner and other money for the children or grandchildren of the deceased person, the statutory guarantee of $50 000 or $75 000 is not going to allow the surviving partner to purchase a home in this modern-day environment, let alone set aside other funds, perhaps as the couple intended would be set aside. If there was no will or a failure in the will—either for technical reasons or some assets were simply not contemplated—the surviving spouse will be left high and dry by the failure of our own laws to keep up with the pace of inflation.

I do not know the exact date on which the statutory legacy for the surviving spouse was set, but I know that the parental statutory legacy was set in 1982 and, after looking at the figures, I guess that the amounts of $50 000 and $75 000 were set also around that time. That was 37 years ago, and it does not cut it today. Someone could buy significant property for $50 000 back then; they would struggle to pay a deposit on a house with $50 000 now, especially with the way banks are going at the moment. With the effluxion of time, what may have been an appropriate distribution between someone's surviving spouse and their children or grandchildren has become completely inappropriate and unfair for a surviving spouse. Of course, after the statutory legacy, the spouse, depending on the children and the types of dependants, will also be entitled to some percentage of the rest of the estate, but their guaranteed amount will be very low. That is just not good enough and this bill recognises that. Since I have been in this place I have often stood up and spoken on similar legislation and said that we need to do better to ensure that amounts that are set in legislation keep up with the pace of inflation and should be reflective in the future of the purchasing power that they reflect today. I will address that in a minute, because I think this bill does that.

The bill increases the statutory legacy for a partner to $435 000 when there are other issues—that is, when there are children and grandchildren—with the intestate person, the person who died without a valid will, or valid provisions to distribute part of their estate, and $650 000 when there is no issue, where there are no children, particularly dependent children. Either in his summing up of the second reading debate or in consideration in detail, perhaps the Attorney General could enlighten us on why these amounts have been chosen. Why is it $435 000 and $650 000 respectively rather than other amounts? I refer to what I said earlier. If the intention is to allow the spouse to get on with their life without financial penalty, perhaps to be able to buy a property, a widow or widower could get appropriate housing with $435 000, or if there is no issue—there are no children or grandchildren to deal with—they could be entitled to a minimum of $650 000. Again, that is a good start. It does not mean that they will be flush with funds, but at least they will be able to purchase their own home if they need to or do other things.

The bill does not deal very easily with the case of joint proprietorship in property; that is, when a couple—a husband and wife, or de facto or same-sex partners—are joint tenants in a property. Immediately upon the death of the first, the title of a house passes outside of a will, outside of this process, to the surviving owner of the property in a joint tenancy. In that case, if we are to look at the rest of the estate, apart from the family home, some people might say that getting the family home and $435 000 is too much. But, again, if we are dealing with adult children, it is probably fair that the majority of the funds go to the spouse.

An easy solution for not copping the statutory formula is for people to make sure that they have a valid will. In valid wills, people can express their intentions. Wills are not concrete and some things can be defeated—our courts are full of cases of people challenging wills—but at the very least a testator can make their intentions clear. A very, very high threshold has to be proven for those intentions to be defeated, especially when a person has tried to balance competing interests. I have spoken before in this place and in other forums about how complex these competing interests have become with merged and mixed families, for people marrying or partnering later in life, and for people who go on to have another partner after their first partner has died. A person's own circumstances are best solved by them. It is best that they sit down with their loved ones and make an agreement. Do not leave it up to the statutory formula. It is a backstop—an emergency. Please treat it as that sort of backstop and emergency.

Another area on which this legislation touches—because it does not change any formula used to distribute an intestate estate amongst various beneficiaries; it just touches on the statutory amounts—is the parental statutory legacy. That is when parents are entitled to an estate when there is no spouse or children after a young person has died in, say, a motor vehicle or workplace accident or from the effects of a congenital disease. Since 1982, the legacy for parents, before other participants share in the distribution, has been set at $6 000. Today, $6 000 is not a substantial sum. In fact, in the administration of most estates, it is just a complicating factor. It is clear that the people who drafted this bill considered it was still appropriate that a deceased person's parents should participate

in the distribution of their child's estate. At the very least, it will not be to compensate them for the loss of their child, but they will get some financial recompense. The statutory legacy has been increased from $6 000 to $52 000, which equates roughly in percentage terms to the uplift in the statutory legacy for spouses. It is a more substantial sum. Again, perhaps the Attorney General might want to enlighten us in his summing-up and during the consideration in detail stage why $52 000 was chosen. It is obviously better than it was, but I am sure that the Attorney General will say—he uses this line occasionally—that it is very hard to work out how long is a piece of string and that they had to set the amount somewhere. I think it is a good start.

Another provision of the bill that I want to speak about quickly is clause 5, which inserts a formula for an uplift factor. I will talk to the Attorney General about the actual factors in this uplift clause during the consideration in detail stage, but essentially it tries to make sure that we do not fall into the trap that we fell into in the past, whereby inflation would erode the statutory sum of money. There is a mechanism whereby the minister can make an order, using the statutory formula, to uplift the amounts of $435 000, $650 000 and $52 000 to keep pace with inflation so that they can still be relevant and provide properly for a deceased person's family members. This is a good provision. I would like to see this sort of formula applied to more legislation, whether it is via benefits, as in the case of the Administration Act, or penalties, as in the case of many, many other acts.

There is no point in holding up the passage of this legislation. As I indicated, the opposition would like to go into the consideration in detail stage simply to tease out some of the operations of the provisions. We support what the Attorney General is doing in this bill. It is the culmination of work that started a long time ago. Neither side of government can say that they have done a good job in this area. The matter has been hanging around since the 2000s and for most of this decade. We are getting to it now, and this bill is a good start. Again, I indicate that the opposition will support the passage of this bill.

DR A.D. BUTI (Armadale) [1.59 pm]: I rise to contribute to the second reading debate on the Administration Amendment Bill 2018. I echo the member for Hillarys' contribution. It is about time that we moved from statutory legacy amounts. The member for Hillarys asked why the government has arrived at the amounts that it has in the amendments. It will be interesting to find that out at the consideration in detail stage. I know that in some jurisdictions over east it is fixed to the average cost of the family home. Looking at what has been proposed, maybe that is the case. Who knows?

Mr P.A. Katsambanis: It can go down too!

Dr A.D. BUTI: Yes, that is right. It certainly had to move on from what we currently have.

Debate interrupted, pursuant to standing orders.

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