

FAMILY COURT AMENDMENT BILL 2021

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Matthew Swinbourn (Parliamentary Secretary)**, read a first time.

Second Reading

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [6.21 pm]: I move —

That the bill be now read a second time.

On 5 December 2018, the commonwealth Family Law Amendment (Family Violence Cross-examination of Parties) Bill 2018 passed both houses of federal Parliament, amending the Family Law Act 1975 to provide better protections for victims of family violence during the cross-examination process in family law proceedings. The new provisions applied to cross-examinations occurring in the commonwealth jurisdiction effective from 10 September 2019. It is the usual custom for Western Australia to amend the state Family Court Act 1997 to mirror any amendments made to the commonwealth Family Law Act 1975. This ensures the same legislative position applies to parents of exnuptial children and people who were in a de facto relationship as applies to married people under the commonwealth legislation. Therefore, this bill will amend the Family Court Act 1997 to also provide protection in relation to the cross-examination of parties who are parents of exnuptial children, or who were in a de facto relationship.

In cases in which there is an allegation of family violence between the parties to a Family Court proceeding, they will be prohibited from directly cross-examining each other in any of the following circumstances: either party has been convicted of, or is charged with, an offence involving family violence, or a threat of violence, to the other party; a family violence restraining order, other than an interim order, applies to both parties; an injunction made under the Family Court Act for the personal protection of either party is directed against the other party; or, if these circumstances do not apply, the court, in its discretion, makes an order that the parties cannot cross-examine each other. The court may make such an order on its own initiative or upon application from either party or an independent children's lawyer.

The cross-examination must be conducted by a legal practitioner if the ban on direct cross-examination applies. In cases in which none of these circumstances apply but an allegation of family violence has been made, the court must ensure that appropriate protections are taken for the alleged victim of the family violence. For example, the court may consider it appropriate to direct that the cross-examination be conducted by way of video or audio link, and/or allow the alleged victim to have a support person with them. The provisions in this bill will apply to both parenting and property hearings.

The Council of Australian Governments' National Summit on Reducing Violence against Women and their Children in October 2016 recommended that a ban should be placed on the personal cross-examination of victims by the perpetrator in family violence and family law proceedings. Allowing victims to be personally cross-examined by the perpetrator or be placed in the situation in which they must cross-examine the perpetrator can be a re-traumatising and highly distressing experience for victims. The measures in this bill aim to reduce this trauma and distress.

A number of other benefits will also stem from this legislation. The cross-examination process is an integral part of having evidence tested in a proceeding and allowing the court to make evidence-based findings. Putting an end to victims being cross-examined by perpetrators will improve their ability to give clear and cogent evidence. Furthermore, the cross-examination of perpetrators by legal practitioners will ensure that their evidence is appropriately tested and therefore more reliable. This, in turn, will enable judicial officers to make more informed decisions and judgements. Being personally cross-examined by a perpetrator may be so daunting that it can lead to some victims prematurely settling their matter on terms that are less favourable to them or are not in the best interest of the children. Their personal safety and care can be put at risk; for example, children may have to spend more time living with a perpetrator of family violence. This bill aims to reduce those situations from occurring. The provisions in this bill will equally apply to perpetrators so that their rights to procedural fairness and a fair hearing will not be unduly impinged. Having a professional legal practitioner to represent them during the cross-examination process should also assist with the better presentation of their case.

Women are usually the victims of family violence. A woman who is subject to family violence is three times more likely to receive a minority share of relationship assets than a woman who is not subject to family violence. These new laws will help to lessen the discrimination against women by encouraging them to be fully involved in presenting their case to the Family Court. Their right to a fair hearing and access to justice will be enhanced.

This bill, through the mandatory requirement to obtain legal representation in certain circumstances, has resource implications. If a party is unrepresented, they will be advised to obtain representation and will be referred to Legal Aid WA, which is administering the commonwealth family violence and cross-examination of parties scheme. In November 2018, the commonwealth government announced the establishment of the scheme to provide

\$7 million in funding over three years to legal aid commissions across Australia. Legal Aid WA has been receiving funding from the commonwealth to administer the ban on personal cross-examinations for married persons, which commenced under the commonwealth Family Law Act 1975 in September 2019. Ongoing funding will also cater for the bans that will be applied under the Western Australian Family Court Act 1997 once this bill is passed.

The commonwealth Attorney-General's Department will be reviewing the cross-examination ban legislation and associated funding after the second anniversary of its commencement, which will be in September this year. There will have been a considerable hiatus between the commencement of the bans under the commonwealth legislation and those that will apply under this bill. The government did attempt to address this issue earlier in the form of the Family Court Amendment Bill 2019; however, that bill lapsed in the previous Parliament due to other competing priorities.

This bill also contains a number of amendments to section 243 of the Family Court Act so that it will read better, and will insert a new subsection that will allow information to be communicated to state or territory authorities responsible for the welfare of children and as prescribed in regulations for that purpose.

Family violence has a significant impact on individuals, families and the community. In Australia, one in six women and one in 16 men have been subjected, since the age of 15, to physical and/or sexual violence by a current or previous cohabiting partner. The fallout and tragedy of family violence is often played out in the justice system. It is therefore important that the justice system, and, in this case, the Family Court of Western Australia and Legal Aid WA, are appropriately equipped to effectively and compassionately deal with the victims of family violence. This bill will play a part in achieving that aim, and ensure that parties in Western Australia who commence proceedings under the Family Court Act are afforded the same protection as parties who commence proceedings under the Family Law Act in Western Australia, and the rest of Australia.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to a bilateral or multilateral intergovernmental agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper [454](#).]

Debate adjourned, pursuant to standing orders.