CHILD SUPPORT (ADOPTION OF LAWS) AMENDMENT BILL 2017

Second Reading

Resumed from 28 June.

MR P.A. KATSAMBANIS (Hillarys) [5.43 pm]: As the lead speaker for the opposition, I indicate that the opposition will support the Child Support (Adoption of Laws) Amendment Bill 2017. It is a short and relatively uncontroversial bill. It adopts as Western Australian law a series of changes that the commonwealth has made to its child support regime, which includes the child support scheme and is backed up by a series of acts, primarily the Child Support Act 1988, later the Child Support (Registration and Collection) Act 1988, and a few other minor acts. This is one of those bills that I usually approve of very readily, because it has only two pages. I have often said that less legislation is better legislation, and less red tape is very welcome in our society. The mechanics of the bill adopt the amending legislation that the commonwealth has introduced in this area since the last adoption of laws bill that this Parliament passed in 2015.

A series of relatively minor changes have been made to the commonwealth law, effectively bringing residents of Norfolk Island, Christmas Island, and the Cocos (Keeling) Islands into the child support regime. Those residents are now defined as residents of Australia for the purposes of the scheme. Other minor changes have been made by the commonwealth; the titles of judges who hear these cases have been changed and corrections have been made to typographical errors and the like. Why do we need to do this? Constitutionally, the commonwealth, through its powers over marriage, has been able to implement laws on the provision of child support for children born in wedlock. For children born outside of wedlock—exnuptial children, if you like—the powers still rest with the states. Every other state and territory has referred its powers to the commonwealth government but Western Australia, in our wisdom over the years since the modern family law regime was implemented in the mid-1970s, has chosen not to refer those powers. Every time the commonwealth amends its laws, we have to pass an adoption of laws act. That applies to not only child support, but also various other family law matters. We have our own Family Court of Western Australia that operates in tandem and in parallel with the federal jurisdiction. From the date of passing, the commonwealth laws apply to all children and families who come under the child support scheme except those who reside in Western Australia. This bill has to become law and be enacted before those laws apply in Western Australia. It is my personal opinion that in 2017 perhaps we need to re-look at how we do this. Of course, we should not jump to any immediate conclusions. It is worthwhile examining what may be the unintended consequences of us making the leap of faith and referring our powers. Perhaps it is also worth examining each of the limbs separately—the child support system, the Family Court Act and maybe even the operation of the court itself. From all reports that I have heard, the Family Court of Western Australia is often used as a model, compared with its commonwealth cousin, in the way it operates procedurally and in the time taken to reach outcomes in most cases—but not all. I think that the Attorney General would say that generally speaking that is the case.

Mr J.R. Quigley: Generally speaking.

Mr P.A. KATSAMBANIS: The commonwealth has often looked at the Family Court of Western Australia as a testbed for new ideas and to see if things can be done better. I think that is a vote of confidence in the court. As far as the adoption of legislation is concerned, perhaps it is time that we revisited it. It might be something that, in time, can be looked at by a parliamentary committee and about which we can reach a bipartisan decision. We should also consider those externalities and whether there might be things that a referral of powers might do that we do not want it to do. It may extend the commonwealth jurisdiction beyond its rightful role in the narrow child support scheme. We know from history that there is one thing the commonwealth government likes to do—extend its jurisdiction. The wording of any future referral would have to be very, very carefully scrutinised. A number of bipartisan bodies of this Parliament could look at that. Today I flag that as something that, as I said from the outset, is a personal opinion of mine that is worthwhile looking at and considering. The opposition and I have no objection at all to Norfolk Islanders, residents of Christmas Island and residents of the Cocos (Keeling) Islands being included as residents of Australia for the purposes of the Child Support (Assessment) Act, and we do not have any problems at all with any of the particular other amending pieces of legislation that the commonwealth has passed over the last two years on the child support scheme. The child support scheme, in practice—to pick up on the comment of the Attorney General earlier—and in general, works relatively well and ensures that the parents of children make fair and equal contributions to the raising of those children. It also ensures a system of collection of the funds to make that concept a reality in practice. Some issues will always arise, particularly around timing and other matters. Some of those issues arise simply because of the delay in adopting some of the commonwealth legislation through the process we have here in our Parliament. We should try to minimise those.

I do not think there is that much more to say about the bill. I do not think there is that much value in us trawling through the operation of the commonwealth child support scheme in our Parliament, apart from just generally saying that in practice it works relatively well. There is that funny quote used sometimes about something being the worst thing ever except for all the alternatives. I think that is probably the case with the child support scheme. Although we could always find faults in it, any other proposed scheme or the alternatives that existed beforehand were actually a lot worse. Sometimes we should be grateful for what we have.

In closing, I again suggest that although it is a personal opinion, perhaps the Attorney General and the government can start considering a mechanism whereby we can at least consider in a collegiate manner, perhaps through a parliamentary committee, whether we should go down the referral path as all the other states and territories have done. And if we do, how do we do it to make sure we limit that referral very narrowly to the areas that we are properly referring, rather than opening up a Pandora's box for the commonwealth government or the High Court to utilise to unfairly reduce the legislative power and the jurisdiction of this Parliament and state? The opposition supports the bill, wishes it speedy passage, and we hope that those other matters can be considered in due course.

MR S.A. MILLMAN (Mount Lawley) [5.53 pm]: I rise to speak on the Child Support (Adoption of Laws) Amendment Bill 2017. I thank the member for Hillarys for his contribution to the debate, and for clearly outlining the opposition's position on this bill. In the time available to me I would like to pick up on some of the points the member for Hillarys made that informed the opposition in its support of the legislation, briefly expand on those by reference to the constitutional necessity, and then, before I conclude, add my own perspective on why the objects that will be achieved by this bill will be worthwhile. In that spirit, I wonder whether I can start with the constitutional basis upon which this legislation is required. As members may or may not be aware, the commonwealth constitution provides at section 51 for various heads of power that the commonwealth Parliament can make laws with respect to. At sections 51(xxi) and (xxii), the commonwealth Parliament has the power to make laws with respect to marriage and the custody of children. As the member for Hillarys quite rightly pointed out, subsequent to a successful referendum in 1946, the commonwealth Parliament also has powers for the provision of child support and child endowment. However, the extent of the commonwealth Parliament's powers to make laws with respect to these matters as spelt out in the constitution does not extend to what we could call properly, de jure, exnuptial or children of de facto relations.

In other jurisdictions, the power to make laws with respect to these matters, which resides in the states, has been referred to the commonwealth in accordance with section 82 of the commonwealth Constitution. I thank the member for Hillarys for his ex tempore comments in his consideration for a referral. I agree that a discussion, deliberation and debate of the referral is not the purview of this debate this evening, but I take his comments on board. Those powers not having been referred by the Parliament of Western Australia, it falls to this place to give effect to a settlement of very complicated matters in the late 1980s and early 1990s.

If I may, I will take the house through some of the history of the Child Support (Adoption of Laws) Act 1990. Members may be aware that when the original Western Australian act was introduced, it was introduced subsequent to the Parliament of the commonwealth enacting the Child Support (Registration and Collection) Act 1988, formerly known as the Child Support Act, and also the Child Support (Assessment) Act 1989. The Western Australian state Parliament desired that the adoption of the commonwealth laws be applied within Western Australia so that Western Australian children or the children of Western Australian relations would not fare worse than their counterparts in the eastern states. Bearing that noble principle in mind, the Western Australian Parliament passed the original version of this act. From an administrative or legislative–mechanical perspective, however, each time that there has been an amendment to this scheme for policy reasons that have been thoroughly thrashed out in the commonwealth Parliament, it has of necessity fallen to this Parliament to amend its governing legislation in this field to bring those amendments into line for the benefit of the children who are supported by this legislation in Western Australia.

As the member for Hillarys quite rightly pointed out, the latest amendments to the current act date back to November 2015. Subsequently, a number of pieces of legislation have been passed by the commonwealth Parliament and they now fall to us to incorporate into our legislation. I will go through some of those very briefly. They include the Norfolk Island Legislation Amendment Act, which picks up the points about Norfolk Island that have been touched on by the opposition spokesperson on this bill; the Territories Legislation Amendment Act 2016; the Statute Law Revision Act (No. 1) 2016; the Civil Law and Justice (Omnibus Amendments) Act 2015; the Australian Immunisation Register Act 2015; the Statute Update Act 2016; and the Statute Law Revision (Spring 2016) Act 2016.

In the absence of the WA state Parliament passing this legislation, the benefits of that legislation as passed by the commonwealth Parliament that flow to children in the eastern states will be denied to children in Western Australia.

Sitting suspended from 6.00 to 7.00 pm

Mr S.A. MILLMAN: Before the dinner adjournment, I had been working through the constitutional framework under which it falls to this Parliament to make the necessary amendments to the Child Support (Adoption of Laws) Act 1990 to pick up the amendments that have been made by the commonwealth Parliament to the commonwealth child support legislative scheme.

Honourable members may recall that before the dinner adjournment, I had referred to section 51(xxi) of the commonwealth Constitution, which vests in the commonwealth Parliament the power to make laws with respect to marriage; section 51(xxii), which vests in the commonwealth Parliament the power to make laws with respect to divorce; and section 51(xxiiiA), which was introduced into the commonwealth Constitution subsequent to a successful referendum in 1946 and makes provision for things such as social security payments and child endowment. I think that earlier I alluded to the wrong provision of the commonwealth Constitution. The provision that I had in mind was section 51(xxxvii), which allows for state Parliaments to refer to the commonwealth Parliament particular heads of power to make laws with respect to certain matters.

The Child Support (Adoption of Laws) Act 1990 gives effect to a number of family law and child support matters that were captured, as I have said, in the commonwealth Child Support (Registration and Collection) Act 1988 and Child Support (Assessment) Act 1989. The Parliaments of New South Wales, Victoria, South Australia and Tasmania had at that time, and the balance of state Parliaments have at this time, referred to the commonwealth Parliament under the aforementioned section 51(xxxvii) the power to make laws on this issue. The Western Australian Parliament has not made that referral. However, the Western Australian Child Support (Adoption of Laws) Act 1990 reflects all the good policy decisions and relevant considerations that informed the commonwealth Parliament when it enacted those two acts. The bill that is currently before this house for discussion and debate is the latest iteration of that ongoing process.

When members have regard to the text of the amendment bill, they will see that it is very brief. Clause 3 states —

> This Act amends the *Child Support (Adoption of Laws) Act 1990*.

Clause 4 amends section 3 of the act to delete "1 July 2015; and" and insert "1 July 2017; and". Clause 5 amends section 4(b) of the act to delete "1 July 2015; and" and insert "1 July 2017; and". For illumination, so that members can appreciate the practical effect of these changes, section 3 of the Western Australian act currently provides that a reference to the Child Support (Registration and Collection) Act is a reference to that act of the commonwealth in the form in which it existed on 1 July 2015. If we do not amend that reference to 1 July 2015 in our act, the child support regime will be frozen in time as at 1 July 2015. By making this very small amendment on the face of it, we will keep our Child Support (Adoption of Laws) Act 1990 current with the equivalent commonwealth legislation.

People might ask why that is important. The answer is that it is important for a number of reasons. A number of changes have been made to this regime since 1 July 2015. If I may, I will briefly go through those for the benefit of the house this evening. I do not propose to delve into them in great detail; I just think that it is important that they be put on the record as considerations that this place should take into account when deciding whether to pass this bill.

On 14 October 2015, the Civil Law and Justice (Omnibus Amendments) Act 2015 was passed by the commonwealth Parliament. That act related to procedural matters in the Administrative Appeals Tribunal, where disputes are brought for adjudication in this field. Section 96B of the Child Support (Registration and Collection) Act was repealed and modified by virtue of the changes to the Civil Law and Justice (Omnibus Amendments) Act. On 12 November 2015, the commonwealth Parliament passed the Australian Immunisation Register Act, which relates to the provision of immunisation for children and the way in which vaccination is recorded. That is defined as a designated program, so those changes will be brought into effect by the passage of this legislation. On 10 March 2016, the Statute Law Revision Act (No. 1) 2016 made some minor amendments to correct cross-references and typographical errors. On 1 July 2016, under the Courts Administration Legislation Amendment Act, the way in which the Federal Court of Australia, the Federal Magistrates Court of Australia, the Federal Circuit Court of Australia and the Family Court of Australia were administered was altered to provide for the appointment of a chief executive officer of the Federal Court. All those changes need to be reflected in the Western Australian legislation by the incorporation of the commonwealth legislation.

Finally, on 1 July 2016, under the Norfolk Island Legislation Amendment Act, Norfolk Island, which had been an external territory of Australia since 1913, became subject to the laws of the commonwealth. This last one is a bit interesting. There is a perverse situation with Norfolk Island, Christmas Island and Cocos (Keeling) Islands whereby if one parent were in one of these jurisdictions, the applicable jurisdiction to the dispute would be unclear because the Western Australian legislation applied only until 2015, but there would be no extraterritorial

application to Cocos (Keeling) Islands, Christmas Island and Norfolk Island. That anomaly will be corrected and it will make it clearer and simpler for the people involved, which is something that we should strive for with legal proceedings.

By passing this legislation, Parliament will bring all those amendments into effect and will ensure that we maintain parity with the commonwealth legislation so that children in Western Australia have the same rights, benefits and privileges as children throughout the nation.

I will make one final point about constitutional law and it relates to what the member for Hillarys described as exnuptial children, or children of de facto relationships.

The powers of the commonwealth Parliament are powers to make laws to section 51(xxi) marriage and section 51(xxii) divorce. What we are talking about in those circumstances is the classical conception. That means that the Western Australian Parliament ought to make the necessary legislative framework as far as de facto and exnuptial circumstances are concerned, and that has been picked up by the commonwealth legislation. All children will be treated equally across Australia, consequent upon the passage of this legislation. Although on the surface it might seem like a relatively mundane administrative or mechanical requirement, my personal view is that it provides an incredibly important safeguard for children in Western Australia.

DR A.D. BUTI (Armadale) [7.10 pm]: I would also like to contribute to the debate on the Child Support (Adoption of Laws) Amendment Bill 2017, which, as the member for Mount Lawley and others have mentioned, is a very brief bill to amend the Child Support (Adoption of Laws) Act 1990. The member for Mount Lawley has gone through the Constitution and given us a constitutional lesson, so I do not need to go through the whole constitutional paradigm, but I would like to comment on that. I will also talk about child support in general, the philosophy behind child support and legislating for child support.

As has been mentioned, the commonwealth Constitution gives the commonwealth Parliament exclusive powers to make laws on marriage. That is why the national debate on same-sex marriage or marriage equality has to be had in the commonwealth Parliament, because that Parliament has the power to amend the meaning of marriage. It is really quite interesting how the Liberal Party and its bedfellow, the National Party, have got themselves into great difficulty over this issue. The majority of federal parliamentarians support marriage equality. The majority of the public, going by the opinion polls, support marriage equality. The commonwealth Parliament has the power to amend, define or redefine the meaning of marriage, but the Liberal Party, through the prism of leadership tension, is going down this stupidity of a plebiscite, which has no constitutional binding effect or any legal effect, necessarily. By all counts it will not pass federal Parliament so it will then go to this absurd postal plebiscite, which the federal government has stated will not be binding. Some coalition members of Parliament who oppose marriage equality have said that if the postal vote comes back saying no to marriage equality then they will see that as binding, but if it comes back saying yes to marriage equality they will see it as not binding. It is incredibly absurd and it is no wonder the Australian public seems to have increasing disdain for politicians. This is an incredible situation. Most politicians in federal Parliament want to at least be able to vote on it and by all counts there would be quite easily a majority supporting marriage equality. The public supports marriage equality. The federal Parliament has the constitutional ability to amend the definition of marriage, but the Liberal Party, through leadership problems, is doing everything that it possibly can to prevent that from happening. During the debate on the weekend, Professor Flint mentioned that we should be looking to former Justice Scalia of the Supreme Court of the United States and what he defined as marriage. Justice Scalia was what we call an "originalist". He looked at the meaning at the time the Constitution was formed.

Why would we want to do that? The Australian High Court, which is our superior court, decided in the case brought against the Australian Capital Territory legislation for marriage equality that marriage can be between two people of the same sex. The High Court of Australia, which is the supreme court in Australia, decided that marriage is not limited to the current situation and that the power to enact laws for marriage rests in the commonwealth Parliament. That is why the ACT marriage equality legislation was struck down as being unconstitutional. What is more important is what the High Court said about what comprises marriage. As mentioned by the member for Mount Lawley, the commonwealth Parliament has the power to deal with marriage and issues of guardianship, parental rights and custody. That is quite interesting because parental rights and guardianship rights are very much one and the same but there are differences and custody is a subset of guardianship rights. Those rights become very important when a child is not being cared for by the biological parents, and the commonwealth Parliament has the power to legislate for that.

Interestingly, as has been mentioned, under the Australian Constitution, the commonwealth Parliament does not have the power to deal with exnuptial births; in other words, a child that is the result of a de facto relationship. That is very interesting in regard to the Western Australian situation, because when the Australian Family Court was established as a result of the Family Law Act 1975 under Attorney-General Lionel Murphy, who then, of

course, became a Justice of the High Court, and there were some infamous dealings in respect to that, Western Australia decided not to go into the federal sphere. The Solicitor-General at the time was Sir Ronald Wilson who, of course, became Western Australia's first High Court Justice. Sir Ronald Wilson had a very distinguished career. He was a Solicitor-General of Australia and was offered a position on the High Court in 1976, but he knocked it back. When it came up again, I think in around 1978 or 1979, he accepted the appointment the second time. At that time, he was a very strong states' rights person, but he changed later on. There is a lot of debate about Sir Ronald Wilson, but at that time he was very focused on states' rights; he believed that we should have a separate Family Court. On the protection of de facto relationships, one could argue that having our own separate Family Court has given us, as a state, greater legislative powers to enact laws in the Family Court of Western Australia.

Ms J.M. Freeman: I don't agree with that.

Dr A.D. BUTI: The member may get up and make her point. As the member for Mirrabooka would know, a case in the High Court about three or four years ago has shown that that is the case. Unless the Family Court of Australia has been given the right by a state court, which it can do under the Constitution, it cannot protect a de facto relationship. But that process has to be adopted. The Family Court of Western Australia is able to do so because the Western Australian Parliament has the constitutional ability to enact laws for de facto relationships. I am not advocating that we should stay out of the federal Family Court scenario; I actually believe that we probably should not. But I would not want to say that because I do not know whether that is our government's position; so maybe we should be a bit circumspect about what we are saying. Anyway, the Western Australian Family Court mirrors the federal Family Court. The only point I was trying to make is that the Western Australian Family Court has always had powers to deal with de facto relationships and the children of de facto relationships. The federal Family Court does not have that ability and can only do so if a state Parliament gives it that ability. That is also the situation with child support for exnuptial children from a de facto relationship. Whether the WA Family Court should be retained is a constant discussion in legal circles. I have never practised in the family law jurisdiction, but there are pros and cons. There are those who say that we should terminate the Family Court of Western Australia and come under the commonwealth Family Court and those who do not agree with that. I will leave that for another day. I will leave it to the Attorney General and the government to decide where we should stand on that question.

Getting down to child support itself, the Hawke government enacted legislation to basically provide a greater legislative and administrative ability to ensure that non-custodial parents pay the appropriate child support. Often orders are made by courts about child support and the non-custodial parent does not comply with those orders. Even if there are not orders, sometimes the non-custodial parent just does not pay child support. For a period of time I worked on a contract basis as a review officer with the department responsible for child support. Child support payments are worked out on the income of the non-custodial parent and the custodial parent and other variables. For instance, if there was an agreement before the relationship split, whether divorce or separation, that a child would be sent to a private school, the child support payable by the non-custodial parent would factor in private school fees. There are also other issues to consider. When I had the role of review officer, the non-custodial parent was generally the father and the custodial parent was more often than not, but not always, the mother. What the non-custodial parent should pay was determined based on income and that parent could make an application to have that varied. Of course, if the custodial parent made an application to have the payment increased, the non-custodial parent paying the child support would often make an application to have it decreased. That would come before the review officer and he would deal with that. In that role I had considerable resources and the ability to tap into the Australian Taxation Office database. When the non-custodial parent ran a business it was often very difficult to determine their taxable income. It was interesting that the determination was not made on what was actually being earned, but on what they were capable of or should be earning. In other words, often to get out of paying child support a non-custodial parent would go on the dole. They would cease their jobs and go on the dole. The review officer had to make a determination whether the parent had the ability to get a job and whether the state of the employment market would allow them to get one. Often they would not come forward and say that they would take a pay cut or work only a couple of days a week because they do not want to pay child support. A couple of people said that. Rather than determining what they should pay based on the fact that they were working only three days a week, the determination was made on the fact that they should be working five days a week.

The philosophy behind it is that a parent has an obligation to pay child support. The non-custodial parents would often say that the mother, the custodial parent, is in another relationship and her new partner is earning X amount of dollars et cetera. That may be the case but under the child support legislation, the non-biological parent is not responsible for child maintenance. The biological parent or the legal parent—not the stepfather, for instance, if the child was not adopted—is responsible for child maintenance. The point is that the non-custodial parent would always see that the money was going to the custodial parent and did not see that the money was supposed to be

used for the maintenance of their child. That is where the problems arose. There was a justifiable angst because some of the non-custodial parents would argue that the assessment was made based on their gross income, not their net income. Obviously, the net income is the amount of money that is left to spend but the assessment was made based on the gross income. We could argue that that seems a bit harsh. If the non-custodial parent was in a new relationship and had children to look after in that new relationship, they would often argue that they had to properly provide for their new family et cetera. The situation obviously created many problems. Review situations could get very heated and quite dangerous. That is why there was always a panic button under the table. It is terrible that in our society we have Parliaments that have to legislate to ensure that non-custodial parents pay child support. It would be great if we did not have to do that—if people did the right thing.

[Member's time extended.]

Dr A.D. BUTI: It would be a great system if people realised that they have children and they will do the right thing by them but, unfortunately, that does not always happen because of the dynamics and the tensions between the parents of the child.

The initiative taken by the Hawke government to legislate in this area was much needed and has proven to be very important. Once the orders are made, it does not always mean that the money is paid. Obviously, we try to garnish the income but that is not always possible and it is very difficult when non-custodial parents are working overseas. The situation is very complex. In the end, non-custodial parents who do not wish to pay for the maintenance of their children must realise that it is about providing support for the child that they brought into this world. As someone said to me, divorce is the worst economic decision one can ever make. There is no doubt that when someone divorces, there are major economic consequences. As we know, relationships break down in society. If children are a product of that relationship, they have to be catered for. It is not their fault that the relationship broke down. That is why there is a need for child support to take place.

Although the bill is brief in its content, it plays a very important role in the child support system. All it will do is ensure that Western Australia is in uniformity with the rest of the commonwealth. It is legislation that will always need to be amended. Changes always need to be made in this area of the law because there are imperfections. When relationships dissolve and children, money and emotions are involved, problems must always be attended to. The philosophy and legislation behind child support is very important. It is of detriment to human character that we need this sort of legislation. One would hope that we did not need this type of legislation. Many couples with children who separate or divorce have no need to go down this path. Many couples can decide on a position, whether it is formally or informally, for the payment of child support. Calculating the payment of child support usually comes with custodial rights, or asset rights, to children. The greater time spent with the child has often meant a reduction in child support paid. Obviously, if a person had a child for two or three nights, they would provide for that child two or three nights a week. The Howard government brought in legislation that changed the way custody was calculated. It was very disruptive, because the Howard government believed that there should be more equality of time for the care and control, or custody or access, of children. That meant one night with dad and one night for mum, or three nights with dad and three nights with mum. That can be incredibly disruptive, but it does not have to be. Although custody has to be worked out individually, stability is important in a child's life. If they are moving from one parent to the another weekly, that is generally not conducive to providing a child with a stable environment. Governments and Parliaments will always seek to improve the child support system and the child care and access regime. It is something that governments need to tackle. This bill is just another chapter in the story of how governments and Parliaments deal with this matter.

MS J.M. FREEMAN (Mirrabooka) [7.33 pm]: I rise with some trepidation to speak on the Child Support (Adoption of Laws) Amendment Bill 2017 after making loud comments while the member for Armadale was speaking. He heard me and I may have misunderstood him. I come after two eminent and legally qualified members of Parliament. I am simply a bush lawyer who, although there is good bushland around Mirrabooka, does not live in the bush. I note that my rather loud comment, which I did not intend to be an interjection, while the member for Armadale spoke, was about my concern of the inconsistencies in two different family law systems that are predominantly for people in de facto relationships. Inconsistencies often occur for those people because we run two systems—a federal family law system and a state system—and that complexity often impacts on those who can least afford it. To understand some of the areas where things fall through the gaps, one needs to have legal training or legal representation, and that concerns me. What I want to raise—I was going to do it later on, but I will take the opportunity now—is that our current family law system has an impact on how the Child Support (Adoptions of Laws) Amendment Bill 2017 works. Because we have a different family law system, when people in a de facto relationship separate and try to work out a financial settlement, they cannot split their superannuation.

I do not know whether members know how super splitting works, but when a marriage breaks down, the parties within a certain period of time can split the superannuation of the partner who was the primary income earner or

who had the greatest amount of super. They can split it and it will go into the retirement income of the other person. Traditionally, this happens in situations in which men have greater superannuation entitlements and women do not because they have tended to be the primary carer and not the principal earner in a relationship. That applies only to marriage relationships in Western Australia, but in the rest of Australia it applies to any relationship, de facto or married. In other states the super can be split, regardless of the type of relationship, so that there is some retirement income for the partner with less superannuation. That is a really important aspect of negotiations in settlements because in our community women tend to have less retirement income than do men. Because of that, the capacity to split super was put into the legislation that covers superannuation.

As I understand it, if there are enough assets in the relationship when the negotiations for settlement take place, more of the proceeds of the property are put into the settlement so that that in some way balances things out, but it does not provide a sustainable retirement income for one of the partners. That is of great concern, because we have a separate family law system. It was mentioned earlier that the federal government can just refer it back to us, or we can refer it to the federal government. I spoke about this to my learned colleague the member for Mount Lawley, and we need to do some more work on this. As I understand it, it is because superannuation covers the field in terms of the federal system; I think we come under section 109 of the Constitution. There cannot be a situation in which superannuation can be split in Western Australia because we have a separate family law system. All the other states refer their family law court cases to the federal system so that they do not run a separate system and so there is not that discrimination. I chose not to marry my partner. We chose to put a new roof on our house instead of paying for an expensive white fluffy dress that I would not really suit. I chose to be in a long-term de facto —

Mr I.C. Blayney: You don't have to spend all the money that you are talking about. You can just pop down to the registry office.

Ms J.M. FREEMAN: I could have done that too. I chose not to for lots of other reasons. I am a good feminist. I think marriage is a patriarchal institution. If the member really wants me to get into that, I am happy to go down that path, but I am not sure that it relates to the Child Support (Adoption of Laws) Amendment Bill 2017. I am talking about the particular aspect of super splitting because it impacts on the child support laws we adopt. By choosing not to get married, I am disadvantaged with super splitting if I separate from my partner. I understand that, but many people do not choose that. Many people who end up in de facto relationships for various reasons—low socioeconomic issues around marriage and stuff like that—do not get married and can end up being disadvantaged. Primarily, a person in a same-sex relationship cannot choose to get married. A person in a same-sex relationship in Western Australia at this point in time, even though our super laws are equal to the rest of Australia, can be a beneficiary if something happens to the other person, but there is no super splitting if the relationship splits. There is no choice but to marry in Western Australia and in Australia as a whole. I concur with the member for Armadale on that. That also has an impact on the Child Support (Adoption of Laws) Amendment Bill because one area this has a detrimental effect on is exnuptial children, as they are called, or de facto children. They are disadvantaged because Western Australia has this lag time. Children of same-sex relationships also may want to get married and they would be detrimentally affected by the fact that for some reason Western Australia has decided not to refer its powers.

I agree with the opposition spokesperson on this matter. I had the opportunity to listen to his speech when I was in my office. He put forward that in this day and age we should be considering whether it is still pertinent and appropriate to have this two-tier system for the child support adoption laws; that we do not just do what the rest of Australia has done and refer our legislation so that it changes when federal legislation changes. It is completely confusing to me why we do not do that. We keep debating child support and the adoption of the laws, but we do not debate child support because we know it is a federal matter. None of us want to get into the substantial debate about child support. When someone comes in to my electorate office with a child support complaint, I am ever so happy to say, "Child support has nothing to do with me as a state member of Parliament; you need to see your federal member of Parliament," because it is so fraught with he-said, she-said conflictual-type situations. It is so based on process that it is not something that a state member of Parliament can even begin to tackle. This is unlike other areas. Some federal matters will come into our offices and we will want to tackle them because, as members of Parliament, we can do some sorting out, but in this area we do not do that. We do not discuss the policy issues. One of the major policy issues that was discussed in a recent inquiry was a limited child support guarantee, as exists in some other countries, under which the government agrees to make up some or all of the shortfall if the paying parent does not meet the child support obligation. That is a good policy debate, because the only people being disadvantaged by someone not making child support payments are the children. There needs to be a good discussion about how we ensure that that disadvantage does not happen. However, we are not going to have that policy debate because it is a debate for the federal Parliament, which deals with child support. However, we are

debating a piece of legislation that adopts all of that. To me, it seems to be completely incongruent, for want of a better way to describe it. I am unsure of the necessity now.

The child support system was introduced in 1988 for very good reasons. It was part of the reform process that the Whitlam government began in the 1970s, with a family law system that did not seek to apportion blame. It was no longer necessary to say that someone had been unfaithful or adulterous, or had some reason to leave a relationship. The reform process was formulated around the idea that people needed to continue to live respectful lives with the best outcomes for themselves and their children and the welfare of the community. This measure was part of that, to ensure that children of relationships that broke up were financially provided for. Having read some of the reports on this issue, my understanding is that 21 per cent of children in Australia have a parent living elsewhere and so qualify to receive child support. That is a pretty huge number, so we are looking at a major area. One of the reasons for the urgency of this bill is that, as I said before, there will be substantial disadvantage for ex-nuptial children in Western Australia if we do not pass this measure. However, looking at the areas that this legislation impacts, I was not necessarily sure about Norfolk Island or the other areas being particularly affected. I do know that we have not adopted any changes to the state child support laws since 1 July 2015, but a reading of some of the notes and information around this shows that the legislation is actually amended quite often, so that time lapse can become a difficulty.

Since 2003, child support has been the subject of two parliamentary inquiries, a ministerial task force and some major reforms. It is consistently amongst the top five Australian government agencies in the number of complaints received by the Commonwealth Ombudsman. Child support is a key challenge to policy and government in Australia. One of the biggest complaints is about the discrepancy between the amounts paid and the amounts not paid and how those are calculated. One of the other big controversies is that people can lose their family tax benefits because of the calculations and people are not made aware of that. Many complaints have been made that because the calculations indicate that a person is receiving a certain amount, Centrelink can stop their family tax benefit even if they are not receiving that amount.

Mr S.A. Millman interjected.

Ms J.M. FREEMAN: The Australian Federal Police will not necessarily pursue it. It will stop people's tax cheques.

[Member's time extended.]

Ms J.M. FREEMAN: If there are outstanding payments for people's child support because they have lodged those and the Child Support Agency is aware of that, it will take that payment for that year. If a recalculation occurs because a person has not filled in tax returns for a time and there are back payments due for anything outside the current financial year, the AFP will not pursue it. As I understand it, the person has to pursue it under personal payments. Centrelink will consider whether people are eligible for a back payment when calculating family tax benefits. It is fraught with those complexities. The greatest criticism of the Child Support Agency is its capacity to communicate with people and take them through a process. If we are to continue to have a separate act in Western Australia, we have a responsibility to make the federal government aware when the Child Support Agency is not serving the community that we say needs a separate act—that is, the Western Australian community. That goes without saying. We need to make the federal government aware through our processes when the Child Support Agency is not responding appropriately to our constituents and our communities.

On 20 July 2015, the federal House Standing Committee on Social Policy and Legal Affairs presented its report, "From conflict to cooperation: Inquiry into the Child Support Program". The committee found that the child support program was generally functioning well and that in approximately 75 to 80 per cent of child support cases parents were meeting their child support obligations and had established cooperative post-separation relationships. That is still 20 per cent —

Mr S.A. Millman: Seventy-five to 80 per cent are meeting them but 20 to 25 per cent are not.

Ms J.M. FREEMAN: Twenty to 25 per cent are not. It is a challenging area.

That was in 2015. I must admit that in the time that I gave myself I could not find out in detail about one of the big issues that came out of the report, but there was a discussion about reviewing the formula, how accurate the formula is, and how it operates. The committee made a suggestion that, as the child support formula was developed in 2005 and it included a range of assumptions about cost of living and government provisions of welfare that had significantly changed, the formula should be reviewed and should adapt to changes. I imagine that the formula would not take into account the casualisation of the workforce and many of those other aspects that have continued to change even since 2005. Family violence was one of the major aspects of the report. It looked at ensuring the response of the child support program to family violence and the difficulty of receiving payments when family violence is involved. In some ways that went to the discussion about whether there should be a limited child

support guarantee program. That is worth considering. The report contained 25 findings and recommendations—quite a number. The need for mediation was highlighted. The member for Mount Lawley might be able to help me, but mediation and family dispute resolution has very much become a part of the family law system. I would have thought that was before 2015. The question is —

Mr S.A. Millman: Compulsory referral.

Ms J.M. FREEMAN: Yes. Compulsory referral mediation has to happen before people can go to the Family Court. I understand people need —

Mr S.A. Millman: A ticket!

Ms J.M. FREEMAN: Yes, people need a ticket! People need a family dispute resolution certificate to go to the Family Court.

The report recommended that mediation should also occur in the area of family support payments. I do not think that is accessible through the Family Court dispute resolution framework because I understand it is free at the current time. I would think that is certainly worth us knowing about, considering Western Australians will have a separate piece of legislation for Western Australians. If there is a dispute around outstanding payment amounts under the child support program, will people receive free mediation to assist them? There is no doubt that someone having the information and capacity to pursue their rights would be assisted through mediation and clarification of those aspects. That seems to be one of the very important findings of the inquiry into the child support program.

One of the most important things the inquiry found was that public confidence is paramount for Child Support. That confidence can be undermined because of criticism of advice and decisions, including that that advice and decisions are inconsistent. The inquiry found that the only way Child Support looks into decisions, the consistency and appropriateness of them, is through the complaints process. It does not have an internal process to ascertain whether there is integrity in the decision-making process. This is a 2015 report that I have not found a response to, but it seems that that would undermine confidence in the system if that is the case. At the moment the processes and procedures seem to be almost hardened and steadfast to the point of being bureaucratic, yet inconsistencies occur. There may be a bureaucratic process at one point, but also some sort of capacity for merit-based decision or review. How does that come together? In the small amount of cases I have dealt with through Child Support, I am not certain that that has been properly addressed.

In 2017 the Australian National Audit Office audited the arrangements between the Australian Taxation Office and the Department of Human Services. It related to the ATO holding back tax refunds to recover past overdue payments. The audit did not go into anything other than whether there was integrity in that process that ensured that it was being done appropriately and within the terms of agreement. The audit did not go into how the clients viewed that, or not in any significant detail.

At the end of the day, we cannot look at it as only a monetary process. We all know that we have to focus beyond those administrative processes. We have to acknowledge that it is about a lived experience and a lived concern of child support. Policy and the social and economic wellbeing of children and their caregivers should be at the forefront of how child support is delivered and administered in our community. In saying that, I will end with an email that was sent to me by a constituent about the child support system. This email is from a few years ago, but I think it outlines the concerns. She writes —

> I am a single parent of a little boy who is in my care 100% of the time. My sons father is a FIFO worker and earns substantially more money than I am able too. We currently have a private collect case —

That means that they have agreed to it —

> and this has worked well over the years and he pays on the 15th of each month.
>
> On the 6th of January 2014 I received a letter to advise me that Child Support had received updated 2012/2013 taxable income for my x and his income was now assessed —

As higher and he had an obligation to pay more support. On 7 February 2014, she received another letter from Child Support to notify her that it had received an updated taxable income for 2011–12 and the figures had changed. She continues —

> As you can see based on the updated figures that have been received by Child Support of X actual taxable income amounts I am owed some funds in back payment of child support.
>
> I have attempted to text and emailed to notify that there is a new amount he has to pay now and that we need to address the back dated assessments and funds outstanding, I have had no reply and the payment I received on the 15/2/14 was the reduced amount of $1436.75.

> I have contacted Child Support to find out if I am required/entitled to receive the arrears of child support funds and if I can get any assistance from Child Support Office …

I will not read much more, because I have limited time, but, basically, the Child Support Agency said that the lady had to collect the payments herself and that there was nothing that it could do. In conclusion, she writes —

> I understand we are a private collection case but Child Support are involved in the assessment and are the office that have changed the assessment and back dated it, I am just asking for a little help in ensuring my X is aware that he needs to pay the new amount and the back pay. I feel as though I am caught between an organisation that will not assist me to collect what I am entitled too (keeping in in mind that I assume Human Services - Centrelink will raise an overpayment on my Family Tax benefit as it is deemed that I should collect the new assessed amount and arrears) and a father that is ignoring my requests to pay what he is oblidged too. My preference, in a resolution to this situation is for Child Support to help me to advise my X of the importance of this assessment and the backdating and that he needs to pay the arrears and new assessment amount from now on.
>
> I really do not want to go to a Child Support collect case and to support this feeling have been told by the Child support if I do change to a Child Support collect case they will only back date for 3 months —

She could not get all the other back payments in any event. She continues —

> … although the letters I have received fall into this date range and I had no idea this back dating assessment was going to take place. I find this unfair as the new assessments took place within 3 months. I feel I am in an impossible position, with myself and my child not receiving the monies we are entitled too and unable to get any assistances from anyone.

MRS L.M. O'MALLEY (Bicton) [8.03 pm]: I rise to make a brief contribution to the Child Support (Adoption of Laws) Amendment Bill 2017. I do so with a sense that this is important business in contribution to the inclusivity of access to financial support for all children residing in the state of Western Australia. To recap briefly on the legislative situation, under the Constitution of Australia, the commonwealth Parliament has power to legislate for the maintenance of children of a marriage, but it gives no power to legislate for the maintenance of exnuptial children, who are children born outside a marriage. The Constitution of Australia provides for the commonwealth Parliament also to legislate in respect to —

> (xxxvii) matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law;

By this process of referral, in those states the commonwealth child support acts apply to both the children of marriage and exnuptial children alike. When the commonwealth amends the child support acts, which it does somewhat frequently, the amendments apply to all those children immediately. This is the situation in all other states except for WA. We have chosen not to refer this power, which means that exnuptial children will be left in a vulnerable position until we pass this bill.

It is a pretty straightforward bill. It simply aims to ensure that under the adoption of law child support option that the state has chosen, inclusivity of access to maintenance is the same for exnuptial children as it is for children born in marriage. If this bill is not passed, we risk having two systems in play, with the ability to ensure access to financial support for exnuptial children greatly diminished, resulting in the risk that these children will be greatly disadvantaged.

At this point, I would like to speak about the importance of certainty and stability and a sense of inclusivity for all children. We are referring here to children in quite objective terms, as we must when speaking of legislation. We use words like "exnuptial" or "marital", but we are talking about kids who need support from legislation that protects all children and does not differentiate between children who are born within the current legal definition of "marriage" and those born outside the current legal definition of "marriage". The ability of some children to get financial support will be diminished unless we pass this amendment bill.

Relationships break down every day and when a child or children are involved, the child or children must be at the centre of critical decisions such as where the child will live and with whom. Fortunately, in many cases, separated parents are able to come to arrangements for support and access that work for all the parties, with all parties meeting, and even exceeding, their responsibilities. Certainly, in my experience, I have a brother who has gone above and beyond his responsibilities. Although there were many traumatic times when they were first working out the arrangements for their children, they were able to do so. They were married, as it is currently defined, and therefore did not have to go through the additional challenges that many parents could face if we do not pass this

bill. Sometimes, however, it does not work out quite that way. What if, for example, one parent is absent? What if the absent parent and the child's custodial parent are not married?

Again, I refer to a situation that I am quite familiar with. In my electorate, a lovely young woman who works exceedingly hard has no support from the father of her child. She worked right up until about 38 weeks, I believe—she may have gone slightly longer—because she knew that she would have to work as much as she possibly could to provide a financially stable and secure home for her child. She is very fortunate that she has the support of many friends and work colleagues and that we have a system that supports mums such as the young woman I have referred to. She has no support from the father. He has chosen to absent himself; he did so early on in her pregnancy. It has made the situation incredibly difficult for her and, with the father choosing not to participate in the child's life in any way, that currently includes financially. If we do not pass this bill, it will obviously have an impact on her ability to follow through the system to access support from that absent father. When we look at the breakdown of marriages and the way that we deal with them as a legal term, or the breakdown of relationships, we can see that we have certainly come a very long way in how we legislate for the provision of maintenance for children when things go wrong. Again, I will refer to a situation in which two members of my extended family's relationships and marriages broke down prior to the introduction of the Family Court. I think the member for Mirrabooka referred earlier to it being a time when a reason had to be given, be it adultery or something of the like, for a relationship or marriage to be annulled. That caused incredible acrimony; it was a terrible situation. In my family it resulted in two families being completely torn apart to the point at which there were no family connections over 20 to 30 years. We have come a long way. The introduction of the Family Court certainly improved things a great deal and we now have that separation between the courts and a support mechanism for custodial situations so that, by and large, we have an administrative system.

Here we are with this amendment bill that takes us to the next step. Again, I refer to the member for Mirrabooka who spoke of this being a legislative debate and not a policy debate. As members of this house, we certainly should turn our thoughts to where the system is going in that regard. This amendment bill will ensure that all children will be included and that no children will slip through the cracks. I also refer to an issue that the members for Mirrabooka and Armadale spoke of earlier: the children of same-sex couples. Once again, I refer to a personal anecdote; I have great friends in this situation. The children of those relationships are doubly disadvantaged because they cannot see their parents marry and, should their parents unfortunately split up, our current legislation does not protect them from being able to access vital maintenance payments either. They are doubly disadvantaged. It is for this reason and the reasons that I outlined earlier that I support this bill. We need to action it as quickly as possible and I ask all members to likewise support it.

MR T.J. HEALY (Southern River) [8.13 pm]: I rise to speak to the Child Support (Adoption of Laws) Amendment Bill 2017. I note with interest that it will be 30 years next year since the passing of the original child support scheme by the commonwealth Parliament. Prior to 1988, the court order–based child maintenance system that existed in Australia was seen as seriously inadequate. It required parties to reach agreement, or institute proceedings for an order in the Family Court prior to the child court being possible. In reading about the pre-1998 system as an adult I was shocked to read about the abject poverty that women and children were often left in following separation, and the increasing government expenditure for maintaining children when their absent parents did not contribute towards their upbringing. I was a part of that system. My parents were divorced early in the 1980s when I was young and my mother, as a single mother, relied heavily on child support and on the system. I am not saying that my parents were perfect, but the separation was difficult and complicated, as it is for a majority of families. When families split up it is not usually a simple or friendly matter.

My birth parents still do not get along over 30 years later, so members can only imagine how difficult things were way back then. It is my belief that codified and legislated child support arrangements support families. My family, generally, was able to agree mostly on a system through a family lawyer, but a system does help. It is not always available to everyone. I think of all the possible situations the 1 635 single-parent families of my electorate in Southern River would be in without this legislation. On average, I understand that 84 per cent to 88 per cent of single-parent households are single-mother households. That is certainly what I identify with. Even today, we know that those 1 300 or so single-mother families in my electorate of Southern River suffer great hardships, including higher unemployment rates. Sixty-three per cent of single parents with a child under four years were jobless in 2015. The national Household, Income and Labour Dynamics in Australia—HILDA—survey tells us that between 18 per cent and 23 per cent of lone parents are falling below the poverty line.

Where would we be without the changes of the last 30 years? Today, the child support scheme is based on the principles of parental responsibility for the financial wellbeing of children when parents separate or divorce and limits the government's involvement to allocating the cost of raising children in separated families between parents and the government. Through the child support scheme, the parent who does not live with their children, because of separation or divorce, is required to make a financial contribution towards their upbringing. Of course, that

contribution—as I repeat what has already been said by other members—is based on the payer's income, the exempt amount of the payer's income and the amount of the payee's disregarded income. As a new father, I reflect on the purpose and goals of the child support scheme, noting that at its core is a desire for equity, equality and a child-centred approach in which those who chose to bring a new life into this world are expected, where able, to ensure that every child has every opportunity they deserve. It is also an approach in which one parent is not left carrying the wheelbarrow financially to the point at which it is detrimental to both the parent and the child. This is a system that has received much criticism. The Acting Speaker (Ms J.M. Freeman) spoke about electorate officers having to deal with this fraught issue. It is humans dealing with humans; it is families coming apart. There is no simple formula. It is a very human issue.

Clearly there is much room for improvement with child support, but Australia would be a much poorer nation should it not be in place. As members are aware, we are debating this bill today due to the structure of our national constitution that at its core makes a distinction between families in which parents are married and families in which they are not. The member for Bicton and others mentioned the current marriage debate and that marriage is not accessible to all. I will not go into that area right now. But, again, this is not an equitable area for all. Today we are not here to debate the merits of that division of families or whether such a system of marriage reflects modern Australia; we are here to ensure that all families no matter their circumstances have access to the commonwealth child support scheme. Our learned colleague Hon John Quigley rightly pointed out in his first reading speech on this bill that it is both appropriate and desirable for us in this house to act expediently and bring this act of Parliament in line with recent changes at the federal level. Of particular note are our fellow Australians who dwell in one of the most beautiful tropical locations—that is, the Christmas and Cocos Islands. The commonwealth Territories Legislation Amendment Act definition of a resident of Australia now applies to residents of the Christmas and Cocos Islands. As such, they are now covered by the child support scheme. It is disappointing that this did not occur earlier. Until we pass this bill, residents of the Christmas and Cocos Islands in exnuptial cases will be unable to access this scheme should one parent reside in Western Australia. Considering the strong links between Western Australia and the Christmas and Cocos Islands, the likelihood of this occurring seems high. I think I would hear no objections from the other side of this chamber if I were to call such a situation unacceptable. As such, considering the importance of this legislation and the likelihood of its ramifications to residents of our state and my electorate, I commend the bill to the house.

MR B. URBAN (Darling Range) [8.19 pm]: I rise in support of the Child Support (Adoption of Laws) Amendment Bill 2017. I will put forward a bit of a perspective from my time as a police officer. It is quite sad when police officers get called to houses, whether it is due to a domestic dispute, a dispute involving a father or mother wanting to see a child, or police officers being used as pawns to do welfare checks on the child. That basically upsets the balance of the home, whether the mother or the father is there, and it is not anything of any intent. I will not say that the child support system is flawed, but it needs to be reviewed, and it is not reviewed in this place.

I took note of the thoughts of Madam Acting Speaker, the member for Mirrabooka, about the child support agency. While I have been in my role in this place, twice people have wandered through our office doors to talk about child support cases. It is not as though a father or a mother does not want to pay for the child; it is about getting some equality and a balance. I will not name names, but there is a mother who looked after her children; one is now 20 years old and the other has turned 16. One day, after a consent order had been made, they went to the father's house. He works away at a mine site and the consent order states that they have to return to their mother's house when the father returns to the mine site. The 20-year-old daughter lives with the father because it is convenient as it is close to work. When the 16-year-old child visits the father, he does not return to the mother's house. That happened in January this year. Out of the blue, the woman found herself on a minimum wage of about $13 or $14 an hour as a cleaner, and she picks up extra hours to make ends meet even further. She lives in a rural setting and needs a car to get to work, and that is an extra expense. She is struggling. The father is not struggling—far from it. However, out of total spite, the father is asking for money for the 16-year-old when it is not needed. The system is quite wrong and it is not fair. Parts of it are not quite right and they need to be addressed. They need to be addressed not in this place, but as a federal issue and further.

I will not dwell on this issue too much and I am trying to talk it out. Another person with a quite sad case came into the office. This father has not seen his children for a number of years. He is paying child support on a regular basis and he is not getting access to the children. The mother has a restraining order against him for no other reason than that she fears for her safety, but there has been no evidence of her safety being compromised and there has been no pursuit of any assaults or threats to her. I will keep talking as much as I can to say that this bill needs to be passed in this place so it can move on.

MS E. HAMILTON (Joondalup) [8.24 pm]: I rise to make a contribution to the Child Support (Adoption of Laws) Amendment Bill 2017. It is important to understand that the Family Court of Western Australia operates

separately from the Family Court of Australia and we need to understand that difference. We have a separate system here in WA and that is why we are now having a conversation about adopting the laws in this place. As someone who has had to navigate the Family Court system in WA, I would like to put on the record that this institution is difficult for many to navigate. It is unfortunate that such a large volume of cases is being dealt with in the Family Court. The time that cases take to be heard is very long. Under the previous government, we saw a failure to adequately invest in the Family Court of WA. It is unfortunate that it takes up to two years for a matter to be heard before a magistrate. That is unacceptable, mainly for the children who are party to this system, but also because the Family Court is the last place that anyone would want to find themselves in. For a family member or someone in a relationship, it is the last place they can go to resolve a dispute.

It is often the case that there are heightened emotions at the time of separation or divorce for all parties concerned. To participate in a system that is not operating as efficiently as it could makes the process much more difficult than it needs to be. This is an issue that I am quite passionate about. This system really needs to be looked at and reviewed. More than that, this is my reality, which means that it is a reality for lots of other families in WA and in the electorate. I have a theory, which I have talked to my staff about quite a bit. If something comes through my doors or if there is something that I am living with, it is affecting a whole host of other people as well, who do not have the ability or the knowledge to interact about their concerns. It is something that we have to take quite seriously.

At a federal level, changes were made to the Child Support (Adoption of Laws) Act in WA. The commonwealth amendments, which affect change to the child support scheme, do not apply to unmarried couples and their exnuptial children in WA. The commonwealth does not have the power to make laws relating to ex-marital children. This is a role for the state Parliament. That is why we are discussing the legislation in this place today. Even though the first words of this bill are "child support", we are not really having a conversation about child support. Many of my colleagues have raised issues this evening relating to the federal child support scheme. We recognise that we as state parliamentarians do not have a role to play in this scheme; rather, we are having a conversation about the state Parliament introducing laws that will bring the state of WA into line with the rest of the country, recognising that exnuptial children from de facto relationships have the ability to receive child support and their caregiver has the ability, whether that be the mother, the father or an alternative caregiver, to follow through and seek the necessary support if that situation arises. More important than that, this is a conversation about ensuring that the children are treated fairly and in the same way as every other child in the same circumstance across the country. They should be given the opportunity to be provided for and to have a stable life in a mostly stressful and difficult time.

The commonwealth has the power to make legislation about marriage. Federally, there is no acceptance of de facto or exnuptial children in this case. We need to make sure that we have legislation here in WA that recognises the children of these relationships. It is the case in WA that if two people have lived together for two years, they are in a de facto relationship. With the passing of this legislation, for the purposes of child support, children from relationships will be considered. The commonwealth Parliament has done the heavy lifting on the policy changes. We in WA are able to reap the rewards and benefits of that hard work and implement the changes in WA. The legislation will bring WA into line with the commonwealth and ensure that children living here are treated exactly the same way and have every other opportunity that every other child in the country has.

It is unfortunate that we have seen the number of family breakdowns start to increase. Each and every one of us would personally know of such a situation or would have heard about it throughout the electorate. It is very important that we have the legislation here in WA. It makes sense. I support it. Ultimately, this legislation comes down to making sure that our children are not discriminated against. I support the legislation.

MRS J.M.C. STOJKOVSKI (Kingsley) [8.30 pm]: I rise to make a brief contribution to the Child Support (Adoption of Laws) Amendment Bill 2017. The administration of the child support scheme, as many of my colleagues have outlined tonight, is a hugely complex issue. As in many responses to complex problems, the legislation is not a perfect solution and, therefore, requires frequent amendment, which often exposes Western Australian children from exnuptial relationships to disadvantage.

As legislators, we have an obligation to ensure that children are treated fairly and equitably under the law. A recent quote encapsulates this, which states, according to my notes —

> The best way to create a genuine "responsibility era"—a genuine commitment to families and to the values they reflect—is to begin with those to whom we owe the greatest responsibility—those whom we most value—our kids. Let's not just talk about it—let's put kids first.

I believe that this amending bill will do just that. It is a well-known fact that in modern society many people do not get married but choose to live together in de facto relationships. Children from those relationships in Western Australia are at a disadvantage because laws have not progressed through this place. Adults sometimes

do not agree on things; we see it in this place and in our personal relationships. The breakdown of a relationship can be a difficult and stressful time and emotionally challenging for many involved, not least of whom the children who are affected by the situation but who have very little say or control over the situation. The need to legislate for all members of the community, particularly those most vulnerable, such as children of relationships that are breaking down, is essential work in this place. As I have said, children do not have a lot of control over these situations, and it is my firm belief that it is our obligation to ensure that we legislate to protect them. If parents cannot agree on their financial obligations to children and to maintain those obligations, the only recourse is to take the matter through the courts, which is an expensive and time-consuming exercise. Protracted proceedings in court can increase financial and emotional stress already being experienced in family homes, particularly in those experiencing a breakdown in the parents' relationship.

I have spoken a number of times in this place about the rise in the number of children experiencing anxiety and depression. Many school principals have indicated that the breakdown of relationships is a key factor that contributes to that. It is our responsibility to ensure not only that children have equitable access to financial assistance, but also their emotional and mental state of health is looked after responsibly.

I commend this bill to the house. I believe that we are doing the right thing by bringing the Western Australian legislation into line with the commonwealth legislation so that Western Australian children are not disadvantaged because we currently are not covered by the amendments that were introduced through the commonwealth legislation.

MR M.J. FOLKARD (Burns Beach) [8.33 pm]: Madam Acting Speaker, thank you for the time and privilege to speak on the Child Support (Adoption of Laws) Amendment Bill 2017. We have heard some interesting contributions, particularly from you, Madam Acting Speaker (Ms J.M. Freeman**)**, on the bill.

It will introduce into Western Australia a national child support scheme to ensure that children receive adequate maintenance, which is serious for the community and for us as members of this place. Knowing about certain circumstances—I can speak about only those that I have had to deal with in a previous life as a policeman, and my colleague the member for Kalgoorlie also referred to experiences in this area—family separation is a serious issue and the people who pay the cost are our kids. That being the case, I can tell members about a couple of experiences—particularly one that stands out in my mind, of a young family that broke up, and there were two young children involved. One was a year old and the other was three, both still in nappies. The separation came about rather suddenly, and I was called to the house because one of the children had been found wandering the streets. We found the young child and returned the child to the house. When we entered the place, I found the mother in absolute despair. The father had left the home some two weeks earlier and had stripped all the bank accounts of funds and had taken away all her identification and ability to make applications to banks; this was very much a power thing, and the woman was in absolute despair. She was sitting in a corner, crying, when we found her. She had been completely stripped of any maintenance or means of supporting her children, and the family was very much in crisis.

Out in the country people do not have the fantastic facilities available in the city, so it fell upon us to come up with solutions for this particular incident. We had to find the partner to find out why this had happened and to look into the circumstances why the children had been left in such a state of neglect. Despair was for mum and neglect was for the kids. We dealt with mum; it was a case of a couple of phone calls to a couple of very friendly, fantastic ladies within the town community. They rustled up a hot meal and the next morning they went around, cleaning up the house and giving her the absolute support that she needed. That is something you find in a country town. They were the practical things we could do to support this individual and the two kids. Giving her a bit of respite so she could actually get a good night's sleep for a change—that was one of the things we needed to do. The other thing was getting her to the local doctor so the kids could be looked at to make sure they were all right, which we were able to do.

But when it came down to actually finding long-term, secure funds for the mother and two children, there were a couple of ways we had to deal with it. One was to get her into the local Centrecare in Geraldton, so we arranged for that. She was that distraught that she did not have enough money to put fuel in her car, so guess what? She went into the back of the police van, and we got her down there so that we could start setting things up. We went to the bank and did all the running around so that we could slowly start building her up.

The other thing we knew was that the other party in the relationship was quite well-off. He was hiding from his obligation to the maintenance of his children; he was hiding himself and hiding the income he had received over that time. He was not standing up to his obligations. This individual was a fisherman by trade and was plying the coast. I knew he was working at one of the nearby towns and I called the local police sergeant there and went and found him. We managed to have a quiet chat with him and to find some of the necessary documents so she could open up bank accounts.

These were only short-term fixes; they did not fix the problem of long-term support for those children. The Child Support (Adoption of Laws) Amendment Bill 2017 allows for that. I note that the other side of the house is in agreement that this legislation should be passed posthaste. It supports the children and stops the hideous incidents that I have encountered, and I am sure there are many members in this house who could recount similar stories. We empowered the impoverished mother to get her fair share of maintenance. This gentleman was earning a good dollar and he thought it was all right to spite his ex-partner. The real tragedy is that the main cost was to the kids.

This bill has one purpose—to make sure that these kids do not live in absolute poverty. It will ensure that mum has enough money to put food on the table, that she can buy nappies and that she can take the kids down to the local doctor to get fixed. To me this situation is a no-brainer. We must get this bill through. I will not speak particularly long on it because it has been covered by other members within the house. In order to bring proper financial support to these kids who are in poverty, this bill should not be obstructed in any way. It should be allowed to go through posthaste. I will not speak any longer.

MR S.J. PRICE (Forrestfield) [8.40 pm]: I rise to contribute to the debate on Western Australia's Child Support (Adoption of Laws) Amendment Bill 2017. As has been discussed so far this evening during this debate, the commonwealth child support scheme essentially enables the collection of support payments from parents to maintain a person, and the costs associated with the raising and upbringing of the children once a couple has separated. Two commonwealth statutes come under the remit of the commonwealth child support scheme—the Child Support (Registration and Collection) Act 1988 and the Child Support (Assessment) Act 1989. Under the Constitution, the commonwealth Parliament has the power to legislate for the maintenance of children of a marriage, and a marriage only. It has no power to legislate for the maintenance of exnuptial children. Essentially, depending on the marital status of the parents, children are being treated differently within the eyes of the law. To ensure that all children within Western Australia are treated equally, we either have to refer the powers to the commonwealth, which we have chosen not to do, or we need to adopt the relevant legislation and any amendments from time to time. As we have heard tonight, for Western Australia to do that, a reasonable time lapse has to occur between when the amendment is adopted federally versus when it is adopted in Western Australia. The last amendment bill was in 2015.

Even though Western Australia has now adopted the relevant legislation to ensure that the commonwealth child support scheme applies to Western Australia, every time an amendment is made federally it applies automatically in Western Australia to the children of married couples as a result of the power that is given to the commonwealth under the Constitution. We are essentially talking about a group of people who, once again, are impacted on by the marital status of their parents. As we progress and get more modern, what determines a family these days is certainly about to be redefined, hopefully sooner than later. A number of different variations are available now. On top of that, the institution of marriage is undergoing significant change. I have pulled up some rough, quick figures. According to the Registry of Births, Deaths and Marriages, there were 12 320 marriages in Western Australia in 2016. That is interesting. Another document that refers to census data from 2016 states that over 201 000 people over the age of 15 declared they were in a de facto relationship within Western Australia. That figure can essentially be halved. If 200 000 people are in a de facto relationship, I might as well say there are 100 000 de facto relationships out there. We have 100 000 de facto relationships versus 12 000 marriages. There is a significant difference in that, which highlights the importance of this legislation, because the children of those 100 000 de facto relationships are not treated equally or covered by the legislation until we go through this process. That in itself is somewhat flawed and might need further discussion at some point. Everything we do must always be in the child's best interest. The child's best interest lies in ensuring that whichever parent has the main responsibility for their upbringing and education is able to do that and is afforded equal representation under the legislation, and within the different government departments that enable that person to provide what is required by the child. Ensuring that we have consistent legislation across the country, and that all our children are treated equally, will ensure a consistent approach, and in the future we can address this issue in a way that will be beneficial to the children whom this legislation will impact.

We must make sure that the legislation we adopt today picks up the changes. The documentation that accompanies the bill shows that a lot of the changes are mechanical, apart from the recognition of the Cocos (Keeling) Islands, which is a significant change, providing for the islands to be captured from a particular date. The changes we are referring to today are mainly mechanical, but there could be changes that have significant impact on the children of unmarried parents—essentially families that are not recognised as traditional under the law at the moment. We must ensure that we are prepared for the future, as I mentioned earlier, as the definition of a family changes over the years in the future, and who will have the responsibility for providing the children with the upbringing they require, through the provision of adequate financial support, and recognition of the children within the legislation.

We have heard significant contributions tonight to the debate on this legislation. It is important to remember that we are here to pass laws that are in the best interests of Western Australians, and ensuring that the requirements in the legislation are consistent across the country to help with some of the issues associated with dealing with some of the federal departments in Western Australia, because these laws come under their jurisdiction. I commend this bill to the house. We have heard how important it is and it has considerable support in this place.

Debate adjourned, on motion by **Mrs M.H. Roberts (Minister for Police)**.

House adjourned at 8.48 pm