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Ms MARINO (Forrest Opposition Whip) (10:51) said

I do not want to see any legislation or policies from this parliament that affect the decision-making process or the decisions made under the Family Law Act that provide less protection for children and families who are at risk of violence or abuse or both. That is why these proposed family law changes deserve very serious scrutiny. I also do not want to see changes to this legislation used and interpreted by anyone in a way that results in unsafe, unhappy children and even more desperate, angry and frustrated parents. Should this legislation be passed, only time, the experience of families, statistical information and genuine, transparent assessment and reporting will provide accurate information on its impacts.

There is probably no more difficult or contentious part of the Australian legal system than family law. We know why: it deals with relationship breakdown, disputes between separated parents, the welfare of
children and young persons, and divorce and property settlement, which are all extremely difficult, contentious and emotive issues. While the Family Court's paramount considerations are 'the best interests of the child or young person' and 'matters relating to the child's protection and care', it is very difficult frequently impossible to provide practical, workable or equitable outcomes for those involved.
The explanatory memorandum, in describing the changes being made by the Family Law Legislation Amendment (Family Violence and Other Measures) Bill, says it: retains the substance of the shared parenting laws and continues to promote a child's right to a meaningful relationship with both parents where this is safe for the child.

I have no doubt that most people believe that under this principle decisions should be made in the best interests of the child in family disputes and that a child should have the right to a fair and proper relationship with both of their parents, which was the intent of the shared parenting provisions introduced in 2006.
The aims of the 2006 reforms were, in part, to encourage greater involvement by both parents in their children's lives after separation. They were also to protect children from violence and abuse and to help separated parents agree on what is best for their children, rather than litigate, through the provision of useful information and advice as well as effective dispute resolution services.

I note that a report by the Australian Institute of Family Studies has confirmed that legislative changes in 2006 placed 'greater emphasis on the need to protect children from harm from exposure to family violence and abuse'. The identification of and response to family violence became more systematic under the 2006 reforms, which have improved some of the ways in which the family law system identifies families at risk of violence. That is an extremely important finding, in my view. The report also noted that the principle of shared parental responsibility is widely supported and that there has been a very substantial shift away from using the Family Court to resolve disputes. This is a very good outcome for all concerned. Another extremely important finding from the AIFS report was that the shared parenting reforms did not expose children to greater risk of violence or abuse. This reflects the intent of the 2006 reforms and the Family Law Act. However, I am seriously concerned that the expanded definition of family violence in the bill before the House may weaken rather than

strengthen the protection of the 2006 reforms.

As we are aware, many cases that reach court involve abuse and neglect, and the Family Court has to try to make sense of broken families and relationships in making its decisions. Rarely are these decisions viewed by all parties as a perfect solution indeed, they cannot be and it would be unfair on those who work in the Family Court to expect perfect outcomes. However, neither is it fair to pretend that people are not hurt by the court in reaching its decisions or that in some cases that hurt is extensive to the point of being potentially life-destroying.

The true 'winners' in the Family Court process are the children and parents who, in spite of their personal circumstances and hurt, are able agree on outcomes and never get to the Family Court at all other than to ratify that agreement. That was one of the AIFS report's findings about the effects of the 2006 reform that in the substantial shift away from using the Family Court to resolve disputes, people are genuinely putting the welfare of their children first. They are separating and divorcing as amicably as they can to try to make the best of a very difficult set of circumstances. When that happens, the children are the real winners, and the increasing number of parents who have chosen this course of action since the 2006 reforms have allowed their children to 'win'.

For those parents who, for so many reasons, cannot resolve their issues the Family Court is the only option. This bill seeks to address the issue of family violence, in particular the need to protect children from abuse and exposure to abuse; however, in seeking to do so it basically reverses the presumption of innocence something I am quite concerned about. By removing the need for abuse to be proved, the government by definition is proposing speculation based on unproven accusations. According to the explanatory memorandum to the bill, the new definition of abuse will:
remove the requirement for the assault to be an offence under an enforceable law in a State or Territory.

It further says:
This means that those working with the Act, including courts, legal practitioners and family members will not be required to have regard to the terms of State and Territory laws when considering whether abuse has occurred. The new definition will remove uncertainty about knowing the elements of an offence and whether an offence has been committed.

The final line 'whether an offence has been committed' seriously concerns me. The bill proposes to remove the certainty that comes with having to prove abuse and imposes the uncertainty of having the court decide whether abuse has occurred. The existing act defines whether an offence has been committed; the bill before the House removes that certainty. How this provision will be used, interpreted and potentially abused by one or both parents is an issue that concerns me, as does how in practical terms it will work for and impact on parents and children. I am seriously concerned that false accusations may well undermine or cover actual cases of abuse that do need to be exposed.

This bill defines abuse as:
threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful.

(2) Examples of behaviour that may constitute family violence include (but are not limited to):
(a) an assault; or
(b) a sexual assault or other sexually abusive behaviour; or
© stalking; or
(d) repeated derogatory taunts; or
(e) intentionally damaging or destroying property; or
(f) intentionally causing death or injury to an animal; or
(g) unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or
(h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; or
(i) preventing the family member from making or keeping connections with his or her family, friends or culture; or
(j) unlawfully depriving the family member, or any member of the family member's family, of his or her liberty.
As I said previously, the derogatory taunts were an issue which concerned me. It may therefore be incumbent upon family law exponents to ensure prospective clients report to the appropriate authorities any repeated derogatory taunts which may be used in future legal action. In practical terms, how will this work? After all, in the case of two parents of otherwise good repute this might be the only differential the court can use to make a decision. Perhaps we may well see both spouses keeping diaries to record any form of derogatory remarks for future court reference.

The Hull committee report in 2003, on which the 2006 changes to the act were based, considered that while the court should of course protect children from violence and abuse, the law should do more to ensure the involvement of both parents in the majority of families. This is what the explanatory memorandum to this bill seeks to continue. In particular, the law should help people move away from the previous tendency to assume that it was best for children to spend most of their time with one parent and only spend alternate weekends and half of the school holidays with the other parent. How does the government propose to ensure that this right to a real relationship with both parents, as enshrined in the 2000 amendments and explained in the explanatory memorandum, will be preserved under the current proposals?

Like many members, I receive constant evidence from people who come into my office with issues. Ten years ago, prior to the 2006 review, a constituent of mine was before the Family Court of Western Australia in a dispute over custody. He was told by the now retired judge that he was not concerned which parent the child was placed with as long as he, the judge, could sleep at night. I know that such a comment to either gender can be offensive to the parents. At the time it was a brutally honest reflection of how the decisions were made and what influenced the judge. The reforms of 2006 demonstrate very clearly that there have been changes in this since then. The pain, the resentment and the frustration of being seen as a loser in the Family Court will be with my constituent for life, as it will be for so many others in the community.

As I said, I do not want to see any legislation or policies from this parliament that relate to decisions made under the Family Law Act that would provide less protection for children and families who are

at risk of violence and abuse. I certainly do not want to see changes used and interpreted by anyone in a way that results in unsafe, unhappy children and even greater numbers of desperately unhappy, angry and frustrated parents.

Mr PERRETT (Moreton) (11:03):

I rise to speak in favour of the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 and I commend the member for Forrest for her contribution on this topic. All governments must take very seriously their responsibility to protect children from child abuse and respond to family violence. That was the message from the Safety for Children Alliance which visited parliament yesterday to demonstrate their support for this bill. If things were a little bit friendlier in this chamber I would have been happy to join them at the front of Parliament House, but it is not the sort of parliament where people can go missing.

The Gillard government has also received a number of reports into family law reforms and how the system deals with family violence. These reports include: the Evaluation of the 2006 family law reforms by the Australian Institute of Family Studies; the Family courts violence review by Professor Richard Chisholm AM; and Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues by the Family Law Council. It is clear from these reports that we can and must do more to protect and support families at risk of abuse or violence.

My wife has worked in child protection for more than 20 years and she often tells me of the lifelong scars suffered by those who experience this kind of physical and emotional abuse in the family home. She is a frontline child protection worker, so she only deals with families when things have gone bad. It is horrible to see how some families treat children. As you know, Mr Deputy Speaker, last night was State of Origin night. For the benefit of Tasmanians and Victorians, for many of us who call New South Wales or Queensland home, State of Origin is one of those iconic contests that brings out our pride and love for our home state and team. Unfortunately, there is one horrible aspect to State of Origin night. I am told that on State of Origin night the state that loses experiences a spike in incidents of domestic violence. I love State of Origin football but, knowing this, on every Origin night I feel anxious about what will happen once the final whistle is blown. So for me, as a Queenslander, a win is always a slightly bittersweet experience—part of me would like every game to be a draw, but I know that will not happen.

So when it came to last night's game, I know the Attorney-General, who introduced this bill and whom I was sitting beside, hoped for a different outcome to me, but when it comes to eliminating family violence we are very much on the same team. Family violence and child abuse cannot be tolerated under any circumstances. Children must be protected from harm and violence, as well as from witnessing harm and violence against other family members. Personally, I come from a broken home so I well know that all separating families face incredible stress and pressure as child custody and property matters are resolved. Where there are violence or abuse issues, the anxiety and apprehension experienced by families is all the worse. All too often we see in our newspaper headlines the grim reminders of what happens when things go wrong. All too often it is men—occasionally women—who hurt the ones they love. I know that as a government and a society we can never get it perfectly right. We can never have a system that will prevent every single murder, but that does not mean that we should not try to achieve that system.

This bill does not change the essence of our shared parenting laws designed to promote a child's right to a meaningful relationship with both parents, obviously where this is safe for the child. All those barneys that we have in family courts, which keep lawyers employed, over access or residency or whatever we want to call it, should always defer to what is best for the children. That should be the prime consideration.

This bill will enable the family law system to better respond to matters involving child abuse or family violence. It amends the Family Law Act 1975. We need to revisit that briefly. How ground breaking it was when the Whitlam government brought in the Family Law Act. It amends that act to prioritise the safety of children in parenting. It changes the meaning of 'abuse' and 'family violence' to better capture harmful behaviour, including actions or threats by a person against another family member or their property. It also includes witnessing such actions or threats. It strengthens adviser obligations. It ensures family courts have better access to evidence of abuse and family violence and it makes it easier for child protection authorities to participate in family law proceedings, because all too often that crucial evidence is missing. Unfortunately, that is probably not great news as concerns workloads for my wife and her work colleagues, but as it will make children's lives safer I am sure they will wear the initiative. The court will quickly consider the need to make any orders to ensure there is sufficient information available about the allegation of family violence or child abuse in order to resolve the issues and ensure that appropriate protections are in place.

The bill also makes a number of minor technical amendments to the Family Law Act: it clarifies the Family Court's power to dismiss appeals and to delegate procedural application in appeals to registrars; it clarifies that parentage testing orders and parenting declarations are not parenting orders; and it aligns the Family Court's and the Federal Magistrates Court's provisions on administering oaths or affirmations and on the swearing of affidavits.

This bill sends a strong signal that family violence and child abuse will not be tolerated. Violence and threats of violence are never acceptable. I revisit the concept that this is not a silver bullet that will solve everything. Parliament is not the community. I am merely my community's representative. Our laws help people but obviously it is the community that saves lives and that saves children from experiencing harm and rescues them. It is the community that raises children. We are merely a part of that process. All too often, when there is a family tragedy—the all too horrible circumstance of murder, normally of the woman and the children, and then the suicide of the murdering male—people come on talkback radio and say, 'Who should we blame? What member of the government or what government department should we blame?' But too often it is the community that has turned its back on the household in distress. Like the campaign going at the moment for a child protection agency, too often we have turned our back. Obviously, what would have changed things early on was a knock on the door, as neighbours, friends and good citizens do, to say, 'How are you going. Can we take the kids out and give you a break.' Too often our community streets are lined with cells, not homes—these little silos of lives that do not intersect with the people living right next door or right across the road. We see it in the recent tragic circumstances on the Gold Coast. Also, there is a court case happening at the moment concerning young twins in Sunnybank Hills who perished because no-one knocked on the doors and asked what was going on.

I welcome the bill and I hope it will have a positive impact on family relationships and children's health, development and wellbeing. I commend the bill to the House.

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Mr KEENAN (Stirling) (11:11):

Family law is the one jurisdiction of the federal judicial system to which almost all Australians have had exposure at some level at some time in their lives. It is a sad fact of life that virtually every one of us will either have first-hand experience or have someone, most likely several people, within our circle of friends who has had contact with the court. It is also a sad fact of life that family law disputes are often amongst the most intractable matters to come before a court, often in a context of extreme personal bitterness and too often occasioned by violence and abuse of the most horrible kind.

It is also a fact of life that any attempt to resolve these disputes will often leave both parties feeling aggrieved and, much worse, their children exposed to the fallout and remaining at risk of violence and abuse. Many of the failed relationships that come before the courts have been blighted by mental illness and substance abuse problems, sometimes on both sides, and, because judges are human, the courts will not always get it right.

In disputes involving children the principal guidance the act provides is that the best interest of the child is the paramount consideration. Just how the best interests of children can be determined, however, is and will always be a vexed question.

Mr Deputy Speaker Scott, as I know you would be well aware, in December 2003 the House of Representatives Standing Committee on Family and Community Services tabled a unanimous report titled Every picture tells a story. The committee was asked to consider whether, given that the best interests of the child are the paramount consideration, what other factors should be taken into account in deciding the respective time each parent should spend with their children, post separation. The committee, headed by Kay Hull MP, heard evidence from more than 2,000 witnesses over six months. One of its findings, which informed many of its recommendations, was:

We are convinced that sharing responsibility is the best way to ensure as many children as possible grow up in a caring environment. To share all the important events in a child’s life with both mum and dad, even when families are separated, would be an ideal outcome.

This was the finding of the entire committee, across party lines. The committee heard heartbreaking evidence of children separated from one of their parents by inflexible Family Court orders, which caused anguish to parents and children alike and which had long-term detrimental effects on children. The so-called 'shared parenting' laws were introduced by the Howard government in 2006 in response to that report. The changes to the family law system included changes to both the legislation and the family relationship services system. The main elements of the legislative changes were to require parents to attend family dispute resolution before filing a court application, except where there are concerns about family violence and child abuse; to place increased emphasis on the need for both parents to be involved in their children's lives after separation, including the introduction of a presumption of shared parental responsibility; to place greater emphasis on the need to protect children from exposure to family violence and child abuse; and, finally, to introduce legislative support for less adversarial court processes in children's matters.

The legislative suite included a requirement for the Australian Institute of Family Studies to undertake a large-scale longitudinal evaluation of the effects of the reforms. That evaluation was completed in December 2009, and I will return to its findings a little later in this speech. The coalition is very proud of the Ruddock reforms and justly so.

I turn now to the bill before the House. The Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 is a bill to amend the Family Law Act 1975 by including an additional object to give effect to the UN Convention on the Rights of the Child, to which decision-makers may have regard when dealing with children's matters; by changing the definition of family violence and abuse; strengthening the obligations of lawyers, dispute resolution practitioners, family consultants and family counsellors to prioritise the safety of children; requiring inquiry and reports on family violence and child abuse to be part of court proceedings; repealing the so-called 'friendly parent' provision; repealing the provision for cost orders in the case of false family violence applications; and providing for simpler procedures for the participation of child welfare agencies in family law proceedings. Some of these amendments will have the coalition's support. Others, however, in our view seek to wind back the Ruddock reforms and will be opposed. I will deal with the substantive provisions in turn.

Prioritising the safety of the child: the bill proposes to insert a new subsection to section 60CC, which requires the court, when determining what is in the child's best interests, to give greater weight to the primary consideration that protects the child from harm where there is inconsistency in applying the two primary considerations—the other consideration being the benefit to the child of having a meaningful relationship with both parents. This amendment is unnecessary and gratuitous. The existing section 60CA makes the best interests of the child the paramount consideration, and existing section 60B clearly articulates that a meaningful relationship with a parent is subordinate to the paramount consideration.

In purported aid of the objective of this amendment, the bill seeks to add, as a further object of part 7 of the act, that it is to give effect to the UN convention. The explanatory memorandum states that the intention is to confirm, in cases of ambiguity, that part 7 should be interpreted consistently with the convention. However, to the extent that the act departs from the convention, the act will prevail.

The proposed amendment does not incorporate the convention into domestic law. Given that the act already gives effect to the principle of the paramountcy of the best interests of the child, the need for this amendment is not clear. At this stage this is a matter for the consideration of the Senate committee. The opposition reserves its position as to whether this amendment will ultimately be necessary.

I turn to the definition of family violence. The exposure draft of this bill proposed a definition of family violence that included any behaviour that was subjectively emotionally, psychologically or economically abusive or threatening. Many stakeholders have voiced their concern that any instance of marital discord could be tailored to fit this definition. The definition now proposed defines family violence as:

… violent, threatening or other behaviour by a person that coerces or controls a member of the person’s family … or causes the family member to be fearful.

It differs from the existing definition in that it imposes a subjective test. The existing definition requires a reasonable fear for the family member's wellbeing or safety.

The new definition attempts to qualify its subjectivity by incorporating a list of examples of behaviour which includes assaults, repeated derogatory taunts, damage to property and other unreasonable or criminal behaviour. However, it is an open question as to whether the list of examples is sufficient to frame and limit the subjective definition. There is no doubt that any of these behaviours exhibited would cause a person to be fearful. They would also give rise to a reasonable fear for a person's wellbeing or safety under the existing test.

The problem with the subjective test is that a person seeking to demonstrate that another person is violent need only state that he or she fears controlling or coercive conduct. The state of mind need not be reasonable. The consequences of a finding of violence can be drastic and permanent. It is not appropriate that a court need not inquire as to whether the fear is well founded. Accordingly, the coalition will press for the retention of the objective test in the existing legislation.

I turn to identification, inquiry and reporting on family violence and child abuse. The Australian Institute of Family Studies evaluation found that the legislative changes introduced as part of the 2006 reforms placed greater emphasis on the need to protect children from harm and from exposure to family violence and child abuse. This meant that the identification of, and response to, family violence became more systemic under the reforms. However, it found that improvements still need to be made in identifying and responding to pertinent safety concerns. The proposed amendments broaden the reporting requirements in this regard to interested persons rather than just the parties in child related proceedings. This will include independent children's lawyers, dispute resolution practitioners, family consultants and family counsellors. There is a continuing need to improve responses to child safety concerns and it is recommended, subject to the specific findings of the Senate committee, that these amendments be supported. Similarly, the record of child welfare agencies in family law proceedings has in many cases been deeply unsatisfactory. Amendments to improve their participation and accountability are welcomed by the coalition.

Turning to the repeal of the friendly parent provision, section 60CC(3)(c) of the act currently requires family courts to consider the willingness of one parent to facilitate the other having a meaningful relationship with the child. The provision has been criticised as discouraging parents from disclosing family violence and child abuse for fear of being found to be 'unfriendly'. The bill seeks to repeal this provision and replace it with considerations of the extent to which each of the child's parents has taken or failed to take the opportunity to participate in major long-term decisions in relation to the child, spend time with and communicate with the child and the extent to which each of the parents has fulfilled or failed to fulfil parental obligations to maintain the child. These criteria already exist in section 60CC(4).

The explanatory memorandum cites the Australian Institute of Family Studies evaluation and the Family Law Council report as the basis for the repeal of this provision. This is misleading. The Australian Institute of Family Studies found that some concerns were expressed that the provision discouraged the reporting of violence, but there was no statistical information to suggest that this was actually the case. The criticism was in fact voiced in the Chisholm report, which was uncited in this bill's explanatory memorandum, and was described as 'gossip' by the Family Law Council. Failure to facilitate a relationship between a child and a separated parent remains a salient issue for the

attention of a court and has been found to be an incident of emotional abuse in several reported cases. If the enhanced violence and abuse reporting obligations are supported, there can be no reason for a parent's obstructive behaviour to be excluded from consideration.

I will turn to the final matter that concerns the opposition, which is cost orders in relation to false allegations of abuse and violence. The bill repeals section 117AB, which provides for mandatory cost orders, albeit that some such orders might cover only a portion of the costs. These orders are made when a party knowingly makes a false allegation or statement in the proceedings. The explanatory memorandum cites the Australian Institute of Family Studies evaluation and the Family Law Council report as finding that the section operates as a disincentive for disclosing family violence. Again, this is misleading. The Chisholm report alludes to practitioner concern as the basis for its recommendation for repeal, but neither of the major studies cited make any substantive finding. The Family Law Council report in fact recommends that the provision be clarified with an explanatory note or public education campaign.

It should be noted that the test within section 117AB is a stringent one. A mandatory costs order could not arise from evidence that was not preferred in the circumstances or even from evidence given recklessly or without belief. It applies only to knowingly false evidence. If a court was prepared to make such a finding, there is no reason why a costs order should not follow. Individual members of the judiciary have confirmed that such false accusations are by no means unknown and that sanctions should apply in such cases.

The policy objectives of the 2006 reforms were to help build strong, healthy relationships and prevent separation, to encourage greater involvement of both parents in their children's lives after separation, to protect children from violence and abuse, to help separated parents agree on what is best for their children rather than litigating through the provision of useful information and advice and effective dispute resolution services, and to establish a highly visible entry point that operates as a doorway to other services and helps families to access those other services.

As the Australian Institute of Family Studies evaluation confirmed, the legislative changes introduced as part of the reforms placed greater emphasis on the need to protect children from harm and from exposure to family violence and child abuse. This meant that the identification of and response to family violence became more systemic under the reforms. The Ruddock reforms have been the subject of criticism. However, all the indications are that the reforms have been largely successful. Many of the criticisms have arisen from misinterpretations, whether wilful or otherwise. Sensibly, the government has withdrawn from its more radical proposals and at this stage will leave the core shared parenting provisions largely intact. However, it is disturbing that it has accepted the criticisms of the friendly parent and cost order provisions at face value and has misleadingly cited positive or neutral findings on those provisions in support of its proposed amendments.

The coalition will always support any sensible proposals to reduce the exposure of children to abuse and family violence. Our record indicates that and it takes these issues very seriously. Some of the amendments proposed by this bill are worthy of support. However, as I have said, it must be recognised that proceedings in the family jurisdiction are some of the most bitterly contested and intractable found in any litigation. Judges and practitioners are well aware that child related proceedings may be brought for any number of collateral purposes—which of course is in itself a

form of child abuse—and that mechanisms must exist to deal with this. For these reasons, I will be moving the amendments that have already been circulated in the chamber.

Ms KATE ELLIS (Adelaide—Minister for Employment Participation and Childcare and Minister for the Status of Women) (11:28):

It is with great pleasure that I speak in support of the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 today. Earlier this year, the Attorney-General and I launched the national plan to reduce violence against women and their children—a ground breaking 12-year plan to end the unacceptable levels of domestic and family violence being perpetrated in Australia each and every day. I am pleased to say that this Family Law Legislation Amendment (Family Violence and Other Measures) Bill is further evidence of this government's ongoing commitment in this area.

Today, I take the opportunity to address not only what this important bill will do but also why it is needed. It is important to dispel some of the myths that have grown up around the issue of family and domestic violence in this country and to place the facts firmly on the record. Firstly, I acknowledge the significant work of the Australian Institute of Family Studies, the Family Law Council and Professor the Hon. Richard Chisholm in providing the strong evidentiary basis for these amendments. I especially acknowledge the numerous women, men and children who have shared their painful experiences to help inform the development of these important changes to the law. The reforms will allow Australia's family law system to respond more effectively to family violence and child abuse. Importantly, the reforms we are introducing through this legislation will ensure the safety of children during the process of separation.

This bill will prioritise the safety of children in parenting matters. It will strengthen the obligations of family consultants, family counsellors, family dispute resolution practitioners, and lawyers to prioritise the safety of children. Under the proposed reforms these advisers must encourage families to focus on the best interests of the child and, in doing so, to put the wellbeing of their children front and centre when reaching parenting arrangements. Importantly, we are actively removing the provisions that had the perverse effect of discouraging the reporting of family violence.

To this end, there will be a new duty on the courts to ask each party about the existence or risk of family violence and child abuse. Parties will have to report their concerns about family violence and child abuse to the courts and the courts will have to deal promptly with these concerns.

Other people interested in the proceedings will be able to make similar reports to the courts. Courts will no longer consider the extent to which a parent is friendly to the other parent, and individuals will no longer need to fear being saddled with a costs order if they report family violence to the courts. The bill will also make it easier for state and territory child protection authorities to participate in family law proceedings where appropriate. These are all vital reforms in our goal to secure safer parenting arrangements for children.

This bill will continue to support shared care and a child's right to a meaningful relationship with both parents. However, where family violence or abuse is a concern the courts will be required to prioritise the safety of the child over the child's maintaining a meaningful relationship with each parent. The bill will also give effect to the United Nations Convention on the Rights of the Child,

allowing decision-makers, in the event of any ambiguity, to interpret the Family Law Act consistently with Australia's obligations under the convention. As part of these amendments, behaviour such as stalking and emotional, psychological and economic abuse is explicitly referenced in the definitions.

These amendments are extremely important to a government that is committed to addressing the epidemic of family and domestic violence in this country. The rate of domestic and family violence in this country is an epidemic, but it is an epidemic that is not frequently discussed either in this House or in our neighbourhoods and communities. Let us take a moment to look at the facts. Those who suffer from family violence are predominantly women and children. The evidence for this is irrefutable. Research by the Australian Bureau of Statistics has found that one in three Australian women has experienced physical violence since the age of 15. Research conducted in Victoria just a couple of years ago revealed that intimate-partner violence is the leading contributor to death, disability and illness amongst women in that state who are aged between 15 and 44. Shockingly, while these rates of violence in the general population are appalling, we know that Indigenous women and girls are 35 times more likely to be hospitalised due to family violence than other Australian women and girls. There seems to be what I find a very concerning trend in this country for people, both men and women, to try and play down the statistics—to try and shy away from them—or shut down discussion on the matter, but it will be absolutely impossible to make inroads into these family and domestic violence figures if people continue to diminish their importance.

Family violence is at the root of some of the biggest social issues facing our nation, including mental health, alcohol and substance abuse, poor education outcomes in children and homelessness. That is why it is entirely infuriating to read about or hear people who play down the impacts and incidence of family violence, suggesting that the problem of street violence against men is far more significant. Let us be clear that all violence must be acted upon, and for this reason we must bring it out of the shadows. We must ensure that we face what is a deeply disturbing reality. It is important to take this opportunity to dispel the myths and put some facts on the record. While it is true that men are more likely to be victims of violence, this violence occurs predominantly at the hands of a stranger and in public places, such as the street or the pub, not at the hands of a family member, not at the hands of a partner, not at the hands of those they trust the most and not in their own home. In fact, violence against women and children is, tragically, too often hidden within the family. As the studies that support these amendments have shown, we know that many cases of domestic and family violence and family abuse continue to be underreported.

The evidence base for these amendments is undeniable. The Australian Institute of Family Studies and the Family Law Council say that the Family Law Act is failing to properly protect children and other family members from family violence and abuse. The Australian Law Reform Commission and the New South Wales Law Reform Commission have both emphasised the need for the family law system to respond more effectively to family violence. In his review, Professor Chisholm found that many families before the Family Court have had to ask the question: 'Do I report family violence to the court and risk losing my children or should I instead stay silent?' We simply cannot and should not live with a family law system in which parents are forced to ask that question or are forced to stay silent when they know there is a risk to family safety. In the face of this overwhelming evidence, we must act to deliver the necessary reforms and ensure the best outcomes for vulnerable women, men and children.

As I have already mentioned, the government has been presented with substantial evidence from Australia's top research bodies that some provisions of the Family Law Act were discouraging the reporting of family violence. Specifically, both the AIFS and the Family Law Council have demonstrated evidence that parties were not disclosing concerns of family violence and child abuse for fear of being found to be an unfriendly parent under the act. We are changing that provision. In addition, there was evidence that vulnerable parents were choosing not to raise legitimate safety concerns for themselves and their children due to the fear that they would be subject to a costs order if their case was not proven before the court. We have made sure that these cost orders are no longer mandatory.

The amendments in this bill will make it easier for the court and other decision makers to inform themselves about family violence when determining matters under the Family Law Act. Through these amendments we hope to see increased reporting of family violence in Family Court matters. We know that this violence does exist. We need to make sure that the court is in a position to receive and weigh evidence on it.

This leads me to the final myth that I would like to dispel today. There has been some opposition to this bill from individuals and groups who say that separated mothers routinely make false accusations of family violence and child abuse. They say that vindictive parents commonly pressure their children to make false claims for the purposes of revenge or to gain tactical advantage in child custody disputes. It is concerning that these groups are gaining increasing prominence and respectability in this country, that we are hearing their arguments repeated across the nation and indeed in the parliament and that they are distorting domestic family violence figures, spreading misinformation and propagating the view that family violence and child abuse claims are fabricated during custody proceedings.

But what is more concerning is that this spurious view seems to have gotten some traction in our community. Surveys undertaken a few years ago by VicHealth found that 46 per cent of respondents agreed with the statement that:

… women going through custody battles often make up claims of domestic violence to improve their case.

Forty-six per cent of respondents agreed with this. I would like to be very clear about this. This reasoning has been entirely debunked by research in Australia and overseas. A report in 2007 by the Australian Institute of Family Studies found that the family violence allegation rates in custody proceedings in the Family Court of Australia or in the Federal Magistrates Court are similar to the reported rates of spousal violence profiles in the general divorcing population. In short, claims that abuse allegations are manufactured are bogus and unsupported by any respectable form of evidence. Violence and abuse claims are not being made up to support some perceived advantage in Family Court cases. In fact, Australian research tells us that the concerns about child and family violence are real, especially during divorce proceedings. Women and children are at their most vulnerable to family violence when parents are separating, and we have seen some pretty high-profile examples of this in recent weeks.

These amendments before the House ensure that our family law system can never again be described as failing to adequately protect children and other family members from family violence

and child abuse. These amendments make sure that the Family Court asks the question about family violence. These amendments make sure that the court has the facts that it needs to make child safety a priority. Some people have said that the reforms in this bill will be bad for men or that they will be good for women, but this is not a debate about that. This is a debate about the rights and safety of children and the responsibilities of parents. It is not a contest about who will be better or worse off. All family members have the right to be free from harm and to live without fear of violence or abuse.

I am pleased to note that this bill has been strongly supported by the community, by those professionals who work in the family law system and by those who have worked so long and so hard to bring about change. In fact, an overwhelming majority of the 400 submissions received during the exposure draft process supported these changes. The government recognises and upholds the right of each child to have love and support from both parents, but that comes unequivocally with the responsibility to protect them from harm.

I congratulate the Attorney-General and his department for their work in achieving a significant law reform package. This is something that our government is committed to, both in legislation and through support programs and the new national plan. We will work in solidarity with every state and territory government of all political persuasions to turn around what are staggering, disturbing and very real statistics in our community. I would hope that this is something we could work on in a bipartisan fashion in this House, because Australia has a shameful record. It is a record that we need to bring out of the darkness. We need to confront it head on. We need to make sure that we are saving more children, women, men and family members from this sort of abuse.

Mr WYATT (Hasluck) (11:42):

I acknowledge the comments made by my parliamentary colleague the member for Adelaide. Many of the points that she made are extremely important in this debate. I rise today to speak on the proposed amendments to the Family Law Act through the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011. There is no doubt that we all condemn violence towards children and partners in a relationship, particularly women. This is not a debate about that. This is a debate around several proposed changes to the act which have come about after several Australian Institute of Family Studies' Evaluation of the 2006 family law reforms, Professor Chisholm's Family Court's violence review and the Family Law Council's submission, Improving responses to family violence in the family law system.

Essentially, this bill seeks to include a provision to give effect to the UN Convention on the Rights of the Child, extend the definition of family violence, extend responsibility for inquiry and reporting into allegations of violence and wind back the reforms introduced by the Attorney-General Philip Ruddock in 2006. It also repeals provisions relating to the facilitation relationships with separated parents and costs orders with respect to false allegations.

The 2006 Ruddock reforms put the best interests of the child at heart. A child in a situation such as divorce has a right to be safe and to maintain a relationship with both parents where possible. The coalition believes it is best for separated parents to agree on what is best for their children and not to be dictated to by government. And the child should have the ability to build and maintain a strong

relationship with both parents. It is a very fine balancing act to get family law right, and the government needs to consult with all family groups.

It is not surprising that when the Gillard government released an exposure draft of the bill last year that there was a widespread community response. The radical changes did not sit well with some in the family law community and thus the current bill was proposed by the government. We are also in the middle of an inquiry by the Senate Legal and Constitutional Affairs Legislation Committee on this very bill. They are due to report their findings on 23 June and this inquiry has also received a number of responses. At my last count there were 210 unique submissions, of which there was a submission from an organisation in my electorate of Hasluck. The Gosnells Community Legal Centre submitted a letter to the inquiry outlining not only its general support for the bill but its recommendations to further strengthen the reforms commenced in 2006. I thank the Gosnells Community Legal Centre for making its views known in such a topical debate.

I know that family law affects a number of my constituents in Hasluck and the Gosnells Community Legal Centre does an outstanding job of representing and assisting people throughout the city of Gosnells. Section 60CA of the Family Law Act, entitled 'Child's best interests paramount consideration in making a parenting order', states:

In deciding whether to make a particular parenting order in relation to a child, a court must regard the best interests of the child as the paramount consideration.

This bill proposes to insert a new subsection into section 60CC which is to prioritise the rights of the child. This is quite unnecessary as section 60CA, which I read before, clearly puts the child first in making a decision in regard to the parenting order. The government also purports that this will give effect to the UN Convention on the Rights of the Child. The explanatory memorandum states that this inclusion is to reinforce the fact that part VII of the act should be interpreted under the UN convention. However, what it does not state is the fact that when the act departs from the UN convention the act will prevail. Therefore, the addition of this amendment will not actually override the act nor incorporate the convention into domestic law. Thus, one would have to wonder what is the purpose of this amendment. Why include it if the act already deals with the exact issue and will not actually impact upon areas of domestic law? The child should always be the centre of decisions made in respect to a parenting order and the 2006 reforms ensured that this was the case.

The bill goes on to extend the definition of family violence. It is good to see that sometimes the Gillard Government does listen to its constituents and key stakeholders because when the exposure draft of this bill was released there were a number of people concerned that the new definition could lead to issues in an everyday marriage being defined and argued to be family violence. Yes, family violence does affect people emotionally, psychologically and economically, but the government expanded this to the extent that a simple marital argument or action that one party deemed to be unfair could be defined as violence. Whilst it is good to see that the government did conduct a consultation process and actually listened to those Australians who made an effort to have their say, the new definition is unfortunately no better. The newly proposed definition of family violence may weaken rather than strengthen the concept. Whereas the existing definition required a reasonable fear for the family member's wellbeing or safety, the new definition is both vague and an overextension of the government to try and categorise what family violence actually is. The new definition states that family violence is:

…violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful.

It then attempts to qualify this by listing 10 behaviours which would qualify under the new definition. The list, in which there is no doubt that the behaviour is not only unreasonable but in some cases criminal, still leaves open the question of whether it frames the definition suitably.

One facet of this bill which is a step in the right direction is the broadening of the reporting requirements of cases of family violence and child abuse to 'interested persons' rather than just the parties to the proceedings. Therefore, this will include children's lawyers, dispute resolution practitioners,family consultants and family counsellors. Response to child safety concerns should always be improved and built upon. Greater accountability and participation is very much welcomed. The biggest concern of this amendment is the repealing of the 'friendly parent' and 'costs orders' provision under the current Family Law Act. These were key reforms under the former Attorney-General Philip Ruddock in 2006 and, whilst the reforms have been subjected to a sustained ideological attack, all indications are that the reforms have been very successful and ultimately supported. The 'friendly parent' provision of the current act is defined under section 60CC(3)(c) as being:

... the willingness and ability of each of the child's parents to facilitate, and encourage, a close and continuing relationship between the child and the other parent ...

This ultimately means that the family courts will have to consider the enthusiasm of one parent to work with the other to establish a relationship with the child. Whilst the government claims that the provision discourages parents' disclosure of family violence for fear of being deemed unfriendly, the current act deals with this in section 60CC(4).

The bill will repeal section 60CC(3)(c) and replace it with considerations of the extent to which each of the child's parents has taken, or failed to take, the opportunity to participate in major long-term decisions in relation to the child, to spend time with and to communicate with the child and the extent to which each of the parents has fulfilled, or failed to fulfil, the parent's obligations to maintain the child. This is already in the act in section 60CC(4). The failure of parents to be encouraged to foster a relationship between a child and a separated parent is a major issue in the family law courts and could be found to be an emotional abuse in some cases.

Another major element of the current act is the repealing of section 117AB, which provides for mandatory costs orders where a party knowingly makes a false allegation or statement in the proceedings. I know of several families in Hasluck who have had to deal with this section of the act and it has actually protected the child and the other partner from having to bear the cost of defending against a false allegation. Without mandatory costs for knowingly making a false allegation of family violence, it opens up the courts to added cases and will impact adversely upon families. The reasoning behind repealing this section of the act is that the cost orders supposedly discourage individual allegations of family violence for fear of having to pay the court costs if found to be false. The test for having to pay mandatory costs orders is stringent. It applies to knowingly providing false evidence, thus could not arise from evidence that was not proffered in the circumstances, or was given recklessly or without belief. If ever a court were to make such a finding—that one party knowingly provided false evidence—then there is no reason why a costs

order should not follow. False accusations are not unknown and sanctions should apply. In the debate around costs orders we should not forget that the safety of the child needs to be paramount. By removing the imposition of costs orders on false allegations, the government is opening up children to the added burden of having to go through extra court processes and angst between parents when a false allegation is made. If there is no disincentive to making false allegations it is much easier to accuse your partner of family violence without any evidence or deterrence. There will be people that will forsake the truth for their own personal gains. The child and the truth are paramount to this argument.

By removing costs orders there are three parties that will be affected: firstly, the child or children in question. Having to go through the courts to determine whether the family violence allegation is in fact true or not is a psychological stress that is unwarranted. In the context of the allegation being false, why should the person making the allegation not be reprimanded? This one person, who knowingly made a false allegation and provided false evidence, will not have to bear the costs of the court proceeding and there is no deterrence to adding this stress onto their child. It may sound like I am implying that once this bill passes, every disaffected parent will go out and make false allegations of family violence, but that is not what I am advocating. I am speaking for those women and men who may find themselves in these situations.

This brings me to the second party affected: the parent who has had the false allegation made against them. This is not only an emotional and psychological blow to them but an added financial cost to defend themselves against an allegation that is not even true! How fair is that? Divorces are always costly exercises, especially where there are children involved. Financial costs added by defending oneself against false allegations can adversely affect one's willingness to work with the other parent towards what is best for the child and for their employment and future prospects.

I mentioned previously that there are three parties affected by the repealing of costs orders, and the final party is the courts. Family law courts are already overburdened and stretched to their limits. If there were to be an increase in false allegations which the courts must act upon, this will add increased stress on the services provided by this institution. Yes, courts should investigate all allegations of family violence and, as I have previously stressed, the interests of the child are paramount in this process, but having no deterrence for making false allegations is a step in the wrong direction. We, as a parliament, should foster a context of resolution and negotiation, not one that is adversarial between parents. Once it becomes adversarial then this can easily escalate into verbal battles and potential violence, increasing the risk to the child's physical, social and emotional wellbeing.

I wish to reaffirm my commitment to any sensible proposals which reduce the exposure of children to abuse and family violence. The coalition's record indicates that we take this issue very seriously. Whilst some of the amendments proposed are worthy of support, clauses 18, 19, 20 and 43 of the bill, which refer to the repealing of the 'friendly parent' and 'costs orders' sections of the act, are particularly worrying. Proceedings to do with family law are some of the most bitterly contested and difficult processes to get right. I look forward to the recommendations from the Senate inquiry and hope that they are a step in the right direction for Australian families.

Ms SAFFIN (Page) (11:56):

I rise in support of the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011. I do so because this is a bill that is designed to improve the situation regarding the best interests of the child and it is about safety of children. We will disagree about ways in which this can happen, but I think all members would agree that if we are dealing with legislation involving children, the safety of children has to be the primary principle, the starting point. In family law that is not always easy. In fact it can be quite fraught. Family law is an area that legal practitioners either embrace or eschew, which is indicative that it is not an easy area to work in. I commend those legal practitioners and others who choose to work in this area, many of whom love doing so and do it extremely well. It can be really difficult to determine through the prism of law and courts, in a system that might have parts grafted into it involving mediation or working out what is in the best interests but ultimately still within that conflict paradigm, because that is how a lot of our court systems operate—in a contested environment.

I really want to commend the Attorney-General for the work he has done in this area. He has done it methodically and forensically over a period of years. He has been mindful of the reviews, mindful of public opinion and very mindful that some changes needed to happen in this area, if not to get it completely right—I am not sure how you can ever do that—then certainly to make it better. That takes me back to looking at the 2006 evaluation done by the Australian Institute of Family Studies. They looked at the impact of the changes, which included the introduction of the presumption of shared parental responsibility in the Family Law Act 1975. That was taken up in the community—not in the legislation itself but the way it was inculcated into the community and the legal community—as meaning equal parenting; equal time. That seemed to be a push by some, but a reading of the legislation did not say that.

Shared parental responsibility is certainly something that was widely supported, and is still widely supported. In fact, that is what a lot of parents do—they just get on and do it and they do not need to be in the Family Court. Once you are before the Family Court, you already have a problem. You are not there because everything is hunky-dory and everyone is getting on—though some people do rock up and get their agreements registered and things like that. You are there because there is discord and disagreement, and in some situations there is violence. That has never been an easy matter to deal with, either, within the Family Court system.

If you are looking after protecting the best interests of the child, that is done at a state level with state agencies and then you have the situation where you are going before the Family Court, the two parents and a child or children, and raising the issues. My experience has seen a reluctance on the part of state agencies to get involved, because they say it is a matter before the Family Court, yet they have a primary responsibility to that child. I have always found a gap in that area. That gap still exists, and that is something that still needs to be tackled in a broad sense. Some of the children who are subjected to violence or abuse or are in a situation where they are affected by it in certain ways, if not directly physically then psychologically and in other ways, are falling through the gaps. That is a hard area that requires a lot more to happen at state level, and I hope that the Standing Committee of Attorneys-General has that on its agenda.

The Australian Institute of Family Studies also found that the principle of shared parental responsibility, although widely supported, was misconstrued often as requiring equal shared care time and led to unrealistic expectations among some parents. Therein lies a problem as well. They

also found that the majority of parents in shared care arrangements believed they were working well but there were concerns where ongoing fear of violence existed, and these were concerns and situations that were not being addressed and needed to be.

Then there was the Family Courts Violence Review, conducted by Professor Richard Chisholm, and also the Improving Responses to Family Violence in the Family Law System review, and that was carried out by the Family Law Council. They looked at the effectiveness of legislation as well as court practices and procedures, particularly in cases involving family violence, which was what it was about. We found after these reviews that there was still a long way to go in effectively responding to issues relating to family violence. They actually said some way to go, but my comment is that there is a long way to go in that area. Hence we have had a series of consultations with the public, and there have been submissions. I have received submissions and I have put forward submissions from my area, and they have been broadly supportive of effecting some change in this area and a recalibration, if you like, of the Family Law Act to make sure children's interests are taken care of. People often say if we stop a parent from seeing a child, more violence could ensue, but my reading of all the research and statistics shows that the violence usually happens during access. It is not a case of stopping access, but I want to put that point on the record.

The Attorney released some new research, I think in May, and again it was from the Australian Institute of Family Studies. It found that interparental conflict, fear, abuse or safety concerns remain prevalent for a significant number of parents following separation, and that almost one in four parents experienced family violence before their separation, and in many cases children had witnessed some of the abuse or violence. That is consistent over a long period of time with the statistics that we have about family violence and domestic violence. We know it is still prevalent in the community and we know that when parents separate and there has been violence in the broad sense of the definition, not just the physical, that does not stop. That gets played out in a range of ways, and it gets played out in the ongoing relationship that the parents have to have with the children. It can then get played out institutionally through the institutions. It has been a real problem. I have talked with many parents in that situation, particularly women. I am doing that at the moment, and they just feel rather bereft—they feel that the law is not helping them or their children in any way, and they do not know where to turn. I know some of them are keen to see the changes this amendment will bring, but some of them say it does not go far enough. There will always be comments like that, but it is a matter of how far you can go in this area.

The Attorney-General, in his second reading speech, said:

The bill will amend the Family Law Act 1975 to promote safer parenting arrangements for children.

As people who pass laws we need to be mindful that the laws we pass do precisely that. The Attorney-General further said:

Firstly, the bill will prioritise the safety of children in family law proceedings.

That is really important, because even though the rhetoric has been there for a long time it has been far more difficult to put it into practice within a setting of contestation, accusations, allegations, counteraccusations and counterallegations and where you might get state agencies with a hands-off approach. Then you might have a situation in which the court appoints a legal representative for the

child. That can be helpful, but that is not properly worked through either. The child has their own lawyer and the parents have their own lawyers, so you are adding some more people into the mix. Sometimes they are told that the parents are not able to talk to the children about certain things. As I said, it is a fraught area. There are no easy answers, but this amendment will give a bit more certainty to those safer parenting arrangements for children and a bit more certainty around the interest of the child being first and paramount.

This amended act will include an additional object to give effect to the United Nations Convention on the Rights of the Child, to which decision makers may have regard when dealing with children's matters under the Family Law Act. Under our legal system that does not happen just of right. It has to be legislated so that it is in there. That will give the decision maker some extra tools for doing what they do now, which is looking at the child's best interest. That is really important, and I know a lot of people have welcomed it.

It also strengthens the obligations of lawyers, family dispute resolution practitioners, family consultants and family counsellors to prioritise the safety of children. So there will be that legislative requirement as well, and it is important to have that in there. To that end, the courts dealing with children's matters will have to ask the parties to proceedings about family violence and child abuse. That is seminal, because if you do not ask you often do not find out. I recall that when people presented to hospitals with accident emergencies the question of whether they were victims of domestic violence never used to be asked. That was changed first of all in New South Wales and then around Australia. And—surprise, surprise!—when the question was asked they found out. Asking that question is really helpful in getting a better outcome for the child, and that is what this legislation does. I commend the Attorney-General and I commend the legislation.

Mr BILLSON (Dunkley) (12:11):

I first of all acknowledge the students from Elisabeth Murdoch College and their teachers Kevin and Amy, who are in the gallery today. It is great to see young people gaining a sense of how the legislative process operates in Australia as part of their education. I welcome them warmly and hope today is informative and useful for them.

The discussion we are having now is about amendments to the family law framework. The Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 is not without some contention. It seeks to amend a body of law that for all members in this parliament is a very difficult area in which we are all called to work and to assist people aggrieved by a process that, by its very nature, means we are engaged because people are frightfully unhappy—and I commend the previous speaker, the member for Page, for that phrasing. The dissolution of a relationship or the breakdown of a family is traumatic and difficult enough at the best of times, but our legal framework expects people who might have—dare I say—a hatred for each other to somehow rise above their personal feelings and to be very objective, calm and open to mutual adjustment at a time when they would probably rather drive over the other person with their car. This is an awful lot to ask.

All the qualities and characteristics we hope would come to the fore after a family finds it can no longer maintain the unit and the harmony that it may have once had are very difficult to find at a time of such distress, at a time of disappointment and at a time when what was once, hopefully, a collaborative relationship between parents may have become quite combative. In the 15 years I

have been in this place, few areas have attracted as much effort from me or as much tension in the constituency as this area of family law, because people come to my office when they are very unhappy and they are looking for a way to resolve that unhappiness.

In a perfect world, as was touched on by the previous speaker, a family breakdown or dissolution will not ever come to fully utilise the provisions of the law we are discussing. Parents with a shared and deep commitment to the wellbeing of their children will work through what works best for the kids. In my contributions to this debate I often say, 'For the sake of the kids, let's find a way of making this work better.' I am pleased to say that the Howard government did find a way of making it work better, with a series of reforms that I think were quite groundbreaking and followed an enormous amount of work. Admittedly, there were some incremental improvements over time, but it was an effort that brought to the fore an improvement in the tool kit that is available to resolve these very difficult and at times combative and distressing family law disputes. If people can sort these things out amicably and in a spirit of mutual adjustment—one where their love and devotion for each other is no longer the issue but where there is a joint-venture between the parents to raise healthy children—many of the provisions of this law are not called upon. What we are actually talking about is a legal framework which seeks to encourage people to behave in a way that might not be the way they are feeling. As I have often said, trying to use black-letter law to get people to behave in a way that is not in their hearts is very difficult.

We are back here today searching for new legal instruments to try to encourage people in situations where collaborative problem-solving, shared purpose and a new joint venture to raise healthy children may not be what is in their hearts—they may just want to win. They might want to win what they might view as the last argument with their partner or spouse at the end of a long period of unhappiness. Or they might just want to make sure that they do not lose too much.

When I was first elected, the family law process seemed to adopt a winner-take-all approach. If you won the argument, all of the policy settings flowed your way. For too many that meant a role specialisation. During the relationships, parents would share in the raising of children, the securing of money and resources, and the giving of their love, care and support for their loved ones. When the relationship fell apart, it was almost as if there was a role separation. You became either the carer—there was a term 'custody' and a sense of ownership of the children—or you were basically left to bankroll the place. One was the carer and the other was the cash cow. You can see how that would be unsatisfactory for many, because the relationship had been so much more before the marriage came to the point where it needed to be dissolved.

There was a fantastic body of work done by the House of Representatives Standing Committee on Family and Community Affairs. It produced a report entitled Every picture tells a story. I pay tribute to Kay Hull and the team on that committee who worked through the difficult, emotional and at times traumatic task of trying to unpick so many individual experiences to try to find a better legal framework to support care arrangements for children after a relationship dissolves. What was interesting was that, at the end of that work, some of the tools were legislative or legal. But there was an insight that that on its own is not enough. The work of that committee brought forward the creation of the Family Relationship Centres. This was a change in the toolkit which helped to create some prospect that people would get help at a difficult time to work through questions about who would give primary care, what the shape of the care would be or how the financial needs of the

children would be met. That was a terrific body of work, but there were also some legislative changes sitting alongside the provision of resources for the community and families to use in those sorts of situation.

I want to pay particular tribute to the Family Relationship Centre in Frankston for its remarkable work and the recent report it published showing that it is making a very real difference in the lives of people facing a very traumatic stage in their life and in their children's lives. I salute all the people involved in that area. Helen Constas and her team and the committed professionals and volunteers at the Peninsula Community Legal Centre are also part of the picture in providing help for people to understand the legal framework so they can mediate and negotiate and explore possibilities. Not far from Frankston Station there is a little place where courageous people make sure access arrangements and time with children can be facilitated, observed and even supervised—to make sure that violence does not play out. That service is a very important and overworked service.

So there was a broad toolkit of support in addition to the law, but there was also an acknowledgement that we had not quite got this right and that we needed to revisit our approach. So a number of reviews were part of that package of measures, and those significant 2006 reforms to the law and to some of the infrastructure that sits around it were partly what fed the discussion today.

What we are talking about is: can we improve that system? The government has come forward with what they think might be ways of improving it. I am very interested in those opportunities for improvement, because I am not convinced that we have it precisely right. But I am also not entirely optimistic that we will ever get it right, because it does require participants to take some responsibility for their own actions and the wellbeing of the children they have brought into this world—and how you get that message across is a difficult problem.

One of the key elements was this idea of a presumption of equally shared parental responsibility. The idea there was not that someone would come to a discussion about future care arrangements with a right or entitlement to share the care as a card that they could play in the argy-bargy that took place as these arrangements were being sorted out. What it aimed to say was that a parent—mother or father—can make a meaningful contribution to the raising of children. Just as we value and make sure that people make financial contributions to the raising of children, surely parental care, support and nurturing should be part of that contribution—a rounded contribution that is in the best interests of the children. That was one of the presumptions made. To many it overcame that point that I was making the earlier about the 'winner takes it all' attitude that made some of these family law processes incredibly combative. That approach set it up so that, where there was a contest—not in every case—the outcome for care arrangements was black or white, not shades of grey.

The new presumption meant that the court was asked to consider how care arrangements could be best set up where parents had an equal commitment to the best interests of the child. A series of checklists was brought forward to work through that. The wellbeing of the child remained at the pinnacle of those considerations, but there were a range of other considerations that could be brought in. At the heart of these was the objective of ensuring the child maintained a meaningful relationship with both parents, although not at the expense of protecting the child from harm. But there are examples which show that that idea, and the legal framework which supported it, has not

always been well implemented. I am always cautious about junking a legal provision, because the problem may be that it is being exercised poorly rather than that it has been poorly framed. All the reports that have been done—whether it is the Chisholm review, whether it is the Family Law Council report, whether it is the report of the Australian Institute of Family Studies—have again and again identified the need for training and professional development to be improved; the need to build knowledge and capacity to make sure that legal provisions are properly exercised and implemented; the need to deal with what may be argued is a misunderstanding about the primacy of the protection of children and the subsidiary nature of other considerations.

I am not convinced that the law needs to be changed in the way proposed in the bill. My reading of the law and my consideration of the reviews into it suggest that there may be some misunderstanding or confusion, but I am not sure that that resides within the law itself. I think there is a considerable opportunity to build, amongst the professionals who are involved in the process, awareness and knowledge of its implementation and the use of evidence and information to inform better decisions. That process is always guided by the best interests of the child but takes into account other legitimate considerations, with the ambition of optimising the contribution of both parents, not just financially but also in terms of their love, care and support.

Family law is an area where concerns about violence and child abuse have often emerged. Family violence is abhorrent. It is completely unacceptable in our community, and it is particularly unacceptable at a time of family adjustment and transition such as during the dissolution or discontinuation of a relationship. The dissolution of a relationship may be a consequence of abuse and violence, and of course that must be taken into account and be a key consideration in the prime objective, which is the wellbeing of the child. That has to be there, and the machinery is there to take that into account.

There are the arguments about how well we go about reporting family violence. There are also arguments—and I have seen this in cases brought to me by advocates—about how effectively family violence is considered in individual cases. That consideration has to be there and it has to be objective, based on reason and with the capacity to validate someone's concerns. If not, those concerns emerge as a tactical argument; as a positioning proposition; as a card to be played, because it is seen to be advantageous, by one party in what may already be a combative dispute over the future care arrangements for children. Those cards should be played where it is valid and reasonable to do so. If the reporting framework for family violence and abuse is inadequate to provide for that card to be a verifiable assertion, rather than an assertion that cannot be backed up or is contested by others with an understanding of the family circumstance, then you need to consider carefully how much weight you give that card.

This bill does not seek to strengthen reasonable concern about violence and threats to the child or the parent as a fundamental consideration in the wellbeing of the child and the family unit; rather, it seeks to redefine it in a way that I fear is unsafe.

The coalition's amendments to this bill are reasonable. I urge the government to take account of them, realising that it is not always the law but may be the way— (Time expired)

Ms O'NEILL (Robertson) (12:26):

I rise to speak in support of the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011. Family violence is an issue I desire to help address during my term as the member for Robertson, because family violence impacts on so many families—way too many families—in my own electorate and, indeed, across the entire nation. As we in this country move forward to addressing this critical issue, I see this legislation as an important element in increasing the safety, health and wellbeing of families.

Nothing affects the fabric of that most vital unit in society—the family—more than instances of domestic violence. This government and preceding Australian governments need to be commended for the public awareness campaigns that have been enacted on domestic violence. Nobody could deny that many Australians still remember the Violence Against Women—Australia Says No advertisements. That campaign was the beginning of a public discussion about what, sadly, was a dirty little family secret for too many years in too many families. Those advertisements did raise in the public consciousness a sense that domestic violence is completely socially unacceptable. But, despite the effectiveness of these campaigns in raising awareness, raising awareness is not always enough to change behaviour. Sadly, violence within families continues to be a significant issue for the Australian community.

Regrettably, in my electorate of Robertson we are not immune from family violence issues—a significant problem does exist. Information about domestic violence is communicated to me by passionate community workers, and I am particularly mindful of a recent visit to a women's refuge in my area during which I saw women and children who had fled, in the most difficult circumstances, from fear and long periods of suffering. Information about domestic violence has also been communicated to me by men in my community, who have spoken particularly of the psychological harm that some of them have come to through long periods of acrimony. It has also been communicated clearly to me by people working in the law, who often provide counselling as well as legal advice to people in critically dangerous situations. I am aware of the good work of all these people in engaging with the issue and practically supporting people who need assistance. I am particularly mindful of the work that the legal profession does to bridge the gaps in areas that social services are sometimes unable to bridge. It is clear to me that much more work needs to be done in order to address the issue of domestic violence. I am pleased that this parliament is being proactive in this area. A critical way to be effective is to reform family law to ensure that family violence is addressed through the law and that the safety of children is prioritised.

This bill follows from the Family Law Amendment (Shared Parental Responsibility) Act 2006 enacted by the previous government. The shared responsibility amendments represented a progressive law reform that satisfied the notion that children benefit from being raised by both parents wherever that is practical. Indeed, the development of Family Relationships Centres has had an immense and positive impact on the Central Coast. This is an area where I sincerely believe that the previous government deserves credit. Yet, despite the developments of recent years, the effect on children from violence in the home and within families remains a grave concern.

In my view, family violence issues are inadequately addressed by the Family Law Act in its current form. I believe that this bill is one means through which these concerns can be addressed. I say this because the issues of family violence against children and domestic violence will not be solved by one piece of legislation alone. Rather, it requires a long-standing commitment by governments on

both sides of the political divide to change any remaining cultural sentiments about such violence being acceptable and to put in place instruments that help us progress to better outcomes for all young Australians and their families.

The aim of this bill is to ensure that the safety of children is a priority when parenting matters are determined under the Family Law Act 1975. It remains an ideal for parenting responsibilities to be shared between both parents in the event of a relationship break-up. This bill, however, ensures that the Family Law Act better emphasises that the safety of children must always be the first priority when determining such parenting matters. This bill also aims to send a loud and clear message that all forms of family violence and child abuse are unacceptable. One of the key means in which this act achieves this is by changing and expanding the definitions of abuse and family violence to ones that are more appropriate for the purpose of the Family Law Act. The definitions contained in this bill are much more clear and comprehensive. They provide a far more appropriate standard of what should be considered by the courts to be abuse and family violence.

As a former high school teacher, I understand that a stable childhood, free of abuse and family violence, is essential in ensuring children reach their potential. As many of my colleagues in the teaching profession across this nation would acknowledge, schools are the sites at which a lot of the trauma of family violence is discovered. The reporting conditions that demand teachers to link people into the kind of care that they need is a big advance from the time I started in that profession. While I am aware that there are inspiring exceptions of remarkably resilient young children who do survive this, and I do not want to increase the sense of victimhood that can sometimes gather around this issue, we do know that there are long-lasting impacts on children who are affected by abuse and family violence, and the outcomes can indeed be tragic.

Our understanding of the types of abuse, including our understanding of mental health and wellbeing, has led to a much more robust definition of what abuse is. The definition of abuse in this bill includes causing a child serious psychological harm by subjecting or exposing the child to family violence. This definition also includes the serious neglect of a child. These two definitions of abuse are not currently included in the Family Law Act, yet I think that Australians absolutely concur with that definition. I am sure that nobody would deny that the definition contained in this bill constitutes what a reasonable person in the street would consider to be family violence. The current definition of family violence in the Family Law Act is only one sentence and it concerns violent actions towards a person that causes another family member to be reasonably concerned about their safety. I genuinely believe that the definition proposed in this bill is a far more comprehensive and appropriate one that captures the sorts of situations we hear about in our community and enables better resolution in the interests of children.

The definition includes a list of instances that constitute family violence. This list is not exhaustive and it is not intended to restrict the court—and that is a critical issue that needs to be on the record. It does, however, ensure that the definition of family violence is wider and includes a variety of activities that are not considered to be physical violence. One category in this list is:

… unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support …

Sadly, I have met a woman who was a victim of this kind of neglect and control by a partner who kept her on $10 a week. It is an impossible situation. I firmly believe that denying a family member financial support, denying a family member their liberty or preventing a family member from maintaining connections with their family and culture are all actions that clearly constitute family violence and demonstrate a lack of understanding and acceptance of the core provisions of our democracy—that is, equality and freedom.

I am proud to be a member of a government that firmly recognises that this needs to be developed. Family law has long been a difficult area of law because of the need to deal with sensitive issues and balance competing interests which directly affect families. All situations involving family law are unique; you cannot have a one-size-fits-all solution. There is, however, one principle that I will always support and which I believe is expressed in this bill: a care for the future health, safety and well-being of children. That must always be the most important priority of family law in matters involving children.

This bill strengthens the obligation of family law advisers to prioritise the safety of children. This is an important amendment because, whilst the role of an adviser, such as a legal practitioner, is to get the best outcome for their client, this must not occur at the expense of the safety of children in family law matters. Under this legislation, advisers in family law matters are obliged to inform and encourage their clients to act in the best interests of their child. This includes the requirement that the adviser must inform the person that they should regard the interests of the child as a paramount consideration. Additionally, the adviser must inform the person that the child's best interests are met when the child is protected from physical and psychological harm. Advisers themselves have no power to compel a client to act in a particular way, yet legal advisers should definitely be obliged to discuss these matters with their clients, even if it is an incidental discussion on these issues when providing advice can lead to a more positive outcome for children and young people.

I have a deep respect for people who work in family law and in organisations that aim to assist families. These include solicitors and their staff, family relationship counsellors, mediators and family law consultants and workers in refuges. All of the people who work with those who are vulnerable play a part, but I am particularly mindful of people who work in the family law courts. These occupations are difficult because lawyers and their staff are dealing with people who are often aggrieved about a particular situation involving their family.

Recently, an event took place in my electorate concerning an innovative program regarding domestic violence. This program is called the Integrated Domestic and Family Violence Service, which is a partnership between the New South Wales Police, local government and various community organisations. The aim of the program is to provide an integrated response to issues concerning domestic and family violence and to ensure that cases are managed in a manner that provides parties with support when dealing with family violence. This includes providing families with support to navigate themselves through the services designed to assist them to recover, and often people lack the agency to negotiate that territory without support during times of crisis, particularly in a context of acrimony or if they have suffered the loss of self-esteem that follows being subjected to psychological and physical harm.

It often takes a long time to recover from domestic violence, and this is even more complicated for families when children are involved. Often people find it difficult to get the help they needed, and

the time period following a traumatic event is one of high risk. It is in this period when support is often lacking that the Integrated Domestic and Family Violence Service will attempt to coordinate support. These innovative programs require a strong and appropriate Commonwealth family law framework in order to be effective.

On the Central Coast, the Central Coast Community Legal Centre plays a vital role in providing family law advice to people who would otherwise have difficulty accessing it. The legal centre broadly supports the bill and the submission made to the Senate inquiry by the Women's Legal Service. I await the findings of the Senate inquiry as to any changes that may be made to this bill.

I am very proud of the Australian Family Law Act, which provides for a comprehensive and progressive system of family law. I am also proud of the progressive amendments to the Family Law Act, which have provided appropriate reform and have ensured that legal issues that have arisen have been addressed. Whilst the integrative solution is fundamental as a response to family violence, the role of family law legislation is to prevent it. Of course, this government, despite the utmost desire, sadly cannot prevent all domestic and family violence. Despite this, as a parliament we can better ensure that the safety and wellbeing of children is of the utmost importance when parenting decisions are made. As a parliament, we can better ensure that safer parenting arrangements for children are promoted when there are child abuse and family violence concerns.

If we believe that the will of the Australian people, as expressed in this parliament, is to prevent to the best of our ability domestic and family violence, then we will support this legislation and enable it to be enacted into law. I commend the bill to the House.

Mr SIMPKINS (Cowan) (12:41):

I welcome the opportunity to make some comments today on the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011. As members of parliament, when we meet with our constituents it is rare that we meet people who are in a more tense, difficult or even extreme situation emotionally than those who come to speak to us about problems with broken marriages and relationships, particularly where that impacts upon relationships with children from the marriage or relationship. Also, the media reminds us, too frequently, that there are occasions where kidnapping and violence towards children are linked to relationship breakdowns. We all cannot imagine why anyone would choose to harm a child as a result of these sorts of breakdowns within families and relationships.

For us, this means that we must legislate and examine every opportunity for reform so that parents and couples have options for the best support and so that levels of enmity and stress can never be factors in the fate of children. That is why in 2005 and 2006 I applauded the changes that the then Attorney-General, the Hon. Philip Ruddock, introduced into this place under the Family Law Amendment (Shared Parental Responsibility) Bill 2005. In that legislation the first 15 family relationship centres were provided for, including the one that operates in Joondalup, not far north of Cowan. The legislation also provided for 50 new services, including 33 early intervention services, which commenced delivering effective relationship services for families. These were the centrepiece of the $397 million family law reform package designed to address the reality that one million children had a parent living elsewhere than with them and that one in four of the children in separated families saw their non-resident parent once a year or not at all.

In 2006, 51,375 divorces were granted, according to ABS figures. In 2007, there was a big drop down to 47,963. I believe that is the biggest drop in recent history. In the concern to reduce the adversarial nature of divorce proceedings, particularly where they involve child custody, family support services were set up nationwide to provide dispute resolution services before divorce cases go to court. These services were set up as not just an entry point to the family law system but to provide case assessments, referrals and practical assistance to parents and also guidance and assistance before there were significant problems in relationships. The initiative, as I said, commenced with 15 family relationship centres and 33 early intervention services, including men and family relationship services, family relationship counselling, family relationship education and skills training services and specialised family violence services. There were also post-separation services, including four services under the Contact Orders Program, seven children's contact services and six family dispute resolution services.

As I said before, the family relationship centres were designed to assist families in strengthening their relationships, providing support and assistance to people in all stages of relationships, including marriage, parenting and the difficult times around separation. It was said at the time that these centres and the initiatives overall were designed to assist families throughout their relationships and not just to assist them through separation and divorce. Certainly I have met many people who have been assisted in achieving workable parenting arrangements through these initiatives, which have helped parents maintain contact with their children. As the then Attorney-General, the Hon. Philip Ruddock, said at the time of these changes, the changes:

... reflected the Government's determination to ensure the right of children to grow up with the love and support of both of their parents.... We want to help parents sit down with each other and talk about what is best for their children, rather than immediately entering into the adversarial legal system.

However, today I wish to direct my remarks toward this bill, the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011. I of course welcome the opportunity to participate in the debate, because I am committed to an outcome of better and more functional legislation to assist my constituents in these family law matters. Yet I would say that there are parts of this bill that are a step backwards and not the step forward we should always be looking for.

To begin, I would question the need to insert the new subsection to section 60CC of the Family Law Act. Already section 60B lays out the best interests of the child and, in conjunction with section 60CA, clearly demonstrates interpretation of the best interests of the child. What the government seeks to do here is to insert a series of subjective examples of behaviour into the Family Law Act. I do not see the justification of trying to prescribe details for multiple circumstances, when the paramountcy of the best interests of the child is already enshrined in the existing legislation.

With regard to identification, inquiry and reporting on family violence and child abuse, what I would say is that across this nation we are used to seeing stories of children at risk. The risk can be the risk of violence, the risk of neglect, abuse or sexual abuse. In our streets, in our suburbs, in our towns and in our communities there are children at risk right now. There are children who are being abused, and that is a reality. What is also true, certainly in my view, is that anyone and everyone who is aware or who suspects that children are at risk are duty bound to take action. It is not right

that we sit back and merely say, 'There is an agency that is responsible for that.' I reject as well ideas such as, 'The court can decide that, so I do not need to be involved.' These are wrong.

It is without doubt the responsibility and the duty of any adult to do what needs to be done to ensure the safety of children in these circumstances. That being said, there is still a requirement for an examination of how legislation can achieve improvements to identifying and responding to pertinent safety concerns. It is right that child welfare agencies, children's lawyers, dispute resolution practitioners, family consultants and family counsellors will have their participation and accountability improved by this bill. I am therefore happy that this is part of this bill.

What I am very unhappy about is the proposed changes regarding false allegations of abuse and violence. Under the Ruddock reforms, section 117AB of the act provided for mandatory cost orders where a party knowingly made a false allegation or statement in the proceedings. This very important reform was introduced by the Howard government and it was greatly welcomed by the people of Australia, particularly if they were affected by court matters where false accusations were made as a bargaining point. To me this change is not a good one, but it shows the great Labor traditions where individual responsibility and accountability are discouraged.

If you look at this sort of situation carefully, it is very clear what should happen. The scenario is this: a person makes an allegation that one of the parents or a former partner has abused the children. Sometimes these are allegations of the worst kind, and I mean, of course, child sexual assault. That allegation must be investigated and, if proven, there should be a lengthy custodial sentence for the person responsible. However, if the allegation is not proven, then consideration should be given to perjury charges or defamation charges against the person who made the allegation originally. It is one or the other, child molester or liar, and there should be accountability for the guilty, based on the proof of such offences. Obviously these matters need to be proved, and among the proofs is the concept of intent. That being said, this was not the way that was chosen, but instead a determination of court costs was made for those who were found to have made vexatious allegations.

This is clearly covered in the stringent requirements of section 117AB, where it applies only if a person has knowingly given false evidence. But instead this legislation will once again take the requirement to prove allegations away. This is a terrible error that will need to be fixed by us when we return to government unless it can be amended today. I think that what is proposed here represents a trampling of the rights of one party and it will potentially damage the relationship between children and one of their parents. I also take this opportunity to express my concern with the repeal of the friendly parent provision. I believe that, when you examine the provisions of section 60CC, you will see that they provide for courts to determine the interests of the child in such family law matters. It is my view that it is all there in section 60CC(4).

It has been said that the reason this particular amendment has been brought forward is that the existing provisions discouraged the reporting of violence, but there was in fact no statistical information to suggest that this was the case. Although the Chisholm report made that assertion, the Family Law Council described that criticism as not much more than gossip. I would also say that the criminal justice system, and in some ways the whole justice system, is the focus of many complaints in my door knocking. Ultimately the view of so many of my constituents is that judges and magistrates do not reflect community standards or expectations. I suppose that, if you are used

to being pretty much god in a courtroom for many years and you only live in the best suburbs, the workings of the real world for the majority of law-abiding Australians are something that happens at a great distance from your personal reality. Perhaps those who are so often described as learned need to be a little more experienced with the outer suburbs of our cities.

The trouble with the amendments in the bill that the government is bringing forward is that they seek to unwisely unwind the objectives of the 2006 reforms. It was certainly the case that those reforms helped to build strong healthy relationships, prevent separation and encourage greater involvement by both parents in their children's lives after separation, whilst also protecting children from violence and abuse. They were there to help separated parents agree on what is best for their children rather than litigating, through the provision of useful information, advice and effective dispute resolution services, and also to establish a highly visible entry point to other services and to help families to access those other services. I think that when you look at the figures on the reductions in divorces immediately following the 2006 reforms, despite what others may say, there is certainly an indication that there was great value in what was achieved by the then Attorney-General, the Hon. Phillip Ruddock, and the government.

I will conclude by saying that I have every confidence in the reforms of 2006. I cannot help but feel the attacks on these reforms are based on an ideology detached from the realities of real Australia, out in the suburbs where most Australians live. The changes to the friendly parent provisions and, most unhelpful of all, the changes to the cost order provisions represent a decision by the government to accept the ideology and not look at these matters in a balanced way. A lot of people in this country will come to regret this matter if we cannot achieve a better result when the coalition's amendments come to be voted upon. What the government should do is listen to reason and not ideology.

Mr HAYES (Fowler—Government Whip) (12:55):

Unlike those opposite, I rise to support the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011. This is an issue that involves all Australians and one that should be addressed well ahead of politics. Children are the future of this nation and they are our most vulnerable asset. I say that as a person who has three children and is now very proudly the grandfather of another five. Children deserve to have the opportunity to grow up in a happy and loving home. They deserve to be able to feel safe and it is unfathomable that there are children who do not enjoy these basic rights. Some are subject to abuse and very often witness a parent being the victim of violence. These acts are intolerable and it is the responsibility of government and of the whole community to intervene to protect those who are vulnerable. This is not the time to be considering legal loopholes, as the previous speaker was suggesting to us; this is the time to ensure that we put the rights of children first. This government is devoted to protecting and enforcing the rights of minors in a way that mirrors the United Nations Convention on the Rights of the Child.

In 2006 the government received a number of reports regarding the family law reforms. These included Evaluation of the 2006 family law reforms by the Australian Institute of Family Studies, Professor Richard Chisholm's Family courts violence review, and the Family Law Council's Improving responses to family violence in the family law system: an advice on the interaction of family violence and family law issues. Each of these reports examined how the current family law framework addressed family violence based issues. These reports indicated that the system that was currently

in place needed to do more to protect the welfare of those who have experienced, or are at risk of experiencing, abuse and violence. The Australian Institute of Family Studies reported that two-thirds of separated mothers and half of separated fathers have experienced emotional or physical abuse by their partner. Given the fact that presently in this country there is one divorce for every three marriages, if you apply that statistic to this arrangement, this is of great concern. We are just talking about marriages and not about partnerships. This is a major issue for us when you consider that one in five separated parents have an ongoing contact with their ex-spouse and have indicated a number of safety concerns. In all that we have to put the issues to do with the child first. As the Family Law Council states, victims of family violence have a higher chance of being treated for psychiatric problems. The council reports that there is an increasing prevalence of attempted suicide, alcohol abuse and homelessness. The government believes that a child has the right to have access to a relationship with both parents. When parents can cooperate, particularly if they live close to each other, shared parenting responsibilities have been shown to be effective. I get to see that with my own family. Regrettably, my younger son's relationship terminated and his daughter, Kiarni, has been at the middle of all that. It is fortunate that both parents have been able to work something out constructively whereby my granddaughter does not miss out on the love and attention of both parents and, indeed, of the grandparents. This is a thing that we need to try to achieve. This is every child's right.

Health and welfare within the family unit is of the utmost importance and the safety of children is, in my opinion, paramount. With this in mind, this amendment will allow the family law system to appropriately respond when issues of child abuse or domestic violence arise. It will further strengthen the role of the Family Court. Specifically, the change will prioritise the safety of the child and strengthen the adviser obligations. In addition, it will allow the Family Court access to a greater range of evidence related to abuse and family violence. This part is critical: the additional evidence is to ensure that safe parenting arrangements are made and enforceable.

Commonwealth, state and territory child protection authorities will now play a greater role in the judicial process and they will actively participate in family law proceedings when requested. The bill will also change the definition of 'family violence' and 'abuse'. The purpose is simple: it is necessary to ensure that we capture the exact meaning of harmful behaviour. We need to guarantee there is no confusion about the behaviour that society says it will not tolerate. As recommended by the Australian and New South Wales law reform commissions, family violence definition encapsulates assault, sexual assault, stalking, emotional as well as psychological and economic abuse. Within that framework, abuse in relation to a child now extends to include severe psychological harm that results from exposure to violence and neglect. To improve the effectiveness of this system and to correct the anomalies, the bill also makes some technical amendments to the Family Law Act and the Bankruptcy Act 1996.

Earlier this year the government released the proposed changes in a report for public scrutiny. The response was overwhelming and very much positive, in support of the changes which are being proposed. The reason why that has occurred is that people understand that we do need to show that domestic violence and child abuse will not be tolerated. That should not be something that occurs in Australian homes, and we—not necessarily government—as community leaders in a modern society should all pledge to work to stamp it out. For that reason this issue is so important.

The amendments being proposed by the opposition, given my reading of them, in effect water down, not strengthen, what is in the legislation. The opposition proposes that a definition of violence be removed from subjectivity and it wants to repeal the mandatory cost order provisions of the bill. It wants to do this against the recommendations of the Australian Law Reform Commission, numerous government reports—which I have already mentioned—and the Family courts violence review. This is not some form of political game. We do not come here to put a piece of amendment legislation through just because it needs reviewing. There is a need for this.

In my electorate I sponsored a student from the ANU, under the intern program, to produce a report for me on domestic violence in the south-west of Sydney. Many of the things that this piece of legislation is intended to deal with were actually discovered by Ms Zara Maxwell-Smith in her report, which I will endeavour to table in this parliament in due course. I think it is a credit to the ANU that this program exists. It is also something that I could actually target to ensure that we did have constructive and contemporary analysis occurring in the south-west of Sydney in respect of abuse and domestic violence and its impact on our community. One cannot believe that protecting child victims and other victims of family violence should meet with anything other than bipartisan support. This is not a time for playing political games and arguing about the position of authorities on this. I would have thought that it would be noted that what has been tabled so far, given the support for each of the law reform commission reports that have been tabled as well as the Family courts violence review, are there because there is an issue at law. They are there because those bodies believe that children deserve move, that they deserve greater protection in this respect. So I think we need to show, as parliamentarians, our best endeavours to get the right outcomes for children. This is not necessarily going to be palatable to every defence lawyer out there, and I will let them paddle their own canoe in that respect, but I will stand up and talk about what is good for children. You do not need to be a leading social scientist to work out that there is certainly a link between poor development outcomes and children who have been exposed to family violence, although I do know that there is an abundance of research around in that respect. I represent a low socioeconomic area in Sydney, and what is being proposed here is very real. I know that in my electorate and in the surrounding electorates issues of domestic and family violence remain high. Despite all the good work that police are doing in reducing other crime indicators around the place, everything that I get to see shows that domestic violence and family violence remain stubbornly high. The product of those abuses does impact on a child's development, and they then take that into their maturity.

This is not something that we can sit down and pretend to be lawyers about and show all the niceties of black-letter law. This is something that we want to get right, because our motivation in doing that is to do the right thing to protect the rights and the future of children. We need to ensure that we are talking about this not only in this chamber but also in our electorates. As I say, I have looked at the various statistics in my electorate and they are something that I am not proud of and I am determined to do something about. When I was first elected as the member for Fowler, I identified the issues of domestic violence and family violence as something I wanted to draw greater attention to. I do not want to point the finger at people and say, 'That's really a state policing matter,' or a matter for the Family Court or for somebody else. This is something for our community. What is being proposed here is to give a greater opportunity for the authorities and for the Family Court to do something, in a significant endeavour to give children a better outcome in life.

It is for that reason that I support the bill. I certainly oppose the position taken by the opposition on it. I encourage them to rethink their position and not simply propose amendments for the sake of it. I encourage them to refocus their attention on what is right for the development of young people in our society.

Mr RUDDOCK (Berowra) (13:09): I very much respect the member for Werriwa and would normally applaud much of what he has to say. The only matter about which I want to comment positively in relation to his remarks is the importance of children—the importance of ensuring that children are safe and secure but also ensuring that children's broader rights are also recognised. It is a question of balance. I am afraid that some comments that my leader made relevant to another issue are about to be equally relevant here. My leader said recently in relation to unauthorised boat arrivals that 'John Howard identified a problem and found a solution and Labor found a solution and has created a problem'.

The Family Law Act has always been a very delicate issue. From the clients that I had to deal with when I was a young solicitor I know sometimes how entrenched certain points of view are and how determined people are to get even with their partner sometimes, whom they see has in some way let them down. I have seen the situation where, often, children are pawns as these frustrations work their way through.

Some of my colleagues in this parliament previously found complaints about family law issues occupying an enormous amount of their time, as people came to their local member of parliament to talk about issues relating to the difficulties in getting support, as some people found that the outcome that had been determined in relation to children was not to their liking and they would not support them. They found that people were very unhappy about the courts and unhappy about delays, and there seemed to be little effort to try to resolve issues before they came to court. Even my own profession sometimes could be engaged in these issues in ways which I consider quite unsatisfactory. Some lawyers are very happy to be able to fight every issue for you to your last dollar. One group of lawyers for whom I came to develop a very high regard were those who were described as 'collaborative' practitioners. They were saying, 'We are prepared to work your issues through with a practitioner who sees things in a like way to obtain a solution, and if we can't find it and you still want to fight, then you might have to find another lawyer.'

I must say that collaborative lawyers are under a lot of pressure sometimes from those who see it differently. I often experienced it myself 40 years ago with practitioners who, if you wanted to work things through in a collaborative way, would simply roll over you at every point. My colleagues found this and they were frustrated by it. The Every picture tells a story report was written by members of parliament from both sides and, as a result of the deliberation of the report and the consideration of it by the parliament and the former government, certain steps were taken. I think it is important in this debate to understand the fundamental principle that was involved because, I must say, it drove me as I drove these reforms. That is that these reforms should be not about the parents but about the children. I am sure that in this debate everybody is talking about the children, but sometimes it is put only from one perspective. Sometimes, when they put it as being from one perspective, they ignore the fact that that perspective was included in the legislative reforms. There were two principal instructions to those who were going to deal with these issues were to have regard to the rights of children. One was their right to be safe and secure. The legislation was never about ignoring

family violence, but it was about recognising another right that I am not hearing mentioned by my colleagues, and that is the right of a child, provided they are safe, to know both of their parents. I have found over a long period any number of people who, because of the way in which these disputes have been worked through by parents, have denied a child the right to know the other parent because they felt so strongly about the way in which they have been disappointed and who are aggrieved that they have never had the opportunity to know that parent.

You think about it and the importance of it: provided the children are safe and secure they should be able to know both their father and their mother. And if role models have anything to do with future upbringing, isn't it important, because it is often the father who is denied any contact, that there be a male role model, particularly for young boys, in relation to their upbringing? Isn't that important? If you can do it, shouldn't that be the principle that is guiding you?

Where I think this government is creating a problem for itself in the future with regard to this legislation is that it will get these matters back into the courts as a matter of priority. Some of the legislation that we put before the former parliament was designed to deal with issues relating to the way in which legal proceedings are conducted. But our principal objective was, where we could, to get matters out of the courts. Before people even started their contest, there was an effort to try to work these things through collaboratively. And we did it very deliberately. We funded family relationship centres right around Australia. Before you could even start to litigate in relation to children, you had to have made some effort to try to resolve those issues. Not every issue will be resolved; not every child will be safe. There are situations in which abuse occurs where children may be subjected to violence but, as I said earlier, regard always has to be had to that. Where you can work it through and where a child has a continuing relationship with a parent, it is so much more positive and so much better.

To me, one of the most disappointing aspects of recent funding decisions by the government and the very clear signal that they are sending about where they expect this matter to go is that funding for family relationship centres and their activities will be reduced and legal aid funding for family disputes will be increased. That is against an expectation, I suspect, that the government believe there will be increased litigation. Why else would they be doing it? It seems to me that this legislation that we are discussing is very significant for the Australian people. I do not think that the reforms which were introduced in 2006 ought be unnecessarily undone without very clear and objective information that suggests that we have been going in the wrong direction.

My understanding is that the amount of litigation we have seen in relation to family disputes has declined. Why would you want to change that? Why would you want to reintroduce provisions that would enable people to make allegations which are proven later to be incorrect, blatantly wrong, deliberately fabricated, designed to mislead even a court and where there is no capacity—

Mr Billson: No consequences.

Mr RUDDOCK: no consequences, as my colleague says, to deal with it. Yet this legislation is about stripping that away. This legislation is about changing the way in which issues relating to violence that may impact upon children are seen. It is about broadening their definition, widening the range of claims that can be made and giving people many more issues which they can dispute. I have a great deal of trust in our legal system. I have met a lot of judges of the Family Court; I know they

come with the very best of intentions to work these things through. We have a magistracy that has been playing that positive role. I do not believe any court would have come to a view whereby they would not have taken into account these issues properly before them, that are going to impact upon a child detrimentally, under the regime that was in place. My view about those matters is that we need to have very clearly in our minds the point I made that children's interests are not only in being safe. It is a prerequisite that they should be, but to be denied some contact with your mother or your father because somebody is about wanting, essentially, to punish a person whom they have been in a loving relationship with but now feel aggrieved by is the worst possible outcome. We have seen children removed from one part of the world to another in order that the other parent has no continuing contact. We see people wanting to move great distances from where they have lived, ostensibly on the basis of being closer to other family members, which deprives a former partner of any relationship.

I know that these are difficult issues to deal with, but my view has been that the measures that we put in place got the balance right. In my judgment the changes that the government is proposing will shift that balance in a way which I regard as being most unsatisfactory. We are proposing that in relation to the broadened definition of family violence there needs to be some caution. We are concerned at the repeal of the friendly parent provisions. We are concerned at the stripping away of the courts; the capacity in terms of costs to deal with false allegations of abuse and violence is being taken away. For that reason, we will be moving amendments. There will be divisions on them and we will seek to ensure, by referring this legislation for review by a parliamentary committee, that there are not other unforeseen consequences. We do this, very deliberately, to help the government, to ensure that they do not move forward on this matter and create a problem for themselves and the nation by pursuing measures without a proper need and at a time when the measures that the Howard government implemented appear to have been achieving a very important objective.

Mr NEUMANN (Blair) (13:24): I rise to speak in support of the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011. The member for Berowra has been in parliament for close to 40 years and I have been here for only four years but, with respect, he is simply wrong on issue after issue. Before I was elected to this place I was a family law specialist from 1996. I practised for nearly a quarter of a century in that jurisdiction, from the

Magistrates Court in suburban Brisbane and other places to the High Court of Australia, where I have done cases involving family law from the most complex property settlements, to Hague convention cases, to the most egregious claims that have ever been made in relation to family violence and child abuse, to the most difficult cases involving relocation. Some of the cases I have done were reported in the Full Court of the Family Court Cases; cases involving parenting orders on an interim basis—cases like the Cowling case, which set the law for this type of matter. So I come with some experience on this issue, and the member for Berowra is simply wrong on issue after issue—a man of straw on numerous occasions.

This is about creating a safer and fairer family law system and prioritising the needs of children. More than 400 submissions were received in relation to that, and 73 per cent expressed support for the measures. This is an indication of strong community support in relation to this matter. The safety of children is prioritised, with clarification of the meaning of domestic violence issues; 'family

violence' and 'abuse' are the terms in the legislation. It strengthens advisers' obligation, ensures the courts have better access to evidence and makes it easier for state and territory child protection authorities to participate—or 'intervene', as we used to call it—in relation to family law proceedings. There is no dispute between the two sides of politics about the fact that we need to provide for the protection and safety of children and that a child needs to have a meaningful relationship with both parents—that is in the best interests of the child where it is safe for that to occur.

It is important to recognise that the Family Law Act does state those things. Section 60CA says that the court, whether it be the Federal Magistrates Court or the Family Court, has to consider 'the best interests of the child as the paramount consideration.' Section 60B in part VII sets out the objects of the division with respect to looking after children: ensuring children have proper and adequate parenting; making sure that parents fulfil their obligations and responsibilities to children; and making sure that children have contact with other people who are important to their care, welfare and development. When a court looks at these types of matters in section 60CC, the court looks at a hierarchy of considerations. We are changing the primary considerations to make sure, front and centre, that the need to protect the child from abuse, neglect and family violence is the highest priority possible. We are elevating that where there is an inconsistency with the need to have a meaningful relationship with both parents. I cannot understand why those opposite do not see that as important.

The friendly parent provision also, in my long experience in the Family Court, from time to time does dissuade people from making arrangements which are in the best interests of a child and forces parents at times to consent to orders which they do not believe are in the best interests of children, handing a child over to a circumstance where that child may be exposed to abuse, neglect and family violence. Violence and abuse are catalysts for family breakdowns and they can often continue afterwards. Violence or abuse is unacceptable wherever it occurs and certainly in relation to children. The long-term damage as a result of family violence cannot be underestimated.

Evaluation of the so-called reforms of 2006 has been undertaken. These things have been looked at. We have three reports, one by a very learned former judge, Professor Richard Chisholm AM, the Family courts violence review—I have spoken to Richard Chisholm about his report a number of times; I met him in Parliament House, actually, to talk about the issue; the Australian Institute of Family Studies' Evaluation of the 2006 family law reforms; and the Family Law Council's Improving responses to family violence in the family law system. With respect to the member for Berowra, the Howard government did get it wrong with many of the changes. Without social research, and with a knee-jerk reaction to a minority of men's rights groups, they responded in the way they did, fettering judicial discretion and creating a legislative pathway with respect to shared parenting—and I have personal views on those issues. As a result of their changes a culture of expectation developed that it was worthwhile for children to continue regular contact with a parent, even if it meant exposing that child to abuse, neglect and family violence. Any lawyer who practised regularly in this jurisdiction would know that that was the case. Time and again, parents felt compelled to agree to contact arrangements for fear of running foul of the 'friendly parent provision' imposed by the 2006 changes.

The task confronting any court when allegations of family violence or abuse are made is daunting—even more so in the pressure cooker of an interim hearing, usually held shortly after separation,

often without the benefit of a detailed affidavit or cross-examination and many times without a detailed welfare report indicating what the children's wishes are, what arrangements were undertaken before separation and what recommendations psychologists or social workers might have made. The ramifications of terminating all contact between a parent and child are many and long-term. It should only be done as a last resort.

The balance needs to be struck in favour of protecting children, and that is where the previous legislation failed. It is restored by this legislation. Now, for the first time, the UN Convention on the Rights of the Child compelling the court to consider the convention in deciding matters concerning children is included in the legislation. That is important in recognising the rights of children. It is not about the parents' rights; it is about the rights of the children.

The bill elevates the primary consideration of protecting a child from abuse, neglect and family violence over the benefit of having a meaningful relationship with a parent where there is an inconsistency. The bill broadens the definition of family violence to what I think is in tune with community expectations. The member for Berowra would have us believe that it is only family violence if, indeed, it is defined as family violence. In fact family violence, as people know, occurs in many ways. That includes not just physical assault but dominating, controlling behaviours; stalking; friendship isolation; familial isolation; emotional manipulation; financial abuse; harassment; and cultural isolation. We need to protect children from these types of activities. We need to protect spouses as well, if we can.

Expanding the definition of abuse and family violence and imposing on court personnel and independent children's lawyers the obligation to report on child abuse to state and territory departments of child safety is a worthy thing. 'Abuse' should include serious psychological harm and exposure to family violence. The bill imposes on those involved in family disputes to make the protection of children the paramount consideration. Prioritising child protection is absolutely crucial.

As I have said, the bill overcomes the reluctance of many parents and their lawyers to report family violence for the fear of being considered an 'unfriendly parent'. That provision is found in the relevant sections of the Family Law Act where a court will consider them. They are part of what I would call the 'additional considerations'. Often I have seen parents struggle with this provision. Lawyers, judges and federal magistrates also really wrestle with this provision. The 'friendly parent provision' is revoked by this bill, meaning children are less likely to run the risk of abuse, neglect and family violence. I believe the balance is back with this bill and, once again, the best interests of children are front and centre.

Section 4 of the Family Law Act defines abuse to be:

(a) an assault, including a sexual assault, of the child which is an offence under a law, written or unwritten, in force in the State or Territory in which the act constituting the assault occurs;

Another subsection further defines abuse of a child as:

(b) a person involving the child in a sexual activity with that person or another person in which the child is used, directly or indirectly, as a sexual object by the first-mentioned person or the other person, and where there is unequal power in the relationship between the child and the first-mentioned person.

I am sure that the average person in the community thinks that abuse is far more broad than that simple definition.

The current legislation states:

"Family violence" means conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes that or any other member of the person's family reasonably to fear for, or reasonably to be apprehensive about, his or her personal wellbeing or safety.

Again, this is a very narrow definition that really does not reflect community standards. Broadening the definitions will help judicial officers to consider behaviours, including patterns of behaviour, within the factual context of a case—not simply whether someone has hit them, punched them or engaged in a physical sexual assault or physical harm perpetrated by fists, a baseball bat or an implement of any description. Broadening the definition will allow a court to look at the pattern of behaviour and focuses the judge or federal magistrate on that.

The Family Law Council and the Australian Law Reform Commission have both recommended the removal of the semiobjective test of family violence so that the decision maker—for example, the court or a family dispute resolution practitioner—is required to consider the situation from the perspective of the victim. This is not something new. It is what happens when you talk about domestic violence laws at a state level—in my state of Queensland's they are domestic violence laws; in other states they are apprehended violence laws. They consider what is happening from the victim's perspective: does the victim feel that he or she—and it is 'he' more often than people think—has been subject to harassment, intimidation or domestic violence or abuse? More often than not, from the victim's perspective, they feel they have.

Over many years of legal practice I have seen thousands of people—both men and women—in tears when they cannot point to a circumstance in which someone has physically assaulted them but yet feel they have been abused in other ways—like not being able to dress in the morning without the man putting the clothes out and determining they particular clothes they wore. One woman said, 'I was not allowed to shower except in his presence.' Things like that are family violence and abuse. No-one would think they were not. I have seen cases where one person stopped a woman of religious faith from going to church. She wanted to go to church. One partner may stop the other from engaging in cultural pursuits—if they came from, say, a Samoan background but could not go to any Samoan cultural events because they were really an Australian, according to the other person. I have seen dozens and dozens of cases like that. This is a terrible form of domestic violence. It is a form of stalking if there is repeated harassment by phone calls.

Broadening the definition allows the court to have a better grasp of what is going on.

I heard the member for Berowra talking about getting rid of the relevant sections that deal with mandatory costs orders for false allegations. Will the repeal of section 117AB increase the number of false allegations? I think that is nonsense. There is strong support for the repeal of this from the legal profession and those who practise in family law. The courts have already considered, in the case of Claringbold and James in 2008, that section 117 is broad enough to deal with false statements, including false allegations and false denials. Indeed it is. Under section117(2A)(c), the court, in

making a decision with respect to whether a cost order can be made, can look at the conduct of the parties to the proceedings in terms of their involvement in pleadings, discovery, particulars, inspections, answers to questions, admissions of fact, production of documents and similar matters. So it is broad enough already without section 117AB. This is a straw man put up by the member for Berowra—that is for sure. It is simply nonsense.

Professor Richard Chisholm, in his report, Family courts violence review, recommends the repeal of section 117AB:

… the law should try to encourage people to tell the truth without making, or appearing to make, any pre-judgment.

The New South Wales Law Society is reported as saying that the very existence of section 117AB provides clear disincentive to parties making allegations. The Family Law Council and the family law section of the Law Council of Australia highlighted similar concerns. So what the member for Berowra says is simply nonsense. He does not understand the law. It has been over 40 years since he practised in the jurisdiction. He does not know how the law has moved on. His reforms of 2006 are not to be put in some gold plated bowl that says how wonderful they are. In fact they are wrong and should never have been done in the first place. (Time expired)

Mr ALEXANDER (Bennelong) (13:39):

I rise to speak on the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011. The issues covered in this bill are of great personal interest to me but, more importantly, are of far greater concern to many members of my electorate of Bennelong. This is a topic that requires significant legislative improvement, as the current system has been shown time and again not to be fulfilling the objectives that were established by the law-makers who preceded us in this place. Firstly, I have concerns at what appears to be an illogical decision to have us debating and voting on a bill that has been referred to a Senate committee for inquiry. The Senate Legal and Constitutional Affairs Committee has received over 200 submissions from individuals and community groups that have deep understandings of the issues involved. It strikes me as somewhat of an arrogant step by this government to bring on this debate before the Senate committee has reported back on its inquiry. Surely the use of all the information and tools available to us as legislators is more likely to result in the best outcome. It is the outcomes that should be focused on in speaking on this bill today.

This bill effects a change in the law to expand the definition of family violence and remove costs orders on complainants making intentionally false allegations of family violence. Currently, family violence is seen as 'violence that exerts a reasonable fear for a family member's wellbeing or safety'. The new definition proposed under the amendment is much more subjective, adding 'violent, threatening or other behaviour that coerces or controls a member of the person's family or causes the family member to be fearful'. The examples added specifically include financial control, which may lead to unintended consequences where a child support payer makes application to the Child Support Agency or courts to reduce the level of child support payable. In such a circumstance, the payer is properly exercising their rights under the Child Support (Assessment) Act 1989 and yet would seem to be culpable of family violence under the new definition.

This bill also seeks to remove the friendly parent provision, which currently requires family courts to consider the willingness of one parent towards facilitating the other to have a meaningful relationship with their child. The removal of this provision could lead to a situation where parents can effectively remove a previous partner from their life through the prevention of contact with their children. This would encourage parental alienation syndrome—the practice where one parent instigates and maintains conflict to harm a child's relationship with the other parent.

The bill also proposes to remove mandatory costs orders where one party knowingly makes a false allegation or statement in the proceedings to gain a tactical advantage. Currently the court is able to implement financial penalties as a disincentive to this course of action. This proposed change will encourage fabricated allegations of violence or abuse, hearsay and uncorroborated allegations. The logic of removing these court orders is that they act as a disincentive for the disclosure of family violence. However, according to the Australian Institute of Family Studies, more than two thirds of respondents to a survey disagreed with the proposition that the prospect of an adverse cost order has discouraged allegations of violence or child abuse that are genuinely held and/or are likely to be true. Parents in conflict too often refer to their rights as parents and the rights they have to have access to their child. This is the wrong focus. The Family Court makes it clear that it is the right of the child to have access to their parents. Breakdowns in relationships too often lead to a phase of adult war—logic and fairness are overridden by emotional issues. Inevitably, the child becomes the collateral damage.

The DEPUTY SPEAKER (Hon. BC Scott): Order! The debate is interrupted in accordance with standing order 43. The debate may be resumed at a later hour.