



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



**HOUSE OF REPRESENTATIVES**

**Federation Chamber**

**BILLS**

**Judges and Governors-General Legislation  
Amendment (Family Law) Bill 2012**

**Second Reading**

**SPEECH**

**Wednesday, 21 March 2012**

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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## SPEECH

<b>Date</b> Wednesday, 21 March 2012	<b>Source</b> House
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<b>Questioner</b>	<b>Responder</b>
<b>Speaker</b> Neumann, Shayne, MP	<b>Question No.</b>

**Mr NEUMANN** (Blair) (16:05): I speak in support of the Judges and Governors-General Legislation Amendment (Family Law) Bill 2012. The member for Mackellar has no idea what she is talking about on this issue. This is a case of making sure that governors-general and judges are treated the same way as every other citizen in this country with respect to section 79 and section 75(2) of the Family Law Act. That is what this legislation purports to do. The Constitution makes it very clear that the Commonwealth parliament has the power under section 51 to make laws in relation to matrimonial causes and divorce, and that is the basis upon which we have made laws under the Family Law Act—and it was a reforming Whitlam Labor that brought family law up to date in the mid-seventies with the Family Law Act.

In this legislation, we are making sure spouses and partners of judges and governors-general are treated in the same way as any other citizen of this country in the states and territories. The changes in this legislation go back a little way and I will explain that to the House. When someone separates in a marital relationship or a de facto relationship, or a same-sex relationship as a result of the laws we have passed, under part VIII of the Family Law Act they have the right to bring an application for property orders in the Family Court or the Federal Magistrates Court. The Family Court, in exercise of its power, can make a property order under section 79(1) of the Family Law Act and take into consideration the factors under section 79(4), which talk about the financial and non-financial contributions made to matrimonial or cohabitation type property. And the court looks at other factors under 75(2).

The situation with respect to superannuation has always been a vexed issue in family law. In fact, it was often the case that the courts engaged in quite unusual tactics to get around the situation that superannuation, whether a defined benefit scheme or an accumulation fund, was a source of income or an asset to a person's benefit. In the case of *Coghlan v Coghlan* of some years ago, judges referred to superannuation as another species of asset and not really a matrimonial asset. This has always been a vexed issue. It is often wives who are disadvantaged in these circumstances. If they have been together for a long time and the husband has a large amount of superannuation and there is a matrimonial house, a car, a bit of savings and property, it is often wives who have been disadvantaged by the non-treatment of superannuation whereby it is considered to be an asset.

Under this legislation, we are making sure that the partners and spouses of judges and governors-general are treated in the same way as every other Australian is treated if they separate, and avail themselves of the right to seek an order for property settlement under part VIII of the Family Law Act. The member for Mackellar raised the question of what the situation would be with a serving judge. If a judge is serving and is not yet qualified for a pension, at the time of the split the adjustment of the benefit would be based on the proportion that has accrued at the time of the split. With respect to property settlement, even if the person has not yet, say, qualified by reason of age for the superannuation, the trustees of the superannuation fund can adjust the superannuation by way of order or by way of a binding financial agreement. I have been involved in cases—

**Mrs Bronwyn Bishop:** There is no fund; it's consolidated revenue!

The DEPUTY SPEAKER ( Mr KJ Thomson ): Order! The member for Mackellar was heard in silence. She will extend the same courtesy to the member for Blair.

**Mr NEUMANN:** There are a plethora of superannuation arrangements, involving politicians, judges, military people, accumulation funds, defined benefit schemes. This legislation makes sure that everyone is treated equally. We want to make sure that the current arrangements happen as every Australian would expect them to happen. If the member for Mackellar has a look at the current arrangements for family law, she will see that, on that issue in relation to judges and governors-general, they are inconsistent with the idea that they should be treated in the same way as every other Australian. Does the member for Mackellar think that judges and governors-general should be treated in another way? That is not the case.

We want to make sure that, when this bill is passed, the former spouse will be able to receive his or her share of the superannuation benefit as a separate interest benefit. I have done thousands of these types of cases involving Australian citizens, and I have been involved in lots of cases involving very senior figures in this country. I am not going to start mentioning individual people that I have acted for or their spouses—

**Mrs Bronwyn Bishop:** I should hope not.

**Mr NEUMANN:** I tell you what: I have acted for more Tory politicians than Labor politicians in relation to family law cases—or their spouses, including people in chambers all over the place. I am not going to start naming them. It is a long time since the member for Mackellar has practised in the area of family law. She should have a good look at the law and what we are doing in this regard. This is a necessary undertaking. The fact that the coalition cannot bring themselves to just get rid of this anomaly goes to show the extent to which they will say no to everything—even to good law that actually fixes up irregularities and eccentricities. This legislation does that. It is a sensible piece of legislation that will make sure the family law splitting arrangements on superannuation are the same for all Australians. We on this side of the House do not believe that Australians should be treated unequally, even if those opposite believe that that is the case.