



FIRST SESSION OF THE THIRTY-SIXTH PARLIAMENT

**REPORT OF THE
STANDING COMMITTEE ON LEGISLATION
IN RELATION TO THE
CHILD SUPPORT (ADOPTION OF LAWS)
AMENDMENT BILL 2001**

Presented by Hon Jon Ford MLC (Chairman)

Report 9
February 2002

STANDING COMMITTEE ON LEGISLATION

Date first appointed:

May 24 2001

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“1. Legislation Committee

- 1.1 A *Legislation Committee* is established.
- 1.2 The Committee consists of 7 members.
- 1.3 The functions of the Committee are -
 - (a) to consider and report on any bill referred by the House;
 - (b) to review the form and content of the statute book;
 - (c) to inquire into and report on any proposal to reform an existing law;
 - (d) to consider and report on a bill referred under SO 230 (c).
- 1.4 Unless otherwise ordered, the policy of a bill referred under subclause 1.3(a) at the second reading or any subsequent stage is excluded from the Committee’s consideration.
- 1.5 The Committee of its own motion, or on a reference from a Minister, may inquire into and report to the House on any or all aspects, including policy, of a proposal for an agreement or arrangement that, to have effect, would necessitate the enactment of legislation of a type described in SO 230 (c).”

Members as at the time of this inquiry:

Hon Jon Ford MLC (Chairman)

Hon Adele Farina MLC

Hon Giz Watson MLC (Deputy Chair)

Hon Peter Foss MLC

Hon Kate Doust MLC

Hon Bill Stretch MLC

Hon Paddy Embry MLC

Staff as at the time of this inquiry:

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EXECUTIVE SUMMARY AND RECOMMENDATIONS FOR THE
REPORT OF THE STANDING COMMITTEE ON LEGISLATION
IN RELATION TO THE
CHILD SUPPORT (ADOPTION OF LAWS) AMENDMENT BILL 2001

EXECUTIVE SUMMARY

- 1 The Child Support (Adoption of Laws) Amendment Bill 2001 (**Bill**) was referred to the Standing Committee on Legislation on November 14 2001, under Standing Order 230A of the Legislative Council.
- 2 By virtue of the *Child Support (Adoption of Laws) Act 1990*, Western Australia adopted relevant Commonwealth child support legislation in the form that legislation stood at the time of adoption. Any subsequent amendments to the Commonwealth child support legislation require a further legislative act of adoption.
- 3 The Bill amends the *Child Support (Adoption of Laws) Act 1990* by adopting recent changes to the relevant Commonwealth child support legislation and enables ex-nuptial children to be treated in the same way as nuptial children in respect of child support.

RECOMMENDATION

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Recommendation 1: The Committee recommends that the Child Support (Adoption of Laws) Amendment Bill 2001 be passed subject to the deletion of the Table in clause 4 and substitution with the following table:

Table

When the amendment occurs	Amendment
Day this Act commences	delete “1 July 1999”, insert instead — “ 1 December 2001 ”
1 July 2002	delete “1 December 2001”, insert instead — “ 1 July 2002 ”

REPORT OF THE STANDING COMMITTEE ON LEGISLATION

IN RELATION TO THE

CHILD SUPPORT (ADOPTION OF LAWS) AMENDMENT BILL 2001

1 REFERENCE AND PROCEDURE

- 1.1 The Child Support (Adoption of Laws) Amendment Bill 2001 (**Bill**) was referred to the Standing Committee on Legislation (**Committee**) on November 14 2001, under Standing Order 230A of the Legislative Council.
- 1.2 Standing Order 230A requires that the Committee report to the Legislative Council within 30 days of the date that the Bill was read a first time. On November 27 2001 the Legislative Council ordered that the time within which the Committee is to report the Bill to the Legislative Council under Standing Order 230A be extended to not later than March 21 2002.
- 1.3 The Committee appointed a subcommittee comprising Hon Kate Doust MLC (Convenor) and Hon Giz Watson MLC to progress the inquiry into the Bill. The subcommittee reported to the Committee on February 20 2002.

2 THE BILL AND ITS BACKGROUND

- 2.1 The Commonwealth child support scheme enables maintenance payments to be collected and paid to parents having responsibility for a child or children whether nuptial or ex-nuptial. The scheme operates under two main Commonwealth statutes, the *Child Support (Registration and Collection) Act 1988* and the *Child Support (Assessment) Act 1989* (**Commonwealth child support legislation**).
- 2.2 Following the making of an assessment about child support, including the payments to be made for the maintenance of a child, the Registrar of Child Support and the Department of Family and Community Services ensure those are either deducted from salary payments or other income. The scheme also establishes, through the legislation administered by that Commonwealth department, enforcement procedures to ensure payments can be collected on behalf of the child.¹
- 2.3 However due to constitutional limitations on the Commonwealth's legislative power, the Commonwealth can only legislate with regard to children of a marriage. Ex-nuptial children are not covered by the Commonwealth legislation. The responsibility to legislate with regard to ex-nuptial children lies with the States.

¹ Western Australia, *Parliamentary Debates (Hansard)*, Legislative Council, November 14 2001, p. 5507.

- 2.4 The Commonwealth child support legislation applies to ex-nuptial children throughout Western Australia only to the extent that, pursuant to s. 51(xxxvii) of the Commonwealth Constitution, Western Australian legislation has *adopted* that Commonwealth legislation. Other States have *referred* legislative power, which means that amendments to the Commonwealth child support legislation automatically immediately apply in those State jurisdictions.²
- 2.5 By virtue of the *Child Support (Adoption) Act 1988*, Western Australia, adopted the relevant Commonwealth child support legislation in the form that legislation stood at the time of adoption. Any subsequent amendments to the Commonwealth child support legislation required a further act of adoption. The Commonwealth child support legislation has been amended on several occasions. In Western Australia, those amendments do not apply until they are adopted by the Parliament. Western Australia adopted Commonwealth amendments to the original Commonwealth Acts in 1994 and 2000.³
- 2.6 The *Child Support (Adoption) Act 1988* also made provision to terminate State adoption by a proclamation published in the *Government Gazette*: s. 6. Other States who had referred their power to the Commonwealth, as opposed to adopting Commonwealth amendments, made similar provision.
- 2.7 That Act was replaced by the *Child Support (Adoption of Laws) Act 1990* (**Principal Act**). The provisions relating to the form of adoption and the termination of adoption are reiterated in the Principal Act.
- 2.8 The Bill amends the Principal Act by adopting recent changes to the relevant Commonwealth child support legislation to allow, in Western Australia, ex-nuptial children to be treated in the same way as nuptial children in respect of child support. The Bill comprises four clauses, of which the subcommittee considered one (clause 4) in detail.

3 REFERENCE TO AND INCORPORATION OF OTHER LEGISLATION

- 3.1 Where in a statute there is reference to another Act, it is presumed that the other Act will be read in an ambulatory manner and thus include amendments made after the original reference is made. The *Interpretation Act 1984* states:

“16 (3) A reference in a written law to ... a Commonwealth Act, or to a provision of ... a Commonwealth Act, shall be construed

² Section 51(xxxvii) of the Commonwealth Constitution provides that the Commonwealth may make laws with respect to “*matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matters are referred, or which afterwards adopt the law.*”

³ Western Australia, *Parliamentary Debates (Hansard)*, Legislative Council, November 14 2001, p. 5507.

so as to include a reference to such Act or provision as it may from time to time be amended.”

- 3.2 This is an alteration of the common law presumption established by the courts that in the absence of an indication to the contrary, a reference to another piece of legislation was to the legislation in the form it took at the date the referring legislation was made. At common law any subsequent amendments to the legislation referred to would not be taken into account.⁴
- 3.3 As a result, due to s. 16 of the *Interpretation Act 1984*, if legislation incorporated into an Act is to be fixed as at the date the referring legislation is made, this will need to be spelt out. Sections 3(a) and 4(b) of the Principal Act expressly indicates that reference to the Commonwealth child support legislation is a reference to the legislation in the form in which it existed on a specified date and that s. 16(3) of the *Interpretation Act* does not apply. As noted, future amendments to the Commonwealth child support legislation require a separate legislative act of adoption.

4 CLAUSE 4 OF THE BILL

Provision for future amendment at different times

- 4.1 Clause 4 provides that ss. 3 and 4 of the Principal Act are to be amended at different times:

“4 Sections 3 and 4 of the *Child Support (Adoption of Laws) Act 1990* amended at different times

On each day specified in column one of the Table to this section, sections 3(a) and 4(b) of the *Child Support (Adoption of Laws) Act 1990* are both amended as specified opposite that day in column 2 of that Table.

⁴ *Re Universal Distributing Co Ltd (in liq)* (1933) 48 CLR 171 at 173; *Commissioner for Government Transport (NSW) v Deacon* (1957) 97 CLR 535 at 546.

Table

When the amendment occurs	Amendment
Day this Act commences	Delete “1 July 1999”, insert instead — “ 2 October 2001 ”
1 December 2001	Delete “2 October 2001”, insert instead — “ 1 December 2001 ”
1 July 2002	Delete “1 December 2001”, insert instead — “ 1 July 2002 ”

”

4.2 Section 3(a) of the Principal Act provides that:

“A reference in this Act to the Child Support (Registration and Collection) Act 1988 of the Commonwealth –

(a) is a reference to that Act in the form in which that Act existed on 1 July 1999; and

(b) is not a reference to which section 16(3) of the Interpretation Act 1984 applies.”

4.3 Section 4(b) of the Principal Act is in similar terms but in respect of the *Child Support (Assessment) Act 1989* of the Commonwealth.

Reason for future amendment at different times

4.4 The subcommittee was advised by the Attorney General that the reason for the different amendment dates was that the Bill was drafted in such a way that it adopted all the Commonwealth Acts detailed in the Bill as they stood on October 2 2001, being the date when the most recent Commonwealth legislation came into effect. However whilst most of the measures in the *Child Support Legislation Amendment Act 2001* (Cth) commenced operation prior to October 2 2001, there are two measures in Schedule 1A of that Act concerned with fringe benefits tax which would come into operation on December 1 2001 and July 1 2002.⁵ The dates expressed in clause 4 of the Bill coincide with the known commencement dates of the operation of this Commonwealth legislation.⁶

⁵ Letter from the Attorney General to the Subcommittee dated November 26 2001; and *Clause Notes* to the Child Support (Adoption of Laws) Amendment Bill 2001 p. 2.

⁶ Sections 2 (1A) and (1B) of the *Child Support Legislation Amendment Act 2001*(Cth) expressly states these two dates.

Amendments other than those listed not caught by the Bill

- 4.5 Whilst the dates in clause 4 are explained by the Attorney General as correlating to express dates in one piece of Commonwealth legislation [*Child Support Legislation Amendment Act 2001*(Cth)] which affects the adopted Commonwealth child support legislation, the subcommittee wished to ensure that the amendments did not operate more widely. For example, if the Commonwealth made amendments to the Commonwealth child support legislation (other than those amendments identified in the Bill) then those amendments should not also be included when the amendments provided by clause 4 of the Bill occurred.
- 4.6 In this respect the purpose of the Act expressed in clause 3 of the Bill is noted. As the Bill only adopts amendments made by the Commonwealth Acts detailed in clause 3 of the Bill, any further amendments will not be caught by the provisions of the Bill and will require a further legislative act of adoption.⁷

Amendments to the Table in clause 4.

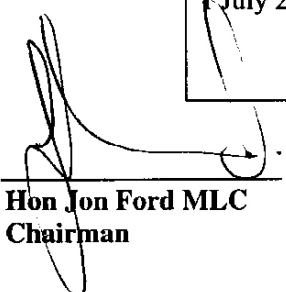
- 4.7 The Committee notes that as December 1 2001 has passed, there is a need for amendments to the Table in clause 4, in that the commencement date should be December 1 2001 and accordingly, the provisions dealing with the date of December 1 2001 should be deleted from the Table.

5 RECOMMENDATION

Recommendation 1: The Committee recommends that the Child Support (Adoption of Laws) Amendment Bill 2001 be passed subject to the deletion of the Table in clause 4 and substitution with the following table:

Table

When the amendment occurs	Amendment
Day this Act commences	delete "1 July 1999", insert instead — " 1 December 2001 "
1 July 2002	delete "1 December 2001", insert instead — " 1 July 2002 "


Hon Jon Ford MLC
Chairman

Date: February 25 2002

⁷ Letter from the Attorney General to the Subcommittee dated December 20 2001.