



THIRTY-EIGHTH PARLIAMENT

REPORT 74

**STANDING COMMITTEE ON UNIFORM
LEGISLATION AND STATUTES REVIEW**

**CHILD SUPPORT (ADOPTION OF LAWS)
AMENDMENT BILL 2012**

Presented by Hon Adele Farina MLC (Chairman)

September 2012

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

Date first appointed:

17 August 2005

Terms of Reference:

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

“5. Uniform Legislation and Statutes Review Committee

5.1 A *Uniform Legislation and Statutes Review Committee* is established.

5.2 The Committee consists of 4 Members.

5.3 The functions of the Committee are –

(a) to consider and report on Bills referred under Standing Order 126;

(b) on reference from the Council, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to Standing Order 126;

(c) to examine the provisions of any treaty that the Commonwealth has entered into or presented to the Commonwealth Parliament, and determine whether the treaty may impact upon the sovereignty and law-making powers of the Parliament of Western Australia;

(d) to review the form and content of the statute book; and

(e) to consider and report on any matter referred by the Council.

5.4 In relation to function 5.3(a) and (b), the Committee is to confine any inquiry and report to an investigation as to whether a Bill, proposal or agreement may impact upon the sovereignty and law-making powers of the Parliament of Western Australia.”

Members as at the time of this inquiry:

Hon Adele Farina MLC (Chairman)

Hon Donna Faragher MLC (Deputy Chairman)

Hon Robin Chapple MLC

Hon Nick Goiran MLC

Staff as at the time of this inquiry:

Kimberley Ould (Advisory Officer (Legal))

Pamela Pohe (Committee Clerk)

Address:

Parliament House, Perth WA 6000, Telephone (08) 9222 7222

unileg@parliament.wa.gov.au

Website: <http://www.parliament.wa.gov.au>

ISBN 978-1-922047-13-7

CONTENTS

REPORT	1
1 REFERENCE.....	1
2 BACKGROUND	1
3 NO INTRODUCTION OF A UNIFORM SCHEME	2

**REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES
REVIEW**

IN RELATION TO THE

CHILD SUPPORT (ADOPTION OF LAWS) AMENDMENT BILL 2012

1 REFERENCE

- 1.1 On 12 September 2012 the Child Support (Adoption of Laws) Amendment Bill (**the Bill**) was referred to the Standing Committee on Uniform Legislation and Statutes Review (**Committee**).¹

2 BACKGROUND

- 2.1 The **Commonwealth Child Support Scheme**,² established in 1988, enables child support payments to be collected and paid to parents having responsibility for a child, whether nuptial or ex-nuptial.
- 2.2 Application of the Scheme to ex-nuptial children is possible as a result of a referral of powers by some States to the Commonwealth. Under the *Commonwealth Constitution*, the Commonwealth can only legislate with respect to children of a marriage as a result of the limitation in section 51(xxi). The States retain the power to make laws in relation to all other (that is, ex-nuptial) children. However, pursuant to section 51(xxxvii) of the *Commonwealth Constitution*, a State may refer a specific matter to the Commonwealth Parliament.³ Whilst in operation such a referral gives to the Commonwealth unconditional authority to deal with the referred matter as it deems fit.
- 2.3 In 1986 the States of New South Wales, Victoria and South Australia referred power in relation to child custody, guardianship, access and maintenance to the Commonwealth. Tasmania followed in 1987 and Queensland in 1990. These referrals of power enabled the Commonwealth Child Support Scheme to apply to ex-nuptial children in those States.

¹ The Attorney General Hon Michael Mischin MLC introduced the Bill into the Legislative Council on 12 September 2012 and nominated the Bill as a Uniform Legislation Bill pursuant to Standing Order 126(2). The Bill accordingly stood referred to the Committee pursuant to Standing Order 126(4).

² Comprising the *Child Support (Registration and Collection) Act 1988* (Cth) and the *Child Support (Assessment) Act 1989* (Cth).

³ Section 51(xxxvii) provides that the Commonwealth may make laws with respect to “*matters referred to the Parliament of the Commonwealth by the Parliament 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.*”

- 2.4 Western Australia has not referred power. Pursuant to the *Child Support (Adoption) Act 1988*, later replaced by the *Child Support (Adoption of Laws) Act 1990* (**Principal Act**), the Western Australian Parliament adopted the Commonwealth Child Support Scheme. Through this mechanism the Commonwealth Child Support Scheme applies to ex-nuptial children in Western Australia.
- 2.5 As adoption of laws is not prospective, every time there is an amendment to the Commonwealth Child Support Scheme, the amendments do not apply in the case of ex-nuptial children until adopted through amendments to the Principal Act. The Bill, as with previous amendment bills, adopts the most recent changes to the Commonwealth Child Support Scheme.

3 NO INTRODUCTION OF A UNIFORM SCHEME

- 3.1 The Committee takes the view that the Bill does not change the uniform scheme adopted by the Principal Act, implement an additional uniform scheme or implement a further separate intergovernmental agreement. As such the uniform scheme remains the same as was reviewed by the House at the time it considered the Principal Act.
- 3.2 The Standing Committee on Procedure and Privileges Report No. 8, adopted by the House on 20 September 2006, noted that the practice of the Legislative Council in relation to amendment bills has been that if a uniform scheme has been implemented by a previous Act then bills that propose further amendments to that uniform legislation do not stand referred to the Committee unless the particular bill implements additional uniform legislation.⁴ The Procedure and Privileges Committee incorporated this approach into its “*Guidelines on the Practice on Bills Standing Referred*”.⁵
- 3.3 It is the view of the Committee that the Bill falls within this category of an amendment bill.
- 3.4 Further, under its current *Terms of Reference* the Committee is restricted to considering matters of parliamentary sovereignty and law making powers – which would have been considered by the House at the time it considered the Principal Act and remain unchanged by this Bill.
- 3.5 The Committee is of the view that there are no other issues in the Bill impacting upon the sovereignty and law-making powers of the Parliament.

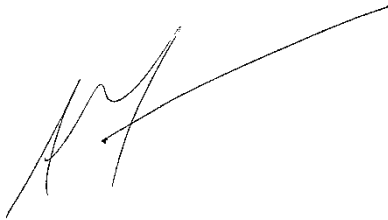
⁴ Standing Committee on Procedure and Privileges Report No. 8, November 2005, Appendix 3, p 34.

⁵ Ibid.

Finding 1: The Committee finds that the Bill does not further impact upon the sovereignty and law-making powers of the Parliament beyond the impact of the Principal Act.

3.6 Previously, the Committee would have considered the provisions of the Bill against the fundamental legislative scrutiny principles however under the current *Terms of Reference* such scrutiny is now beyond the Committee's mandate.

3.7 The Committee respectfully returns the Bill to the House.



Hon Adele Farina MLC

Chairman

Date: 26 September 2012