

Commonwealth Powers (Family Law-Children) (Amendment) Bill

EXPLANATORY MEMORANDUM

Overview of the Bill

The purpose of the Bill is to amend the **Commonwealth Powers (Family Law—Children) Act 1986** to:

- refer to the Commonwealth the power to legislate with respect to maintenance for children who are subject to a child welfare order;
- clarify the types of child welfare orders which exclude the jurisdiction of the Commonwealth;
- provide that the Family Court can hear custody, guardianship and access matters relating to ex-nuptial children who are subject to a child welfare order if the relevant state Minister consents in writing;
- make declarations of parentage for Commonwealth purposes; and
- make consequential amendments.

Outline of provisions

- Clause 1 sets out the general purpose of the Bill which is to amend the **Commonwealth Powers (Family Law—Children) Act 1986**.
- Clause 2 provides for the commencement of the Bill. Proclamation will be timed to coincide with the commencement of the complementary Commonwealth regulations.
- Clause 3 provides that the **Commonwealth Powers (Family Law—Children) Act 1986** is the Principal Act.
- Clause 4(1) inserts a new section 3(1)(c) into the Principal Act to refer power to the Commonwealth to make laws with respect to the determination of a child's parentage for the purposes of a law of the Commonwealth. This will allow the Commonwealth to confer power on the Family Court to make laws regarding parentage where proceedings are not otherwise on foot in that Court. This does not deprive the State of this power but rather confers a joint power on the Commonwealth.

Clause 4(2) amends section 3(2) of the Principal Act.

Paragraph (a) inserts a qualification on the reservation of power where the procedures provided by the new sub-section (2A) are followed.

Paragraph (b) makes it clear that the referral of power to the Commonwealth does not extend to the power to make adoption orders. It is understood that this is the effect of the current position and this amendment is included to put the matter beyond doubt.

Paragraphs (c) and (f) reflect the changes to the Schedule provided for by clause 5.

Paragraph (d) repeals section 3(2)(b) which has the effect of referring to the Commonwealth the power to make laws with respect to maintenance for ex-nuptial children who are the subject of a child welfare law. For example, where such a child is under a supervision order under the **Children and Young Persons Act 1989** and has been placed with one parent, that parent would be able to seek maintenance from the other parent.

Paragraph (e) makes it clear that the referral of power to the Commonwealth does not include any matter that would interfere with a power of a State tribunal or a bail justice.

Clause 4(3) inserts a new section 3(2A) into the Principal Act the purpose of which is to provide a mechanism for the Commonwealth (in effect the Family Court) to be able to interfere with a child welfare law proceeding in respect of ex-nuptial children where the relevant state Minister or official consents in writing to the Commonwealth having that jurisdiction.

Clause 4(4) replaces the existing section 3(3)(c) of the Principal Act to reflect the amendments made to the Schedule.

Clause 5 replaces the Schedule to the Principal Act to make it clear which child welfare laws operate to reserve the exclusive jurisdiction of the State except where the new section 3(2A) operates.

Clause 6 makes a consequential amendment to the **Adoption Act 1984**.

- Clause 7 makes consequential amendments to the **Maintenance Act 1958** to repeal those provisions which provide for the Magistrates' Court to hear and determine child maintenance matters. The Bill does not affect the provisions relating to spousal maintenance.
- Clause 8 makes consequential amendments to the **Marriage Act 1958** to repeal those provisions which deal with custody and guardianship matters relating to children except in relation to testamentary guardianship.
- Clause 9 makes consequential amendments to the **Status of Children Act 1974**.

