

## CHILD SUPPORT (ADOPTION OF LAWS) AMENDMENT BILL 2009

### EXPLANATORY MEMORANDUM

The Commonwealth Child Support Scheme enables the collection of child support payments from a parent and the payment of that maintenance to the person having responsibility for a child, as well as the collection and distribution of other maintenance payments including spousal maintenance. The Bill will adopt recent changes as well as changes identified in a review carried out by Parliamentary Counsel to the relevant Commonwealth legislation to allow ex-nuptial children in Western Australia to be treated in the same way as nuptial children.

#### **Clause 1. Short Title**

Clause 1 provides that the Bill, when enacted, is to be known as the *Child Support (Adoption of Laws) Amendment Act 2009 (WA)*.

#### **Clause 2. Commencement**

Clause 2 makes provision for the commencement of the Act. Clause 2(a) provides that clauses 1 and 2 commence on assent. Clause 2(b) provides that the rest of the Act is to commence 1 July 2009 or the day after assent, whichever is sooner.

#### **Clause 3. The Act amended**

Clause 3 provides that the amendments are to the *Child Support (Adoption of Laws) Act 1990 (WA)*.

#### **Clause 4. Purpose of the Act**

This clause lists in paragraph (a) and (b) all those Commonwealth Acts that have the effect of amending the *Child Support (Registration and Collection) Act 1988 (Commonwealth)*, the *Child Support (Assessment) Act 1989 (Commonwealth)* (the Commonwealth Child Support Acts) or Acts that have amended the Commonwealth Child Support Acts.

It is Parliamentary Counsel's opinion that this approach provides greater clarity and certainty than relisting in this clause of the Bill Commonwealth amending Acts that have been previously referred to in a purposes clause of a Child Support (Adoption of Laws) Act, and that have been subsequently amended by the Commonwealth.

- (a) The *Child Support (Registration and Collection) Act 1988 (Cth)*. This paragraph provides that the provisions of the *Child Support (Registration and Collection) Act 1988 (Cth)* as amended by the other Commonwealth Acts listed extend to the *Child Support (Adoption of Laws) Act 1990 (WA)*. The relevant Commonwealth Acts are listed hereunder:
  - (i) *New Business Tax Laws System (Alienation of Personal Services Income) Act 2000*. This Act amends the definition of "work and income support related withholding payments" to include amounts which must be withheld under Division 13 of Schedule 1 in the *Taxation Administration Act 1953*. It effectively extends the definition of monies from which child support may be recovered.
  - (ii) *Financial Sector Legislation Amendment Act (No.1) 2000*. This Act amends the *Financial Sector (Amendments and Transitional Provisions) Act (No 1)*

1999 which amended the Registration and Collection Act by substituting the phrase “building society” with “co-operative housing society”.

- (iii) *Corporations (Repeals, Consequential and Transitional) Act 2001*. This Act amends references in the child support legislation to “Corporations Law” to “Corporations Act 2001”.
- (iv) *Statute Law Revision Act 2007*. This Act repeals an item in the *Child Support Legislation Amendment (Reform of the Child Support Scheme – Initial Measures) Act 2006* which became unnecessary as a result of amendments effected by the *Family Law Amendment (Shared Parental Responsibility) Act 2006*.
- (v) *Superannuation Legislation Amendment (Simplification) Act 2007*. This Act re-amends the definition of “work and income related withholding payments” consequent upon amendments to the *Taxation Administration Act 1953*.
- (vi) *Families, Housing, Community Services and Indigenous Affairs and other Legislation Amendment (2008 Budget and Other Measures) Act 2008*. This Act clarifies the effects of the new child support legislation on child support agreements and court orders that span periods before and after 1 July 2008 and make provision for the Child Support Registrar to automatically deduct a sum less than the previously prescribed amount from payments made to a payer in arrears of child support by Social Security of the Department of Veteran’s Affairs.
- (vii) *Statute Law Revision Act 2008*. This Act makes technical amendments to the *Families, Community Services and Indigenous Affairs Legislation Amendments (Child Support Reform Consolidation and Other Measures) Act 2007* which Act was adopted by Western Australia in the 2007 Adoption of Laws Act.
- (viii) *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008*. This Act amends the child support legislation to recognize that orders and agreements may be made under Commonwealth law with respect to maintenance and property between de facto spouses.
- (ix) *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further 2008 Budget and Other Measures) Act 2008*. This Act effects amendments to the Child Support legislation in the following areas:
  - changes in the relevant percentages of care;
  - interim care determinations;
  - minimum assessments;
  - child support agreements;
  - costs of child care; and
  - provisional notional assessments.
- (x) *Same Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Act 2008*. This Act allows for the recognition of same sex relationships for the purposes of existing child support legislation.

(b) The *Child Support (Assessment) Act 1989* (Cth). This paragraph provides that the provisions of the *Child Support (Assessment) Act 1989* (Cth) as amended by the other Commonwealth Acts listed extend to the *Child Support (Adoption of Laws) Act 1990* (WA). The relevant Commonwealth Acts are listed hereunder:

- (i) *Statute Law Revision Act 2007.*
- (ii) *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment ( 2008 Budget and Other Measures) Act 2008.*
- (iii) *Statute Law Revision Act 2008.*
- (iv) *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008.*
- (v) *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further 2008 Budget and Other Measures) Act 2008.*
- (vi) *Same Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Act 2008.*
- (vii) *Tax Laws Amendment (2009 Measures No.1) Act 2009.* This Act amends the Assessment Act to incorporate new definitions of “total investment loss” and “reportable superannuation contributions” as provided for in Items 4 and 5 in Schedule 3 of this Act.

**Clause 5. Section 3 amended**

The clause provides that section 3(a) is amended so that the date “1 July 2008” is deleted and replaced by “1 July 2009”. The change is necessary to adopt Commonwealth changes that commenced on 1 July 2009.

**Clause 6. Section 4 amended**

The clause provides that section 4(b) is amended so that the date “1 July 2008” is replaced by “1 July 2009”. The change is necessary to adopt Commonwealth changes that commenced on 1 July 2009.