

CHILD SUPPORT (ADOPTION OF LAWS) AMENDMENT BILL 2014

EXPLANATORY MEMORANDUM

Overview of the Bill

The Commonwealth Child Support Scheme was introduced with the object of ensuring that separated parents shared equitably in the financial cost of supporting their children. The scheme enables the collection of child support payments from a parent and the payment of that maintenance to the person having responsibility for the child and operates under two Commonwealth statutes: the *Child Support (Registration and Collection) Act 1988* (Cth) and the *Child Support (Assessment) Act 1989* (Cth).

Under the Australian Constitution, the legislative power of the Commonwealth Parliament does not extend to ex-nuptial children. To ensure that the Child Support Scheme operates in respect to ex-nuptial children as well as to children of a marriage, all other State Parliaments referred power in respect to ex-nuptial children to the Commonwealth Parliament. Accordingly, the statutes that govern the Child Support Scheme apply to all children in those states.

Instead of referring power to the Commonwealth, the WA Parliament adopted the Commonwealth child support legislation, initially by the *Child Support (Adoption) Act 1988* (WA) which adopted the *Child Support Act 1988* (Cth).

Subsequently, when the Commonwealth child support legislation became the two statutes - the *Child Support (Registration and Collection) Act 1988* (Cth) and the *Child Support (Assessment) Act 1989* (Cth) the WA Parliament adopted those statutes by the *Child Support (Adoption of Laws) Act 1990* (WA) and the *Child Support (Adoption) Act 1988* (WA) was repealed.

Since that time the Commonwealth Acts have been amended many times. For the amended Commonwealth Acts to apply to ex-nuptial children in Western Australia, the WA Parliament must adopt them as they stand at a stated date subsequent to the commencement of the amendments made by the Commonwealth. Currently, the Commonwealth Acts apply with respect to ex-nuptial children in WA in the form in which they stood on 1 July 2012.

The Child Support (Adoption of Laws) Amendment Bill 2014 will adopt the Commonwealth Acts as they stand on 1 July 2014. Notes in the Bill list the various Commonwealth Acts that have amended either or both the *Child Support (Registration and Collection) Act 1988* (Cth) and the *Child Support (Assessment) Act 1989* (Cth) since 1 July 2012.

Clause Notes

Clause 1: Short title

Clause 1 provides that the Bill, once enacted, will be known as the *Child Support (Adoption of Laws) Amendment Act 2014*.

Clause 2: Commencement

Clause 2 makes provision for the commencement of the Act. Clause 2(a) provides that sections 1 and 2 of the Act will commence on the day the Act receives the Royal Assent. Clause 2 (b) provides that the rest of the Act will commence on the day after Royal Assent.

Clause 3 The Act amended

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

Clause 4 Section 3 amended

The WA Parliament does not adopt just the specific amendments to the Commonwealth legislation; instead, it adopts the Commonwealth legislation as amended at the date specified in the Bill to amend the *Child Support (Adoption of Laws) Act 1990* (WA).

Thus, Clause 4 provides that section 3(a) of the *Child Support (Adoption of Laws) Act 1990* is amended so that the date 1 July 2012 is deleted and replaced by 1 July 2014

This amendment ensures that the adoption by the West Australian Parliament of the *Child Support (Registration and Collection) Act 1988* (Commonwealth) extends to that Act as amended –

(a) on 17 November 2012 by the *Social Security and Other Legislation Amendment (Further 2012 Budget and Other Measures Act 2012* (Cth) Schedule 4.

This amendment to the *Child Support (Registration and Collection) Act 1988* (Commonwealth) inserts a new section (1A) after subsection 26(1) and clarifies the particulars which must be recorded in respect to each registered maintenance liability under subsection 26(1)(g).

Subsection 26(1)(g) requires that where an entry relates to the maintenance of two or more people, periodic amounts attributable to each person must be recorded. The intention of subsection 26(1)(g) was directed at cases where there is spousal maintenance and maintenance for children. The majority in the judgment of the Full Court of the Family Court of Australia in *Child Support Registrar v Farley and Anor* [2011] FAMCAFC 207 (Farley) decided that this requires separate amounts to be recorded for each individual child in a group of children, even though the assessment relates to the group, rather than to individual children. This amendment clarifies that, if an entry relates to two or more children only, the entry needs to record the periodic amount attributed to all the children collectively. If an entry relates to the maintenance of a spouse and two or more children, the entry would need to record the periodic amount attributed to the spouse and a further amount attributed to the children collectively.

(b) on 11 December 2012 by the *Personal Liability for Corporate Fault Reform Act 2012* (Cth).

Subsection 62(7) of the *Child Support (Registration and Collection) Act 1988* (Cth) previously provided that any notice, process, or proceeding under that Act that could be given to, served on or taken against a company may be given to, served on or taken against any company director, secretary or other company officer, in which case that person would have the same liability as would have been imposed on the company.

Section 62(7) was repealed and replaced by a new section 62A to remove any potential for directors or other company officers to be made personally liable for corporate fault. This

new section clarifies that the Registrar may give a notice or serve a process on a company, by giving it or serving it on a director or other particular company officers.

These amendments were made as part of a package of amendments to Commonwealth legislation to implement the Council of Australian Governments' (COAG) Directors' Liability reform, which aims to harmonise the imposition of personal criminal liability for corporate fault across Australian jurisdictions. The Directors' Liability reform project forms part of the COAG National Partnership Agreement to Deliver a Seamless National Economy.

(c) on 15 December 2012 by the *Social Security and Other Legislation Amendment (Further 2012 Budget and Other Measures Act 2012* (Cth) Schedule 3.

The Schedule 3 amendments to the *Child Support (Registration and Collection) Act 1988* (Cth) are part of a package of amendments to improve the operation of the Social Security Appeals Tribunal. The amending Act:

- inserts new definitions - **Human Services Department**: "the department administered by the Minister administering the *Human Services (Centrelink) Act 1997* (Cth)"; **SSAT member**: "a member of the SSAT and includes the SSAT Principal Member";
- substitutes "review" for "proceedings in paragraph 16 (2AB)(a) and 16(2AB)(c) to achieve drafting consistency with Part VIIA of the *Child Support Registration and Collection Act 1997* (Cth) which refers to "review" rather than "proceedings";
- addresses gaps in the protection of privacy by allowing the SSAT Principal Member to direct a party not to disclose any information or documents obtained during any stage of the review;
- extends the grounds on which an application for review can be dismissed and allows parties to request reinstatement of a dismissed application and empowers the SSAT Principal Member to re-instate the application for review;
- clarifies definitions and ensures greater consistency of language across the SSAT's areas of jurisdiction - child support, family assistance, social security and paid parental leave legislation;
- allows SSAT members to disclose protected information concerning a threat to the life, health or welfare of a person in certain circumstances;
- clarifies that permission of the SSAT Principal Member is required for a party to have another person make submissions on their behalf;
- requires the SSAT to give notice and reasons for the decision to a party who was removed from the review;

(d) on 12 April 2013 by the *Federal Circuit Court of Australia (Consequential Amendments) Act 2013* (Cth).

Consequential amendments to the *Child Support (Registration and Collection) Act 1988* (Cth) were made to reflect changes to the name of the Federal Magistrates Court and the title of Federal Magistrates.

The *Federal Circuit Court of Australia Legislation Amendment Act 2013* (Cth) amended the *Federal Magistrates Act 1999* (Cth) and other legislation to rename the Federal Magistrates

Court as the 'Federal Circuit Court of Australia', and to change the title of the Chief Federal Magistrate to 'Chief Judge' and the title of Federal Magistrate to 'Judge'.

The amendments are not intended to alter the jurisdiction or the status of the Federal Magistrates Court or its judicial officers.

(e) on 29 June 2013 by the *Statute Law Revision Act 2013* (Cth).

This amendment is consequential upon amendments to the *Acts Interpretation Act 1901* (Cth) to include provisions of general application in relation to acting appointments to make clear that an irregularity in appointment does not invalidate an action of a person purporting to act under the appointment. Subsection 10A(3) of the *Child Support (Registration and Collection) Act 1988* (Cth) which was in similar terms, is as a consequence, redundant and has been repealed by the *Statute Law Revision Act 2013* (Cth).

(f) on 7 April 2014 by the *Social Services and Other Legislation Amendment Act 2014* (Cth).

Subsequent upon the creation of the Department of Social Services 18 September 2012, responsibility for the administration and policy development of the Child Support Scheme devolved to the new Department. Child support service delivery continued to be the responsibility of the Department of Human Services. The *Human Services Legislation Amendment Act 2011* (Cth) integrated Medicare and Centrelink into the Department for Human Services. The amendments to both governing statutes of the child support scheme are administrative in nature and ensure that the terminology of the legislative provisions is consistent with the new structure. For example: the definition of "Human Services Department" is changed from "Minister administering the *Human Services (Centrelink) Act 1997*" to "Human Services Minister".

Clause 5 Section 4 amended

Clause 5 provides that section 4(b) of the *Child Support (Adoption of Laws) Act 1990* (WA) is amended so that the date 1 July 2012 is deleted and replaced by 1 July 2014.

This amendment ensures that the adoption by the West Australian Parliament of the *Child Support (Assessment) Act 1989* (Commonwealth) extends to that Act as amended –

(a) on 17 November 2012 by the *Social Security and Other Legislation Amendment (Further 2012 Budget and Other Measures) Act 2012* (Cth) Schedule 4.

As a consequence of the Farley case, this amendment confirms the longstanding policy and administration in cases where the amount of child support payable under a child support assessment is reduced because:

- a court decides that the payer is not a parent of one of the children in the assessment; but
- the payer remains liable for at least one other child in the assessment.

Section 107 of the *Child Support (Assessment) Act 1989* (Cth) allows the court to make a declaration that a person should not be assessed in respect of the costs of a child because the person is not a parent of the child. This is in cases where paternity is challenged and it is found that a father has paid child support for a child who was not in fact his child. A consequence of a section 107 declaration being made is that any application for assessment of child support for that child is taken never to have been accepted by the Child Support Registrar. The amendment inserts a new section 107A which makes clear that in those circumstances the assessment is to be amended administratively by the Registrar.

Without the amendment, the effect of the Farley case would be that in such cases the payer would be required to take court action to have the assessment amended.

(b) on 1 January 2013 by the *Social Security and Other Legislation (Disability Support Pension Participation Reforms) Act 2012* (Cth).

The Commonwealth amendments were necessitated by a change in the frequency of the Australian Bureau of Statistics (ABS) publication, *Average Weekly Earnings Australia*, from quarterly to biannually in 2012.

Previously, the *Child Support (Assessment) Act 1989* (Cth) required the formulae for assessment of the rate of child support payable to incorporate ABS figures for the September quarter. In 2012 the ABS ceased publication of figures for the September quarter.

Accordingly, in the absence of September quarter figures, the formulae had to be changed to use the figures that were published by the ABS: April-June and October-December.

The amendments which commenced on Royal Assent, 26 May 2012, included:

- the repeal of subsection 155(2A) of the *Child Support (Assessment) Act 1989* (Cth) which had required the publication in the *Government Gazette* prior to the end of the calendar year, the Average Weekly Earnings (AWE) amount, the Annualized Male Total Average Weekly Earnings (MTAWE) amount, and the Costs of Children Table for child support periods commencing the next calendar year. All incorporated figures from the September quarter which the ABS had ceased to publish.
- transitional provisions allowing for the new definitions incorporated in the formulae to accommodate the absence of September quarter figures to apply as though the amendments due to commence on 1 January 2013 and 1 July 2013 were already in operation.

The amendments commencing on 1 January 2013 defined the annualized MTAWE figure by reference to relevant June figures published by the ABS and applied to child support periods starting after that date.

The amendments commencing on 1 July 2013 defined the AWE figure by reference to the December figures published by ABS.

(c) on 12 April 2013 by the *Federal Circuit Court of Australia (Consequential Amendments) Act 2013* (Cth).

Consequential amendments to the *Child Support (Registration and Collection) Act 1988* (Cth) were made to reflect changes to the name of the Federal Magistrates Court and the title of Federal Magistrates. The *Federal Circuit Court of Australia Legislation Amendment Act 2013* amended the *Federal Magistrates Act 1999* (Cth) and other legislation to rename the Federal Magistrates Court as the 'Federal Circuit Court of Australia', and change the title of the Chief Federal Magistrate to 'Chief Judge' and the title of Federal Magistrate to 'Judge'.

The amendments are not intended to alter the jurisdiction or the status of the Federal Magistrates Court or its judicial officers.

(d) on 29 June 2013 by the *Statute Law Revision Act 2013* (Cth)

The *Statute Law Revision Act 2013* (Cth) amended the *Child Support (Assessment) Act 1988* (Cth) by the repeal of Parts 10-13.

Parts 10-13 were provisions amending other Acts which, now having taken effect, are obsolete.

(e) on 1 July 2012 by the *Social Security and Other Legislation (Disability Support Pension Participation Reforms) Act 2012* (Cth) to define the AWE figure by reference to the December figures published by ABS (see paragraph (b))

(f) on 7 April 2014 by the *Social Services and Other Legislation Amendment Act 2014* (Cth)

Subsequent upon the creation of the Department of Social Services on 18 September 2012, responsibility for the administration and policy development of the Child Support Scheme devolved to the new Department. Child support service delivery continued to be the responsibility of the Department of Human Services. The *Human Services Legislation Amendment Act 2011* (Cth) integrated Medicare and Centrelink into the Department for Human Services. The amendments to both governing statutes of the child support scheme are administrative in nature and ensure that the terminology of the legislative provisions is consistent with the new organisational structure of the Department for Human Resources. For example: the definition of “Family Assistance Secretary” is repealed and replaced wherever it occurs by “Secretary” which is designated to mean “the Human Services Secretary.”