CHILD SUPPORT (ADOPTION OF LAWS) AMENDMENT BILL 2015

Introduction and First Reading

Bill introduced, on motion by **Hon Michael Mischin (Attorney General)**, and read a first time.

Second Reading

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [12.37 pm]: I move —

That the bill be now read a second time.

As honourable members will be aware, 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 provides for the assessment of the financial support required to support the children, and the enforcement, collection and transfer of child support payments. Prior to the implementation of the scheme, child support could be obtained only by parents reaching agreement or by instituting proceedings for an order of the Family Court.

The scheme operates under two commonwealth statutes—the Child Support (Registration and Collection) Act 1988, and the Child Support (Assessment) Act 1989. However, the commonwealth Parliament has constitutional power to legislate with respect to only children of a marriage. For the commonwealth child support scheme to apply uniformly to married and unmarried couples and their children, state Parliaments must refer legislative power to the commonwealth Parliament or afterwards adopt the commonwealth acts by state legislation. All states except Western Australia have referred legislative power to the commonwealth Parliament. Western Australia has not referred power but has adopted the commonwealth acts, initially by the Western Australian Child Support (Adoption) Act 1988 and subsequently by the Western Australian Child Support (Adoption of Laws) Act 1990.

The adoption method means that amendments to the commonwealth acts, and therefore changes to the child support scheme, do not apply to unmarried couples and their exnuptial children in Western Australia until the Parliament of Western Australia amends the Western Australian Child Support (Adoption of Laws) Act 1990 to adopt again the commonwealth acts once those commonwealth amendments have come into operation. The Western Australian Child Support (Adoption of Laws) Act 1990 was last amended in November 2014 and adopted the commonwealth acts in the form in which they existed as at 1 July 2014. Since the last adoption date of 1 July 2014, the commonwealth acts have been amended by two pieces of commonwealth legislation that have since come into operation—the Tribunals Amalgamation Act 2015 and the Treasury Legislation Amendment (Repeal Day) Act 2015. The bill before the house will amend the Child Support (Adoption of Laws) Act 1990 to adopt the commonwealth acts as in force on 1 July 2015, which will ensure that the amendments made by those items of commonwealth amending legislation are included in the commonwealth acts as adopted by Western Australia.

The first commonwealth amending act, the Tribunals Amalgamation Act 2015, commenced on 1 July 2015. It amalgamated the Social Security Appeals Tribunal, the Migration Review Tribunal and the Refugee Review Tribunal and the Administrative Appeals Tribunal. The SSAT previously had jurisdiction to review certain decisions in respect of an administrative child support decision to which objection had been taken and in respect of which an internal review was unsuccessful. Appeal from the SSAT on a question of law was to the Family Court. The amalgamated tribunal now has a social services and child support division and a migration and refugee division, reflecting the jurisdictions of the SSAT and the MRT–RRT respectively. Members, staff and registries of the SSAT and the MRT–RRT were transferred to the amalgamated tribunal, including registries in Western Australia. The amalgamated AAT is established under the commonwealth Administrative Appeals Tribunal Act 1975. Matters previously determined by the SSAT are now determined by the social services and child support division of the AAT. Most of the amendments in the amalgamation act relate to making the appropriate changes to provisions to substitute the AAT for the SSAT as the body that will review decisions under the child support scheme in place of the SSAT.

The two-tier review provided for in certain child support matters—first to the SSAT and from SSAT to the AAT—has been retained. Both reviews come under the jurisdiction of the AAT and will be known as the AAT first review and the AAT second review. The AAT first review retains for the most part the same jurisdiction, powers and procedures as the former SSAT. However, unlike the SSAT, the AAT first review will include jurisdiction to review a decision of the Child Support Registrar to refuse to make a determination because the issues are too complicated. Previously, jurisdiction for review of this decision was with the Family Court and the Federal Circuit Court of Australia. The commonwealth explanatory memorandum to the Tribunals Amalgamation Bill 2014 explained that the reason for this change of policy was that the SSAT had developed a level of expertise such that review by a court was no longer necessary. The commonwealth explanatory memorandum also explained that to streamline pathways of judicial review, jurisdiction for child support matters would no longer lie with the Family Court but with the Federal Circuit Court and the

Federal Court. However, when there are proceedings before the Family Court, that court has retained its jurisdiction under section 116 of the commonwealth Child Support (Assessment) Act 1989 to make an order departing from an administrative assessment when the court considers this to be in the interests of justice.

The second commonwealth amending act, the Treasury Legislation Amendment (Repeal Day) Act 2015, commenced on 25 February 2015 and applies to the child support legislation as of 1 July 2015. The amendment, which effects no material change to the child support legislation, is consequential upon a change to the definition of "Australia" to simplify its meaning and to make it uniform across all laws relating to income tax. The definition of "resident of Australia" in the commonwealth Child Support (Assessment) Act 1989 and Child Support (Registration and Collection) Act 1988 incorporated a reference to section 7A(2) of the commonwealth Income Tax Assessment Act 1936, which was repealed by the amendments. Accordingly, the definition has been redrafted to remove the reference to the repealed section 7A.

Commonwealth amendments that effect changes to the scheme do not apply to exnuptial children in this state until the Parliament of Western Australia amends the Western Australian Child Support (Adoption of Laws) Act 1990 to adopt the commonwealth Child Support (Registration and Collection) Act 1988 and Child Support (Assessment) Act 1989 as in force on or after the day on which those commonwealth amendments commenced. During the hiatus period between the 1 July 2015 commencement of the amendments to the commonwealth child support legislation and the adoption by the Parliament of Western Australia, decisions on child support matters for exnuptial children in Western Australia are not able to be taken on review to the amalgamated AAT. I understand that the AAT has been consulted about the limited number of applicants in WA who may be affected and is aware of the transition occurring in this jurisdiction. The AAT has advised applicants and parties that, in the interim, they may wish to seek legal advice about whether there may be an avenue of appeal to a court, such as the Family Court of WA. Following the passage of this bill, affected applicants will have the opportunity to seek an extension of time for their matter to be considered on review by the AAT. This will be able to be considered by the tribunal once its jurisdiction in these matters is confirmed.

I trust that all members will agree that it is appropriate and desirable that the recent commonwealth amendments be adopted by Western Australia, as proposed in the bill.

Pursuant to standing order 126, I advise the house that this is not a uniform legislation bill as defined in standing order 126(2)(a), as it does not ratify or give effect to an intergovernmental agreement, or as defined in standing order 126(2)(b), as it is not a bill that introduces a uniform scheme or uniform laws throughout the commonwealth. Rather, it merely amends an existing scheme.

I commend the bill to the house and I table the explanatory memorandum.

[See paper 3556.]

Debate adjourned, pursuant to standing orders.