

CHILD SUPPORT (COMMONWEALTH POWERS) BILL 2018

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Leader of the House)**, read a first time.

Second Reading

HON SUE ELLERY (South Metropolitan — Leader of the House) [9.31 pm]: I move —

That the bill be now read a second time.

The bill will greatly benefit ex-nuptial children in this state. It will ensure that they receive immediately all the benefits of commonwealth legislative amendments to the child support scheme, like all other children in Western Australia and like children in other parts of Australia, rather than having to wait for the enactment of WA adoption legislation.

As members will be aware, the commonwealth child support scheme was introduced with the objective of ensuring that separated parents shared equitably in the financial cost of supporting their children. The scheme operates under two commonwealth statutes: the Child Support (Registration and Collection) Act 1988 and the Child Support (Assessment) Act 1989. In this context, the commonwealth Parliament has constitutional power to legislate with respect to children only if they are the product of a marriage. Legislative power with respect to unmarried parents and their children vests in state Parliaments. For the commonwealth child support acts and, therefore, the child support scheme to apply uniformly to married and unmarried couples and their children, state Parliaments must either, firstly, refer legislative power in respect of the maintenance of ex-nuptial children to the commonwealth Parliament or, secondly, afterwards adopt the commonwealth acts under which the scheme operates by state legislation.

All states except Western Australia have referred legislative power so that whenever one or both of the commonwealth statutes is amended, those amendments have immediate application to all children in those referring states. Instead of referring power to the commonwealth Parliament, this Parliament has previously adopted the commonwealth legislation that governs the child support scheme. As members will be aware, these commonwealth acts have been amended many times. Under section 51(xxxvii) of the commonwealth Constitution, amendments to the commonwealth child support legislation extend to Western Australia only when this Parliament afterwards adopts the amended commonwealth legislation. Therefore, the method of adoption of laws, rather than referral of legislative power, means that the child support scheme as amended by commonwealth acts does not apply to unmarried couples and their ex-nuptial children in Western Australia until this Parliament amends the Western Australian Child Support (Adoption of Laws) Act 1990 to adopt the commonwealth acts as amended. During the hiatus between amendment of the commonwealth acts and adoption by the Western Australian Parliament, often ex-nuptial children in Western Australia do not have the benefits of the commonwealth amendments. Until this Parliament adopts the commonwealth acts as amended, two versions of the commonwealth legislation operate in WA. This Parliament regularly has to pass bills adopting current versions of the commonwealth child support acts. Since 1990, this Parliament has passed eight such bills. As amendments at commonwealth level are becoming more frequent, the need for adopting bills in Western Australia is correspondingly greater. For example, there have been three such Western Australian bills in the past four years.

Under section 51(xxxvii) of the commonwealth Constitution, this Parliament can adopt amendments only after they have been enacted by the commonwealth Parliament and then, in practice, only when Western Australian parliamentary time is available. The result is that considerable time often elapses between the commencement of a particular amendment to the commonwealth child support acts and the adoption of the same amendment by this Parliament. As the commonwealth amendments take effect immediately for children of a marriage in Western Australia, these delays mean that, for a period, the commonwealth scheme does not apply equally to children of a marriage and exnuptial children in Western Australia. Authorities administering the child support scheme need, in effect, to operate two schemes in Western Australia: one for children of a marriage and one for exnuptial children. This inequality can disadvantage the latter, especially financially. It should also be noted that since the first adoption by the Western Australian Parliament in 1988 of the commonwealth legislation relating to the child support scheme, the WA Parliament has always adopted, albeit with some delay, all commonwealth amendments. Therefore, firstly, this bill will adopt all commonwealth child support laws that this Parliament has previously adopted and also commonwealth amendments that have been enacted between 1 September 2017 and when this bill receives assent. Secondly, the bill refers state legislative power to the commonwealth Parliament.

Members will also note that the adoption and referral can be terminated by the Governor issuing a proclamation that has been approved by both houses of this Parliament. I trust that all members will agree that this bill will greatly benefit children in this state.

Pursuant to standing order 126(1), I advise that this bill is a uniform legislation bill. It is a bill that, by reason of its subject matter, is part of a uniform scheme or uniform laws throughout the commonwealth.

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

[See paper 2306.]

Debate adjourned and bill referred to the Standing Committee on Uniform Legislation and Statutes Review, pursuant to standing orders.