CHILD SUPPORT (ADOPTION OF LAWS) AMENDMENT BILL 2012

EXPLANATORY MEMORANDUM

OUTLINE

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* (Clth) and the *Child Support (Assessment) Act 1989* (Clth).

Under the Commonwealth Constitution, the legislative power of the Commonwealth Parliament does not extend to ex-nuptial children. To ensure that this scheme operates in respect to ex-nuptial children as well as to children of a marriage, all other State Parliaments have 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 has adopted the Commonwealth child support legislation by the *Child Support (Adoption of Laws) Act 1990* (WA). That Act adopted the Commonwealth Acts in the form in which they existed on 19 December 1989.

Subsequently, the Commonwealth Acts have been amended many times. However for those statutes as amended to apply to ex-nuptial children in Western Australia, the Parliament of Western Australia must adopt again the Commonwealth Acts as they stand at a stated date subsequent to the commencement of the amendments to the relevant Commonwealth Acts.

The last occasion on which the WA Parliament amended the *Child Support (Adoption of Laws) Act 1990* (WA) to adopt amendments to the *Child Support (Registration and Collection) Act 1988* (Clth) and the *Child Support (Assessment) Act 1989* (Clth) was 3 March 2011. Since that date the Commonwealth Parliament has made further amendments to those Acts which, if they are to apply to ex nuptial children in WA, must be adopted by the WA Parliament.

The Commonwealth amendments it is proposed to adopt have been enacted but not all have commenced as yet.

Accordingly, the Child Support (Adoption of Laws) Amendment Bill 2012 (WA):

(i) proposes to adopt the Commonwealth legislation as it stands after the amendments which have already commenced operation;

(ii) proposes, with effect from 1 January 2013, to adopt the Commonwealth legislation as it will stand following the amendments which have already been enacted and which are to come into operation on 1 January 2013;
(iii) proposes, with effect from 1 July 2013, to adopt the Commonwealth legislation as it will stand following the amendments which have already been enacted and which are to come into operation on 1 July 2013; and

(iv) contains a legislative mechanism which will have the effect that the Commonwealth legislation will not be adopted as of 1 January 2013 or 1 July 2013 if, before those dates, the Commonwealth legislation has been affected by further amendments not included in the Child Support (Adoption of Laws) Amendment Bill 2012 (WA). This mechanism ensures that the Bill will not have the effect of adopting the Commonwealth legislation after it has been amended in ways which the WA Parliament does not foresee when considering the Bill.

NOTES ON CLAUSES

Part 1 – Preliminary

Clause 1: Short title

This clause provides that the Bill, once enacted, will be known as the *Child Support (Adoption of Laws) Amendment Act 2012*.

Clause 2: Commencement

This clause provides for the commencement of the Act.

Section 5 adopts the *Child Support (Registration and Collection) Act 1988* (Clth) as it stands on 1 July 2012. Section 6(1) adopts the *Child Support (Assessment) Act 1989* (Clth) as it stands on the same date. These provisions will have the effect of incorporating into the law of Western Australia amendments to those two Acts which have already come into operation.

Subject to clause 3(1), section 6(2) comes into operation on 1 January 2013. It adopts the *Child Support (Assessment) Act 1989* (Clth) as it stands on that date. This will incorporate into the law of Western Australia amendments to that Act which have already been enacted, and which are to come into operation on 1 January 2013.

Subject to clause 3(2), section 6(3) comes into operation on 1 July 2013, as it adopts the *Child Support (Assessment) Act 1989* (Clth) as it stands on that date. This will incorporate into the law of Western Australia amendments to those Acts which have already been enacted, and which are to come into operation on 1 July 2013.

Clause 3   Conditional deletions

The WA Parliament does not adopt the specific amendments to the Commonwealth legislation; 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).

(1) If between the first adoption date specified in the Bill, 1 July 2012, and the second adoption date specified in the Bill, 1 January 2013, the Commonwealth Parliament enacts further amendments to the *Child Support Assessment Act 1989* (Clth) then those further amendments might be included in the adoption although not included in the present Bill and thus not considered by the WA Parliament.

Clause 3 provides a mechanism to prevent that from occurring: if after July 2012, being the date used in the Bill for purposes of identifying the *Child Support Assessment Act 1989* (Clth) as amended, proposed to be adopted by the Bill, but on or before 1 January 2013, a further amendment is made to

the *Child Support (Assessment) Act 1989* (Clth) other than by the *Social Security and Other Legislation Amendment (Disability Support Pension Participation Reforms) Act 2012* (Clth) which amendment is included in the Child Support (adoption of Laws Amendment Bill 2012, then section 6(2) is deleted. If that occurs, then the *Child Support (Assessment) Act 1989* (Clth) will not be adopted in Western Australia on 1 January 2013 as it stands on that day.

(2) Similarly, if, after 1 July 2012 but on or before 1 July 2013, an amendment is made to the *Child Support (Assessment) Act 1989* (Clth) other than by the *Social Security and Other Legislation Amendment (Disability Support Pension Participation Reforms) Act 2012* (Clth), section 6(3) is deleted. If that occurs, then the *Child Support (Assessment) Act 1989* (Clth) will not be adopted in Western Australia on 1 July 2013 as it stands on that day.

Clause 4   Act amended

Clause 4 provides that this proposed Act amends the *Child Support (Adoption of Laws) Act 1990* (WA).

Clause 5   Section 3 amended

Clause 5 provides that section 3(a) is amended so that the date "1 October 2010" is deleted and replaced by 1 July 2012.

This amendment ensures that the adoption by Western Australia of the *Child Support (Registration and Collection) Act 1988* (Clth) extends to this Commonwealth Act as amended -

(a)   on 19 April 2011 by the *Statute Law Revision Act 2011* (Clth) which redefines "Immigration Department" and "Veteran's Affairs Department" so that when changes are made to the Administrative Arrangements Order, Commonwealth legislation does not need to be amended. The Administrative Arrangements Order is the mechanism by which responsibilities for various areas of government responsibility are assigned to departments and ministers. They are made by the Governor-General acting on the advice of the Prime Minister. As the names of departments and titles of ministers can change as a result of new Administrative Arrangements Orders, legislation that refers to such names and titles become incorrect when such changes occur necessitating legislative amendment. While the *Acts Interpretation Act 1901* (Clth) acts to transfer responsibility to the correct minister or department, the law becomes less clear. The amendments remove this difficulty by referring to ministers and departments with responsibility for the legislation; and

(b)   on 1 July 2011 by the *Human Services Legislation Amendment Act 2011* (Clth) which makes no substantive changes to the law but makes significant changes to the personnel referred to in the Commonwealth

legislation as a result of the amendments. For example, subsection 4(1) (definition of CEO) has been redefined as Chief Executive Centrelink; and

(c)   on 4 August 2011 by the *Child Support (Registration and Collection) Amendment Act 2011* (Clth) which provides for the Child Support Registrar to delegate functions outside the Commonwealth Department of Human Services. For example, the Registrar could delegate certain debt recovery functions to another authority of the Commonwealth or to an organisation that performs services for the Commonwealth. The amendment also provides for strengthening of criminal penalty provisions, making it clear that employers commit offences when they fail to comply with the relevant requirements; and

(d)   on 27 December 2011 by the *Acts Interpretation Amendment Act 2011* (Clth) which amends the child support legislation to bring it into line with amendments made to the principal Act, primarily changing references to "month" to "calendar month"; and

(e)   on 30 June 2012 by the *Social Security and Other Legislation (2012 Budget and Other measures) Act 2012* (Clth) Schedule 7 which will enable the Secretary of the Commonwealth Department of Human Services of which the Child Support Registrar is an employee, to utilise computer programmes for any purposes for which the Registrar makes decisions under the Commonwealth *Child Support (Registration and Collection) Act 1988* and *Child Support (Assessment) Act 1989* legislation.

Clause 6   Section 4 amended

Clause 6 provides that:

(1) section 4(b) is amended so that the date "1 October 2010" is deleted and replaced by 1 July 2012.

This amendment ensures that the adoption by Western Australia of the *Child Support (Assessment) Act 1988* (Clth) extends to that Act as amended –

(a)   on 19 April 2011 by the *Statute Law Revision Act 2011* (Clth) which redefines "Immigration Department" and "Veteran's Affairs Department" so that when changes are made to the Administrative Arrangements Order, legislation does not need to be amended; and

(b)   on 1 July 2011 by the *Families, Housing Community Services and Indigenous Affairs and Other Legislation Amendment (Further Election Commitments and Other Measures) Act 2011* (Clth) which amends the current default position of assessing income and as a result the child support to be paid by a parent who has not lodged his or her tax return. Child support is calculated by applying a formula which includes, amongst other things, the taxable incomes of the parents. If a parent has not lodged his or her tax return, the current default position is to deem the income as two-thirds of the Male Total Average Weekly Earnings. This amendment

replaces that default position to be the parent's previous taxable income indexed with reference to growth in wages; and

(c)   on 1 July 2011 by the *Human Services Legislation Amendment Act 2011* (Clth) which makes no substantive changes to the law but makes significant changes to the personnel referred to in the legislation as a result of the amendments; and

(d)   on 27 December 2011 by the *Acts Interpretation Amendment Act 2011* (Clth) which amends the child support legislation to bring it into line with amendments made to the principal Act, primarily changing references to "month" to "calendar month"; and

(e)   on 26 May 2012 by the *Social Security and Other Legislation (Disability Support Pension Participation Reforms) Act 2012* (Clth) Schedule 4 Part 1 Division 1 which changes references in Commonwealth legislation to average weekly earnings; and

(f)   on 30 June 2012 by the *Social Security and Other Legislation (2012 Budget and other Measures) Act 2012* (Clth) Schedule 7 which will enable the Secretary of the Commonwealth Department of which the Child Support Registrar is an employee, to utilise computer programmes for any purposes for which the Registrar make decisions under the Commonwealth legislation; and

(g)   on 1 July 2012 by the *Social Security and Other Legislation (2012 Budget and other Measures)) Act 2012* (Clth) Schedule 5 which seeks to enable a reasonable balance to be obtained between complying with previously agreed or ordered child care arrangements and ensuring that there are adequate resources in households to support children.

(2)   This sub clause provides that section 4(b) is amended so that the date "1 July 2012" is deleted and replaced by "1 January 2013".

This amendment ensures that the adoption by Western Australia of the *Child Support (Assessment) Act 1989* (Clth) will, from 1 January 2013, extend to that Act as amended on that date by the *Social Security and Other Legislation (Disability Support Pension Participation Reforms) Act 2012* (Clth) Schedule 4 Part 1 Division 2. That amendment to the *Child Support (Assessment) Act 1989* (Clth) has been enacted but will not commence until that date.

(3)   This sub clause provides that section 4(b) is amended so that the date "1 January 2013" is deleted and replaced by "1 July 2013".

This amendment ensures that the adoption by Western Australia of the *Child Support (Assessment) Act 1989* (Clth) will, from 1 July 2013, extend to that Act as amended on that date by the *Social Security and Other Legislation (Disability Support Pension Participation Reforms) Act 2012* (Clth) Schedule 4 Part 1 Division 3. That amendment to the *Child Support (Assessment) Act 1989* (Clth) has been enacted but will not commence until that date.