

COMMONWEALTH POWERS (FAMILY LAW—CHILDREN) AMENDMENT BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

OBJECTIVES OF THE LEGISLATION

The objective of this legislation is to amend the *Commonwealth Powers (Family Law - Children) Act 1990* to refer to the Commonwealth certain powers relating to children subject to child welfare orders under Queensland legislation and ex-nuptial children.

REASONS FOR THE OBJECTIVES AND HOW THEY WILL BE ACHIEVED

The purpose of this Bill is to make a further reference of power to the Commonwealth for family law purposes. The reference builds on that made by the Parliament in the *Commonwealth Powers (Family Law – Children) Act 1990*.

The referral of powers is necessary as the Family Court of Australia has no jurisdiction to make parenting orders in relation to a child who is under the care of a person under the *Child Protection Act 1999*, unless the order is expressed to come into effect when the child ceases to be subject to that care.

This limitation on the jurisdiction of the Family Court limits the range of options that can be considered when the Department of Families is conducting an assessment of a child's protective and other needs.

Similarly, the Commonwealth has no jurisdiction in relation to the maintenance of children who are the subject of an order under the *Child Protection Act 1999*. The Family Court cannot make maintenance orders and the child support agency is unable to collect child support for such children.

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The further reference will confer jurisdiction on the Commonwealth to make laws with respect to:

- custody, guardianship and access matters in respect of children who are subject to a child welfare law where the relevant state minister or authorised person consents;
- maintenance for children who are subject to a child welfare law; and
- declarations of parentage for Commonwealth purposes.

Similar legislation referring these powers has been enacted by New South Wales, Tasmania and Victoria.

The amendments represent an important reform of the law in relation to children subject to State child welfare orders.

ADMINISTRATIVE COST TO GOVERNMENT OF IMPLEMENTATION

The implementation of this Bill will not impose additional costs on the Queensland Government.

FUNDAMENTAL LEGISLATIVE PRINCIPLES

The Bill is consistent with the fundamental legislative principles set out in the *Legislative Standards Act 1992*.

CONSULTATION

The Bill followed consideration of jurisdictional arrangements in family law and child protection by the Standing Committee of Attorneys-General.

The Bill has been developed from model drafting instructions produced by the Parliamentary Counsel's Committee in consultation with officers from the Family Law Division of the Commonwealth Attorney-General's Department.

The Commission for Children and Young People and Legal Aid Queensland both regard the Bill as a positive step for children who are subject to child welfare orders.

NOTES ON PROVISIONS

Clause 1 is the short title of the Bill.

Clause 2 provides that the Act amends the *Commonwealth Powers (Family Law – Children) Act 1990*.

Clause 3 inserts a new section 3(1)(c) to add the determination of a child's parentage for the purposes of the law of the Commonwealth to the matters referred under the Act to the Parliament of the Commonwealth.

Clause 3 also inserts a new section 3(3) to enable the taking of an action of a kind specified in subsection 2(a) and 2(b) with the consent of the Minister or a person authorised in writing by the Minister.

Clause 4 replaces the Schedule to the Act.