

FIRST PRINT

**COMMONWEALTH POWERS
(FAMILY LAW—CHILDREN) BILL 1986**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to refer to the Parliament of the Commonwealth power to legislate for certain matters relating to children, namely:

- (a) maintenance and payment of certain expenses; and
- (b) custody, guardianship and access.

The reference is made under section 51 (37) of the Commonwealth Constitution, and will principally operate in relation to ex-nuptial children.

The Bill provides for the termination of the reference by proclamation, and provides that certain matters are excluded from the reference (including adoption of children and action that would interfere with certain functions under the Child Welfare Act 1939 or the Community Welfare Act 1982).

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

Clause 3 (1) refers to the Parliament of the Commonwealth the matters mentioned in paragraphs (a) and (b) above.

Clause 3 (2) provides that the reference does not extend to certain specified matters.

Clause 3 (3) defines "children" as being persons under the age of 18 years, and has the effect of extending the reference to cover certain persons over that age who are undergoing courses of education or who are physically or mentally handicapped. The subclause also provides that the Acts mentioned in Schedule 1 include future amendments and substituted Acts.

Clause 4 empowers the Governor-in-Council to fix a day on which the reference will terminate.

Schedule 1 specifies the Acts (i.e., the Child Welfare Act 1939 and the Community Welfare Act 1982) which, so far as they confer powers relating to the custody, guardianship, care or control of children, are not to be affected by the reference.

COMMONWEALTH POWERS (FAMILY LAW—CHILDREN) BILL 1986

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4. Termination of reference

SCHEDULE 1—ACTS

**COMMONWEALTH POWERS
(FAMILY LAW—CHILDREN) BILL 1986**

NEW SOUTH WALES



No. , 1986

A BILL FOR

An Act to refer to the Parliament of the Commonwealth certain matters relating to family law.

Commonwealth Powers (Family Law—Children) 1986

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

5 Short title

1. This Act may be cited as the "Commonwealth Powers (Family Law—Children) Act 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this
10 Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Reference of certain matters relating to children

15 3. (1) The following matters, to the extent to which they are not otherwise included in the legislative powers of the Parliament of the Commonwealth, are referred to the Parliament of the Commonwealth for a period commencing on the day on which this Act commences and ending on the day fixed, pursuant to section 4, as the day on which the reference
20 under this section shall terminate, but no longer, namely:

(a) the maintenance of children and the payment of expenses in relation to children or child bearing;

(b) the custody and guardianship of, and access to, children.

25 (2) The matters referred by subsection (1) do not include the matter of the adoption of children or the matter of the taking, or the making of provision for or in relation to authorising the taking, of action that would prevent or interfere with—

30 (a) a Minister of the Crown, an officer of the State, an officer of an adoption agency approved under a law of the State, or any other person or body, having or acquiring the custody, guardianship, care or control of children under a provision of an Act specified in Schedule 1;

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- (b) the maintenance of, or the payment of expenses in relation to, children who are in such custody, guardianship, care or control;
- (c) the jurisdiction of the Supreme Court to make orders in respect of children who are in such custody, guardianship, care or control; or
- 5 (d) the jurisdiction of a court of the State, under a provision of an Act specified in Schedule 1, to make orders, or take any other action, in respect of—
 - (i) the custody, guardianship, care or control of children; or
 - (ii) access to children or the supervision of children.
- 10 (3) In the preceding provisions of this section—
 - (a) the references to children shall be read as references to persons under the age of 18 years;
 - (b) the references to the maintenance of, and the payment of expenses in relation to, children shall be read as including references to the maintenance of, and the payment of expenses in relation to, persons
15 who have attained that age and have special needs in respect of maintenance or expenses by reason of being engaged in a course of education or training or by reason of a physical or mental handicap; and
 - 20 (c) the references to an Act specified in Schedule 1 shall be read as references to that Act as amended and in force from time to time, and as including a reference to any Act or Acts replacing that Act and as amended and in force from time to time.

Termination of reference

- 25 4. The Governor may, at any time, by proclamation published in the Gazette, fix a day as the day on which the reference under this Act shall terminate.
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Commonwealth Powers (Family Law—Children) 1986

SCHEDULE 1

(Sec. 3)

ACTS

- Child Welfare Act 1939
- 5 Community Welfare Act 1982

**COMMONWEALTH POWERS
(FAMILY LAW—CHILDREN) ACT 1986 No. 182**

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1. Short title
2. Commencement
3. Reference of certain matters relating to children
4. Termination of reference

SCHEDULE 1—ACTS



**COMMONWEALTH POWERS
(FAMILY LAW—CHILDREN) ACT 1986 No. 182**

NEW SOUTH WALES



Act No. 182, 1986

An Act to refer to the Parliament of the Commonwealth certain matters relating to family law. [Assented to 18 December 1986]

Commonwealth Powers (Family Law—Children) 1986

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Commonwealth Powers (Family Law—Children) Act 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Reference of certain matters relating to children

3. (1) The following matters, to the extent to which they are not otherwise included in the legislative powers of the Parliament of the Commonwealth, are referred to the Parliament of the Commonwealth for a period commencing on the day on which this Act commences and ending on the day fixed, pursuant to section 4, as the day on which the reference under this section shall terminate, but no longer, namely:

- (a) the maintenance of children and the payment of expenses in relation to children or child bearing;
- (b) the custody and guardianship of, and access to, children.

(2) The matters referred by subsection (1) do not include the matter of the adoption of children or the matter of the taking, or the making of provision for or in relation to authorising the taking, of action that would prevent or interfere with—

- (a) a Minister of the Crown, an officer of the State, an officer of an adoption agency approved under a law of the State, or any other person or body, having or acquiring the custody, guardianship, care or control of children under a provision of an Act specified in Schedule 1;

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- (b) the maintenance of, or the payment of expenses in relation to, children who are in such custody, guardianship, care or control;
- (c) the jurisdiction of the Supreme Court to make orders in respect of children who are in such custody, guardianship, care or control; or
- (d) the jurisdiction of a court of the State, under a provision of an Act specified in Schedule 1, to make orders, or take any other action, in respect of—
 - (i) the custody, guardianship, care or control of children; or
 - (ii) access to children or the supervision of children.

(3) In the preceding provisions of this section—

- (a) the references to children shall be read as references to persons under the age of 18 years;
- (b) the references to the maintenance of, and the payment of expenses in relation to, children shall be read as including references to the maintenance of, and the payment of expenses in relation to, persons who have attained that age and have special needs in respect of maintenance or expenses by reason of being engaged in a course of education or training or by reason of a physical or mental handicap; and
- (c) the references to an Act specified in Schedule 1 shall be read as references to that Act as amended and in force from time to time, and as including a reference to any Act or Acts replacing that Act and as amended and in force from time to time.

Termination of reference

4. The Governor may, at any time, by proclamation published in the Gazette, fix a day as the day on which the reference under this Act shall terminate.

Commonwealth Powers (Family Law—Children) 1986

SCHEDULE 1

(Sec. 3)

ACTS

Child Welfare Act 1939
Community Welfare Act 1982



