



Speech by

Hon. R. WELFORD

MEMBER FOR EVERTON

Hansard 3 April 2001

STATUS OF CHILDREN AMENDMENT BILL

Hon. R. J. WELFORD (Everton—ALP) (Attorney-General and Minister for Justice) (1.01 p.m.): I move—

That the bill be now read a second time.

For a long time, courts have wrestled with the problem of determining the parentage of children. This bill aims to assist courts in that task. It has three purposes. First, it provides a more rational set of presumptions of parentage than currently exist in the Status of Children Act 1978. Second, it contributes to national uniformity as agreed to by the Standing Committee of Attorneys-General in October 1992. Finally, it repeals section 30 of the Maintenance Act 1965.

I seek leave to incorporate the remainder of my speech in Hansard.

Leave granted.

The question at issue is usually one of establishing paternity—which male is the biological father of a particular child.

Presumptions are rules of evidence for the courts.

They facilitate proof by allowing certain facts to be inferred when other secondary facts are established.

All the presumptions (except for presumptions based on the findings of a court that are made while the parent is alive) are not conclusive—they can be rebutted by other more direct evidence.

A presumption arising from a court finding made when a person is alive, that is not altered, set aside or reversed, is irrebuttable.

This is because all the parties are alive at the time the finding was either made, altered, set aside or reversed and are able to contest the finding.

With the advent of blood and genetic testing, much of the uncertainty in proving paternity has been removed.

However, there remain cases where such testing is unavailable—for example, if the putative father or child is dead or where one of the parties will not consent to the testing.

In those cases, the presumptions remain important.

When the Scrutiny of Legislation Committee reported on this bill in Alert Digest issue No. 10 of 2000, they concluded that the presumptions were not unreasonable.

Parentage presumptions need to be uniform to avoid forum shopping and to minimise the possibility of different courts making different findings of parentage.

With the Family Court becoming the predominant court in this area, it is especially desirable that the presumptions in states and territories match those used by the Family Court.

This bill is based on a model bill endorsed by the Standing Committee of Attorneys-General.

All jurisdictions have enacted this legislation except for South Australia where it is under consideration.

The Scrutiny of Legislation Committee also noted that elements of national scheme legislation have been identified by scrutiny committees nationally as undermining the institution of parliament.

The committee referred to parliament the question of whether the bill has sufficient regard to the institution of parliament.

In a letter dated 21 August 2000, the then Attorney-General and Minister for Justice replied—

'... sometimes it is necessary to pass uniform or national scheme legislation to ensure a national coverage of certain legal policy.

The Status of Children Amendment Bill, which is based on model legislation, delivers an important public policy benefit in terms of consistency in determining the parentage of children.

It is likely that injustice could result for a particular child if the Family Court applied a different set of parentage presumptions for custody and access issues, to those applied by the state court when the parent died without a will.'

Whilst most family matters are now the province of the Family Court, Queensland courts may have to consider issues of parentage in a variety of circumstances, including—

- intestacy distributions
- family provision applications
- succession to property and
- the construction of wills.

Presumptions of parentage currently arise from—

- marriage
- registrations of birth
- findings of courts
- acknowledgments from the parent.

These presumptions are being modified slightly.

In addition, there is a new presumption arising from de facto cohabitation.

The de facto rule presumes that a man, who cohabited with the mother of the child between 44 and 20 weeks prior to the birth, is the father of the child.

It is desirable to have such a presumption as many children are born of de facto relationships.

The growth in the number of couples living together in de facto relationships has been one of the significant changes in the structure of Australian family life.

There is also a modification to the presumption arising from registration of the birth.

It will now apply, not only to births registered in Queensland, but in any Australian state or prescribed overseas jurisdictions as defined by the Family Law Act 1975.

These changes recognise the increasing mobility of Australian society and the multicultural nature of the Australian population.

Since the 1987 amendments to the Family Law Act 1975, provisions related to medical testing for parentage are no longer uniform.

Clause 18 of the bill makes procedural changes to permit redrafting the Status of Children Regulations 1989 to add uniform parentage testing procedures.

The current requirement, that a medical test can not be performed without consent, will remain.

This bill also repeals section 30 of the Maintenance Act.

It provides that a maintenance order for a child cannot be made 'if the court is satisfied that, at about the time the child was conceived, the mother (or as the case may be, woman) was a common prostitute or had intercourse with men other than the defendant.'

This is an odious and archaic evidentiary provision that discriminates against women and their children.

It has also little practical application since the referral of power to the Commonwealth in June 1990 over maintenance of ex-nuptial children—now under the Commonwealth Family Law Act 1975 and Child Support (Assessment) Act 1989.

The Bill is an important initiative in achieving uniformity across all states and territories in the recognition of the rights of children that derive from their parentage.

I commend the bill to the House.
