

Illegitimacy

Terms of Reference

In 1976 the Commission was given a reference to consider and report on the rights of putative fathers in relation to their illegitimate children, including but not confined to the following matters:

- (a) whether they should receive notice of adoption proceedings;
- (b) their rights in relation to adoption;
- (c) their rights to custody and access;
- (d) potential conflicts in the law which should be remedied;
- (e) what recommendations may be made to overcome situations of personal conflict, considering that the interests of the child are paramount; and
- (f) generally.

The project was initially titled *Rights of Fathers of Illegitimate Children*.

Background of Reference

In 1977, following preliminary research, the Commission considered the law relating to proof of paternity and decided that the topic would also cover the father's rights in situations:

- (a) where he seeks custody or access in respect of the child, including his rights in the case where the child's custodian has died;
- (b) where he seeks to have some control of the child's upbringing but without claiming custody;
- (c) where the child is to be adopted; and
- (d) where he seeks a share in his deceased child's estate.

In 1978 the project was renamed *Illegitimacy* and the terms of reference were expanded when the Attorney-General requested that they include 'whether the law should be amended so as to remove all or any of the remaining disabilities of illegitimacy'.

The terms of reference were further amended in 1980 when the Attorney-General requested that the Commission also address 'problems concerning children conceived by artificial insemination procedures, including the position of semen donors and the parents of such children'. Consequently, the Commission divided the project into two parts. Part A dealt with the rights of fathers of illegitimate children and was given priority at the request of the Attorney-General. Part B dealt with other difficulties relating to illegitimate children including problems arising from artificial insemination procedures.

Research progressed towards the preparation of a working paper. However, as it became apparent that many of the matters raised would fall within Commonwealth legislative jurisdiction,¹ the paper was never completed. In 1982, the Commission deferred work on the project awaiting resolution of the jurisdictional question.

Reference Withdrawn

The Attorney-General withdrew the reference in 1986 with the issue of legislative jurisdiction unresolved. However, in the interim, many of the problems that had prompted the reference were addressed by amendments to the *Adoption of Children Act 1986 (WA)* and related legislation.²

¹ If there was a referral of power from certain states to the Commonwealth, pursuant to section 51(xxxvii) of the *Commonwealth of Australia Constitution Act 1900*.

² The *Adoption Act 1994 (WA)* repealed the *Adoption of Children Act 1896 (WA)*.