

Affiliation Proceedings

Terms of Reference

In 1969 the Committee was given a reference to consider and report on whether, in affiliation cases in which it appears from the evidence that there are two or more putative fathers, it is desirable that the law should provide for:

- (a) contribution of maintenance by such persons; or
- (b) additional or alternative relief for the mother.

Background of Reference

The reference arose from a perception by legal practitioners that maintenance applications by the mother of a child (where the child was born to unmarried parents) were frequently defeated on the evidence of witnesses for the respondent who testified that they were possible fathers. The Law Society suggested that all witnesses to affiliation proceedings testifying on the part of the respondent be made liable to contribute to the maintenance of the child as possible fathers unless they could be ruled out by scientific or other evidence. The matter was subsequently referred to the Committee for consideration.

Nature and Extent of Consultation

Because of the nature of the issue the Committee declined to issue a working paper. Instead it engaged in lengthy consultation with experts¹ and researched the law in other jurisdictions. The Committee produced its report on the subject in March 1970.²

Recommendations

The Committee recommended certain amendments to the *Married Persons and Children (Summary Relief Act) 1965–1967 (WA)*. These amendments included allowing the court to draw adverse inferences from a respondent's refusal to provide a blood sample for testing in affiliation proceedings. In respect of witnesses who testify that they are, or may be the father, the Committee recommended that a court may take any refusal to submit to a blood test into account when assessing the witness' evidence.

Legislative or Other Action Undertaken

The *Married Persons and Children (Summary Relief Act), 1965–1967* was repealed in 1979. However, the Committee's recommendations were implemented in 1988 by amendment to the *Family Court Act 1975 (WA)* which provides that when the parentage of a child is in issue in proceedings under the Act, the court may order a "parentage testing procedure" to determine the parentage of the child.³

¹ Several local experts were consulted upon the psychological effects upon a child of a maintenance order against more than one putative father. Those consulted included Professor VB Macdonald, Professor CB Kidd and Dr W Tauss, all of the University of Western Australia.

² Law Reform Committee of Western Australia, *Affiliation Proceedings*, Project No 13 (1970).

³ *Family Court Act 1975 (WA)* s 82E.