



Child Support Legislation Amendment Act 1998

No. 120, 1998



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**An Act to amend the law relating to child support,
and for related purposes**

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Child Support Legislation Amendment Act 1998

No. 120, 1998

An Act to amend the law relating to child support, and for related purposes

[Assented to 15 December 1998]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Child Support Legislation Amendment Act 1998*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Subject to subsection (10), the amendments of the *Child Support (Registration and Collection) Act 1988* made by this Act (other

Section 2

than by Part 2 of Schedule 12 or by Schedule 22) commence on a day or days to be fixed by Proclamation.

- (3) Part 2 of Schedule 12 commences on 1 July 1999.
- (4) Subject to subsection (10), the amendments of the *Social Security Act 1991* made by this Act (other than Schedule 7) commence on a day or days to be fixed by Proclamation.
- (5) Schedules 14 and 18 commence immediately after the commencement of Schedule 1.
- (6) Schedule 13 commences immediately after the commencement of Schedule 14.
- (7) Schedule 15 commences immediately after the commencement of Schedule 13.
- (8) Schedule 16 commences immediately after the commencement of Schedule 15.
- (9) Subject to subsection (10), the amendments made by Schedule 7 commence on a day or days to be fixed by Proclamation.
- (10) If an amendment referred to in subsection (2), (4) or (9) does not commence within the period of 12 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.
- (11) Schedule 23 (except Part 2) commences immediately after the commencement of Schedule 16.
- (12) Part 2 of Schedule 23 commences on the day after the day on which the *A New Tax System (Fringe Benefits Reporting) Act 1999* receives the Royal Assent. However, if this Act receives the Royal Assent after the day on which that Act receives the Royal Assent, that Part commences on the day after the day on which this Act receives the Royal Assent.
- (13) Schedule 24 (except Part 2) commences immediately after the commencement of Part 1 of Schedule 23.
- (14) Part 2 of Schedule 24 commences when Part 2 of Schedule 23 commences.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Application

- (1) Subject to sections 5 and 6, the amendments of the *Child Support (Assessment) Act 1989* made by Schedules 1, 3, 5, 8, 9, 13, 14 and 18 do not apply in relation to the 1998-99 child support year or any earlier child support year.

Note: The effect of this subsection can be modified by regulations made under sections 5 and 6. If such regulations are made, they can apply the amendments to a part of the 1998-99 child support year.

- (2) The amendments made by Schedules 6 and 19 do not apply to applications for administrative assessment made before the prescribed day.
- (3) The amendments of the *Child Support (Assessment) Act 1989* made by Schedules 15 and 16 do not apply in relation to the 1998-99 child support year or any earlier child support year.
- (4) The amendments of the *Social Security Act 1991* made by Schedule 20 do not apply to family allowance payments made before the commencement of Schedule 20.
- (5) The amendments of the *Child Support (Assessment) Act 1989* made by Schedule 23 do not apply in relation to an assessment for a child support year, or a child support period, starting before 1 July 2000.
- (6) The amendments of the *Child Support (Assessment) Act 1989* made by Schedule 24 do not apply in relation to an assessment for a child support year, or a child support period, starting before 1 July 2000.

5 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) Without limiting subsection (1), the regulations may do any of the following:
 - (a) prescribe a day for the purposes of subsection 4(2);
 - (b) prescribe a day on or after 1 July 1998 and before 1 July 1999 as the 1998-99 commencing day;
 - (c) provide for any transitional matters arising out of the amendment of the *Child Support (Assessment) Act 1989*, the *Child Support (Registration and Collection) Act 1988* and the *Social Security Act 1991* by this Act.
- (3) Without limiting paragraph (2)(c), the regulations may, in relation to the 1998-99 child support year or a specified part of that year:
 - (a) modify the operation of section 6; or
 - (b) modify the operation of any of the provisions of an Act referred to in paragraph (2)(c), as in force before or after the commencement of this section.

6 Transitional rules if 1998-99 commencing day is prescribed

- (1) If a day is prescribed as the 1998-99 commencing day, the following subsections apply.
- (2) The amendments of the *Child Support (Assessment) Act 1989* made by Schedules 1, 3, 5, 8, 9, 13, 14 and 18 do not apply in relation to the part of the 1998-99 child support year that occurs before the 1998-99 commencing day.
- (3) After the commencement of the amendments of the *Child Support (Assessment) Act 1989* made by Schedules 1, 3, 5, 8, 9, 13, 14 and 18, the Registrar must, under that Act as so amended, assess the annual rate of the child support payable under each assessment in force under that Act in relation to the days in the 1998-99 child support year.
- (4) An annual rate assessed under subsection (3) is to apply on and from the 1998-99 commencing day.
- (5) The amendments of the *Child Support (Assessment) Act 1989* made by Schedule 8 do not apply in relation to a child who turns 18 before the 1998-99 commencing day.

Schedule 1—Child support adjusted formula income amounts

Child Support (Assessment) Act 1989

1 Section 5

Insert:

EAWWE amount, in relation to a child support year, means the estimate of the all employees average weekly total earnings for persons in Australia for the latest period for which such an estimate was published by the Australian Statistician before 1 January immediately before the child support year.

2 Paragraph 39(1)(a)

Omit “the annual amount”, substitute “110% of the annual amount”.

3 Subparagraph 39(1)(b)(i)

Omit “twice”, substitute “220% of”.

4 Subsection 44(1)

After “reduced by”, insert “50% of”.

5 Section 46

Repeal the section, substitute:

46 Carer’s disregarded income amount

The entitled carer’s disregarded income amount is the yearly equivalent of the EAWWE amount for the child support year.

6 Paragraph 48(d)

Repeal the paragraph, substitute:

- (d) if the relevant parents are both liable parents of a shared care child or children, the exempted income amount of each parent is to include an additional amount, worked out under subsection 39(2), for the child, or for each of the children; and

7 At the end of section 48

Add:

- (2) In working out an additional amount under subsection 39(2) for the purposes of paragraph (1)(d) of this section, the reference to a relevant dependent child of the liable parent is to be read as a reference to a shared care child of a relevant parent.

8 Subsection 54(2)

Repeal the examples, substitute:

Example 1: Application of basic formula where liable parent has a liability to 2 carers and has no care of the children	
<i>Facts:</i>	Peter is liable to 2 carers—Mary and Jane. He is liable to Mary for 3 children and Jane for 2 children. Mary's 3 children will be 10, 14 and 17 at the end of the child support year. Peter's 1996/97 taxable income for the calculation of the liability is \$32,000. Mary's and Jane's respective incomes are too low to affect the assessment.
<i>Step 1:</i>	<i>Calculate the child support percentage for each carer. (Paragraph 54(1)(b))</i> The total number of children is 5. The table at section 37 shows the child support percentage for 5 children is 36%. Mary has 3 children. Therefore the child support percentage for Mary is: $\frac{\text{No. of children in Mary's care}}{\text{Total no. of children}} \times 36\% \quad : \quad \frac{3}{5} \times 36\% = 21.60\%$ Jane has 2 children. Therefore the child support percentage for Jane is: $\frac{\text{No. of children in Jane's care}}{\text{Total no. of children}} \times 36\% \quad : \quad \frac{2}{5} \times 36\% = 14.40\%$

Step 2: Do separate assessments for each carer, using the 2 child support percentages calculated in Step 1. (Part 5, Division 1)

For Peter to pay Mary:

Peter's taxable income for 1 July 1996 to 30 June 1997	=	\$32,000
Adjust by inflation factor of 4%	+	\$1,280
Peter's child support income amount	=	\$33,280
Less exempted income amount	-	\$9,947
Peter's adjusted income amount	=	\$23,333
Multiply by child support percentage	×	21.6%
Peter's 1998/99 child support annual rate	=	\$5,040

For Peter to pay Jane:

Peter's taxable income for 1 July 1996 to 30 June 1997	=	\$32,000
Adjust by inflation factor of 4%	+	\$1,280
Peter's child support income amount	=	\$33,280
Less exempted income amount	-	\$9,947
Peter's adjusted income amount	=	\$23,333
Multiply by child support percentage	×	14.4%
Peter's 1998/99 child support annual rate	=	\$3,360

Example 2: Application of basic formula where liable parent has a liability to 2 carers and shares daily care of one of the children

Facts: Peter is liable to 2 carers—Mary and Jane. He is liable to Mary for 3 children. Mary’s 3 children will be 10, 14 and 17 at the end of the child support year. Peter shares daily care of the 10 year old child and Mary has sole daily care of the other 2 children. Peter is liable to Jane for 2 children. Jane has sole daily care of both children.

Peter’s 1996/97 taxable income for the calculation of the liability is \$32,000. Mary’s 1996/97 taxable income is \$28,000 and Jane’s income is too low to affect the assessment.

Step 1: Calculate the child support percentage for each carer. (Paragraph 54(1)(b))

The total number of children is 4.5 (2 + 0.5 for Mary + 2 for Jane). The table at paragraph 54(1)(c) is used when the liable parent and at least one of the carers have shared or divided children between them, or when substantial contact is involved. The table shows the child support percentage for a total of 4.5 children is 35%.

Mary has 2.5 children. Therefore the child support percentage for Mary is:

$$\frac{\text{No. of children in Mary's care}}{\text{Total no. of children}} \times 35\% \quad : \quad \frac{2.5}{4.5} \times 35\% = 19.45\%$$

Jane has 2 children. Therefore the child support percentage for Jane is:

$$\frac{\text{No. of children in Jane's care}}{\text{Total no. of children}} \times 35\% \quad : \quad \frac{2}{4.5} \times 35\% = 15.55\%$$

Step 2: Do an assessment for Peter to pay Jane using the child support percentage calculated in Step 1. (Part 5, Division 1)

For Peter to pay Jane:

Peter’s taxable income for 1 July 1996 to 30 June 1997	=	\$32,000
Adjust by inflation factor of 4%	+	\$1,280
Peter’s child support income amount	=	\$33,280
Less exempted income amount	–	\$11,842
Peter’s adjusted income amount	=	\$21,438
Multiply by child support percentage	×	15.55%
Peter’s 1998/99 child support annual rate	=	\$3,334

<i>Step 3: Do assessments for Peter and Mary as if they were liable to each other (using the Division 1 basic formula with modification). (Section 48)</i>		
<i>For Peter to pay Mary:</i>		
Peter's taxable income for 1 July 1996 to 30 June 1997	=	\$32,000
Adjust by inflation factor of 4%	+	\$1,280
Peter's child support income amount	=	\$33,280
Less exempted income amount	-	\$11,842
Peter's adjusted income amount	=	\$21,438
Multiply by child support percentage	×	19.45%
Peter's 1998/99 child support annual rate	=	\$4,170
<i>For Mary to pay Peter:</i>		
Mary's taxable income for 1 July 1996 to 30 June 1997	=	\$28,000
Adjust by inflation factor of 4%	+	\$1,120
Mary's child support income amount	=	\$29,120
Less exempted income amount	-	\$24,909
Mary's adjusted income amount	=	\$4,211
Multiply by child support percentage	×	12%
Mary's 1998/99 child support annual rate	=	\$505
Peter owes Mary \$4170. Mary owes Peter \$505. Therefore Peter pays Mary \$3,665 (\$4,170 – \$505).		

Note: The table at section 48 provides that 0.5 children attracts a child support percentage of 12%.

9 At the end of subsection 98C(2)

Add:

; and (c) sub-subparagraph 117(2)(b)(i)(C) has effect subject to subsections 117(3A) and (3B).

10 At the end of subparagraph 117(2)(b)(i)

Add:

(C) high child care costs in relation to the child; or

11 After subsection 117(3)

Insert:

(3A) The ground for departure mentioned in sub-subparagraph 117(2)(b)(i)(C) is taken not to exist unless:

- (a) the costs are incurred by the carer entitled to child support; and
- (b) the child is younger than 12 at the start of the child support year; and
- (c) the liable parent is not an eligible carer of any eligible child of whom both the liable parent and the entitled carer are the parents.

(3B) For the purposes of sub-subparagraph 117(2)(b)(i)(C), child care costs in a child support year are not taken to be high unless the total of the costs during the child support year is more than 5% of the carer's child support income amount for the year.

12 Section 154

After "weekly total earnings", insert ", or of the all employees average weekly total earnings,".

Note: The heading to section 154 is altered by inserting "**or EAW**E" after "**A**WE".

13 Paragraph 155(a)

After "AWE amount", insert ", and of the EAW

Schedule 2—Information disclosure on assessment notice

Child Support (Assessment) Act 1989

1 Paragraph 76(2)(d)

Repeal the paragraph, substitute:

- (d) the number of relevant dependent children of the liable parent in each of the age groups specified in subsection (2A);

2 Paragraph 76(2)(f)

Omit “and the names and dates of birth of any relevant dependent children of that parent”, substitute “and the number of relevant dependent children of that parent in each of the age groups specified in subsection (2A)”.

3 Subparagraph 76(2)(g)(iii)

Repeal the subparagraph, substitute:

- (iii) the number of relevant dependent children of the other parent in each of the age groups specified in subsection (2A);

4 After subsection 76(2)

Insert:

- (2A) For the purposes of subsection (2), the age groups are the following:
 - (a) younger than 13;
 - (b) 13 or older, but younger than 16;
 - (c) 16 or older, but younger than 18.

Schedule 3—Minimum liability (\$260)

Child Support (Assessment) Act 1989

1 Subdivision B of Division 2 of Part 5

Repeal the Subdivision.

2 Paragraph 48(a) and section 51

Omit “they are applicable, Subdivisions B and C of this Division (which deal respectively with Liable parents with low child support income and”, substitute “it is applicable, Subdivision C of this Division (which deals with”.

3 Section 59 (sub-subparagraph (b)(i)(C) of the definition of *income amount order*)

Omit “41,”.

4 Section 66

Repeal the section, substitute:

66 Minimum rate of child support

- (1) Subject to section 66B, if, in relation to a day in a child support year, the total annual rate of child support payable for a child or children by a liable parent to one or more carers entitled to child support would, apart from this section, be assessed as an amount per annum less than \$260, the total annual rate of child support in relation to the day is to be assessed as \$260.
- (2) In working out for the purposes of subsection (1) whether or not the total annual rate of child support in relation to a day in a child support year is less than \$260, account must not be taken of an annual rate of child support:
 - (a) payable by a person in his or her capacity as a parent of the kind referred to in subsection 66B(1); or
 - (b) arising out of an order made under Division 4 of Part 7 (Orders for departure from administrative assessment in special circumstances); or

- (c) arising out of provisions of a child support agreement that have effect, for the purposes of this Part, as if they were such an order made by consent.
- (3) If:
- (a) child support is payable by a liable parent to 2 or more carers entitled to child support; and
 - (b) an assessment is to be made under subsection (1) in relation to any one or more of those carers;
- the annual rate, or each annual rate, is to be assessed by apportioning a notional total annual rate of \$260 per annum between the carers, in accordance with the regulations, and taking into account the total number of children of the liable parent who are in the care of each of the carers mentioned in paragraph (a).

66A Registrar may reduce an assessment to nil in certain cases

- (1) If the Registrar has made an assessment under section 66, the Registrar may, on application made by the liable parent in accordance with the regulations, reduce the annual rate of child support payable by the parent in relation to a day in the child support year to nil.
- (2) The Registrar must not grant an application under subsection (1) unless satisfied that the applicant's income for the child support year to which the application relates will be less than \$260.
- (3) If the Registrar grants an application under subsection (1), the nil rate does not remain in force after the end of the child support year to which the application relates.
- (4) In this section:
 - income*, in relation to a person, means:
 - (a) any money earned, derived or received by the person for his or her own use or benefit; or
 - (b) a periodical payment by way of a gift or allowance.

66B Section 66 does not apply in certain cases

- (1) Section 66 does not apply in relation to the child support payable by the parent of a child or children to the other parent of the child

or children in respect of one of their children, if either or both of the following paragraphs apply:

- (a) both of the parents are eligible carers of the child or of one or more of the children;
 - (b) one of the parents is an eligible carer of one or more of the children and the other parent is an eligible carer of another or other of the children.
- (2) Section 66 also does not apply in relation to the child support payable in respect of a child:
- (a) in accordance with an order made under Division 4 of Part 7 (Orders for departure from administrative assessment in special circumstances); or
 - (b) in accordance with provisions of a child support agreement that have effect, for the purposes of this Part, as if they were such an order made by consent.

5 At the end of section 98A

Add:

- (3) The Registrar is not empowered under this Part to make a determination that varies, or that has the effect of varying, the annual rate of child support payable by a liable parent under an assessment made under subsection 66(1) to a rate below \$260 per annum.

6 Subsection 98D(1)

Omit “The determinations”, substitute “Subject to section 98A, the determinations”.

7 Subparagraph 98D(1)(f)(i)

Repeal the subparagraph.

8 At the end of section 115

Add:

- ; or (d) where the child support is for a period beginning on or after:
 - (i) if a day has been prescribed under paragraph 5(2)(b) of the *Child Support Legislation Amendment Act 1998* as the 1998-99 commencing day—that day; or
 - (ii) if no such day has been prescribed—1 July 1999;

and the administrative assessment was made under subsection 66(1).

9 Subparagraph 118(1)(f)(i)

Repeal the subparagraph.

Child Support (Registration and Collection) Act 1988

10 After section 72A

Insert:

72AA Deductions from social security pensions and benefits

- (1) If the payer of an enforceable maintenance liability covered by subsection 17(2) is in receipt of a social security pension or a social security benefit, the Registrar may give a written notice to the Secretary to the Department of Social Security:
 - (a) specifying the payer's name and setting out sufficient particulars to enable the Secretary to identify the payer; and
 - (b) instructing the Secretary to make the prescribed periodic deduction from the payer's social security pension or social security benefit as from the specified day.
- (2) If:
 - (a) a person by whom a child support debt is due (whether before or after the commencement of this section) has not paid the debt; and
 - (b) the person is in receipt of a social security pension or a social security benefit;the Registrar may give a written notice to the Secretary to the Department of Social Security:
 - (c) specifying the person's name and setting out sufficient particulars to enable the Secretary to identify the person; and
 - (d) instructing the Secretary to make the prescribed periodic deduction from the person's social security pension or social security benefit as from the specified day until the debt is paid.
- (3) A notice may be given by electronic transmission or by any other means.

- (4) Subsection (2) does not apply to an amount due in respect of a liability covered by section 18.
- (5) An amount received by the Commissioner of Taxation under subsection 1359(2) of the *Social Security Act 1991* is taken to have been received by the Commissioner in his or her capacity as the Child Support Registrar.
- (6) In this section:
social security benefit and *social security pension* have the same respective meanings as in the *Social Security Act 1991*.

Social Security Act 1991

11 At the end of section 1359

Add:

- (2) The Secretary must, in accordance with a notice given to the Secretary under section 72AA of the *Child Support (Registration and Collection) Act 1988* in relation to the recipient of a social security pension or a social security benefit:
 - (a) make deductions from the instalments of the pension or benefit payable to the person; and
 - (b) pay the amounts deducted to the Commissioner of Taxation.

Note: The heading to section 1359 is replaced by the heading “**Payments to the Commissioner of Taxation**”.

Schedule 4—Private collection between parties

Child Support (Registration and Collection) Act 1988

1 Subsection 4(1) (paragraph (b) of the definition of *appealable refusal decision*)

Omit “38”, substitute “38A”.

2 Paragraph 33(1)(b)

Omit “38”, substitute “38A or a decision of the Registrar under section 38B”.

3 Subsections 37B(6) and (7)

Omit “38”, substitute “38A, 38B”.

4 Sections 38 and 39

Repeal the sections, substitute:

38 Variation of Register to have enforceable maintenance liability no longer enforced under Act

The Registrar must vary the particulars in the Child Support Register in relation to an enforceable maintenance liability so that the liability is no longer enforced under this Act if:

- (a) the payee of the liability makes an election under section 38A; or
- (b) the payee and payer of the liability jointly make an election under section 38A; or
- (c) the Registrar makes a decision under section 38B.

38A Election by payee or by payee and payer jointly

- (1) The payee of an enforceable maintenance liability, or the payee and payer jointly, may make an election to have the liability no longer enforced under this Act.

- (2) An election under this section must be made in the manner specified by the Registrar.

Note: Section 16A provides for the Registrar to specify the manner in which an election may be made.

- (3) Within 28 days after receiving the election, the Registrar must:
- (a) vary the particulars relating to the liability in the Child Support Register by specifying a day (not later than 60 days after the day on which the Registrar received the election) as the day on which the liability ceases to be enforceable under this Act (the *terminating day*); and
 - (b) if the payee, or the payee and payer jointly, have elected to have amounts payable under the liability in relation to the child support enforcement period that are unpaid on the terminating day also no longer enforced under this Act—vary the particulars so as to ensure that, in spite of section 30, those amounts cease to be debts due by the payer to the Commonwealth.
- (4) The Registrar must not make a variation under paragraph (3)(a) by specifying a day that is included in a period that is a low-income non-enforcement period under section 37B in relation to the liability. If that day is included in that period, the Registrar must not take action under paragraph (3)(b) in relation to that day.

38B Decision by Registrar based on payment record and other factors

- (1) The Registrar may decide that an enforceable maintenance liability should no longer be enforced under this Act if all the following conditions are met:
- (a) the payer is taken, under the regulations, to have a satisfactory payment record in relation to the previous 6 months;
 - (b) the Registrar is satisfied that the payer is likely to continue to have a satisfactory payment record;
 - (c) the Registrar is satisfied that a decision under this section is appropriate in relation to the liability.
- (2) If the Registrar makes a decision under subsection (1), the Registrar must vary the particulars relating to the liability in the Child Support Register by specifying a day (not earlier than 28

days after the day on which the Registrar makes the decision) as the day on which the liability ceases to be enforceable under this Act.

- (3) If, before the day specified in a variation under subsection (2), the Registrar decides to revoke the decision that gave rise to the variation, the Registrar must vary the particulars concerned in the Child Support Register to give effect to the revocation.
- (4) The revocation takes effect on the day the Registrar varies the particulars concerned.

39 Application for variation to enable liability to again become enforceable under Act

- (1) If a registered maintenance liability is not enforceable under this Act because of an election made under section 38A or a decision by the Registrar under section 38B, the payee may apply to the Registrar for the liability to again become enforceable under this Act.

- (2) The application must be made in the manner specified by the Registrar.

Note: Section 16A provides for the Registrar to specify the manner in which an application may be made.

- (3) An application cannot be made in relation to a liability during a period that is a low-income non-enforcement period under section 37B in relation to the liability.
- (4) Within 28 days after receiving an application under subsection (1), the Registrar must grant or refuse the application.
- (5) The Registrar must grant the application if:
 - (a) the payer is taken, under the regulations, to have an unsatisfactory payment record; or
 - (b) the Registrar is satisfied that special circumstances exist in relation to the liability which make it appropriate to grant the application.
- (6) If the Registrar grants the application, the Registrar must:
 - (a) vary the particulars relating to the liability in the Child Support Register by specifying a day (not later than 60 days

after the day on which the Registrar received the application) as the day on which the liability again becomes enforceable under this Act; and

- (b) may make any variations to those particulars that the Registrar considers necessary or desirable:
- (i) to enable a court order or court registered maintenance agreement that varies or otherwise affects the liability to be given effect under this Act; or
 - (ii) to take account of the happening of an affecting event in relation to the liability.

- (7) The Registrar must not make a variation under subsection (6) by specifying a day that is included in a period that is a low-income non-enforcement period under section 37B in relation to the liability. If that day is included in that period, the Registrar must not take action under paragraph (6)(b) in relation to that day.

5 Subsection 39A(2)

Omit “38” (wherever occurring), substitute “38A or 38B”.

Note: The heading to section 39A is altered by omitting “38 election” and substituting “38A election or 38B decision”.

Note: The heading to subsection 39A(2) is altered by omitting “38” and substituting “38A or 38B”.

6 Subsection 39A(3)

Omit “38” (wherever occurring), substitute “38A or 38B”.

7 Subsection 39A(7)

Omit “38” (wherever occurring), substitute “38A or 38B”.

8 Transitional

- (1) If, before the commencement of this Schedule, the Registrar had received an election under section 38 of the *Child Support (Registration and Collection) Act 1988* but had not varied the particulars of the Child Support Register as required by section 38 of that Act as in force immediately before the commencement of this Schedule, the Registrar must deal with the election as if the amendments made by this Schedule had not been made.

- (2) If, before the commencement of this Schedule, the Registrar had received an application under section 39 of the *Child Support (Registration and Collection) Act 1988* as required by section 39 of that Act as in force immediately before the commencement of this Schedule, the Registrar must deal with the application as if the amendments made by this Schedule had not been made.
- (3) The reference in subsection 39(1) of the *Child Support (Registration and Collection) Act 1988* as in force immediately after the commencement of this Schedule to an election made under section 38A includes a reference to an election made under section 38 of that Act as in force immediately before the commencement of this Schedule.

Schedule 5—Effect of child care arrangements on assessments

Child Support (Assessment) Act 1989

1 Section 5 (definition of *relevant dependent child*)

Repeal the definition, substitute:

relevant dependent child, in relation to a liable parent, means a child or step-child of the parent, but only if:

- (a) the parent:
 - (i) is the sole or principal provider of ongoing daily care for the child or step-child; or
 - (ii) has major contact with the child or step-child; and
- (b) the child or step-child is under 18 and is not a member of a couple; and
- (c) in the case of a step-child:
 - (i) an order is in force under section 66M of the *Family Law Act 1975* in relation to the parent and the step-child; or
 - (ii) the parent has the duty, under section 58D of the *Family Court Act 1975* of Western Australia, of maintaining the step-child.

2 Section 5 (definition of *child support percentage*)

Omit “and 54(b) and (c)”, substitute “, 54(1)(b) and (c) and 54B(f)”.

3 Section 5 (definition of *major contact*)

Omit “subsection 8(3)”, substitute “subsections 8(3) and 8A(5).”

4 Section 5 (definition of *substantial contact*)

Omit “subsection 8(3)”, substitute “subsections 8(3) and 8A(4).”

5 Before subsection 8(1)

Insert:

(1A) This section operates subject to section 8A.

6 Paragraph 8(3)(b)

Repeal the paragraph, substitute:

(b) either:

- (i) another person has care of the child for at least 30%, but less than 40%, of the nights of the child support year concerned; or
- (ii) another person has care of the child for less than 30% of the nights of the child support year concerned, but the principal provider of care and the other person agree that the other person has substantial contact with the child;

7 After section 8

Insert:

8A Interpretation—modification of meaning of care/contact if court order etc. contravened

(1) This section applies if:

- (a) a court order or registered parenting plan in force in relation to a child deals with the person or persons with whom the child is to live, or with the contact between a child and another person or persons; and
- (b) the Registrar is notified, or otherwise becomes aware, of the fact that a person is contravening the order or parenting plan; and
- (c) the Registrar is satisfied, in accordance with the regulations, that the person does not have a reasonable excuse for contravening the order or parenting plan; and
- (d) as a result of the contravention, a person has more care of the child than is provided for in the order or parenting plan and another person has less care of the child than is provided for in the order or plan.

(2) If this section applies, then for all purposes under this Act:

- (a) a person who has more care of the child than is provided for in the court order or registered parenting plan is taken to have care of the child only to the extent (if any) permitted by the court order or parenting plan (as the case may be); and

- (b) if another person has less care than is provided for in the court order or registered parenting plan, the amount of care that person has of the child is to be worked out on the basis of the care (if any) that the person actually has of the child; and
 - (c) section 8 does not apply to any person referred to in paragraph (a) or (b) in relation to the child; and
 - (d) the kind of care (if any) that each of those persons is taken to have is worked out under subsections (3), (4) and (5).
- (3) If a carer has care of the child for at least 40%, but less than 60%, of the days of the child support year concerned, he or she is taken to have care of the child for 50% of those days and to *share* the ongoing daily care of the child with another person.
- (4) If a carer has care of the child for at least 30%, but less than 40%, of the nights of the child support year concerned, he or she is taken to have care of the child for 35% of those nights, and is referred to in this Act as having *substantial contact* with the child.
- (5) If a carer has care of the child for at least 60%, but less than 70% of the nights of the child support year concerned, he or she is taken to have care of the child for 65% of those nights and is referred to in this Act as having *major contact* with the child.
- (6) If a person is taken, under this section, to share care of a child, or to have substantial or major contact with a child, the person cannot also be taken to be the sole or principal provider of ongoing daily care for the child.
- (7) In this section:

court order means:

- (a) a parenting order within the meaning of section 64B of the *Family Law Act 1975*; or
 - (b) a family violence order within the meaning of section 60D of the *Family Law Act 1975*; or
 - (c) an overseas child order registered under section 70G of the *Family Law Act 1975*; or
 - (d) a State child order registered under section 70D of the *Family Law Act 1975*.
-

registered parenting plan means a parenting plan registered under section 63E of the *Family Law Act 1975*.

Example 1: Rob and Chris separate on 28 April 1997. They have one child Yvonne. A parenting plan is registered by them in the Family Court at Melbourne on 3 March 1998. The plan provides that Yvonne will live with Rob at Rob's home in Brisbane. It also provides that Yvonne will stay with Chris at Chris's home in Adelaide for one half of Yvonne's school holidays. Yvonne goes to stay with Chris for the last 2 weeks of the June school holidays. At the end of the holidays, Yvonne does not return to stay with Rob. Chris applies for child support for Yvonne on 14 December 1998.

To be eligible for an assessment of child support Chris must have lawful care that amounts to at least substantial contact. Under the terms of the registered parenting plan, Chris's "lawful care" would amount to 39 days out of the 198 days remaining in the child support year (from 14 December to 30 June—i.e. 22 days in Dec/Jan; 7 days in April; 10 days in June) or 19.69% of days in the year. This equates to less than substantial contact. Chris, therefore, is not eligible for an assessment of child support (unless a new parenting plan is registered).

Example 2: A court order provides that Dani and Alex are to have joint parental and residential responsibility for Paul. The order provides that Paul is to reside with Dani each alternate week commencing Monday 30 June 1997. Paul is to reside with Alex each alternate week commencing Monday 7 July. The arrangement is to continue during the school holidays.

On 5 January Paul stays with Dani and does not go to live with Alex. Paul will now only be living with Alex every third week. Based on the current arrangement, over the 177 days remaining in the child support year, Alex will have care of Paul for 56 days and Dani will have care of Paul for 121 days.

Alex's level of care (56 days out of 177 days) works out to be 31.63% and falls within the definition of substantial contact. Dani's level of care (121 days out of 177 days) works out to be 68.36% and falls within the definition of major contact. However, under the court order, Dani would have had care of Paul for 86 days of the remaining 177 days i.e. 48.59%. Dani's lawful care therefore amounts to shared care and Dani's entitlement will be calculated on this basis, and not on the basis of Dani's actual care.

Under the terms of the court order, Alex would have had care of Paul for 91 days of the remaining 177 days i.e. 51.41%. Alex's lawful care therefore amounts to shared care. However, as Alex does not actually have care of Paul for that amount of time, Alex is entitled to be paid child support only to the level of Alex's actual care. This works out to be 31.63% and falls within the definition of substantial contact.

8 At the end of Division 2 of Part 5

Add:

Subdivision H—Parents whose care is modified by effect of court order/parenting plan

54A Cases in relation to which Subdivision applies

- (1) This Subdivision applies in relation to the parents of a child or children eligible for administrative assessment if:
 - (a) section 8A (which deals with the meaning of care and contact in situations where a court order or registered parenting plan has been contravened) applies to the parents; and
 - (b) as a result of the application of section 8A:
 - (i) one parent (the *liable parent*) is taken not to be an eligible carer of the child or any of the children (as the case requires); and
 - (ii) the other parent (the *carer*) is taken to share care of the child or all of the children (as the case requires) or to have substantial or major contact with the child or all of the children (as the case requires).

Note 1: If both the parents are eligible carers of one or more children of the parents, Subdivision E applies rather than this Subdivision.

Note 2: If the carer is the sole or principal provider of care for the child or children, Division 1 applies rather than this Subdivision.

54B Application of basic formula etc.

- (1) In working out the annual rate of child support that is payable, in relation to a day in a child support year, by the liable parent to the carer:
 - (a) Division 1 (the basic formula) and, to the extent that it is applicable, Subdivision C of this Division (which deals with liable parents with high child support income) are to be applied to the carer and the liable parent in turn, but with the modifications made by paragraphs (c), (d), (e) and (f); and
 - (b) Subdivision D (carer parents with child support income of more than disregarded income amount) is not to be applied in relation to the carer; and
 - (c) the liable parent is taken to be a liable parent in relation to each of his or her children who is a child eligible for administrative assessment and for whom the other parent is an eligible carer, and the other parent is taken to be a carer entitled to child support in relation to each such child; and

- (d) if either of the parents is a parent of a shared care child or children, the exempted income amount of that parent is to include an additional amount, worked out under subsection 39(2), for the child, or for each of the children; and
- (e) in determining the exempted income amount of either parent, a child with whom the parent has substantial contact is to be disregarded; and
- (f) the child support percentage of the carer is the percentage ascertained using the following table, with:
 - (i) the number attributed to each child with whom the carer has major contact taken to be 0.65; and
 - (ii) the number attributed to each child with whom the carer has substantial contact taken to be 0.35; and
 - (ii) the number attributed to a child with whom the carer has shared care taken to be 0.5.

Modified table of child support percentages

	Number of children for whom a parent is a liable parent in relation to the carer	Child support percentage (based on lawful entitlement plus factual care)
1	less than 0.35	Not Applicable (see note below)
2	0.35	8
3	0.50	12
4	0.65-0.70	14
5	0.85	16
6	1.00	18
7	1.05	19
8	1.15-1.20	20
9	1.25-1.35	22
10	1.40-1.45	23
11	1.50-1.55	24
12	1.60-1.70	25
13	1.75-1.90	26
14	1.95-2.05	27
15	2.10-2.20	28

Schedule 5 Effect of child care arrangements on assessments

16	2.25-2.40	29
17	2.45-2.60	30
18	2.65-2.85	31
19	2.90-3.20	32
20	3.25-3.70	33
21	3.75-4.20	34
22	4.25-4.70	35
23	4.75-5.00 or more	36

Note: If a child is in the care of a parent for less than 30% of the nights, no allowance is made in the formula.

- (2) In working out an additional amount under subsection 39(2) for the purposes of paragraph (1)(d) of this section, the reference to a relevant dependent child of the liable parent is to be read as a reference to a shared care child of a parent.

Example: Application of formula where care is modified by lawful care

Facts: There is one child, Billie (aged 11), from the relationship of Jan and Kris. Under the terms of a court order, both Jan's and Kris's lawful care of Billie is shared. Jan's actual care of Billie is nil, and Kris's actual care is sole. Jan's taxable income is \$45,000. Kris's income is \$38,000.

Step 1: Calculate the child support percentage for both parents (Paragraph 54B(1)(f))
Section 8A applies so that Kris's level of care is taken to be shared. The child support percentage attributable to shared care is 12%.

Section 8A applies so that Jan's level of care is taken to be nil. The child support percentage attributable to nil care is 0%.

Step 2: Calculate the liability of both Jan and Kris (Part 5, Division 1)

Do separate assessments for each carer, using the child support percentages above.

Jan to pay Kris:

Jan's taxable income	=	\$45,000
Adjust by inflation factor of 4%	+	\$1,800
Jan's child support income amount	=	\$46,800
Less exempted income amount (see note 1)	-	\$9,947
Jan's adjusted income amount	=	\$36,853
Multiply by child support percentage (see note 2)	×	12%
Jan's 1998/99 child support annual rate	=	\$4,422

Kris to pay Jan:

Kris's taxable income	=	\$38,000
Adjust by inflation factor of 4%	+	\$1,520
Kris's child support income amount	=	\$39,520
Less exempted income amount (see note 3)	-	\$11,842
Kris's adjusted income amount	=	\$27,678
Multiply by child support percentage (see note 4)	×	0%
Kris's 1998/99 child support annual rate	=	\$0

Jan owes Kris \$4,422. Kris owes Jan \$0. Therefore Jan pays Kris \$4,422.

Schedule 5 Effect of child care arrangements on assessments

Note 1: No additional allowance is given in the exempted amount as no child is actually in Jan's care.

Note 2: Represents 0.5 of a child.

Note 3: Exempted rate plus additional amount for child under 13 years.

Note 4: Represents 0.0 of a child.

Schedule 6—Starting date of liability

Child Support (Assessment) Act 1989

1 Subparagraph 31(1)(d)(i)

Repeal the subparagraph, substitute:

- (i) beginning on the day on which the application was made to the Registrar; and

Schedule 7—Election by carer to end liability

Child Support (Assessment) Act 1989

1 Subsection 151(4)

Repeal the subsection, substitute:

- (4) If a carer who is receiving family allowance at a rate that is more than the minimum family allowance rate makes an election under subsection (1), the election has no effect unless and until the Secretary approves the election under section 151A.

Note: For *minimum family allowance rate* see subsection 6(1) of the *Social Security Act 1991*.

2 After section 151

Insert:

151A Procedure where person making election is receiving more than the minimum rate of family allowance

- (1) As soon as practicable after a carer referred to in subsection 151(4) makes an election, the Registrar must inform the Secretary or, if the Secretary has delegated his or her powers under this section to the CEO or an employee of the Services Delivery Agency, the CEO.
- (2) The Secretary must decide whether or not the carer would cease to be paid at more than the minimum rate of family allowance because of point 1069-K3 of the *Social Security Act 1991* if it were assumed that:
- (a) the election were to take effect; and
 - (b) if the carer is a claimant for the allowance—the carer were in receipt of the allowance.

Note 1: Point 1069-K3 of the *Social Security Act 1991* deals with the “reasonable action to obtain maintenance” test.

Note 2: Chapter 6 of the *Social Security Act 1991* provides for review of decisions under this subsection.

- (3) The Secretary is taken to **approve** the election if the Secretary decides that the carer would not so cease to be qualified for the allowance.
- (4) The Secretary is taken not to **approve** the election if the Secretary decides that the carer would so cease to be qualified for the allowance.
- (5) As soon as practicable after the Secretary makes a decision under this section, the Secretary must tell the Registrar about the decision.
- (6) As soon as practicable after the Secretary decides not to approve the election, the Secretary must give the carer a written notice setting out the decision.
- (7) The Secretary may, by writing, delegate all or any of his or her powers under this section to an officer of the Department of Social Security or, in accordance with service arrangements, to the CEO or an employee of the Services Delivery Agency.

Social Security Act 1991

3 Paragraph 1239(1)(d)

After “91A(3)”, insert “or 151A(2)”.

Schedule 8—Extension of child support for secondary students

Child Support (Assessment) Act 1989

1 Section 5

Insert:

full-time secondary education, in relation to a child, means education that is determined by the secondary school at which the child is receiving the education to be full-time secondary education.

2 Section 5

Insert:

last day, in relation to a child's secondary school year, means the day determined by the secondary school to be the last day, in the calendar year concerned, on which the child receives full-time secondary education from the school.

3 Section 5

Insert:

secondary school means a school, technical and further education institution or any other educational institution at which full-time secondary education is provided.

4 At the end of subsection 12(1)

Add:

Note: Paragraph (1)(c) may be affected by section 151C (which deals with continuing administrative assessments and child support agreements beyond a child's 18th birthday in certain situations).

5 Before section 152

Insert:

151B Application for assessment/agreement to continue beyond child's 18th birthday

- (1) If a child turns 18 during a year in which the child is in full-time secondary education, a carer entitled to child support for the child may apply for an administrative assessment, or a child support agreement, in relation to the child to continue in force until the last day of the secondary school year in which the child turns 18.

Note: For *full-time secondary education, last day* and *secondary school* see section 5.

- (2) The application must be:
- (a) made to the Registrar in the manner specified by the Registrar; and
 - (b) in the case of an application for a child support agreement to continue in force—signed by both the carer and the liable parent.

Note: Section 150A provides for the Registrar to specify the manner in which an application may be made.

151C Application for assessment/agreement to continue—Registrar's decision

- (1) The Registrar must either accept or refuse to accept an application under section 151B.
- (2) The Registrar must accept the application if, and only if, the Registrar is satisfied that:
- (a) the child has turned 17; and
 - (b) an administrative assessment, or a child support agreement, in relation to the child either is in force, or is likely to be in force on the day before the child's 18th birthday; and
 - (c) the child is likely to be in full-time secondary education on the child's 18th birthday; and
 - (d) the child's 18th birthday will occur on or before the last day of the secondary school year; and
 - (e) either:
 - (i) the application is made before the child's 18th birthday;
 - or

- (ii) there are, in the Registrar's opinion, exceptional circumstances justifying the making of the application after the child's 18th birthday.

Note: For *full-time secondary education, last day* and *secondary school* see section 5.

Refusal of application

- (3) If the Registrar refuses to accept the application, the Registrar must immediately notify the applicant in writing.

Acceptance of application

- (4) If the Registrar accepts the application, the Registrar must immediately notify the applicant, and the liable parent concerned, in writing.
- (5) A notice to a person under this section must include a statement to the effect:
 - (a) that the person may, subject to this Act, object to the particulars of the assessment in relation to which the application under section 151B was made; and
 - (b) that if the person is aggrieved by the decision on the objection, he or she may appeal, subject to this Act and the *Family Law Act 1975*, to a court having jurisdiction under this Act under section 110 against the assessment.
- (6) A contravention of subsection (5) in relation to a decision does not affect the validity of the decision.
- (7) To avoid doubt, a reference in this section to an *administrative assessment* does not include a reference to an assessment made by the Registrar under subsection 93(2).

**151D Application for assessment/agreement to continue—
consequences of acceptance**

Child support terminating event

- (1) If the Registrar accepts an application under section 151B in relation to a child, then, in spite of section 12 (which deals with child support terminating events):
-

- (a) a child support terminating event does not happen in relation to the child when the child turns 18; and
- (b) a child support terminating event happens in relation to the child on the last day of the secondary school year to which the application relates.

Registrar to take necessary action

- (2) If the Registrar accepts the application, the Registrar must immediately take such action as is necessary:
 - (a) if the application is to continue an administrative assessment in force—to take account of the change effected by subsection (1) to the meaning of ***child support terminating event*** in relation to the child (whether by amending the assessment or otherwise); and
 - (b) if the application is to continue a child support agreement in force—to take account of the change effected by subsection (1) to the meaning of ***child support terminating event*** in relation to the child (whether by accepting a subsequent child support agreement or otherwise).

Date of effect of decision

- (3) A decision of the Registrar to grant an application in relation to a child under section 151B takes effect on the day before the child turns 18, whether the decision is made before, on or after that day.

Child Support (Registration and Collection) Act 1988

6 Subsection 4(1) (subparagraph (c)(i) of the definition of terminating event)

Repeal the subparagraph, substitute:

- (i) the child attaining 18 years of age unless:
 - (A) under the terms and conditions of the relevant court order or maintenance agreement or otherwise by force of law, the liability is to continue after the child attains that age; or
 - (B) section 151D of the *Child Support (Assessment) Act 1989* applies in relation to the child;

Note: Section 151D of the *Child Support (Assessment) Act 1989* modifies the normal rules about terminating events in relation to certain

children who turn 18 during a year in which the child is in full-time secondary education.

7 Subsection 4(1) (after paragraph (c) of the definition of terminating event)

Insert:

- (ca) in a case where section 151D of the *Child Support (Assessment) Act 1989* applies to the child because of an application made under section 151B of that Act—the last day of the secondary school year (within the meaning of that Act) to which the application relates; or

Note: Section 151B of the *Child Support (Assessment) Act 1989* provides for a person to apply to continue an administrative assessment or child support agreement under that Act in force after a child's 18th birthday. If the application is granted, section 151D of that Act modifies the normal rules about terminating events.

8 At the end of subsection 34(1)

Add:

Note: The reference to a child ceasing to be in full-time secondary education is only relevant to a case where an administrative assessment or child support agreement under the *Child Support (Assessment) Act 1989* is continuing in force after the child's 18th birthday because of the operation of section 151D of that Act.

Schedule 9—Notification requirements

Part 1—Date of effect

Child Support (Assessment) Act 1989

1 At the end of section 39

Add:

(3) If:

- (a) an assessment of child support payable by a liable parent is in force; and
- (b) the Registrar is later notified, or otherwise becomes aware, of the fact that the parent has a relevant dependent child who was not taken into account for the purposes of making the assessment;

then, for the purposes of working out the parent's exempted income amount under this section, the liable parent is taken to have the relevant dependent child:

- (c) if the Registrar was notified, or otherwise became aware, of the fact that the child is a relevant dependent child of the liable parent within 28 days after the day on which the child became such a child—on and from the day the child became such a child; or
 - (d) if the Registrar was notified, or otherwise became aware, of the fact within 28 days after the notice of the assessment was given—on and from the day the notice was given; or
 - (e) if neither paragraph (c) nor (d) applies—on and from the day the Registrar was notified, or otherwise became aware, of the fact that the child is a relevant dependent child of the liable parent.
- (4) For the purposes of working out the parent's exempted income amount under this section, a liable parent is taken to cease to have a relevant dependent child on the day the child ceases to be a relevant dependent child, regardless of when the Registrar is notified, or otherwise becomes aware, of the fact.

2 After section 74

Insert:

74A Date of effect of change in care

If:

- (a) child support is payable for a child; and
- (b) the Registrar is notified, or otherwise becomes aware, that the basis on which a person is an eligible carer of the child has changed from one of the categories set out in the definition of *eligible carer* (in section 5) to another of those categories; and
- (c) as a result, the Registrar amends an administrative assessment under section 74 to alter the annual rate at which the child support is payable for the child;

the altered annual rate is to apply on and from the day the Registrar was notified, or otherwise became aware, of the change of care referred to in paragraph (b).

Part 2—Manner in which applications etc. to be made

Child Support (Assessment) Act 1989

3 Section 11

Repeal the section.

4 Section 27

Repeal the section, substitute:

27 Application for administrative assessment

An application for administrative assessment of child support must be made to the Registrar in the manner specified by the Registrar.

Note: Section 150A provides for the Registrar to specify the manner in which an application may be made.

5 Subsection 32(1)

Omit “written”.

6 Subsections 32(2) and (3)

Repeal the subsections, substitute:

(2) The notice must be given in the manner specified by the Registrar.

Note: Section 150A provides for the Registrar to specify the manner in which a notice may be given.

7 Subsection 32(4)

Omit “and (3)”.

8 Subsection 60(1)

Omit “written”.

9 Subsection 60(2)

Repeal the subsection, substitute:

(2) The notice must:

- (a) be given in the manner specified by the Registrar before or during the child support year; and
- (b) specify the person's estimate of his or her taxable income for the child support year.

Note: Section 150A provides for the Registrar to specify the manner in which a notice may be given.

10 Subsection 62(1A)

Omit "written".

11 Subsection 62(2)

Repeal the subsection, substitute:

- (2) The notice must be given in the manner specified by the Registrar.

Note: Section 150A provides for the Registrar to specify the manner in which a notice may be given.

12 Subsections 89(1), (2) and (3)

Repeal the subsections, substitute:

- (1) An application for acceptance by the Registrar of an agreement made in relation to a child must be made in the manner specified by the Registrar.

Note: Section 150A provides for the Registrar to specify the manner in which an application may be made.

13 Subsection 89(4)

Omit "Without limiting paragraph (1)(a), a form of application for acceptance by the Registrar of an agreement made in relation to a child", substitute "In specifying the manner in which an application for acceptance by the Registrar of an agreement made in relation to a child must be made, the Registrar".

14 Subsection 128(2)

Omit "in the appropriate approved form", substitute "in the manner specified by the Registrar".

15 Paragraph 128(4)(a)

Omit "in the appropriate approved form", substitute "in the manner specified by the Registrar".

16 At the end of subsection 128(4)

Add:

Note: Section 150A provides for the Registrar to specify the manner in which an application or notice may be made or given.

17 At the end of Part 8

Add:

150A Applications, notices, elections and replies to be in the manner specified by the Registrar

- (1) The Registrar may specify the manner in which an application, notice, election or reply required or able to be made or given under this Act is to be made or given.
- (2) Without limiting subsection (1), in respect of an application, notice, election or reply, the Registrar may specify any or all of the following matters:
 - (a) the content of the application, notice, election or reply;
 - (b) that the content is to be made or given in a particular form approved by the Registrar under subsection (4);
 - (c) that the content is to be made or given orally;
 - (d) that specified documents are to accompany it;
 - (e) that the content is to be verified or that a document accompanying it is to be verified;
 - (f) that it may be given on a specified kind of data processing device, or by way of electronic transmission, including specifying that it be given in accordance with certain software requirements.
- (3) In relation to an application, notice, election or reply, if the Registrar specifies that it, or a document accompanying it, must be signed, the Registrar may also specify that, if it is given to the Registrar on a data processing device, or by way of electronic transmission, it may contain the electronic signature of the person concerned.
- (4) The Registrar may in writing approve a form of application, notice, election or reply for the purposes of a particular section of this Act.

Note: Strict compliance with the form is not required—see section 25C of the *Acts Interpretation Act 1901*.

(5) In this section:

electronic signature, in relation to a person, means a unique identification in an electronic form that is approved by the Registrar.

18 Subsection 151(1)

Omit “written”.

19 Subsections 151(2) and (3)

Repeal the subsections, substitute:

(2) The notice must be given in the manner specified by the Registrar.

Note: Section 150A provides for the Registrar to specify the manner in which a notice may be given.

Child Support (Registration and Collection) Act 1988

20 Subsection 4(2)

Repeal the subsection.

21 At the end of Part II

Add:

16A Applications, notices, elections to be in the manner specified by the Registrar

- (1) The Registrar may specify the manner in which an application, notice or election required or able to be made or given under this Act is to be made or given.
- (2) Without limiting subsection (1), in respect of an application, notice or election, the Registrar may specify any or all of the following matters:
 - (a) the content of the application, notice or election;
 - (b) that the content is to be made or given in a particular form approved by the Registrar under subsection (4);
 - (c) that the content is to be made or given orally;
 - (d) that specified documents are to accompany it;
 - (e) that the content is to be verified or that a document accompanying it is to be verified;

-
- (f) that it may be given on a specified kind of data processing device, or by way of electronic transmission, including specifying that it may be given in accordance with certain software requirements.
 - (3) In relation to an application, notice or election, if the Registrar specifies that it, or a document accompanying it, must be signed, the Registrar may also specify that, if it is given to the Registrar on a data processing device, or by way of electronic transmission, the process may contain the electronic signature of the person concerned.
 - (4) The Registrar may in writing approve a form of application, notice or election for the purposes of a particular section of this Act.

Note: Strict compliance with the form is not required—see section 25C of the *Acts Interpretation Act 1901*.
 - (5) In this section:

electronic signature, in relation to a person, means a unique identification in an electronic form that is approved by the Registrar.

22 Subsection 23(2)

Omit “furnish to the Registrar a duly completed approved form”, substitute “give notice to the Registrar”.

23 Subsection 23(3)

Repeal the subsection, substitute:

- (3) The payee is not required to give the Registrar notice under subsection (1) if the payee, within that period of 14 days, elects, by giving the Registrar a notice, not to have the registrable maintenance liability enforced under this Act.

24 Subsection 23(5)

Omit “furnish to the Registrar a duly completed approved form”, substitute “give notice to the Registrar”.

25 Subsection 23(6)

Omit “furnish the form”, substitute “give the notice”.

26 After subsection 23(6)

Insert:

(6A) The notices under subsections (2), (3) and (5) must be given in the manner specified by the Registrar.

Note: Section 16A provides for the Registrar to specify the manner in which a notice may be given.

27 Subsection 24(1)

Omit “duly completed approved form”, substitute “notice”.

28 Subsection 24(1)

Omit “duly completed form”, substitute “notice”.

29 Subsection 24(2)

Repeal the subsection, substitute:

(2) Where the payee of a registrable maintenance liability who is required by subsection 23(2) to give notice to the Registrar fails to do so within the period specified in that subsection, the Registrar may, even though the notice has not been given within that period or has not been given at all, register the liability under this Act by entering particulars of the liability in the Child Support Register.

30 Subsection 25(1)

Omit “in the approved form”, substitute “in the manner specified by the Registrar”.

31 At the end of subsection 25(1)

Add:

Note: Section 16A provides for the Registrar to specify the manner in which an application may be made.

32 Subsections 25(2) and (3)

Repeal the subsections, substitute:

(2) Subject to subsection (3), if the Registrar receives an application from the payee the Registrar must, within 28 days after receiving the application, register the liability under this Act by entering particulars of the liability in the Child Support Register.

- (3) The Registrar must not register the liability if the payee has given notice, or is required to give notice, under subsection 23(2) in relation to the liability.

33 Subsection 28A(3)

Omit “in the approved form”, substitute “in the manner specified by the Registrar”.

34 At the end of subsection 28A(3)

Add:

Note: Section 16A provides for the Registrar to specify the manner in which an application may be made.

35 Section 32

Repeal the section, substitute:

32 Payer and payee to be given copy of entry in Child Support Register on application

- (1) The payer or payee of a registered maintenance liability may apply to the Registrar requesting that a copy of the entry in the Child Support Register in relation to the liability be provided to him or her.
- (2) The application must be made in the manner specified by the Registrar.

Note: Section 16A provides for the Registrar to specify the manner in which an application may be made.

- (3) The Registrar must comply with the request.

36 Subsection 33(1)

Omit “furnish to the Registrar a duly completed approved form”, substitute “give notice to the Registrar, in the manner specified by the Registrar,”.

37 At the end of subsection 33(1)

Add:

Note: Section 16A provides for the Registrar to specify the manner in which a notice may be given.

38 Subsection 33(3)

Omit “furnished the relevant form”, substitute “gave the notice”.

39 Subsection 34(1)

Omit “notify the Registrar of the affecting event by furnishing a duly completed approved form to the Registrar”, substitute “give notice to the Registrar, in the manner specified by the Registrar, of the affecting event”.

40 At the end of subsection 34(1)

Add:

Note: Section 16A provides for the Registrar to specify the manner in which a notice may be given.

41 Subsections 35(1) and (2)

Omit “in the approved form”, substitute “in the manner specified by the Registrar”.

42 At the end of subsection 35(2)

Add:

Note: Section 16A provides for the Registrar to specify the manner in which an application may be made.

43 Section 36

Repeal the section, substitute:

36 Registrar to vary Child Support Register on receipt of notification or application

When the Registrar receives under subsection 33(1), 34(1) or 35(1) or (2) an application or notice (as the case may be) from the payee or payer of a registrable maintenance liability, the Registrar must, within 28 days after receipt of the application or notice, make such variations (if any) to the particulars entered in the Child Support Register in relation to the liability as the Registrar considers necessary or desirable to:

- (a) enable the relevant order or maintenance agreement to be given effect to under this Act; or
- (b) take account of the happening of the relevant affecting event; as the case requires.

44 Section 37

Omit “approved form”, substitute “application or notice (as the case may be)”.

45 Subsection 37B(2)

Omit “in the approved form”, substitute “in the manner specified by the Registrar”.

46 At the end of subsection 37B(2)

Add:

Note: Section 16A provides for the Registrar to specify the manner in which an application may be made.

47 Subsection 39A(4)

Omit “in the approved form”, substitute “in the manner specified by the Registrar”.

48 At the end of subsection 39A(4)

Add:

Note: Section 16A provides for the Registrar to specify the manner in which an application may be made.

49 Subsection 39B(3)

Omit “giving a duly completed approved form to the Registrar”, substitute “applying to the Registrar in the manner specified by the Registrar”.

50 At the end of subsection 39B(3)

Add:

Note: Section 16A provides for the Registrar to specify the manner in which an application may be made.

51 Subsection 39B(5)

Omit “giving a duly completed approved form to the Registrar”, substitute “applying to the Registrar in the manner specified by the Registrar”.

52 Subsection 44(3)

Omit “by giving to the Registrar a duly completed approved form”, substitute “to the Registrar in the manner specified by the Registrar”.

53 At the end of subsection 44(3)

Add:

Note: Section 16A provides for the Registrar to specify the manner in which an election may be made.

54 Paragraph 47(1)(b)

Repeal the paragraph, substitute:

(b) give notice to the Registrar in the manner specified by the Registrar.

55 At the end of subsection 47(1)

Add:

Note: Section 16A provides for the Registrar to specify the manner in which a notice may be given.

56 Subsection 47(1A)

Omit “, in the approved form, the particulars required by the form”, substitute “notice in the manner specified by the Registrar”.

57 Subsection 47(3)

Omit “approved form”, substitute “manner specified by the Registrar”.

58 Paragraph 71(b)

Omit “in the approved form”.

59 At the end of section 71

Add:

(2) An application must be made in the manner specified by the Registrar.

Note: Section 16A provides for the Registrar to specify the manner in which an application may be made.

60 At the end of section 71A

Add:

Note: Section 16A provides for the Registrar to specify the manner in which an application may be made.

61 Subsection 111(1)

Omit “ by furnishing a duly completed approved form to”, substitute “in the manner specified by”.

62 At the end of subsection 111(1)

Add:

Note: Section 16A provides for the Registrar to specify the manner in which a notice may be given.

63 Subsection 111(2)

Omit “ by furnishing a duly completed approved form to”, substitute “in the manner specified by”.

Schedule 10—Payments temporarily held in Child Support Reserve

Child Support (Registration and Collection) Act 1988

1 Subsection 76(1)

Omit “and subsection 79(2),”, substitute “, subsection 79(2) and section 79A,”.

2 After section 79

Insert:

79A Suspension of payee’s entitlement to be paid collected amounts

Suspension determination

(1) If:

- (a) apart from this subsection, a payee of a registered maintenance liability in relation to a child would be entitled to be paid an amount under subsection 76(1) in relation to the liability on a particular day; and
- (b) the Registrar has notice, before that day, that:
 - (i) an application made by the payer of the registered maintenance liability under section 107 of the *Child Support (Assessment) Act 1989* is pending; and
 - (ii) the application was made by the payer in relation to the payee’s entitlement to administrative assessment of child support for the child;

the Registrar may make a determination (a *suspension determination*) that subsection 76(1) does not apply to the payee in relation to the amount payable by the payer for the child either on the day referred to in paragraph (a), or on any subsequent day.

Determination effective until resumption determination made

- (2) The determination has effect unless and until the Registrar makes a determination under subsection (4) (a *resumption determination*) in relation to the payee and the amount.

- (3) Immediately after making a suspension determination in relation to an amount payable under a registered maintenance liability, the Registrar must vary the particulars entered in the Child Support Register in relation to the liability in whatever way the Registrar considers necessary or desirable to give effect to the determination.

Resumption determination

- (4) If:
- (a) the Registrar has made a suspension determination in relation to the payee of a registered maintenance liability; and
 - (b) the Registrar is satisfied that the application made by the payer under section 107 of the *Child Support (Assessment) Act 1989* has been:
 - (i) finally refused by the court (within the meaning of section 144 of that Act); or
 - (ii) withdrawn; or
 - (iii) struck out by the court;
- the Registrar must make a resumption determination that:
- (c) subsection 76(1) again applies to the payee in relation to the amount affected by the suspension determination; and
 - (d) if the payee has not, because of the suspension determination, been paid an amount which the payee would otherwise have been paid under subsection 76(1)—the payee is entitled to be paid that amount.
- (5) Immediately after making a resumption determination in relation to an amount payable under a registered maintenance liability, the Registrar must vary the particulars entered in the Child Support Register in relation to the liability in whatever way the Registrar considers necessary or desirable to give effect to the determination.

Schedule 11—Debts offset between parents

Child Support (Registration and Collection) Act 1988

1 After section 71

Insert:

71AA Registrar may offset child support debts between payer and payee

- (1) If:
 - (a) 2 persons each have a child support debt arising from a liability referred to in section 17; and
 - (b) each of the debts arose in respect of a registered maintenance liability that provided for child support for a child of the 2 persons; and
 - (c) in respect of each debt, the Commonwealth would be required, under section 76, to pay the amount paid by one of the persons to the other person;the Registrar may offset the debts by deducting the amount, or part of the amount, of the debt of the person who owes the lesser amount from the amount of the debt of the person who owes the greater amount.
- (2) If the amount of the debts is the same, the Registrar may offset one debt against the other. In this case, the Commonwealth is taken to have recovered both of the debts.
- (3) If the amount of the debts is not the same, the Commonwealth is taken to have recovered:
 - (a) so much of the amount of the smaller debt as is offset against the larger debt; and
 - (b) so much of the amount of the larger debt that equals the amount of the smaller debt as is offset.
- (4) Any amounts recovered by the Commonwealth by way of offset are taken to be:
 - (a) paid by the payer to the Registrar under the registered maintenance liability concerned; and

- (b) paid by the Commonwealth to the payee as provided for in this Act.

Example: Offset of part of a debt

Helena was previously the payer of a registrable maintenance liability. Helena's children have now come to live with her. Helena has the greater debt of \$3,000 from the period when she was a child support payer. Even though the children are no longer living with Theo, he is entitled to \$3,000 in child support when Helena pays it.

Theo has now been assessed as having a child support liability. Under that liability, Theo has a debt of \$150 in respect of a month.

The Registrar offsets \$100 of the debt (part of it only) that became due and payable by Theo against the amount owed by Helena. The effect of the offset is that Helena is taken to have paid \$100 per month. Theo is taken to have paid \$100 of his liability to pay \$150. Under the liability, Theo must pay \$50 for that month.

Each time a debt incurred by Theo under the liability becomes due and payable it may be offset against the remainder of Helena's debt.

2 Subsection 79(1)

Repeal the subsection, substitute:

(1) If:

- (a) the payee of a registered maintenance liability is:
- (i) paid an amount under section 76; or
 - (ii) because of section 71AA, taken to have been paid an amount under section 76; and
- (b) either of the following situations apply:
- (i) the payee was not entitled to be paid the amount; or
 - (ii) the amount is, because of a subsequent variation to particulars of the entry in the Child Support Register in relation to the liability, repayable by the Registrar to the payer of the liability;

the amount is repayable by the payee to the Registrar and is a debt due by the payee to the Commonwealth.

Schedule 12—Non-Agency payments

Part 1—Amendments commencing on Proclamation

Child Support (Registration and Collection) Act 1988

1 Section 71

Omit “Where”, substitute “Subject to section 71D, if”.

2 Paragraph 71(b)

Repeal the paragraph, substitute:

- (b) the payer or the payee applies to the Registrar to have the amount received by the payee treated as having been paid to the Registrar;

3 Section 71A

Omit “If”, substitute “Subject to section 71D, if”.

4 Paragraph 71A(b)

Repeal the paragraph, substitute:

- (b) the payer or the payee applies to the Registrar, in the manner specified by the Registrar, to have the amount, or part of the amount, received by the third party treated as having been paid to the Registrar; and
- (c) the amount paid, or a part of the amount paid, was intended by both the payer and the payee to be paid in complete or partial satisfaction of an amount payable under the enforceable maintenance liability in relation to the child support enforcement period;

5 After section 71A

Insert:

71B Payments not in money

- (1) For the purposes of sections 71 and 71A, if both the payer and the payee of an enforceable maintenance liability so intend:
 - (a) a payment in a form, other than money, by the payer; or

- (b) a transfer of any property or right by the payer;
is taken to be an amount paid in complete or partial satisfaction of
an amount payable under an enforceable maintenance liability.
- (2) For the purpose of determining the amount to be credited under
section 71 or 71A, in relation to the payment or transfer, against
the liability of the payer to the Commonwealth, the amount of the
payment or transfer is taken to be:
 - (a) the amount agreed by the payer and the payee; or
 - (b) if no amount is agreed, the amount determined by the
Registrar.

71D Registrar may refuse to credit amounts in special circumstances

The Registrar may refuse to credit an amount under section 71 or
71A if satisfied that, in the circumstances of the particular case, the
amount ought not to be credited.

Part 2—Amendments commencing on 1 July 1999

Child Support (Registration and Collection) Act 1988

6 At the end of section 28A

Add:

Amounts that would have been credited under section 71C

- (7) To avoid doubt, a reference in this section to an unpaid amount payable under a liability does not include a reference to any amount that would have been credited against that liability under section 71C if the liability had been an enforceable maintenance liability at all relevant times.

7 At the end of section 39A

Add:

Amounts that would have been credited under section 71C

- (8) To avoid doubt, a reference in this section to an unpaid amount payable under a liability does not include a reference to any amount that would have been credited against that liability under section 71C if the liability had been an enforceable maintenance liability at all relevant times.

8 After section 71B

Insert:

71C Other payments of up to 25% of child support liability

- (1) Subject to subsections (3) and (5) and section 71D, in relation to any month for which the payer of an enforceable maintenance liability has an uncredited amount, the Registrar must, in spite of section 30, credit:
- (a) if the uncredited amount does not exceed 25% of the payer's enforceable maintenance liability for the month—that uncredited amount; or

-
- (b) if it exceeds 25% of that liability—so much of that uncredited amount as does not exceed 25% of that liability; against the liability of the payer to the Commonwealth in relation to the amount payable under the liability in relation to that month.
- (2) If:
- (a) the payer has made a payment, to the payee of the enforceable maintenance liability or to another person, that is a payment of the kind specified in the regulations; and
 - (b) the amount of all such payments made by the payer in respect of the liability exceeds the sum of all the amounts credited under this section against the liability in relation to all the months preceding the month in question;
- the payer has an *uncredited amount* equal to the amount of that excess.
- (3) Subject to subsection (4), the Registrar must not credit an amount under this section in relation to a month for which the payer has not paid to the Commonwealth an amount equal to the difference between:
- (a) the amount payable by the payer to the Commonwealth under the enforceable maintenance liability in relation to that month; and
 - (b) the amount that is to be credited under subsection (1), or that would be so credited but for this subsection, in relation to that month.
- (4) If the payer:
- (a) did not pay that difference to the Commonwealth within the time required under section 66; and
 - (b) subsequently pays the amount of that difference to the Commonwealth;
- the Registrar may credit against the liability of the payer in relation to the amount payable under the enforcement maintenance liability in relation to that month the amount that, but for subsection (3), would have been credited under subsection (1).
- (5) This section does not apply in relation to a liability covered by section 18.

9 Section 71D

Omit “or 71A”, substitute “, 71A or 71C”.

Schedule 13—Objections to decisions of the Child Support Registrar

Part 1—Amendments providing for objection procedure

Child Support (Assessment) Act 1989

1 After Part 6A

Insert:

Part 6B—Objection procedure and AAT review of certain decisions

98W Object and general principle of this Part

- (1) The object of this Part is:
 - (a) to provide for internal reconsideration of decisions of the Registrar that are reviewable by a court having jurisdiction under this Act; and
 - (b) to provide for internal reconsideration of certain other decisions of the Registrar, and for AAT review of those decisions.
- (2) In general, the Act requires a person who is aggrieved by a decision to use the objections procedure under this Part before using the procedures provided in the Act for a court or the AAT to consider decisions of the Registrar.

98X Decisions against which objection may be lodged

- (1) A person may lodge with the Registrar an objection in writing to any of the following decisions of the Registrar:
 - (a) to accept an application for administrative assessment under subsection 30(1);
 - (b) to refuse to accept an application for administrative assessment under subsection 30(2);

-
- (c) as to the particulars of an administrative assessment;
 - (d) to make or refuse to make a departure determination under Part 6A;
 - (e) to accept or refuse to accept a child support agreement under section 92 or 98U;
 - (f) in relation to the remission of a penalty under section 64A.
- (2) In spite of paragraph (1)(a), a person may not lodge an objection to a decision to accept an application for administrative assessment under subsection 30(1) if the ground of the person's objection is that the person is not the parent of the child concerned.

Note: In this case the person may be able to apply to a court under section 107 for a declaration that the applicant for the administrative assessment in question was not entitled to it.

98Y Who may lodge objection

The persons who may lodge objections against a particular kind of decision are as set out in the table below.

Decisions/objectors		
Item	Decision	Who may object
1	To refuse to accept an application for administrative assessment	Applicant
2	To accept an application for administrative assessment	Person from whom or to whom the application seeks payment of child support
3	As to the particulars of an administrative assessment	Carer entitled to child support Liable parent
4	To make or refuse to make a departure determination under Part 6A	Carer entitled to child support Liable parent
5	To accept or refuse to accept a child support agreement	Party to the agreement
6	In relation to the remission of a penalty under section 64A	Person by whom penalty is payable

98Z Time limits on lodging objection

General rule

- (1) An objection to a decision under this Part must be lodged by a person within 28 days after service of notice of the decision on the person unless:
 - (a) the decision is a refusal decision; or
 - (b) one of the grounds of objection to the decision is based on a refusal decision.

Meaning of refusal decision

- (2) A **refusal decision** is any of the following:
 - (a) a decision under Part 6A refusing to make a departure determination;
 - (b) a decision under section 60A refusing to accept an estimate election;
 - (c) a decision under section 66A refusing to grant an application to reduce the annual rate of child support payable to nil;
 - (d) a decision under section 151C refusing to accept an application to continue an administrative assessment or a child support agreement in force after a child's 18th birthday.

Rule for refusal decisions

- (3) If the person's objection is to a refusal decision, or to a decision on the ground that a refusal decision was wrongly made in relation to the decision, the objection must be lodged within 28 days after service of notice of the refusal decision concerned on the person.

98ZA Grounds of objection

An objection must state fully and in detail the grounds of objection relied on.

98ZB Registrar to serve copy of grounds of objection on other party

- (1) The Registrar must serve a copy of the grounds of objection:
 - (a) if the person objecting is an applicant for an administrative assessment—on the person from whom, or to whom, the application seeks payment of child support; or

- (b) if the person objecting is a carer entitled to child support in relation to an administrative assessment—on the liable parent in relation to the administrative assessment; or
 - (c) if the person objecting is a liable parent in relation to an administrative assessment—on the carer entitled to child support in relation to the administrative assessment.
- (2) A person served with a copy of the grounds of objection may lodge with the Registrar a notice in opposition to, or in support of, the objection.
- (3) The notice must be in writing and must be lodged within 28 days after service on the person of the copy of the grounds of objection.

98ZC Consideration of objections by Registrar

- (1) The Registrar must:
 - (a) consider an objection lodged under this Part, and any notice of opposition or support lodged under section 98ZB; and
 - (b) either disallow the objection, or allow it in whole or in part, within 60 days after the objection was lodged.
- (2) The Registrar must give written notice of the decision to the person who lodged the objection and to any person who lodged a notice under section 98ZB in relation to the objection.
- (3) A contravention of subsection (2) in relation to a decision does not affect the validity of the decision.

98ZD Application for extension of time

- (1) If the period for lodging an objection under this Part has ended, a person may lodge the objection with the Registrar, together with a written application asking the Registrar to consider the objection in spite of the ending of the period.
- (2) The application must state the reasons for the person's failure to lodge the objection within the period required by this Part.

98ZE Consideration of applications for extension of time for lodging objections

- (1) If a person applies to the Registrar under section 98ZD in relation to an objection, the Registrar must:
 - (a) consider the application; and
 - (b) either grant or refuse the application within 60 days after the application was lodged; and
 - (c) if the Registrar grants the application—deal with the objection under section 98ZC.
- (2) If the Registrar does not make a decision on the application within 60 days after the application was lodged, the Registrar is taken to have refused the application at the end of that period.
- (3) The Registrar must give written notice of the decision granting or refusing the application to the person who made the application.
- (4) The notice must include a statement to the effect that, if the person is aggrieved by the decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the AAT for review of the decision. Except where subsection 28(4) of that Act applies, the notice must also include a statement to the effect that the person may request a statement under section 28 of that Act.
- (5) A contravention of subsection (3) or (4) in relation to a decision does not affect the validity of the decision.
- (6) If an application under subsection 98ZD(1) is granted, the person who made the application is, for the purposes of this Act, taken to have duly lodged the objection to which the application relates.
- (7) A person aggrieved by a decision under subsection (1) may apply to the AAT for review of the decision.
- (8) In subsection (7), **decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

98ZF AAT review of decisions on section 64A objections

- (1) A person aggrieved by a decision under subsection 98ZC(1) on an objection to a decision of the Registrar under subsection 64A(4) (remission of penalty) may apply to the AAT for review of the decision.

- (2) In subsection (1), *decision* has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

98ZG Implementation of decisions

- (1) When a decision of the AAT under this Part becomes final, the Registrar must immediately take such action as is necessary to give effect to the decision.
- (2) If an appeal is not lodged against the decision of the AAT within the period for lodging an appeal, the decision becomes final at the end of the period.

98ZH Pending objection not to affect assessment

Subject to section 140 (Stay orders), the fact that an objection is pending under this Part in relation to a person does not, in the meantime, interfere with, or affect, any administrative assessment made in relation to the person. Any such assessment may be registered under the *Child Support (Registration and Collection) Act 1988*, and any amounts of child support and other amounts may be recovered in relation to the assessment, as if no objection were pending.

98ZJ Pending review not to affect section 64A decision

The fact that an objection or a review is pending under this Part in relation to a decision of the Registrar under section 64A does not, in the meantime, interfere with, or affect, the decision, and amounts payable in relation to the decision may be recovered as if no objection or review were pending.

Part 2—Amendments consequential on objection procedure

Child Support (Assessment) Act 1989

2 Section 5

Insert:

AAT means the Administrative Appeals Tribunal.

3 Subsection 33(2)

Repeal the subsection, substitute:

- (2) The notice must include a statement to the effect:
 - (a) that the applicant may, subject to this Act, object to the decision; and
 - (b) that if the applicant is aggrieved by the decision on the objection, he or she may apply, subject to this Act and the *Family Law Act 1975*, to a court having jurisdiction under this Act:
 - (i) if the application was a carer application—for a declaration under section 106 that the applicant was entitled to administrative assessment of child support for the child payable by the person from whom the application sought payment of child support; or
 - (ii) if the application was a liable parent application—for a declaration under section 106A that the applicant was entitled to administrative assessment of child support for the child payable to the person to whom the application sought to pay child support.

4 Subsection 34(2)

Repeal the subsection, substitute:

- (2) The notice must include a statement to the effect:
 - (a) that the person from whom, or to whom, the application sought payment of child support may, subject to this Act, object to the decision; and

- (b) in the case of a carer application—that if the person from whom the application sought payment of child support is aggrieved by the decision on the objection, he or she may apply, subject to this Act and the *Family Law Act 1975*, to a court having jurisdiction under this Act for a declaration under section 107 that the applicant was not entitled to administrative assessment of child support for the child payable by the person.

5 After section 60A

Insert:

60B Notice to be given if Registrar refuses to accept election

- (1) If the Registrar refuses to accept an election under section 60A, the Registrar must serve written notice of the decision on the person who sought to make the election.
- (2) The notice must include a statement to the effect:
 - (a) that the person may, subject to this Act, object to the particulars of the assessment in relation to which the person sought to make the election; and
 - (b) that if the person is aggrieved by the decision on the objection, he or she may appeal, subject to this Act and the *Family Law Act 1975*, to a court having jurisdiction under this Act under section 110 against the assessment.

6 At the end of section 64A

Add:

- (5) If the Registrar makes a decision to remit only part of a penalty payable under this section, or not to remit any part of the penalty, the Registrar must serve written notice of the decision on the person by whom the penalty is, or but for the remission would be, payable.
- (6) The notice must include a statement to the effect:
 - (a) that the person may, subject to this Act, lodge an objection with the Registrar against the decision; and
 - (b) that if the person is aggrieved by the decision of the Registrar on the objection, application may, subject to the

Administrative Appeals Tribunal Act 1975, be made to the AAT for review of the decision on the objection; and

- (c) except where subsection 28(4) of that Act applies—that the person may request a statement under section 28 of that Act.
- (7) A contravention of subsection (5) or (6) in relation to a decision does not affect the validity of the decision.

7 After section 66B

Insert:

66C Notice to be given to unsuccessful applicant

- (1) If the Registrar refuses to grant an application under section 66A, the Registrar must serve written notice of the decision on the applicant.
- (2) The notice must include a statement to the effect:
 - (a) that the applicant may, subject to this Act, object to the particulars of the assessment in relation to which the unsuccessful application was made; and
 - (b) that if the applicant is aggrieved by the decision on the objection, he or she may appeal, subject to this Act and the *Family Law Act 1975*, to a court having jurisdiction under this Act under section 110 against the assessment.

8 Paragraph 76(3)(a)

Repeal the paragraph, substitute:

- (a) a statement that specifically draws the attention of the liable parent and the carer entitled to child support to the right:
 - (i) to object, subject to this Act, to particulars of the assessment; and
 - (ii) if aggrieved by the decision on the objection, to appeal, subject to this Act and the *Family Law Act 1975*, to a court having jurisdiction under this Act under section 110 against the assessment;

9 Subsection 96(2)

Repeal the subsection, substitute:

- (2) The notice must include a statement that specifically draws the attention of the parties to the agreement to the right:
 - (a) to object, subject to this Act, to the decision; and
 - (b) if aggrieved by the decision on the objection, to appeal, subject to this Act and the *Family Law Act 1975*, to a court having jurisdiction under this Act under section 132 against the decision accepting or refusing to accept the agreement.

10 At the end of Division 2 of Part 6A

Add:

98JA Notice to be given to unsuccessful applicant

- (1) If the Registrar refuses to make a determination under this Division, the Registrar must serve notice in writing of the decision on the applicant.
- (2) The notice must include a statement to the effect:
 - (a) that the applicant may, subject to this Act, object to the decision; and
 - (b) that if the applicant is aggrieved by the decision on the objection, he or she may apply, subject to this Act and to the *Family Law Act 1975*, under section 116 to a court having jurisdiction under this Act for an order for departure from the administrative assessment in question.

11 Subsection 106(1)

After “the applicant may”, insert “, subject to subsection (1A),”.

12 After subsection 106(1)

Insert:

- (1A) A person may not apply to a court under subsection (1) unless:
 - (a) the person has objected under section 98X to the Registrar’s refusal to accept the application for administrative assessment; and
 - (b) the Registrar has either disallowed the objection or has allowed it only in part.

13 After subsection 106A(1)

Insert:

- (1A) A person may not apply to a court under subsection (1) unless:
- (a) the person has objected under section 98X to the Registrar's refusal to accept the application for administrative assessment; and
 - (b) the Registrar has either disallowed the objection or has allowed it only in part.

14 Subsection 107(1)

After "child support may", insert ", subject to subsection (1A),".

15 After subsection 107(1)

Insert:

- (1A) A person may not apply to a court under subsection (1) unless:
- (a) the person has objected under section 98X to the Registrar's acceptance of the application for administrative assessment; and
 - (b) the Registrar has either disallowed the objection or has allowed it only in part.

- (1B) Subsection (1A) does not apply if the ground on which the person seeks a declaration under subsection (1) is that the person is not a parent of the child concerned.

16 Subsection 110(1)

After "he or she may", insert ", subject to subsection (1A),".

17 After subsection 110(1)

Insert:

- (1A) A person may not appeal to a court under subsection (1) in relation to particulars unless:
- (a) the person has objected under section 98X to those particulars; and
 - (b) the Registrar has either disallowed the objection or has allowed it only in part.

18 Subsection 116(1)

Omit "Application", substitute "Subject to subsection (1A), application".

19 After subsection 116(1)

Insert:

- (1A) A person may not make an application under subsection (1) based on paragraph 115(b) in relation to the making of, or refusal to make, a departure determination unless:
- (a) the person has objected under section 98X to the making of, or refusal to make, the departure determination; and
 - (b) the Registrar has either disallowed the objection or has allowed it only in part.
- (1B) Subsection (1A) does not apply if:
- (a) the person is party to an application pending in a court having jurisdiction under this Act; and
 - (b) the court is satisfied that it would be in the interest of the carer entitled to child support and the liable parent for the court to consider, at the same time as it hears that application, whether an order should be made under this Division in relation to the child in the special circumstances of the case.

20 Subsection 132(1)

After “he or she may”, insert “, subject to subsection (1A),”.

21 After subsection 132(1)

Insert:

- (1A) A party may not appeal to a court under subsection (1) in relation to a decision about an agreement unless:
- (a) the party has objected under section 98X in relation to the decision; and
 - (b) the Registrar has either disallowed the objection or has allowed it only in part.

Schedule 14—Departure from administrative assessments

Child Support (Assessment) Act 1989

1 Subparagraph 76(3)(aa)

Omit “98A(2)”, substitute “98A(3)”.

2 Part 6A

Repeal the Part, substitute:

Part 6A—Departure from administrative assessment of child support

Division 1—Object of Part

98A Object of Part

- (1) The object of this Part is, subject to subsection (2), to give power to the Registrar to make a determination having the effect that the provisions of this Act relating to administrative assessment of child support will be departed from in relation to a child.
- (2) Under this Part, the Registrar may make a determination in 2 circumstances:
 - (a) upon application by a liable parent or carer entitled to child support; or
 - (b) when the Registrar initiates the making of the determination.
- (3) The Registrar is not empowered under this Part to make a determination in relation to child support payable in the child support year ending on 30 June 1992 or any earlier child support year.
- (4) The Registrar is not empowered under this Part to make a determination that varies, or that has the effect of varying, the annual rate of child support payable by a liable parent under an

assessment made under subsection 66(1) to a rate below \$260 per annum.

Division 2—Departures initiated by a liable parent or carer

98B Application for determination under Part

- (1) If, at any time when an administrative assessment is in force in relation to a child:

- (a) the liable parent concerned; or
- (b) the carer entitled to child support concerned;

is of the view that, because of special circumstances that exist, the provisions of this Act relating to administrative assessment of child support should be departed from in relation to the child, the liable parent or carer may, by written application, ask the Registrar to make a determination under this Part.

Note: For the determinations that the Registrar may make under this Part see section 98S.

- (2) The parties to the proceedings under this Division are the liable parent and the carer entitled to child support.

98C Matters as to which Registrar must be satisfied before making determination

- (1) Subject to this Part, if:

- (a) an application is made to the Registrar under section 98B; and

- (b) the Registrar is satisfied:

- (i) that one, or more than one, of the grounds for departure referred to in subsection (2) exists; and

- (ii) that it would be:

- (A) just and equitable as regards the child, the liable parent, and the carer entitled to child support; and

- (B) otherwise proper;

to make a particular determination under this Part;

the Registrar may make the determination.

- (2) For the purposes of subparagraph (1)(b)(i):
-

- (a) the grounds for departure from the provisions of this Act relating to administrative assessment of child support in relation to the child are the same as the grounds for departure set out in subsection 117(2); and
 - (b) sub-subparagraph 117(2)(b)(i)(C) has effect subject to subsections 117(3A) and (3B).
- (3) Subsections 117(4) to (9) (inclusive) apply to the Registrar in the exercise of his or her powers under this Division as if:
- (a) any reference in those subsections to the court were a reference to the Registrar; and
 - (b) any reference to an order were a reference to a determination.

98D Formal requirements for application

An application made under section 98B must be in the manner specified by the Registrar.

Note: Section 150A provides for the Registrar to specify the manner in which an application must be made.

98E Registrar may refuse to make determination because issues too complex

If the Registrar is satisfied, after considering the application, that the issues raised by the application are too complex to be dealt with under this Part, the Registrar may:

- (a) refuse to make the determination, without taking any further action under this Part; and
- (b) recommend that application be made to a court having jurisdiction under this Act for an order under Division 4 of Part 7.

98F Application disclosing no grounds etc. for making determination—how dealt with

If the Registrar is satisfied, after considering the application, that:

- (a) there are no grounds for departing from the provisions of this Act relating to administrative assessment of child support in relation to the child concerned; or
- (b) that it would not be:

- (i) just or equitable as regards the child or either party to the application; or
 - (ii) otherwise proper;
- to make the determination;
- the Registrar may refuse to make the determination without taking any further action under this Part.

98G Other party to be notified

- (1) If section 98E or 98F or subsection 98J(2) does not apply, the Registrar must cause a copy of:
 - (a) the application; and
 - (b) any document accompanying it;to be served on the other party to the proceedings.
- (2) The Registrar must, at the same time, inform the other party to the proceedings in writing that he or she may make any representation (a *reply*) regarding the application that he or she considers relevant.
- (3) If the other party to the proceedings makes a reply, the Registrar must serve a copy of the reply and any accompanying documents on the applicant for the determination.

98H Procedure for dealing with application

- (1) In making a decision under this Division in relation to an application, the Registrar:
 - (a) may act on the basis of:
 - (i) the application and the documents accompanying it; and
 - (ii) if action has been taken under section 98G—the reply (if any) to the application and the documents (if any) accompanying it; and
 - (b) may, but is not required to, conduct any inquiry or investigation into the matter.
- (2) Except where the Registrar refuses to make a determination under section 98E or 98F or subsection 98J(2) in respect of an application, the Registrar must give an opportunity to the applicant and the other party to appear before the Registrar, and be heard by him or her, if they so wish.

Note: Sections 98E and 98F and subsection 98J(2) provide that the Registrar may refuse to make a determination in the circumstances set out in those provisions without taking any further action under this Part.

- (3) Nothing in subsection (2) empowers the Registrar to compel a party to the proceeding to appear before the Registrar in the presence of the other party.
- (4) Any hearing before the Registrar, and any inquiry or investigation carried out by the Registrar, is to be carried out as the Registrar thinks fit and the Registrar is not bound by any rules of evidence.
- (5) A party to the proceedings must not be represented by another person before the Registrar.

98J Subsequent applications

- (1) A person who has made an application for a determination under this Part in respect of an administrative assessment of child support is not, for that reason, precluded from subsequently making another application in respect of that assessment if, because of circumstances existing at the time when the subsequent application is made, there are grounds for departing from the administrative assessment.
- (2) If:
 - (a) a person has made an application for a determination under this Part; and
 - (b) the Registrar has refused to make a determination on the application; and
 - (c) the person subsequently makes an application for a determination under this Part; and
 - (d) the Registrar is satisfied, after considering:
 - (i) the application last made and the documents (if any) accompanying it; and

- (ii) the previous application and the documents (if any) accompanying it and any matter taken into account by the Registrar in refusing to make a determination in relation to that application;

that no new matter has been submitted in support of the claim that there are grounds for departing from the provisions of this Act relating to administrative assessment of child support in relation to the child;

the Registrar may refuse to make a determination, without taking any further action under this Part.

Division 3—Departures initiated by the Registrar

98K Registrar may initiate a determination under this Part

- (1) If, at any time when an administrative assessment is in force in relation to a child, the Registrar is of the view that, because of special circumstances that exist, the provisions of this Act relating to administrative assessment of child support should be departed from in relation to the child, the Registrar may make a determination under this Part.

Note: For the determinations that the Registrar may make under this Part see section 98S.

- (2) The parties to the proceedings under this Division are the liable parent and the carer entitled to child support.

98L Matters as to which Registrar must be satisfied before making determination

- (1) Subject to this Part, the Registrar may make the determination if:
 - (a) the Registrar is satisfied that, in the special circumstances of the case, application in relation to a child of the provisions of this Act relating to administrative assessment of child support would result in an unjust and inequitable determination of the level of financial support to be provided by the liable parent for the child because of the income, earning capacity, property and financial resources of either parent; and
 - (b) that it would be:
 - (i) just and equitable as regards the child, the liable parent, and the carer entitled to child support; and

- (ii) otherwise proper;
to make a particular determination under this Part.
- (2) Subsections 117(4) to (9) (inclusive) apply to the Registrar in the exercise of his or her powers under this section as if:
 - (a) any reference in those subsections to the court were a reference to the Registrar; and
 - (b) any reference to an order were a reference to a determination.

98M Parties to be notified

- (1) The Registrar must, in writing, notify the parties to the proceedings that the Registrar is considering the making of a determination under section 98S in relation to the child concerned.
- (2) The Registrar must also cause to be served on each of the parties to the proceedings a summary of the information that the Registrar used to form the view that the Registrar should make a determination under this Division.
- (3) At the same time, the Registrar must inform each party to the proceedings in writing that the party may make any representation (a *reply*) regarding the application that the party considers relevant.

98N Replies

- (1) Any reply made by a party to proceedings under this Division must:
 - (a) be in the manner specified by the Registrar; and
 - (b) be made to the Registrar.

Note: Section 150A provides for the Registrar to specify the manner in a reply may be made.
- (2) If a party to the proceedings makes a reply, the Registrar must serve a copy of the reply and any accompanying documents on the other party to the proceedings.

98P Parties may jointly elect that Registrar discontinue proceedings

- (1) In respect of proceedings under this Division, the liable parent and the carer entitled to child support may jointly elect that the Registrar discontinue the proceedings if the carer is not in receipt of an income tested pension, benefit or allowance.

- (2) The election must be:
 - (a) in the manner specified by the Registrar; and
 - (b) given to the Registrar.
- (3) If the parties to the proceedings make an election as set out in subsection (1), the Registrar must:
 - (a) discontinue the proceedings; and
 - (b) notify the parties to the proceedings that the Registrar has discontinued them because of the election under subsection (1).

98Q Procedure

- (1) In making a decision under this Division, the Registrar:
 - (a) may act on the basis of:
 - (i) the information that the Registrar used to form the view that because of special circumstances that exist, the provisions of this Act relating to administrative assessment of child support should be departed from in relation to the child concerned; and
 - (ii) if action has been taken under section 98N—the replies (if any) and the documents (if any) accompanying them; and
 - (b) may, but is not required to, conduct any inquiry or investigation into the matter.
- (2) Except where the Registrar refuses to make a determination under section 98R in respect of proceedings, the Registrar must give an opportunity to parties to the proceedings to appear before the Registrar, and be heard by him or her, if they so wish.

Note: Section 98R provides that the Registrar may refuse to make a determination in the circumstances set out in that provision without taking any further action under this Part.
- (3) Nothing in subsection (2) empowers the Registrar to compel the parties to the proceedings to appear before the Registrar in the presence of the other party.
- (4) Any hearing before the Registrar, and any inquiry or investigation carried out by the Registrar, is to be carried out as the Registrar thinks fit and the Registrar is not bound by any rules of evidence.

- (5) A party must not be represented by another person before the Registrar.

98R Registrar may refuse to make determination because issues too complex

If the Registrar is satisfied, after considering the information before him or her and the representations (if any), that the issues involved are too complex to be dealt with under this Part, the Registrar may:

- (a) decide not to make the determination, without taking any further action under this Part; and
- (b) recommend that application be made to a court having jurisdiction under this Act for an order under Division 4 of Part 7.

Division 4—Determinations that may be made under this Part

98S Determinations that may be made under Part

- (1) Subject to section 98A, the determinations that the Registrar may make under this Part are as follows:
 - (a) a determination varying the rate of child support payable by the liable parent concerned;
 - (b) a determination varying the child support percentage, adjusted income amount, child support income amount or exempted income amount of the liable parent;
 - (c) a determination making provision of a kind permitted under the regulations with respect to the calculation of any such amount in relation to the liable parent;
 - (d) a determination varying the child support income amount or disregarded income amount of the carer entitled to child support concerned;
 - (e) a determination making provision of a kind permitted under the regulations with respect to the calculation of any such amount in relation to the carer entitled to child support;
 - (f) a determination directing that one or more of the following provisions is not to apply:

- (i) section 42 (Cap on child support if child support income amount exceeds 2.5 times yearly equivalent of relevant AWE amount);
 - (ii) section 52 (Cap on combined child support liabilities of 2 liable parents);
 - (g) a determination varying a factor ascertained under paragraph 54(1)(b).
- (2) In proceedings under Division 2, the determinations under subsection (1) that the Registrar may make are not limited by the terms of the application.
 - (3) A determination under this Division may make different provision in relation to different child support years and in relation to different parts of a child support year.
 - (4) The Registrar must give, in writing, the reasons for making the determination (including the reasons for which the Registrar is satisfied as required by paragraph 117(1)(b)).
 - (5) A contravention of subsection (4) in relation to a determination does not affect the validity of the determination.

Division 5—Child support agreements

98T Parties may enter into child support agreement

The parties to proceedings under this Part may, at any time before a determination is made in relation to the proceedings, enter into an agreement, purporting to be a child support agreement, in relation to the child support payable for the child in relation to whom the determination may be made.

98U Decision on child support agreement

- (1) Subject to subsection (2), if the Registrar is satisfied that an agreement entered into by the parties to proceedings is a child support agreement, the Registrar must accept the agreement.
- (2) If the carer entitled to child support who is party to the agreement is in receipt of an income tested pension, allowance or benefit, the Registrar must not accept the agreement unless he or she is also satisfied that it would be:

- (a) just and equitable as regards the child, the liable parent, and the carer entitled to child support; and
 - (b) otherwise proper;to accept the agreement.
- (3) Subsections 117(4) to (9) (inclusive) apply to the Registrar in the exercise of his or her functions under subsection (2) as if:
 - (a) any reference in those subsections to the court were a reference to the Registrar; and
 - (b) any reference to the making of a particular order under Division 4 of Part 7 were a reference to the acceptance of an agreement.
- (4) If the Registrar accepts the agreement:
 - (a) sections 94, 95 and 96 apply; and
 - (b) the Registrar may not make a determination under this Part in relation to the proceedings.
- (5) If the Registrar is not satisfied as required by subsections (1) and (2), the Registrar must refuse to accept the agreement.
- (6) If the Registrar refuses to accept the agreement:
 - (a) section 96 applies; and
 - (b) the Registrar must proceed to make a determination under this Part.

Division 6—Pending applications

98V Pending application not to affect assessment

Subject to section 140 (Stay orders), the fact that proceedings are pending under this Part in relation to a person does not, in the meantime, interfere with, or affect, any administrative assessment made in relation to the person. Any such assessment may be registered under the *Child Support (Registration and Collection) Act 1988*, and amounts of child support and other amounts recovered in relation to the assessment, as if proceedings were pending.

3 Paragraph 115(b)

Omit “, on application under section 98B,”.

4 Subsection 132(1)

Omit “98K”, substitute “98U”.

5 Transitional

(1) If:

- (a) a person applied for a determination under subsection 98(1) of the *Child Support (Assessment) Act 1989* before the day that this Schedule commences (the **commencement day**); and
- (b) the application was not determined before the commencement day;

then:

- (c) the application is taken to have been made under subsection 98B(1) of the *Child Support (Assessment) Act 1989* as amended by this Schedule; and
- (d) any action taken by the Registrar before the commencement day in respect of the application under section 98G or 98H of Part 6A as in force before the commencement day, is taken to have been made under section 98G or 98H of the *Child Support (Assessment) Act 1989* as amended by this Schedule.

(2) If:

- (a) the Registrar has made a determination in respect of an application under Part 6A before the commencement day that the provisions of the *Child Support (Assessment) Act 1989* relating to an administrative assessment should be departed from; and
- (b) the Registrar has not, before the commencement day, amended the administrative assessment to give effect to the determination;

the determination is taken to have been made under the *Child Support (Assessment) Act 1989* as amended by this Schedule.

(3) If:

- (a) the Registrar has refused to make a determination in respect of an application under Part 6A before the commencement day; and
- (b) after the commencement day, the applicant makes another application for a determination in respect of the same administrative assessment;

then, for the purposes of section 98J of the *Child Support (Assessment) Act 1989* as amended by this Schedule, the first application is to be treated as if it had been made under the *Child Support (Amendment) Act 1989* as amended by this Schedule.

Schedule 15—Adjustment of child support income base

Child Support (Assessment) Act 1989

1 Section 5

Insert:

supplementary amount:

- (a) in relation to a liable parent—has the meaning given in section 38A; and
- (b) in relation to a carer—has the meaning given in section 45A.

2 Section 38

Repeal the section, substitute:

38 Liable parent's child support income amount

The liable parent's *child support income amount* in relation to the days in the child support year is, subject to section 38A and to Division 3, the total of:

- (a) the amount of the liable parent's taxable income under the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* for the liable parent's last relevant year of income in relation to the child support year; and
- (b) the liable parent's supplementary amount for the liable parent's last relevant year of income.

Note: For *supplementary amount* see section 38A.

38A Liable parent's supplementary amount

- (1) The liable parent's *supplementary amount* for a year of income is the total of:
 - (a) the liable parent's exempt foreign income; and
 - (b) the liable parent's rental property loss.
- (2) The liable parent's *exempt foreign income* is the total amount of the liable parent's income that is exempt from tax under

section 23AF or 23AG of the *Income Tax Assessment Act 1936*, reduced by the total amount of losses and outgoings (except capital losses and outgoings) incurred by the liable parent in deriving that exempt income.

- (3) The amount of the liable parent's exempt foreign income cannot be reduced below nil under subsection (2).
- (4) The liable parent's **rental property loss** is the amount (if any) by which the amount of the liable parent's allowable deductions under the *Income Tax Assessment Act 1997* in respect of rental property exceeds the liable parent's rental property income (other than rental property income derived by him or her as a member of a partnership).

3 Section 45

Repeal the section, substitute:

45 Carer's child support income amount

The entitled carer's **child support income amount** in relation to the days in the child support year is, subject to section 45A and to Division 3, the total of:

- (a) the amount of the entitled carer's taxable income under the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* for the entitled carer's last relevant year of income in relation to the child support year; and
- (b) the entitled carer's supplementary amount for the last relevant year of income in relation to the child support year.

Note: For **supplementary amount** see section 45A.

45A Entitled carer's supplementary amount

- (1) The entitled carer's **supplementary amount** for a year of income is the total of:
 - (a) the entitled carer's exempt foreign income; and
 - (b) the entitled carer's rental property loss.
 - (2) The entitled carer's **exempt foreign income** is the total amount of the entitled carer's income that is exempt from tax under section 23AF or 23AG of the *Income Tax Assessment Act 1936*, reduced by the total amount of losses and outgoings (except capital
-

losses and outgoings) incurred by the liable parent in deriving that exempt income.

- (3) The amount of the entitled carer's exempt foreign income cannot be reduced below nil under subsection (2).
- (4) The entitled carer's *rental property loss* is the amount (if any) by which the amount of the entitled carer's allowable deductions under the *Income Tax Assessment Act 1997* in respect of rental property exceeds the entitled carer's rental property income (other than rental property income derived by him or her as a member of a partnership).

4 Section 55

Omit "the person's taxable", substitute "the total of the person's taxable".

5 Section 55

Before "for the person's", insert "and the person's supplementary amount".

Note: The heading to section 55 is altered by adding at the end "**and supplementary amount**".

6 Before subsection 57(1)

Insert:

- (1A) This section does not apply to a person in relation to a year of income if the person has a supplementary amount for that year of income.

Note: For *supplementary amount* see sections 38A and 45A.

7 Paragraph 58(1)(a)

Before "for a year", insert "or a person's supplementary amount, or both (as the case may be)".

Note: The heading to section 58 is replaced by the heading "**Taxable income or supplementary amount not readily ascertainable**".

8 Paragraph 58(1)(b)

After "taxable income", insert "or supplementary amount, or both (as the case may be)".

9 Subsection 58(1)

After “taxable income under that Act”, insert “or the person’s supplementary amount, or both (as the case may be)”.

10 Paragraph 58(1A)(a)

Before “for a year”, insert “or a person’s supplementary amount, or both (as the case may be)”.

11 Paragraph 58(1A)(b)

After “taxable income”, insert “or the person’s supplementary amount, or both (as the case may be)”.

12 Subsection 58(1A)

Before “for the year of income”, insert “or the person’s supplementary amount, or both (as the case may be)”.

13 Paragraph 58(2)(b)

After “that taxable income)”, insert “and the person’s supplementary amount under this Act for the year of income”.

14 Subsection 58(2)

Add at the end “and that the person’s supplementary amount for the year of income is, and always has been, the subsequently ascertained supplementary amount, or both (as the case may be)”.

15 Subdivision B of Division 3 of Part 5 (heading)

Repeal the heading, substitute:

**Subdivision B—Child support income amount determined by
reference to estimate of taxable income and
supplementary amount for current child support
year**

16 Paragraph 60(1)(a)

After “estimates that”, insert “the total of”.

17 Paragraph 60(1)(a)

Before “for the year”, insert “and his or her supplementary amount”.

Note: The heading to section 60 is altered by inserting “**and supplementary amount**” after “**taxable income**”.

18 Paragraph 60(2)(b)

After “taxable income”, insert “and supplementary amount”.

19 Paragraph 60A(1)(b)

Omit “taxable income”, substitute “total of the taxable income and supplementary amount”.

20 Paragraph 60A(1)(b)

After “taxable income amount”, insert “and supplementary amount”.

21 Paragraphs 61(1)(a) and 63(1)(a)

After “*Income Tax Assessment Act 1997*”, insert “and his or her supplementary amount”.

22 Paragraph 64(1)(b)

Omit “(in this subsection called the *actual taxable income*)”, substitute “and the person’s supplementary amount (in this subsection called the *actual taxable income and supplementary amount*)”.

Note: The heading to section 64 is altered by inserting “**and supplementary amount**” after “**taxable income**”.

23 Paragraph 64(1)(b)

After “either of those Acts”, insert “and his or her supplementary amount”.

24 Subsection 64(1)

Add at the end “and supplementary amount”.

25 Paragraph 64A(1)(b)

Before “for the child support”, insert “and supplementary amount”.

Note: The heading to section 64A is altered by adding at the end “**and supplementary amount**”.

26 Paragraph 64A(1)(b)

After “taxable income” (second occurring), insert “and supplementary amount”.

27 Paragraph 64A(2)(a)

After “taxable income”, insert “and supplementary amount”.

Schedule 16—Assessment on most recent taxable income

Child Support (Assessment) Act 1989

1 Section 5

Insert:

child support period has the meaning given by subsection 7A(1).

2 Section 5 (definition of *Eawe amount*)

Omit “year” (first occurring), substitute “period”.

3 Section 5 (definition of *Eawe amount*)

Omit “1 January immediately before the child support year”, substitute “the calendar year in which the child support period started”.

4 Section 5 (definition of *last relevant year of income*)

Repeal the definition, substitute:

last relevant year of income for a child support period means the last year of income that ended before the start of the period.

5 Section 5

Insert:

named month means one of the 12 named months of the year.

6 Section 5 (definition of *relevant Awe amount*)

Omit “year” (first occurring), substitute “period”.

7 Section 5 (definition of *relevant Awe amount*)

Omit “1 January immediately before the child support year”, substitute “the calendar year in which the child support period started”.

8 Section 5 (example at the end of the definition of *relevant Awe amount*)

Repeal the example, substitute:

Example: Suppose that the pay week ending on 20 October 2000 was the latest period in the year 2000 for which the Australian Statistician published such an estimate before 1 January 2001, and that the estimate was \$790. The relevant AWE amount for a child support period starting on any day in 2001 (including 1 January 2001) would be \$790.

9 Section 5 (definition of *relevant partnered rate of Social Security pension*)

Omit “year” (first occurring), substitute “period”.

10 Section 5 (definition of *relevant partnered rate of Social Security pension*)

Omit “that was payable on 1 January immediately before the child support year”, substitute “payable on 1 January of the year in which the child support period started”.

11 Section 5 (definition of *relevant unpartnered rate of Social Security pension*)

Omit “year” (first occurring), substitute “period”.

12 Section 5 (definition of *relevant unpartnered rate of Social Security pension*)

Omit “that was payable on 1 January immediately before the child support year”, substitute “payable on 1 January of the year in which the child support period started”.

13 Section 5 (definition of *yearly equivalent of the relevant AWE amount*)

Omit “year” (twice occurring), substitute “period”.

14 After section 7

Insert:

7A Meaning of *child support period*

What is a child support period?

- (1) A *child support period* is a period that:
- (a) starts at a time described in subsection (2); and
 - (b) ends at the time described in subsection (3) that occurs soonest after the start of the period.

Note: Subsections (6), (7), (8) and (9) provide some examples of child support periods. The examples are not exhaustive or definitive: see section 15AD of the *Acts Interpretation Act 1901*.

When does a child support period start?

- (2) Each of the following times is the start of a child support period:
- (a) the beginning of the day when an application for an administrative assessment of the child support payable by a liable parent to the carer entitled to child support for a child is properly made under Part 4;
 - (b) the beginning of a period containing days for which child support is payable under a child support agreement by a liable parent to the carer entitled to child support for a child under paragraph 93(1)(g);
 - (c) the start of the first day for which a child support agreement described in section 34B is to affect the rate of child support payable by a liable parent to the carer entitled to child support for a child;
 - (d) immediately after the end of the preceding child support period that relates to child support payable by the liable parent to the carer entitled to child support for the child (whether it was a period starting as described in paragraph (a), (b) or (c) or this paragraph).

End of the child support period

- (3) The child support period ends at whichever of the following times occurs soonest after the start of the period:
- (a) the time 15 months after the period started;
 - (b) the end of the named month during which the Registrar makes an assessment relating to the liable parent, carer and child as required by section 34A (Registrar must make assessment when new taxable income figure is available);
 - (c) the time immediately before the beginning of a period containing days for which child support is payable under paragraph 93(1)(g) as a result of the liable parent and carer making a child support agreement accepted by the Registrar;
 - (d) the end of the day immediately before the first day for which a child support agreement described in section 34B is to affect the rate of child support payable by the liable parent to the carer entitled to child support for a child.

Examples

- (4) Subsections (5), (6), (7) and (8) merely give a series of examples of the operation of the rules in subsections (1), (2) and (3). The examples involve Mary and Peter. Mary cares for their child and, on 8 June 2000, makes an application under Part 4 and receives a child support assessment for Peter to pay her child support for the child.

Example—initial child support period resulting from application under Part 4

- (5) On 20 October 2000, the Registrar makes a new administrative assessment based on an assessment under the income tax law of Peter's taxable income for the 1999-2000 year of income (as required by section 34A). The first child support period starts on 8 June 2000 and ends at the end of 31 October 2000, and the second starts on 1 November 2000.

Example—end of child support period if new taxable income not available within 15 months

- (6) If no assessment of the taxable income of Mary or Peter for the 1999-2000 or the 2000-2001 year of income had been made under the income tax law before the end of 7 September 2001, the first child support period would start on 8 June 2000 and end at the end of 7 September 2001 (15 months after it started).

Example—child support agreement ends existing child support period and starts a new one

- (7) If Mary and Peter make a child support agreement to influence the annual rate of child support on and after 15 September 2000:
- (a) the child support period that started on 8 June 2000 ends at the end of 14 September 2000; and
 - (b) a new child support period starts on 15 September 2000.

Example—child support period for child support agreement setting child support rate lasts 15 months

- (8) If the child support agreement set the rate of child support payable for the next 2 years (so section 34A did not require the Registrar to make an administrative assessment on 20 October 2000 as

described in subsection (5)), the child support period that started on 15 September 2000 would end 15 months later at the end of 14 December 2001 (unless Mary and Peter made another child support agreement to affect the rate of child support payable for a day before 15 December 2001).

15 Paragraph 8(1)(b), subparagraphs 8(3)(b)(i) and (ii) and subsection 8A(3)

Omit “of the child support year”, substitute “in the 12 months immediately after the start of the child support period”.

16 Subsection 8A(3)

Omit “those days”, substitute “the days in the child support period”.

17 Subsection 8A(4)

Omit “of the child support year”, substitute “in the 12 months immediately after the start of the child support period”.

18 Subsection 8A(4)

Omit “those nights”, substitute “the nights in the child support period”.

19 Subsection 8A(5)

Omit “of the child support year”, substitute “in the 12 months immediately after the start of the child support period”.

20 Subsection 8A(5)

Omit “those nights”, substitute “the nights in the child support period”.

21 Subsection 8A(7) (examples 1 and 2)

Repeal the examples.

22 Subsection 31(2)

Repeal the subsection, substitute:

- (2) The Registrar must assess under this Act the annual rate of the child support payable by the liable parent to the carer entitled to the child support for the child for the days in the child support period that starts on the day the application was made. The Registrar must do so as quickly as practicable.

Note: Part 4A deals with assessments for later child support periods.

23 After Part 4

Insert:

Part 4A—Assessments of child support for later child support periods**34A Registrar must make assessment when new taxable income figure is available***Application*

- (1) This section requires the Registrar to assess the rate of child support payable in some cases if:
 - (a) child support is payable by a liable parent to the carer entitled to child support for a child for a day in a child support period (the *earlier period*); and
 - (b) during the earlier period, an assessment (the *tax assessment*) is made under the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* of the taxable income of the liable parent or the carer for the latest year of income (the *last year*) that ended after the start of the earlier period.

Registrar must make assessment using new taxable income figure

- (2) As soon as practicable after the tax assessment is made, the Registrar must assess under this Act the annual rate of the child support payable by the liable parent to the carer for the child for days in a child support period (the *later period*) starting on the first day of the next named month (after the named month in which the Registrar makes the assessment).

No assessment needed if tax assessment is for carer and carer's taxable income could not affect child support assessment

- (3) This section does not require the Registrar to make an assessment if:
 - (a) the tax assessment relates to the carer; and
 - (b) the Registrar calculates that the sum of the carer's taxable income and supplementary amount for the last year could not affect the rate of child support payable to the carer for a day in the later period.

No assessment needed if adjusted income amount or child support rate fixed by other means

- (4) This section does not require the Registrar to make an assessment if the adjusted income amount, or the rate of child support payable, for the first day of the next named month is to be worked out without reference to the actual taxable income of the person the tax assessment relates to for the last year, because of:
- (a) a child support agreement between the liable parent and carer; or
 - (b) a determination under Part 6A (Departure from administrative assessment of child support); or
 - (c) an order made by a court under this Act.

No assessment needed if new child support period would start before first day of next named month

- (5) This section does not require the Registrar to make an assessment if the earlier period will end before the end of the earliest named month in which it is practicable for the Registrar to make the assessment mentioned in subsection (2).

Note: In this case, the Registrar must use the information from the tax assessment to make an assessment for the period starting immediately after the end of the earlier period (unless the information is not relevant to an assessment, because of an agreement, determination or order). See section 34C.

34B Administrative assessment for child support period started by new agreement when support already payable

If:

- (a) the Registrar accepts a child support agreement made in relation to a child; and
- (b) child support for the child is already payable by a liable parent to the carer entitled to child support for the child; and
- (c) the agreement is to affect the annual rate of child support payable by the liable parent for the child;

the Registrar must immediately assess under this Act the annual rate of child support payable for the child for a child support period that starts at the beginning of the first day for which the rate of child support payable for the child is to be affected by the agreement.

Note: Section 95 explains how the provisions of the agreement affect the assessment.

34C Administrative assessments for child support periods not started by application or new agreement

The Registrar must assess under this Act the annual rate of child support payable by a liable parent to the carer entitled to child support for a child for days in a child support period either before, or as soon as practicable after, the start of the period unless:

- (a) the period starts when an application is made under Part 4; or
- (b) the period starts when a period described in paragraph 93(1)(g) starts; or
- (c) an assessment of the child support payable for days in the period has already been made as required by section 34A; or
- (d) the period starts on the first day for which a child support agreement described in paragraph 34B is to affect the annual rate of child support payable by the liable parent to the carer for the child.

Note 1: Subsection 31(2) requires the Registrar to make an assessment of child support payable, as soon as practicable after accepting an application under Part 4.

Note 2: Subsection 93(2) requires the Registrar to make an assessment of child support payable, as soon as practicable after accepting certain child support agreements.

Note 3: If a child support agreement has effect for the purposes of the child support period, it will affect the assessment. See section 95.

24 Subsection 36(1), section 38, paragraphs 38(a) and 39(1)(a) and subparagraph 39(1)(b)(i)

Omit “child support year”, substitute “child support period”.

25 Subsection 39(2)

Omit “The additional”, substitute “Subject to subsection (5), the additional”.

26 Paragraphs 39(2)(a) and (b)

Omit “at the end of the child support year”, substitute “12 months after the start of the child support period”.

27 At the end of section 39

Add:

- (5) If an assessment of child support payable by a liable parent for days in a child support period is made or amended more than 12 months after the start of the period:
- (a) the liable parent's additional amount for a child for the purpose of the assessment or amendment is to be worked out under subsection (2) as if, at the time 12 months after the start of the period, the child had already reached the age he or she has reached when the assessment or amendment is made; and
 - (b) the additional amount worked out as described in paragraph (a) applies to days in the period on or after the day the assessment or amendment is made.

28 Section 42 and subsection 44(1),

Omit "year" (wherever occurring), substitute "period".

29 Section 45 and paragraphs 45(a) and (b)

Omit "child support year", substitute "child support period".

30 Section 46, subsection 48(1), sections 49 and 51, subsection 52(1), subsection 52(2) (paragraph (b) of the definition of *maximum possible child support liability*) and subsection 54(1)

Omit "year", substitute "period".

31 Subsection 54(2) (examples 1 and 2)

Repeal the examples, substitute:

<p>Example 1: Application of basic formula where liable parent has a liability to 2 carers and has no care of the children</p>

Facts: The assessment is being made for a child support period starting on 1 November 1999.

Peter is liable to 2 carers—Mary and Jane. He is liable to Mary for 3 children and Jane for 2 children, and he does not have care of any of the children.

Peter’s taxable income for the 1998-99 year of income (which is the last relevant year of income for the child support period) is \$33,280. Neither Mary nor Jane has a taxable income for that year of income that is high enough to affect the assessment under Subdivision D of Division 1.

Assume that the relevant unpartnered rate of Social Security pension for the child support period is such that Peter’s exempted income amount for the period is \$9,947 (see paragraph 39(1)(a)).

Step 1: Calculate the child support percentage for each carer. (Paragraph 54(1)(b))

The total number of children is 5. The table at section 37 shows the child support percentage for 5 children is 36%.

Mary has 3 children. Therefore the child support percentage for Mary is:

$$\frac{\text{No. of children in Mary's care}}{\text{Total no. of children}} \times 36\% \quad : \quad \frac{3}{5} \times 36\% = 21.60\%$$

Jane has 2 children. Therefore the child support percentage for Jane is:

$$\frac{\text{No. of children in Jane's care}}{\text{Total no. of children}} \times 36\% \quad : \quad \frac{2}{5} \times 36\% = 14.40\%$$

Step 2: Do separate assessments for each carer, using the 2 child support percentages calculated in Step 1. (Division 1 of Part 5)

For Peter to pay Mary:

Peter’s taxable income for 1998-99 year of income	=	\$33,280
Peter’s child support income amount	=	\$33,280
Less exempted income amount	–	\$9,947
Peter’s adjusted income amount	=	\$23,333
Multiply by child support percentage	×	21.6%
Peter’s child support annual rate for the child support period starting on 1 November 1999	=	\$5,040

For Peter to pay Jane:

Peter’s taxable income for 1998-99 year of income	=	\$33,280
Peter’s child support income amount	=	\$33,280
Less exempted income amount	–	\$9,947
Peter’s adjusted income amount	=	\$23,333
Multiply by child support percentage	×	14.4%

Peter's child support annual rate for the child support period starting on 1 November 1999	=	\$3,360
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Example 2: Application of basic formula where liable parent has a liability to 2 carers and shares daily care of one of the children

Facts: The assessment is being made for a child support period starting on 1 November 1999.

Peter is liable to 2 carers—Mary and Jane. He is liable to Mary for 3 children, but shares the daily care of a 10-year-old child with her substantially equally. Mary has sole daily care of the other 2 children. Peter is liable to Jane for 2 children. Jane has sole daily care of both children.

Peter's taxable income for the 1998-99 year of income (which is the last relevant year of income for the child support period) is \$33,280. Mary's taxable income for that year of income is \$28,000 but Jane's taxable income for that year of income is so low that Subdivision D of Division 1 does not affect the assessment of the child support payable to Jane.

Assume that the relevant rates under the *Social Security Act 1991* on 1 January 1999 are such that Peter's exempted income amount worked out under section 39 for the period is \$11,842 and Mary's exempted income amount worked out under that section for the period is \$24,909.

Step 1: Calculate the child support percentage for each carer. (Paragraph 54(1)(b))

The total number of children is 4.5 (2 + 0.5 for Mary + 2 for Jane). The table at paragraph 54(1)(c) is used when the liable parent and at least one of the carers have shared or divided children between them, or when substantial contact is involved. The table shows the child support percentage for a total of 4.5 children is 35%.

Mary has 2.5 children. Therefore the child support percentage for Mary is:

$$\frac{\text{No. of children in Mary's care}}{\text{Total no. of children}} \times 35\% \quad : \quad \frac{2.5}{4.5} \times 35\% = 19.45\%$$

Jane has 2 children. Therefore the child support percentage for Jane is:

$$\frac{\text{No. of children in Jane's care}}{\text{Total no. of children}} \times 35\% \quad : \quad \frac{2}{4.5} \times 35\% = 15.55\%$$

Step 2: Do an assessment for Peter to pay Jane using the child support percentage calculated in Step 1. (Division 1 of Part 5)

For Peter to pay Jane:

Peter's taxable income for the 1998-99 year of income	=	\$33,280
Peter's child support income amount	=	\$33,280

Less exempted income amount	–	\$11,842
Peter’s adjusted income amount	=	\$21,438
Multiply by child support percentage	×	15.55%
Peter’s child support annual rate for the child support period starting on 1 November 1999	=	\$3,334
<i>Step 3: Do assessments for Peter and Mary as if they were liable to each other (using the Division 1 basic formula with modification). (Section 48)</i>		
<i>For Peter to pay Mary:</i>		
Peter’s taxable income for the 1998-99 year of income	=	\$33,280
Peter’s child support income amount	=	\$33,280
Less exempted income amount	–	\$11,842
Peter’s adjusted income amount	=	\$21,438
Multiply by child support percentage	×	19.45%
Peter’s child support annual rate for the child support period starting on 1 November 1999	=	\$4,170
<i>For Mary to pay Peter:</i>		
Mary’s taxable income for the 1998-99 year of income	=	\$28,000
Mary’s child support income amount	=	\$28,000
Less exempted income amount	–	\$24,909
Mary’s adjusted income amount	=	\$3,991
Multiply by child support percentage (from table in section 48)	×	12%
Mary’s child support annual rate for the child support period starting on 1 November 1999	=	\$479
<i>Step 4: Reduce the annual rates payable by Peter and Mary. (Section 49)</i>		
Peter owes Mary \$4,170 a year. Mary owes Peter \$479 a year. Therefore the annual rate payable by Peter to Mary is \$3,691 (\$4,170 – \$479). The annual rate payable by Mary to Peter is reduced to 0.		

Note: The annual rates of child support are all rounded to the nearest dollar, as required by section 156.

32 Section 54B

Omit “year”, substitute “period”.

33 Section 54B (example)

Repeal the example.

34 Section 55

Repeal the section.

35 Paragraph 56(4)(a)

Omit “year”, substitute “period”.

36 Subsection 56(4)

Omit “for current child support year”, substitute “and supplementary amount for rest of current child support period”.

37 Paragraph 57(8)(a)

Omit “year”, substitute “period”.

38 Subsection 57(8)

Omit “for current child support year”, substitute “and supplementary amount for rest of current child support period”.

39 Subsection 58(1)

Omit “child support year” (first occurring), substitute “child support period”.

40 Subsection 58(1)

Omit “(as multiplied by the inflation factor (if any) applicable to the child support year under regulations made for the purposes of section 55)”.

41 Subsection 58(1)

Omit “child support year” (last occurring), substitute “child support period”.

42 Subsection 58(1A)

Omit “child support year”, substitute “child support period”.

43 Subdivision B of Division 3 of Part 5 (heading)

Repeal the heading, substitute:

Subdivision B—Child support income amount determined by reference to estimate of taxable income and supplementary amount for rest of current child support period

44 Section 60

Repeal the section, substitute:

60 Choosing child support income amount for remainder of child support period

Election that child support income amount is estimated amount

- (1) Before or during a child support period, a person may elect that the person's child support income amount for assessing the annual rate of child support payable by or to the person for the remaining days in a child support period is to be the amount the person works out using the method in subsection (5) (with the modification in subsection (6), if appropriate).

Election prohibited if income amount order in force

- (2) However, a person may not make an election relating to a child support period if an income amount order is in force in relation to the person and any part of the period.

First election must be for amount less than taxable income and supplementary amount for last relevant year of income

- (3) The person may make a first election relating to a child support period only if the amount that he or she works out under this section is not more than 85% of the total of the person's taxable income and supplementary amount for the last relevant year of income for the child support period.

Other elections may be made at intervals of at least 2 months

- (4) The person may make one or more later elections relating to the child support period at intervals of at least 2 months if:
 - (a) the person revokes the immediately preceding election under section 62 when making each later election; and

- (b) the amount worked out under this section for each later election is greater or less than the amount of the first election relating to the period.

Method of estimation of child support income amount

- (5) The method is as follows:

Method statement

Step 1. Work out the length of the period (the **remaining period**):

- (a) starting on the day the person makes the estimate or the day the child support period starts, whichever is later (or either day if they are the same); and
- (b) ending 15 months after the start of the child support period.

Step 2. Estimate the amount that would be the person's taxable income for the remaining period if that period were a year of income.

Step 3. Estimate the amount that would be the person's supplementary amount for the remaining period if that period were a year of income.

Step 4. Add up the amounts estimated in Steps 2 and 3.

Step 5. If the remaining period is shorter or longer than 12 months:

- (a) divide the total from Step 4 by the number of days in the remaining period; and
- (b) multiply the quotient by 365.

Person may treat remaining period as 12 months even if it is longer

- (6) If the remaining period is more than 12 months, the person may apply the method in subsection (5) as if the remaining period were exactly 12 months, starting on the day worked out under paragraph (a) of Step 1 of the Method statement in subsection (5).

How election is made

- (7) The person makes the election by giving notice of it to the Registrar in the manner specified by the Registrar. The notice must specify:
- (a) the amount that the person elects is to be his or her child support income amount; and
 - (b) the amount the person estimated at Step 2 of the Method statement in subsection (5); and
 - (c) the amount the person estimated at Step 3 of the Method statement in subsection (5); and
 - (d) that the remaining period was treated as being 12 months, if the person chose to do so under subsection (6).

45 Subsection 60A(1)

Repeal the subsection, substitute:

- (1) The Registrar may refuse to accept the person's election if the Registrar is satisfied that:
- (a) the amount the person estimated at Step 2 of the Method statement in subsection 60(5) is likely to be less than the actual amount that would be the person's taxable income for the remaining period if that period were a year of income; or
 - (b) the amount the person estimated at Step 3 of the Method statement in subsection 60(5) is likely to be less than the actual amount that would be the person's supplementary amount for the remaining period if that period were a year of income.

For this purpose, *remaining period* means the period that the person used as the remaining period in applying the method in subsection 60(5).

46 Subsection 61(1)

Repeal the subsection, substitute:

- (1) If a person makes an election under section 60 relating to a child support period, the person's child support income amount is the amount the person elected, for the purposes of assessing the annual rate of child support payable by or to the person for a day in the period on or after the day the person made the election.

47 Subsections 61(2), (3) and (4) and 62(1A) and (3)

Omit "year" (wherever occurring), substitute "period".

48 Subsection 63(1)

Repeal the subsection, substitute:

- (1) If a person who made an election under section 60 relating to a child support period revokes the election and substitutes a new election, the person's child support income amount is the amount the person elected in the new election, for the purposes of assessing the annual rate of child support payable by or to the person for a day in the period on or after the day the person made the new election.

49 Subsections 63(2), (3) and (4)

Omit "year", substitute "period".

50 After section 63

Insert:

63A Amendment of assessment based on election if event affecting accuracy of estimate occurs

- (1) This section allows the Registrar to amend an assessment of child support payable by or to a person for some days in a child support period if:
 - (a) the person has made an election under section 60 relating to the period; and
 - (b) the Registrar has given the person a notice under section 160 requiring the person to notify the Registrar of the occurrence of an event that may affect the accuracy of an estimate on which the election is based.

- (2) If the person gives notice of the event as required by section 160, the Registrar may amend the assessment to affect the annual rate of child support payable by or to the person for the days in the child support period on or after the day the person gives notice.
- (3) If the person does not give notice of the event as required by section 160, the Registrar may amend the assessment to affect the annual rate of child support payable by or to the person for the days in the child support period on or after the day the event occurred.
- (4) This section does not:
 - (a) affect the operation of section 160; or
 - (b) prevent the Registrar from making a new assessment for part of the child support period.

Note: This section does not limit the power under section 75 to amend assessments: see subsection 75(4).

63B Amendment of assessment based on election if Registrar asks for information supporting estimate

- (1) This section allows the Registrar to amend an assessment of child support payable by or to a person for some days in a child support period if:
 - (a) the person has made an election under section 60 relating to the period; and
 - (b) the Registrar has given the person a notice under section 161 requiring the person to:
 - (i) give the Registrar information; or
 - (ii) attend before a person and answer questions; or
 - (iii) produce documents containing information;relevant to determining the accuracy of an estimate on which the election is based.
- (2) If the person complies with section 161 (in relation to the notice), the Registrar may amend the assessment to affect the annual rate of child support payable by or to the person for the days in the child support period on or after the day the person complies.
- (3) If the person does not comply with section 161 (in relation to the notice), the Registrar may amend the assessment to affect the

annual rate of child support payable by or to the person for the days in the child support period on or after:

- (a) the day the election was made; or
- (b) if:
 - (i) before the Registrar gave the notice but after the election was made, the Registrar had given the person another notice (the *earlier notice*) of the kind described in paragraph (1)(b); and
 - (ii) the person complied with section 161 in relation to the earlier notice;the day on which the person complied with section 161 in relation to the earlier notice.

- (4) This section does not:
 - (a) affect the operation of section 161; or
 - (b) prevent the Registrar from making a new assessment for part of the child support period.

Note: This section does not limit the power under section 75 to amend assessments: see subsection 75(4).

51 Subsection 64(1)

Repeal the subsection, substitute:

- (1A) This section applies if:
 - (a) an election made by a person under section 60 in relation to a child support period has not been revoked at the end of the period; and
 - (b) the total of the person's real remaining period taxable income and real remaining period supplementary amount is more than the total of the amounts the person estimated at Steps 2 and 3 of the Method statement in subsection 60(5) for the purposes of making the election.
- (1) For the purposes of assessing the annual rate of child support payable by or to the person for days on or after the election was made but before the end of the child support period, the person's child support income amount is taken to be (and always to have been) the amount worked out by:
 - (a) adding up the person's real remaining period taxable income and real remaining period supplementary amount; and
 - (b) if the remaining period was not 12 months:

- (i) dividing the sum from paragraph (a) by the number of days in the remaining period; and
- (ii) multiplying the quotient by 365.

Note: The heading to section 64 is altered by omitting “year” and substituting “period”.

52 Subsections 64(2), (3) and (4)

Omit “year”, substitute “period”.

53 At the end of section 64

Add:

- (5) In this section:

real remaining period supplementary amount of a person who made an election under section 60 is the amount that would have been the person’s supplementary amount for the remaining period had the remaining period been a year of income.

real remaining period taxable income of a person who made an election under section 60 is the amount that would have been the person’s taxable income (as defined in the *Income Tax Assessment Act 1997*) for the remaining period had the remaining period been a year of income.

remaining period for a person who made an election under section 60 is the period the person used in applying the method in subsection 60(5) to make the election.

54 Subsection 64A(1)

Repeal the subsection, substitute:

- (1) A person is liable to pay the Registrar a penalty of the amount worked out under subsection (2) if:
 - (a) the person made an election under section 60 relating to a child support period; and
 - (b) the total of the person’s real remaining period taxable income and real remaining period supplementary amount is at least 110% of the total of the amounts the person estimated at Steps 2 and 3 of the Method statement in subsection 60(5) for the purposes of making the election.

55 At the end of section 64A

Add:

(8) In this section:

real remaining period supplementary amount of a person who made an election under section 60 has the meaning given by subsection 64(5).

real remaining period taxable income of a person who made an election under section 60 has the meaning given by subsection 64(5).

56 Subsections 66(1) and (2) and 66A(1)

Omit “year”, substitute “period”.

57 Subsection 66A(2)

Omit “child support year”, substitute “12 months starting at the beginning of the child support period”.

58 Subsections 66A(3), 67(1) and 68(1) and section 69

Omit “year”, substitute “period”.

Note: The heading to section 68 is altered by omitting “year” and substituting “period”.

59 Section 71

Repeal the section, substitute:

71 Assessment for part of a child support period

In making an administrative assessment of the annual rate of child support payable for days in a period (the *part period*) that is not a whole child support period, the Registrar may apply this Act as if the beginning and end of the part period were the beginning and end respectively of a child support period.

60 Paragraph 75(2)(b)

Omit “year, or the part of the child support year”, substitute “period, or the part of the child support period”.

61 Paragraph 77(a)

Omit “year”, substitute “period”.

62 Subsection 84(4)

Omit “years”, substitute “periods”.

63 Subsection 84(4)

Omit “year”, substitute “period”.

64 Subsection 93(2)

Repeal the subsection, substitute:

- (2) The Registrar must assess under this Act the annual rate of the child support payable by the liable parent to the carer entitled to the child support for the child for the days in the child support period that starts on the day the period mentioned in paragraph (1)(g) starts. The Registrar must do so as quickly as practicable.

Note: Part 4A deals with assessments for later child support periods.

65 After paragraph 94(1)(c)

Insert:

- and (d) the child support agreement is not to affect the annual rate of child support payable for the child by the liable parent by whom child support is already payable for the child;

66 Subsection 94(1)

After “such action”, insert “(if any)”.

67 At the end of subsection 94(1)

Add:

Note: Section 34B requires the Registrar to make a new assessment of the annual rate of child support if the child support agreement is to affect the annual rate of child support payable for the child by the liable parent by whom child support is already payable for the child.

68 Subsection 98S(3)

Omit “years”, substitute “periods”.

69 Subsection 98S(3)

Omit “year”, substitute “period”.

70 Paragraph 98U(4)(a)

Repeal the paragraph, substitute:

- (a) whichever of sections 34B and 94 is appropriate applies; and
- (aa) sections 95 and 96 apply; and

71 Subsection 117(3)

Repeal the subsection, substitute:

- (3) A parent's costs involved in enabling the parent to have contact with a child can only be high for the purposes of subparagraph (2)(a)(iv) or sub-subparagraph (2)(b)(i)(A) if, during a child support period, they total more than 5% of the amount worked out by:
 - (a) dividing the parent's child support income amount for the period by the number of days in the period; and
 - (b) multiplying the quotient by 365.

72 Paragraph 117(3A)(b)

Omit "year", substitute "period".

73 Subsection 117(3B)

Repeal the subsection, substitute:

- (3B) Child care costs can only be high for the purposes of sub-subparagraph (2)(b)(i)(C) if, during a child support period, they total more than 5% of the amount worked out by:
 - (a) dividing the carer's child support income amount for the period by the number of days in the period; and
 - (b) multiplying the quotient by 365.

74 Subsection 118(2)

Omit "years", substitute "periods".

75 Subsection 118(2)

Omit "year", substitute "period".

76 Subsection 125(4)

Omit "years", substitute "periods".

77 Subsection 125(4)

Omit "year", substitute "period".

78 Section 155

Repeal the section, substitute:

155 Publication of AWE and social security pension figures

Before the end of each calendar year, the Registrar must publish in the *Gazette*:

- (a) the yearly equivalent of the relevant AWE amount, and of the EAWWE amount; and
- (b) the relevant partnered rate of Social Security pension; and
- (c) the relevant unpartnered rate of Social Security pension; and
- (d) the amounts referred to in paragraph 39(2)(b);

for all child support periods starting in the following calendar year.

79 Transitional provision—child support period starting on 1 July 1999

Child support is payable by a liable parent to a carer entitled to child support for a child for a day in a child support period starting on 1 July 1999 if:

- (a) child support was payable by the liable parent to the carer for the child for 30 June 1999; and
- (b) child support would have been payable by the liable parent to the carer for the child for the first day of the 1999-2000 child support year apart from the amendments made by this Schedule.

80 Transitional provision—new assessment when 1998-99 taxable income figure becomes available

- (1) This item makes special provision relating to child support periods and assessment of child support for the situation where:
 - (a) child support is payable by a liable parent to a carer entitled to child support for a child for a day in a child support period that starts on or after 1 July 1999 but before 1 June 2000; and
 - (b) an assessment (the *tax assessment*) of the taxable income of the liable parent or carer for the 1998-99 year of income is made under the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* before 1 June 2000; and
 - (c) the amount of the taxable income of the liable parent or carer as shown in the tax assessment was not used in making the

assessment of child support payable for a day in the child support period.

- (2) Section 34A of the *Child Support (Assessment) Act 1989* applies as if the child support period had started before the end of the 1998-99 year of income.
- (3) However, that section (as applied by this item) does not require the Registrar to make an assessment of child support payable in June 2000 or a later named month.

Schedule 17—Flexible due dates for child support

Child Support (Registration and Collection) Act 1988

1 Subsection 4(1) (after paragraph (a) of the definition of *appealable refusal decision*)

Insert:

- (aaa) a decision under subsection 26B(3) or section 65B refusing to register an elected period;

2 Subsection 4(1)

Insert:

initial period, in relation to a registrable maintenance liability or a registered maintenance liability, means the period entered in the Child Support Register under paragraph 26(2)(a).

3 Subsection 4(1)

Insert:

payment period, except in section 76, means one of the following periods:

- (a) a week;
- (b) a fortnight;
- (c) a 4 week period;
- (d) a month;
- (e) a calendar month.

4 Section 26

Repeal the section, substitute:

26 Particulars of liability to be entered in Child Support Register

Particulars of the child support assessment, court order or maintenance agreement

- (1) The entry in the Child Support Register in relation to a registered maintenance liability must include particulars from the child support assessment, court order or maintenance agreement under which the liability arose. Those particulars are as follows:
 - (a) the name of the payer;
 - (b) the name of the payee;
 - (c) particulars of the child support assessment, court order or maintenance agreement under which the liability arose and each assessment, court order and maintenance agreement varying or otherwise affecting the first-mentioned assessment, order or agreement, being particulars that are, in the opinion of the Registrar, sufficient to adequately identify the basis of the liability;
 - (d) the name and date of birth of each child to whose maintenance the entry relates;
 - (e) the name of any other person to whose maintenance the entry relates;
 - (f) the periodic amount, or the aggregate of the periodic amounts that are:
 - (i) stipulated in the child support assessment, court order or maintenance agreement under which the liability arose; and
 - (ii) payable by the payer in relation to the entry;
 - (g) if the entry relates to the maintenance of 2 or more persons—the periodic amount attributable to each of them;
 - (h) the period specified in the child support assessment, court order or maintenance agreement as the period at which amounts are payable under the liability;
 - (i) particulars of any terms and conditions of the court order or agreement that the Registrar considers necessary or desirable to include in the entry to ensure that all the terms and conditions of the order or agreement relating to the liability are fully given effect to under this Act.

Particulars as to the payment period and payment rate

- (2) The entry in the Register must also include particulars relating to the payment rate and payment period in respect of the liability. Those particulars are as follows:
- (a) the initial period (determined under section 26C) (if any) at which an amount is payable in respect of the liability;
 - (b) the payment period (determined under section 26A, 26B or 42A or Part IV), after the initial period (if any), at which amounts are payable in respect of the liability, and the start day of the period;
 - (c) if employer withholding is to apply in relation to a liability—a weekly rate of payment in relation to the periodic amount, or the aggregate of the periodic amounts;
 - (d) the rate of payment (weekly, fortnightly, 4 weekly or monthly) in relation to the periodic amount, or the aggregate of the periodic amounts, payable by the payer in relation to the entry and the amount of the rate of payment.

Note 1: For *payment period* see subsection 4(1).

Note 2: Section 28B requires the Registrar to convert the periodic amount payable in respect of a registrable maintenance liability to a rate of payment depending upon the payment period determined in respect of the liability.

Particulars relating to enforceability of the liability

- (3) The entry in the Register must also include particulars relating to the enforceability of the liability. Those particulars are as follows:
- (a) the day on which the liability first becomes enforceable under this Act;
 - (b) if the liability ceases to be enforceable under this Act (whether on one occasion or more than one occasion)—each day on which the liability ceases to be so enforceable;
 - (c) if the liability ceases to be enforceable under this Act and again becomes so enforceable (whether on one occasion or more than one occasion)—each day on which the liability again becomes enforceable under this Act;
 - (d) particulars of any suspension of the liability.

Other particulars that the Register may include

- (4) The entry in the Register may also include the following particulars in relation to the liability:
 - (a) the daily rate of payment in relation to the periodic amount, or the aggregate of the periodic amounts, payable by the payer in relation to the entry;
 - (b) a statement of whether or not employer withholding applies in relation to the liability;
 - (c) such other matters as the Registrar considers necessary or desirable to be included in the Child Support Register.

26A Payment period to be entered in Register under paragraph 26(2)(b) if Registrar to collect by deduction from salary or wages

Application of section

- (1) This section applies to a registrable maintenance liability or an enforceable maintenance liability if the Registrar is to collect amounts due to the Commonwealth under, or in relation to, the liability by deduction from the salary or wages of the payer of the liability.

Object of section

- (2) This section deals with the determination, in relation to a liability, of:
 - (a) the payment period the Registrar must enter in the Child Support Register under paragraph 26(2)(b) as the period at which amounts are payable in respect of the liability (see subsection (3)); and
 - (b) the day that the Registrar must enter in the Register under paragraph 26(2)(b) as the day from which a payment period (see subsection (4)) starts.

Note: For *payment period* see subsection 4(1).

Period that must be registered where liability to be collected by deduction from salary or wages

- (3) If the Registrar is going to collect amounts due to the Commonwealth under a liability, or in relation to the liability, by
-

deduction from the salary or wages of the payer, the period that the Registrar must enter in the Register is the payment period that reflects the payer's pay cycle.

Example: If a payer is paid weekly, the payment period the Registrar must enter in the Child Support Register will be a week. Similarly, if the payer is paid monthly, the payment period the Registrar must enter in the Register will be a month.

Note: Part IV deals with collection by deduction from salary or wages.

Day from which a payment period starts

- (4) The start day of the payment period referred to in subsection (3) in respect of the liability, is a day specified by the Registrar. The day that the Registrar must specify is the first day of the first of the payment periods in which deduction from the salary or wages of the payer will occur.

26B Payment period to be entered in Register under paragraph 26(2)(b) if payer makes voluntary payments

Application of section

- (1) This section applies to a registrable maintenance liability or an enforceable maintenance liability if the Registrar is not going to collect amounts due to the Commonwealth under, or in relation to, the liability by deduction from the salary or wages of the payer of the liability.

Object of section

- (2) This section deals with the determination, in relation to a liability of:
 - (a) the payment period that the Registrar must enter in the Child Support Register under paragraph 26(2)(b) as the period at which amounts are payable in respect of the liability (see subsections (3) and (5)); and
 - (b) the day that the Registrar must enter in the Register under paragraph 26(2)(b) as the day from which an elected period (see subsection (4)) starts.

Note: For *payment period* see subsection 4(1).

Period that must be registered when liability to be paid voluntarily and election made

- (3) If:
- (a) the Registrar is not going to collect amounts due to the Commonwealth under, or in relation to, a liability by deduction from the salary or wages of the payer of the liability; and
 - (b) the payer makes an election that a payment period be entered in the Register as the period at which amounts are payable in respect of the liability; and
 - (c) the Registrar is satisfied that it will be more convenient for the payer to accrue debts in respect of the elected period instead of a month;
- the Registrar must enter in the Register the elected period as the period at which amounts are payable in respect of the liability.

Day from which elected period starts

- (4) In making an election under subsection (3), the payer must specify the day from which the payment period starts. The Registrar must enter in the Register the specified day as the day from which the elected period starts.

Example 1: The payer elects a 4 week period as the payment period. The payer elects that the start day of the period will be 8 July which is a Wednesday. Therefore the period will end 4 weeks later on a Tuesday.

Example 2: The payer elects a period of a calendar month as the payment period. The payer elects that the start day will be 16 October. Therefore the period will end on 15 November. If the payer elects that the start day will be 31 January the period will end on 28 February.

Period that must be registered when liability to be paid voluntarily and no election made

- (5) If:
- (a) the Registrar is not going to collect amounts due to the Commonwealth under, or in relation to, a liability by deduction from the salary or wages of the payer of the liability; and
 - (b) the payer does not make an election under subsection (3);
- the Registrar must enter in the Register a month as the period at which amounts are payable in respect of the liability.
-

Manner in which election is to be made

- (6) An election made under subsection (3) must be made in the manner specified by the Registrar.

Note: Section 16A provides for the Registrar to specify the manner in which an election may be made.

26C Initial period that may be registered under paragraph 26(2)(a)

- (1) If the Registrar is about to enter a period in the Child Support Register under subsection 26A(3) or 26B(3) in respect of a registrable maintenance liability or an enforceable maintenance liability, the Registrar may also enter in the Register an initial period under paragraph 26(2)(a) in respect of the liability.

When will the initial period start and end—Registrar about to enter liability

- (2) If the Registrar is about to register the liability, the initial period starts on the day on which the liability first becomes enforceable under this Act and ends:
- (a) in the case of the Registrar entering in the Register a payment period under subsection 26A(3)—on the day before the start day specified by the Registrar under subsection 26A(4) in respect of the liability; or
 - (b) in the case of the Registrar entering in the Register a payment period under subsection 26B(3)—on the day before the start day specified by the payer of the liability under subsection 26B(4).

Note: Section 28 deals with when a liability first becomes enforceable under this Act.

When will the initial period start and end—Registrar varies Register under subsection 37B(7) to again make a registered maintenance liability enforceable

- (3) If:
- (a) a low-income non-enforcement period in relation to a registered maintenance liability ends; and
 - (b) the Registrar has varied the particulars of the Register as required by paragraph 37B(7)(1)(a) by specifying the end of

the low-income non-enforcement period as the time at which the liability again becomes enforceable under this Act;
the initial period, in respect of the liability, starts on the day the Registrar has entered in the Register as the time at which the liability again becomes enforceable under this Act and ends:

- (c) in the case of the Registrar entering in the Register a payment period under subsection 26A(3)—on the day before the start day specified by the Registrar under subsection 26A(4) in respect of the liability; or
- (d) in the case of the Registrar entering in the Register a payment period under subsection 26B(3)—on the day before the start day specified by the payer of the liability under subsection 26B(4).

When will the initial period start and end—Registrar receives an application under subsection 39(1) to again make a registered maintenance liability enforceable

- (4) If:
 - (a) the Registrar receives an application under subsection 39(1) for a registered maintenance liability to again become enforceable under this Act; and
 - (b) the Registrar has varied the particulars of the Child Support Register as required by paragraph 39(6)(a) by specifying a day as the day on which the liability again becomes enforceable under this Act;

the initial period, in respect of the liability, starts on the day the Registrar has entered in the Register as the day on which the liability again becomes enforceable under this Act and ends:

- (c) in the case of the Registrar entering in the Register a payment period under subsection 26A(3)—on the day before the start day specified by the Registrar under subsection 26A(4) in respect of the liability; or
- (d) in the case of the Registrar entering in the Register a payment period under subsection 26B(3)—on the day before the start day specified by the payer of the liability under subsection 26B(4).

5 After section 28A

Insert:

28B Conversion of periodic amounts into payment rates in respect of payment periods

- (1) The Registrar must convert a periodic amount payable under a registered maintenance liability arising under a court order or a maintenance agreement to:
 - (a) a daily rate of payment; and
 - (b) one of the following rates of payment:
 - (i) weekly;
 - (ii) fortnightly;
 - (iii) 4 weekly;
 - (iv) monthly.

Note: An amount payable under a registrable maintenance liability is entered on the Child Support Register under paragraph 26(1)(f).

- (2) The Registrar must convert an amount payable under a registered maintenance liability arising under a child support assessment in respect of a day into one of the rates of payment set out in paragraph (1)(b).
- (3) If the Registrar is to collect amounts due to the Commonwealth under, or in relation to, a liability by deduction from the salary or wages of the payer of the liability, the Registrar must convert the periodic amount or daily amount (as the case may be) to a weekly rate of payment.
- (4) The rate of payment to which the Registrar must convert a periodic amount payable under a registered maintenance liability, is the rate that reflects the payment period entered in the Register under paragraph 26(2)(b) in respect of the liability.

Note 1: For *payment period* see subsection 4(1).

Note 2: Sections 26A, 26B and 42A and Part IVA deal with the determination of the period, and the start day for the period, that may be entered in the Child Support Register under paragraph 26(2)(b).

Note 3: The particulars entered in the Child Support Register in respect of a liability must include the rates of payment provided for in this section (see paragraphs 26(2)(c) and (d)).

6 Section 29

After “weekly”, insert “, fortnightly, 4 weekly”.

7 Section 30

Repeal the section, substitute:

30 Effect of registration

- (1) If a registrable maintenance liability is registered under this Act, amounts payable under the child support assessment, court order or maintenance agreement under which the liability arises are debts due to the Commonwealth by the payer in accordance with the particulars of the liability entered in the Child Support Register.
- (2) In particular, the amounts are payable by the payer at the payment rate entered in the Register under paragraph 26(2)(d) in respect of the periods entered in the Register under paragraphs 26(2)(a) and (b).

Note: Section 28B requires the Registrar to convert the periodic amount payable in respect of a registrable maintenance liability to a rate of payment depending upon the payment period determined in respect of the liability.

- (3) If a registrable maintenance liability is registered under this Act, the payee is not entitled to, and may not enforce payment of, amounts payable under the liability.

8 At the end of Part III

Add:

42A Registrar may vary Child Support Register to change period entered under paragraph 26(2)(b) to reflect pay cycle

- (1) If:
 - (a) the Registrar is collecting amounts due to the Commonwealth under, or in relation to a registered maintenance liability, by deduction from the salary or wages of the payer of the liability; and
 - (b) the Registrar becomes aware, other than by means of a notice referred to in paragraph 42B(1)(a) or (b), that the period of the payer's pay cycle is different from the payment period entered in the Child Support Register under paragraph 26(2)(b) in respect of the payer;the Registrar may vary the particulars in the Child Support Register by deleting the period in the Register and substituting another payment period and start day of the period.

- (2) The period that the Registrar must register in substitution is the payment period that reflects the payer's pay cycle. The start day that the Registrar must register is the day specified by the Registrar as the start day of the period.

Note: For *payment period* see subsection 4(1).

42B Registrar may vary Child Support Register if payer's pay cycle changes

- (1) If:
- (a) the Registrar receives:
 - (i) a notice under subsection 47(1) from an employer who is making deduction from a payer's salary or wages; or
 - (ii) a notice from an payer under subsection 111(1) (Notification of commencement of employment); and
 - (b) the notice indicates that the period of the payer's pay cycle is different from the payment period entered in the Child Support Register under paragraph 26(2)(b) in respect of the payer;

the Registrar must, within 28 days of receiving the notice, vary the particulars in the Child Support Register by deleting the period and start day in the Register and substituting another payment period and start day.

- (2) The period that the Registrar must register in substitution is the payment period that reflects the payer's pay cycle. The start day that the Registrar must register is the day specified by the Registrar as the start day.

Note: For *payment period* see subsection 4(1).

9 After Part IV

Insert:

Part IVA—Election available to payers who make voluntary payments of maintenance liabilities

65A Election under this Part

- (1) If the Registrar is not going to collect amounts due to the Commonwealth under, or in relation to, an enforceable maintenance liability by deduction from the salary or wages of the payer of the liability, the payer may elect that the payment period entered in the Child Support Register in respect of the liability under paragraph 26(2)(b) be changed.
- (2) In making the election, the payer must:
 - (a) specify a payment period; and
 - (b) specify the day from which the period starts.
- (3) An election made under subsection (1) must be made in the manner specified by the Registrar.

Example 1: The payer elects a 4 week period as the payment period. The payer elects that the start day of the period will be 8 July which is a Wednesday. Therefore the period will end 4 weeks later on a Tuesday.

Example 2: The payer elects a period of a calendar month as the payment period. The payer elects that the start day will be 16 October. Therefore the period will end on 15 November. If the payer elects that the start day will be 31 January, the period will end on 28 February.

Note: Section 16A provides for the Registrar to specify the manner in which an election may be made.

65B Registrar to act on election

If:

- (a) a payer of an enforceable maintenance liability makes an election of a kind set out in section 65A; and
 - (b) the Registrar is satisfied that it will be more convenient for the payer to accrue debts in relation to the elected period instead of the period in the Child Support Register;
- the Registrar must, within 28 days of receiving the election, vary the particulars of the entry in the Register in relation to the payment period by:

- (c) substituting the elected period; and
- (d) entering in the Register the specified day as the day from which the period starts.

10 Section 66

Repeal the section, substitute:

66 When child support debts become payable

- (1) An amount that becomes a child support debt in respect of a day in an initial period is due and payable on the seventh day of the month following that day.
- (2) An amount that becomes a child support debt in respect of a payment period is due and payable on the seventh day after the end of the period.

Note: For *initial period* and *payment period* see subsection 4(1).

Schedule 18—Estimate requirements

Child Support (Assessment) Act 1989

1 Paragraph 60(1)(a)

Omit “before or during a child support year”, substitute “during a child support year’s estimate period”.

2 Paragraph 60(2)(a)

Omit “before or during the child support year”, substitute “during the estimate period”.

3 At the end of section 60

Add:

(4) In this section:

estimate period, in relation to a child support year, means the period beginning before the child support year and ending on 31 July in the child support year immediately after the child support year.

4 After section 60

Insert:

60A Registrar may refuse to accept election

(1) If:

- (a) a person has made an election under subsection 60(1); and
 - (b) the Registrar is satisfied that the taxable income that the person is likely to have for the child support year will be higher than the person’s estimated taxable income amount;
- the Registrar may refuse to accept the person’s election.

(2) In making the decision as to whether to refuse the election, the Registrar:

- (a) may act on the basis of information that the Registrar has received or obtains as to the financial circumstances of the person; and

- (b) may, but is not required to, conduct an inquiry into the matter.
- (3) Except for the purposes of Part 6B and section 110 (dealing with objections and appeals), if the Registrar refuses to accept an election, the election is taken never to have been made.

Schedule 19—Liable parent applications

Child Support (Assessment) Act 1989

1 Section 5

Insert:

carer application means an application for administrative assessment under section 25.

2 Section 5

Insert:

liable parent application means an application for administrative assessment under section 25A.

3 Paragraphs 23(b) and (c)

Repeal the paragraphs, substitute:

- (b) section 25 (Persons who may apply—eligible carers);
- (c) section 25A (Persons who may apply—parents other than eligible carers);

4 Sections 25 and 26

Repeal the sections, substitute:

25 Persons who may apply—eligible carers

- (1) An application made under this section is a *carer application*.
- (2) A person may apply to the Registrar under this section for administrative assessment of child support for a child if:
 - (a) the person is an eligible carer of the child; and
 - (b) the person is seeking payment of child support for the child from a person who is:
 - (i) a parent of the child; and
 - (ii) a resident of Australia on the day the application is made; and
 - (c) the person is not living with the person from whom payment of child support is sought as the partner of that person on a

genuine domestic basis (whether or not legally married to that person); and

- (d) the person complies with any applicable requirements of section 26 (dealing with joint care situations) and section 26A (dealing with children cared for under child welfare laws).

25A Persons who may apply—parents other than eligible carers

- (1) An application made under this section is a *liable parent application*.
- (2) A person may apply to the Registrar under this section for administrative assessment of child support for a child if:
 - (a) the person is a parent of the child; and
 - (b) the person is a resident of Australia on the day the application is made; and
 - (c) the person is seeking to pay child support for the child; and
 - (d) the person is seeking to pay the child support to an eligible carer of the child; and
 - (e) the person is not living with the person to whom child support is sought to be paid as the partner of that person on a genuine domestic basis (whether or not legally married to that person); and
 - (f) the person complies with any applicable requirements of section 26 (dealing with joint care situations) and section 26A (dealing with children cared for under child welfare laws).

26 Requirements of application where there are joint carers

Carer application

- (1) If:
 - (a) 2 or more persons (*joint carers*) jointly are the sole or principal providers of ongoing daily care for a child; or
 - (b) 2 or more persons (*joint carers*) jointly share ongoing daily care of a child substantially equally with another person or other persons;

one only of the joint carers may apply for administrative assessment of child support for the child.

- (2) If any of the joint carers is a parent of the child, the application must be made by or on behalf of the person who is the parent.

Liable parent application

- (3) If:
- (a) 2 or more persons (*joint carers*) jointly are the sole or principal providers of ongoing daily care for a child; or
 - (b) 2 or more persons (*joint carers*) jointly share ongoing daily care of the child substantially equally with another person or other persons;
- a person who makes a liable parent application must nominate one only of the joint carers as an eligible carer to whom the person is seeking to pay child support.
- (4) If any of the joint carers is a parent of the child, the joint carer nominated in the liable parent application must be the joint carer who is the parent.

26A Requirements of application if child is cared for under child welfare law

If a person applies for administrative assessment of child support for a child who is under the care (however described) of a person under a child welfare law, the application must:

- (a) if it is a carer application—be made by an eligible carer of the child who is a parent or relative of the child; and
- (b) if it is a liable parent application—nominate as the eligible carer to whom the child support is sought to be paid an eligible carer who is a parent or relative of the child.

5 Subsection 29(1)

Omit “26”, substitute “25A”.

6 Subsection 29(2)

Omit “The”, substitute “If the application is a carer application, the”.

7 Paragraphs 31(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) if the application is a carer application:
-

- (i) the applicant is a *carer entitled to child support* in relation to the child; and
 - (ii) the person from whom the application sought payment of child support for the child is a *liable parent* in relation to the child; and
- (b) if the application is a liable parent application:
- (i) the applicant is a *liable parent* in relation to the child; and
 - (ii) the person to whom the application sought to pay child support is a *carer entitled to child support* in relation to the child; and

8 Subsection 34(1)

After “sought payment of child support”, insert “or the person to whom the application sought to pay child support (as the case requires)”.

9 Paragraph 83(1)(b)

Repeal the paragraph, substitute:

- (b) a person who is:
 - (i) a parent of the child; and
 - (ii) a resident of Australia on the day the agreement is entered into.

10 Subsection 106(1)

Omit “an application”, substitute “a carer application”.

Note: The heading to section 106 is altered by inserting “carer” after “unsuccessful”.

11 Paragraph 106(4)(c)

Repeal the paragraph, substitute:

- (c) that the person from whom the application sought payment of child support was:
 - (i) a parent of the child; and
 - (ii) a resident of Australia on the day the application was made;

12 After section 106

Insert:

106A Application for declaration by unsuccessful liable parent applicant for administrative assessment

- (1) If the Registrar refuses to accept a liable parent application for administrative assessment of child support for a child, the applicant may apply to a court having jurisdiction under this Act for a declaration that the applicant was entitled to administrative assessment of child support for the child payable to the person to whom the application sought to make payment of child support.

Note: For *liable parent application* see section 5.

- (2) The application must be made within the time prescribed by the Rules of Court or within such further time as is allowed under the Rules of Court.
- (3) Subject to section 145 (Registrar to intervene in proceedings), the parties to the proceeding are the applicant and the person to whom the application sought to pay child support.
- (4) If the court is satisfied:
- (a) that the child was, under section 24, a child in relation to whom the application for administrative assessment of child support was entitled to be made; and
 - (b) that the applicant was, under section 25A, a person entitled to make the application for the child; and
 - (c) that the person to whom the application sought to pay child support was, under section 25A, a person to whom payment of child support was entitled to be sought for the child;
- the court may grant the declaration.
- (5) If the court grants the declaration, the Registrar is taken to have accepted the application for administrative assessment of child support for the child.

13 Subsection 107(1)

Omit “an application”, substitute “a carer application”.

Note: The heading to section 107 is altered by inserting “**payment under**” after “**whom**”.

14 Paragraph 107(4)(c)

Repeal the paragraph, substitute:

(c) that the person from whom the application sought payment was not:

- (i) a parent of the child; or
- (ii) a resident of Australia;

15 Paragraph 109(2)(b)

Repeal the paragraph, substitute:

- (b) a ground of the application is that the person is not a parent of the child; and

16 Subsection 139(1)

Omit “an application”, substitute “a carer application”.

17 Paragraphs 153(c) and (d)

After “from”, insert “or to”.

Child Support (Registration and Collection) Act 1988

18 Subsection 24A(2)

Add at the end:

- ; or (c) the application giving rise to the child support assessment was a liable parent application within the meaning of the *Child Support Assessment Act 1989*.

Note: Section 25 allows a payee in this situation to apply for the liability to be registered.

19 After subsection 28A(1)

Insert:

(1A) This section applies if:

- (a) a payee applies under subsection 25(1) for registration of a registrable maintenance liability; and
- (b) the registrable maintenance liability arises under a child support assessment made because of an application by the payer.

20 Transitional

If an application under section 25 of the *Child Support (Assessment) Act 1989 (the Act)* was made in relation to the 1998-99 child support year, but not determined before the commencement of this Schedule, the application is taken to have been made under the Act as in force after the commencement of this Schedule.

Schedule 20—Family allowance income credit for person paying child maintenance

Social Security Act 1991

1 Paragraph 860(c)

After “point 1069-H21”, insert “or point 1069-H22C”.

2 After Subdivision E of Division 9 of Part 2.17

Insert:

Subdivision EA—Child maintenance expenditure determinations

886A Child maintenance expenditure determinations

(1) If:

- (a) in working out the rate of family allowance payable to a person, regard is had to the person’s child maintenance expenditure for a tax year; and
- (b) the child maintenance expenditure to which regard was had consisted of an amount estimated by the person; and
- (c) the amount of child maintenance expenditure on which the determination of the rate of family allowance was based is more than 110% of the person’s child maintenance expenditure for that tax year;

the person’s rate of family allowance is to be recalculated on the basis of the child maintenance expenditure incurred.

(2) In this section, *child maintenance expenditure* has the same meaning as in point 1069-H34.

3 After Submodule 2 of Module H of the Family Allowance Rate Calculator

Insert:

Submodule 2A—Appropriate child maintenance expenditure year

Appropriate child maintenance expenditure year

1069-H22A Subject to the following provisions of this Submodule, the appropriate child maintenance expenditure year for a family allowance payday is the base tax year for that payday.

Note: For *base tax year* see point 1069-H14.

Change to appropriate child maintenance expenditure year at recipient's request

1069-H22B If:

- (a) a person requests the Secretary to make a determination under point 1069-H22C; and
 - (b) as a result, the Secretary determines under that point that the appropriate child maintenance expenditure year, for the purpose of applying this Module to the person for a family allowance payday on or after the day on which the request is made, is the tax year in which the person makes the request;
- the appropriate child maintenance expenditure year for that purpose is the tax year in which the person makes the request.

Family allowance recipient may ask Secretary to change appropriate child maintenance expenditure year

1069-H22C If:

- (a) family allowance:
 - (i) is not payable to a person because of this Module; or
 - (ii) is payable at a reduced rate because of this Module; and
- (b) the person gives the Secretary an estimate of the child maintenance expenditure the person expects to incur for a tax year; and
- (c) the person requests the Secretary to make a determination under this point; and
- (d) the person agrees that the person's rate of family allowance for that tax year is to be recalculated if the amount of the child maintenance expenditure estimated by the person is more than 110% of the person's child maintenance expenditure for that tax year;

the Secretary must determine that the appropriate child maintenance expenditure year, for the purpose of applying this Module to the person for a family allowance payday on or after the day on which the request is made, is the tax year in which the request is made.

Note: For the consequences of overestimating child maintenance expenditure see section 886A.

Form of request

1069-H22D A request under point 1069-H22C must be made in writing in accordance with a form approved by the Secretary.

4 Point 1069-H23 (step 2 of the method statement)

Repeal the step, substitute:

Step 2. Work out the person's ***appropriate child maintenance expenditure year*** using Submodule 2A.

Step 2A. Work out the person's ***deductible child maintenance expenditure*** for the appropriate child maintenance expenditure year using point 1069-H33.

Step 2B. Work out the person's family payment income for the appropriate tax year by adding:

- (a) the person's taxable income for that tax year; and
- (b) the person's adjusted fringe benefits value for that tax year; and
- (c) the person's target foreign income for that tax year; and
- (d) the person's net rental property loss for that tax year; and

deducting the ***person's deductible child maintenance expenditure*** for the person's appropriate child maintenance expenditure year.

5 At the end of Module H of the Family Allowance Rate Calculator

Add:

Deductible child maintenance expenditure

- 1069-H33 If a person incurs an amount of child maintenance expenditure during the appropriate child maintenance expenditure year, 50% of the amount of the expenditure is the **person's deductible child maintenance expenditure** in respect of that year.

Child maintenance expenditure

- 1069-H34 For the purposes of this Module, a person incurs **child maintenance expenditure** if:
- (a) the person (the **payer**), or if the payer is a member of a couple—the payer's partner, pays a payment (either one-off or periodic) or provides benefits; and
 - (b) the payment or benefits are paid or provided in respect of the payer's, or the partner's (if any), natural or adopted child; and
 - (c) the payment or benefits are paid or provided to another person other than the payer, or the partner (if any), for the maintenance of the child.

Amount of child maintenance expenditure

- 1069-H35 For the purposes of this Module, if a person incurs child maintenance expenditure, the amount of the child maintenance expenditure incurred by the person is the amount of the payment paid or the value of the benefits to the person who provided them.

Value of a benefit provided

- 1069-H36 For the purposes of point 1069-H35, the **value of a benefit**, in relation to the person providing the benefit, has the meaning set out in points 1069-H37 and 1069-H38.

Value of benefit where provider is a party to a child support agreement

- 1069-H37 If:
-

- (a) a person providing a benefit is a party to a child support agreement under the *Child Support (Assessment) Act 1989*; and
- (b) the agreement contains:
 - (i) provisions under which the person is providing child support to a person for a child otherwise than in the form of a periodic payment; and
 - (ii) a statement of the annual value of a specified amount that the child support has; and
- (c) the person provides the support;
the value of the benefit provided by the person is the specified amount.

Value of benefit where provider is not a party to a child support agreement

1069-H38 If a person providing a benefit is not a party to a child support agreement under the *Child Support (Assessment) Act 1989*, the value of the benefit provided by the person is the cost of the benefit to the person.

6 Subparagraph 1223(3)(b)(iii)

Omit “and”, substitute “or”.

7 At the end of paragraph 1223(3)(b)

Add:

- (iv) section 886A (overestimate of child maintenance expenditure); and

Schedule 21—Further amendments

Child Support (Assessment) Act 1989

1 After section 159

Insert:

159A Statements made recklessly etc.

- (1) A person who recklessly:
 - (a) makes a statement to an officer which is false or misleading in a material particular; or
 - (b) omits from a statement made to an officer any matter or thing without which the statement is misleading in a material particular;is guilty of an offence.
Penalty: 5 penalty units.
- (2) In a prosecution of a person for an offence against subsection (1), if, having regard to:
 - (a) the person's abilities, experience, qualifications and other attributes; and
 - (b) all the circumstances surrounding the alleged offence;the person has acted without taking reasonable care as to the accuracy and completeness of the statement, or with wilful disregard to the requirements to obtain and provide relevant information, the person is to be taken to have acted recklessly in making the statement.
- (3) A reference in subsection (1) to a statement made to an officer is a reference to a statement made to a person exercising powers under or in relation to this Act, whether the statement is made orally, in a document or in any other form, and includes, for example, a statement:
 - (a) made in an application, form, notification, appeal or other document made, given or lodged, or purporting to be made, given or lodged, under this Act; or

- (b) made in answer to a question asked of the person under this Act; or
- (c) made in any information given, or purporting to have been given, under this Act.

159B Failure to notify required information

- (1) A person who, intentionally or recklessly, fails to notify the Registrar of information required by section 55A or subsection 60(4) is guilty of an offence.

Penalty: 5 penalty units.

- (2) In a prosecution of a person for an offence against subsection (1), if, having regard to:
 - (a) the person's abilities, experience, qualifications and other attributes; and
 - (b) all the circumstances surrounding the alleged offence;the person has acted without reasonable care or with wilful disregard to his or her obligation to notify the Registrar as required by section 55A or subsection 60(4), the person is to be taken to have acted recklessly in failing to notify the Registrar.

Schedule 22—Miscellaneous technical corrections

Child Support (Assessment) Act 1989

1 Paragraph 35(c)

Omit “provision”, substitute “provisions”.

2 Paragraph 48(a)

After “(d)”, insert “, (da)”.

Note: This amendment inserts a cross-reference to paragraph 48(da) that should have been included when the paragraph was inserted.

3 Subsection 56(3)

Omit “subsection 170(2) (Amendment of assessments where no full and true disclosure)”, substitute “subsection 170(2) (Amendment of assessments because of tax avoidance)”.

Note: This amendment updates the description of a subsection of the *Income Tax Assessment Act 1936* so that the description reflects the current content of the subsection.

4 Paragraphs 58(1)(b), 58(1A)(b), 61(1)(a) and 63(1)(a)

After “*Income Tax Assessment Act 1936*”, insert “, the *Income Tax Assessment Act 1997*”.

5 Subsection 91A(3) (note 1)

Omit “1069-D11”, substitute “1069-K3”.

Note: This amendment corrects an incorrect cross-reference.

6 Subparagraph 118(1)(f)(ii)

Omit “or”, substitute “of”.

7 Paragraph 118(1)(g)

Omit “54(b)”, substitute “54(1)(b)”.

Note: This amendment corrects an incorrect cross-reference.

8 Subsection 150(9)

Omit “67M(6)”, substitute “67N(10)”.

Note: This amendment corrects an incorrect cross-reference.

Child Support (Registration and Collection) Act 1988

9 Subsection 16(9)

Omit “67M(6)”, substitute “67N(10)”.

Note: This amendment corrects an incorrect cross-reference.

Schedule 23—Liable parents' reportable fringe benefits totals

Part 1—Amendment of the Child Support (Assessment) Act 1989

1 Section 5

Insert:

reportable fringe benefits total has the meaning given by subsection 158A(3).

2 At the end of subsection 38A(1)

Add:

; and (c) the liable parent's reportable fringe benefits total (if any) for the year of income.

3 After section 158

Insert:

158A Disclosure of reportable fringe benefits total

- (1) This section applies if one or more fringe benefits are provided in relation to a year of tax in respect of the employment by an employer of an employee who is a liable parent.
- (2) The liable parent must notify the Registrar, in accordance with the regulations, of the reportable fringe benefits total of the liable parent for the year of income ending on the first 30 June after the end of the year of tax.
- (3) The *reportable fringe benefits total* of the liable parent for the year of income is the amount worked out in accordance with the regulations, taking account of the value (worked out in accordance with the regulations) of the fringe benefit or fringe benefits (other than a fringe benefit of a kind that is prescribed by the regulations).
- (4) An expression used in this section and in the *Fringe Benefits Tax Assessment Act 1986* has the same meaning in this section as it has in that Act.

- (5) This section applies in relation to a liable parent who is an employee of the Commonwealth, or of an authority of the Commonwealth described in paragraph (e) of the definition of **employer** in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*, as if the Commonwealth or the authority were an employer for the purposes of that Act.
- (6) This section applies in relation to a benefit that is an exempt benefit because of section 57A or 58 of the *Fringe Benefits Tax Assessment Act 1986* and would be a fringe benefit apart from those sections as if it were a fringe benefit for the purposes of that Act.
- (7) This section does not require notification of a reportable fringe benefits total for a year of income before the 1999-2000 year of income.

158B Penalty for failure to notify reportable fringe benefits total accurately

- (1) A person must pay the Registrar a penalty of the amount worked out under subsection (2) if:
 - (a) section 158A requires the person to notify the Registrar of the person's reportable fringe benefits total for a year of income; and
 - (b) the person's reportable fringe benefits total for the year of income is at least 10% greater than the amount that the person notified the Registrar under section 158A was the person's reportable fringe benefits total for the year of income.
 - (2) The amount of the penalty is 10% of the difference between:
 - (a) the administrative assessment of child support based on the person's reportable fringe benefits total for the year of income; and
 - (b) the amount that was or would have been the administrative assessment of child support based on the amount that the person notified the Registrar under section 158A was the person's reportable fringe benefits total for the year of income.
 - (3) If a person is required by section 158A to notify the Registrar of the person's reportable fringe benefits total for a year of income
-

and does not do so as required by that section, this section operates as if the person had notified the Registrar under that section that the person's reportable fringe benefits total for the year of income was a nil amount.

- (4) The penalty is a debt due to the Commonwealth, payable when the administrative assessment mentioned in paragraph (2)(a) is made.
- (5) The Registrar may make an administrative assessment of child support for the purposes of this section at any time.
- (6) The Registrar may remit penalty payable under this section if he or she thinks it is fair and reasonable to do so.

Part 2—Amendment dependent on fringe benefits reporting legislation

Child Support (Assessment) Act 1989

4 Section 5 (definition of *reportable fringe benefits total*)

Repeal the definition, substitute:

reportable fringe benefits total for a year of income for a person who is an employee (for the purposes of the *Fringe Benefits Tax Assessment Act 1986*, whether it applies of its own force or because of the *Fringe Benefits Tax (Application to the Commonwealth) Act 1986*) means the employee's reportable fringe benefits total (as defined in the *Fringe Benefits Tax Assessment Act 1986*) for the year of income.

5 Section 158A

Repeal the section.

Schedule 24—Entitled carers' reportable fringe benefits totals

Part 1—Amendment of the Child Support (Assessment) Act 1989

1 At the end of subsection 45A(1)

Add:

; and (c) the entitled carer's reportable fringe benefits total (if any) for the year of income.

2 At the end of subsection 158A(1)

Add "or an entitled carer (within the meaning of Subdivision D of Division 2 of Part 5)".

3 Subsection 158A(2)

After "liable parent" (first occurring), insert "or entitled carer".

4 Subsection 158A(2)

After "liable parent" (second occurring), insert "or entitled carer (as appropriate)".

5 Subsections 158A(3) and (5)

After "liable parent", insert "or entitled carer".

Part 2—Amendment dependent on fringe benefits reporting legislation

Child Support (Assessment) Act 1989

6 Section 158B

Repeal the section.

*[Minister's second reading speech made in—
House of Representatives on 11 November 1998
Senate on 23 November 1998]*

(164/98)