



Child Support Legislation Amendment Act 2001

No. 75, 2001



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

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No. 75, 2001

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

[Assented to 30 June 2001]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Child Support Legislation Amendment Act 2001*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

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- (1A) Items 22, 23, 24, 25 and 26 of Schedule 1A commence on whichever of the following days applies:
- (a) if this Act receives the Royal Assent on or before 1 July 2002—on 1 July 2002;
 - (b) otherwise—on a day or days to be fixed by Proclamation.
- (1B) Items 18, 19, 20 and 21 of Schedule 1A commence on whichever of the following days applies:
- (a) if this Act receives the Royal Assent on or before 1 December 2001—on 1 December 2001;
 - (b) otherwise—on a day or days to be fixed by Proclamation.
- (2) Schedule 4 commences on whichever of the following days applies:
- (a) if this Act receives the Royal Assent on or before 1 July 2001—on 1 July 2001;
 - (b) otherwise—on a day or days to be fixed by Proclamation.
- (4) Part 2 of Schedule 6 commences at whichever of the following times applies:
- (a) if Parts 4 to 10 of the Act that establishes the Administrative Review Tribunal commence before, or at the same time as, Part 1 of Schedule 6 to this Act—immediately after the commencement of Part 1 of Schedule 6 to this Act;
 - (b) if Parts 4 to 10 of the Act that establishes the Administrative Review Tribunal commence after Part 1 of Schedule 6 to this Act—the time when Parts 4 to 10 of the Act that establishes the Administrative Review Tribunal commence.
- Note: The short title of the Act that establishes the Administrative Review Tribunal is either the *Administrative Review Tribunal Act 2000* or the *Administrative Review Tribunal Act 2001*.
- (5) Item 1 of Schedule 10 is taken to have commenced immediately after the commencement of section 124 of the *Family Court Act 1997* of Western Australia.
- (6) Item 2 of Schedule 10 is taken to have commenced immediately after the commencement of Schedule 16 to the *Child Support Legislation Amendment Act 1998*.
- (7) Items 3, 4 and 5 of Schedule 10 are taken to have commenced immediately after the commencement of item 5 of Schedule 4 to

the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*.

- (8) Items 6, 15, 16, 17 and 18 of Schedule 10 are taken to have commenced immediately after the commencement of Schedule 16 to the *Child Support Legislation Amendment Act 1998*.
- (9) Item 23 of Schedule 10 is taken to have commenced immediately after the commencement of Schedule 21 to the *Child Support Legislation Amendment Act 1998*.
- (10) Items 29, 30, 31, 32, 33 and 34 of Schedule 10 are taken to have commenced immediately after the commencement of Schedule 17 to the *Child Support Legislation Amendment Act 1998*.
- (11) If a provision of this Act does not commence under paragraph (1A)(b), (1B)(b), (2)(b) or (3)(b) within the period of 6 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.

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.

Schedule 1A—Amendments relating to family tax benefit

A New Tax System (Family Assistance) Act 1999

18 Subsection 3(1) (subparagraph (b)(i) of the definition of *FTB child*)

Omit “and 25(1)(b)”, substitute “and 25(1)(b), (1A)(b) and (1B)(b)”.

19 Paragraph 22(7)(c)

After “subsection 25(1)”, insert “, (1A) or (1B)”.

20 After subsection 25(1)

Insert:

(1A) If:

- (a) the Secretary is satisfied that there has been, or will be, a pattern of care for an individual (the *child*) over a period such that, for the whole, or for parts (including different parts), of the period, the child was, or will be, an FTB child of more than one other individual in accordance with subsection 22(2), (3), (4), (5) or (6); and
- (b) one of those other individuals makes, or has made, a claim under Part 3 of the *A New Tax System (Family Assistance) (Administration) Act 1999* for payment of family tax benefit in respect of the child for some or all of the days in that period; and
- (c) the Secretary is satisfied that the child was, or will be, in the care of that last-mentioned individual for not less than 10%, but less than 30%, of that period; and
- (d) that last-mentioned individual, by written declaration given to the Secretary, waives the individual’s eligibility for family tax benefit in respect of the child for some or all of the days in that period;

the child is to be taken, despite that subsection, not to be an FTB child of the last-mentioned individual on any day covered by the declaration.

(1B) If:

- (a) the Secretary is satisfied that there has been, or will be, a pattern of care for an individual (the *child*) over a period such that, for the whole, or for parts (including different parts), of the period, the child was, or will be, an FTB child of more than one other individual in accordance with subsection 22(2), (3), (4), (5) or (6); and
- (b) the Secretary is satisfied that, if one of those other individuals was to make a claim under Part 3 of the *A New Tax System (Family Assistance) (Administration) Act 1999* for payment of family tax benefit in respect of the child for some or all of the days in that period, the Secretary would be satisfied that the child would have been, or would be, in the care of that individual for not less than 10%, but less than 30%, of that period; and
- (c) that last-mentioned individual, by written declaration given to the Secretary, waives the individual's eligibility for family tax benefit in respect of the child for some or all of the days in that period;

the child is to be taken, despite that subsection, not to be an FTB child of the last-mentioned individual on any day covered by the declaration.

- (1C) If an individual has given the Secretary a written declaration under subsection (1A) or (1B), the individual may, by further notice in writing given to the Secretary, revoke the declaration with effect from a specified day, not being a day earlier than the date of the revocation.
- (1D) A written declaration referred to in subsection (1A) or (1B), or a revocation of such a declaration, must be made in a form and manner required by the Secretary.

Note: The heading to section 25 is altered by omitting “10%” and substituting “30%”.

21 Subsections 25(2) and (3)

After “subsection (1)”, insert “, (1A) or (1B)”.

A New Tax System (Family Assistance) (Administration) Act 1999

22 Subsections 23(6) and 24(4)

Omit “and sections 225 and 226 (which deal with tax debts)”, substitute “, sections 225 and 226 (which deal with tax debts) and section 227 (which deals with child support debts)”.

23 At the end of subsection 66(2)

Add:

- ; and (f) section 227 (about deductions from family tax benefit to repay certain child support debts).

24 After section 226

Insert:

227 Payment of deductions to Child Support Registrar

- (1) The Secretary must, in accordance with a notice given to the Secretary under subsection 72AB(3) of the *Child Support (Registration and Collection) Act 1988* in relation to a person:
 - (a) make deductions from instalment amounts of family tax benefit that the person is entitled to be paid under section 23; or
 - (b) make a deduction from an amount of family tax benefit that the person is entitled to be paid under section 24;and pay amounts so deducted to the Child Support Registrar.
- (2) However, the Secretary must not deduct an amount under subsection (1) in contravention of section 228.
- (3) If the Secretary deducts an amount under subsection (1), then:
 - (a) on the day the amount is deducted, the total amount of the child support debts of the person (being debts referred to in subsection 72AB(2) of the *Child Support (Registration and Collection) Act 1988*) is taken to be reduced by an amount equal to the amount deducted; and
 - (b) on the day the amount is deducted, the person is taken to have been paid an amount of family tax benefit equal to the amount deducted.
- (4) A deduction under subsection (1) may result in the family tax benefit that the person is entitled to be paid being reduced to nil.

228 Maximum deduction

- (1) This section applies if a notice is given under subsection 72AB(3) of the *Child Support (Registration and Collection) Act 1988* to a person that specifies:
 - (a) an amount to be deducted from family tax benefit that the person is entitled to be paid on a day or days specified in the notice; or
 - (b) a method of working out such an amount.
- (2) The amount deducted on a particular day must not exceed the total amount of the child support debts of the person on that day, being debts referred to in subsection 72AB(2) of the *Child Support (Registration and Collection) Act 1988*.
- (3) If, on a day specified in the notice, the person has at least one FTB child for whom the person is eligible for family tax benefit who is not a designated child support child of the person, the amount deducted on that day must not exceed the difference between:
 - (a) the amount of family tax benefit that the person is entitled to be paid on that day; and
 - (b) the amount of family tax benefit that the person would be entitled to be paid on that day, assuming that each designated child support child of the person was not an FTB child of the person on that day.
- (4) If, on a day specified in the notice:
 - (a) each FTB child for whom the person is eligible for family tax benefit is a designated child support child of the person; and
 - (b) an income support payment or an income support supplement is payable to the person;the amount deducted on that day must not exceed the difference between:
 - (c) the amount of family tax benefit that the person is entitled to be paid on that day; and
 - (d) the forgone amount in respect of the person's income support payment or income support supplement.
- (5) For the purposes of subsection (4), the *forgone amount*, in respect of a person's income support payment or income support supplement, is the amount that represents the difference between:

- (a) the amount of the income support payment or the income support supplement that would have been payable to the person if the person had not been entitled to be paid family tax benefit on that day; and
 - (b) the amount of the income support payment or the income support supplement payable to the person on that day.
- (6) In this section:

designated child support child of a person has the same meaning as in section 72AB of the *Child Support (Registration and Collection) Act 1988*.

income support payment has the same meaning as in the *Social Security Act 1991*.

income support supplement has the same meaning as in Part IIIA of the *Veterans' Entitlements Act 1986*.

Child Support (Registration and Collection) Act 1988

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

Insert:

- (ca) a decision under subsection 72AB(3);

26 After section 72AA

Insert:

72AB Deductions from family tax benefit

- (1) This section applies to a person if:
 - (a) the person is entitled to be paid family tax benefit under a determination under section 16 or 17 of the Family Assistance Administration Act; and
 - (b) the FTB child, or at least one of the FTB children, for whom the person is eligible for family tax benefit is a designated child support child of the person.
- (2) An FTB child of a person is a *designated child support child of the person* if:

- (a) the person has a registrable maintenance liability of a kind mentioned in section 17 in respect of the child; and
 - (b) an amount payable under the liability is a child support debt; and
 - (c) the day on which the debt became due and payable under section 66 has passed, and the debt remains unpaid in whole or in part.
- (3) If this section applies to a person, the Registrar may give a written notice to the Secretary directing the Secretary:
- (a) to deduct from each instalment amount of family tax benefit that the person is entitled to be paid under section 23 of the Family Assistance Administration Act an amount specified, or worked out as specified, in the notice; or
 - (b) to deduct from an amount of family tax benefit that the person is entitled to be paid under section 24 of the Family Assistance Administration Act an amount specified, or worked out as specified, in the notice.
- (4) A notice under subsection (3) must:
- (a) specify the person's name and the name of each designated child support child of the person; and
 - (b) set out sufficient particulars to enable the Secretary to identify the person and each designated child support child of the person; and
 - (c) be in accordance with section 228 of the Family Assistance Administration Act, which sets out the maximum amount that can be deducted; and
 - (d) specify the day or days on which deductions are to be made.
- (5) In this section:

Family Assistance Act means the *A New Tax System (Family Assistance) Act 1999*.

Family Assistance Administration Act means the *A New Tax System (Family Assistance) (Administration) Act 1999*.

family tax benefit has the same meaning as in the Family Assistance Act.

FTB child means an FTB child in relation to family tax benefit within the meaning of the Family Assistance Act.

Schedule 3—Income earned for the benefit of resident children

Child Support (Assessment) Act 1989

1 After subsection 98S(3)

Insert:

- (3A) A determination under this Part varying the child support income amount of a liable parent or a carer entitled to child support must not reduce the child support income amount worked out under Part 5 by more than 30%, to the extent that the reduction is attributable to a ground mentioned in subparagraph 117(2)(c)(iii) or (iv).

2 Paragraph 117(2)(c)

Omit “because of”.

3 Subparagraph 117(2)(c)(i)

Before “the income”, insert “because of”.

4 Subparagraph 117(2)(c)(ii)

Before “any payments”, insert “because of”.

5 At the end of paragraph 117(2)(c)

Add:

- ; or (iii) because an amount (the *additional amount*) of a liable parent’s child support income amount was earned, derived or received by the liable parent for the benefit of a resident child or resident children of the liable parent;
or
(iv) because an amount (the *additional amount*) of an entitled carer’s child support income amount was earned, derived or received by the entitled carer for the benefit of a resident child or resident children of the entitled carer.

Note: Section 117A sets out provisions relating to income earned for the benefit of resident children.

6 After section 117

Insert:

117A Provisions relating to income earned for the benefit of resident children

- (1) A child is a ***resident child of a liable parent*** for the purposes of subparagraph 117(2)(c)(iii) if, and only if:
 - (a) the child normally lives with the liable parent; and
 - (b) the child is aged under 18; and
 - (c) the child is not a member of a couple; and
 - (d) the liable parent:
 - (i) is a parent of the child; or
 - (ii) is, or was, a member of a couple of which the other member is, or was, a parent of the child; and
 - (e) the child is not a child of whom both the liable parent and the entitled carer are the parents.
- (2) A child is a ***resident child of an entitled carer*** for the purposes of subparagraph 117(2)(c)(iv) if, and only if:
 - (a) the child normally lives with the entitled carer; and
 - (b) the child is aged under 18; and
 - (c) the child is not a member of a couple; and
 - (d) the entitled carer:
 - (i) is a parent of the child; or
 - (ii) is, or was, a member of a couple of which the other member is, or was, a parent of the child; and
 - (e) the child is not a child of whom both the entitled carer and the liable parent are the parents.
- (3) For the purposes of subparagraphs 117(2)(c)(iii) and (iv), an amount is taken not to be an additional amount in relation to a person in the following circumstances:
 - (a) the amount is earned, derived or received in accordance with a pattern of earnings, derivation or receipt that was established:
 - (i) before the resident child became a resident child of the liable parent or the entitled carer; or

- (ii) if the child was a resident child of the liable parent or the entitled carer immediately after the child was born—before the liable parent or the entitled carer could reasonably be expected to have been aware of the pregnancy that resulted in the birth of the child;
- (b) the amount is earned, derived or received other than in accordance with such a pattern, but the alterations to the pattern are of a kind that it is reasonable to expect would have occurred in the ordinary course of events.

7 After subsection 118(2)

Insert:

- (2A) An order under this section varying the child support income amount of a liable parent or a carer entitled to child support must not reduce the child support income amount worked out under Part 5 by more than 30%, to the extent that the reduction is attributable to a ground mentioned in subparagraph 117(2)(c)(iii) or (iv).

**Schedule 4—Increase in deductible child
maintenance expenditure for family tax
benefit and child care benefit**

A New Tax System (Family Assistance) Act 1999

1 Subclause 8(1) of Schedule 3

Omit “50%”, substitute “100%”.

Schedule 5—Administrative arrangements

Child Support (Assessment) Act 1989

1 Paragraph 58(1)(a)

After “Registrar” (first occurring), insert “or the Commissioner”.

2 Paragraph 58(1)(a)

Omit “(whether as Registrar or Commissioner)”.

3 Paragraph 58(1)(b)

Omit “has (whether as Registrar or Commissioner)”, substitute “or the Commissioner has”.

4 Paragraph 58(1A)(a)

After “Registrar” (first occurring), insert “or the Commissioner”.

5 Paragraph 58(1A)(a)

Omit “(whether as Registrar or Commissioner)”.

6 Paragraph 58(1A)(b)

Omit “(whether as Registrar or Commissioner)”, substitute “or the Commissioner”.

7 Section 65

Omit “(whether as Registrar or Commissioner)”.

8 Section 65

Omit “, the *Income Tax Assessment Act 1936*”.

9 Section 65

Omit “the furnishing of any return,”.

10 Subsections 70(1) and (2)

Omit “or a Deputy Registrar”.

11 Paragraph 75(3)(b)

Omit “(whether as Registrar or Commissioner)”.

12 Subsection 91A(6)

Omit “of Social Security”.

13 Section 147

Omit “Registrar”, substitute “Secretary”.

Note: The heading to section 147 is altered by omitting “**Registrar**” and substituting “**Secretary**”.

14 Subsection 148(1)

Omit “Registrar”, substitute “Secretary”.

15 Subsection 149(1)

Omit all the words from and including “to”, substitute “to an officer or employee of the Department.”.

16 Subsection 150(1) (paragraph (a) of the definition of *person to whom this section applies*)

Omit “or a Deputy Registrar”.

17 Subsection 150(1) (paragraph (b) of the definition of *person to whom this section applies*)

Omit “of Social Security”.

18 Subsection 150(1) (after paragraph (ba) of the definition of *person to whom this section applies*)

Insert:

(bb) the Commissioner; or

19 Subsection 150(1) (subparagraph (c)(ii) of the definition of *person to whom this section applies*)

Omit “of Social Security”.

20 Subsection 150(1) (at the end of the definition of *person to whom this section applies*)

Add:

; or (g) a person to whom this section applied immediately before the commencement of Schedule 5 to the *Child Support Legislation Amendment Act 2001*.

21 Subsection 150(3)

Omit “, a Deputy Registrar,”.

22 Subsection 150(3)

Omit “or a Deputy Registrar,”.

23 Paragraph 150(3)(a)

Omit “to the Department of Social Security”.

24 Paragraph 150(3)(a)

Omit “that”, substitute “the”.

25 Paragraph 150(3)(b)

Omit “of Social Security”.

26 Paragraph 150(3)(c)

Omit “an Act of which the Registrar (whether as Registrar or Commissioner) has the general administration,”, substitute “this Act or the *Child Support (Registration and Collection) Act 1988*,”.

27 Paragraph 150(3)(c)

Omit “such an”, substitute “either”.

28 After paragraph 150(3)(c)

Insert:

(ca) to a person performing, as a person to whom this section applies, duties under or in relation to an Act of which the Commissioner has the general administration, or under regulations made under such an Act, for the purpose of enabling the person to perform those duties; or

29 Subsection 150(8)

Omit “or a Deputy Registrar”.

30 At the end of Part 8

Add:

150B Registrar's power to request tax file numbers

- (1) This section applies to a person in Australia if:
 - (a) the person has applied for an administrative assessment of child support; or
 - (b) payment of child support is sought from the person; or
 - (c) another person is seeking to pay child support to the person; or
 - (d) the person is a carer entitled to child support; or
 - (e) the person is a liable parent.
- (2) The Registrar may request, but not compel, the person:
 - (a) to give the Registrar a written statement of the person's tax file number; or
 - (b) if the person does not have a tax file number—to apply to the Commissioner for a tax file number and to give to the Registrar a written statement of the person's tax file number after the Commissioner has issued it.

150C Effect of failure by person to satisfy request for person's tax file number

- (1) If the Registrar makes a request under subsection 150B(2) of a person, and the person does not, within 28 days of the making of the request:
 - (a) comply with the request; or
 - (b) give to the Registrar a statement of a kind mentioned in subsection (2) or (3) of this section;section 58 applies to the person as if the request under subsection 150B(2) were a requirement with which the person has refused or failed to comply.

Note: Section 58 provides that where the Registrar has required a person to give information, and the person has refused or failed to comply with the requirement, the Registrar may act on the basis that the person's taxable income is an amount worked out under section 58.
- (2) The person may give to the Registrar a statement that the person:
 - (a) has a tax file number but does not know what it is; and

- (b) has asked the Commissioner to inform the person of the person's tax file number; and
- (c) authorises the Commissioner to tell the Registrar:
 - (i) whether the person has a tax file number; and
 - (ii) if the person has a tax file number—that number.
- (3) The person may give to the Registrar a statement that the person:
 - (a) has an application for a tax file number pending; and
 - (b) authorises the Commissioner to tell the Registrar:
 - (i) if a tax file number is issued to the person—that number; or
 - (ii) if the application is refused—that the application has been refused; or
 - (iii) if the application is withdrawn—that the application has been withdrawn.

150D Registrar may require Commissioner to provide information

- (1) The Registrar may require the Commissioner to provide the Registrar with information about people, including tax file numbers, being information that is in the possession of the Commissioner.
- (2) Information provided to the Registrar under a requirement made under subsection (1) may be used only for the following purposes:
 - (a) to ascertain whether a person may apply for administrative assessment of child support;
 - (b) to make or amend an administrative assessment of child support;
 - (c) to ascertain the happening of a child support terminating event;
 - (d) to identify a person for purposes related to a purpose mentioned in paragraph (a), (b) or (c).

31 Subsection 151A(7)

Omit “of Social Security”.

32 Subsection 157(1)

Omit “or a Deputy Registrar,”.

33 Paragraph 157(1)(b)

Omit “or a Deputy Registrar”.

34 Subsection 157(2)

Omit “or a Deputy Registrar”.

35 Section 158

Omit “or Deputy Registrar”.

Child Support (Registration and Collection) Act 1988

36 Subsection 4(1) (definition of *Deputy Registrar*)

Repeal the definition.

37 Subsection 4(1) (definition of *Secretary*)

Omit “of Social Security”.

38 Subsection 10(2)

Repeal the subsection, substitute:

(2) The Child Support Registrar is:

- (a) the person who holds, or is acting in, the position known as the General Manager of the Child Support Agency; or
- (b) if there is no such position—an SES employee, or acting SES employee, who holds, or is acting in, a position specified by the Secretary by written instrument for the purposes of this paragraph.

39 Section 11

Omit “Registrar”, substitute “Secretary”.

Note: The heading to section 11 is altered by omitting “**Registrar**” and substituting “**Secretary**”.

40 Section 12

Repeal the section.

41 Subsection 14(1)

Omit “Registrar”, substitute “Secretary”.

42 Subsection 15(1)

Omit all the words from and including “to”, substitute “to an officer or employee of the Department.”.

43 Subsections 15(2) and (3)

Omit “under subsection (1)”.

44 Subsection 16(1) (paragraph (a) of the definition of *person to whom this section applies*)

Omit “or a Deputy Registrar”.

45 Subsection 16(1) (after paragraph (ba) of the definition of *person to whom this section applies*)

Insert:

(bb) the Commissioner; or

46 Subsection 16(1) (subparagraph (c)(ii) of the definition of *person to whom this section applies*)

Omit “of Social Security”.

47 Subsection 16(1) (at the end of the definition of *person to whom this section applies*)

Add:

; or (g) a person to whom this section applied immediately before the commencement of Schedule 5 to the *Child Support Legislation Amendment Act 2001*.

48 Subsection 16(3)

Omit “a Deputy Registrar,” (first occurring).

49 Subsection 16(3)

Omit “or a Deputy Registrar”.

50 Paragraph 16(3)(a)

Omit “to the Department of Social Security”.

51 Paragraph 16(3)(a)

Omit “that”, substitute “the”.

52 Paragraph 16(3)(b)

Omit “of Social Security”.

53 Paragraph 16(3)(c)

Omit “an Act of which the Registrar (whether as Registrar or Commissioner) has the general administration,”, substitute “this Act or the *Child Support (Assessment) Act 1989*,”.

54 Paragraph 16(3)(c)

Omit “such an”, substitute “either”.

55 After paragraph 16(3)(c)

Insert:

- (ca) to a person performing, as a person to whom this section applies, duties under or in relation to an Act of which the Commissioner has the general administration, or under regulations made under such an Act, for the purpose of enabling the person to perform those duties; or

56 Subsection 16(8)

Omit “or a Deputy Registrar”.

57 At the end of Part II

Add:

16B Registrar’s power to request tax file numbers

- (1) This section applies to a person in Australia if the person is a payer or a payee in relation to a registrable maintenance liability.
- (2) The Registrar may request, but not compel, the person:
 - (a) to give the Registrar a written statement of the person’s tax file number; or
 - (b) if the person does not have a tax file number—to apply to the Commissioner for a tax file number and to give to the Registrar a written statement of the person’s tax file number after the Commissioner has issued it.

- (3) A person is taken to have complied with a request under subsection (2) if the person gives to the Registrar a statement of a kind mentioned in subsection (4) or (5) of this section.
- (4) The person may give to the Registrar a statement that the person:
 - (a) has a tax file number but does not know what it is; and
 - (b) has asked the Commissioner to inform the person of the person's tax file number; and
 - (c) authorises the Commissioner to tell the Registrar:
 - (i) whether the person has a tax file number; and
 - (ii) if the person has a tax file number—that number.
- (5) The person may give to the Registrar a statement that the person:
 - (a) has an application for a tax file number pending; and
 - (b) authorises the Commissioner to tell the Registrar:
 - (i) if a tax file number is issued to the person—that number; or
 - (ii) if the application is refused—that the application has been refused; or
 - (iii) if the application is withdrawn—that the application has been withdrawn.

16C Registrar may require Commissioner to provide information

- (1) The Registrar may require the Commissioner to provide the Registrar with information about people, including tax file numbers, being information that is in the possession of the Commissioner.
- (2) Information provided to the Registrar under a requirement made under subsection (1) may be used only for the following purposes:
 - (a) to facilitate the recovery of debts due to the Commonwealth under this Act;
 - (b) to identify a person for purposes related to the purpose mentioned in paragraph (a).

58 Section 72

Repeal the section, substitute:

72 Application of certain amounts to child support debts

- (1) If, apart from this section:
- (a) the Commissioner would be required under section 8AAZLF of the *Taxation Administration Act 1953* to refund an amount (the **refund amount**) to a person (the **creditor**); and
 - (b) the creditor owes a child support debt to the Commonwealth under this Act;
- then, despite anything contained in any law of the Commonwealth apart from this Act (including section 8AAZLF of the *Taxation Administration Act 1953*):
- (c) the Registrar may require the Commissioner, at a particular time, to pay an amount to the Registrar not exceeding the lesser of the refund amount and the child support debt; and
 - (d) if the Registrar so requires, the Commissioner must, as soon as practicable, pay the required amount to the Registrar.
- (2) If the Commissioner pays an amount to the Registrar under subsection (1), the Registrar must:
- (a) apply the amount against the child support debt of the creditor; or
 - (b) if the child support debt has been paid in full after the time mentioned in paragraph (1)(c)—pay the amount to the creditor; or
 - (c) if the child support debt has been paid in part after the time mentioned in paragraph (1)(c):
 - (i) apply the amount against the child support debt of the creditor; and
 - (ii) if, after the amount has been applied, the child support debt has been paid in full, pay any excess to the creditor.
- (3) If the Commissioner pays an amount to the Registrar under subsection (1), the amount that the Commissioner is required to refund under section 8AAZLF of the *Taxation Administration Act 1953* to the person is taken to be reduced by the amount paid to the Registrar immediately after the amount is paid.

59 Subsections 72AA(1) and (2)

Omit “to the Department of Social Security”.

60 Subsection 72AA(5)

Repeal the subsection.

61 Paragraph 113(1)(b)

Omit “or a Deputy Registrar”.

62 Subsections 116(1) and (2)

Omit “or a Deputy Registrar”.

63 Subsection 117(1)

Omit “or a Deputy Registrar” (wherever occurring).

64 Subsection 117(1)

Omit “or Deputy Registrar, as the case may be.”.

65 Subsection 117(2)

Omit “or a Deputy Registrar”.

66 Section 118

Omit “or Deputy Registrar”.

67 Section 123

Repeal the section.

Income Tax Assessment Act 1936

68 After paragraph 16(4)(j)

Insert:

- (ja) the Child Support Registrar, for the purposes of the administration of the *Child Support (Registration and Collection) Act 1988* and the *Child Support (Assessment) Act 1989*;

69 After paragraph 202(g)

Insert:

- (ga) to facilitate the administration of the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988*; and

Social Security (Administration) Act 1999

70 Subsection 238(2)

Omit “Commissioner of Taxation”, substitute “Registrar”.

Note: The heading to section 238 is altered by adding at the end “**or the Child Support Registrar**”.

Taxation Administration Act 1953

71 Paragraph 8WA(1)(b)

After “(g),” insert “(ga),”.

72 Paragraphs 8WB(1)(d) and (e)

After “(g),” insert “(ga),”.

73 Section 8WD

Repeal the section.

74 Saving provision

To avoid doubt, the validity of anything done by a Deputy Registrar before the commencement of this item is not affected by the amendments of the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988* made by this Schedule.

Schedule 6—Departure prohibition orders

Part 1—Departure prohibition orders

Child Support (Registration and Collection) Act 1988

1 After Part V

Insert:

Part VA—Departure prohibition orders

Division 1—Registrar may make departure prohibition orders

72D Registrar may make departure prohibition orders

- (1) The Registrar may make an order (a *departure prohibition order*) prohibiting a person from departing from Australia for a foreign country if:
 - (a) the person has a child support liability; and
 - (b) the person has not made arrangements satisfactory to the Registrar for the child support liability to be wholly discharged; and
 - (c) the Registrar is satisfied that the person has persistently and without reasonable grounds failed to pay child support debts arising from a registrable maintenance liability of a kind mentioned in section 17; and
 - (d) the Registrar believes on reasonable grounds that it is desirable to make the order for the purpose of ensuring that the person does not depart from Australia for a foreign country without:
 - (i) wholly discharging the child support liability; or
 - (ii) making arrangements satisfactory to the Registrar for the child support liability to be wholly discharged.
- (2) For the purposes of paragraph (1)(c), the Registrar must have regard to:

- (a) the number of occasions on which a debt mentioned in that paragraph had not been paid on or before the day on which it became due and payable; and
 - (b) the number of occasions on which action has been taken to recover such debts, and the outcome of the recovery action; and
 - (c) the capacity of the person concerned to pay such debts; and
 - (d) such other matters as the Registrar considers appropriate.
- (3) A departure prohibition order must be in the approved form.

Note: For *approved form* see section 72X.

72E Meaning of *child support liability*

For the purposes of this Part, a person has a *child support liability* if:

- (a) the person has a registrable maintenance liability of a kind mentioned in section 17; and
- (b) an amount payable under the registrable maintenance liability is a child support debt; and
- (c) the day on which the debt became due and payable under section 66 has passed, and the debt remains unpaid in whole or in part.

Division 2—Offence provision

72F Departure from Australia of certain child support debtors prohibited

A person must not depart from Australia for a foreign country if:

- (a) a departure prohibition order in respect of the person is in force, and the person knows that the order is in force, or is reckless as to whether the order is in force; and
- (b) the person's departure is not authorised by a departure authorisation certificate, and the person knows that the departure is not authorised by such a certificate, or is reckless as to whether the departure is authorised by such a certificate.

Maximum penalty: 60 penalty units or imprisonment for 12 months, or both.

Division 3—Administrative requirements

72G Notification requirements for departure prohibition orders

- (1) This section applies if the Registrar makes a departure prohibition order in respect of a person.
- (2) The Registrar must notify the person that the order has been made.
- (3) The notice must be in the approved form and must be given as soon as practicable after making the order.

Note: For *approved form* see section 72X.

- (4) The Registrar must give to the Secretary of the Department of Immigration and Multicultural Affairs a copy of the order, and information likely to facilitate identification of the person, for the purposes of administering the *Migration Act 1958*, unless the Registrar is satisfied that the person is an Australian citizen.
- (5) The Registrar must also give a copy of the order, and information likely to facilitate identification of the person for the purposes of this Part, to such other persons as the Registrar considers appropriate in the circumstances, being persons prescribed by the regulations for the purposes of this subsection.
- (6) The Registrar must give a copy of the order or information under subsection (4) or (5) as soon as practicable after making the order.

72H Operation of departure prohibition order

- (1) A departure prohibition order comes into force when it is made, and continues in force until it is revoked, or until it is set aside by a court.
- (2) However, a departure prohibition order in respect of a person is not in force during any period when a deportation order in respect of the person is in force under the *Migration Act 1958*.

72I Revocation and variation of departure prohibition orders

- (1) The Registrar must revoke a departure prohibition order in respect of a person if:
 - (a) the person no longer has a child support liability; or

- (b) the person has a child support liability, but arrangements satisfactory to the Registrar have been made for the liability to be wholly discharged; or
 - (c) the person has a child support liability, but the Registrar is satisfied that the liability is completely irrecoverable.
- (2) However, if the Registrar considers that the person may later become subject to a child support liability in respect of, or arising out of, matters that have occurred, the Registrar must not revoke a departure prohibition order under subsection (1) unless the Registrar is satisfied:
- (a) that the liability will be wholly discharged; or
 - (b) that arrangements satisfactory to the Registrar will be made for the liability to be wholly discharged; or
 - (c) that the liability will be completely irrecoverable.
- (3) The Registrar may also, at the Registrar's discretion, revoke or vary a departure prohibition order in respect of a person if the Registrar considers it desirable to do so.
- (4) The Registrar may revoke or vary a departure prohibition order under subsection (1) or (3):
- (a) on application by the person in the approved form; or
 - (b) on the Registrar's own motion.

72J Notification of decisions about revocation and variation

- (1) The Registrar must notify a person who has made an application under paragraph 72I(4)(a) for the revocation or variation of a departure prohibition order of the Registrar's decision on the application.
- (2) The Registrar must notify a person if the Registrar decides, on the Registrar's own motion, to revoke or vary a departure prohibition order in respect of the person.
- (3) The Registrar must also notify each person to whom a copy of a departure prohibition order was given under subsection 72G(4) or (5) if the Registrar decides to revoke or vary the order.
- (4) A notice under this section must be in the approved form, and must be given as soon as practicable after the decision concerned is made.

Note: For *approved form* see section 72X.

Division 4—Departure authorisation certificates

72K Application for departure authorisation certificate

- (1) A person in respect of whom a departure prohibition order is in force may apply for a certificate authorising the person to depart from Australia for a foreign country (a *departure authorisation certificate*).
- (2) The application must be in the approved form.

Note: For *approved form* see section 72X.

72L When Registrar must issue departure authorisation certificate

- (1) This section applies if a person makes an application under section 72K for a departure authorisation certificate.
- (2) The Registrar must issue the departure authorisation certificate if the Registrar is satisfied:
 - (a) that, if the certificate is issued:
 - (i) it is likely that the person will depart from Australia and return to Australia within a period that the Registrar considers appropriate; and
 - (ii) it is likely that, within a period that the Registrar considers appropriate, the Registrar will be required by subsection 72I(1) to revoke the departure prohibition order in respect of the person; and
 - (b) that it is not necessary for the person to give security under section 72M for the person's return to Australia.
- (3) If the Registrar is not satisfied as mentioned in subsection (2), the Registrar must nevertheless issue the departure authorisation certificate if:
 - (a) the person has given security under section 72M for the person's return to Australia; or
 - (b) if the person is unable to give such security, the Registrar is satisfied:
 - (i) that the certificate should be issued on humanitarian grounds; or

- (ii) that refusing to issue the certificate will be detrimental to Australia's interests.

72M Security for person's return to Australia

- (1) A person may give such security as the Registrar considers appropriate by bond, deposit or any other means, for the person's return to Australia by such day as is agreed by the person and the Registrar and is specified in the departure authorisation certificate.
- (2) The Registrar may substitute a later day for the day mentioned in subsection (1), either on the Registrar's own motion, or on application by the person in the approved form.
- (3) The Registrar may refuse an application by a person to substitute a later day if:
 - (a) the person refuses to increase the value of the security already given to a level that the Registrar considers appropriate; or
 - (b) the person refuses to give such further security as the Registrar considers appropriate; or
 - (c) the Registrar considers that it would not be appropriate to substitute the later day.

72N What departure authorisation certificate must authorise

- (1) A departure authorisation certificate in respect of a person must authorise the departure of the person on or before the seventh day after a day specified in the certificate.
- (2) The day specified in the certificate must be a day that is after the day on which the certificate is issued, but not more than 7 days after that day.

72O Notification requirements for departure authorisation certificates

- (1) The Registrar must notify a person who makes an application for a departure authorisation certificate of the Registrar's decision on the application.
- (2) The notice must be in the approved form and must be given as soon as practicable.

Schedule 6 Departure prohibition orders

Part 1 Departure prohibition orders

Note: For *approved form* see section 72X.

- (3) If the Registrar decides to issue the departure authorisation certificate, the Registrar must, as soon as practicable, give a copy of the certificate to the person, and to each person to whom a copy of the departure prohibition order in respect of the person was given under subsection 72G(4) or (5).

72P Notification requirements for substituted days

- (1) The Registrar must notify a person who makes an application under section 72M to have a later day substituted of the Registrar's decision on the application.
- (2) The Registrar must notify a person in respect of whom a departure authorisation certificate is in force if the Registrar decides, on the Registrar's own motion, to substitute a later day.
- (3) If the Registrar decides to substitute a later day, the Registrar must also notify each person to whom a copy of the departure prohibition order in respect of the person was given under subsection 72G(4) or (5).
- (4) A notice under this section must be given as soon as practicable.

Division 5—Appeals and review in relation to departure prohibition orders and departure authorisation certificates

72Q Appeals to courts against making of departure prohibition orders

- (1) A person aggrieved by the making of a departure prohibition order may appeal to the Federal Court of Australia against the making of the order.
- (2) This section has effect:
 - (a) subject to Chapter III of the Constitution; and
 - (b) despite anything contained in section 9 of the *Administrative Decisions (Judicial Review) Act 1977*.

72R Jurisdiction of courts

The jurisdiction of a court under section 72Q must be exercised by a single Judge or Justice.

72S Orders of court on appeal

A court hearing an appeal under section 72Q against the making of a departure prohibition order may, in its discretion:

- (a) make an order setting aside the order; or
- (b) dismiss the appeal.

72T Applications for review of certain decisions

- (1) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Registrar under section 72I, 72L or 72M.
- (2) In this section:

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Division 6—Enforcement

72U Powers of authorised officers

- (1) This section applies if an authorised officer believes on reasonable grounds that:
 - (a) a person is about to depart from Australia for a foreign country; and
 - (b) a departure prohibition order in respect of the person is in force; and
 - (c) the person's departure is not authorised by a departure authorisation certificate.
- (2) The authorised officer may:
 - (a) take such steps as are reasonably necessary to prevent the person's departure, including, but not limited to, steps to prevent the person going on board, or to remove the person from, a vessel or aircraft in which the authorised officer

believes on reasonable grounds the departure will take place;
and

- (b) require the person to answer questions or produce documents to the authorised officer for the purposes of ascertaining whether:
 - (i) a departure prohibition order in respect of the person is in force; and
 - (ii) if such an order in respect of the person is in force—whether the person’s departure is authorised by a departure authorisation certificate.
- (3) A person is guilty of an offence if the person refuses or fails to answer a question or produce a document.

Maximum penalty: 30 penalty units.

- (4) However, a person is not guilty of an offence under subsection (3) if the person answers the question or produces the document to the extent that the person is capable of answering the question or producing the document.

Note: A defendant bears an evidential burden in relation to the matters mentioned in subsection (4).

- (5) A person must not, in answer to a question under subsection (2), make a statement that the person knows to be false or misleading in a material particular.

Maximum penalty: 30 penalty units, or imprisonment for 6 months, or both.

72V Privilege against self-incrimination

- (1) A person is not excused from the requirement to comply with a requirement under paragraph 72U(2)(b) to answer questions or produce documents on the ground that doing so might tend to incriminate the person or expose the person to a penalty.
- (2) However, if the person is an individual:
 - (a) the answer to the question or the document; or
 - (b) any other information, document or thing obtained as a direct or indirect result of complying with the requirement;

is not admissible in evidence against the individual in any criminal proceedings other than proceedings under, or arising out of, subsection 72U(5).

72W Certain people must produce authority to depart

- (1) If:
- (a) a departure prohibition order in respect of a person is in force; and
 - (b) the person is about to depart from Australia for a foreign country; and
 - (c) the person's departure is authorised by a departure authorisation certificate;

the person must give a copy of the certificate to an authorised officer for inspection, if requested to do so by the authorised officer.

Maximum penalty: 5 penalty units.

- (2) Strict liability, within the meaning of section 6.1 of the *Criminal Code*, applies to subsection (1).

Division 7—Definitions etc.

72X Definitions

In this Part:

approved form means a form approved by the Registrar for the purposes of the provision in which the expression appears.

authorised officer means:

- (a) an officer within the meaning of the *Customs Act 1901*; or
- (b) a member of the Australian Federal Police.

72Y Interpretation—departure from Australia for foreign country

A reference in this Part to the departure of a person from Australia for a foreign country is a reference to the departure of the person from Australia for a foreign country, whether or not the person intends to return to Australia.

Part 2—Amendments consequential on changed administrative law arrangements

Child Support (Registration and Collection) Act 1988

2 Subsection 72T(1)

Omit “Appeals”, substitute “Review”.

3 Subsection 72T(2)

Omit “*Administrative Appeals Tribunal Act 1975*”, substitute “Act that establishes the Administrative Review Tribunal”.

4 At the end of section 72T

Add:

Note: The short title of the Act that establishes the Administrative Review Tribunal is either the *Administrative Review Tribunal Act 2000* or the *Administrative Review Tribunal Act 2001*.

Schedule 7—Minimum rate of child support

Child Support (Assessment) Act 1989

1 Subsection 66A(4) (paragraph (a) of the definition of *income*)

After “benefit”, insert “other than money earned, derived or received in a manner, or from a source, prescribed by the regulations for the purposes of this paragraph”.

2 Subsection 66A(4) (paragraph (b) of the definition of *income*)

After “allowance”, insert “other than a payment of a kind prescribed by the regulations for the purposes of this paragraph”.

Schedule 9—Definition of eligible carer

Child Support (Assessment) Act 1989

1 Section 5 (definition of *eligible carer*)

Repeal the definition, substitute:

eligible carer has the meaning given by section 7B.

2 After section 7A

Insert:

7B Meaning of *eligible carer*

- (1) In this Act, *eligible carer*, in relation to a child, means:
 - (a) a person who is the sole or principal provider of ongoing daily care for the child; or
 - (b) a person who has major contact with the child; or
 - (c) a person who shares ongoing daily care of the child substantially equally with another person; or
 - (d) a person who has substantial contact with the child.
- (2) Despite subsection (1), if:
 - (a) a person provides care for a child, shares care of a child or has contact with a child; and
 - (b) the person is neither a parent nor a legal guardian of the child; and
 - (c) a parent or legal guardian of the child has indicated that he or she does not consent to the person providing or sharing such care, or having such contact;then the person is not an eligible carer in relation to the child unless it would be unreasonable in the circumstances for a parent or legal guardian of the child to provide or share such care or have such contact.
- (3) For the purposes of subsection (2), it is unreasonable for a parent or legal guardian to provide care for, share care of or have contact with, a child if:

- (a) the Registrar is satisfied that there has been extreme family breakdown; or
- (b) the Registrar is satisfied that there is a serious risk to the child's physical or mental wellbeing from violence or sexual abuse in the home of the parent or legal guardian concerned.

Schedule 10—Technical amendments

Child Support (Assessment) Act 1989

1 Section 5 (subparagraph (c)(ii) of the definition of *relevant dependent child*)

Omit “section 58D of the *Family Court Act 1975*”, substitute “section 124 of the *Family Court Act 1997*”.

2 Paragraph 39(2)(a)

Omit “year”, substitute “period”.

3 Paragraph 39(2)(b)

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

4 Paragraph 39(2)(b) (definition of *base FTB rate*)

Omit “year”, substitute “period”.

5 Paragraph 39(2)(b) (definition of *standard FTB rate*)

Omit “year”, substitute “period”.

6 Subsection 39(5)

Repeal the subsection.

7 Subsection 47(1)

Omit “eligible for administrative assessment”, substitute “in respect of whom an assessment has been made”.

8 Subsection 98A(4)

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

9 Subsection 98A(4)

Omit “made under subsection 66(1)”.

10 At the end of section 98A

Add:

- (5) The Registrar may make a determination that varies, or has the effect of varying, the annual rate of child support payable by a liable parent under an assessment to a rate below \$260 per annum if section 66 does not apply in relation to the child support payable by the liable parent because of the operation of section 66B.

11 Paragraph 110(1A)(a)

Repeal the paragraph, substitute:

- (a) an objection to those particulars has been lodged under section 98X; and

12 Paragraph 110(1A)(b)

Omit “only”, substitute “in whole or”.

13 Paragraph 116(1A)(a)

Repeal the paragraph, substitute:

- (a) an objection to the making of, or the refusal to make, the departure determination has been lodged under section 98X; and

14 Paragraph 116(1A)(b)

Omit “only”, substitute “in whole or”.

15 Paragraph 117(3)(a)

Omit “the number of days in the period”, substitute “365”.

16 Paragraph 117(3)(b)

Omit “365”, substitute “the number of days in the period”.

17 Paragraph 117(3B)(a)

Omit “the number of days in the period”, substitute “365”.

18 Paragraph 117(3B)(b)

Omit “365”, substitute “the number of days in the period”.

19 Paragraph 132(1A)(a)

Repeal the paragraph, substitute:

- (a) an objection in relation to the decision has been lodged under section 98X; and

20 Paragraph 132(1A)(b)

Omit “only”, substitute “in whole or”.

21 Paragraph 151D(1)(b)

Repeal the paragraph, substitute:

- (b) a child support terminating event happens in relation to the child on whichever of the following days occurs first:
 - (i) the day on which the Registrar is satisfied the child ceased to be in full-time secondary education;
 - (ii) the last day of the secondary school year to which the application relates.

22 After subsection 151D(2)

Insert:

Child to be regarded as aged 17 for purposes of Part 5

- (2A) If the Registrar accepts the application, the child is to be taken to be aged 17 for the purposes of applying Part 5 to the child throughout the period:
 - (a) beginning on the day on which the child turned 18; and
 - (b) ending on the day on which a child support terminating event (within the meaning of paragraph (1)(b)) happens in relation to the child.

23 Subsections 159B(1) and (2)

Omit “55A or subsection 60(4)”, substitute “63A”.

Child Support (Registration and Collection) Act 1988

24 Subsection 67(1)

Repeal the subsection, substitute:

- (1) If a child support debt in respect of a payment period remains unpaid after the time when it became due and payable, the person liable to pay the debt is liable to pay to the Registrar, by way of penalty, whichever of the following amounts applies:
 - (a) if the payment period is a week—an amount calculated on the balance outstanding each week at a weekly rate equal to $\frac{1}{52}$ of the relevant annual rate;

- (b) if the payment period is a fortnight—an amount calculated on the balance outstanding each fortnight at a fortnightly rate equal to $\frac{1}{26}$ of the relevant annual rate;
- (c) if the payment period is a 4 week period—an amount calculated on the balance outstanding each four weeks at a four weekly rate equal to $\frac{4}{52}$ of the relevant annual rate;
- (d) if the payment period is a month or a calendar month—an amount calculated on the balance outstanding each month or calendar month at a monthly rate equal to $\frac{1}{12}$ of the relevant annual rate.

(1AA) If a child support debt in respect of a day in an initial period remains unpaid after the time when it became due and payable, the person liable to pay the debt is liable to pay to the Registrar, by way of penalty, an amount calculated on the balance outstanding each month at a monthly rate equal to $\frac{1}{12}$ of the relevant annual rate.

25 Subsection 67(1A)

Omit “subsection (1)”, substitute “subsections (1) and (1AA)”.

26 Subsection 67(2)

Omit “(1)”, substitute “(1) or (1AA)”.

27 At the end of section 67

Add:

- (3) In this section:

relevant annual rate means the annual rate of the penalty for unpaid income tax for the time being specified in the *Income Tax Assessment Act 1936*.

28 After section 67

Insert:

67A Due date of certain debts for the purposes of calculating penalty

For the purposes of section 67, if:

- (a) the Registrar has entered an initial period in the Register under paragraph 26(2)(a) in respect of a liability; and

- (b) a child support debt in respect of a payment period for the liability becomes due and payable on a particular day (the *payment period due day*); and
 - (c) the payment period due day occurs before any day on which a child support debt in respect of a day in the initial period for the liability is due and payable;
- the child support debt in respect of the payment period is taken to have become due and payable on the day on which a child support debt in respect of the last day in the initial period is due and payable.

29 Subsection 71C(1)

Omit “month” (first occurring), substitute “payment period entered in the Register under paragraph 26(2)(b) or initial period entered in the Register under paragraph 26(2)(a)”.

30 Paragraph 71C(1)(a)

Omit “month”, substitute “period”.

31 Subsection 71C(1)

Omit “month” (third occurring), substitute “period”.

32 Paragraph 71C(2)(b)

Omit “months”, substitute “payment periods, and any initial period,”.

33 Paragraph 71C(2)(b)

Omit “month”, substitute “period”.

34 Subsections 71C(3) and (4)

Omit “month” (wherever occurring) substitute “period”.

35 Paragraph 84A(1)(a)

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

*[Minister's second reading speech made in—
House of Representatives on 30 August 2000
Senate on 2 November 2000]*

(147/00)