



Child Support (Assessment) Act 1989

No. 124 of 1989

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Child Support (Assessment) Act 1989

No. 124 of 1989

An Act to make provision for determining the financial support payable by parents for their children, and for other purposes

[Assented to 21 September 1989]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Child Support (Assessment) Act 1989*.

Commencement

2. (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

(2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.

Duty of parents to maintain their children

3. (1) The parents of a child have the primary duty to maintain the child.

(2) Without limiting subsection (1), the duty of a parent to maintain a child:

- (a)** is not of lower priority than the duty of the parent to maintain any other child or another person; and
- (b)** has priority over all commitments of the parent other than commitments necessary to enable the parent to support:
 - (i)** himself or herself; and
 - (ii)** any other child or another person that the parent has a duty to maintain; and
- (c)** is not affected by:
 - (i)** the duty of any other person to maintain the child; or
 - (ii)** any entitlement of the child or another person to an income tested pension, allowance or benefit.

Objects of Act

4. (1) The principal object of this Act is to ensure that children receive a proper level of financial support from their parents.

(2) Particular objects of this Act include ensuring:

- (a)** that the level of financial support to be provided by parents for their children is determined according to their capacity to provide financial support and, in particular, that parents with a like capacity to provide financial support for their children should provide like amounts of financial support; and
- (b)** that the level of financial support to be provided by parents for their children should be determined in accordance with the legislatively fixed standards; and
- (c)** that persons who provide ongoing daily care for children should be able to have the level of financial support to be provided for the children readily determined without the need to resort to court proceedings; and
- (d)** that children share in changes in the standard of living of both their parents, whether or not they are living with both or either of them.

(3) It is the intention of the Parliament that this Act should be construed, to the greatest extent consistent with the attainment of its objects:

- (a)** to permit parents to make private arrangements for the financial support of their children; and
- (b)** to limit interferences with the privacy of persons.

Interpretation—definitions

5. In this Act, unless the contrary intention appears:

“**adjusted income amount**”, in relation to a liable parent, has the meaning given by subsection 36 (2);

“**administrative assessment**” means assessment under Part 5;

“**annual rate**” includes an annual rate of nil;

“**child eligible for administrative assessment**” means a child in relation to whom an application may, under section 24, be made to the Registrar for administrative assessment of child support;

“**child support**” means financial support under this Act, including financial support under this Act by way of lump sum payment or by way of transfer or settlement of property;

“**child support agreement**” has the meaning given by section 81;

“**child support income amount**” has the meaning given by:

(a) in the case of a liable parent—section 38 and Division 3 of Part 5; and

(b) in the case of a custodian entitled to child support—section 45 and Division 3 of Part 5;

“**child support percentage**” has the meaning given by section 37 (as modified in relation to certain cases by paragraphs 48 (e) and 54 (b) and (c));

“**child support terminating event**” has the meaning given by section 12;

“**child support year**” means:

(a) the period starting on the commencing day and ending on the next 30 June; or

(b) a subsequent financial year;

“**commencing day**” means the day on which this Act commences;

“**court exercising jurisdiction under this Act**” does not include a court exercising jurisdiction in proceedings under paragraph 79 (a);

“**court having jurisdiction under this Act**” does not include a court that has jurisdiction under this Act only in relation to the recovery of amounts of child support;

“**custodian entitled to child support**” has the meaning given by section 31 or, in relation to a case in which the liability to pay the child support concerned arose because of the acceptance by the Registrar of a child support agreement, section 93;

“**disregarded income amount**”, in relation to a custodian entitled to child support, has the meaning given by section 46;

“**eligible child**” has the meaning given by Part 3 (Children who may be covered by Act);

“**eligible custodian**”, in relation to a child, means:

(a) a person who is the sole or principal provider of ongoing daily care for the child; or

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- (b) a person who shares ongoing daily care of the child substantially equally with another person;
- “**exempted income amount**”, in relation to a liable parent, has the meaning given by section 39;
- “**Family Law Act 1975**” includes the regulations and Rules of Court made under that Act;
- “**income tested pension, allowance or benefit**” has the same meaning as in the *Family Law Act 1975*;
- “**last relevant year of income**”, in relation to a person and a child support year, means the year of income immediately before the year of income that ended most recently before the start of the child support year;

Examples of operation of definition of last relevant year of income

Child support year	Most recently ended year of income	Last relevant year of income
1989-90	1988-89	1987-88
1990-91	1989-90	1988-89
1991-92	1990-91	1989-90
1992-93	1991-92	1990-91

“**liable parent**” has the meaning given by section 31 or, in relation to a case in which the liability to pay the child support concerned arose because of the acceptance by the Registrar of a child support agreement, section 93;

“**married person**” means:

- (a) a person who is legally married to another person and is not living separately and apart from the other person on a permanent basis; or
- (b) a person who is living with another person of the opposite sex as the spouse of the other person on a genuine domestic basis although not legally married to the other person;

“**parent**” means:

- (a) when used in relation to a child who has been adopted—an adoptive parent of the child; and
- (b) when used in relation to a child born because of the carrying out of an artificial conception procedure—a person who is a parent of the child under section 60B of the *Family Law Act 1975*;

“**Registrar**” means the Child Support Registrar;

“**relevant AWE amount**”, in relation to a child support year, means the estimate of the full-time adult 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;

Example: For the child support year 1989-90, the latest period for which such an estimate was published by the Australian Statistician before 1 January 1989 was the pay week ending on or before 19 August 1988. The estimate for that period was

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\$502.40. The relevant AWE amount for the child support year 1989-90 is, therefore, \$502.40.

“relevant dependent child”, in relation to a liable parent, means a child of whom the liable parent is both a parent and an eligible custodian but is not a liable parent, being a child who:

- (a) is under 18 years of age; and
- (b) is an unmarried person; and
- (c) is not a shared custody child;

“relevant married rate of Social Security pension”, in relation to a child support year, means the maximum rate at which pension under Part IV of the *Social Security Act 1947* was payable on 1 January immediately before the child support year to a married person:

- (a) whose spouse within the meaning of that Act was in receipt of a prescribed pension within the meaning of that Act; and
- (b) who did not have a dependent child within the meaning of that Act; and
- (c) who was not permanently blind within the meaning of that Act; and
- (d) to whom section 36 of that Act did not apply;

Example: The maximum rate of that pension on 1 January 1989 was \$5,384.60 per annum. The relevant married rate of Social Security pension for the 1989-90 child support year is, therefore, \$5,384.60 per annum.

“relevant single rate of Social Security pension”, in relation to a child support year, means the maximum rate at which pension under Part IV of the *Social Security Act 1947* was payable on 1 January immediately before the child support year to an unmarried person:

- (a) who did not have a dependent child within the meaning of that Act; and
- (b) who was not permanently blind within the meaning of that Act; and
- (c) to whom section 36 of that Act did not apply;

Example: The maximum rate of that pension on 1 January 1989 was \$6,461 per annum. The relevant single rate of Social Security pension for the 1989-90 child support year is, therefore, \$6,461 per annum.

“resident of Australia” has the meaning given by section 10;

“Rules of Court” means Rules of Court made under the *Family Law Act 1975*;

“separated” has the meaning given by section 9;

“shared custody child” means a child of whom each of the parents is an eligible custodian because he or she shares ongoing daily care of the child substantially equally with the other parent;

“this Act” includes the regulations;

“unmarried person” means a person who is not a married person (as defined in this section);

“yearly equivalent of the relevant AWE amount”, in relation to a child support year, means 52 times the relevant AWE amount in relation to the child support year;

“year of income”, in relation to a person, has the same meaning as in the *Income Tax Assessment Act 1936*.

Interpretation—expressions used in Child Support (Registration and Collection) Act

6. Unless the contrary intention appears, expressions used in this Act, and in the *Child Support (Registration and Collection) Act 1988*, have the same respective meanings as in that Act.

Interpretation—expressions used in Part VII of Family Law Act

7. Unless the contrary intention appears, expressions used in this Act, and in Part VII of the *Family Law Act 1975*, have the same respective meanings as in that Part.

Interpretation—when substantial access is shared ongoing daily care

8. (1) For the purposes of this Act, if:

- (a) a person is the principal provider of ongoing daily care for a child; and
- (b) another person has care of the child for at least 40% of the nights of the child support year concerned;

the other person is to be taken to share ongoing daily care of the child substantially equally with the first-mentioned person.

(2) Subsection (1) is not to be taken to limit by implication the circumstances in which a person shares ongoing daily care of a child substantially equally with another person.

Interpretation—meaning of “separated”

9. For the purposes of this Act, the parents of a child are to be taken to have separated in circumstances in which the parties to a marriage are, under the *Family Law Act 1975*, taken to have separated.

Interpretation—meaning of “resident of Australia”

10. For the purposes of this Act, a person is a resident of Australia on a day if on that day the person is a resident of Australia for the purposes of the *Income Tax Assessment Act 1936* otherwise than because of subsection 7A (2) of that Act.

Interpretation—meaning of “approved form”

11. A reference in a provision of this Act to an approved form is a reference to a form made available by the Registrar for the purposes of the provision, being a form that deals with such matters (if any) as are prescribed in relation to the provision for the purposes of this section.

Interpretation—happening of child support terminating events

12. (1) A child support terminating event happens in relation to a child if:

- (a) the child dies; or
- (b) the child ceases to be an eligible child under regulations made under subsection 22 (1); or
- (c) the child turns 18; or
- (d) the child is adopted; or
- (e) the child becomes a married person; or
- (f) none of the following subparagraphs applies any longer in relation to the child:
 - (i) the child is present in Australia;
 - (ii) the child is an Australian citizen;
 - (iii) the child is ordinarily resident in Australia.

(2) A child support terminating event happens in relation to a person who is a custodian entitled to child support in relation to a child if:

- (a) the person dies; or
- (b) the person ceases to be an eligible custodian of the child.

(3) A child support terminating event happens in relation to a person who is a liable parent in relation to a child if:

- (a) the person dies; or
- (b) the person ceases to be a resident of Australia.

(4) A child support terminating event happens in relation to a child and the persons who are respectively a custodian entitled to child support and a liable parent in relation to the child if:

- (a) either of the following subparagraphs applies in relation to the child and those persons:
 - (i) the custodian entitled to child support elects by a notice that complies with section 151 (Election by custodian entitled to child support to end administrative assessment) that the liability of the liable parent to pay or provide child support for the child to the custodian entitled to child support is to end from a specified day;
 - (ii) the Registrar accepts a child support agreement made in relation to the child between the custodian entitled to child support and the liable parent, and the agreement includes provisions under which the liability of the liable parent to pay or provide child support for the child to the custodian entitled to child support is to end from a specified day; and
- (b) the specified day arrives.

Extension and application of Act in relation to maintenance of children

13. (1) Subject to subsections (4) and (5), this Act so far as it relates to the maintenance of children extends to New South Wales, Victoria, South Australia and Tasmania.

(2) If:

- (a)** the Parliament of Queensland or Western Australia refers to the Parliament of the Commonwealth the matter of the maintenance of children or matters that include, or are included in, that matter; or
- (b)** Queensland or Western Australia adopts this Act so far as it relates to the maintenance of children;

then, subject to subsections (4) and (5), this Act so far as it relates to the maintenance of children also extends to Queensland or Western Australia, as the case may be.

(3) This Act so far as it relates to the maintenance of children applies in and in relation to the Territories.

(4) This Act extends to a State because of subsection (1) or (2) only for so long as there is in force:

- (a)** an Act of the Parliament of the State by which there is referred to the Parliament of the Commonwealth:
 - (i)** the matter of the maintenance of children; or
 - (ii)** matters that include or are included in that matter; or
- (b)** a law of the State adopting this Act so far as it applies in relation to the maintenance of children.

(5) This Act extends to a State at any time because of subsection (1) or paragraph (2) (a) only so far as it makes provision with respect to:

- (a)** the matters that are at that time referred to the Parliament of the Commonwealth by the Parliament of the State; or
- (b)** matters incidental to the execution of any power vested by the Constitution in the Parliament of the Commonwealth in relation to those matters.

Additional application of Act in relation to maintenance of children of marriages

14. (1) Without prejudice to its effect apart from this section, this Act so far as it relates to the maintenance of children also has effect as provided by this section.

(2) This Act so far as it relates to the maintenance of children has, because of this section, the effect that it would have if:

- (a)** each reference to a child were, by express provision, confined to a child of a marriage; and
- (b)** each reference to the parents of the child were, by express provision, confined to the parties to the marriage;

and has that effect only so far as it makes provision with respect to the rights and duties of the parties to the marriage in relation to the child, including, for example, provision with respect to the rights and duties of the parties in relation to the maintenance of the child.

Corresponding State laws

15. (1) If the Minister is satisfied that a law of a State makes adequate and appropriate provision for determining the financial support payable for children, the Minister may, by *Gazette* notice, declare the law to be a corresponding State law.

(2) If the Minister becomes satisfied that the State law no longer makes adequate and appropriate provision for determining the financial support payable for children, the Minister may, by *Gazette* notice, revoke the declaration of the law as a corresponding State law.

(3) It is the intention of the Parliament that the Registrar should have and be subject to the powers, functions, rights, liabilities and duties conferred or imposed on the Registrar by a corresponding State law that are additional to those conferred or imposed by this Act.

Act to bind Crown

16. (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

(2) Nothing in this Act permits the Crown to be prosecuted for an offence.

PART 2—COUNSELLING

Court counselling facilities to be made available

17. (1) A parent of an eligible child, or an eligible custodian of an eligible child who is not a parent of the child, may seek the assistance of the counselling facilities of the Family Court or a Family Court of a State.

(2) The Principal Director of Court Counselling of the Family Court or an appropriate officer of the Family Court of the State must, as far as practicable, make the counselling facilities available.

PART 3—CHILDREN WHO MAY BE COVERED BY ACT

Act applies only in relation to eligible children

18. This Act applies only in relation to children who are eligible children.

Children born on or after commencing day are eligible children

19. A child born on or after the commencing day is an eligible child.

Children of parents who separate on or after commencing day are eligible children

20. (1) Where:

- (a) the parents of a child born before the commencing day have cohabited; and
- (b) the parents separate on or after the commencing day;

the child is an eligible child.

(2) Subsection (1) applies in relation to the child whether or not the parents:

- (a) are or were at any time legally married; or
- (b) have separated on an earlier occasion; or
- (c) have resumed cohabitation.

Children with a brother or sister who is an eligible child are eligible children

21. Where:

- (a) a child would, apart from this section, not be an eligible child; and
- (b) another child is born to the parents of the first-mentioned child on or after the commencing day;

the first-mentioned child is an eligible child.

Exclusion of certain children from coverage of Act

22. (1) The regulations may provide that children who are in the custody of, or under the guardianship, care and control or supervision of, a person under a child welfare law are not eligible children.

(2) Sections 19, 20 and 21 have effect subject to any regulations made under subsection (1).

PART 4—APPLICATIONS TO REGISTRAR FOR ADMINISTRATIVE ASSESSMENT OF CHILD SUPPORT

Division 1—Application requirements

Application requirements generally

23. An application for administrative assessment of child support is properly made if it complies with the following provisions:

- (a) section 24 (Children in relation to whom applications may be made);
- (b) section 25 (Persons who may apply);
- (c) section 26 (Persons from whom child support may be sought);
- (d) Section 27 (Formal requirements for applications).

Children in relation to whom applications may be made

24. Application may be made to the Registrar for administrative assessment of child support for a child only if:

- (a) the child is:
 - (i) an eligible child; and
 - (ii) under 18 years of age; and
 - (iii) an unmarried person; and
- (b) either or both of the following subparagraphs applies or apply in relation to the child:
 - (i) the child is present in Australia on the day on which the application is made;
 - (ii) the child is an Australian citizen, or ordinarily resident in Australia, on that day.

Persons who may apply

25. (1) Application may be made to the Registrar for administrative assessment of child support for a child only if the person making the application:

- (a) is an eligible custodian of the child; and
 - (b) is not living with the person from whom payment of child support is sought as the spouse of that person on a genuine domestic basis (whether or not legally married to that person); and
 - (c) complies with subsections (2) and (3) so far as those subsections are applicable.
- (2)** Subject to subsection (3), where:
- (a) 2 or more persons jointly are the sole or principal providers of ongoing daily care for a child; or
 - (b) 2 or more persons jointly share ongoing daily care of a child substantially equally with another person or other persons;

application may be made to the Registrar for administrative assessment of child support for the child by any, but not more than one, of the persons (in subsection (3) called the “**joint custodians**”) who jointly are the sole or principal providers of the ongoing daily care of the child or who jointly share ongoing daily care of the child substantially equally with another person or other persons.

(3) If either or any of the joint custodians is a parent of the child, the application must be made by or on behalf of the person who is the parent.

Persons from whom child support may be sought

26. Application may be made to the Registrar for administrative assessment of child support for a child only if the application seeks payment of the child support from a person who is:

- (a) a parent of the child; and
- (b) a resident of Australia on the day on which the application is made.

Formal requirements for applications

27. (1) An application for administrative assessment of child support must be:

- (a) in the appropriate approved form; and
 - (b) made to the Registrar.
- (2)** The application must be:
- (a) verified as required by the form of application; and
 - (b) accompanied by such documents (if any) as are required by the form of application to accompany the application.

(3) A document that accompanies the application must also be verified as required by the form of application.

Application for child support for 2 or more children made in same form etc.

28. (1) If application is made in the same form for administrative assessment of child support for 2 or more children, the form may be treated as if it contained separate applications made for administrative assessment for each of the children.

- (2) If:**
- (a) application is made in the same form for administrative assessment of child support for a child or 2 or more children; and
 - (b) payment of child support is sought from 2 or more persons for the child or any of the children;

the form may be treated as if it contained separate applications made for administrative assessment of child support for the child or each of the children from each of the persons from whom payment of child support is sought.

Division 2—Decision on application

How decision is to be made

29. (1) Subject to subsection (2), in determining whether an application for administrative assessment of child support complies with sections 24, 25 and 26, the Registrar may act on the basis of the application and the documents accompanying the application, and is not required to conduct any inquiries or investigations into the matter.

(2) The Registrar is to be satisfied that a person is a parent of a child only if the Registrar is satisfied:

- (a) that the person is or was a party to a marriage and the child was born to the person, or the other party to the marriage, during the marriage; or
- (b) that the person's name is entered in a register of births or parentage information, kept under the law of the Commonwealth or of a

- State, Territory or prescribed overseas jurisdiction, as a parent of the child; or
- (c) that, whether before or after the commencement of this Act, an Australian court or a court of a prescribed overseas jurisdiction has found, or could reasonably be inferred to have found, that the person is the father or mother of the child, and the finding has not been altered, set aside or reversed; or
 - (d) that, whether before or after the commencement of this Act, the person has, under the law of the Commonwealth or of a State, Territory or prescribed overseas jurisdiction, executed an instrument acknowledging that he is the father of the child, and the instrument has not been annulled or otherwise set aside; or
 - (e) that the child has been adopted by the person.

Decision on application

30. (1) If the Registrar is satisfied that an application has been properly made for administrative assessment of child support for a child, the Registrar must accept the application.

(2) If the Registrar is not so satisfied, the Registrar may refuse to accept the application.

Liability to pay child support arises on acceptance of application etc.

31. (1) If the Registrar accepts an application for administrative assessment of child support for a child:

- (a) the applicant is a custodian entitled to child support in relation to the child; and
- (b) the person from whom the application sought payment of child support for the child is a liable parent in relation to the child; and
- (c) child support is payable for the child by the liable parent to the custodian entitled to child support; and
- (d) the child support is payable in relation to the days in the period:
 - (i) beginning on:
 - (A) if the application was made to the Registrar within 28 days after the earliest day or the most recent earliest day, as the case requires, on which an application for administrative assessment of child support could properly be made by the custodian entitled to child support seeking payment of child support for the child from the liable parent (in this subparagraph called “**earliest entitlement day**”) and the liable parent did not, on or after the earliest entitlement day and before the day on which the application was made to the Registrar (in this subparagraph called the “**application day**”), pay or provide maintenance for the child to the custodian entitled to child support—the earliest entitlement day; or

- (B) if the application was not made to the Registrar within 28 days after the earliest entitlement day and the liable parent did not, on or after the earliest entitlement day and before the application day, pay or provide maintenance for the child to the custodian entitled to child support—the day 28 days before the application day; or
 - (C) if the liable parent, on or after the earliest entitlement day and before the application day, paid or provided maintenance for the child to the custodian entitled to child support—the application day; and
- (ii) ending on the day immediately before the day on which a child support terminating event happens in relation to the child, the custodian entitled to child support, the liable parent or all 3 of them.
- (2) The Registrar must, under this Act:
- (a) as quickly as practicable assess the annual rate of the child support payable by the liable parent to the custodian entitled to child support in relation to the days in the child support year in which the application is accepted (and any earlier child support years) in relation to which child support is payable for the child; and
 - (b) before, or as early as practicable after, the start of each later child support year in which the child support continues to be payable for the child, assess the annual rate of the child support payable by the liable parent to the custodian entitled to child support in relation to the days in the later child support year in relation to which child support is payable for the child.

Withdrawal of application by applicant

32. (1) Where:

- (a) a person has made an application to the Registrar for administrative assessment of child support for a child; and
 - (b) the Registrar has not accepted, or refused to accept, the application;
- the person may, by written notice given to the Registrar, withdraw the application.

(2) The notice must be:

- (a) in the appropriate approved form; and
- (b) verified as required by the form of notice; and
- (c) accompanied by such documents (if any) as are required by the form of notice to accompany the notice.

(3) A document that accompanies the notice must also be verified as required by the form of notice.

(4) Where a notice that complies with subsections (2) and (3) is given to the Registrar in relation to an application for administrative assessment, the application is to be taken not to have been made.

Division 3—Notice of decision

Notice to be given to unsuccessful applicant

33. (1) If the Registrar refuses to accept an application for administrative assessment of child support for a child, the Registrar must immediately notify the applicant in writing.

(2) The notice must include, or be accompanied by, a statement that specifically draws the attention of the applicant to the right, subject to the *Family Law Act 1975*, to apply to a court having jurisdiction under this Act 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.

(3) A contravention of subsection (2) in relation to a decision does not affect the validity of the decision.

Notice to be given to person from whom child support sought

34. (1) If the Registrar accepts an application for administrative assessment of child support for a child, the Registrar must immediately notify the applicant, and the person from whom the application sought payment of child support, in writing.

(2) The notice must also include, or be accompanied by, a statement that specifically draws the attention of the person from whom the application sought payment of child support to the right, subject to the *Family Law Act 1975*, to apply 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.

(3) A contravention of subsection (2) in relation to a decision does not affect the validity of the decision.

PART 5—ADMINISTRATIVE ASSESSMENT OF CHILD SUPPORT

Division 1—The basic formula

Application of basic formula to determine annual rate of child support

35. This Division applies in relation to the assessment of child support payable for a child by a liable parent:

- (a) except to the extent otherwise provided in Division 2 (Modifications of the basic formula for certain cases); and
- (b) subject to any order made by a court under Division 4 of Part 7 (Orders for departure from administrative assessment in special circumstances); and
- (c) subject to any provision of a child support agreement that have effect, for the purposes of this Part, as if they were such an order made by consent.

The basic formula

36. (1) The annual rate of the child support payable, in relation to a day in a child support year, by a liable parent for the child, or all of the

children, for whom child support is payable by the liable parent is the amount calculated, in relation to the liable parent in relation to that day, using the formula:

child support percentage × adjusted income amount.

(2) The **adjusted income amount** is the amount (being an amount not below 0) calculated, in relation to the liable parent in relation to that day, using the formula:

child support income amount — exempted income amount.

Liable parent's child support percentage

37. The liable parent's **child support percentage** is the percentage ascertained using the following table:

TABLE OF CHILD SUPPORT PERCENTAGES

Number of children for whom the person is a liable parent	Child support percentage
1	18%
2	27%
3	32%
4	34%
5 or more	36%

Liable parent's child support income amount

38. The liable parent's **child support income amount** in relation to the days in the child support year is, subject to Division 3, the liable parent's taxable income under the *Income Tax Assessment Act 1936* for the liable parent's last relevant year of income in relation to the child support year.

Liable parent's exempted income amount

39. (1) The liable parent's **exempted income amount** is:

- (a) if the liable parent does not have a relevant dependent child—the annual amount of the relevant single rate of Social Security pension for the child support year; and
- (b) if the liable parent has a relevant dependent child—the aggregate of:
 - (i) twice the annual amount of the relevant married rate of Social Security pension for the child support year; and
 - (ii) the additional amount ascertained under subsection (2) for each child who is a relevant dependent child of the liable parent.

(2) The additional amount for a child who is a relevant dependent child of the liable parent is:

- (a) if the child will be under 13 at the end of the child support year—the amount per year referred to in paragraph 33 (4) (a) of the *Social Security Act 1947* that is applicable in relation to 1 January immediately before the child support year; and

- (b) if the child will be 13 or over, but under 16, at the end of the child support year—the amount per year referred to in paragraph 33 (4) (b) of the *Social Security Act 1947* that is applicable in relation to that 1 January; and
- (c) if the child will be 16 or over at the end of the child support year—25% of twice the annual amount of the relevant married rate of Social Security pension for the child support year.

Division 2—Modifications of the basic formula for certain cases

Subdivision A—General

Division subject to departure orders and child support agreements

40. This Division applies subject to:

- (a) any order made by a court under Division 4 of Part 7 (Orders for departure from administrative assessment in special circumstances); and
- (b) any 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.

Subdivision B—Liable parents with low child support income

Child support not payable if child support income amount does not exceed exempted income amount

41. If a liable parent's child support income amount in relation to the days in a child support year does not exceed the liable parent's exempted income amount in relation to a day in the child support year, child support is not payable by the liable parent in relation to that day.

Subdivision C—Liable parents with high child support income

Cap on child support if child support income amount exceeds 2.5 times yearly equivalent of relevant AWE amount

42. If a liable parent's child support income amount in relation to the days in a child support year exceeds 2.5 times the yearly equivalent of the relevant AWE amount for the child support year, the liable parent's adjusted income amount in relation to any day in the child support year is the amount calculated using the formula:

$$\begin{array}{r} 2.5 \text{ times yearly equivalent of the relevant AWE amount} \\ - \text{exempted income amount.} \end{array}$$

Subdivision D—Custodial parents with child support income of more than disregarded income amount

Cases in relation to which Subdivision applies

43. This Subdivision applies in relation to a liable parent by whom child support is payable to a custodian entitled to child support (in this Subdivision called the "entitled custodian") for a child or children if:

- (a) the entitled custodian is a parent of the child or any of the children; and
- (b) the liable parent is not an eligible custodian of any child eligible for administrative assessment of whom the entitled custodian is a parent.

Reduction of child support if custodian's child support income amount exceeds custodian's disregarded income amount

44. (1) If, in relation to a day in a child support year, the entitled custodian's child support income amount exceeds the entitled custodian's disregarded income amount, then, subject to subsection (2), the liable parent's adjusted income amount in relation to that day is to be reduced by the excess.

(2) The annual rate of the child support payable, in relation to that day, by the liable parent to the entitled custodian is not to be reduced below 25% of the annual rate that would, but for subsection (1), be payable in relation to that day.

Custodian's child support income amount

45. The entitled custodian's child support income amount in relation to the days in the child support year is, subject to Division 3, the entitled custodian's taxable income under the *Income Tax Assessment Act 1936* for the entitled custodian's last relevant year of income in relation to the child support year.

Custodian's disregarded income amount

46. (1) The entitled custodian's disregarded income amount is the sum of:

- (a) the yearly equivalent of the relevant AWE amount for the child support year; and
 - (b) the additional amount (if any) worked out under subsection (2) for the child or children in relation to whom the entitled custodian is both a parent and custodian entitled to child support and the liable parent is a liable parent.
- (2) The additional amount for the child or children is the aggregate of:
- (a) for the first or only child who is under 6 at the start of the child support year—11.5% of the yearly equivalent of the relevant AWE amount for the child support year; and
 - (b) for each subsequent child who is under 6 at the start of the child support year—2.5% of the yearly equivalent of the relevant AWE amount for the child support year; and
 - (c) for each child who is 6 or over, but under 12, at the start of the child support year—5% of the yearly equivalent of the relevant AWE amount for the child support year.

Subdivision E—Children shared or divided between parents

Cases in relation to which Subdivision applies

47. (1) This Subdivision applies in relation to the parents (in this Subdivision called the “**relevant parents**”) of a child or children eligible for administrative assessment if either or both of the following paragraphs applies or apply:

- (a) both of the parents are eligible custodians of the child or of one or more of the children;
- (b) one of the parents is an eligible custodian of one or more of the children and the other parent is an eligible custodian of another or other of the children.

(2) This Subdivision applies in relation to the relevant parents whether or not both relevant parents have applied for administrative assessment of child support against each other.

Application of the basic formula etc.

48. In working out the annual rate of child support that would, apart from section 49, be payable, in relation to a day in a child support year, by either of the relevant parents to the other (or would, apart from that section, be payable, in relation to that day, by either of the relevant parents to the other if each of the relevant parents were a liable parent in relation to the other):

- (a) Division 1 (The basic formula) and, to the extent that they are applicable, Subdivisions B and C of this Division (which deal respectively with Liable parents with low child support income and Liable parents with high child support income) are to be applied to each of the relevant parents in turn, but with the modifications made by paragraphs (c), (d) and (e); and
- (b) Subdivision D (Custodial parents with child support income of more than disregarded income amount) is not to be applied in relation to the relevant parents; and
- (c) each of the relevant parents is to be taken to be a liable parent in relation to each of their children who is a child eligible for administrative assessment and for whom the other parent is an eligible custodian, and the other parent is to be taken to be a custodian entitled to child support in relation to each such child; and
- (d) in determining in relation to either of the relevant parents the exempted income amount any child who is a shared custody child is to be disregarded; and
- (e) the child support percentage of either of the relevant parents is the percentage ascertained using the following table (with the number attributed to each shared custody child taken to be 0.5):

MODIFIED TABLE OF CHILD SUPPORT PERCENTAGES

Number of children for whom either of the relevant parents is a liable parent in relation to the other	Child support percentage
0.5	12%
1.0	18%
1.5	24%
2.0	27%
2.5	30%
3.0	32%
3.5	33%
4.0	34%
4.5	35%
5.0 or more	36%

Offsetting of child support liabilities

49. The annual rate of child support that would, apart from this section, be payable, in relation to a day in a child support year, by either of the relevant parents to the other is to be reduced (but not below 0) by the annual rate of child support that would, apart from this section, be payable in relation to that day by the other (or would, apart from this section, be payable in relation to that day by the other if each of the relevant parents were a liable parent in relation to the other).

Subdivision F—Children with 2 liable parents

Cases in relation to which Subdivision applies

50. This Subdivision applies in relation to the parents (in this Subdivision called the “**relevant parents**”) of a child or children if:

- (a) both of the parents are liable parents of the child or of one or more of the children; and
- (b) the person who is the custodian entitled to child support in relation to the child or children (in this Subdivision called the “**relevant child or children**”) is a person other than either of the parents.

Application of the basic formula etc.

51. In working out the annual rate of child support payable (or that would, apart from section 52, be payable), in relation to a day in a child support year, by each of the relevant parents for the relevant child or children, Division 1 (The basic formula) and, to the extent that they are applicable, Subdivisions B and C of this Division (which deal respectively with Liable parents with low child support income and Liable parents with high child support income) are to be applied in relation to each of the relevant parents in turn, but with the modification made by section 52.

Cap on combined child support liabilities of 2 liable parents

52. (1) If, in relation to a day in a child support year, the sum (in this subsection called the “**combined liability amount**”) of the annual rates of child support that would, apart from this section, be payable by the relevant

parents for the relevant child or children exceeds 1.5 times the maximum possible child support liability, the annual rate of child support payable, in relation to that day, by either of the relevant parents for the relevant child or children is to be calculated by multiplying the annual rate of child support that would, apart from this section, be payable by the relevant parent for the relevant child or children by the factor calculated using the formula:

$$\frac{1.5 \times \text{maximum possible child support liability}}{\text{combined liability amount.}}$$

(2) In subsection (1):

“**maximum possible child support liability**” means the annual rate of child support that would be payable in relation to that day by a person who is a liable parent if:

- (a) the number of children for whom the person was a liable parent were the number of children for whom the 2 relevant parents are both liable parents and not eligible custodians; and
- (b) the person’s child support income amount were 2.5 times the yearly equivalent of the relevant AWE amount for the child support year; and
- (c) the person did not have a relevant dependent child; and
- (d) the custodian entitled to child support was not a parent of any of the children for whom child support was payable by the person.

Subdivision G—Liable parents with 2 or more custodians entitled to child support

Cases in relation to which Subdivision applies

53. This Subdivision applies in relation to a liable parent if the liable parent is a liable parent in relation to 2 or more custodians entitled to child support.

Application of the basic formula etc.

54. In working out the annual rate of child support payable, in relation to a day in a child support year, by the liable parent to any one of the custodians entitled to child support:

- (a) Division 1 (The basic formula) and, to the extent that they are applicable, the other Subdivisions of this Division (Modifications of the basic formula for certain cases) are to be applied as if the custodian entitled to child support were the only custodian entitled to child support in relation to the liable parent, but with the modifications made by paragraphs (b), (c) and (d); and
- (b) the child support percentage of the liable parent in relation to the custodian entitled to child support is to be taken to be the child support percentage that would, apart from this section but subject

to paragraph (c), be applicable in relation to the liable parent multiplied by the factor calculated using the formula:

$$\frac{\text{number of children in custodian's custody}}{\text{total number of children}}$$

where:

number of children in custodian's custody is the number of children in relation to whom the liable parent is a liable parent in relation to the custodian entitled to child support (with the number attributed to each shared custody child of the liable parent and the custodian entitled to child support taken to be 0.5);

total number of children is the number of children in relation to whom the liable parent is a liable parent in relation to all of the custodians entitled to child support (with the number attributed to each shared custody child of the liable parent taken to be 0.5); and

- (c) if Subdivision E (Children shared or divided between parents) is applicable in relation to the liable parent in relation to any of the custodians entitled to child support, the child support percentage that would, apart from this paragraph, be applicable in relation to the liable parent under section 48 is to be taken to be the percentage ascertained using the following table (with "total number of children" having the meaning given in paragraph (b)):

MODIFIED TABLE OF CHILD SUPPORT PERCENTAGES

Total number of children	Child support percentage
0.5	12%
1.0	18%
1.5	24%
2.0	27%
2.5	30%
3.0	32%
3.5	33%
4.0	34%
4.5	35%
5.0 or more	36%

; and

- (d) Subdivision F (Children with 2 liable parents) is to be applied (if it is applicable in relation to the liable parent) disregarding section 52 (Cap on combined child support liabilities of 2 liable parents).

Division 3—Child support income amount

Subdivision A—Child support income amount determined by reference to taxable income for last relevant year of income

Updating of taxable income

55. In working out a person's child support income amount in relation to the days in a child support year, the person's taxable income under the

Income Tax Assessment Act 1936 for the person's last relevant year of income is to be multiplied by the inflation factor (if any) applicable to the child support year under the regulations.

Taxable income assessed under Income Tax Assessment Act to be taxable income for child support purposes

56. (1) Subject to this section and section 57, where an assessment has been made of a person's taxable income under the *Income Tax Assessment Act 1936* for a year of income and of the tax payable on that taxable income, then, in making an administrative assessment, the person's taxable income under that Act for the year of income is, for the purposes of this Act, to be taken to be that taxable income as so assessed or as last so assessed, as the case requires, before the making of the administrative assessment.

(2) Subject to subsection (3), subsection (1) has effect despite the making, after the making of the administrative assessment, of an amendment under the *Income Tax Assessment Act 1936* to the relevant assessment of the person's taxable income under that Act (whether or not the amendment is made because of an objection, appeal or review in relation to the assessment).

(3) Subsection (2) does not apply in relation to the person if the amendment is made under subsection 170 (2) (Amendment of assessments where no full and true disclosure) of the *Income Tax Assessment Act 1936* or under a provision of that Act, or in circumstances, prescribed for the purposes of this subsection and, where such an amendment is made, the person's taxable income under that Act for the year of income is to be taken to be, and always to have been, the person's taxable income for the year of income as last so assessed under that Act.

(4) Where:

- (a) the Registrar, applying subsection (1), assesses the annual rate of child support payable by a liable parent to a custodian entitled to child support in relation to the days of, or some of the days of, a child support year; and
- (b) after the making of the administrative assessment, an amendment is made under the *Income Tax Assessment Act 1936* to the relevant assessment of the taxable income under that Act of the liable parent, or the custodian entitled to child support, for the last relevant year of income; and
- (c) subsection (3) does not apply in relation to the amendment made under that Act;

then, in subsequently amending the administrative assessment otherwise than for the purpose of giving effect to a provision of Subdivision B (Child support income amount determined by reference to estimate of taxable income for current child support year), the amendment made under that Act is to be disregarded.

(5) Where:

- (a) notice of an assessment (including an amended assessment) of a person's taxable income under the *Income Tax Assessment Act 1936*, and of the tax payable on that taxable income, has been served on a person under that Act; and
- (b) the notice was dated;

the assessment is to be taken, for the purposes of this section, to have been made on the date of the notice.

(6) Nothing in this section is to be taken to prevent:

- (a) a court making any order under Division 4 of Part 7 (Orders for departure from administrative assessment in special circumstances); or
- (b) the making, and acceptance by the Registrar, of a child support agreement that includes provisions that have effect, for the purposes of this Part, as if they were such an order made by consent.

Taxable income for child support purposes where taxable income determined to be nil under Income Tax Assessment Act etc.

57. (1) Subject to this section, where the taxable income of a person under the *Income Tax Assessment Act 1936* for a year of income has been determined under that Act to be nil, the person's taxable income under that Act for the year of income is, for the purposes of this Act, to be taken to be nil.

(2) Subject to this section, where:

- (a) the Commissioner has determined under the *Income Tax Assessment Act 1936* that no tax was payable (before the allowance of any rebate or credit) under that Act on the taxable income of a person for a year of income; and
- (b) either of the following subparagraphs applies in relation to the person:
 - (i) Part 1 of Schedule 7 to the *Income Tax Rates Act 1986* (or, if another law of the Commonwealth is prescribed for the purposes of this paragraph in relation to the year of income, that other law) applied in relation to the person for the year of income;
 - (ii) no tax would have been payable (before the allowance of any rebate or credit) under that Act by the person on his or her taxable income if Part 1 of Schedule 7 to the *Income Tax Rates Act 1986* (or, if another law of the Commonwealth is prescribed in relation to the year of income for the purposes of this paragraph, that other law) had applied in relation to the person for the year of income;

the person's taxable income under that Act for the year of income is, for the purposes of this Act, to be taken to be nil.

(3) Where a notice to the effect that the taxable income of a person under the *Income Tax Assessment Act 1936* for a year of income was nil has been served on the person under that Act:

- (a) the taxable income of the person under that Act for the year of income is to be taken to have been determined under that Act to be nil; and
- (b) if the notice was dated—the determination is to be taken to have been made on the date of the notice.

(4) Where a notice to the effect that no tax is payable (before the allowance of any rebate or credit) under the *Income Tax Assessment Act 1936* on the taxable income of a person for a year of income has been served on the person under that Act:

- (a) the Commissioner is to be taken to have determined under that Act that no tax was payable (before the allowance of any rebate or credit) under that Act on the taxable income of the person for the year of income; and
- (b) if the notice was dated—the determination is to be taken to have been made on the date of the notice.

(5) Subject to subsection (8), subsections (1) and (2) do not apply in relation to the making of an administrative assessment in relation to the person if, before the administrative assessment is made but after the making of the relevant, or most recent relevant, notice of the kind mentioned in subsection (1) or (2), an assessment has been issued under the *Income Tax Assessment Act 1936* of the person's taxable income under that Act for the year of income and of the tax payable on that taxable income.

(6) Subject to subsection (7), subsections (1) and (2) continue to apply in relation to the making of an administrative assessment in relation to the person despite the subsequent making of an assessment of the person's taxable income under that Act for the year of income and of the tax payable on that taxable income.

(7) Subsection (6) does not apply in relation to the person if the subsequent assessment was made because the person had not made to the Commissioner a full and true disclosure of all the material facts necessary for the Commissioner's assessment or in other circumstances prescribed for the purposes of this subsection and, where such an assessment is made, the person's taxable income under that Act for the year of income is to be taken to be, and always to have been, the person's taxable income for the year of income as last so assessed under that Act.

(8) Where:

- (a) the Registrar has, applying subsection (1) or (2), assessed the annual rate of child support payable by a liable parent to a custodian entitled to child support in relation to the days of, or some of the days of, a child support year; and
- (b) after the making of the administrative assessment, an assessment is

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issued under the *Income Tax Assessment Act 1936* of the taxable income under that Act of the liable parent or the custodian entitled to child support for the last relevant year of income and of the tax payable on that taxable income; and

- (c) subsection (7) does not apply in relation to the assessment made under that Act;

then, in subsequently amending the administrative assessment otherwise than for the purpose of giving effect to Subdivision B (Child support income amount determined by reference to estimate of taxable income for current child support year), the assessment made under that Act is to be disregarded.

(9) Where:

- (a) notice of an assessment (including an amended assessment) of a person's taxable income under the *Income Tax Assessment Act 1936*, and the tax payable on that taxable income, has been served on a person under that Act; and

- (b) the notice was dated;

the assessment is to be taken, for the purposes of this section, to have been made on the date of the notice.

(10) Nothing in this section is to be taken to prevent:

- (a) a court making any order under Division 4 of Part 7 (Orders for departure from administrative assessment in special circumstances); or
- (b) the making, and acceptance by the Registrar, of a child support agreement that includes provisions that have effect, for the purposes of this Part, as if they were such an order made by consent.

Taxable income for child support purposes where taxable income under Income Tax Assessment Act not readily ascertainable

58. (1) Where:

- (a) the Registrar is unable to ascertain readily a person's taxable income under the *Income Tax Assessment Act 1936* for a year of income on the basis of the documents and information in his or her possession (whether as Registrar or Commissioner); and

- (b) the Registrar has (whether as Registrar or Commissioner) required the person to furnish a return, give information (whether orally or in writing) or produce a document (whether the requirement was made under this Act, the *Income Tax Assessment Act 1936* or otherwise) for the purpose of ascertaining that taxable income; and

- (c) the person has refused or failed to comply with the requirement;

the Registrar may, in making an administrative assessment of the child support payable by or to the person in relation to a child support year, act on the basis that the person's taxable income under that Act for the year of income (as multiplied by the inflation factor (if any) applicable to the child support year under regulations made for the purposes of section 55) is 2.5

times the yearly equivalent of the relevant AWE amount for the child support year.

(2) If:

- (a) the Registrar has made an administrative assessment applying subsection (1); and
- (b) the Registrar subsequently ascertains the person's taxable income under that Act for the year of income (whether or not the Commissioner has made an assessment under that Act of the person's taxable income for the year of income and of the tax payable on that taxable income);

the Registrar must immediately amend the administrative assessment on the basis that the person's taxable income for the year of income is, and has always been, the subsequently ascertained taxable income.

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

Interpretation

59. In this Subdivision:

“income amount order” means:

- (a) in relation to a custodian entitled to child support:
 - (i) an order under Division 4 of Part 7 (Orders for departure from administrative assessment in special circumstances), being an order:
 - (A) varying the annual rate of child support payable to the custodian; or
 - (B) varying the child support income amount of the custodian or making provision with respect to the calculation of that amount; or
 - (C) directing that section 52 is not to apply in relation to the custodian; or
 - (ii) provisions of a child support agreement that has been accepted by the Registrar that have effect, for the purposes of this Part, as if they were such an order made by consent; and
- (b) in relation to a liable parent:
 - (i) an order under Division 4 of Part 7 (Orders for departure from administrative assessment in special circumstances), being an order:
 - (A) varying the annual rate of child support payable by the liable parent; or
 - (B) varying the child support income amount, or the adjusted income amount, of the liable parent or making provision with respect to the calculation of either amount; or

- (C) directing that section 41, 42 or 52 is not to apply in relation to the liable parent; or
- (ii) provisions of a child support agreement that has been accepted by the Registrar that have effect, for the purposes of this Part, as if they were such an order made by consent.

Election where taxable income for child support purposes estimated to have fallen at least 15%

60. (1) Subject to subsection (3), where:

- (a) before or during a child support year, a person estimates that his or her taxable income under the *Income Tax Assessment Act 1936* for the year will be a particular amount; and
- (b) the amount of the estimate is not more than 85% of the person's taxable income under that Act for the last relevant year of income (as multiplied by the inflation factor (if any) applicable to the child support year under regulations made for the purposes of section 55);

the person may, by written notice given to the Registrar, elect that the person's child support income amount for the child support year is to be the amount of the estimate.

(2) The notice must:

- (a) be in the appropriate approved form; and
- (b) be given to the Registrar before or during the child support year; and
- (c) specify the person's estimate of his or her taxable income for the child support year; and
- (d) include such information relating to the making of the estimate as the form of notice requires to be included.

(3) The person may not make the election if:

- (a) an election that the person had previously made under this section in relation to the child support year has not been revoked; or
- (b) the person had made an election under this section in relation to the child support year within the previous 3 months; or
- (c) an income amount order is in force in relation to the person and any part of the child support year.

Effect of election

61. (1) If:

- (a) an election is made by a person under section 60 in relation to a child support year; and
- (b) the election complies with that section;

the person's child support income amount in relation to the days in the child support year (including any days in the child support year before the

making of the election) is to be taken to be, and always to have been, the amount of the person's estimate of his or her taxable income under the *Income Tax Assessment Act 1936* for the child support year as specified in the election.

(2) Where an income amount order made after the making of the election applies in relation to the person and any part of the child support year, subsection (1) has effect subject to the order.

(3) The Registrar must immediately take such action as is necessary to give effect to subsection (1) in relation to any administrative assessment that has been made in relation to the person and the child support year (whether by amending the assessment or otherwise).

(4) Subject to section 63, in subsequently making any administrative assessment in relation to the person and the child support year, the Registrar must act in accordance with this section.

(5) Nothing in this section is to be taken to prevent:

- (a) a court making any order under Division 4 of Part 7 (Orders for departure from administrative assessment in special circumstances); or
- (b) the making, and acceptance by the Registrar, of a child support agreement that includes provisions that have effect, for the purposes of this Part, as if they were such an order made by consent.

Revocation of election

62. (1) Subject to subsection (3), a person who has made an election under section 60 in relation to a child support year may, by written notice given to the Registrar, revoke the election.

(2) The notice must be:

- (a) in the appropriate approved form; and
- (b) given to the Registrar before or during the child support year.

(3) The person may not revoke the election if an income amount order made after the making of the election is in force in relation to the person and the child support year.

Effect of revocation

63. (1) If an election made by a person under section 60 in relation to a child support year is revoked under section 62, then, despite the making of the election, the person's child support income amount in relation to the days in the child support year (including any days in the child support year before the revocation of the election) is to be taken to be, and always to have been, the amount that would have been the person's child support income amount for the year if that election had not been made.

(2) Subsection (1) does not apply in relation to any day in the child support year in relation to which an income amount order made after the

making, but before the revocation of, the election applies in relation to the person.

(3) The Registrar must immediately take such action as is necessary to give effect to subsection (1) in relation to any administrative assessment that has been made in relation to the person and any part of the child support year (whether by amending the assessment or otherwise).

(4) Subject to section 61, in subsequently making any administrative assessment in relation to the person and the child support year, the Registrar must act in accordance with subsection (1).

(5) Nothing in this section is to be taken to prevent:

- (a) a court making any order under Division 4 of Part 7 (Orders for departure from administrative assessment in special circumstances); or
- (b) the making, and acceptance by the Registrar, of a child support agreement that includes provisions that have effect, for the purposes of this Part, as if they were such an order made by consent.

Reconciliation of estimated and actual taxable income after end of child support year

64. (1) If:

- (a) at the end of a child support year, an election made by a person under section 60 in relation to the year has not been revoked; and
- (b) the amount of the person's taxable income under the *Income Tax Assessment Act 1936* (in this subsection called the "actual taxable income") for the child support year exceeds the amount of the person's estimate of his or her taxable income under that Act for the year as specified in the election;

the person's child support income amount in relation to the days in the child support year is to be taken to be, and always to have been, the amount of the actual taxable income.

(2) Subsection (1) does not apply in relation to any day in the child support year in relation to which an income amount order made before the making of the election applies in relation to the person.

(3) Where an income amount order made after the making of the election applies in relation to the person and any part of the child support year, subsection (1) has effect subject to the order.

(4) The Registrar is to take such action as is necessary to give effect to this section in relation to the person (whether by amending any administrative assessment that has been made in relation to the child support year or otherwise).

Division 4—Provisions relating to the making of assessments

How assessment is to be made

65. In making an administrative assessment, the Registrar may act on the basis of the documents and information in his or her possession (whether

as Registrar or Commissioner), and is not required to conduct any inquiries or investigations into the matter or to require (whether under this Act, the *Income Tax Assessment Act 1936* or otherwise) the furnishing of any return, the giving of any information or the production of any document.

Minimum rate of child support

66. (1) If, in relation to a day in a child support year, the annual rate of child support payable for a child or children by a liable parent to a particular custodian entitled to child support would, apart from this section, be assessed as an amount per annum less than \$260, the annual rate of the child support in relation to the day is to be assessed as nil.

(2) Without limiting subsection (1), that subsection applies in giving effect to:

- (a)** an order made under Division 4 of Part 7 (Orders for departure from administrative assessment in special circumstances); and
- (b)** 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.

Assessment to relate to all children for whom child support payable by liable parent

67. (1) If, in relation to a day in a child support year, child support is payable by a liable parent to a custodian entitled to child support for 2 or more children, any administrative assessment of the child support payable by the liable parent to the custodian entitled to child support in relation to the day is to relate to all of the children and not to any of the children separately.

(2) Subsection (1) applies whether or not the child support is payable because of:

- (a)** the acceptance by the Registrar of 2 or more separate applications for administrative assessment made otherwise than in the same form; or
- (b)** the acceptance by the Registrar of 2 or more child support agreements made otherwise than in the same document; or
- (c)** the acceptance by the Registrar of an application for administrative assessment and of an application for acceptance of a child support agreement.

(3) Subsection (1) does not require a single administrative assessment to be made of the child support payable by a liable parent to 2 or more custodians entitled to child support.

Assessment to relate to whole or part of single child support year

68. (1) An administrative assessment of child support is to relate to all the days of, or some of the days of, a single child support year.

(2) Subsection (1) does not prevent a single notice of assessment under section 76 dealing with more than one administrative assessment.

Conversion of annual rates into daily rates of payment

69. Where the Registrar assesses the annual rate of child support payable for a child or children, in relation to a day in a child support year, by a liable parent, the Registrar must, in accordance with the regulations, convert that annual rate into a daily rate and specify both the annual and daily rates in the notice of assessment given under section 76 in relation to the assessment.

Evidence relating to assessments

70. (1) The production of a notice of administrative assessment, or of a document signed by the Registrar or a Deputy Registrar that appears to be a copy of a notice of administrative assessment, is conclusive evidence of the proper making of the assessment and, except in proceedings under Division 3 of Part 7 on an appeal relating to the assessment, that all the particulars of the notice of assessment are correct.

(2) The production of a document signed by the Registrar or a Deputy Registrar that appears to be a copy of or an extract from any return or notice of administrative assessment is evidence of the matters in the document to the same extent as the original would be if it were produced.

Assessments for part of child support year

71. In making an administrative assessment of the annual rate of child support payable in relation to the days of a period of less than a full child support year, the Registrar may apply this Act as if the beginning and end of the period were respectively the beginning and end of a full child support year.

Validity of assessments

72. Except in an appeal under Division 3 of Part 7, the validity of an assessment is not affected because any of the provisions of this Act have not been complied with.

Assumptions as to future events

73. In assessing the annual rate at which child support is payable in relation to a day in the future, the Registrar may act on the assumption that the state of affairs known to the Registrar at the time the assessment is made will remain unchanged on that day.

Registrar to give effect to happening of child support terminating events etc.

74. (1) Where:

- (a) child support is payable for a child; and
- (b) the Registrar is notified of, or otherwise becomes aware of:
 - (i) the happening of a child support terminating event in relation to:
 - (A) the child; or

- (B) a person who is or was a custodian entitled to child support, or a liable parent, in relation to the child; or
 - (C) the child, and a person who is or was a custodian entitled to child support, and a person who is or was a liable parent, in relation to the child; or
- (ii) the happening of an event or change of circumstances that affects the annual rate at which the child support is payable under this Act;

the Registrar must immediately take such action as is necessary to take account of the happening of the event or change of circumstances (whether by amending any administrative assessment or otherwise).

(2) Nothing in subsection (1) is to be taken to prevent the Registrar from taking such action as the Registrar considers appropriate to take account of the likely happening of an event or change of circumstances of which the Registrar is notified or otherwise becomes aware (whether by amending any administrative assessment or otherwise).

Amendment of assessments

75. (1) The Registrar may, at any time, amend any administrative assessment by making such alterations and additions as the Registrar considers necessary to give effect to this Act.

- (2) Subsection (1) has effect despite the fact that:
- (a) child support has been paid under the administrative assessment; or
 - (b) the child support year, or the part of the child support year, to which the administrative assessment relates has ended; or
 - (c) proceedings are pending in a court having jurisdiction under this Act against or in relation to the administrative assessment.
- (3) Without limiting subsection (1), the Registrar may amend any administrative assessment for the purpose of:
- (a) correcting any error or mistake (whether or not made by the Registrar); or
 - (b) correcting the effect of any false or misleading statement made to the Registrar (whether as Registrar or Commissioner); or
 - (c) giving effect to the happening of a child support terminating event in relation to:
 - (i) a child; or
 - (ii) a person who is or was a custodian entitled to child support, or a liable parent, in relation to a child; or
 - (iii) the child, and a person who is or was a custodian entitled to child support, and a person who is or was a liable parent, in relation to the child; or
 - (d) giving effect to the happening of an event or change of circumstances that, under this Act, affects the annual rate at which child support is or was payable; or

- (e) giving effect to the acceptance of a child support agreement by the Registrar; or
- (f) giving effect to a decision or order of a court having jurisdiction under this Act.

(4) Where a provision of this Act expressly authorises the Registrar to amend an administrative assessment, that provision does not by implication limit the power of the Registrar (whether under this section or otherwise) to amend the assessment.

(5) Except as otherwise expressly provided in this Act, every amended administrative assessment is to be taken to be an administrative assessment for all the purposes of this Act.

Notice of assessment to be given to liable parent etc.

76. (1) When the Registrar makes an administrative assessment, the Registrar must immediately give written notice of the assessment to the liable parent, and the custodian entitled to child support, in relation to whom the assessment is made.

(2) The notice must (in addition to specifying the matters that section 69 requires to be specified in the notice) specify at least the following matters:

- (a) the child support percentage applied;
- (b) the names and dates of birth of the children taken into account in ascertaining the child support percentage and, if any of the children are shared custody children, the names of those children;
- (c) the liable parent's child support income amount;
- (d) the names and dates of birth of any relevant dependent children of the liable parent;
- (e) if the custodian entitled to child support is a parent of the child—the child support income amount of the custodian entitled to child support;
- (f) if Subdivision E of Division 2 (Children shared or divided between parents) applies in relation to the parents of the child concerned and only one of the parents is a liable parent of the child—the child support income amount of the parent who is not a liable parent of the child and the names and dates of birth of any relevant dependent children of that parent;
- (g) if Subdivision F of Division 2 (Children with 2 liable parents) applies in relation to the liable parent:
 - (i) the annual rate of child support that would, apart from section 52, be payable by the other parent concerned; and
 - (ii) the other parent's child support income amount; and
 - (iii) the names and dates of birth of any relevant dependent children of the other parent;

- (h) if Subdivision G of Division 2 (Liable parents with 2 or more custodians entitled to child support) applies in relation to the liable parent—the names and dates of birth of all the children in relation to whom the liable parent is a liable parent;
 - (j) whether the custodian entitled to child support was in receipt of an income tested pension, allowance or benefit when the assessment was made;
 - (k) such other matters as are prescribed.
- (3) The notice must also include, or be accompanied by, statements of the following kinds:
- (a) a statement that specifically draws the attention of the liable parent and the custodian entitled to child support to the right, subject to the *Family Law Act 1975*, to appeal under section 110 to a court having jurisdiction under this Act against the assessment if he or she is aggrieved by any of the particulars of the assessment;
 - (b) a statement that specifically draws the attention of the liable parent and the custodian entitled to child support to the right, subject to the *Family Law Act 1975*, to apply to a court having jurisdiction under this Act for an order under Division 4 of Part 7 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 in the special circumstances of the case;
 - (c) a statement that specifically draws the attention of the liable parent and the custodian entitled to child support to the right, subject to the *Family Law Act 1975*, to apply to a court having jurisdiction under this Act for an order under section 124 that the liable parent provide child support for the child otherwise than in the form of periodic amounts paid to the custodian entitled to child support;
 - (d) a statement that specifically draws the attention of the liable parent and the custodian entitled to child support to the provisions of section 128 (Pensioners entitled to apply to have assessed child support not reduced by more than 25%).

Division 5—Liability to pay child support as assessed

Effect of assessment

77. Where the Registrar:

- (a) assesses the annual rate of child support payable for a child or children, in relation to a day in a child support year, by a liable parent to a custodian entitled to child support; and
- (b) converts the annual rate into a daily rate and specifies both rates in a notice of assessment given under section 76 in relation to the assessment;

the amount of the child support payable for the child or children in relation to that day by the liable parent to the custodian entitled to child support is the amount of the daily rate specified in the notice of assessment.

When amounts of child support due and payable

78. An amount of child support payable in relation to a day in any month is due and payable:

- (a) on the 7th day of the following month; or
- (b) on the 30th day after the liable parent concerned was given a notice of assessment under section 76 specifying the annual and daily rates of child support in relation to that day;

whichever is the later.

Recovery of amounts of child support

79. An amount of child support due and payable by a liable parent to a custodian entitled to child support is a debt due and payable by the liable parent to the custodian entitled to child support, and may be sued for and recovered in:

- (a) a court having jurisdiction for the recovery of debts up to the amount of the child support; or
- (b) a court having jurisdiction under this Act.

PART 6—CONSENT ARRANGEMENTS

Division 1—Introduction

Cases in relation to which Part applies

80. (1) This Part applies where the parents of an eligible child, or a parent or the parents of an eligible child and an eligible custodian of the child who is not a parent of the child, want to give effect to an agreement between themselves in relation to child support payable for the child.

(2) This Part applies whether or not an administrative assessment is already in force in relation to the child.

Division 2—Child support agreement requirements

Child support agreement requirements generally

81. An agreement is a child support agreement if it complies with the following provisions:

- (a) section 82 (Children in relation to whom agreements may be made);
- (b) section 83 (Persons who may be parties to agreements);
- (c) section 84 (Matters in relation to which agreements may make provision);
- (d) section 85 (Formal requirements for agreements).

Children in relation to whom agreements may be made

82. (1) An agreement is a child support agreement only if it is made in relation to a child in relation to whom an application for administrative assessment is, under section 24, entitled to be made on the day the agreement is entered into.

(2) If the agreement is also made in relation to another child in relation to whom subsection (1) does not apply, the other child is to be disregarded for the purposes of this Act.

(3) Subsection (2) does not affect the operation of the agreement in relation to the other child for any other purpose.

Persons who may be parties to agreements

83. (1) An agreement is a child support agreement only if it is made between:

- (a) a person who is, under section 25, entitled to make an application for administrative assessment of child support for the child in relation to whom the agreement is made on the day on which the agreement is entered into; and
- (b) a person who is, under section 26, a person from whom payment of child support is entitled to be sought for the child on that day.

(2) If there is a party to the agreement in relation to whom subsection (1) does not apply, that party is to be disregarded for the purposes of this Act.

(3) Subsection (2) does not affect the operation of the agreement in relation to that party for any other purpose.

Matters in relation to which agreements may make provision

84. (1) An agreement is a child support agreement only if it includes provisions of one or more of the following kinds:

- (a) provisions under which a party is to pay child support for a child to another party in the form of periodic amounts paid to the other party at a specified annual rate;
- (b) provisions under which the annual rate at which a party is already liable to pay child support for a child to another party in the form of periodic amounts paid to the other party is varied to a specified annual rate;
- (c) provisions agreeing between parties any other matter that may be included in an order made by a court under Division 4 of Part 7 (Orders for departure from administrative assessment in special circumstances);
- (d) provisions under which a party is to provide child support for a child to another party otherwise than in the form of periodic amounts paid to the other party;
- (e) provisions under which the liability of a party to pay or provide child support for a child to another party is to end from a specified day.

(2) If the agreement includes provisions under which a party (in this subsection and subsections (3) and (8) called the “**liable party**”) is to provide child support for a child to another party otherwise than in the form of periodic amounts paid to the other party, the agreement must also

state whether the child support is to be credited against the liable party's liability under any administrative assessment (in subsections (3) and (8) called a "**relevant administrative assessment**") of the child support payable by the liable party to the other party that relates to the period, or a part of the period, for which the provisions have effect.

(3) If:

- (a) the agreement includes provisions as mentioned in subsection (2); and
- (b) the agreement states that the child support is to be credited against the liable party's liability under any relevant administrative assessment;

the agreement must also state either:

- (c) that the child support has an annual value of a specified amount and that the annual rate of the child support payable under any relevant administrative assessment is to be reduced by that amount; or
- (d) that the child support is to count for a specified percentage of the annual rate of child support payable under any relevant administrative assessment.

(4) The agreement may include different provisions in relation to different child support years and different parts of a child support year.

(5) If the agreement also includes provisions of a kind not falling within subsections (1), (2), (3) and (4), those provisions do not have effect for the purposes of this Act.

(6) Subsection (5) does not affect the operation of those provisions of the agreement for any other purpose.

(7) Without limiting subsection (6), nothing in this Part is to be taken to prevent the same agreement being both a child support agreement and:

- (a) a child agreement under Part VII of the *Family Law Act 1975*; or
- (b) a maintenance agreement under that Act.

(8) If the agreement includes provisions as mentioned in subsection (2) but the agreement would not, apart from this subsection, comply with subsections (2) and (3), the agreement is to be taken to state that the child support mentioned in subsection (2) is not to be credited against the liable party's liability under any relevant administrative assessment.

Formal requirements for agreements

85. An agreement is a child support agreement only if:

- (a) it is in writing; and
- (b) signed by the parties to the agreement.

Child support agreement may be entered into outside Australia

86. An agreement may be a child support agreement whether it is entered into in or outside Australia.

Agreement may be made in relation to 2 or more children etc.

87. (1) If an agreement is made in the same document in relation to 2 or more children, the document may be treated as if it contained separate agreements for each of the children.

(2) If:

- (a)** agreement is made in the same document in relation to a child or 2 or more children; and
- (b)** child support is to be payable to or by 2 or more parties to the agreement for the child or any of the children;

the document may be treated as if it contained separate agreements made in relation to the child or each of the children by each of the parties to or by whom child support is to be payable.

Division 3—Applications to Registrar for acceptance of child support agreements

Application requirements generally

88. An application for acceptance by the Registrar of an agreement made in relation to a child is properly made if:

- (a)** the agreement is a child support agreement; and
- (b)** the application complies with section 89.

Formal requirements for applications

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

- (a)** in the appropriate approved form; and
- (b)** made to the Registrar.

(2) The application must be:

- (a)** verified as required by the form of the application; and
- (b)** accompanied by such documents (if any) as are required by the form of application to accompany the application.

(3) A document that accompanies the application must also be verified as required by the form of the application.

Application for 2 or more separate agreements may be made in same form

90. If application is made in the same form for acceptance of 2 or more agreements made in relation to a child or 2 or more children (whether or not the agreements have been made in the same document), the form may be treated as if it contained separate applications for each of the agreements.

Division 4—Decisions on applications

How decision is to be made

91. In determining whether an agreement made in relation to a child is a child support agreement, the Registrar may act on the basis of the application made to the Registrar for acceptance of the agreement, the documents accompanying the application and the agreement itself, and is not required to conduct any inquiries or investigations into the matter.

Decision on application

92. (1) If the Registrar is satisfied that an application made to the Registrar for acceptance of an agreement made in relation to a child has been properly made, the Registrar must accept the agreement.

(2) If the Registrar is not so satisfied, the Registrar may refuse to accept the agreement.

Liability to pay child support arises on acceptance of application where child support not already payable etc.

93. (1) If:

- (a)** the Registrar accepts a child support agreement made in relation to a child; and
- (b)** either:
 - (i)** child support is not already payable for the child; or
 - (ii)** child support is already payable by a person to another person for the child, but child support is to be paid or provided under agreement for the child otherwise than by the first-mentioned person to the other person;

then:

- (c)** the acceptance of the agreement by the Registrar has the same effect (as provided by this section) as the acceptance by the Registrar of an application for administrative assessment of child support for the child; and
- (d)** a person to whom child support is to be paid or provided under the agreement is a custodian entitled to child support in relation to the child; and
- (e)** a person by whom child support is to be paid or provided under the agreement to the custodian entitled to child support is a liable parent in relation to the child and the custodian entitled to child support; and
- (f)** child support is payable for the child by the liable parent to the custodian entitled to child support; and
- (g)** the child support is payable in relation to the days in the period:
 - (i)** beginning on:
 - (A)** if the application for acceptance of the agreement was made to the Registrar within 28 days after the day on

which the agreement was entered into and the agreement specifies a day (not being a day earlier than the commencing day) on which payment of child support is to start—the specified day; or

(B) if the application was made to the Registrar within 28 days after the day on which the agreement was entered into and the agreement does not specify a day on which payment of child support is to start—the day on which the agreement was entered into; or

(C) in any other case—the day on which the application was made to the Registrar; and

(ii) ending on the day immediately before the day on which a child support terminating event happens in relation to the child, the custodian entitled to child support, the liable parent or all 3 of them.

(2) The Registrar must, under this Act:

(a) as quickly as practicable assess the annual rate of the child support payable by the liable parent to the custodian entitled to child support in relation to the days in the child support year in which the application for acceptance of the child support agreement was made to the Registrar (and any earlier child support years) in relation to which child support is payable for the child; and

(b) before, or as early as practicable after, the start of each later child support year, assess the annual rate of the child support payable by the liable parent to the custodian entitled to child support in relation to the days in the later child support year in relation to which child support is payable for the child.

(3) In making any administrative assessment in relation to the child, the custodian entitled to child support and the liable parent, the Registrar must act in accordance with section 95 (Effect of certain provisions of accepted child support agreements).

Registrar to take action to give effect to accepted child support agreement where child support already payable

94. (1) If:

(a) the Registrar accepts a child support agreement made in relation to a child; and

(b) child support is already payable for the child; and

(c) section 93 does not apply in relation to the child support agreement;

the Registrar must immediately take such action as is necessary to give effect to the agreement in relation to any administrative assessment that has been made in relation to the child (whether by amending the assessment or otherwise).

(2) In subsequently making any administrative assessment in relation to the child, the Registrar must act in accordance with section 95 (Effect of certain provisions of accepted child support agreements).

Effect of certain provisions of accepted child support agreements

95. (1) This section applies in relation to a child support agreement that has been accepted by the Registrar.

(2) If the agreement includes:

- (a) provisions under which a party is to pay child support for a child to another party in the form of periodic amounts paid to the other party at a specified annual rate; or
- (b) provisions under which the annual rate at which a party is already liable to pay child support for a child to another party in the form of periodic amounts paid to the other party is varied to a specified annual rate; or
- (c) provisions agreeing between parties any other matter that may be included in an order made by a court under Division 4 of Part 7 (Orders for departure from administrative assessment in special circumstances);

the provisions have effect, for the purposes of Part 5, as if they were an order made by consent by a court under Division 4 of Part 7.

(3) If the agreement includes provisions under which a party is to provide child support to another party otherwise than in the form of periodic amounts paid to the other party, the provisions have effect, for the purposes of Part 5, as if they were an order made by consent by a court under section 124 (Orders for provision of child support otherwise than in form of periodic amounts paid to custodian entitled to child support), and, if the agreement or those provisions are registered in a court having jurisdiction under Part VII of the *Family Law Act 1975*, may be enforced under that Act as if the provisions were a decree made by that court under that Part.

(4) If the agreement includes provisions stating whether child support of a kind referred to in subsection (3) is to be credited against a party's liability under any administrative assessment (in this subsection called a "**relevant administrative assessment**") of the child support payable by the party to another party that relates to the period, or a part of the period, for which the provisions have effect and, if it is to be so credited, stating either:

- (a) that the child support has an annual value of a specified amount and that the annual rate of the child support payable under any relevant administrative assessment is to be reduced by that amount; or
- (b) that the child support is to count for a specified percentage of the child support payable under any relevant administrative assessment;

the provisions have effect, for the purposes of this Act (including section 127 (Effect of orders on administrative assessment of child support) and

section 128 (Pensioners entitled to apply to have assessed child support not reduced by more than 25%)), as if they were a statement included in an order made by consent by a court under section 125 (Court to state relationship between order and assessed child support).

(5) The provisions of the agreement have effect despite any inconsistency with a court order made before the agreement was entered into.

(6) Where any difficulty arises in the application of this section in or in relation to a particular proceeding, the court exercising jurisdiction in the proceeding may, on the application of a party to the proceeding or of its own motion, give such directions, and make such orders, as it considers appropriate to resolve the difficulty.

Division 5—Notice of the decision

Notice of decision to be given

96. (1) If the Registrar accepts or refuses to accept an agreement made in relation to a child, the Registrar must immediately notify each party to the agreement of the decision.

(2) The notice must include, or be accompanied by, a statement that specifically draws the attention of the parties to the agreement to the right, subject to the *Family Law Act 1975*, to appeal under section 132 to a court having jurisdiction under this Act if he or she is aggrieved by the decision to accept or refuse to accept the agreement.

(3) A contravention of subsection (2) in relation to a decision does not affect the validity of the decision.

Division 6—Variation of child support agreements

Child support agreement may be varied by subsequent agreement

97. The provisions of a child support agreement that has been accepted by the Registrar may be varied by a subsequent child support agreement that is accepted by the Registrar.

Variation etc. of provisions of child support agreement by court order

98. (1) Where:

(a) under section 95, provisions of a child support agreement have effect, for the purposes of Part 5, as if they were a court order of a particular kind; and

(b) the agreement, or those provisions of the agreement, are registered in a court having jurisdiction under this Act;

the provisions may be discharged, suspended, revived or varied by the court in the same manner and in like circumstances as the court could discharge, suspend, revive or vary an order of that kind made by it.

(2) Where any difficulty arises in the application of subsection (1) in or in relation to a particular proceeding, the court exercising jurisdiction in the

proceeding may, on the application of a party to the proceeding or of its own motion, give such directions, and make such orders, as it considers appropriate to resolve the difficulty.

(3) Subsection (1) does not limit by implication the operation of section 95.

PART 7—JURISDICTION OF COURTS

Division 1—General

Jurisdiction of courts under Act

99. (1) Jurisdiction is conferred on the Family Court and, subject to subsection (7), the Supreme Court of the Northern Territory, and each Family Court of a State is invested with federal jurisdiction in relation to matters arising under this Act.

(2) Subject to subsections (5) and (7), each court of summary jurisdiction of each State is invested with federal jurisdiction, and jurisdiction is conferred on each court of summary jurisdiction of each Territory, in relation to matters arising under this Act.

(3) The Governor-General may, by Proclamation, fix a day as the day on and after which proceedings in relation to matters arising under this Act may not be instituted in, or transferred to, a court of summary jurisdiction in a specified State or Territory.

(4) A Proclamation under subsection (3) may be expressed to apply only in relation to:

- (a) proceedings of specified classes; or
- (b) the institution of proceedings in, or the transfer of proceedings to, a court of summary jurisdiction in a specified part of a State or Territory.

(5) A court of summary jurisdiction must not hear or determine proceedings under this Act otherwise than in accordance with any Proclamation in force under subsection (3).

(6) The Governor-General may, by Proclamation, declare that a Proclamation under subsection (3) is revoked on and from a specified day and, on and from the specified day, this Act (including subsection (3)) has effect as if the revoked Proclamation had not been made, but without prejudice to the effect of the revoked Proclamation before the specified day.

(7) Jurisdiction in relation to a matter arising under this Act in relation to which a proceeding is instituted under this Act is not conferred on a court of a Territory unless at least one of the parties to the proceeding (other than the Registrar) is, on the day on which the proceeding is instituted in or transferred to that court, ordinarily resident in the Territory.

(8) The jurisdiction conferred on or invested in a court by this section includes jurisdiction in relation to matters arising under this Act in relation to which proceedings are transferred to that court under another law of the Commonwealth.

(9) The jurisdiction conferred on or invested in a court by this section is in addition to any jurisdiction conferred on or invested in the court apart from this section.

Application of Family Law Act

100. (1) The *Family Law Act 1975* (other than Part X of that Act) applies, subject to this Act and with such modifications as are prescribed by the Rules of Court, to proceedings under this Act (other than proceedings under paragraph 79 (a)) as if:

- (a) the proceedings were proceedings under Part VII of that Act; and
- (b) the proceedings were proceedings instituted under Part VII of that Act; and
- (c) a court having or exercising jurisdiction in the proceedings were a court having or exercising jurisdiction under Part VII of that Act; and
- (d) a decree made in the proceedings were a decree made under Part VII of that Act; and
- (e) matters arising in the proceedings were matters arising under Part VII of that Act; and
- (f) any other necessary changes were made.

(2) Without limiting subsection (1), a decree made by a court under this Act may be enforced under the *Family Law Act 1975* as if it were a decree made by a court under Part VII of that Act.

(3) Where any difficulty arises in the application of subsection (1) or (2) in or in relation to a particular proceeding, the court exercising jurisdiction in the proceeding may, on the application of a party to the proceeding or of its own motion, give such directions, and make such orders, as it considers appropriate to resolve the difficulty.

Appellate jurisdiction of Family Court under Act

101. (1) The Family Court has jurisdiction with respect to matters arising under this Act in relation to which:

- (a) applications for leave to appeal referred to in section 102 or 105 are made; and
- (b) appeals referred to in section 102 or 105 are instituted.

(2) Subject to section 105, in an appeal under section 102 or 105, the Family Court must have regard to the evidence given in the proceedings out of which the appeal arose and has power to draw inferences of fact and, in its discretion, to receive further evidence on questions of fact.

(3) The further evidence may be given by affidavit, by oral examination before the Family Court or a Judge or in such other manner as the Family Court directs.

Appeals to Full Court of Family Court under Act

102. (1) An appeal lies, with the leave of a Full Court of the Family Court, to a Full Court from:

- (a) a decree of the Family Court, constituted otherwise than as a Full Court, exercising original or appellate jurisdiction under this Act; or
- (b) a decree of:
 - (i) a Family Court of a State; or
 - (ii) the Supreme Court of the Northern Territory constituted by a single Judge;

exercising original or appellate jurisdiction under this Act.

(2) An appeal lies, with the leave of a Full Court of the Family Court, to a Full Court from a decree or decision of a Judge exercising original or appellate jurisdiction under this Act rejecting an application that he or she disqualify himself or herself from further hearing of a matter.

(3) An application for leave to appeal under subsection (1) or (2) 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.

(4) On an appeal to the Full Court, the Full Court may affirm, reverse or vary the decree or decision the subject of the appeal and may make such decree or decision as, in the opinion of the Full Court, ought to have been made in the first instance, or may, if it considers appropriate, order a re-hearing, on such terms and conditions (if any) as it considers appropriate.

Cases stated

103. (1) If, in proceedings in a court under this Act, being proceedings in which a decree to which subsection 102 (1) applies could be made, a question of law arises that the Judge and at least one of the parties wish to have determined by a Full Court of the Family Court before the proceedings are further dealt with, the Judge shall state the facts and question in the form of a special case for the opinion of a Full Court, and a Full Court shall hear and determine the question.

(2) The Full Court may draw, from the facts and the documents, any inference, whether of fact or law, that could have been drawn from them by the Judge.

Appeals to High Court

104. Despite anything contained in any other Act, an appeal does not lie to the High Court from a decree of a court exercising jurisdiction under this Act, whether original or appellate, except:

- (a) by special leave of the High Court; or

- (b) on a certificate of a Full Court of the Family Court that an important question of law or of public interest is involved.

Appeals from courts of summary jurisdiction

105. (1) Subject to subsections (2) and (5), an appeal lies from a decree of a court of summary jurisdiction of a State or Territory exercising jurisdiction under this Act to the Family Court or:

- (a) in the case of a court of summary jurisdiction of a State that has a Family Court of the State—to the Family Court of the State; or
- (b) in the case of a court of summary jurisdiction of the Northern Territory—to the Supreme Court of the Northern Territory.

(2) An appeal lies to a court under subsection (1) only with the leave of the court.

(3) An application for leave to appeal under subsection (1) 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.

(4) A Family Court of a State is invested with federal jurisdiction, and jurisdiction is conferred on the Supreme Court of the Northern Territory, with respect to matters arising under this Act in relation to which applications for leave to appeal are made under subsection (1) and appeals are instituted under that subsection.

(5) The Governor-General may, by Proclamation, fix a day as the day on or after which applications may not be made to the Family Court of a State or the Supreme Court of the Northern Territory for leave to appeal under subsection (1).

(6) A court hearing an appeal under subsection (1):

- (a) subject to subsection (7), is to proceed by way of a hearing *de novo*, but may receive as evidence any record of evidence given, including any affidavit filed or exhibit received in the court of summary jurisdiction; and
- (b) may make such decrees as it considers appropriate, including a decree affirming, reversing or varying the decree the subject of the appeal.

(7) Where a court has granted leave to appeal under subsection (1), the court may refer the appeal to a Full Court of the Family Court.

(8) Where an appeal is referred to a Full Court of the Family Court under subsection (7), the Full Court may:

- (a) proceed by way of a hearing *de novo*, but may receive as evidence any record of evidence given, including any affidavit filed or exhibit received in the court of summary jurisdiction; and
- (b) order that questions of fact arising in the proceedings be tried by a Judge; and

- (c) determine questions of law arising in the proceedings and remit the appeal to a Judge for hearing in accordance with directions given by it; and
- (d) make such other decrees as it considers appropriate, including a decree affirming, reversing or varying the decree the subject of the appeal.

Division 2—Declarations in relation to entitlement to administrative assessment

Application for declaration by unsuccessful applicant for administrative assessment

106. (1) Where the Registrar refuses to accept an 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 by the person from whom the application sought payment of child support.

(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 may intervene in proceedings), the parties to the proceeding are the applicant and the person from whom the application sought payment of 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 25, a person entitled to make the application for the child; and
- (c) that the person from whom the application sought payment of child support was, under section 26, a person from 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 to be taken to have accepted the application for administrative assessment of child support for the child.

Application for declaration by person from whom administrative assessment of child support sought

107. (1) Where the Registrar accepts an application for administrative assessment of child support for a child, the person from whom the application sought payment of child support may apply to a court having jurisdiction under this Act for a declaration that the applicant was not entitled to

administrative assessment of child support for the child payable by the person.

(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 may intervene in proceedings), the parties to the proceeding are the person from whom the application sought payment of child support and the applicant for administrative assessment of child support.

(4) If the court is satisfied:

- (a) that the child was not, under section 24, a child in relation to whom the application for administrative assessment of child support was entitled to be made; or
- (b) that the applicant was not, under section 25, a person entitled to make the application for the child; or
- (c) that the person from whom the application sought payment of child support was not, under section 26, a person from 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 application for administrative assessment of child support is to be taken never to have been accepted by the Registrar.

Implementation of decisions

108. When a decision of a court under this Division becomes final, the Registrar must immediately take such action as is necessary to give effect to the decision.

Pending application not to affect assessment

109. (1) Subject to section 140 (Stay orders), the fact that a proceeding is pending under this Division in relation to a person does not, in the meantime, interfere with, or affect, any administrative assessment made in relation to the person, and 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 no proceeding were pending.

(2) Subsection (1) does not apply in relation to a person in relation to a child if:

- (a) the person has made an application under section 107 in relation to the child; and
- (b) a ground of the application is that the person was not, under section 26, a person from whom payment of child support was entitled to be sought for the child because the person is not a parent of the child; and

(c) there is not a decision of a court determining that ground of the application that has become final.

(3) Subsection (2) does not apply in or in relation to the Territories and only extends to a State at a particular time if this Act does not, at that time, extend to the State because of subsection 13 (1) or (2).

Division 3—Appeals against incorrect assessments

Appeals

110. (1) If a liable parent or a custodian entitled to child support is aggrieved by any of the particulars of an administrative assessment, he or she may appeal to a court having jurisdiction under this Act against the assessment.

(2) The grounds of the appeal may include:

- (a) that an annual or daily rate of child support specified in the assessment was incorrectly assessed; or
- (b) that the assessment has incorrectly determined the days in relation to which the child support is payable; or
- (c) that an annual rate of child support specified in the assessment is no longer correctly assessed because the Registrar has failed to give effect to section 74 (Registrar to give effect to happening of child support terminating events etc.), or any other provision of this Act, in relation to the assessment.

(3) The appeal must be instituted within the time prescribed by the Rules of Court or within such further time as is allowed under the Rules of Court.

(4) Subject to section 145 (Registrar may intervene in proceedings), the parties to the appeal are the liable parent, and the custodian entitled to child support, in relation to whom the assessment was made.

(5) Subsection (1) has effect:

- (a) subject to Chapter III of the Constitution; and
- (b) despite section 9 (Limitation of jurisdiction of State courts) of the *Administrative Decisions (Judicial Review) Act 1977*.

Powers of court hearing appeal

111. A court hearing an appeal under this Division may make such orders in relation to the assessment to which the appeal relates as it considers appropriate, including an order setting aside, confirming or varying the assessment.

Implementation of decisions

112. (1) When a decision of a court under this Division (including a decision making an order under section 111) becomes final, the Registrar must immediately take such action as is necessary to give effect to the decision in relation to any administrative assessment that has been made in

relation to the child, the custodian entitled to child support and the liable parent concerned (whether by amending the assessment or otherwise).

(2) In subsequently making any administrative assessment in relation to the child, the custodian entitled to child support and the liable parent concerned, the Registrar must act on the basis of the decision of the court to the extent to which it is applicable.

Pending appeal not to affect assessment

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

Division 4—Orders for departure from administrative assessment in special circumstances

Additional particular objects of Division

114. Additional particular objects of this Division include ensuring:

- (a) that children have their proper needs met from reasonable and adequate shares in the income, earning capacity, property and financial resources of both of their parents; and
- (b) that parents share equitably in the support of their children.

Cases in relation to which Division applies

115. This Division applies where, in the special circumstances of a case, a custodian entitled to child support, or a liable parent, wants a court having jurisdiction under this Act to make an order 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 in the special circumstances of the case.

Application for order under Division

116. (1) Application may be made to a court having jurisdiction under this Act for an order under this Division in relation to a child in the special circumstances of the case.

(2) An application:

- (a) may only be made if an administrative assessment is in force in relation to the child, the custodian entitled to child support and the liable parent concerned; and
- (b) may be made by the custodian entitled to child support or the liable parent.

(3) Subject to section 145 (Registrar may intervene in proceedings), the parties to the application are the liable parent and the custodian entitled to child support.

Matters as to which court must be satisfied before making order

117. (1) Where:

- (a) application is made to a court having jurisdiction under this Act for an order under this Division in relation to a child in the special circumstances of the case; and
- (b) the court is satisfied:
 - (i) that one or more of the grounds for departure mentioned in subsection (2) exists or exist; and
 - (ii) that it would be:
 - (A) just and equitable as regards the child, the custodian entitled to child support and the liable parent; and
 - (B) otherwise proper;

to make a particular order under this Division;

the court may make the order.

(2) For the purposes of subparagraph (1) (b) (i), the grounds for departure are as follows:

- (a) that, in the special circumstances of the case, the capacity of either parent to provide financial support for the child is significantly reduced because of:
 - (i) the duty of the parent to maintain any other child or another person; or
 - (ii) special needs of any other child or another person that the parent has a duty to maintain; or
 - (iii) commitments of the parent necessary to enable the parent to support:
 - (A) himself or herself; or
 - (B) any other child or another person that the parent has a duty to maintain;
- (b) that, in the special circumstances of the case, the costs of maintaining the child are significantly affected:
 - (i) because of:
 - (A) high costs involved in enabling a parent access to the child; or
 - (B) special needs of the child; or
 - (ii) because the child is being cared for, educated or trained in the manner that was expected by his or her parents;
- (c) that, in the special circumstances of the case, application in relation to the 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:
 - (i) the income, earning capacity, property and financial resources of either parent or the child; or

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- (ii) any payments, and any transfer or settlement of property, previously made (whether under this Act, the *Family Law Act 1975* or otherwise) by the liable parent to the child, to the custodian entitled to child support or to any other person for the benefit of the child.

(3) For the purposes of sub-subparagraph (2) (b) (i) (A), costs involved in enabling a parent access to the child are not, if those costs are costs of a parent and not costs of another person, to be taken to be high unless the total of those costs during a child support year is more than 5% of the child support income amount for the year in relation to the parent concerned.

(4) In determining whether it would be just and equitable as regards the child, the custodian entitled to child support and the liable parent to make a particular order under this Division, the court must have regard to:

- (a) the nature of the duty of a parent to maintain a child (as stated in section 3); and
- (b) the proper needs of the child; and
- (c) the income, earning capacity, property and financial resources of the child; and
- (d) the income, earning capacity, property and financial resources of each parent who is a party to the proceeding; and
- (e) the commitments of each parent who is a party to the proceeding that are necessary to enable the parent to support:
 - (i) himself or herself; or
 - (ii) any other child or another person that the person has a duty to maintain; and
- (f) the direct and indirect costs incurred by the custodian entitled to child support in providing care for the child; and
- (g) any hardship that would be caused:
 - (i) to:
 - (A) the child; or
 - (B) the custodian entitled to child support;by the making of, or the refusal to make, the order; and
 - (ii) to:
 - (A) the liable parent; or
 - (B) any other child or another person that the liable parent has a duty to support;by the making of, or the refusal to make, the order.

(5) In determining whether it would be otherwise proper to make a particular order under this Division, the court must have regard to:

- (a) the nature of the duty of a parent to maintain a child (as stated in section 3) and, in particular, the fact that it is the parents of a child themselves who have the primary duty to maintain the child; and

- (b) the effect that the making of the order would have on:
 - (i) any entitlement of the child, or the custodian entitled to child support, to an income tested pension, allowance or benefit; or
 - (ii) the rate of any income tested pension, allowance or benefit payable to the child or the custodian entitled to child support.
- (6) In having regard to the proper needs of the child, the court must have regard to:
 - (a) the manner in which the child is being, and in which the parents expected the child to be, cared for, educated or trained; and
 - (b) any special needs of the child.
- (7) In having regard to the income, earning capacity, property and financial resources of the child or a parent of the child, the court must:
 - (a) have regard to the capacity of the child or parent to earn or derive income, including any assets of, under the control of, or held for the benefit of, the child or parent that do not produce, but are capable of producing, income; and
 - (b) disregard:
 - (i) the income, earning capacity, property and financial resources of any person who does not have a duty to maintain the child, or who has such a duty but is not a party to the proceeding, unless, in the special circumstances of the case, the court considers that it is appropriate to have regard to them; and
 - (ii) any entitlement of the child or the custodian entitled to child support to an income tested pension, allowance or benefit.
- (8) In having regard to the direct and indirect costs incurred by the custodian entitled to child support in providing care for the child, the court must have regard to the income and earning capacity foregone by the custodian entitled to child support in providing that care.
- (9) Subsections (4) to (8) (inclusive) do not limit other matters to which the court may have regard.

Orders that may be made under Division

118. (1) The orders that a court may make under this Division are as follows:

- (a) an order varying the annual rate of child support payable by the liable parent concerned;
- (b) an order varying the child support percentage, adjusted income amount, child support income amount or exempted income amount of the liable parent;
- (c) an order 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) an order varying the child support income amount or disregarded income amount of the custodian entitled to child support concerned;
 - (e) an order making provision of a kind permitted under the regulations with respect to the calculation of any such amount in relation to the custodian entitled to child support;
 - (f) an order directing that one or more of the following provisions is not to apply:
 - (i) section 41 (Child support not payable if child support income amount does not exceed exempted income amount);
 - (ii) section 42 (Cap on child support if child support income amount exceeds 2.5 times yearly equivalent or relevant AWE amount);
 - (iii) section 52 (Cap on combined child support liabilities of 2 liable parents);
 - (g) an order varying a factor ascertained under paragraph 54 (b).
- (2) An order under this section may make different provision in relation to different child support years and in relation to different parts of a child support year.
- (3) If the court makes an order under this section, the court must:
- (a) give reasons for making the order (including reasons for its satisfaction as required by paragraph 117 (1) (b)); and
 - (b) cause the reasons to be entered in the records of the court.
- (4) Subsection (3) does not apply in relation to an order made by consent.
- (5) A contravention of subsection (3) in relation to an order does not affect the validity of the order.

Implementation of orders

119. (1) When a decision of a court making an order under this Division becomes final, the Registrar must immediately take such action as is necessary to give effect to the decision in relation to any administrative assessment that has been made in relation to the child, the custodian entitled to child support and the liable parent concerned (whether by amending the assessment or otherwise).

(2) In subsequently making an administrative assessment in relation to the child, the custodian entitled to child support and the liable parent concerned while the order is in force, the Registrar must act on the basis of the provisions of this Act as modified by the order.

Pending proceeding not to affect assessment

120. Subject to section 140 (Stay orders), the fact that a proceeding is pending under this Division in relation to a person does not, in the meantime, interfere with, or affect, any administrative assessment made in relation to the person, and 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 no proceeding were pending.

Division 5—Orders for provision of child support otherwise than in form of periodic amounts paid to custodian

Additional particular objects of Division

121. Additional particular objects of this Division include ensuring:

- (a) that children have their proper needs met from reasonable and adequate shares in the income, earning capacity, property and financial resources of both their parents; and
- (b) that parents share equitably in the support of their children.

Cases in relation to which Division applies

122. This Division applies where a custodian entitled to child support wants a liable parent to provide, or a liable parent wants to provide, child support for a child otherwise than in the form of periodic amounts paid to the custodian entitled to child support.

Application for order under Division

123. (1) Application may be made to a court having jurisdiction under this Act for an order that a liable parent provide child support for a child otherwise than in the form of periodic amounts paid to the custodian entitled to child support.

(2) An application:

- (a) may only be made if an administrative assessment is in force in relation to the child, the custodian entitled to child support and the liable parent; and
- (b) may be made by the custodian entitled to child support or the liable parent.

(3) Before hearing the application, the court must hear and determine any pending application made to the court for an order under Division 4 (Orders for departure from administrative assessment in special circumstances) in relation to the child, the custodian entitled to child support and the liable parent.

(4) Subject to section 145 (Registrar may intervene in proceedings), the parties to the application are the custodian entitled to child support and the liable parent.

Orders for provision of child support otherwise than in form of periodic amounts paid to custodian entitled to child support

124. (1) Where:

- (a) a custodian entitled to child support or a liable parent makes an application to a court under section 123; and

- (b) the court is satisfied that it would be:
- (i) just and equitable as regards the child, the custodian entitled to child support and the liable parent; and
 - (ii) otherwise proper;

to make an order that the liable parent provide child support for the child otherwise than in the form of periodic amounts paid to the custodian entitled to child support;

the court may make the order.

(2) In determining the application, the court must have regard to:

- (a) the administrative assessment in force in relation to the child, the custodian entitled to child support and the liable parent; and
- (b) any order in force under Division 4 (Orders for departure from administrative assessment in special circumstances) in relation to the child, the custodian entitled to child support and the liable parent; and
- (c) whether the custodian entitled to child support is in receipt of an income tested pension, allowance or benefit or, if the custodian entitled to child support is not in receipt of such a pension, allowance or benefit, whether the circumstances of the custodian are such that, taking into account the effect of the order proposed to be made by the court, the custodian would be unable to support himself or herself without an income tested pension, allowance or benefit; and
- (d) the effect that the making by the custodian entitled to child support of an application under section 128 (Pensioners entitled to apply to have assessed child support not reduced by more than 25%) would have on the order proposed to be made by the court (and any statement included in the order under section 125).

(3) In determining whether it would be just and equitable as regards the child, the custodian entitled to child support and the liable parent to make an order under subsection (1), the court must have regard to the matters mentioned in subsections 117 (4), (6), (7) and (8).

(4) In determining whether it would be otherwise proper to make an order under subsection (1), the court must have regard to the matters mentioned in subsection 117 (5).

(5) Subsections (2), (3) and (4) do not limit the matters to which the court may have regard.

Court to state relationship between order and assessed child support

125. (1) If the court makes an order under section 124, the court must state in the order whether the child support ordered to be provided by the liable parent is to be credited against the liable parent's liability under any administrative assessment (in this Division called a "**relevant administrative assessment**") of the child support payable by the liable parent to the

custodian entitled to child support that relates to the period, or a part of the period, for which the order has effect.

(2) The court may state that the child support is not to be credited against the liable parent's liability under any relevant assessment only if it is satisfied that, in the special circumstances of the case, it would be:

- (a) just and equitable as regards the child, the custodian entitled to child support and the liable parent; and
- (b) otherwise proper;

that the child support should not be credited.

(3) If the court states in the order that the child support is to be credited against the liable parent's liability under any relevant administrative assessment, the court must also state in the order either:

- (a) that the child support has an annual value of a specified amount and that the annual rate of the child support payable under any relevant administrative assessment is to be reduced by that amount; or
- (b) that the child support is to count for a specified percentage of the annual rate of child support payable under any relevant administrative assessment.

(4) The court may, under subsections (1) and (3), make different provision in relation to different child support years and in relation to different parts of a child support year.

(5) In determining whether it would be just and equitable as regards the child, the custodian entitled to child support and the liable parent to make a statement of the kind referred to in subsection (2), the court must have regard to the matters mentioned in subsections 117 (4), (6), (7) and (8).

(6) In determining whether it would be otherwise proper to make a statement of the kind referred to in subsection (2), the court must have regard to the matters mentioned in subsection 117 (5).

(7) Subsections (5) and (6) do not limit the matters to which the court may have regard.

Court to give reasons for order

126. (1) If the court makes an order under section 124, the court must:

- (a) give reasons for:
 - (i) making the order; and
 - (ii) the statement or statements included in the order under section 125; and
- (b) cause the reasons to be entered in the records of the court.

(2) Subsection (1) does not apply in relation to an order made by consent.

(3) A contravention of subsection (1) in relation to an order does not affect the validity of the order.

Effect of orders on administrative assessment of child support

127. (1) This section applies if the court makes an order under section 124 that includes a statement that the child support ordered to be provided by the liable parent is to be credited against the liable parent's liability under any relevant administrative assessment.

(2) When the decision of the court making the order becomes final, the Registrar must immediately take such action as is necessary to give effect to the order in relation to any relevant administrative assessment that has been made (whether by amending the assessment or otherwise).

(3) In subsequently making a relevant administrative assessment, the Registrar must:

- (a) work out what would, apart from this Division, be the annual rate of child support payable by the liable parent to the custodian entitled to child support; and
- (b) reduce (but not below 0) that annual rate by the amount or percentage specified in the statement included in the order under subsection 125 (3); and
- (c) make the assessment on the basis of that reduced annual rate.

Pensioners entitled to apply to have assessed child support not reduced by more than 25%

128. (1) This section applies if:

- (a) the court has made an order under section 124 that includes a statement that the child support ordered to be provided by the liable parent is to be credited against the liable parent's liability under any relevant administrative assessment; and
- (b) the custodian entitled to child support is in receipt of an income tested pension, allowance or benefit (whether or not he or she was in receipt of the pension, allowance or benefit when the order was made).

(2) If the custodian entitled to child support applies to the Registrar, in the appropriate approved form, for any relevant administrative assessment to be made as required by this section, the Registrar must immediately take such action as is necessary to give effect to the application (as from the time when the application was made to the Registrar) in relation to any relevant administrative assessment that has been made (whether by amending the assessment or otherwise).

(3) In making a relevant administrative assessment while the application remains in force, the Registrar must:

- (a) work out whether, apart from this section, the annual rate of child support referred to in paragraph 127 (3) (a) would be reduced under paragraph 127 (3) (b) by more than 25%; and

- (b) if the annual rate would be so reduced by more than 25%—work out whether, if the annual rate were instead reduced by only 25%, the custodian entitled to child support would be entitled to continue to receive the income tested pension, allowance or benefit; and
 - (c) if paragraph (b) applies and the custodian entitled to child support would be so entitled to continue to receive the income tested pension, allowance or benefit—the Registrar must, under paragraph 127 (3) (b), reduce the annual rate by only 25%.
- (4) The application stops being in force when:
- (a) the custodian entitled to child support notifies the Registrar, in the appropriate approved form, that he or she no longer wants any relevant administrative assessment to be made as required by this section; or
 - (b) the custodian entitled to child support is no longer in receipt of any income tested pension, allowance or benefit; or
 - (c) a child support terminating event happens in relation to the child concerned, the custodian entitled to child support, the liable parent or all 3 of them.

(5) If the application stops being in force, the Registrar must immediately amend any relevant administrative assessment that has been made (as from the time when the application stopped being in force) so that the assessment is made as required by this Act (apart from this section).

Modification of orders under Division

129. (1) If an order under section 124 is in force in relation to a child (whether or not all things ordered to be done by the order have been done):

- (a) the court that made the order; or
- (b) another court having jurisdiction under this Act in which the order has been registered;

may under this section, by order:

- (c) discharge the order; or
- (d) suspend its operation wholly or in part and either until further order or until a fixed time or the happening of a future event; or
- (e) if the operation of the order has been suspended under paragraph (d)—revive its operation wholly or in part; or
- (f) subject to subsection (3), vary the order (including any statement included in the order under section 125) in any way.

(2) The court must not make an order under subsection (1) in relation to the order under section 124 unless the court is satisfied, having regard in particular to any statement included in the last-mentioned order under section 125, that it would be:

- (a) just and equitable as regards the child, the custodian entitled to child support and the liable parent concerned; and
- (b) otherwise proper;

to make the order.

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(3) The court must not, by order under subsection (1), vary an order unless it is also satisfied:

- (a)** that making the variation is justified because of a change in the circumstances of the child, the custodian entitled to child support or a liable parent concerned since the order was made or last varied; or
- (b)** that the custodian entitled to child support has made an application under section 128 and the order is no longer proper or appropriate; or
- (c)** that making the variation is justified because of a change in the cost of living since the order was made or last varied; or
- (d)** in a case where the order was made by consent—that the order is not proper or adequate; or
- (e)** that material facts were withheld from the court that made the order or from a court that varied the order, or that material evidence previously given before such a court was false.

(4) If the court proposes to vary the order otherwise than by varying any statement included in the order under section 125, the court must consider whether, having regard to the proposed variation, it should also order the variation of any such statement.

(5) In determining whether it would be just and equitable as regards the child, the custodian entitled to child support and a liable parent to make an order under subsection (1), the court must have regard to the matters mentioned in subsections 117 (4), (6), (7) and (8).

(6) In determining whether it would be otherwise proper to make an order under subsection (1), the court must have regard to the matters mentioned in subsection 117 (5).

(7) Subsections (5) and (6) do not limit the matters to which the court may have regard.

(8) In satisfying itself for the purposes of paragraph (3) (b) or (d), the court must have regard to any payments, and any transfer or settlement of property, previously made by the liable parent to the child, to the custodian entitled to child support or to any other person for the benefit of the child.

(9) In satisfying itself for the purposes of paragraph (3) (c), the court must have regard to any changes that have occurred in a relevant Consumer Price Index published by the Australian Statistician.

(10) The court must not, in considering the variation of an order, have regard to a change in the cost of living unless at least 12 months have elapsed since the order was made, or was last varied having regard to a change in the cost of living.

(11) Subject to any order made under section 131, the discharge of an order does not affect the recovery of arrears due under the order, or under this Act, when the discharge takes effect.

Court to give reasons for modifications

130. (1) If the court makes an order under section 129, the court must:

(a) give reasons:

(i) for making the order; and

(ii) if the court varies an order otherwise than by varying any statement included in the order under section 125 and does not order the variation of any such statement—for not ordering the variation of any such statement; and

(b) cause the reasons to be entered in the records of the court.

(2) Subsection (1) does not apply in relation to an order made by consent.

(3) A contravention of subsection (1) in relation to an order does not affect the validity of the order.

Court may make orders consequential upon the discharge of orders etc.

131. (1) This section applies where an order under section 124 is discharged by a court under section 129 or ceases to be in force because of section 142 (Cessation of orders under Act).

(2) A court having jurisdiction under this Act may make such orders (including orders for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of the child concerned or a person who is or was a custodian entitled to child support, or a liable parent, in relation to the child.

(3) An order under subsection (2) may be made in the proceeding in which the order is discharged or in another proceeding brought on the application of a person who is or was a custodian entitled to child support, or a liable parent, in relation to the child concerned.

(4) In the exercise of its powers under this section, a court must have regard to the interests of, and must make any order proper for the protection of, a *bona fide* purchaser or other person interested.

Division 6—Agreements made in relation to children

Subdivision A—Appeals against acceptance and non-acceptance of agreements

Appeals

132. (1) If a party to an agreement made in relation to a child is aggrieved by a decision of the Registrar under section 92 accepting or refusing to accept the agreement, he or she may appeal to a court having jurisdiction under this Act against the decision.

(2) The appeal must be instituted 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 may intervene in proceedings), the parties to the appeal are the parties to the agreement.

(4) Subsection (1) has effect:

(a) subject to Chapter III of the Constitution; and

(b) despite section 9 (Limitation of jurisdiction of State courts) of the *Administrative Decisions (Judicial Review) Act 1977*.

Powers of court hearing appeal

133. A court hearing an appeal under this Subdivision may make such orders as it considers appropriate in relation to the acceptance by the Registrar of the agreement, or the refusal by the Registrar to accept the agreement, that is the subject of the appeal.

Implementation of decisions

134. When a decision of a court under this Subdivision becomes final, the Registrar must immediately take such action as is necessary to give effect to the decision (whether by amending any administrative assessment or otherwise).

Pending appeal not to affect assessment

135. Subject to section 140 (Stay orders), the fact that an appeal is pending under this Subdivision in relation to an agreement does not, in the meantime, interfere with, or affect, any administrative assessment giving effect or not giving effect, as the case requires, to the agreement, and the assessment may be registered under the *Child Support (Registration and Collection) Act 1988*, and child support and other amounts recovered in relation to the assessment, as if no appeal were pending.

Subdivision B—Setting aside of accepted child support agreements

Power of court to set aside agreements

136. (1) A court having jurisdiction under this Act may set aside a child support agreement that has been registered in the court if the court is satisfied, on application by a party to the agreement, that the concurrence of the party was obtained by fraud or undue influence.

(2) Subject to section 145 (Registrar may intervene in proceedings), the parties to a proceeding under subsection (1) are the parties to the agreement.

Court may make orders consequential on setting aside of agreement

137. (1) This section applies where a child support agreement made in relation to a child is set aside under section 136.

(2) A court having jurisdiction under this Act may make such orders (including orders for the transfer of property) as it considers just and

equitable for the purpose of preserving or adjusting the rights of the child or a party to the agreement.

(3) An order under subsection (2) may be made in the proceeding in which the agreement is set aside or in another proceeding brought on the application of a party to the agreement.

(4) In the exercise of its powers under this section, a court must have regard to the interests of, and must make any order proper for the protection of, a *bona fide* purchaser or other person interested.

Implementation of decisions

138. When a decision of a court under this Subdivision becomes final, the Registrar must immediately take such action as is necessary to give effect to the decision for the purposes of this Act (whether by amending any administrative assessment or otherwise).

Division 7—Urgent maintenance orders and stay orders

Urgent maintenance orders

139. (1) Where, at any time after an application has been made to the Registrar for administrative assessment of child support for a child (whether or not the Registrar has accepted or refused to accept the application), a court having jurisdiction under this Act is of the opinion that the child is in urgent need of financial assistance, the court may order the payment of such periodic or other amount as the court considers appropriate.

(2) An order under subsection (1) has effect for such period as is specified in the order, other than a period that ends after:

- (a) the final determination under this Act that child support is not payable for the child; or
- (b) if a determination is made under this Act that child support is payable for the child—the receipt by the custodian entitled to child support of or on account of the first payment of such child support.

(3) A proceeding under this section may be instituted by the applicant for administrative assessment of child support against the person from whom the application sought payment of child support.

Stay orders

140. (1) Where a proceeding has been instituted in a court having jurisdiction under this Act, a party to the proceeding may, subject to the *Family Law Act 1975*, apply to the court for an order under this section.

(2) If the court considers that it is desirable to do so taking into account the interests of the persons who may be affected by the outcome of the proceeding, the court may make such orders staying or otherwise affecting the operation or implementation of this Act as the court considers appropriate pending the hearing and final determination of the proceeding.

(3) The court may, by order, vary or revoke an order made under subsection (2).

(4) An order under subsection (2):

- (a) is subject to such terms and conditions as are specified in the order; and
- (b) operates for such period as is specified in the order or, if no period is specified, until the decision of the court determining the proceeding becomes final.

Division 8—Provisions relating to court orders

General powers of court

141. (1) In exercising its powers under this Act, a court may do all or any of the following:

- (a) order payment of a lump sum, whether in one amount or by instalments;
- (b) order payment of a weekly, monthly, yearly or other periodic amount;
- (c) order that a specified transfer or settlement of property be made;
- (d) order that payment of an amount ordered to be paid be wholly or partly secured as the court specifies;
- (e) order that any necessary deed or instrument be executed, and that such documents of title be produced and such other things be done, as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;
- (f) order that payment be made to a specified person or public authority or into court;
- (g) make a permanent order, an order pending the disposal of proceedings, an order for a fixed period, an order until a child attains a specified age or an order until further order;
- (h) make an order expressed to be retrospective to such day as the court considers appropriate;
- (j) subject to section 129 (Modification of orders under Division 5), make an order:
 - (i) discharging an order; or
 - (ii) suspending the operation of an order wholly or in part and either until further order or until a fixed time or the happening of a future event; or
 - (iii) revive wholly or in part the operation of an order that has been suspended; or
 - (iv) vary an order in any way;
- (k) make an order imposing terms and conditions;
- (m) make an order by consent;

(n) make any other order (whether or not of the same kind as those referred to in paragraphs (a) to (m) (inclusive)) that the court considers appropriate;

(p) make an order at any time.

(2) The making of an order of a kind referred to in paragraph (1) (c), or of any other order under this Act, in relation to a child does not prevent a court from making a subsequent order (whether under this Act or otherwise) in relation to the child.

(3) The Rules of Court may make provision with respect to the making of orders under this Act (whether as to their form or otherwise) for the purpose of facilitating their enforcement and the collection of any child support payable under them.

Cessation of orders under Act

142. (1) Where an order made under this Act is in force in relation to a child and:

(a) a child support terminating event happens in relation to the child;
or

(b) if there is a custodian entitled to child support and a liable parent in relation to the child—a child support terminating event happens in relation to the custodian entitled to child support, the liable parent or all 3 of them; or

(c) if there is not a custodian entitled to child support and a liable parent in relation to the child, one of the following events happens:

(i) the person on whose application the order was made:

(A) dies; or

(B) ceases to be an eligible custodian of the child;

(ii) the person against whom the order was made:

(A) dies; or

(B) ceases to be a resident of Australia;

the order ceases to be in force.

(2) Nothing in this section affects the recovery of arrears due under an order when the order ceases to be in force.

Amounts paid where no liability to pay exists etc.

143. (1) Where:

(a) an amount of child support is paid by a person to another person;
and

(b) the person is not liable, or subsequently becomes not liable, to pay the amount to the other person;

the amount may be recovered in a court having jurisdiction under this Act.

(2) Where:

- (a) an amount is paid by a person to another person for a child in relation to a period under an order made under section 139 (Urgent maintenance orders); and
- (b) child support does not become payable by the person to the other person for the child in relation to the period;

the amount may be recovered in a court having jurisdiction under this Act.

(3) In a proceeding in a court under this section, the court may make such orders as it considers just and equitable for the purpose of adjusting or giving effect to the rights of the parties and the child concerned.

(4) An amount paid to the Commonwealth under section 30 of the *Child Support (Registration and Collection) Act 1988* is to be taken, for the purposes of this section, to have been paid to the person to whom, apart from that section, the amount would have been payable.

Division 9—Miscellaneous

Determining when decision of a court becomes final

144. For the purpose of determining when a decision of a court becomes final:

- (a) if the decision is not a decision of a Full Court of the Family Court and an application is not made for leave to appeal against the decision within the period for making such an application—the decision becomes final at the end of that period; or
- (b) if the decision is a decision of a Full Court of the Family Court and an application is not made for special leave to appeal to the High Court within the period of 30 days after the making of the decision—the decision becomes final at the end of that period.

Registrar may intervene in proceedings

145. (1) The Registrar may intervene in, and contest and argue any question arising in, a proceeding under this Act.

(2) If the Registrar intervenes in a proceeding under this Act, the Registrar is to be taken to be a party to the proceeding with all the rights, duties and liabilities of a party.

(3) This section does not limit Part IX of the *Family Law Act 1975*.

Copies of orders to be forwarded to Registrar

146. (1) Where a court having jurisdiction under this Act makes an order under this Act, the registrar or other responsible officer of the court must, within 28 days after the day on which the order is made, send a certified or sealed copy of the order to the Child Support Registrar.

(2) The Child Support Registrar may, by written notice served on the registrar or other responsible officer of a court, vary, in relation to the court,

in such instances and to such extent as the Child Support Registrar considers appropriate, the requirement of subsection (1).

PART 8—ADMINISTRATION

Registrar has general administration of Act

147. The Registrar has the general administration of this Act.

Annual report

148. (1) The Registrar must, as soon as practicable after 30 June in each year, give to the Minister a report on the working of this Act.

(2) The Minister must cause a copy of the report to be laid before each House of the Parliament.

(3) For the purposes of section 34C of the *Acts Interpretation Act 1901*, a report that is required by subsection (1) to be furnished as soon as practicable after 30 June in a year is to be taken to be a periodic report relating to the working of this Act during the year ending on that 30 June.

Delegation

149. (1) The Registrar may, in writing, delegate all or any of the Registrar's powers or functions under this Act to:

- (a)** a Deputy Registrar; or
- (b)** the Secretary to the Department of Social Security; or
- (c)** an officer or employee of:
 - (i)** the branch of the Australian Public Service under the direct control of the Registrar (whether as Registrar or Commissioner); or
 - (ii)** the Department of Social Security.

(2) A delegation under subsection (1) may be made subject to a power of review and alteration by the Registrar, within a period specified in the delegation, of acts done under the delegation.

(3) A delegation under subsection (1) continues in force even though there has been a change in the occupancy of, or there is a vacancy in, the office of Registrar, but, for the purposes of the application of subsection 33 (3) of the *Acts Interpretation Act 1901* in relation to such a delegation, nothing in any law is to be taken to preclude the revocation or variation of the delegation by the same or a subsequent holder of the office.

Secrecy

150. (1) In this section:

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“person to whom this section applies” means a person who is or has been:

- (a) the Registrar or a Deputy Registrar; or
- (b) the Secretary to the Department of Social Security; or
- (c) an officer or employee of:
 - (i) the branch of the Australian Public Service under the direct control of the Registrar (whether as Registrar or Commissioner); or
 - (ii) the Department of Social Security; or
- (d) otherwise appointed or employed by, or a provider of services for, the Commonwealth;

“produce” includes permit access to;

“protected document” means a document that:

- (a) contains information that concerns a person; and
- (b) is obtained or made by a person to whom this section applies in the course of, or because of, the person’s duties under or in relation to this Act;

“protected information” means information that:

- (a) concerns a person; and
- (b) is disclosed to, or obtained by, a person to whom this section applies in the course of, or because of, the person’s duties under or in relation to this Act.

(2) Subject to subsection (3), a person to whom this section applies must not:

- (a) make a record of any protected information; or
- (b) whether directly or indirectly, divulge or communicate to a person any protected information concerning another person;

unless the record is made, or the information divulged or communicated:

- (c) under or for the purposes of this Act; or
- (d) in the performance of duties, as a person to whom this section applies, under or in relation to this Act.

Penalty: Imprisonment for 1 year.

(3) Subsection (2) does not prevent the Registrar, a Deputy Registrar, or a person authorised by the Registrar or a Deputy Registrar, from divulging or communicating any protected information:

- (a) to the Secretary to the Department of Social Security, or an officer or employee of that Department, for the purpose of the administration of this Act; or
- (b) to the Secretary to the Department of Social Security or the Department of Veterans’ Affairs, or an officer or employee of either Department, for the purpose of the administration of any law of the Commonwealth relating to pensions, allowances or benefits; or

- (c) to a person performing, as a person to whom this section applies, duties under or in relation to an Act of which the Registrar (whether as Registrar or Commissioner) has the general administration, or under regulations made under such an Act, for the purpose of enabling the person to perform the duties; or
- (d) to the Secretary to the Attorney-General's Department, or an officer or employee of that Department, for the purpose of:
 - (i) the enforcement outside Australia of:
 - (A) child support liabilities; or
 - (B) maintenance liabilities that arose under the law of the Commonwealth or of a State or Territory; or
 - (ii) the enforcement within Australia of maintenance liabilities that arose under the law of an external Territory or a foreign country.

(4) A person divulges or communicates protected information to a person in contravention of subsection (2) if the person divulges or communicates the information to any Minister.

(5) A person to whom this section applies is not required:

- (a) to divulge or communicate protected information to a court; or
- (b) to produce a protected document in court;

except where it is necessary to do so for the purpose of carrying into effect the provisions of this Act.

(6) Nothing in an Act of which the Commissioner has the general administration is to be taken to prohibit the Commissioner, a Second Commissioner, a Deputy Commissioner, or a person authorised by the Commissioner, a Second Commissioner or a Deputy Commissioner, from divulging or communicating any information to a person performing, as a person to whom this section applies, duties under or in relation to this Act for the purpose of enabling the person to perform the duties.

(7) Nothing in an Act of which the Commissioner has the general administration is to be taken to prohibit the Commissioner, a Second Commissioner, a Deputy Commissioner, or a person authorised by the Commissioner, a Second Commissioner or a Deputy Commissioner, from:

- (a) divulging or communicating to a court any information obtained under or for the purposes of such an Act; or
- (b) producing in court a document obtained or made under or for the purposes of such an Act;

where it is necessary to do so for the purpose of carrying into effect the provisions of this Act.

(8) A person to whom this section applies must, if and when required by the Registrar or a Deputy Registrar to do so, make an oath or declaration, in a manner and form specified by the Registrar in writing, to maintain secrecy in accordance with this section.

(9) This section has effect subject to subsection 64 (11B) of the *Family Law Act 1975*.

PART 9—MISCELLANEOUS

Election by custodian entitled to child support to end administrative assessment

151. (1) A custodian entitled to child support for a child may, by written notice given to the Registrar, elect that the liability of a liable parent to pay or provide child support for the child to the custodian entitled to child support is to end from a specified day.

(2) The notice must be:

- (a) in the appropriate approved form; and
- (b) verified as required by the form of notice; and
- (c) accompanied by such documents (if any) as are required by the form of notice to accompany the notice.

(3) A document that accompanies the notice must also be verified as required by the form of notice.

Offsetting where liabilities overlap

152. (1) This section applies in relation to a child (in this section called the “**relevant child**”) and a day if the following conditions are satisfied:

- (a) under an administrative assessment an amount (in this section called the “**first amount**”) of child support for the relevant child is, apart from this section, payable by a liable parent to another person in relation to a period (in this section called the “**first period**”) that includes the day (whether or not the child support is also for another child or other children and whether or not the first amount has been paid in whole or part);
- (b) under a court order, a court registered maintenance agreement or another administrative assessment an amount (in this section called the “**second amount**”) of maintenance or child support for the relevant child is, apart from this section, payable by the liable parent to the other person in relation to a period (in this section called the “**second period**”) that includes the day (whether or not the maintenance or child support is also for another child or other children and whether or not the second amount has been paid in whole or part).

(2) If, because of section 30 of the *Child Support (Registration and Collection) Act 1988*, a person is liable to pay an amount to the Commonwealth that the person would otherwise have been liable to pay to another person, subsection (1) applies in relation to the amount as if the amount were payable by the person to the other person.

(3) Where this section applies in relation to the relevant child and a day, the following provisions have effect:

- (a) if the daily rate of the child's part of the second amount equals or is more than the daily rate of the child's part of the first amount—the second amount is, by force of this section, reduced in relation to that day by the daily rate of the child's part of the first amount;
- (b) if the daily rate of the child's part of the second amount is less than the daily rate of the child's part of the first amount—the first amount is, by force of this section, reduced in relation to that day by the daily rate of the child's part of the second amount.

(4) In this section:

“child's part of the first amount”, in relation to the relevant child, means:

- (a) if the first amount does not also relate to any other child—the whole of the first amount; and
- (b) if the first amount also relates to another child or other children—the amount worked out by dividing the first amount by the total number of children to whom the first amount relates;

“child's part of the second amount”, in relation to the relevant child, means:

- (a) if the second amount does not also relate to any other child—the whole of the second amount; and
- (b) if the second amount also relates to another child or other children—the amount worked out by dividing the second amount by the total number of children to whom the second amount relates;

“daily rate” means:

- (a) in relation to the child's part of the first amount—the amount worked out by dividing the child's part of the first amount by the number of days in the first period; and
- (b) in relation to the child's part of the second amount—the amount worked out by dividing the child's part of the second amount by the number of days in the second period.

Evidentiary certificates by Registrar

153. A certificate by the Registrar stating:

- (a) that a specified person was, on a specified day, a resident of Australia; or
- (b) that a specified person ceased, on a specified day, to be a resident of Australia; or
- (c) that an application for administrative assessment of child support was made on a specified day by a specified person seeking payment of child support for a specified child from a specified person; or

- (d) that an application for administrative assessment of child support was not made on or before a specified day by a specified person seeking payment of child support for a specified child from a specified person; or
- (e) that a notice to the effect that the taxable income of a specified person under the *Income Tax Assessment Act 1936* for a specified year of income was nil, or to the effect that no tax is payable (before the allowance of any rebate or credit) under that Act on the taxable income of a specified person for a specified year of income, was served on the person under that Act; or
- (f) that a notice mentioned in paragraph (e) was dated as at a specified day;

is *prima facie* evidence of the matters stated in the certificate.

Changes in published AWE figures to be disregarded

154. If, at any time, the Australian Statistician publishes an estimate of the full-time adult average weekly total earnings for persons in Australia for a period for which such an estimate was previously published by the Australian Statistician, the publication of the later estimate is to be disregarded for the purposes of this Act.

Publication of AWE figures etc.

155. The Registrar must, as soon as practicable after 1 January in each child support year, cause to be published in the *Gazette*:

- (a) the yearly equivalent of the relevant AWE amount for the following child support year; and
- (b) the relevant married rate of Social Security pension for the following child support year; and
- (c) the relevant single rate of Social Security pension for the following child support year; and
- (d) the amounts referred to in paragraphs 39 (2) (a) and (b) that are applicable in relation to the following child support year.

Rounding of amounts

156. (1) If an amount that is calculated or worked out under or for the purposes of this Act is not, apart from this section, a number of whole dollars, the amount is to be rounded to the nearest whole dollar.

(2) If the amount that is calculated or worked out is an amount consisting of a number of whole dollars and 50c, the amount is to be rounded up to the nearest whole dollar.

(3) This section does not apply in relation to the conversion of an annual rate of child support into a daily rate of child support.

Appearance by Registrar in proceedings etc.

157. (1) In any action, prosecution or other proceeding under, or arising out of, this Act, the Registrar or a Deputy Registrar, may appear personally or may be represented by:

- (a) a person enrolled as a barrister, solicitor, barrister and solicitor or legal practitioner of a federal court or of the Supreme Court of a State or Territory; or
- (b) a person authorised by the Registrar or a Deputy Registrar, in writing, to appear.

(2) The appearance of a person, and the statement of the person that the person appears with the authority of the Registrar or a Deputy Registrar, is *prima facie* evidence of that authority.

Judicial notice of signature of Registrar etc.

158. All courts and tribunals, and all judges and persons acting judicially or authorised by law or consent of parties to hear, receive and examine evidence, must take judicial notice of the signature of a person who holds or has held the office of Registrar or Deputy Registrar.

False or misleading statements

159. (1) A person who:

- (a) makes a statement to an officer that the person knows 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, to the knowledge of the person, misleading in a material particular;

is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 6 months.

(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 ought reasonably to have known that the statement to which the prosecution relates was false or misleading in a material particular, the person is to be taken to have known that the statement was false or misleading in a material particular.

(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 be given, under this Act.

Notification requirements

160. (1) The Registrar may, by written notice given to a person to or by whom child support is payable, require the person to notify the Registrar, within 14 days and in the manner specified in the notice, if:

- (a) an event or change of circumstances specified in the notice happens;
or
- (b) the person becomes aware that an event or change of circumstances specified in the notice is likely to happen.

(2) An event or change of circumstances must not be specified in a notice under subsection (1) unless the happening of the event or change of circumstances might affect the payment of child support or the annual rate at which it is payable.

(3) A person who, without reasonable excuse, refuses or fails to comply with a notice under subsection (1) to the extent that the person is capable of doing so is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 6 months.

(4) It is a reasonable excuse for a person to refuse or fail to comply with a requirement under subsection (1) if complying with the requirement may tend to incriminate the person.

Obtaining of information and evidence

161. (1) The Registrar may, where it is reasonably necessary for the purposes of this Act, by written notice, require a person:

- (a) to give to the Registrar, within a reasonable period (being a period of not less than 7 days), and in a reasonable manner, specified in the notice, such information as the Registrar requires; and
- (b) to attend before the Registrar, or before an officer authorised by the Registrar for the purpose, at a reasonable time and place specified in the notice, and then and there answer questions; and
- (c) to produce to the Registrar, at a reasonable time and place specified in the notice, any documents in the custody or under the control of the person.

(2) The regulations must prescribe scales of expenses to be allowed to persons required to attend under this section.

(3) A person who, without reasonable excuse, refuses or fails to comply with a requirement made under subsection (1) to the extent that the person is capable of doing so is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 6 months.

(4) It is a reasonable excuse for a person to refuse or fail to comply with a requirement under subsection (1) if complying with the requirement may tend to incriminate the person.

(5) A requirement made of a person under subsection (1) may not relate to the non-financial affairs of another person.

Order to comply with requirement

162. (1) Where:

- (a) a person is convicted before a court of an offence against subsection 161 (3); or
- (b) a court makes an order under section 19B of the *Crimes Act 1914* in relation to a person in relation to an offence against subsection 161 (3);

in relation to the refusal or failure of the person to comply (whether in whole or part) with a requirement made by or under this Act, the court may, in addition to imposing a penalty on the person or making such an order in relation to the person, as the case may be, and even though the time for complying with the requirement or any other such requirement has passed, order the person to comply with:

- (c) the requirement; and
- (d) such other requirements made, or that could be made, in relation to the person by or under this Act as the court considers necessary to ensure the effectiveness of the first-mentioned requirement;

within a specified time or at a specified place and time.

(2) If an order under subsection (1) is not given orally by the court to the person to whom the order is addressed, the proper officer of the court must cause a copy of the order to be served on the person in the prescribed manner.

(3) A person who contravenes an order under subsection (1) is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 12 months.

Act not a taxation law

163. This Act is not a taxation law within the meaning of the *Taxation Administration Act 1953*.

Regulations

164. The Governor-General may make regulations, not inconsistent with this Act, prescribing all 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;

and, in particular, may make regulations prescribing penalties not exceeding a fine of \$1,000 for offences against the regulations.

PART 10—AMENDMENTS OF THE CHILD SUPPORT ACT 1988

Principal Act

165. In this Part, “**Principal Act**” means the *Child Support Act 1988*¹.

Short title

166. Section 1 of the Principal Act is amended by omitting “*Child Support Act 1988*” and substituting “*Child Support (Registration and Collection) Act 1988*”.

Interpretation

167. Section 4 of the Principal Act is amended:

- (a) by inserting “, 24A (1),” after “24 (1)” in paragraph (a) of the definition of “appealable refusal decision” in subsection (1);
- (b) by inserting “, 37A” after “36” in paragraph (b) of the definition of “appealable refusal decision” in subsection (1);
- (c) by inserting “the *Child Support (Assessment) Act 1989*,” after “under” in paragraph (a) of the definition of “court order” in subsection (1);
- (d) by inserting in subsection (1) the following definitions:

“**‘child support’** means financial support under the *Child Support (Assessment) Act 1989*, including financial support by way of lump sum payment or by way of transfer or settlement of property;

‘child support assessment’ means an assessment made under the *Child Support (Assessment) Act 1989*;

‘court exercising jurisdiction under this Act’ does not include a court exercising jurisdiction in a proceeding under subparagraph 113 (c) (i);

‘court having jurisdiction under this Act’ does not include a court that has jurisdiction under this Act only in relation to the recovery of amounts of child support;

‘maintenance’ includes child support;”.

Delegation

168. Section 15 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) The Registrar may, in writing, delegate all or any of the Registrar’s powers or functions under this Act to:

- (a) a Deputy Registrar; or
- (b) the Secretary; or
- (c) an officer or employee of:
 - (i) the branch of the Australian Public Service under the direct control of the Registrar (whether as Registrar or Commissioner); or
 - (ii) the Department of Social Security.”.

169. Section 16 of the Principal Act is repealed and the following section is substituted:

Secrecy

“16. (1) In this section:

‘court’ includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

‘person to whom this section applies’ means a person who is or has been:

- (a) the Registrar or a Deputy Registrar; or
- (b) the Secretary; or
- (c) an officer or employee of:
 - (i) the branch of the Australian Public Service under the direct control of the Registrar (whether as Registrar or Commissioner); or
 - (ii) the Department of Social Security; or
- (d) otherwise appointed or employed by, or a provider of services for, the Commonwealth;

‘produce’ includes permit access to;

‘protected document’ means a document that:

- (a) contains information that concerns a person; and
- (b) is obtained or made by a person to whom this section applies in the course of, or because of, the person’s duties under or in relation to this Act;

‘protected information’ means information that:

- (a) concerns a person; and
- (b) is disclosed to, or obtained by, a person to whom this section applies in the course of, or because of, the person’s duties under or in relation to this Act.

“(2) Subject to subsection (3), a person to whom this section applies must not:

- (a) make a record of any protected information; or
- (b) whether directly or indirectly, divulge or communicate to a person any protected information concerning another person;

unless the record is made, or the information divulged or communicated:

- (c) under or for the purposes of this Act; or
- (d) in the performance of duties, as a person to whom this section applies, under or in relation to this Act.

Penalty: Imprisonment for 1 year.

“(3) Subsection (2) does not prevent the Registrar, a Deputy Registrar, or a person authorised by the Registrar or a Deputy Registrar, from divulging or communicating any protected information:

- (a) to the Secretary to the Department of Social Security, or an officer or employee of that Department, for the purpose of the administration of this Act; or
- (b) to the Secretary to the Department of Social Security or the Department of Veterans' Affairs, or an officer or employee of either Department, for the purpose of the administration of any law of the Commonwealth relating to pensions, allowances or benefits; or
- (c) to a person performing, as a person to whom this section applies, duties under or in relation to an Act of which the Registrar (whether as Registrar or Commissioner) has the general administration, or under regulations made under such an Act, for the purpose of enabling the person to perform the duties; or
- (d) to the Secretary to the Attorney-General's Department, or an officer or employee of that Department, for the purpose of:
 - (i) the enforcement outside Australia of registrable maintenance liabilities; or
 - (ii) the enforcement within Australia of maintenance liabilities that arose under the law of a foreign country.

“(4) A person divulges or communicates protected information to a person in contravention of subsection (2) if the person divulges or communicates the information to any Minister.

“(5) A person to whom this section applies is not required:

- (a) to divulge or communicate protected information to a court; or
- (b) to produce a protected document in court;

except where it is necessary to do so for the purpose of carrying into effect the provisions of this Act.

“(6) Nothing in an Act of which the Commissioner has the general administration is to be taken to prohibit the Commissioner, a Second Commissioner, a Deputy Commissioner, or a person authorised by the Commissioner, a Second Commissioner or a Deputy Commissioner, from divulging or communicating any information to a person performing, as a person to whom this section applies, duties under or in relation to this Act for the purpose of enabling the person to perform the duties.

“(7) Nothing in an Act of which the Commissioner has the general administration is to be taken to prohibit the Commissioner, a Second Commissioner, a Deputy Commissioner, or a person authorised by the Commissioner, a Second Commissioner or a Deputy Commissioner, from:

- (a) divulging or communicating to a court any information obtained under or for the purposes of such an Act; or
- (b) producing in court a document obtained or made under or for the purposes of such an Act;

where it is necessary to do so for the purpose of carrying into effect the provisions of this Act.

“(8) A person to whom this section applies must, if and when required by the Registrar or a Deputy Registrar to do so, make an oath or declaration, in a manner and form specified by the Registrar in writing, to maintain secrecy in accordance with this section.

“(9) This section has effect subject to subsection 64 (11B) of the *Family Law Act 1975*.”.

Liabilities in relation to children that are registrable maintenance liabilities

170. Section 17 of the Principal Act is amended by adding at the end the following subsection:

“(2) Subject to section 19, a liability is a registrable maintenance liability if it arises under a child support assessment.”.

Exclusion of liabilities by regulation

171. Section 19 of the Principal Act is amended:

- (a) by inserting in subparagraph (2) (b) (i) “assessments,” after “when the”;
- (b) by inserting in subparagraph (2) (b) (iv) “section 139 of the *Child Support (Assessment) Act 1989* or” after “made under”.

Payer and payee to notify Registrar when registrable maintenance liability arises etc.

172. Section 23 of the Principal Act is amended by inserting in paragraph (1) (a) “the *Child Support (Assessment) Act 1989*,” after “under”.

173. After section 24 of the Principal Act the following section is inserted:

Registrar to register liability in Child Support Register on making of child support assessment

“24A. (1) Subject to subsection (2), where the Registrar makes a child support assessment under which a registrable maintenance liability arises, the Registrar must immediately register the liability under this Act by entering particulars of the liability in the Child Support Register.

“(2) Subsection (1) does not apply in relation to a registrable maintenance liability if:

- (a) the payee is not in receipt of an income tested pension, allowance or benefit at the time the assessment is made; and
- (b) the payee elected in the relevant application for assessment of child support or the relevant application for acceptance of a child support agreement, as the case requires, not to have the liability enforced under this Act.”.

Particulars of liability to be entered in Child Support Register

174. Section 26 of the Principal Act is amended:

- (a) by inserting in paragraph (1) (c) “child support assessment,” before “court order” (first occurring);
- (b) by inserting in paragraph (1) (c) “assessment,” before “court order” (last occurring);
- (c) by inserting in paragraph (1) (c) “assessment,” after “first-mentioned”.

Single entry in relation to all liabilities with same payer and payee

175. Section 27 of the Principal Act is amended by inserting “child support assessment,” before “court order”.

Day on which liability first becomes enforceable under Act

176. Section 28 of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

- “(ba) if the liability arose under a child support assessment and is registered under subsection 24A (1)—the day on and from which child support is payable under the assessment;”.

Payee to notify Registrar of court order varying registered maintenance liability etc.

177. Section 33 of the Principal Act is amended by inserting in paragraph (1) (a) “the *Child Support (Assessment) Act 1989*,” after “under”.

Payee to notify Registrar of happening of affecting event

178. Section 34 of the Principal Act is amended by adding at the end the following subsection:

- “(4) This section does not apply in relation to a liability that arises under a child support assessment.”.

Payer may apply to Registrar for variation of Child Support Register

179. Section 35 of the Principal Act is amended by adding at the end the following subsection:

- “(3) This section does not apply in relation to a liability that arises under a child support assessment.”.

Registrar may vary Child Support Register to give effect to court order etc.

180. Section 37 of the Principal Act is amended by inserting in paragraph (a) “the *Child Support (Assessment) Act 1989*,” after “under”.

181. After section 37 of the Principal Act the following section is inserted:

Registrar to vary Child Support Register on amendment of child support assessment

“37A. Where the Registrar amends a child support assessment under which a registrable maintenance liability arose, the Registrar must immediately 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 enable the amendment to be given effect to under this Act.”.

Jurisdiction of courts under Act

182. Section 104 of the Principal Act is amended:

- (a) by omitting from subsections (1), (2), (3) and (5) “subsections 44 (2) and (3) and 88 (1)” and substituting “this Act”;
- (b) by omitting from subsection (7) “subsection 44 (2) or (3) or 88 (1)” and substituting “this Act”.

Application of Family Law Act

183. Section 105 of the Principal Act is amended:

- (a) by inserting in subsection (1) “(other than proceedings under subparagraph 113 (c) (i))” after “under this Act”;
- (b) by inserting after subsection (1) the following subsection:

“(1A) In the application of subsection (1) to proceedings under this Act in relation to a child, references in paragraphs (1) (a) to (e) (inclusive) to the *Family Law Act 1975* are to be taken to be references to Part VII of that Act.”.

Appellate jurisdiction of Family Court under Act

184. Section 106 of the Principal Act is amended by omitting from subsection (1) “subsections 44 (2) and (3) and 88 (1)” and substituting “this Act”.

Appeals to Family Court under Act

185. Section 107 of the Principal Act is amended:

- (a) by omitting from subparagraph (1) (b) (ii) “a” (first occurring) and substituting “the”;
- (b) by inserting after subsection (1) the following subsection:

“(1A) An appeal lies, with the leave of a Full Court of the Family Court, from a decree or decision of a Judge exercising original or appellate jurisdiction under this Act rejecting an application that he or she disqualify himself or herself from further hearing a matter.”;

- (c) by inserting in subsection (2) “or (1A)” after “subsection (1)”;
- (d) by inserting in subsection (3) “or decision” after “decree” (wherever occurring).

Appeals from courts of summary jurisdiction

186. Section 110 of the Principal Act is amended by omitting from subsection (1) “subsection (2)” and substituting “subsections (2) and (5)”.

Recovery of debts

187. Section 113 of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraphs:

“(b) may be sued for and recovered by the Registrar or a Deputy Registrar suing in his or her official name; and

(c) may be recovered in:

(i) a court having jurisdiction for the recovery of debts up to the amount of the debt; or

(ii) a court having jurisdiction under this Act.”.

Order to comply with requirement

188. Section 121 of the Principal Act is amended by omitting from paragraphs (1) (a) and (b) “120 (1)” and substituting “120 (3)”.

PART 11—AMENDMENTS OF THE FAMILY LAW ACT 1975

Principal Act

189. In this Part, “Principal Act” means the *Family Law Act 1975*.

Certain proceedings to be instituted only under Part

190. Section 63A of the Principal Act is amended by adding at the end the following subsection:

“(2) Subsection (1) does not apply in relation to the institution of proceedings under the *Child Support (Assessment) Act 1989*.”.

191. After section 66B of the Principal Act the following section is inserted:

Application of Division to children to whom Child Support (Assessment) Act applies

“66BA. A court having jurisdiction under this Part must not, at any time, make, revive or vary an order for the maintenance of a child on the application of a person (in this section called the ‘applicant’) against a person (in this section called the ‘respondent’) if an application could properly be made, at that time, under the *Child Support (Assessment) Act 1989* by the applicant for administrative assessment of child support (within the meaning of that Act) for the child seeking payment of the child support from the respondent (whether or not such an application has in fact been made by the applicant or another person).”.

Matters to be taken into consideration in relation to spousal maintenance

192. Section 75 of the Principal Act is amended:

(a) by omitting from paragraph (2) (n) “and”;

- (b) by inserting after paragraph (2) (n) the following paragraph:
“(na) any child support under the *Child Support (Assessment) Act 1989* that a party to the marriage has provided, or is to provide, for a child of the marriage; and”.

Alteration of property interests

193. Section 79 of the Principal Act is amended:

- (a) by omitting from paragraph (4) (e) “and”;
(b) by adding at the end the following word and paragraph:
“; and (g) any child support under the *Child Support (Assessment) Act 1989* that a party to the marriage has provided, or is to provide, for a child of the marriage.”.

Registered maintenance agreements

194. Section 86 of the Principal Act is amended by inserting after subsection (3A) the following subsection:

“(3B) Where:

- (a) a maintenance agreement is, at any time, registered under subsection (1); and
(b) the maintenance agreement makes provision for the maintenance of a child; and
(c) an application could properly be made, at that time, under the *Child Support (Assessment) Act 1989* by one of the parties to the agreement for administrative assessment of child support (within the meaning of that Act) for the child, seeking payment of the child support by the other party to the agreement (whether or not such an application has in fact been made by the party or by another person);

the maintenance agreement, so far as it makes provision for the maintenance of the child, has no effect and is not enforceable in any way.”.

Operation of maintenance agreements entered into in substitution for rights under Act

195. Section 87 of the Principal Act is amended by inserting after subsection (4C) the following subsection:

“(4D) Where:

- (a) a maintenance agreement that makes provision as mentioned in subsection (1) is, at any time, approved by the court; and
(b) the maintenance agreement makes provision for the maintenance of a child; and
(c) an application could properly be made, at that time, under the *Child Support (Assessment) Act 1989* by one of the parties to the agreement for administrative assessment of child support (within the meaning of that Act) for the child seeking payment of the child

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support by the other party to the agreement (whether or not such an application has in fact been made by the party or by another person);

the maintenance agreement, so far as it makes provision for the maintenance of the child, has no effect and is not enforceable in any way.”.

PART 12—AMENDMENTS OF THE SOCIAL SECURITY ACT 1947

Principal Act

196. In this Part, “Principal Act” means the *Social Security Act 1947*³.

Interpretation

197. Section 3 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“‘child support’ means financial support under the *Child Support (Assessment) Act 1989*, including financial support by way of lump sum payment or by way of transfer or settlement of property;

‘maintenance’ includes child support;”.

Secrecy

198. Section 19 of the Principal Act is amended by inserting after subsection (5) the following subsection:

“(5A) Nothing in this section is to be taken to prevent a person from divulging or communicating information to another person if the information is divulged or communicated for the purposes of the *Child Support (Registration and Collection) Act 1988* or the *Child Support (Assessment) Act 1989*.”.

PART 13—AMENDMENT OF THE TAXATION ADMINISTRATION ACT 1953

Principal Act

199. In this Part, “Principal Act” means the *Taxation Administration Act 1953*⁴.

Application of Subdivision in relation to Child Support Acts

200. Section 8WD of the Principal Act is amended by omitting “*Child Support Act 1988*” and substituting “*Child Support (Registration and Collection) Act 1988* and the *Child Support (Assessment) Act 1989*”.

NOTES

1. No. 3, 1988, as amended. For previous amendments, see No. 132, 1988.
2. No. 53, 1975, as amended. For previous amendments, see Nos. 63, 95 and 209, 1976; No. 102, 1977; No. 23, 1979; No. 2, 1982; Nos. 67 and 72, 1983; Nos. 63, 72 and 165, 1984; Nos. 65, 166 and 193, 1985; Nos. 76 and 168, 1986; No. 141, 1987; No. 181, 1987 (as amended by No. 8, 1988); and Nos. 8 (as amended by No. 120, 1988) and 120, 1988.
3. No. 26, 1947, as amended. For previous amendments, see Nos. 38 and 69, 1948; No. 16, 1949; Nos. 6 and 26, 1950; No. 22, 1951; Nos. 41 and 107, 1952; No. 51, 1953; No. 30, 1954; Nos. 15 and 38, 1955; Nos. 67 and 98, 1956; No. 46, 1957; No. 44, 1958; No. 57, 1959; No. 45, 1960; No. 45, 1961; Nos. 1 and 95, 1962; No. 46, 1963; Nos. 3 and 63, 1964; Nos. 57 and 152, 1965; No. 41, 1966; Nos. 10 and 61, 1967; No. 65, 1968; No. 94, 1969; Nos. 2 and 59, 1970; Nos. 16 and 67, 1971; Nos. 1, 14, 53 and 79, 1972; Nos. 1, 26, 48 (as amended by No. 135, 1988), 103 and 216, 1973; Nos. 2, 23 and 91, 1974; Nos. 34, 56, 101 and 110, 1975; Nos. 26, 62 and 111 (as amended by No. 135, 1988), 1976; No. 159, 1977; No. 128, 1978; No. 121, 1979 (as amended by Nos. 37 and 98, 1982; and No. 135, 1988); No. 130, 1980; Nos. 61 and 170, 1981; No. 159, 1981 (as amended by No. 98, 1982; and No. 135, 1988); Nos. 37, 98 and 148, 1982; Nos. 4 and 36, 1983; No. 69, 1983 (as amended by No. 78, 1984; and No. 95, 1985); Nos. 46, 78, 93 (as amended by No. 95, 1985), 120 (as amended by No. 95, 1985), 134 and 165, 1984; Nos. 24, 52, 95, 127 and 169 (as amended by No. 106, 1986), 1985; Nos. 5, 28 (as amended by No. 78, 1987), 33, 106, 130 and 152, 1986; Nos. 77, 88 and 130 (as amended by No. 133, 1988), 1987; Nos. 13, 35, 58, 75, 85, 133 and 135, 1988; and Nos. 59, 83 and 84, 1989.
4. No. 1, 1953, as amended. For previous amendments, see Nos. 28, 39, 40 and 52, 1953; No. 18, 1955; No. 39, 1957; No. 95, 1959; No. 17, 1960; No. 75, 1964; No. 155, 1965; No. 93, 1966; No. 120, 1968; No. 216, 1973; No. 133, 1974; No. 37, 1976; Nos. 19 and 59, 1979; Nos. 39 and 117, 1983; No. 123, 1984; No. 65, 1985 (as amended by No. 193, 1985); Nos. 4, 47, 104, 123 and 168, 1985; Nos. 41, 46, 48, 49, 112, 144 and 154, 1986; Nos. 58 and 62, 1987; and Nos. 95 and 97, 1988.

*[Minister's second reading speech made in—
House of Representatives on 4 June 1989
Senate on 29 August 1989]*