



**Child Support Legislation Amendment
(Reform of the Child Support Scheme—
Initial Measures) Act 2006**

No. 53, 2006

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Child Support Legislation Amendment (Reform of the Child Support Scheme— Initial Measures) Act 2006

No. 53, 2006

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

[Assented to 15 June 2006]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Child Support Legislation Amendment
(Reform of the Child Support Scheme—Initial Measures) Act 2006*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	15 June 2006
2. Schedule 1	The later of: (a) the start of the day after the day on which this Act receives the Royal Assent; and (b) the start of 1 July 2006.	1 July 2006 (paragraph (b) applies)
3. Schedule 2, Part 1	The later of: (a) the start of the day after the day on which this Act receives the Royal Assent; and (b) the start of 1 July 2006.	1 July 2006 (paragraph (b) applies)
4. Schedule 2, item 10	The later of: (a) the start of the day after the day on which this Act receives the Royal Assent; and (b) the start of 1 July 2006. However, if section 1 of the <i>Child Support Legislation Amendment Act 2006</i> commences at or before that time, the provision(s) do not commence at all.	1 July 2006 (paragraph (b) applies)
5. Schedule 2, item 11	Immediately before the commencement of item 4 of Schedule 3 to the <i>Child Support Legislation Amendment Act 2006</i> . However, if section 1 of the <i>Child Support Legislation Amendment Act 2006</i> commences at or before the time when Schedule 1 to this Act commences, the provision(s) do not commence at all.	Does not commence

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
6. Schedule 2, item 12	The later of: (a) the time when Schedule 1 to this Act commences; and (b) immediately after the commencement of item 21 of Schedule 1 to the <i>Child Support Legislation Amendment Act 2006</i> .	Does not commence
7. Schedule 2, Part 3	The later of: (a) the start of the day after the day on which this Act receives the Royal Assent; and (b) the start of 1 July 2006.	1 July 2006 (paragraph ((b) applies)
8. Schedules 3 and 4	The later of: (a) the start of the day after the day on which this Act receives the Royal Assent; and (b) the start of 1 July 2006.	1 July 2006 (paragraph ((b) applies)
9. Schedule 5	The day on which this Act receives the Royal Assent.	15 June 2006

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

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

4 Extension of amended Child Support Acts to Western Australia in relation to exnuptial children

- (1) The Parliament of the Commonwealth intends that a Child Support Act, so far as it is amended by this Act and any other later Act in

relation to the maintenance of exnuptial children, not extend to Western Australia, unless and until one of the following events occurs:

- (a) the Parliament of Western Australia refers to the Parliament of the Commonwealth the matter of the maintenance of exnuptial children or matters that include that matter;
 - (b) Western Australia adopts the Child Support Act, as so amended.
- (2) The Parliament of the Commonwealth also intends that, unless and until one of those events occurs, the Child Support Act continue to extend to Western Australia in relation to the maintenance of exnuptial children as if those amendments had not been made.

Note: If a Child Support Act is amended by this Act and any other later Act in relation to the maintenance of exnuptial children, unless and until one of the events mentioned in subsection (1) occurs, there are effectively 2 versions of the Child Support Act that apply in Australia. The Child Support Act, as amended, applies:

- (a) in all States and Territories in relation to children of marriages; and
- (b) in all States and Territories, except Western Australia, in relation to exnuptial children.

The Child Support Act continues to apply in Western Australia in relation to exnuptial children as if those amendments had not been made.

- (3) In this section:

Child Support Act means:

- (a) the *Child Support (Registration and Collection) Act 1988*; or
- (b) the *Child Support (Assessment) Act 1989*.

Schedule 1—Minimum annual rate of child support

Child Support (Assessment) Act 1989

1 Section 5

Insert:

index number for a quarter has the meaning given by subsection 66(4).

2 Section 5

Insert:

minimum annual rate of child support in respect of a child support period has the meaning given by subsection 66(4).

3 Subsection 66(1)

Omit “an amount per annum less than \$260”, substitute “less than the minimum annual rate of child support in respect of that period”.

Note: The heading to section 66 is altered by inserting “**annual**” after “**Minimum**”.

4 Subsection 66(1)

Omit “\$260” (second occurring), substitute “that minimum annual rate”.

5 Subsection 66(2)

Omit “\$260”, substitute “the minimum annual rate of child support in respect of that period”.

6 Subsection 66(3)

Omit “of \$260 per annum”, substitute “equal to the minimum annual rate of child support in respect of the relevant child support period”.

7 At the end of section 66

Add:

Meaning of minimum annual rate of child support

- (4) In this Act, the *minimum annual rate of child support* in respect of a child support period is worked out using the following formula:

$$\$320 \times \frac{\text{Highest index number for the September quarter of 2005 or for the September quarter of a later year that ends before the child support period commences}}{\text{Index number for the September quarter of 2005}}$$

where:

index number for a quarter is the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities and is published by the Australian Statistician in respect of that quarter.

- (5) Subject to subsection (6), if at any time (whether before or after the commencement of this subsection), the Australian Statistician publishes an index number for a quarter in substitution for an index number previously published by the Australian Statistician for that quarter, the publication of the later index number is to be disregarded for the purposes of subsection (4).
- (6) If at any time the Australian Statistician changes the reference base for the Consumer Price Index, regard is to be had, for the purposes of applying subsection (4) after the change takes place, only to index numbers published in terms of the new reference base.

8 Subsection 66A(2)

Omit “\$260”, substitute “the minimum annual rate of child support in respect of that period”.

9 Subsections 98A(4) and (5)

Omit “under an assessment to a rate below \$260 per annum”, substitute “in relation to a day in a child support period under an assessment to a rate below the minimum annual rate of child support in respect of that period”.

10 After paragraph 155(d)

Insert:

and (e) the minimum annual rate of child support;

11 Application

The amendments made by this Schedule apply in relation to a day in a child support period, being a day that is, or is after, the day on which this Schedule commences.

Schedule 2—Lower cap on child support

Part 1—Main amendments

Child Support (Assessment) Act 1989

1 Section 5 (definition of *relevant AWE amount*)

Repeal the definition.

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

Repeal the definition.

3 Section 42

Omit “relevant AWE amount” (first occurring), substitute “EAWE amount”.

Note: The heading to section 42 is altered by omitting “**relevant AWE amount**” and substituting “**EAWE amount**”.

4 Section 42 (formula)

Repeal the formula, substitute:

$$\left(2.5 \times \begin{array}{l} \text{Yearly equivalent} \\ \text{of the EAWE amount} \end{array} \right) - \text{Exempted income amount}$$

5 Subsection 52(2) (paragraph (b) of the definition of *maximum possible child support liability*)

Omit “relevant AWE amount”, substitute “EAWE amount”.

6 Subsection 58(1)

Omit “relevant AWE amount”, substitute “EAWE amount”.

7 Subparagraphs 98S(1)(f)(i) and 118(1)(f)(ii)

Omit “relevant AWE amount”, substitute “EAWE amount”.

8 Section 154

Omit “of the full-time adult average weekly total earnings, or”.

Note: The heading to section 154 is altered by omitting “**AWE or**”.

9 Paragraph 155(a)

Omit “of the relevant AWE amount, and”.

Note: The heading to section 155 is altered by omitting “**AWE**” and substituting “**EAW**”.

Schedule 2 Lower cap on child support

Part 2 Amendments contingent on the Child Support Legislation Amendment Act 2006

Part 2—Amendments contingent on the Child Support Legislation Amendment Act 2006

Division 1—Amendments that might not commence

Child Support (Assessment) Act 1989

10 Section 5

Insert:

yearly equivalent of the EAWE amount, in relation to a child support period, means 52 times the EAWE amount in relation to the child support period.

Child Support Legislation Amendment Act 2006

11 Item 4 of Schedule 3

Repeal the item.

Division 2—Amendment that commences after the Child Support Legislation Amendment Act 2006 commences

Child Support (Assessment) Act 1989

12 Subsection 58C(2)

Omit “relevant AWE amount”, substitute “EAWE amount”.

Part 3—Application

13 Application

- (1) The amendments made by this Schedule (other than item 12) apply in relation to a day in a child support period, being a day that is, or is after, the day on which Part 1 of this Schedule commences.
- (2) The amendment made by item 12 of this Schedule applies in relation to a day in a child support period, being a day that is, or is after, the later of the following days:
 - (a) the day on which Part 1 of this Schedule commences;
 - (b) the day on which item 12 of this Schedule commences.

Schedule 3—Earning capacity of a parent of a child

Child Support (Assessment) Act 1989

1 Subparagraph 117(2)(c)(i)

Omit “either parent or”.

Note 1: The following heading to subsection 117(1) is inserted “*Court may make departure order*”.

Note 2: The following heading to subsection 117(2) is inserted “*Grounds for departure order*”.

2 After subparagraph 117(2)(c)(i)

Insert:

(ia) because of the income, property and financial resources of either parent; or

(ib) because of the earning capacity of either parent; or

Note: The following heading to subsection 117(3) is inserted “*High costs involved in enabling parent to have contact with child*”.

3 Subsection 117(3A)

Omit “sub-subparagraph 117(2)(b)(i)(C)”, substitute “sub-subparagraph (2)(b)(i)(C)”.

Note: The following heading to subsection 117(3A) is inserted “*High child care costs*”.

4 Paragraph 117(4)(d)

Omit “earning capacity,”.

Note: The following heading to subsection 117(4) is inserted “*Matters to consider for purposes of subparagraph (1)(b)(ii)*”.

5 After paragraph 117(4)(d)

Insert:

(da) the earning capacity of each parent who is a party to the proceeding; and

Note: The following heading to subsection 117(6) is inserted “*Matters to consider for purposes of paragraph (4)(b)*”.

6 Subsection 117(7)

Omit “or a parent of the child”.

Note: The following heading to subsection 117(7) is inserted “*Matters to consider for purposes of paragraph (4)(c)*”.

7 Paragraph 117(7)(a)

Omit “or parent” (wherever occurring).

8 After subsection 117(7)

Insert:

Matters to consider for purposes of paragraph (4)(d)

(7A) In having regard to the income, property and financial resources of a parent of the child, the court must:

- (a) have regard to the capacity of the parent to derive income, including any assets of, under the control of, or held for the benefit of, the 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 carer entitled to child support to an income tested pension, allowance or benefit.

Determinations in respect of paragraph (4)(da)

(7B) In having regard to the earning capacity of a parent of the child, the court may determine that the parent’s earning capacity is greater than is reflected in his or her income for the purposes of this Act only if the court is satisfied that:

- (a) one or more of the following applies:
 - (i) the parent does not work despite ample opportunity to do so;
 - (ii) the parent has reduced the number of hours per week of his or her employment or other work below the normal number of hours per week that constitutes full-time

- work for the occupation or industry in which the parent is employed or otherwise engaged;
- (iii) the parent has changed his or her occupation, industry or working pattern; and
- (b) the parent’s decision not to work, to reduce the number of hours, or to change his or her occupation, industry or working pattern, is not justified on the basis of:
- (i) the parent’s caring responsibilities; or
- (ii) the parent’s state of health; and
- (c) the parent has not demonstrated that it was not a major purpose of that decision to affect the administrative assessment of child support in relation to the child.

Note 1: The following heading to subsection 117(8) is inserted “*Matters to consider for purposes of paragraph (4)(f)*”.

Note 2: The following heading to subsection 117(9) is inserted “*Subsections not to limit consideration of other matters*”.

9 Subsection 124(3)

After “(7)”, insert “, (7A)”.

10 After subsection 124(3)

Insert:

- (3A) In having regard to the earning capacity of a parent of the child under paragraph 117(4)(da), the court may determine that the parent’s earning capacity is greater than is reflected in his or her income for the purposes of this Act only if the court is satisfied as mentioned in subsection 117(7B).

11 Subsection 124(5)

After “(3)”, insert “, (3A)”.

12 Subsection 125(5)

After “(7)”, insert “, (7A)”.

13 After subsection 125(5)

Insert:

- (5A) In having regard to the earning capacity of a parent of the child under paragraph 117(4)(da), the court may determine that the

parent's earning capacity is greater than is reflected in his or her income for the purposes of this Act only if the court is satisfied as mentioned in subsection 117(7B).

14 Subsection 125(7)

After “(5)”, insert “, (5A)”.

15 Subsection 129(5)

After “(7)”, insert “, (7A)”.

16 After subsection 129(5)

Insert:

(5A) In having regard to the earning capacity of a parent of the child under paragraph 117(4)(da), the court may determine that the parent's earning capacity is greater than is reflected in his or her income for the purposes of this Act only if the court is satisfied as mentioned in subsection 117(7B).

17 Subsection 129(7)

After “(5)”, insert “, (5A)”.

18 Application

The amendments made by this Schedule apply in relation to:

- (a) decisions made by the Registrar under Division 2 of Part 6A on or after the day on which this Schedule commences; and
- (b) determinations made by the Registrar under Division 3 of Part 6A on or after the day on which this Schedule commences; and
- (c) decisions made by the Registrar under Division 5 of Part 6A on or after the day on which this Schedule commences; and
- (d) decisions made by a court under Division 4 or 5 of Part 7 on or after the day on which this Schedule commences.

Schedule 4—Prescribed non-agency payments

Child Support (Registration and Collection) Act 1988

1 Subsection 71C(1)

Omit “25%” (wherever occurring), substitute “30%”.

Note: The heading to section 71C is altered by omitting “25%” and substituting “30%”.

2 Application

The amendment made by this Schedule applies in respect of any uncredited amount (whether arising before, on or after the day on which this Schedule commences) that is credited on or after that day.

Schedule 5—Exnuptial children and Western Australia

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

Child Support (Assessment) Act 1989

1 Subsection 13(1)

After “maintenance of”, insert “exnuptial”.

Note 1: The heading to section 13 is altered by inserting “**exnuptial**” after “**maintenance of**”.

Note 2: The following heading to subsection 13(1) is inserted “*Extension of Act to States (except Western Australia)*”.

2 Subsection 13(2)

Repeal the subsection, substitute:

Extension of Act to Western Australia

(2) If:

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

then, subject to subsections (4), (5), (5A) and (5B), this Act in so far as it relates to the maintenance of exnuptial children also extends to Western Australia.

3 Subsection 13(3)

After “maintenance of”, insert “exnuptial”.

Note: The following heading to subsection 13(3) is inserted “*Application of Act to Territories*”.

4 Subparagraph 13(4)(a)(i)

After “maintenance of”, insert “exnuptial”.

Note: The following heading to subsection 13(4) is inserted “*Limitations on extension of Act to States*”.

5 Subparagraph 13(4)(a)(ii)

Omit “or are included in”.

6 Paragraph 13(4)(b)

After “maintenance of”, insert “exnuptial”.

7 At the end of subsection 13(4)

Add:

Note: See subsections (5A) and (5B) for the extension of this Act to Western Australia if the Act is amended in relation to the maintenance of exnuptial children.

8 At the end of section 13

Add:

(5A) The Parliament of the Commonwealth intends that this Act, so far as it is amended by one or more other Acts in relation to the maintenance of exnuptial children, not extend to Western Australia, unless and until one of the following events occurs:

- (a) the Parliament of Western Australia refers to the Parliament of the Commonwealth the matter of the maintenance of exnuptial children or matters that include that matter;
- (b) Western Australia adopts this Act, as so amended.

(5B) The Parliament of the Commonwealth also intends that, unless and until one of those events occurs, this Act continue to extend to Western Australia in relation to the maintenance of exnuptial children as if those amendments had not been made.

Note: If this Act is amended by one or more other Acts in relation to the maintenance of exnuptial children, unless and until one of the events mentioned in subsection (5A) occurs, there are effectively 2 versions of this Act that apply in Australia. This Act, as amended, applies:

- (a) in all States and Territories in relation to children of marriages; and
- (b) in all States and Territories, except Western Australia, in relation to exnuptial children.

This Act continues to apply in Western Australia in relation to exnuptial children as if those amendments had not been made.

Part 2—Amendment of the Child Support (Registration and Collection) Act 1988

Child Support (Registration and Collection) Act 1988

9 Subsection 5(1)

After “maintenance of”, insert “exnuptial”.

Note 1: The heading to section 5 is altered by inserting “**exnuptial**” after “**maintenance of**”.

Note 2: The following heading to subsection 5(1) is inserted “*Extension of Act to States (except Western Australia)*”.

10 Subsection 5(1)

After “Victoria,”, insert “Queensland,”.

11 Subsection 5(2)

Repeal the subsection, substitute:

Extension of Act to Western Australia

(2) If:

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

then, subject to subsections (4), (5), (5A) and (5B), this Act in so far as it relates to the maintenance of exnuptial children also extends to Western Australia.

12 Subsection 5(3)

After “maintenance of”, insert “exnuptial”.

Note: The following heading to subsection 5(3) is inserted “*Application of Act to Territories*”.

13 Subparagraph 5(4)(a)(i)

After “maintenance of”, insert “exnuptial”.

Note: The following heading to subsection 5(4) is inserted “*Limitations on extension of Act to States*”.

14 Subparagraph 5(4)(a)(ii)

Omit “or are included in”.

15 Paragraph 5(4)(b)

After “maintenance of”, insert “exnuptial”.

16 At the end of subsection 5(4)

Add:

Note: See subsections (5A) and (5B) for the extension of this Act to Western Australia if the Act is amended in relation to the maintenance of exnuptial children.

17 At the end of section 5

Add:

(5A) The Parliament of the Commonwealth intends that this Act, so far as it is amended by one or more other Acts in relation to the maintenance of exnuptial children, not extend to Western Australia, unless and until one of the following events occurs:

- (a) the Parliament of Western Australia refers to the Parliament of the Commonwealth the matter of the maintenance of exnuptial children or matters that include that matter;
- (b) Western Australia adopts this Act, as so amended.

(5B) The Parliament of the Commonwealth also intends that, unless and until one of those events occurs, this Act continue to extend to Western Australia in relation to the maintenance of exnuptial children as if those amendments had not been made.

Note: If this Act is amended by one or more other Acts in relation to the maintenance of exnuptial children, unless and until one of the events mentioned in subsection (5A) occurs, there are effectively 2 versions of this Act that apply in Australia. This Act, as amended, applies:

- (a) in all States and Territories in relation to children of marriages; and
- (b) in all States and Territories, except Western Australia, in relation to exnuptial children.

This Act continues to apply in Western Australia in relation to exnuptial children as if those amendments had not been made.

Note: The heading to section 6 is altered by adding at the end “**of marriages**”.

Part 3—Extension of amended Child Support Acts to Western Australia in relation to exnuptial children

18 Definition of *Child Support Act*

In this Part:

Child Support Act means:

- (a) the *Child Support (Registration and Collection) Act 1988*; or
- (b) the *Child Support (Assessment) Act 1989*.

19 Extension of amended Child Support Acts to Western Australia in relation to exnuptial children

- (1) The Parliament of the Commonwealth intends, and is taken always to have intended, that a Child Support Act, so far as it was amended, before the commencement of this item, by one or more of the Acts mentioned in subitem (3) in relation to the maintenance of exnuptial children, not extend to Western Australia, unless and until Western Australia adopted or adopts the Child Support Act, as so amended.
- (2) The Parliament of the Commonwealth intends, and is taken always to have intended, that:
 - (a) unless and until that occurred, the Child Support Act continued to extend to Western Australia; or
 - (b) unless and until that occurs, the Child Support Act continues to extend to Western Australia;

in relation to the maintenance of exnuptial children as if those amendments had not been made.

Note: If a Child Support Act is amended in relation to the maintenance of exnuptial children, unless and until Western Australia adopts the Child Support Act, as amended, there are effectively 2 versions of the Child Support Act that apply in Australia. The Child Support Act, as amended, applies:

- (a) in all States and Territories in relation to children of marriages;
and
- (b) in all States and Territories, except Western Australia, in relation to exnuptial children.

The Child Support Act continues to apply in Western Australia in relation to exnuptial children as if those amendments had not been made.

Schedule 5 Exnuptial children and Western Australia

Part 3 Extension of amended Child Support Acts to Western Australia in relation to exnuptial children

- (3) The following Acts amended one or both Child Support Acts:
- (a) the *Child Support Amendment Act 1988*;
 - (b) the *Social Security and Veterans' Affairs Legislation Amendment Act (No. 3) 1989*;
 - (c) the *Child Support Legislation Amendment Act 1990*;
 - (d) the *Taxation Laws Amendment Act (No. 3) 1991*;
 - (e) the *Child Support Legislation Amendment Act 1992*;
 - (f) the *Child Support Legislation Amendment Act (No. 2) 1992*;
 - (g) the *Corporate Law Reform Act 1992*;
 - (h) the *Insolvency (Tax Priorities) Legislation Amendment Act 1993*;
 - (i) the *Child Support Legislation Amendment Act 1995*;
 - (j) the *Social Security Legislation Amendment (Family Measures) Act 1995*;
 - (k) the *Family Law Reform (Consequential Amendments) Act 1995*;
 - (l) the *Taxation Laws Amendment Act (No. 3) 1995*;
 - (m) the *Statute Law Revision Act 1996*;
 - (n) the *Commonwealth Services Delivery Agency (Consequential Amendments) Act 1997*;
 - (o) the *Income Tax (Consequential Amendments) Act 1997*;
 - (p) the *Child Support Legislation Amendment Act (No. 1) 1997*;
 - (q) the *Audit (Transitional and Miscellaneous) Amendment Act 1997*;
 - (r) the *Social Security Legislation Amendment (Parenting and Other Measures) Act 1997*;
 - (s) the *Taxation Laws Amendment Act (No. 3) 1998*;
 - (t) the *Social Security and Veterans' Affairs Legislation Amendment (Budget and Other Measures) Act 1998*;
 - (u) the *Child Support Legislation Amendment Act 1998*;
 - (v) the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*;
 - (w) the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*;
 - (x) the *Public Employment (Consequential and Transitional) Amendment Act 1999*;
 - (y) the *A New Tax System (Tax Administration) Act 1999*;
-

- (z) the *Federal Magistrates (Consequential Amendments) Act 1999*;
- (za) the *A New Tax System (Family Assistance and Related Measures) Act 2000*;
- (zb) the *Child Support Legislation Amendment Act 2000*;
- (zc) the *New Business Tax System (Alienation of Personal Services Income) Act 2000*;
- (zd) the *Family Law Amendment Act 2000*;
- (ze) the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*;
- (zf) the *Child Support Legislation Amendment Act 2001*;
- (zg) the *Family and Community Services Legislation Amendment (Application of Criminal Code) Act 2001*;
- (zh) the *Financial Framework Legislation Amendment Act 2005*;
- (zi) the *Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005*;
- (zj) the *Jurisdiction of Courts (Family Law) Act 2006*;
- (zk) the *Jurisdiction of the Federal Magistrates Court Legislation Amendment Act 2006*;
- (zl) the *Financial Framework Legislation Amendment Act (No. 1) 2006*;
- (zm) the *Family Law Amendment (Shared Parental Responsibility) Act 2006*.

20 Payments and amounts referred to in section 75 of the *Child Support (Registration and Collection) Act 1988*

(1) If:

- (a) a payment purported to be a payment or repayment of an amount referred to in section 75 of the *Child Support (Registration and Collection) Act 1988* in relation to the maintenance of an exnuptial child because of the extension of that Act to Western Australia; and
- (b) the payment was made:
 - (i) after a Child Support Act was amended by one or more other Acts in relation to the maintenance of exnuptial children; and

Schedule 5 Exnuptial children and Western Australia

Part 3 Extension of amended Child Support Acts to Western Australia in relation to exnuptial children

- (ii) before the earlier of the day on which Western Australia adopted the Child Support Act, as so amended, or the day on which this item commences;

then the payment may, to the extent that it has not already been repaid to the Commonwealth before this item commences, be recovered by the Commonwealth from the person as a debt due to the Commonwealth.

- (2) A person to whom a payment referred to in subitem (1) was made is entitled, on the commencement of this item, to be paid, by the Commonwealth, an amount equal to the amount of the debt due to it by the person under subitem (1).
- (3) The Consolidated Revenue Fund is appropriated for the purpose of payments under subitem (2).
- (4) The Commonwealth may set-off the amount of a debt due to it by a person under subitem (1) against an amount that is payable to that person under subitem (2).
- (5) Despite subitems (1) and (2), in applying section 79 of the *Child Support (Registration and Collection) Act 1988* after the commencement of this item, any payment referred to in subitem (1) is to be counted as though it had been validly made under section 76 of that Act.
- Note: A person will therefore be liable to repay to the Commonwealth the amount of any overpayment of that purported payment to the person.
- (6) This item does not, by implication, affect the recovery or set-off of other overpayments purporting to be made under the *Child Support (Registration and Collection) Act 1988*.
- (7) To avoid doubt, this item applies to a payment that, because of section 71AA of the *Child Support (Registration and Collection) Act 1988*, is taken to have been paid under section 76 of that Act.

21 Validation of past rights and liabilities

- (1) This item applies if, and during the period when, the rights and liabilities of a person under a Child Support Act were different from the rights and liabilities that the person would have had under that Act because:
- (a) the Child Support Act was amended, before the commencement of this item, by one or more of the Acts
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- mentioned in subitem 19(3) in relation to the maintenance of exnuptial children; and
- (b) Western Australia did not adopt the Child Support Act, as so amended.
- (2) During that period, the rights and liabilities of the person are, by force of this item, declared to be, and always to have been, the same as if:
- (a) the Child Support Act, as so amended, did not extend to Western Australia; and
 - (b) the Child Support Act continued to extend to Western Australia in relation to the maintenance of exnuptial children as if those amendments had not been made.
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*[Minister's second reading speech made in—
House of Representatives on 10 May 2006
Senate on 13 June 2006]*

(51/06)
