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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS
LEGISLATION AMENDMENT (CHILD SUPPORT REFORM
CONSOLIDATION AND OTHER MEASURES) BILL 2007**

EXPLANATORY MEMORANDUM

**(Circulated by the authority of the
Minister for Families, Community Services and Indigenous Affairs,
the Hon Mal Brough MP)**

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LEGISLATION AMENDMENT (CHILD SUPPORT REFORM
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OUTLINE

This bill contains several measures affecting Families, Community Services and Indigenous Affairs and related legislation.

Child support consolidation amendments

The bill makes minor consolidating refinements to the child support scheme, and some minor consequential amendments to the family assistance law, to clarify and refine the operation of the government's major 2006 legislation that restructured the scheme in line with the recommendations of the Ministerial Taskforce on Child Support, chaired by Professor Patrick Parkinson. It also clarifies a small number of pre-existing issues or anomalies with the operation of the scheme.

Relocation of measures from the Child Support Legislation Amendment Bill 2004

This bill contains amendments, relocated from the Child Support Legislation Amendment Bill 2004, that are still required in light of the Child Support Taskforce reforms. The 2004 bill, which will now no longer be needed, was introduced in late 2004 but its passage was delayed, largely because the imminent Taskforce reforms overshadowed it. The measures from the 2004 bill now incorporated in this bill are:

- move into the primary child support legislation provisions currently contained in regulations relating to overseas maintenance arrangements (thus, honouring a commitment made by the government during passage of the enabling provisions for the regulations); minor or consequential amendments to the family law legislation are also being made;
- make amendments to improve equity between parents in access to court in relation to decisions about parentage of a child and to streamline certain review processes; and
- make various child support minor policy refinements and technical corrections.

Maintenance income test

The bill amends the maintenance income test provisions in the *A New Tax System (Family Assistance) Act 1999*. These amendments:

- clarify the meaning of 'amount received' and 'amount payable' in the formula used to work out the notional amount of maintenance income an individual is taken to have received under a child support agreement or court order where there is an underpayment of child support that is registered for collection by the Child Support Agency;
- clarify that maintenance income received by a payee for one or more children will reduce the payee's amount of family tax benefit (FTB) Part A above the base rate for those children only;
- ensure that the benefits of the maintenance income credit (MIC) are available only where FTB is claimed through Centrelink or Medicare Australia and not through the tax system from the Australian Taxation Office;
- refine the MIC provisions so that they operate as intended; and
- reflect the new FTB treatment under the Child Support Taskforce reforms of child support agreements and lump sum child support in the MIC provisions.

Baby bonus amendments

The bill amends the family assistance law to:

- ensure that under 18 year old claimants are paid the baby bonus in 13 fortnightly instalments;
- require registration of the birth with the relevant state/territory authority as a condition of eligibility for the baby bonus; and
- rename maternity payment to 'baby bonus'.

Portability of family tax benefit

Changes are being made to allow the FTB portability period of 13 weeks for full payment to be extended for members of the Australian Defence Force and certain Australian Federal Police personnel of the International Deployment Group who are deployed overseas as part of their duties and, as a result, remain overseas for longer than 13 weeks.

Remote area allowance

The remote area allowance provisions in the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986* are being amended from 1 July 2008 to ensure that an additional allowance is payable for each FTB child and regular care child of a person.

Dependant and housekeeper rebates, and Medicare levy

Amendments are being made to the *Income Tax Assessment Act 1936* as a consequence of the Child Support Taskforce reforms, which included changes to 'FTB child' and the introduction of a concept of 'regular care child'.

Extension of the assets test exemption period

The bill amends the social security and veterans' entitlements legislation to provide a discretion to extend the assets test exemption for proceeds from the sale of a person's principal home from 12 months to up to 24 months in certain circumstances. It also provides a discretion to extend the current 12 month temporary absence from the principal home rule for absences of up to 24 months, in relation to people who have suffered loss of or damage to their homes, including through a natural disaster.

Amendments relating to income streams

This bill amends the *Social Security Act 1991* to make a number of minor amendments aimed at enhancing and improving the efficiency and effectiveness of various income streams rules.

Other minor and technical amendments

The bill also makes various amendments of a minor or technical nature to the social security law and child support Acts.

Financial impact statement

Financial impact		Total resourcing
	2006-07	\$ 2.1 m
	2007-08	\$ 0.8 m
	2008-09	\$ 0.5 m
	2009-10	\$ 0.4 m

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NOTES ON CLAUSES

Clause 1 sets out how the Act is to be cited, that is, the *Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Act 2007*.

Clause 2 provides a table that sets out the commencement dates of the various sections in, and Schedules to, the Act.

Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.

Clause 4 provides for any application, saving or transitional provision that relates to an amendment made, from 1 July 2008, by the *Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006* to a particular provision, to apply similarly to any amendment made by this Act to the particular provision.

This Explanatory Memorandum uses the following abbreviations:

- ‘Child Support Assessment Act’ means the *Child Support (Assessment) Act 1989*;
- ‘Child Support Registration and Collection Act’ means the *Child Support (Registration and Collection) Act 1988*;
- ‘Family Assistance Act’ means the *A New Tax System (Family Assistance) Act 1999*;
- ‘Family Assistance Administration Act’ means the *A New Tax System (Family Assistance) (Administration) Act 1999*;
- ‘Social Security Act’ means the *Social Security Act 1991*;
- ‘Social Security Administration Act’ means the *Social Security (Administration) Act 1999*;
- ‘Veterans’ Entitlements Act’ means the *Veterans’ Entitlements Act 1986*;
- ‘New Formula Act’ means the *Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006*;
- ‘SSAT’ means the Social Security Appeals Tribunal; and
- ‘FTB’ means family tax benefit.

Schedule 1 – Main amendments

Summary

This Schedule makes minor consolidating refinements to the child support scheme, comprised of the Child Support Assessment Act and Child Support Registration and Collection Act, and some minor consequential amendments to the Family Assistance Act to clarify and refine the operation of amendments made to the scheme by the New Formula Act, and in one minor regard, an amendment made by the *Child Support Legislation Amendment (Reform of the Child Support Scheme – Initial Measures) Act 2006*. It also clarifies a small number of pre-existing issues or anomalies with the operation of the child support scheme.

Background

The broad thrust of policy intent behind the amendments is outlined below under various headings. Detail of what each individual item is achieving is outlined in relation to each item number at 'explanation of the changes' below.

Administrative review

Exchange of information during internal review

A parent may currently seek a review by the Child Support Registrar (Registrar) if they are dissatisfied with an original decision of the Registrar. They do this by lodging an objection, which must fully set out the grounds upon which the parent argues the decision is wrong. The Registrar is then required to serve a copy of the grounds of objection on the other parent, to enable them to provide any response they wish to be considered. It is not clear from the current legislative formulation that the entire document constituting the objection must be served, along with any accompanying documents, to comply with procedural fairness requirements for the internal review. Amendments are made to achieve this.

Attendance before the SSAT

SSAT review of child support decisions has now been available since 1 January 2007. The Executive Director of the SSAT has the power to obtain information for the purposes of a review by requiring a person to attend before him or her, or an officer authorised for the purpose. In practice, people attend before members of the SSAT, rather than the Executive Director or authorised officers. The requirement is being amended to reflect this reality.

Decisions on out of time applications

If a parent wishes to apply to the SSAT for review of a child support decision, they must do so within the required time, or seek an extension of time. Currently, the Executive Director of the SSAT has 60 days within which to make such a decision, and if a decision is not made within this time, is deemed to have refused the application. It is proposed to remove this deemed refusal, leaving ensuring decisions are made in a timely way to other mechanisms, such as the SSAT's reporting requirements.

The heading to the section relating to consideration of extension of time applications by the SSAT currently erroneously refers to 'objections'. This is being corrected, to refer to applying for review.

Return of documents by the SSAT

If the SSAT makes a decision on a review, the SSAT must return to the Registrar any document that the Registrar has provided to the SSAT in connection with the review. However, as a matter of administrative ease, the Registrar does not need all documents to be returned. Amendments are being made to provide that, at the conclusion of the proceedings, the SSAT only has to return to the Registrar any original documents that the Registrar has provided at the special request of the SSAT (see below – provision of documents by the Registrar to the SSAT).

Allowing a parent to withdraw an application to the SSAT

An SSAT review for child support purposes usually involves at least three parties, namely the applicant, the Registrar, and the other party in the child support case. As a result, the jurisdiction of the SSAT does not include an automatic dismissal of the application to it, despite the fact the applicant may not wish to proceed with their application. This is because one of the other parties to the case may wish to proceed, and if the application were dismissed, they may be out of time to initiate their own proceedings. The dismissal arrangements will allow the SSAT to dismiss an application if the applicant wishes it, with notice of the dismissal sent to each of the parties. If a party wishes the application to remain on foot, they have 28 days after service of the dismissal notice to request that the SSAT reinstate the application. If the SSAT thinks it appropriate to do so, it may reinstate the application, and give such directions as appear to it to be appropriate in the circumstances. This may include removing the original applicant as a party to the review if the applicant prefers to take no further part in the review.

Provision of documents by the Registrar to the SSAT

A number of refinements to the interaction between the SSAT and the Registrar are required to ensure reviews can take place as fairly as possible. These include: requiring the Registrar to send the statement of reasons for decision to the SSAT to allow the SSAT to consider fully a parent's request to be permitted to lodge a review application outside the required timeframe; making it clear only copies of documents in the possession of the Registrar that are relevant to the decision need be provided to the SSAT unless the SSAT uses its specifically requests provision of the original document; making it clearer that the Child Support Agency (CSA) need not send a document to the other parties to the review while the SSAT is considering the CSA's application for a direction about this requirement for the document and ensuring any direction made as the result of such an application is then served on any party to the SSAT review entitled to receive documents as part of the review.

Reporting proceedings – identifying the Registrar

The reporting of child support proceedings before the SSAT or a court is restricted to reporting that does not identify the parties to the proceeding. However, the Registrar is a party to all such proceedings. It is being clarified that the restrictions upon the identification of parties does not apply to the Registrar.

Jurisdiction of courts

Jurisdiction of Magistrates courts to hear appeals on questions of law

Once a review is finalised by the SSAT, a parent who remains dissatisfied may appeal to a court on a question of law. Although not express, the provisions may be interpreted as confining the jurisdiction of such courts to courts constituted by Judges. It is intended that such appeals may be heard by the Federal Magistrates Court, and, where this is convenient, by courts of summary jurisdiction. Amendments are made to make it clear that Federal Magistrates and magistrates generally have jurisdiction to hear such matters.

Formulation of appeal bench

The Court hearing an appeal on a question of law is given a discretion to determine the constitution of the bench for consideration of the appeal. For superior courts, a full court may be constituted, or the appeal may be heard by a single Judge. For the Federal Magistrates Court or courts of summary jurisdiction, a full bench is not an option, and a single magistrate will hear the appeal. Amendments make these factors clear.

Provision of documents

A court hearing such an appeal must currently be provided the SSAT's full file on the matter. However, not all documents that had been before the SSAT may be relevant to the question of law raised, and may be unnecessary for the court to receive. An approach involving selecting only relevant documents and providing these to the court is being substituted.

Access to court where a matter is too complex to determine administratively

Amendments made by the New Formula Act changed the arrangements for review of child support decisions, including review by the SSAT. However, some decisions in relation to an application to depart from a formula assessment, have been found by the Registrar to be too complex for administrative determination. In this case, the parent may apply to a court for an order departing from the formula assessment, rather than to the SSAT. The original decision of the Registrar may have been that the matter was too complex, and this decision has not been changed on lodgement of an objection. Alternatively, it may only have been on objection that the Registrar substituted a decision that the matter is too complex for administrative determination. Amendments are made to clarify that, in both cases, the parent has a right to apply to a court.

Frivolous or vexatious applications

Neither the Child Support Assessment Act nor the Child Support Registration and Collection Act currently contain provisions allowing courts to dismiss proceedings that are frivolous and vexatious. Such powers should be available to courts hearing child support matters, and are included in both Acts by these amendments.

Retrospective determinations

Amendments made by the New Formula Act limited the retrospective effect of departure determinations either made administratively or by court order to 18 months except where a court has granted leave. Amendments clarify that, where the court grants leave, it is not limited by the determination sought by the application, and can grant leave either for the Registrar to make the determination or for a court to make an order regardless as to the determination applied for.

Grounds for departure from the formula

Amendments made by the Family Law Amendment (Shared Parental Responsibility) Act 2006

Under the family law reforms made in 2006, the terminology to describe arrangements between separated parents and their children was changed. The term 'contact' was removed from the Child Support Assessment Act, and generally replaced by the concept of 'care' for a child. Among other provisions, this substitution was made in the description of a particular ground upon which a departure from a formula assessment of child support can be made: that the parent has high costs of 'contact' with a child. However, the substitution does not reflect the original effect of the provision. The ground is not intended to include in high costs the everyday costs of providing care for the child. To make the longstanding policy intent clear, the words 'to spend time with or communicate with' are being substituted for the word 'care'.

Reflecting a parent's care for a step-child

From 1 July 2008, the moral obligation of a parent to support a step-child may form a basis for a departure from the child support formula. The circumstances in which this can occur remain limited, to avoid undermining the principle object of the child support scheme, that parents support their own children. One of the requirements is that the actual parents of the step-child are unable to support the child, for a range of reasons, including the responsibility to care for a child.

Changes were made in 2006 to narrow the ground generally known as 'capacity to earn'. In such cases, a parent's decision not to work or to reduce their work may be justified on the basis they have caring responsibilities. This is a broader concept than just care for children. For consistency, the same terminology is being used in the ground about departures for step-children, so that if the biological parents of the step-child are unable to work and support the child because they have caring responsibilities, the ground may be established. Caring responsibilities may include care for the child in question, or for another child or other person.

If a family includes a step-child, and the family satisfies the circumstances in which the step-child may be considered as a basis for departure from the formula, any consideration about whether any departure from the formula should occur on any ground should consider the effect of any proposed order on the step-child. Currently, the effect of any proposed order on the parents, the child support children, and any other person that a parent has a duty to support must be considered. However, the effect of any proposed order on the step-child should also be considered. The current formulation of the provisions in this regard may not be effective in that they appear to require a reconsideration of the departure ground, rather than considering the effect on the particular child who fits the criteria set out in the step-children departure ground. This refinement is being made.

Clarifying misleading headings about capacity to earn

From 1 July 2006, the ground of departure based upon a parent's capacity to earn was narrowed and clarified. Amendments were made to make it clear that a capacity to earn decision could only be made where certain circumstances were established. In practice, the amendments have proven unclear as to where in the reasoning process, when considering an application, the particular criteria apply, because the headings appear to narrow the otherwise broad operation of the provisions. Amendments to the headings of the sections make it clear that the limiting factors apply in all stages of considering a departure, including the establishment of a ground for departure, and considering whether a change would be just and equitable and otherwise proper.

Payee private enforcement

Orders for payment

Since 1 January 2007, payees have been able to take private enforcement action against the payer for debt, while leaving their ongoing entitlement registered for collection by the Registrar. The provisions allow courts a choice to order payment either to the Registrar or directly to the payee. It is more practical for the payment to be made to the Registrar, to allow the Registrar to maintain accurate records of amounts outstanding, and minimise disputes between the payee and payer about what payments have been made. Amendments are made to require the court to order payment to the Registrar, for disbursement to the payee. Amendments are also being made to require the payee to keep the Registrar informed of all such orders made, including details of costs orders (which are not then collectable by the Registrar). The payee must also inform the Registrar of any payments made directly to them when they have taken private enforcement action.

Apportionment

In cases in which a child support payer owes child support to a number of payees, the Registrar is required to apportion any payment received from the payer between the payees. In some circumstances, payers make payments intended to be child support directly to the payee, or to a third party on their account. This may be because the child support liability is to be collected privately, rather than by the Registrar. This may also be because the payee agrees to the crediting of such a payment against the payer's liability for child support, despite the liability generally being payable to the Registrar. However, in these cases, it is not appropriate to apportion such a payment between all payees owed child support by the particular payer, because they are payments made directly to a particular payee, or on their account. Amendments are made to make it clear that apportionment is only required in situations where the liability is collected by the Registrar, and the payment is made to the Registrar.

Interaction between the Child Support Acts

Allowing amendment of assessments

The New Formula Act made some structural alterations to the two child support Acts, including generally transferring internal review (objection) and external review (SSAT and courts) provisions into the Registration and Collection Act. This enables an objection officer or the SSAT or court to make a decision affecting an assessment. Amendments are made to allow the Registrar to reflect such decisions by making appropriate amendments to the child support assessment.

Effect of terminating events

The changes effected by the New Formula Act may enable a court hearing a matter under the Registration and Collection Act to make an order varying the child support assessment for a particular child. Currently, if an order of this type is made under the Child Support Assessment Act, the order ceases to be in force if a terminating event happens in relation to the child, for example, the child dies, or becomes a member of a couple. Amendments are being made to the Child Support Registration and Collection Act to maintain consistency between the two Acts in this regard.

Coverage of stay orders

Amendments made by the New Formula Act moved the internal review (objection) provisions from the Child Support Assessment Act to the Child Support Registration and Collection Act. Provisions relating to further review following internal review, to the SSAT and then to courts on questions of law, are similarly now located in the Child Support Registration and Collection Act. The provisions empowering courts to issue stay orders pending the finalisation of proceedings were not altered, so that a separate stay power existed in each Acts for the purposes of that Act. This has left some situations in which no stay may be ordered. These amendments ensure the complete coverage of stay powers by relocating the powers into the Child Support Registration and Collection Act.

Consistent information gathering powers

An information gathering power for the purposes of preparation for the implementation of the new formula was introduced by the New Formula Act. However, unlike the other information gathering powers already in the child support Acts, the power did not include a penalty for failure to comply. A penalty of the maximum fine (60 penalty units) is being included.

The power under the Child Support Assessment Act is currently limited to financial information where the requirement is made of a person who is not a party to a child support assessment. This is inconsistent with the broader information gathering power available to an objections officer conducting an internal review of a Child support Assessment Act decision, who is not subject to this limitation due to acting under the Child Support Registration and Collection Act. The restriction is being removed from the Child Support Assessment Act power.

Recognition of over 18 relevant dependent children

Changed commencement

The New Formula Act allowed for continuing the recognition of relevant dependent children who have reached the age of 18, in circumstances in which child support children can continue to be recognised for the purposes of a child support assessment. A child who remains in full time secondary education may continue to be recognised as though they remain 17 for the whole school year. Because the changes apply for particular school years, the previous commencement date of 1 July 2008 is impractical. This date is being brought back to commence from 1 January 2008, allowing recognition of such children for the full 2008 calendar year. While this commencement date is earlier than previously enacted, and involves a retrospective amendment of the commencement provision in the New Formula Act, it is not a retrospective change in practice because the commencement date remains in the future, so there is no practical disadvantage caused to any parent.

The dates from which and to which the child is considered

A parent's care of a relevant dependent child may be considered, generally from the date on which the child becomes a relevant dependent child, or the date upon which the Registrar is notified that the child is being cared for, if this notification occurs more than 28 days after the child becomes a relevant dependent child. Amendments are made to ensure that, where a parent's level of care for a relevant dependent child changes, these changes may also be reflected in the assessment. Similarly, if such a child aged over 18 ceases attending full-time secondary schooling in the year in which they turn 18, they will no longer be considered a relevant dependent child from that date.

Setting aside binding agreements

As currently drafted, courts could set aside binding child support agreements (made with legal advice) in a range of circumstances, including circumstances that may have been contemplated and dealt with in the agreement. It is not intended that binding agreements should be set aside lightly. This amendment restricts the scope for the setting aside of binding child support agreements, by specifying that exceptional circumstances relating to one of the children or parties to the agreement must have arisen since the making of the agreement, and that the child or party would suffer hardship if the agreement were not altered or set aside.

Notional assessments

The New Formula Act changed the approach to the calculation of FTB for parents who enter into a child support agreement from 1 July 2008. For these parents, a formula assessment of child support is calculated as though the agreement had not been made, called a 'notional' assessment. The notional assessment is used to calculate these parents' entitlement to FTB. A provisional notional assessment is made as though a standard formula assessment were being made under Part V of the Child Support Assessment Act. The resulting notional assessment is not an 'administrative assessment' for any purposes under either the Child Support Assessment Act or the Child Support Registration and Collection Act.

The provisional notional assessment may be affected by pre-existing determinations varying a standard administrative assessment, which would have continued to apply but for the fact the parents have entered into an agreement. This may include court ordered variations, or administrative variations by the Registrar as the result of a change of assessment.

Once notified of the new provisional notional assessment, the parents then have 14 days during which they may seek to update the provisional notional assessment, before it becomes a notional assessment. Parents may take advantage of any provision that is available in relation to a standard formula assessment, including recognition of post-separation costs, reduction of a fixed rate or minimum rate assessment, or other variations including changes of care, or inclusion of relevant dependent children. Variations such as lodging an estimate of income or applying for a change of assessment remain available. However, unlike a standard formula assessment, once the provisional notional assessment becomes a notional assessment, it will not be varied, unless and until a further provisional notional assessment is made. Changes such as changes in care arrangements for children, lodgement of tax returns by either parent, changes to Male Total Average Weekly Earnings (MTAWE) or the commencement of a new child support period will not vary the notional assessment. Depending upon the nature of their agreement, a parent may be able to seek a new provisional notional assessment in these circumstances. A parent with a limited agreement (made without legal advice) may seek a new provisional notional assessment at any time. A parent with a binding agreement (made with legal advice) will have a new provisional notional assessment made if the amount payable under the agreement varies by more than 15 per cent, or at the expiry of three years from the acceptance of the agreement.

One exception to the general rule that a notional assessment is not varied applies where parents have child support children who are not covered by their agreement, and each of the parents has some care of the children. In a standard formula assessment, the liability of each parent for care of children provided by the other is offset in this situation. In a situation in which some of the children are covered by an agreement, and some not, this offsetting will initially occur under Part V in the same way when the provisional notional assessment is made. However, the standard (non-notional) formula assessment for children not covered by the agreement is likely to vary during the application of the notional assessment. If this happens, the offsetting will need to be redone to calculate the correct notional assessment and actual assessment. This may result in the Registrar amending the notional assessment to reflect the change in the actual assessment for some of the parents' children. The notional assessment will remain as though made in the circumstances applying at the date when it was made. However, the offset outcome will change. This will not of itself result in the making of a new provisional notional assessment. A parent dissatisfied with the outcome of the changed offsetting has the option of objecting to the particulars of the actual assessment made for the non-agreement child or children.

If a new provisional notional assessment is made, changes that may have occurred during the application of the previous notional assessment may be reflected in the new notional assessment. These would take effect from the day the Registrar makes the new provisional notional assessment.

A minor amendment is made to the formulation of elections of income for the purposes of notional assessments, in relation to income amount orders. An income amount order may have been in force in relation to particular parents and children, but may have been overridden by the making of the agreement. In this case, such income amount order is not 'in force'. It is intended that the notional assessment be made subject to such income amount order, and amendments are made to achieve this.

Costs of children and parents with multiple cases

The new formula applying from 1 July 2008 does not deal appropriately with situations where one or other of the parents has more than one child support case, and the children are of different ages. Presently, the New Formula Act provides that in these cases the child support payable is simply divided by the number of children. This works appropriately in situations in which the children are all living in one household. However, where children are living in a number of households, it does not sufficiently recognise the fundamental principle that older children cost more to raise than younger children, and child support should be divided accordingly. Amendments are made to provide for a different method to calculate child support payable in this situation.

This changed method does not change the formula for calculating an administrative assessment as a whole. It only applies from Division 6 – The costs of the child. In particular, the new method will be used for multiple-case, mixed-age children situations instead of the more general, ‘averaged’ costs of children approach. The changed approach to the formula for parents with multiple cases becomes:

Step 1 Calculate each parent’s Child Support Income by deducting the self-support amount from their adjusted taxable income, as well as any Relevant Dependant or Multicase Allowance.

Step 2 Calculate the parents’ Combined Child Support Income by adding the parents’ Child Support Incomes.

Step 3 Determine whether the first child is a younger child or an older child.

Step 4 Calculate the cost of this child by

- i. determining what the costs of all the child support children would be if they were all in the same age bracket as this child
- ii. dividing this total cost by the number of child support children.

That is, the cost of each child X is:

$$\text{Cost of a child X} = \frac{\text{cost of the total number of children if all children were the same age as X}}{\text{total number of children}}$$

Step 5 Repeat steps 3 and 4 for each of the child support children.

Step 6 Determine the child support payable for each child according to the cost of the child as determined in steps 3 to 5 and according to the incomes and care arrangements of the parents.

Step 7 Apply the Multicase Cap to the child support payable for each child.

Step 8 Determine each parent’s total amount of child support payable to the other parent by adding the child support payable by that parent for each child.

Step 9 Determine the net child support payable by one parent to the other by offsetting the amounts resulting from step 8.

As for the general formula, where there are more than three such multi-case children, the figure for three children is used. However, this is divided by the total number of such children to obtain the cost per child.

The changed method will be relevant to Formulas 3 and 4 under the New Formula Act. It may also affect Formulas 5 and 6 if the parent involved has a number of child support cases.

This method will not apply in relation to relevant dependent children. The costs of relevant dependent children will continue to be worked out using the existing averaging non-age specific method, even if the costs of the child support children are to be calculated using the 'multi-case' method.

The multi-case allowance is an allowance to recognise a parent's responsibility to children in another child support case. The allowance will now be calculated by adding the costs of all children in other child support cases, with the costs calculated using the multi-case cost method.

The multi-case cap, which limits the child support which may be paid for a particular child to ensure a parent with multiple cases does not pay more child support than they would pay if all the children were in the same case, will be based upon the cost of the individual child for whom the child support is being capped. The cost of this child, however, will be calculated using the multi-case cost method, by assuming that all the child support children of the parent are the same age, calculating the costs from the costs of children table for that number of children of that age, and then dividing this cost by the number of such children to obtain the cost for one child.

Example

Jack has two child support cases: one with Anita, with whom he has a 15 year old son, Tim, and one with Sue, with whom he has a 13 year old daughter, Fiona, and a 9 year old son, Fred. Jack has less than 14 per cent contact with Tim, and has 50 per cent care of Fiona and Fred. None of the parents has a relevant dependant. Jack has an income of \$40,000, Anita receives parenting payment single, so has no income above the self-support amount, and Sue has an income of \$30,000.

To calculate child support for Tim:

Step 1 After deduction of the self support amount, Jack has a child support income of \$23,117. Jack's multi-case allowance when calculating child support for Tim is equal to the total of the multi-case costs for Fiona and Fred. The multi-case cost for Fiona is calculated according to what her cost would be if all of Jack's three child support children were the same age as her (that is, older) children, and based on Jack's income alone. The cost of three older children in a case with a combined child support income of \$23,117 is \$7,397, so Fiona's multi-case cost is \$2,466. The multi-case cost for Fred is calculated according to what his cost would be if all of Jack's three child support children were the same age as his (that is, younger) children, and based on Jack's income alone. The cost of three younger children in a case with a combined child support income of \$23,117 is \$6,242, so Fred's multi-case cost is \$2,081.

Therefore, Jack's multi-case allowance when calculating child support for Tim is \$2,466 plus \$2,081, which is \$4,547. His child support income is therefore \$40,000 minus the self-support amount of \$16,883 minus \$4,547, which is \$18,570. Anita's child support income is \$0, as she has no income above the self-support amount.

Step 2 Jack and Anita's combined child support Income is \$18,570 plus \$0, which is \$18,570.

Step 3 There is only one child in the case. Tim is an older child.

Step 4 The cost for one older child in a case with a combined child support income of \$18,570 is \$4,271. This means that Tim's cost is \$4,271.

Step 5 There are no other children in the case.

Step 6 Jack has 100 per cent of the combined child support income, so must meet 100 per cent of Tim's cost. He doesn't meet any of the cost through care, so would need to transfer 100 per cent of the cost, or \$4,271, to Anita.

Step 7 Jack should not pay more in child support than the cost of having all the children living with him. The cost of having all the children live with him would be the same as the multi-case costs for the children. The multi-case cost for Tim is calculated according to what his cost would be if all of Jack's three child support children were the same age as his (that is, older) children, and based on Jack's income alone. The cost of three older children in a case with a combined Child support income of \$23,117 is \$7,397 so Tim's multi-case cost is \$2,466.

The multi-case cap also takes account of any costs that the parents meet through care. Jack doesn't meet any of Tim's cost through care, so the multi-case cap for Tim is 100 per cent of \$2,466. This cap amount is lower than the amount worked out in Step 6, so the child support payable for Tim is set by the cap.

Step 8 Jack is liable to pay \$2,466 to Anita. Anita is not liable to pay any child support to Jack.

Step 9 Jack pays \$2,466 to Anita.

To calculate child support for Fiona and Fred:

Step 1 After deduction of the self support amount, Jack has a child support income of \$23,117. Jack's multi-case allowance when calculating child support for Fiona and Fred is equal to the total of the multi-case costs for Tim. The multi-case cost for Tim is calculated according to what his cost would be if all of Jack's three child support children were the same age as his (that is, older) children, and based on Jack's income alone. The cost of three older children in a case with a combined child support income of \$23,117 is \$7,397 so Tim's multi-case cost is \$2,466. Therefore, Jack's multi-case allowance when calculating child support for Fiona and Fred is \$2,466. His child support income is therefore \$23,117 minus \$2,466, which is \$20,651.

Sue's child support income is \$30,000 minus the self-support amount of \$16,883, as she has no other child support cases. Therefore, her child support income is \$13,117.

Step 2 Jack and Sue's combined child support income is \$20,651 plus \$13,117, which is \$33,768.

Step 3 Fiona is an older child.

Step 4 The cost for two older children in a case with a combined child support income of \$33,768 is \$9,708. This means that Fiona's cost is \$4,854.

Step 5 Fred is a younger child. The cost for two younger children in a case with a combined child support income of \$33,768 is \$8,020. This means that Fred's cost is \$4,010.

Step 6 Jack has 61.16 per cent of the combined child support income, so must meet 61.16 per cent of the cost of Fiona and Fred. He meets 50 per cent of their cost through care, so would need to transfer 11.16 per cent of the cost to Sue. 11.16 per cent of Fiona's cost is \$541 and 11.16 per cent of Fred's cost is \$448. Therefore, Fred would need to transfer \$989 to Sue.

Step 7 Jack should not pay more in child support than the cost of having all the children living with him. The cost of having all the children live with him would be the same as the multi-case costs for the children. The multi-case cost for Fiona is calculated according to what her cost would be if all of Jack's three child support children were the same age as her (that is, older) children, and based on Jack's income alone. The cost of three older children in a case with a combined child support income of \$23,117 is \$7,397 so Fiona's multi-case cost is \$2,466.

The multi-case cost for Fred is calculated according to what his cost would be if all of Jack's three child support children were the same age as his (that is, younger) children, and based on Jack's income alone. The cost of three younger children in a case with a combined child support income of \$23,117 is \$6,242, so Fred's multi-case cost is \$2,081.

The multi-case cap also takes account of any costs that the parents meet through care. Jack meets 50 per cent of the costs of Fiona and Fred through care, so the multi-case cap for Fiona is 50 per cent of \$2,466 and the multi-case cap for Fred is 50 per cent of \$2,081. These cap amounts are higher than the amounts worked out in Step 6, so the cap does not apply.

Step 8 Jack is liable to pay \$989 to Sue. Sue is not liable to pay any child support to Jack.

Step 9 Jack pays \$989 to Sue.

A correction is also being made to the calculations outlined at the costs of children table in the New Formula Act, to make it clear that the costs of a particular child are calculated by applying the percentages set out only to the income between the upper and lower incomes of each band.

Children's costs will similarly be calculated for a day in a child support period, both for multi-case children and for the ordinary situation. In practice, this will allow the Registrar to reflect anticipated changes in the costs of children, particularly flowing from children turning 13 during a child support period, in the assessment made at the beginning of the child support period. Parents will be notified at the beginning of the child support period that the assessment will increase on the birthday of the relevant child that results in an increase in the costs of children.

Reflecting care changes in the assessment

Changes not affecting the assessment

For the purposes of the new formula, the Registrar must amend the assessment when notified of various changes in a parent's caring arrangements for a child. Various changes may not actually result in a change of the parent's level of care of the child for the purposes of their child support assessment, although the change might otherwise qualify as requiring an amendment to the assessment, that is, is greater than 7.1 per cent. These changes include changes where a parent is providing regular care of a child, and the change, although exceeding 7.1 per cent, still results in the parent being taken to provide regular care of the child. In this case, the Registrar should not make any amendment to the assessment.

Amendment of assessments

The Registrar has broad powers to amend assessments, where required for the purposes of the Child Support Assessment Act. If a decision is made affecting an assessment under the Child Support Registration and Collection Act, for example, on an objection to a decision under the Child Support Assessment Act, the assessment should be amended. Amendments to allow implementation of decisions of the SSAT are also being included.

The Registrar's powers to amend are subject to some limitations. In particular, amendments to a parent's level of care can only occur where various conditions are met. In order to implement the changes outlined above, amendments are made to give operative effect to the removal of the requirement on the Registrar to amend a care level for a child where the change will not have any effect.

Amendments are also made to allow the Registrar to amend an assessment when he or she becomes aware of a relevant dependent child not taken into account for the purposes of the assessment. Amendments to assessments to implement changes such as terminating events may be made without further amendment to the provisions. This is because such amendments are not expressly prohibited by any existing provisions.

In general, such amendments to an assessment to reflect a changed care level for a child must be made with prospective effect only. One exception applies where the Registrar considers the care arrangements on the application of a parent during or at the end of the child support period, and determines that a parent should be considered to have less than 14 per cent care of the child for the purposes of the child support period. Such a determination is made with effect from the date the parent ceased to have at least 14 per cent care of the child, which will generally be a date in the past. In this case, the Registrar may amend the assessment retrospectively to take account of this change.

Amendments are also made to allow the Registrar to amend an assessment when he or she becomes aware of a relevant dependent child not taken into account for the purposes of the assessment, which may otherwise have been restricted by restrictions applying to amendments of changed care levels. By contrast, amendments to reflect a terminating event in relation to a relevant dependent child may be made without further modification, because such changes are not changes to the care level of the child.

Incomes where no tax return lodged

Making a determination

Where a parent has not lodged a tax return for the last financial year prior to the start of a child support period when a new child support assessment must be made, the Registrar must determine an income to use in the assessment for the parent. This income may be based upon information provided by the parent, or upon other reliable income, such as information about the parent's employment history, or information held by Centrelink about Centrelink payments received by the parent. Amendments make it clear that the Registrar can use such information to determine the parent's adjusted taxable income, and therefore a minimum determination of 2/3 MTAWWE does not apply.

In some cases, the parent may have lodged a tax return for the year prior to the last relevant year of income. If so, it is being made clear that the Registrar may use the information from the tax assessment for this year, inflated by an appropriate figure, as the income for the parent. The inflation figure to be used will be prescribed in regulations. The provisions are being clarified to make it clear that these are not situations in which the Registrar is unable to ascertain the parent's income, such that the Registrar should seek further information from the parent themselves.

Minimum level to be 2/3 MTAWWE

If the Registrar has no current income information, and the parent has not lodged a tax return for the two years prior to the start of the child support period, the Registrar is currently obliged to determine an income of 2/3 MTAWWE. For some parents, this level of income is likely to be too low, particularly where the Registrar has information about previous financial years which consistently indicates a higher level of income. In these cases, the Registrar should be able to determine an income which is higher than 2/3 MTAWWE.

Exception to no retrospective use of income where parent could not communicate

The New Formula Act limited the circumstances in which the Registrar could replace an income that he has determined with a more accurate income, where the income is lower than that used in the assessment. The limitation is based upon the time at which the parent gives the more accurate income to the Registrar, and whether the parent could have lodged their tax return on time for tax purposes at that time. However, this may operate harshly where parents are genuinely unable to provide the Registrar with timely information. This may be because of ill-health, natural disaster or remote location. An exception to the general rule that the income cannot be used to adjust past portions of the assessment is being introduced, in circumstances prescribed. Regulations will be enacted, prescribing circumstances in which the exception will apply.

Parental estimates of income

Income amount orders

Currently, a parent may elect to have their child support assessment based upon their estimate of their current income, where their income has reduced since their last relevant year of income. Various conditions restrict the situations in which a parent may estimate, including where an 'income amount order' affects the child support assessment. Income amount orders are determinations of the Registrar or the SSAT, or orders of a court, that vary the child support assessment in a way that is inconsistent with allowing the parent to estimate a lower income. The determination or order may set a particular rate of child support, or set the taxable income of the parent. However, the definition is currently broad enough to include circumstances in which an estimate of income should legitimately be available, such as where the determination increases the taxable income of the parent by an amount to reflect the availability to the parent of income or assets which are not reflected in their taxable income. This amendment limits income amount orders to situations in which the determination or order either varies to a fixed rate the child support payable by a parent, or varies the child support income amount of the parent to a fixed figure.

Requirement that the Registrar be given an accurate taxable income for the last year

Parents may choose to have their child support assessment based upon their estimate of their child support income amount for the next 12 months, where their income has gone down compared to their last relevant year of income. The Registrar must compare the estimated income with the parent's last taxable year of income when deciding whether to accept the estimate. However, in many cases, parents have not lodged the tax return for the last relevant year of income at the time they wish to estimate their current income. The Registrar may have made their child support assessment based upon a determination of their income for child support purposes. Amendments will require that the parent provide a declaration of their last relevant year of income when seeking to lodge an estimate. If the Registrar is satisfied that this is correct, then the Registrar may proceed to consider whether to accept the estimate.

Reconciliation of estimates only if no review

Checking of the accuracy of parental estimates of income can occur in a number of ways. The parent may update their estimate themselves when it becomes inaccurate. The Registrar may review the estimate during its application, where the estimate has become inaccurate. The Registrar may also be required to reconcile an estimate at the end of the child support period. Amendments are made so that the Registrar is required to either review or reconcile an estimate, but not both.

Minimum assessments

Removal of automatic reduction to the minimum

A mechanism to place payers receiving full income support automatically on the minimum rate was enacted in the New Formula Act. Subsequent exploration of service delivery implications has shown that the aim of improving processes for parents who commence receiving income support can be better achieved through other mechanisms. Amendments remove the provision requiring the automatic mechanism. Parents remain able to estimate their income, resulting in a minimum assessment applying.

Reversal of reduction to the minimum payment or reduction of minimum to nil

The Registrar may currently allow a parent an exemption from paying the minimum rate of child support in certain circumstances. The circumstances are that the parent demonstrates that they have less available money during the child support period than the minimum rate. The Registrar may similarly exempt a parent from payment of the higher rate, initially of \$20 per child, applying to parents with a low taxable income not on income support, where the parent demonstrates that they have a genuinely low income. In some circumstances, it may only subsequently become clear that the reduction should not have been made. Provisions are inserted allowing the Registrar to reverse the determination in these cases, by amending the assessment to raise it to either the minimum rate, or the higher rate for parents with low taxable income who are not on income support. If the Registrar amends the assessment in order to reverse a previous determination, notice must be given to the parents of this reversal, and the parents advised of their objection rights.

Information about carer's pension or benefit receipt in assessment notices

Prior to the changes commencing 1 July 2008, information about whether a carer received an income tested pension, allowance or benefit was relevant to the other parent. This was because, if the parents entered into an agreement that child support would be paid in a single, non-periodic amount, provisions previously allowed the carer to ask for the reinstatement of periodic payments in some circumstances. This ability will be removed by the New Formula Act, and there will then be no consequence for either parent directly based upon whether or not the carer receives such Centrelink payments. Consequently, there is no need for the other parent to be informed of payment receipt, and the requirement to give notification of this is being removed.

Lump sums and non-periodic payments

Terminology about how payments affect a liability

Detailed provisions introducing the ability for parents to agree that child support would be paid in a lump sum have been introduced with effect from 1 July 2008. The provisions set out how the lump sum payment affects the periodic child support liability, providing that the payment satisfies the liability under the assessment, rather than affect the amount of the assessment directly. However, the option remains for parents to agree that their lump sum will directly affect their assessment. Terminology changes are being made to make it clear that, if this is not the case, the lump sum affects only the amount payable under the liable party's liability under the administrative assessment, to distinguish the two types of lump sum. Terminology changes more broadly throughout the Act to reflect the concept that amounts are credited against amounts payable under the liability, rather than against the liability, are also being made.

Similar terminology changes are being made to references to such crediting in the Family Assistance Act.

Variations to crediting orders

Currently, a court may order that child support be paid in a non-periodic manner, and that such payment be credited against the assessment in a particular way. The manner of such crediting is set out in a statement made by the court. If the court considers modifying the statement, it must first consider whether it is just and equitable to the child, the carer and liable parent concerned, and otherwise proper to do so. Amendments are made to ensure that the decision about whether to modify the level of credit of a lump sum against the amount payable under a liability is subject to the same reasoning process.

Crediting period

Lump sums are credited against the assessment both in respect of an initial period, and then annually. In relation to the initial period, the crediting is to occur on a daily basis, given that it cannot be known how many days will apply until the next year commencement is reached.

Subsequent credits will occur in relation to financial years, as this works more conveniently with reflection of the value of the credit for Family Tax Benefit purposes. A definition of 'year of income', linking it to definitions under Taxation legislation is being inserted for this purpose. Indexing of the lump sum amount will also occur just prior to the financial year start, by reference to the indexation factor for the March quarter.

Payment options

Where parents have an arrangement for payment of a lump sum, the carer will be receiving a reduced rate of periodic child support to take account of the lump sum payment. In the ordinary case, a payer may choose to pay their child support by making various prescribed payments (non-agency payments), and asking for these to be credited against the amounts payable under their liability. However, this may have the effect of overly reducing the ongoing periodic support available to the carer where a lump sum is also in effect. Amendments are made so that prescribed non-agency payments are not available as a means of satisfying the ongoing liability in these cases.

Issues in parentage proceedings

Knowledge considered

The New Formula Act set out factors that a court should have regard to when considering whether an order for repayment of child support should be made, when it finds that child support has been paid by a person who is not the parent of the child. One of these factors concerns the likely knowledge of both parents about the issue of parentage. Amendments are being made to make it clear that a mere suspicion on the part of either parent that the payer was not the parent of the child is a factor relevant for the court to consider, even when this falls short of a reasonable doubt about parentage.

Determining when a decision of the Registrar becomes final

The New Formula Act made amendments to ensure that disbursement of child support ceased while a parent challenged the making of the assessment on the basis they were not the parent of the child. The Registrar still retains a discretion to suspend disbursement of child support payments while a parent challenges the making of the child support assessment for some other reason, for example, that the child was not an eligible child. This Schedule expands the situations in which such a determination may be made to include all challenges to the assessment under Part VII, VIIA or VII of the Child Support Registration and Collection Act. If the Registrar makes a suspension determination, the Registrar must make a determination to resume payments of child support (a 'resumption determination') once the decision-maker has made a decision, and no further review or appeal of that decision has been lodged. Amendments are made to ensure the resumption determination is made when appropriate.

Payment options

The Registrar may use most collection methods to enforce payment of repayment orders, as required. However, for an ongoing liability, a parent may make payments of a prescribed nature, and ask for these to be credited against the liability against the wishes of the payee of the liability (prescribed payments). The payments prescribed are generally those that directly assist with the maintenance for the child. It is inappropriate for a parent liable for a repayment amount to pay in this way. Such crediting is being excluded.

Exclusion of costs from recovery of overpaid amounts in paternity cases

The New Formula Act introduced Registrar collection of orders for repayment of overpaid amounts as the result of a court finding that a particular person was not a parent of a child. The provision is broad enough to allow the Registrar collection of an order for costs made as part of the proceedings to recover the overpaid child support. The provisions intended to place the former payer of the liability in as close a position as possible to that of the payee of the liability. A payee cannot have any costs orders incurred in establishing or varying a registrable maintenance liability collected. Accordingly, these amendments make it clear that costs are excluded from collection.

Ongoing collections

From contractors

Child support debts (which have not been paid when due) and ongoing child support are collected differently. Current liabilities can only be collected from regular salary and wage earning payers, or from Centrelink recipients. The Registrar gives a notice to the payer's employer requiring the employer to calculate the required amount to be deducted, and to forward deducted amounts to the Registrar each month. A balance of at least the protected earnings amount must remain to be paid to the payer, to ensure the parent has sufficient money to support themselves.

The Registrar will have power to attach regular periodic payments to child support payers under contract for service arrangements, where these payments are effectively substituting for wages. The same notice and penalty provisions will apply.

Ongoing garnishee notices to third parties

The Registrar currently has power to give a garnishee notice to a person or institution who owes an amount of money to a child support debtor, to pay that money to the Registrar instead, in satisfaction of that parent's child support debt. The power applies in situations where the person has money, or will subsequently hold money for the child support debtor. It also applies whether the amount is greater or less than the child support debt. If the amount is greater, only the child support debt amount must be paid to the Registrar. However, if the amount is less, that amount must be paid. In some situations, the person or institution has or will subsequently have an amount of money that is less than the child support debt, but is aware that they will subsequently have further money. It is not entirely clear that this situation is covered by the existing notice powers. Amendments are made to make it clear that the person or institution receiving such notice, who will hold further money on behalf of the child support debtor, must continue to remit amounts to the Registrar until the child support debt amount claimed in the notice is reached.

From 1 January 2008, reference to the amount claimed in the notice will be by reference to the 'maximum notified deduction total' to reflect changes made by Schedule 4 to this bill.

Payment periods

Particulars the Registrar must enter into the Register on registration of a liability include an initial and an ongoing payment period. The payment period currently defaults to a period of one month where the liability is not to be collected by withholding from the payer's salary or wages, and the payer does not make an election to have a different period apply. Instead, it is proposed that payers may still make an election, but this may be refused by the Registrar where he or she is not satisfied that the payment period elected will be a convenient payment period for the payer to accrue debts. In such cases, or cases where no election is made, the Registrar may enter a payment period which the Registrar determines to be convenient for the payer to accrue debts.

Reconciliation – effect of suspension determinations

The effect of suspension is intended to end the effect of the child support assessment for all purposes. This will allow any child living with the reconciled couple to be treated as a relevant dependent child if either of the parents is involved in another child support case. Amendments are made so that the child or children in the reconciled family is treated as though they have not been assessed in respect of the costs of the child for child support, to allow this to occur.

Post-separation costs

The provisions under which higher costs to a parent after a separation may be taken into account in the child support assessment need to be clarified to deal with multiple reconciliations and re-separations. If a separated couple were to reconcile, break up again after at least six months together, then reconcile for a shorter period and break up again, the provisions at present may apply to take the costs into account from the date of the last separation. However, the policy is that they should in fact apply from the date of the last separation following six months of being together. This is being clarified.

For consistency, this Schedule also extends the availability of exclusion of post-separation costs to situations in which a parent has lodged an estimate of their current income for the purposes of the assessment. While the first such estimate is for an amount lower than their last relevant year of income, and will not include any post-separation cost component, subsequent estimate may be for higher amounts as the parents' income changes. In this case, the estimate of income will be able to exclude post-separation costs if the other criteria are met.

Terminology changes for new formula

The current formula uses the concepts of a person applying for child support from a particular person. The new formula replaces this concept with the concept of a person applying for a parent or parents to be assessed in respect of the costs of a child. Child support becomes payable as a result of this assessment. Amendments are made to update the old terminology from 1 July 2008.

Transitional arrangements

Many current child support assessments are formula assessments varied by court orders. Most such court orders will continue to apply unaffected by the change to the new formula. However, some will not. To protect the outcome probably intended by the court in originally making the order, the assessments for such parents will be adjusted in a way that as closely as possible approximates the prior effect of the order in the context of the new formula. Regulations will be made, setting out rules for this purpose. If dissatisfied by the resulting assessment, parents will have the option of approaching a court for a fresh order.

A similar approach will apply to parents who, on 1 July 2008, will have a formula assessment affected by a prior change of assessment determination. However, such parents may seek a fresh change of assessment if dissatisfied by the outcome.

In both cases, parents will have the right to seek a fresh order or determination, despite their circumstances being unchanged from those applying when the order or determination was originally made.

Explanation of the changes

Item 1 makes the commencement change described above at ‘Recognition of over 18 relevant dependent children – changed commencement’.

Items 2, 3 & 4 make amendments consequential to the measure described above at ‘Interaction between the Child Support Acts – coverage of stay orders’.

Item 5 makes amendments described above at ‘Jurisdiction of courts – retrospective determinations’.

Item 6 makes amendments that are consequential to the measure described above at ‘Interaction between the Child Support Acts – coverage of stay orders’.

Item 7 makes amendments described above at ‘Jurisdiction of courts – access to court where a matter is too complex to determine administratively’.

Items 8 and 9 make the amendments described above at ‘Grounds for departure from the formula – amendments made by the *Family Law Amendment (Shared Parental Responsibility) Act 2006*’.

Items 10 and 11 make technical amendments, correcting references to sub-subparagraphs that do not exist.

Items 12, 13 and 14 make amendments that are consequential to the measure described above at ‘Interaction between the Child Support Acts – coverage of stay orders’.

Item 15 makes the amendments described above at ‘Interaction between the Child Support Acts – coverage of stay orders’, relating to removing the stay power from the Assessment Act.

Item 16 makes the amendment described above in the measure ‘Issues in parentage proceedings – knowledge considered’.

Items 17 and 18 make amendments that are consequential to the measure described above at ‘Jurisdiction of courts – frivolous or vexatious applications’.

Item 19 makes amendments described above at ‘Interaction between the Child Support Acts – Consistent information gathering powers’.

Item 20 makes amendments described above at ‘Interaction between the Child Support Acts – consistent information gathering powers’ in relation to the information gathering power for the New Formula Act.

Item 21 makes the amendments described above at ‘Transitional arrangements’.

Item 22 makes amendments that are consequential to the measure described above at 'Issues in parentage proceedings – determining when a decision of the Registrar becomes final.

Items 23 and 24 make amendments that are consequential to the measure described above at 'Issues in parentage proceedings – exclusion of costs for recovery of overpaid amounts'.

Items 25, 26 and 27 make amendments described above at 'Ongoing collections – payment periods' in relation to the particulars in the Register.

Item 28 makes amendments described above at 'Ongoing collections – from contractors'.

Item 29 makes amendments described above at 'Payee private enforcement – apportionment'.

Item 30 makes amendments described above at 'Ongoing collections – ongoing garnishee notices to third parties'.

Items 31 and 32 make amendments that are consequential to the measure described above at 'Issues in parentage proceedings – determining when a decision of the Registrar becomes final'.

Items 33, 34, 35, 36, 37, 38 and 39 make amendments described above at 'Administrative review – exchange of information during internal review'.

Item 40 makes amendments described above at 'Jurisdiction of courts – access to court where a matter is too complex to determine administratively'.

Item 41 make amendments that are consequential to the measure described above at 'Administrative review – exchange of information during internal review'.

Item 42 makes amendments described above at 'Administrative review – decisions on out of time applications'.

Items 43, 44 and 45 make amendments described above at 'Administrative review – provision of documents by the Registrar to the SSAT.

Item 46 makes a technical amendment, replacing an incorrect section reference.

Item 47 clarifies the term 'application' so that it covers the original application for review, not the document seeking the extension of time by the SSAT.

Items 48, 49, 50 and 51 make amendments described above at 'Administrative review – provision of documents by the Registrar to the SSAT'.

Items 52, 53, 54 and 55 make amendments that are consequential to the measure described above at 'Administrative review – allowing a parent to withdrawn an application to the SSAT'.

Item 56 makes amendments described above at 'Administrative review – Attendance before the SSAT'.

Item 57 makes amendments that are consequential to the measure described above at 'Administrative review – return of documents by the SSAT'.

Item 58 makes amendments that are consequential to the measure described above at 'Interaction between the Child Support Acts – coverage of stay orders'.

Items 59, 60, 61, 62 and 63 make amendments that are consequential to the measure described above at 'Jurisdiction of courts – formulation of appeal bench'.

Item 64 makes amendments described above at 'Jurisdiction of courts – provision of documents'.

Item 65 makes amendments that are consequential to the measure described above at 'Issues in parentage proceedings – determining when a decision of the Registrar becomes final'.

Items 66, 67 and 68 make amendments that are consequential to the measure described above at 'Reporting proceedings – identifying the Registrar'.

Item 69 makes amendments that are consequential to the measure described above at 'Interaction between the Child Support Acts – coverage of stay orders'.

Item 70 makes amendments that are consequential to the measure described above at 'Interaction between the child support Acts – effect of terminating events'.

Item 71 makes amendments that are consequential to the measure described above at 'Interaction between the child support Acts – coverage of stay orders'.

Item 72 makes amendments that are consequential to the measure described above at 'Issues in parentage proceedings – determining when a decision of the Registrar becomes final'.

Item 73 makes amendments that are consequential to the measure described above at 'Jurisdiction of courts – frivolous or vexatious applications'.

Item 74 makes amendments that are consequential to the measure described above at 'Payee private enforcement – orders for payment'.

Item 75 makes amendments described above at ‘Interaction between the child support Acts – effect of terminating events’.

Items 76 & 77 make amendments described above at ‘Payee private enforcement – orders for payment’.

Item 78 prescribes the application for the amendments described above at ‘Jurisdiction of courts – access to court where a matter is too complex to determine administratively’ as decisions that a matter is too complex made before or after commencement.

Item 79 prescribes the application for the amendments at ‘issues in parentage proceedings – knowledge considered’ to decisions after commencement.

Item 80 prescribes the application for amendments described above at ‘Interaction between the Child Support Acts – consistent information gathering powers’ in relation to the information gathering power for the New Formula Act for requirements made after the item commences.

Item 81 prescribes the application for amendments described above at ‘Issues in parentage proceedings – exclusion of costs from recovery of overpaid amounts’ in relation to liabilities that are registered after the item commences.

Item 82 prescribes the application for amendments described above at ‘Ongoing collections – payment periods’ in relation to liabilities that are registered or whose particulars are varied after the item commences.

Item 83 prescribes the application for amendments described above at ‘Payee private enforcement – apportionment’ in respect of payments made to the Registrar after the item commences.

Item 84 prescribes the application for amendments described above at ‘issues in parentage proceedings – determining when a decision of the Registrar becomes final’ in respect of suspension determinations made before or after the item commences.

Item 85 prescribes the application for amendments described above at ‘Administrative review – exchange of information during internal review’ in respect of objections lodged after the item commences.

Item 86 prescribes the application for amendments described generally above at ‘Administrative review’ in respect of applications to the SSAT after the item commences.

Item 87 prescribes the application for amendments described generally above at 'Administrative review' in respect of withdrawal of applications to the SSAT, requirements made by the SSAT Executive Director and appeals against SSAT decisions after the item commences, whether the application to the SSAT was made before or after the item commences.

Item 88 prescribes the application for amendments described generally above at 'Jurisdiction of courts – provision of documents' in respect appeals against SSAT decisions, whether the appeal was made before or after the item commences.

Item 89 prescribes the application for amendments described generally above at 'Interaction between the child support Acts – coverage of stay orders' in respect of proceedings instituted either before or after the item commences.

Item 90 prescribes the application for amendments described generally above at 'Payee private enforcement – orders for payment' in respect of orders made after the item commences, whether the proceedings were instituted before or after the item commences.

Item 91 prescribes the application for amendments described generally above at 'Interaction between the child support Acts – effect of terminating events' in respect of terminating events that happen after the item commences, whether the court order was made before or after the item commences.

Items 92, 93, 94, 95, 96 and 97 make the amendments described above at 'Parental estimates of income – income amount orders'.

Item 98 applies the amendments made by the items above to all elections made after the item commences.

Items 99 and 100 make amendments described above at 'Recognition of over 18 relevant dependent children – changed commencement'.

Item 101 makes the amendments described above at 'Ongoing collections – ongoing garnishee notices to third parties' for the amendments commencing on 1 January 2008.

Item 102 makes amendments to the Family Assistance Act that are consequential to the measure described above at 'Lump sums and non-periodic payments – terminology about how payments affect a liability'.

Item 103 makes amendments that are consequential to the measure described above at 'Notional assessments'.

Item 104 makes amendments that are consequential to the measure described above at 'Costs of children and parents with multiple cases'.

Items 105 and 106 make amendments that are consequential to the measure described above at 'Parental estimates of income – income amount orders', narrowing the definition.

Item 107 makes amendments that are consequential to the measure described above at 'Recognition of over 18 relevant dependent children – the dates from which and to which the child is considered'.

Items 108, 109, 110, 111, 112, 13, 114, 115, 116 and 117 make amendments described above at 'Costs of children and parents with multiple cases'.

Items 118, 119 and 120 make amendments described above at 'Post-separation costs'

Items 121 and 122 make amendments that are consequential to the measure described above at 'Costs of children and parents with multiple cases'.

Item 123 makes amendments described above at 'Reflecting care changes in the assessment – changes not affecting the assessment'.

Item 124 makes amendments that are consequential to the measure described above at 'Reflecting care changes in the assessment – amendment of assessments' in relation to relevant dependent children.

Items 125, 126, 127, 128 and 129 make amendments that are consequential to the measure described above at 'Costs of children and parents with multiple cases'.

Item 130 makes amendments described above at 'Incomes where no tax return lodged – minimum level to be 2/3 MTAW'.

Items 131 and 132 make amendments described above at 'Incomes where no tax return lodged – making a determination'.

Item 133 makes amendments that are consequential to the measure described above at 'Incomes where no tax return lodged – exception to no retrospective use of income where parent could not communicate'.

Item 134 makes amendments described above at 'parental estimates of income – requirement that the registrar be given an accurate taxable income for the last year'.

Items 135 and 136 make amendments described above at 'parental estimates of income – Reconciliation of estimates only if no review'.

Item 137 makes a technical amendment, renumbering a second subsection 65B(3) as subsection 65B(5).

Items 138, 139 and 140 make amendments described above at 'Minimum assessments – removal of automatic reduction to the minimum'.

Items 141, 142 and 143 make amendments described above at ‘Minimum assessments – Reversal of reduction to the minimum payment or reduction of minimum to nil’.

Item 144 makes amendments described above at ‘Reflecting care changes in the assessment – changes not affecting the assessment’.

Item 145 makes amendments described above at ‘Reflecting care changes in the assessment – amendment of assessments’ with regard to retrospective amendments.

Items 146 and 147 make amendments described above at ‘Reflecting care changes in the assessment – amendment of assessments’ in relation to relevant dependent children.

Item 148 makes amendments that are consequential to the measure described above at ‘Interaction between the child support Acts – allowing amendment of assessments’.

Item 149 makes amendments described above at ‘reflecting care changes in the assessment – changes not affecting the assessment’.

Item 150 makes amendments described above at ‘reflecting care changes in the assessment – amendment of assessments’ regarding relevant dependent children’.

Items 151, 152, 153, 154, 155 and 156 make amendments described above at ‘Interaction between the child support Acts – allowing amendment of assessments’.

Item 157 makes the amendments described above at ‘Information about carer’s pension or benefit receipt in assessment notices’.

Items 158, 159, 160, 161, 162, and 163 make amendments described above at ‘Lump sums and non-periodic payments – terminology about how payments affect a liability’.

Items 164 and 165 make amendments described above at ‘Grounds for departure from the formula – reflecting a parent’s care for a step-child’.

Item 166 makes amendments described above at ‘Grounds for departure from the formula – amendments made by the Family Law Amendment (Shared parental responsibility Act) 2006.

Items 167 and 168 make amendments described above at ‘Grounds for departure from the formula – reflecting a parent’s care for a step-child’.

Items 169, 170, 171 and 172 make amendments described above at ‘Lump sums and non-periodic payments – terminology about how payments affect a liability’.

Items 173, 174 and 175 make amendments described above at ‘Lump sums and non-periodic payments – variations to crediting orders’.

Item 176 makes an amendment consequential to the amendment described above at ‘Setting aside binding agreements’

Item 177 makes the amendment described above at ‘Setting aside binding agreements’.

Items 178, 179, 180, 181, and 182 make amendments described above at ‘Notional assessments’.

Item 183 makes the amendment described above at ‘Notional assessments’ in relation to the exception.

Item 184 makes amendments described above at ‘Notional assessments’ in relation to estimate of income, and income amount orders.

Item 185 makes amendments described above at ‘Reconciliation – effect of suspension determinations’ regarding the effect of suspension.

Item 186 makes amendments described above at ‘Terminology changes for new formula’.

Items 187, 188, 189, 190, 191 and 192 make amendments that are described above at ‘Costs of children and parents with multiple cases’.

Item 193 makes amendments described above at ‘lump sums and non-periodic payments – terminology about how payments affect a liability’.

Item 194 makes amendments that are consequential to the measure described above at ‘Notional assessments’.

Item 195 makes amendments described above at ‘Lump sums and non-periodic payments – crediting period’.

Items 196 and 197 make amendments that are consequential to the measure described above at ‘lump sums and non-periodic payments – terminology about how payments affect a liability’.

Items 198 and 199 make amendments described above at ‘lump sums and non-periodic payments – terminology about how payments affect a liability’ regarding reflecting lump sums.

Items 200, 201, 202, 203, 204, 205, and 206 make amendments that are consequential to the measure described above at ‘Lump sums and non-periodic payments – terminology about how payments affect a liability’.

Item 207 makes amendments described above at both ‘Issues in parentage proceedings’ for prescribed payments and ‘Lump sums and non-periodic payments – payment options’.

Items 208 and 209 make amendments that are consequential to the measure described above at ‘Lump sums and non-periodic payments – terminology about how payments affect a liability’.

Item 210 makes amendments described above at ‘Terminology changes for new formula’.

Item 211 makes amendments that are consequential to the measure described above at ‘Lump sums and non-periodic payments – terminology about how payments affect a liability’.

Item 212 makes a technical amendment, amending item 104 of the New Formula Act in order to ensure that the amendment will be operative as originally intended from 1 July 2008 despite amendments made to section 85 of the Child Support Registration and Collection Act by item 27 of Schedule 3 of this bill.

Items 213 and 214 make amendments that are consequential to the measure described above at ‘Grounds for departure from the formula – reflecting a parent’s care for a step-child’.

Child support offence provisions

A number of these policy clarifications are to provisions containing offences. None of these measures affects the underlying rationale for the offence and its level. Affected items are set out below.

Item 76 creates an offence for failure to notify orders or payments made in a payee private enforcement action. This is necessary to enable the Registrar to keep accurate records of the liability outstanding, and avoid taking action to collect amounts which have already been paid. The penalty of 10 penalty units is similar to that applying to other failures to notify orders already existing in the Child Support Registration and Collection Act, for example, section 23.

A new offence of strict liability is created by **item 20**, inserting a penalty into the New Formula Act as a consequence of failure to comply with an information gathering requirement made by the Registrar. The offence is one of strict liability, and is similar to that already applying to a similar provision allowing the Registrar to seek information, at section 120 of the Child Support Registration and Collection Act. The maximum fine allowable is greater, to give a court more options when dealing with a breach of the provision. The existing information gathering power of the Registrar under the Child Support Assessment Act is expanded slightly by **item 19**, which removes the restriction applying to requirements made of third parties: that the information sought may not relate to the non-financial affairs of another person. This is needed for the purposes of administering child support, and provides consistency with the similar provision in the Child Support Registration and Collection Act.

The expansion of the existing employer withholding provisions to cover independent contractors by **item 28** will expand the scope of the offences within Part IV of the Child Support Registration and Collection Act to persons or organisations engaging independent contractors. However, the underlying rationale for the offences and their level remain unchanged.

Items 66, 67 and 68 narrow the scope of an offence, by providing that publication of proceedings identifying the Registrar or a person associated with the Registrar is no longer prohibited.

Commencements

The items in this Schedule commence in three separate groupings. **Items 1 to 91** commence the day after Royal Assent. **Items 92 to 101** commence prospectively on 1 January 2008, generally in order to allow necessary service delivery preparations to occur. **Items 102 to 214** commence on 1 July 2008 because they are related to the new child support formula, which commences on this date under the New Formula Act.

Schedule 2 – Incorporation in primary legislation of matters dealt with by regulation

Summary

This Schedule moves into the primary child support legislation provisions currently contained in regulations relating to overseas maintenance arrangements (thus, honouring a commitment made by the government during passage of the enabling provisions for the regulations). The Schedule also makes minor or consequential amendments to the family law legislation.

Background

The *Child Support Legislation Amendment Act 2000* amended the Child Support Assessment Act, the Child Support Registration and Collection Act and the *Family Law Act 1975* (Family Law Act) to insert regulation-making provisions that would enable Australia to fulfil its international maintenance arrangements. Regulations were subsequently made to prescribe, in relation to countries, and parts of countries, with which Australia has maintenance enforcement arrangements, all matters relevant to the recognition and enforcement of child support and spousal maintenance liabilities. The regulations in question are:

- the *Child Support (Assessment) (Overseas-related Maintenance Obligations) Regulations 2000* (Assessment Overseas Regulations);
- the *Child Support (Registration and Collection) (Overseas-related Maintenance Obligations) Regulations 2000* (Registration and Collection Overseas Regulations); and
- certain provisions in the *Family Law Regulations 1984*.

When the regulation-making provisions were inserted into the three pieces of primary legislation, they each included a specific provision that would allow the overseas-related regulations to be inconsistent with the principal legislation and to prevail to the extent of any such inconsistency. These specific provisions are subsection 163B(3) of the Child Support Assessment Act, subsection 124A(3) of the Child Support Registration and Collection Act and subsection 124A(3) of the Family Law Act.

This approach was taken to overcome the difficulty of drafting and passing primary legislation amendments within the timeframe necessary for the international arrangements. During passage, however, the government made a commitment that provisions in the forthcoming regulations that were inconsistent with the primary legislation would be brought into the legislation as soon as possible. This Schedule gives effect to that commitment.

Complementary regulation changes will follow enactment of this bill. These changes will mostly be to remove provisions that will now appear in the primary legislation, to avoid duplication and to ensure that the new provisions work correctly. However, there are some provisions (notably, administrative type matters, the list of reciprocating jurisdictions and specific references in some provisions to the current Australia-New Zealand Agreement) that are to be left in regulations for reasons such as similarity to other provisions already in regulations and the potential need for amendment (mainly, to add or remove relevant countries or to add references to any future agreements). Even so, it is intended that the few provisions that are to remain in child support regulations be relocated to the main body of regulations for the two child support Acts, the *Child Support (Assessment) Regulations 1989* and the *Child Support (Registration and Collection) Regulations 1988*.

As a general principle, the provisions in the regulations that are to be relocated into the primary legislation are not being amended, apart from necessary technical and style changes. However, there are some specific policy improvements and rationalisations being made to some of the provisions – these are detailed below.

Meaning of ‘reciprocating jurisdiction’

The overseas child support provisions relate to Australia’s international maintenance arrangements with certain foreign countries, or parts of countries, known as ‘reciprocating jurisdictions’. These jurisdictions are specified in regulations and are the same for both the Child Support Assessment Act and the Child Support Registration and Collection Act. However, the provisions are being amended to reflect the fact that enforcement against payers under child support agreements and child support assessments may be contrary to the law of some of those jurisdictions.

Accordingly, it is provided that an assessment may not be made and a child support agreement may not be accepted in relation to a payer who is a resident of a reciprocating jurisdiction that is specified in regulations to be a jurisdiction of that kind.

One parent to reside in Australia

In several provisions, the need for one parent to reside, or continue to reside, in Australia is being clarified. Some of the provisions currently envisage that both parents may live overseas – this is not the intended policy. Such cases should not be dealt with under Australian child support law.

Applications from overseas and role of overseas authority

New provisions clarify that a parent who is a resident of a reciprocating jurisdiction may apply under Australian law for a child support assessment, or for registration of a child support liability. These new provisions also clarify the correct avenue for making such an application. The following is being provided:

- A payee application may be made if the payee is a resident of a reciprocating jurisdiction. However, it must be made either by the payee and given by the overseas authority of the jurisdiction to the Australian Child Support Registrar, or be made by the overseas authority itself, on behalf of the payee. The required involvement of the overseas authority in making an application reflects the authority's legitimate role in determining whether it is appropriate under the law of the reciprocating jurisdiction to make an application under Australian law. The capacity for the overseas authority to initiate an application reflects the authority's competence to seek reimbursement of child maintenance paid in advance.
- A payer application may be made if the payer is a resident of a reciprocating jurisdiction. This may be made by the payer and given by the overseas authority to the Registrar – otherwise, the payer must apply directly to the Registrar. There is no need in this case to provide for the overseas authority to initiate an application.

These arrangements are consistent with the underlying policy intentions of the international maintenance arrangements – firstly, that payees apply for assessment or registration in the jurisdiction in which they reside (some jurisdictions can issue assessments or liabilities themselves) and, secondly, that applications should generally be received via overseas authorities so that both Australia and the overseas authority are fully aware of current processes.

A further new provision is being set up, to give an overseas authority the power to veto an election by a payee to end a child support assessment that is in force because of an application initiated by the overseas authority. This is similar to an existing provision for 'domestic' cases in which the Secretary of the Department of Families, Community Services and Indigenous Affairs has a power to veto the ending of an assessment, to protect potential outlays on Australian family tax benefit (section 151A of the Child Support Assessment Act).

From 1 July 2008, these arrangements will be modified in line with the 2006 reforms. For example, from that date, there will no longer be a formal distinction between payee and payer applications (since both parents will be assessed in respect of the costs of the child, whoever applies for the assessment).

Child support agreements

It is being clarified that child support agreements (between parents) are on a similar footing to child support assessments for most overseas purposes, just as they are for domestic purposes. Accordingly, it is provided that a child support agreement may be made between parents, one of whom is a resident of a reciprocating jurisdiction. This is to avoid current situations in which, for example, a payer overseas signs an agreement drafted by a payee in Australia but then cannot have the agreement accepted by the Registrar because the payer resided overseas when the agreement was signed. As with assessments, for this rule to apply, one parent must reside in Australia – they cannot both reside overseas.

However, a further new provision will prevent the acceptance by the Registrar of a child support agreement that would override a child assessment that is in force because of an application initiated by an overseas authority. In that case, the overseas authority will have the power to veto the agreement. This is consistent with the arrangements described above for child support assessments.

Preventing dual liabilities and repeated new liabilities

A child support liability may arise from an administrative child support assessment, from a court order, or from a child support agreement between parents. In domestic child support cases, a court order cannot be obtained if the parents are eligible for an administrative assessment. Furthermore, an agreement overrides an assessment, at least to the extent addressed by the agreement. Therefore, there is no possibility of there being more than one domestic liability registered for collection at any one time for the same parents. Nor is there any possibility of the parents attempting to better their respective positions by repeatedly seeking new liabilities (although the merits of the current liability are subject to the usual rights of objection or further review).

However, this issue has proven to be difficult in overseas cases. As a general principle, liabilities should be raised in the jurisdiction in which the payee resides. However, because that is not always possible, it remains open that (depending on the circumstances) either parent may seek an administrative assessment or court order elsewhere. Accordingly, it is possible at any one time for there to be a liability raised by each of the two parents. Furthermore, this situation may be manipulated by one or the other party, or both, as a way of seeking a better personal outcome through a new liability, rather than having the merits of the original liability reviewed in the proper way.

Therefore, a structure is being set up for these arrangements, without unduly limiting parents affected by overseas residence. The following refinements will apply:

- To eliminate the possibility of dual liabilities, it will be provided that one registered maintenance liability ceases to have effect if a second maintenance liability is registered in relation to the same child and parents. (The first liability will, though, remain in effect for the purpose of recovering any arrears under it.)
- However, if the second liability (that is, the one that came to the attention of the Registrar second) actually arose (that is, the liability was created) *before* the first liability (that is, the registered one), the second one must *not* be registered. (The second liability may, though, be registered for the purpose of recovering any arrears under it.)
- To minimise repeated new liabilities, the Registrar will be able to refuse to accept an application for an Australian child support assessment that would override an overseas liability already registered.
- However, because the Registrar may in fact accept an application for assessment in some of these cases, there needs to be provision for an ensuing liability to be registered. This is not provided for at present if it should be the payer who seeks the assessment, because a payer cannot apply for registration. Accordingly, this will now be provided for, but only if either the payer or the payee is a resident of a reciprocating jurisdiction. If it is the payer who is a resident of a reciprocating jurisdiction, the application for registration could be made by the payer and given by the overseas authority to the Registrar – otherwise, the payer must apply directly to the Registrar.
- A further new provision is set up to ensure that an Australian administrative assessment has the same effect on an existing overseas maintenance liability as on an existing domestic liability. It will provide that, where an amount of child support becomes payable for a child by a liable parent to another person under an administrative assessment, an existing overseas maintenance liability for the same child payable by the liable parent to the other person ceases to have effect.

Enforcement overseas without payee application

Currently, domestic liabilities may be registered by the Registrar for collection to occur, at the choice of the payee. If a liability is to be enforced overseas, there must currently be an application by the payee. However, in some circumstances, the application for registration will have been made by an overseas authority, under the law of the overseas jurisdiction, or by the payer. To reflect more appropriately the situations in which an overseas liability may arise, the Registrar will be able to seek enforcement of a liability overseas without a specific application by the payee, if considered appropriate.

Overseas income

The provisions that currently apply to determining overseas income in relation to a person covered by an international maintenance arrangement are being extended. These provisions will now also cover a payee who is a resident of a reciprocating jurisdiction but covered by the purely domestic Australian child support provisions. Such a situation is possible under the existing legislation (because a payee does not have to be a resident of Australia), and the same procedures and principles should apply to determining overseas income as apply under the international maintenance arrangements.

Extra time allowances

There will be some rationalisation in the extra time currently allowed by the regulations (for example, 90 days instead of 28 days) for various processes where one parent is a resident of a reciprocating jurisdiction. This extra time is sometimes allowed to a parent and sometimes to the Registrar, recognising the delays involved in some international communications and the need to seek information from an overseas authority. The provisions in question will allow extra time where necessary for an international maintenance arrangement to work efficiently and fairly, but not otherwise. The processes should not be slowed down and one parent's appeal rights deferred unnecessarily.

The extra time allowances that are necessary under international maintenance arrangements will also be available in relation to payees who are residents of a reciprocating jurisdiction but covered by the purely domestic Australian child support provisions. The same time allowances will apply if one of the parents is overseas, regardless of whether the case is covered by international or domestic provisions.

Deemed refusal provisions

Currently in the overseas regulations, there are several provisions deeming the Registrar to have refused to do certain things after a certain period. In most cases, there are no equivalent domestic provisions. To eliminate this inconsistency, these deemed refusal provisions will generally be removed. The provisions are also undesirable in that they could prevent the Registrar from making an appropriate decision after the relevant period. Furthermore, the deemed refusals were originally to allow overseas authorities to object to decisions of the Registrar. This is in fact unnecessary in that such representations work effectively at present on an informal basis.

Date liability first becomes enforceable

Further amendments will make the date from which an overseas maintenance liability first becomes enforceable consistent with domestic cases – on the day on which the Registrar received the application for registration (instead of on the day of the registration itself).

Application of low-income non-enforcement period to overseas maintenance liabilities

The existing section 37B of the Child Support Registration and Collection Act provides for the non-enforcement of certain registered maintenance liabilities during a period of low income for the payer. Section 37B will be amended to make clear that it applies to overseas liabilities.

Access to court

If the Registrar refuses to accept a payee's application for child support administrative assessment, the payee can apply to a court for a declaration that he or she is entitled to an assessment. It will be provided that the court may also make the declaration in respect of a payer who is a resident of a reciprocating jurisdiction. Similarly, a payer may apply to a court for a declaration that the payee is not entitled to an assessment of child support payable by the payer. It will be provided that a payer who is a resident of a reciprocating jurisdiction may also apply for such a declaration.

References to New Zealand Agreement

The overseas child support provisions currently refer in places to the treaty between Australia and New Zealand, or to specific decisions or articles under that treaty. In relocating those provisions, there will be no specific mention of that treaty but provision instead for the regulations to prescribe a treaty, decision or article for the purposes of the relevant provision. This is to provide for any future treaties to be accommodated in the same way as the current one with New Zealand.

Explanation of the changes

Rather than being accommodated in one or more discrete portions of the primary child support legislation, the child support overseas provisions are being incorporated in the various substantive provisions of the primary legislation to which they relate. Accordingly, the relocated provisions will be scattered throughout the legislation, along with the policy improvements and rationalisations mentioned above. What follows is a broad explanation of the basis for each of the items in this Schedule – that is, whether each item is a simple relocation of a particular regulation or makes a policy change (or a combination of the two), whether it is consequential to a relocation or policy change (or both) made by another item in this Schedule, or whether it is generally consequential to this exercise to accommodate the overseas provisions within the structure of the principal legislation.

Commencement

The amendments will generally commence 28 days after Royal Assent, to allow regulations to be repealed or remade as necessary, as discussed above. The amendments will be refined from 1 July 2008 to reflect the 2006 reforms to the child support scheme made by the New Formula Act, while preserving as far as possible the original effect of the provisions.

Child Support Assessment Act amendments

Items 1 to 44 and 114 to 149 amend the Child Support Assessment Act.

Item 2 gives effect to the policy change discussed above: *preventing dual liabilities and repeated new liabilities*.

Item 3 and new subsection 12(3A), inserted by **item 4**, give effect to policy changes discussed above: *one parent to reside in Australia* and *applications from overseas and role of overseas authority*. New subsection 12(3B), also inserted by **item 4**, gives effect to the policy change discussed above: *meaning of 'reciprocating jurisdiction'*.

New subsection 12(4A) of the Child Support Assessment Act, inserted by **item 5**, relocates Assessment Overseas Regulation 6 into the Child Support Assessment Act. New subsection 12(4B), inserted by the same item, gives effect to the policy change discussed above: *one parent to reside in Australia*.

Items 6 and 7 relocate Assessment Overseas Regulation 4 into the Child Support Assessment Act.

Items 8, 9, 10 and 116 relocate Assessment Overseas Regulation 11 into the Child Support Assessment Act, incorporating the policy change discussed above: *one parent to reside in Australia*.

Items 11, 117, 118, 119, 120, 121 and 122 and new subsection 25(3) of the Child Support Assessment Act, inserted by **item 12**, relocate Assessment Overseas Regulation 14 into the Child Support Assessment Act, incorporating the policy change discussed above: *applications from overseas and role of overseas authority*. New subsection 25(4), also inserted by **item 12**, gives effect to the policy change discussed above: *applications from overseas and role of overseas authority*. New subsections 25(5) and (6), inserted by the same item, partially relocates Assessment Overseas Regulation 13 into the Child Support Assessment Act, incorporating the policy change discussed above: *applications from overseas and role of overseas authority*. The remainder of the regulation will be re-made in a new regulation.

Item 13 and new subsections 25A(3) and (4) of the Child Support Assessment Act, inserted by **item 14**, give effect to the policy change discussed above: *applications from overseas and role of overseas authority*. New subsection 25A(5), inserted by the same item, partially relocates Assessment Overseas Regulation 13 into the Child Support Assessment Act, incorporating the policy change discussed above: *applications from overseas and role of overseas authority*. The remainder of the regulation will be re-made in a new regulation.

New section 30A of the Child Support Assessment Act, inserted by **item 16**, gives effect to the policy change discussed above: *meaning of 'reciprocating jurisdiction'*. New section 30B, inserted by the same item, gives effect to the policy change discussed above: *preventing dual liabilities and repeated new liabilities*. **Items 15, 123, 124, 125, 126, 127, 128 and 129** are consequential to those policy changes.

Items 17 and 130 relocate Assessment Overseas Regulation 15 into the Child Support Assessment Act.

Items 19, 141, 142 and 143 relocate Assessment Overseas Regulation 16 into the Child Support Assessment Act.

Items 21, 132, 133 and 134 relocate Assessment Overseas Regulation 17 into the Child Support Assessment Act, incorporating a technical amendment clarifying the meaning of the original (substituted) provision.

Items 22 and 135 relocate most of Part 3 of the Assessment Overseas Regulations (regulations 23 and 25 to 27) into the Child Support Assessment Act, incorporating the policy change discussed above: *overseas income*. **Items 1, 18, 20, 23, 24, 25, 26, 27, 28, 114, 115, 136, 137, 138, 139 and 140** make amendments consequential to that relocation and policy change. **Items 23 to 28** are also generally consequential to this exercise to accommodate the overseas provisions within the structure of the principal legislation.

Items 29 and 30 give effect to the policy change discussed above: *child support agreements*.

Items 31, 144 and 145 give effect to policy changes discussed above: *one parent to reside in Australia and child support agreements*.

Items 32, 146 and 147 are consequential to the policy change discussed above: *applications from overseas and role of overseas authority*.

Items 33 and 131 give effect to policy changes discussed above: *child support agreements and extra time allowances*.

Item 34 relocates Assessment Overseas Regulation 7 into the Child Support Assessment Act.

Items 35 and 148 relocate Assessment Overseas Regulation 29 into the Child Support Assessment Act, incorporating the policy change discussed above: *references to New Zealand Agreement*.

Items 36 and 149 give effect to the policy change discussed above: *applications from overseas and role of overseas authority*.

Items 37, 38 and 39 give effect to the policy change discussed above: *preventing dual liabilities and repeated new liabilities*.

New section 162A of the Child Support Assessment Act, inserted by **item 42**, relocates Assessment Overseas Regulation 24 into the Child Support Assessment Act and is also generally consequential to this exercise to accommodate the overseas provisions within the structure of the principal legislation. **Items 40 and 41** are consequential to that item. New section 162B, also inserted by **item 42**, partially relocates Assessment Overseas Regulation 22 into the Child Support Assessment Act. The remainder of the regulation will be re-made in a new regulation.

Items 43 and 44 are generally consequential to this exercise to accommodate the overseas provisions within the structure of the principal legislation.

Child Support Registration and Collection Act amendments

Items 45 to 100, 150 and 151 amend the Child Support Registration and Collection Act.

Items 45, 46, 49 and 50 relocate definitions from Registration and Collection Overseas Regulation 5 into the Child Support Registration and Collection Act.

Items 47 and 48 are generally consequential to this exercise to accommodate the overseas provisions within the structure of the principal legislation.

Item 51 relocates Registration and Collection Overseas Regulation 6 into the Child Support Registration and Collection Act.

Item 52 relocates Registration and Collection Overseas Regulation 7 into the Child Support Registration and Collection Act.

Items 53 and 54 relocate a definition from Registration and Collection Overseas Regulation 5 and also regulation 11 into the Child Support Registration and Collection Act.

Items 55 and 56 are generally consequential to this exercise to accommodate the overseas provisions within the structure of the principal legislation.

New paragraphs (ca) and (cb) of the definition of ‘terminating event’, inserted by **item 57**, give effect to the policy change discussed above: *one parent to reside in Australia*. New paragraph (cd) of the same definition, inserted by the same item, gives effect to policy changes discussed above: *one parent to reside in Australia and applications from overseas and role of overseas authority*. New paragraph (ce) of the same definition, inserted by the same item, gives effect to the policy change discussed above: *meaning of ‘reciprocating jurisdiction’*.

Items 58 and 59 relocate Registration and Collection Overseas Regulation 4 into the Child Support Registration and Collection Act.

Item 60 relocates Registration and Collection Overseas Regulation 11 into the Child Support Registration and Collection Act, incorporating the policy change discussed above: *references to New Zealand Agreement*. **Item 61** is consequential to that relocation and policy change.

Item 62 relocates Registration and Collection Overseas Regulation 19 into the Child Support Registration and Collection Act.

Item 63 relocates subregulation 10(4) of the Registration and Collection Overseas Regulations into the Child Support Registration and Collection Act.

New subsections 25(1A) and (1B) of the Child Support Registration and Collection Act, inserted by **item 65**, relocate Registration and Collection Overseas Regulation 13 into the Child Support Registration and Collection Act, incorporating the policy change discussed above: *applications from overseas and role of overseas authority*. New subsections 25(1C) and (1D), inserted by the same item, give effect to policy changes discussed above: *applications from overseas and role of overseas authority and preventing dual liabilities and repeated new liabilities*. **Items 64, 66 and 68** are consequential to the insertion of new subsection 25(1C).

New subsection 25(2A) of the Child Support Registration and Collection Act, inserted by **item 67**, relocates subregulations 10(1) and 12(1) of the Registration and Collection Overseas Regulations into the Child Support Registration and Collection Act. New subsection 25(2B), inserted by the same item, relocates subregulation 12(2) of the Registration and Collection Overseas Regulations into the Child Support Registration and Collection Act. New subsections 25(2C) and (2D), inserted by the same item, give effect to the policy change discussed above: *preventing dual liabilities and repeated new liabilities*.

New section 25A of the Child Support Registration and Collection Act, inserted by **item 69**, relocates Registration and Collection Overseas Regulation 22 into the Child Support Registration and Collection Act, incorporating the policy change discussed above: *references to New Zealand Agreement*. New section 25B, inserted by the same item, relocates Registration and Collection Overseas Regulation 23 into the Child Support Registration and Collection Act. New section 25C, inserted by the same item, gives effect to the policy change discussed above: *one parent to reside in Australia*.

Item 70 relocates Registration and Collection Overseas Regulation 14 into the Child Support Registration and Collection Act.

New paragraphs 28(1)(d) and (e) of the Child Support Registration and Collection Act, inserted by **items 71 and 72**, relocate Registration and Collection Overseas Regulation 15 into the Child Support Registration and Collection Act, incorporating the policy change discussed above: *date liability first becomes enforceable*. New subsection 28(2), inserted by **item 72**, gives effect to the policy change discussed above: *preventing dual liabilities and repeated new liabilities*.

Item 73 relocates Registration and Collection Overseas Regulation 16 into the Child Support Registration and Collection Act.

Item 74 gives effect to the policy change discussed above: *preventing dual liabilities and repeated new liabilities*.

Item 75 relocates Registration and Collection Overseas Regulation 31 into the Child Support Registration and Collection Act, incorporating policy changes discussed above: *meaning of 'reciprocating jurisdiction' and enforcement overseas without payee application*. The new provision (section 30A) includes a clarification that a request under new subsection 30A(2) (by the Registrar to an overseas authority of a reciprocating jurisdiction to have a liability enforced in the jurisdiction) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, being administrative in nature.

Item 76 makes a minor technical amendment to repeal a superfluous note.

Item 77 relocates Registration and Collection Overseas Regulation 19 into the Child Support Registration and Collection Act.

Items 78, 79, 81 and 83 relocate subregulations 10(1) and (2) of the Registration and Collection Overseas Regulations into the Child Support Registration and Collection Act.

Item 80 gives effect to the policy change discussed above: *application of low-income non-enforcement period to overseas maintenance liabilities*.

Item 82 relocates Registration and Collection Overseas Regulation 21 into the Child Support Registration and Collection Act.

New subsection 42D(1) of the Child Support Registration and Collection Act, inserted by **items 84 and 85** relocates Registration and Collection Overseas Regulation 40 into the Child Support Registration and Collection Act. The other new subsections inserted by **item 85** relocate Registration and Collection Overseas Regulations 41 and 42 into the Child Support Registration and Collection Act, incorporating the policy change discussed above: *references to New Zealand Agreement*.

Items 86, 87, 150 and 151 relocate Registration and Collection Overseas Regulation 25 into the Child Support Registration and Collection Act.

Item 88 relocates Registration and Collection Overseas Regulation 26 into the Child Support Registration and Collection Act.

Items 89 and 92 relocate Registration and Collection Overseas Regulation 38 into the Child Support Registration and Collection Act and generally reflect the policy change discussed above: *extra time allowances*.

Items 90 and 96 relocate subregulations 10(1) and (2) of the Registration and Collection Overseas Regulations into the Child Support Registration and Collection Act. **Items 91 and 100** are consequential to those relocations.

Items 93, 94 and 95 relocate subregulations 10(1) and (2) of the Registration and Collection Overseas Regulations into the Child Support Registration and Collection Act, incorporating the policy change discussed above: *extra time allowances*.

New section 121A of the Child Support Registration and Collection Act, inserted by **item 98**, relocates Registration and Collection Overseas Regulation 8 into the Child Support Registration and Collection Act and is also generally consequential to this exercise to accommodate the overseas provisions within the structure of the principal legislation. **Item 97** is consequential to that item. New section 121B, also inserted by **item 98**, relocates Registration and Collection Overseas Regulation 9 into the Child Support Registration and Collection Act. New section 121C of the Child Support Registration and Collection Act, inserted by the same item, partially relocates Registration and Collection Overseas Regulation 28 into the Child Support Registration and Collection Act. The remainder of the regulation will be re-made in a new regulation.

Items 99 and 100 are generally consequential to this exercise to accommodate the overseas provisions within the structure of the principal legislation.

Child support offence provisions

Several items in this Schedule (**items 40, 41, 62, 77 and 97**) amend child support provisions that provide for an offence. In each case, the amendment is to make it clear that the existing offence does *not* apply in connection with a liability under an international maintenance arrangement. Therefore, the underlying rationale for the offence, and its level, is not affected by the amendments. Furthermore, although the amendments technically appear to narrow the application of the offence to this extent, there is no practical narrowing because the circumstances in which the offence may have applied previously were in fact covered by the overseas related regulations, which provided no offences.

In particular, the offences provided by the provisions being amended by these items are all offences of strict liability. There is no alteration by these amendments to the existing basis for those strict liability offences.

Family Law Act amendments

Items 101 to 113 amend the Family Law Act.

Items 101, 102, 103 and 104 are consequential amendments arising from the insertion of new section 111AA into the Family Law Act, discussed above: *effect of Australia-New Zealand Agreement on court's jurisdiction*.

Item 105 makes clear that the presumption of parentage in new subsection 69S(1) applies to a finding by a court in Australia.

Item 106 inserts new subsection 69S(1A) to establish a presumption of parentage arising from a finding by a court in a reciprocating jurisdiction or a Convention country.

Item 107 gives effect to the policy discussed above: *parentage testing*, by adding a new section 69XA. The provisions in new section 69XA have until now been in subregulations 39B(5) to (8) of the *Family Law Regulations 1984*. The reference in new section 69XA, and in new section 117AC (inserted by **item 112**), to Schedule 4A is a reference to a Schedule to regulations that is yet to be made. The Schedule will contain a list of the countries that are parties to the 1973 Hague Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations.

Item 108 expands the list of agreements or treaties to which Australia is a party, and for which parentage testing regulations may be made.

Item 109 is a consequential amendment of the kind made by **items 101 to 104**.

Item 110 inserts new section 111AA to give effect to the policy discussed above: *Effect of Australia-New Zealand Agreement on court's jurisdiction*. **Item 110** also inserts new section 111AB to provide a regulation-making power in relation to the performance of Australia's obligations under a maintenance agreement between Australia and the United States of America.

Items 111 and 112 insert new section 117AC to prevent a court making an order for security for costs in maintenance proceedings involving a country that is a party to the 1973 Hague Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations.

Item 113 repeals subsection 124A(3) to remove the power to make regulations that are inconsistent with the Act. The reasons that the power was originally inserted are explained in *Background*.

Schedule 3 – Amendments relating to access to courts and review process

Summary

This Schedule makes amendments to improve equity between parents in access to court in relation to decisions about parentage of a child and to streamline certain review processes.

Background

The Child Support Registration and Collection Act provides a system of internal reconsideration ('objections') for decisions made by the Child Support Registrar and first tier external review by the SSAT. That Act and the Child Support Assessment Act also deal with access to court in child support matters.

Essentially, any appeal against a decision relating to parentage of a child must be made to a court – that is, there may be no objection, nor review by the SSAT. As a general principle, any decision other than relating to parentage may be reviewed on objection and then by the SSAT, with possible further review by a court on a question of law alone. Notably, if an objection has been lodged by one of the parties to a child support assessment, SSAT review may be pursued by either party, not just the one who lodged the objection.

Despite this comprehensive general structure, there are some inequities in the current system, whereby one party affected by a parentage decision may have a lesser right of access to a court. This streamlining initiative is largely to make the system of court access in parentage decisions fairer. Certain minor refinements to the objection procedure are also made. The amendments fall into several categories.

Equal court access – disputed parentage

Objections and SSAT review are not available if the issue is parentage of the child in question. Instead, access to a court to resolve the issue is the appropriate mechanism. However, there is currently some inequity between parents having court access when parentage is under dispute.

If the Registrar *refuses to accept a carer application* for administrative assessment of child support because he or she is not satisfied that the person from whom child support payment is sought is a parent of the child (or if this is one of the reasons for the refusal), the *carer applicant* may apply to a court under section 106A of the Child Support Assessment Act to challenge the decision on the basis of parentage.

Similarly, if the Registrar *accepts a carer application*, and if the liable parent claims not to be a parent of the child concerned, the *liable parent* may apply to a court under section 107 for review on the basis of parentage.

However, this structure does not cover two scenarios that may arise from a liable parent application. Firstly, a *liable parent applicant* whose application is *refused* because the Registrar is not satisfied that the applicant is a parent of the child may want to apply to court to assert parentage.

Secondly, a *liable parent applicant* whose application is *accepted* may later have reason to doubt the fact of parenthood and may therefore want to apply to court to have the acceptance of the application overturned on that basis.

Most of the amendments in this Schedule are to make sure either party has access to a court if the issue is that the party, or the other party (as relevant), is, or is not (as relevant), a parent of the child concerned.

Serving copy of objection on other party

The objection procedure includes, in section 85 of the Child Support Registration and Collection Act, a requirement for the Registrar to serve a copy of the objection, and the accompanying documents, on the other party affected by the decision. In the case of an objection to the making of, or to the refusal to make, a Part 6A departure determination, amendments will provide that the Registrar now *not* be subject to this requirement if satisfied that the other party's rights will not be affected by any possible decision in relation to the objection.

This is likely to arise in relation to representations that purport to be 'objections' but do not in fact raise any new issues, to the extent that they may not in fact be valid objections. Some of these representations are essentially arguments about whether there is sufficient evidence to support a particular decision. Some are essentially reiterations of previous objections. Nevertheless, these representations are handled as objections so that, once finalised, there is access to the SSAT for those who want to pursue the matter. Relaxing the requirement to send copies, when it is clear that no purpose would be served by that, will speed up the process so that this access is available as soon as possible.

A minor clarification is also made to make sure that the other party is given a copy of a relevant objection to a decision on an application for administrative assessment, whether the application was accepted or refused.

Applications for extension of time to lodge objection

Objections must be lodged within a set time frame (see section 81 of the Child Support Registration and Collection Act). However, section 82 allows an application for an extension of time in which to lodge an objection. This application must be in writing and must be lodged with the objection.

Amendments in this Schedule will allow the Registrar to specify the manner in which such an application may be made. Oral applications, for example, could be allowable on this basis.

An additional amendment is made, to deal with the fact that, in practice, people often lodge objections without realising that the period has passed and then have to be reminded to apply for the extension. The requirements in this process are being eased so that an application for an extension of time is valid even if lodged after the objection itself. The application for extension will then be considered under the current provisions.

Explanation of the changes

Commencement

The amendments will commence on 1 January 2008 and be refined from 1 July 2008 to reflect the 2006 reforms, while preserving as far as possible the original effect of the provisions.

Items 1 to 17 and 29 to 49 amend the Child Support Assessment Act.

Items 18 to 28 and 50 to 55 amend the Child Support Registration and Collection Act.

Items 11 and 12 make the substantive amendments related to the measure discussed above: *equal court access – disputed parentage*. The items insert new sections 106B and 107A of the Child Support Assessment Act to provide court access for a liable parent applicant disputing a parentage decision in the situations described above.

Items 1, 2, 3, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 26 all make amendments to various provisions in the Child Support Assessment Act and the Child Support Registration and Collection Act that are consequential to **items 11 and 12**, that is, they reflect the effect of new sections 106B and 107A.

All of the above items commence on 1 January 2008.

From 1 July 2008, the new provisions inserted by the New Formula Act require similar amendments. **Items 29 to 55** achieve this. In particular, **items 39 and 42** repeal the new sections inserted by **items 11 and 12** above. This is because new section 106B will be subsumed by section 106A, and new section 107A will be subsumed by section 107. Notably, the amendments commencing on 1 July 2008 will reflect the new child support formula, in which the concept is of a person applying for a parent or parents to be assessed in respect of the costs of a child, rather than the previous concept of carers and liable parents applying for child support to be paid from or to each other. The outcome, however, will be the same – each parent will be able to apply to court to challenge a decision on the basis of parentage.

Item 4 makes a minor amendment to clarify that SSAT review is available to either party following an objection process, regardless of which party lodged the objection.

Item 24 makes the amendment relating to allowing an application for an extension of time to lodge an objection to be lodged after the objection, as discussed above under: *applications for extension of time to lodge objection*.

Item 25 makes the amendment relating to the manner of applying for an extension of time to lodge an objection, as discussed above under: *applications for extension of time to lodge objection*.

Item 27 makes a minor clarification to section 85 of the Child Support Registration and Collection Act, which requires copies of objections to be served on other parties. The clarification is to ensure that, if one party makes an objection to a decision on an application for administrative assessment, whether the decision was to accept or refuse the application, a copy of the objection is given to the other party.

Item 28 makes the amendment relevant to the measure discussed above: *serving copy of objection on other party*.

Schedule 4 – Miscellaneous amendments

Summary

This Schedule makes various child support minor policy refinements and technical corrections.

Background

The minor policy measures included in this Schedule are described separately below.

Inclusion in child support assessment, after initial assessment, of a 'relevant dependent child'

A payer's assessed liability for a child may be lower if he or she also has a 'relevant dependent child' (for example, a child of a current relationship). Subsection 39(3) of the Child Support Assessment Act addresses the situation in which the Registrar finds out, after an assessment comes into force, that the payer has a relevant dependent child who was not taken into account in the assessment. There is a technical problem with one of the backdating rules in this provision (paragraph (d)).

The default rule in subsection 39(3) is that the payer is taken to have had the relevant dependent child from the day the Registrar found out that the child is a relevant dependent child (see paragraph (e)). However, there are two backdating rules.

The backdating rule provided by paragraph (d) allows backdating to the day the notice of assessment was given by the Registrar, as long as the Registrar found out, within 28 days after the notice was given, about the child being a relevant dependent child. This rule does not operate correctly. In particular, the notice of assessment being received by the payer (which may well be the first he or she knows about the child support liability) may be considerably later than the start of the liability (which is when the application for assessment was made). The payer should have reflected in his or her assessment, from the start of the liability, the responsibility of having the relevant dependent child. This is being corrected.

Notices of assessment – information given about other children, and information given in child support agreement or court order cases

Section 76 of the Child Support Assessment Act requires the Registrar to give written notice of any administrative assessment made to the parents involved. It also sets down the information that must be included in the notice. This is designed to give the parent concerned a full appreciation of the basis of the assessment that affects him or her (and so inform any decision to object, or respond to an objection). Accordingly, the information required to be included in the notice may vary between specific situations set out in subsection (2). However, section 76 attempts to balance the need to give full information against the need to preserve privacy – that is, only necessary information should be given.

Information given about other children

Several paragraphs in subsection 76(2) require some clarification and refinement to ensure that this balance is achieved in relation to information given about children other than those for whom assessments are made (for example, a child of a current relationship). This is being done by making sure the information that must be notified in each specific situation relates strictly to those matters relevant to the legislative provisions that apply to those situations.

Information given in child support agreement or court order cases

Amendments are also being made to refine the notice requirements when a child support agreement or a court order modifies the administrative assessment. From a privacy viewpoint, the only matters that should be notified are those that informed the assessment, that is, those *not* overridden by the agreement or court order. Yet section 76 requires that all of the specified matters be notified. This is being corrected.

Rental property loss

For each parent, the child support income amount includes a component known as the parent's rental property loss. This is the amount (if any) by which the parent's allowable deductions under the *Income Tax Assessment Act 1997* in respect of rental property exceed the parent's rental property income (other than such income derived as a member of a partnership). Thus, any reduction in taxable income for rental property losses is generally added back into income for child support purposes.

The Australian Taxation Office changed the way in which rental property losses are reported by taxpayers from the 2002-03 income year. The change was to introduce a low value pool deduction. Depreciation (relating to a rental property) that has declined in value to below \$1000 may now be claimed as part of a pool along with other unrelated deductions such as education expenses and work related expenses. The value of the pool deduction is given as a separate item in tax returns, and it is not possible to isolate the rental property component from other components of the pool deduction.

Accordingly, rental property loss amounts claimed through a pool may not be readily added back into income for child support purposes.

This problem is being addressed by excluding such amounts from the rental property loss – they will no longer form part of the child support income amount, although the more clearly identifiable rental property components will continue to be treated as they have been. However, this will happen by regulation, because of the potential for change to the taxation arrangements. Accordingly, the only change at present is to insert a regulation-making provision into the child support legislation – regulations will be made soon after.

Recovery of overpayments between payers and payees

A recent case before the full Family Court (Child Support Registrar and Z and T (21 March 2002)) concerned a person (Z) who had been paying child support as the father of the child concerned but who was subsequently established in DNA testing not to be the father of the child. Z had been seeking a refund, from the Registrar, of his child support payments made after a certain point. He had succeeded in a case before a single judge of the court, but this full court decision overturned the earlier judgment so that Z was ultimately unsuccessful.

This ultimate result is in line with the policy intent in such cases. However, the case highlighted considerable confusion about the legislation involved, which the court suggested be clarified. It is proposed to provide that clarification and to safeguard the intended operation of the provisions.

Z had originally accepted being named as the child's father on the birth certificate. Accordingly, the mother's (T's) application for administrative assessment satisfied the requirement of seeking payment of child support from a parent of the child. Child support payments started to be made. After about two years, the DNA test was carried out.

It is generally intended that any amount to be recovered by Z in such circumstances would be recovered as provided by section 143 of the *Child Support (Assessment) Act 1989* – in court. As addressed by subsection 143(4), the recovery would be by Z from T, not from the Registrar – this intended outcome is being made clearer, through amendments that make only minimal changes to section 143.

Recovering lesser amounts of child support related debts from third parties

Section 72A of the Child Support Registration and Collection Act gives the Registrar a discretion to require a person who owes money to a child support debtor to pay an amount to the Registrar in whole or partial satisfaction of the debt.

However, if the Registrar chooses to exercise this discretion, there is little choice about the amount that may be required to be paid. In essence, the Registrar must require that an amount be paid that is equal to the whole debt or the whole amount due by the third party to the debtor (whichever is the smaller amount).

In fact, there are some circumstances in which the Registrar may wish to require a lesser amount to be paid – that is, less than the whole debt or less than the whole amount due to the debtor by the third party. For example, if a satisfactory arrangement for the repayment of the debt were to be agreed between the debtor and the Registrar, it may not be necessary to use the section 72A recovery mechanism to the full extent possible. Nor may that be desirable if the debtor relies on the money in question, for example, in a bank account, as the sole means of supporting himself or herself.

Accordingly, amendments will allow the Registrar to require the payment of an amount that may be less than the whole debt or less than the whole amount due to the debtor by the third party.

Duty of payee to notify change of name or address

Subsection 111(2) of the Child Support Registration and Collection Act obliges the payer of an enforceable maintenance liability to notify the Registrar of a change to his or her name or address. An amendment will impose the same obligation on payees so that the liability can be properly administered and incorrect payments avoided.

Application of certain amounts to child support debts

Schedule 5 to the *Child Support Legislation Amendment Act 2001* repealed section 72 of the Child Support Registration and Collection Act and substituted a new section 72. The purpose of this, along with the other amendments made by Schedule 5, was to reflect the fact that the child support function had moved to the then Family and Community Services portfolio and that, accordingly, the Child Support Registrar was no longer the Commissioner of Taxation. No substantive change was intended to be made to the operation of section 72 – only the portfolio change was to be reflected, along with necessary minor changes to reflect the current taxation arrangements. However, an unintended substantive change was in fact made, which is now being corrected.

The correction is to resume the former capacity in section 72 to recover from a person's tax refund any debt 'due to the Commonwealth by the person under this Act' (for example, a debt owed by a payee), and not just a 'child support debt' (that is, only a payer debt), as is provided by the erroneously amended section 72.

Secrecy amendments – disclosure to ministers, threats of self-harm and disclosure for the purpose of certain proceedings

The secrecy provisions in the Child Support Assessment Act and the Child Support Registration and Collection Act are being refined to make them more consistent with similar provisions applying in other legislation within the Families, Community Services and Indigenous Affairs portfolio. The main aim of these refinements is to imitate the extensive protection for personal information that applies in, for example, the social security law, while enabling the two ministers who jointly administer the child support legislation to fulfil their respective roles.

The social security provisions on which most of these amendments will be modelled are located either in Division 3 of Part 5 of the Social Security Administration Act or in the *Social Security (Public Interest Certificate Guidelines) Determination 2006* (the Public Interest Guidelines), a legislative instrument made under subparagraph 209(1)(a)(i) and paragraph 209(1)(b) of the Social Security Administration Act.

The child support secrecy amendments will achieve the following:

- Ministers (that is, the two ministers who jointly administer the child support legislation) would come within the scope of the secrecy provisions, as they generally do in other legislation such as the social security law.
- The Child Support Registrar (or person authorised by the Registrar) will be able to communicate protected information not only to a law enforcement officer, as currently provided, but also to anyone else (for example, a child protection authority) if it were considered necessary to prevent or lessen a credible threat to the life, health or welfare of a person (that is, a threat by a person against himself or herself or someone else). The people to whom information can be provided will be limited on the basis that a person is only to be provided information where it is necessary to prevent or lessen the threat to life or for the purposes of preventing, investigating or prosecuting an offence.
- The Registrar (or a person authorised by the Registrar) will be able to communicate protected information to a person who had the consent of the person to whom the information relates to obtain that information.
- The Registrar (or a person authorised by the Registrar) will be able to communicate protected information in certain restricted circumstances:

- to correct a mistake of fact about the administration of the child support legislation, if either the integrity of that administration would be at risk if the mistake were not corrected or the mistake related to a matter in the public domain;
- to brief a minister for various purposes related to his or her responsibilities – specifically, to allow the minister to consider or respond to complaints or issues raised with the minister; for a meeting or forum to be attended by the minister; to allow the minister to address information in the public domain to correct a mistake of fact, a misleading perception or impression, a misleading statement or an incorrectly held opinion; about a possible error or delay by the Child Support Agency (CSA); or about an instance of anomalous or unusual operation of the child support legislation;
- to assist in relation to the whereabouts of a missing person, as long as there were no reasonable ground for thinking the missing person would not want the information communicated; or
- to assist in locating a relative or beneficiary of a deceased person or for similar purposes associated with a death.

Before any of these circumstances could apply to justify the release of information, it would need to be established that the information could not reasonably be obtained from a source other than the Department and that the person to whom the information would be communicated had a *sufficient interest* in the information. A minister administering the child support legislation, or the Prime Minister, would have sufficient interest, or a person who was able to satisfy the Registrar that he or she had a genuine and legitimate interest in the information.

- A new provision will ensure that it would be an offence if a person, incorrectly sent personal information by the CSA (for example, a letter mailed to the wrong person), were to record, communicate or otherwise use that information – this is not covered thoroughly by the current offence provision. In keeping with the current offence provision, the new offence will carry a penalty of imprisonment for one year. The new offence would not apply if a person were to record, communicate or otherwise use personal information that was obtained legally from a source other than the records of the Department or the CSA. The new offence will be a fault-based offence and the default fault elements in the *Criminal Code Act 1995* would apply.

- Associated amendments will be made to ensure that people to whom personal information was legitimately given may use or record that information for the purpose for which it was given, but would generally be subject to the offence provision if they were otherwise to use or record it.
- Lastly, it will be clarified that necessary information may be released to a person who has notified the Registrar, in accordance with section 113A of the Child Support Registration and Collection Act, an intention to institute proceedings in court to recover a debt due in relation to a child support liability. The release would be for the purpose of those proceedings alone and the person would become subject to the secrecy provisions in his or her handling of the information.

Explanation of the changes

Commencement

Most of the amendments will commence on 1 January 2008 and be refined from 1 July 2008 to reflect the 2006 reforms, while preserving as far as possible the original effect of the provisions. However, the amendments to the secrecy provisions will commence on Royal Assent.

Items 1 to 10, 21 to 38 and 47 to 53 amend the Child Support Assessment Act.

Items 11 to 20 and 39 to 46 amend the Child Support Registration and Collection Act.

Items 1 to 10 amend the secrecy provision in section 150 of the Child Support Assessment Act. These amendments give effect to the measure described above: *secrecy amendments – disclosure to ministers, threats of self-harm and disclosure for the purpose of certain proceedings.*

Item 1 repeals the definition in subsection 150(1) of *law enforcement officer*, which will now be redundant.

Item 2 repeals and substitutes the definition of *person to whom this section applies*. The main substantive change made is to include within the definition ‘the Minister’, making the ministers who administer the Act subject to the secrecy provisions, as they are under, for example, the social security law. The substituted definition also recognises that new subsections 150(4) and (4G), inserted by **item 9** will allow protected information to be communicated to a person in certain restricted circumstances and, in that case, the person receiving the information will be a person to whom the section applies, as is currently provided for a person receiving information under subsection 150(3). Otherwise, the new definition is to simplify and update the drafting of the provision.

Items 3 and 4 amend the definitions of *protected document* and *protected information* to reflect the new capacity to communicate information under the new subsections being inserted by **item 9**. **Item 5** inserts a new definition of *relevant Minister*, for the purpose of the new subsections being inserted by **item 9**.

Item 4 is to make sure the general prohibition in subsection 150(2) on recording or communicating protected information is subject not only to subsection (3), as currently referred to, but also to the exception covered by new subsection (4), inserted by **item 9**. This is done by expressing subsection (2) to be subject to 'this section' so all of the exceptions to recording or communicating protected information contained in section 150 are taken into account.

Item 7 adds to subsection 150(2A) to make sure that it is not an offence for a person to record or communicate protected information for any purpose for which it was given to him or her under the section.

Item 8 repeals and substitutes paragraph 150(3)(e) to make it possible for the Registrar (or person authorised by the Registrar) to communicate protected information to a law enforcement officer or anyone else (for example, a child protection authority) if it is considered necessary to prevent or lessen a threat to the life, health or welfare of a person (that is, a threat by a person against himself or herself or someone else). Furthermore, the existing capacity in paragraph (e), to communicate protected information if warranted for the purpose of preventing, investigating or prosecuting an offence that may be associated with the threat, is preserved.

Item 8 also includes a new paragraph 150(3)(f) as part of the substitution. This makes it possible for the Registrar (or a person authorised by the Registrar) to communicate protected information to a person who has the express or implied consent of the person to whom the information relates to obtain that information. This essentially replicates the provision allowing communication of information in subparagraph 208(1)(b)(ii) of the Social Security Administration Act.

Item 9 repeals subsection 150(4) and substitutes several new subsections. Subsection (4) currently provides that a person breaches the prohibition in subsection (2) on communication of protected information if the person communicates the information to any Minister. In view of the general strengthening of the secrecy provisions, especially now that ministers will be subject to the secrecy provisions, and to make sure ministers may receive protected information if it is necessary to carry out their ministerial responsibilities, the existing subsection (4) is no longer required.

New subsection 150(4) provides a new power for the Registrar (or a person authorised by the Registrar) to communicate protected information in certain restricted circumstances. This directly reflects the social security arrangement (see section 7 of the Public Interest Guidelines). Three criteria must be satisfied.

The first is that the information cannot reasonably be obtained from a source other than the Department – if it can, then a person should pursue that source. The second is that the person to whom the information is to be communicated must have a sufficient interest in the information. The meaning of *sufficient interest* is addressed by new subsection 150(4A). A relevant Minister (that is, one of the ministers administering the Assessment Act or the Prime Minister) is taken to have sufficient interest. Otherwise, the Registrar (or person authorised by the Registrar) must be satisfied that, in relation to the purpose of the communication, the person concerned has a genuine and legitimate interest in the information. This stringent test will exclude casual, vexatious and other unwarranted requests for information. The third criterion is that the Registrar (or the person authorised by the Registrar) must be satisfied that the communication is for the purpose of one of new subsections 150(4B) to (4F).

New subsection 150(4B) provides the first of the purposes that may justify the communication of protected information, mirroring section 10 of the Public Interest Guidelines. This will apply if it is necessary to communicate the information to correct a mistake of fact in relation to the administration of the Act. It must also be established either that the integrity of that administration will be at risk if the mistake is not corrected, or that the mistake relates to a matter that is or will be in the public domain (regardless of whether the person to whom the information relates consented or consents to the information being made public).

New subsection 150(4C), replicating section 11 of the Public Interest Guidelines, provides a purpose if it is necessary to communicate the information to brief a relevant Minister for various purposes, comprising:

- to consider or respond to complaints or issues raised with the Minister by or on behalf of a person (in writing or orally);
- for a meeting or forum to be attended by the Minister;
- in relation to issues currently, or proposed to be, raised in public by or on behalf of the person concerned so the Minister can correct a mistake of fact, a misleading perception or impression, a misleading statement or an incorrectly held opinion;
- about a possible error or delay by the Child Support Agency; or
- about an instance of an anomalous or unusual operation of the Act.

New subsection 150(4D) mirrors section 12 of the Public Interest Guidelines. It provides a purpose if the information to be communicated is about a missing person and is necessary either to assist a court, coronial enquiry, Royal Commission, department or authority (whether Commonwealth, State or Territory) in relation to the whereabouts of the missing person or to locate a person (including the missing person). The purpose will apply only if there is no reasonable ground for thinking the missing person would not want the information communicated.

New subsections 150(4E) and (4F) replicate section 13 of the Public Interest Guidelines and relate to deceased persons. New subsection (4E) is very similar to new subsection (4D), with the aim of assisting to locate a relative or beneficiary of the deceased person or assisting with formal processes associated with the death, including in relation to the administration of the estate. New subsection (4F) provides a purpose if the information is to be communicated to establish the death of a person or the place where the death is registered.

New subsection 150(4G) is necessary to support section 113A of the Child Support Registration and Collection Act. That section allows a payee to institute a proceeding in court to recover a debt due under a child support liability and the new subsection allows protected information to be communicated to the payee, but only for the purposes of that proceeding. In other respects, once in possession of the information, the payee is covered by the secrecy provisions as discussed above.

Item 10 inserts new section 150AA. This is a new secrecy provision that, again, mirrors arrangements under the social security confidentiality provisions. The purpose of the new section is to provide a remedy, should personal information be communicated incorrectly (for example, an official letter mailed to the wrong person). A remedy for such a situation already exists in, for example, the social security law because the offence of recording, disclosing or otherwise using protected information (see section 204 of the Social Security Administration Act) falls on 'a person'. Therefore, any person, including one incorrectly sent protected information, would commit an offence by subsequently recording, disclosing or otherwise using that information. This has proven to be sufficient protection for that information in cases like these. By contrast, the equivalent child support offence (see subsection 150(2) of the Assessment Act) falls on 'a person to whom this section applies' and this would not necessarily include a person incorrectly sent protected information.

Therefore, new section 150AA establishes a new offence, at the same level as currently contained in subsection 150(2), that is, carrying a penalty of imprisonment for one year. The new offence will apply if 'a person' (not being a *person to whom this section applies* within the meaning of subsection 150(1), in which case the offence in subsection 150(2) may apply) records, communicates or otherwise uses relevant information. *Relevant information* is defined to mean information about a person obtained from the records of the Department or the Child Support Agency or information to the effect that there is no information about a person held in those records. This definition equates to the definition of *protected information* in subsection 23(1) of the Social Security Act, which applies for the social security confidentiality provisions.

Notably, because of the definition of *relevant information*, the new offence will not apply if a person records, communicates or otherwise uses personal information that was obtained legally from a source other than the records of the Department or the Child Support Agency.

The new offence is a fault-based offence and the default fault elements in the *Criminal Code Act 1995* will apply.

Items 11 to 20 make equivalent amendments to the secrecy provision in section 16 of the Child Support Registration and Collection Act.

Items 21, 25 and 47 give effect to the policy refinement discussed above: *rental property loss*. The regulations that will be necessary to give effect to the new rules will be made as soon as this Bill is enacted, ready for when these amendments commence, 28 days after Royal Assent.

Items 22, 23 and 49 give effect to the policy refinement discussed above: *inclusion in child support assessment, after initial assessment, of a 'relevant dependent child'*.

Item 24 makes a technical amendment. Section 45A of the Assessment Act describes the entitled carer's 'supplementary amount' for the purposes of the definition of the carer's 'income amount' in section 45. One of the components of the supplementary amount is the carer's 'exempt foreign income' (as mentioned in paragraph 45A(1)(a)). This in turn is defined in subsection 45A(2), but the subsection contains an editing error towards the end. It *should* refer to the total amount of the carer's relevant exempt income, reduced by certain losses and outgoings 'incurred by the *entitled carer* [not liable parent] in deriving that exempt income'.

Item 26 makes a technical amendment. The *Child Support Legislation Amendment Act 2001* made an amendment to allow the modification to the basic formula for administrative assessment in shared or divided care cases to apply to eligible children who have turned 18, and not just those aged under 18 as currently provided. Another amendment in the same Act inserted a new section to make sure that the continuation of child support once a child has turned 18 is based on the assumption that the child is still 17 for the purposes of the administrative assessment provisions. In fact, the second amendment alone would have been sufficient to achieve the desired result. The first amendment is superfluous and is being undone to avoid confusion.

Item 27 makes a technical amendment. Section 56 of the Assessment Act provides that, for child support purposes, a person's taxable income is generally taken to be the taxable income last assessed before the affected administrative assessment is made. Any later amendment of that assessment is usually disregarded and the assessment already applied continues to apply. However, in certain cases generally connected with tax avoidance, etc, the amended assessment *should* apply. This is provided by subsection 56(3), which identifies the three cases in a rather lengthy passage that, although technically correct, is prone to being misread. The subsection is being redrafted in a clearer way to avoid misinterpretation. The regulations that currently prescribe provisions and circumstances for the purposes of the subsection will be re-made with the same effect as soon as this Bill is enacted, ready for when these amendments commence, on 1 January 2008.

Items 28 and 48 make a technical amendment. Part 5 of the Assessment Act provides for a person's child support income amount to be based on an estimate of taxable income in certain circumstances. The *Child Support Legislation Amendment Act 1998* repealed and substituted a new section 60 in that Part. The effect of the new section is that a child support income amount can now be based on an election (that is, an estimate) only for the remaining days (after the election) in the child support period. That is, it can be so based only prospectively – the previous version of the provision had applied the estimate throughout the income year, including retrospectively. This deliberate change in approach was not followed through, however, in new subsection 60(2), which prevents a person from making such an election if an income amount order is in force in relation to any part of the child support period. This should in fact say 'any part of the *remaining* [child support] period'.

Items 29, 30, 31, 32, 33, 50 and 51 give effect to the policy refinement discussed above: *notices of assessment – information given about other children*.

Items 34, 52 and 53 give effect to the policy refinement discussed above: *notices of assessment – information given in child support agreement or court order cases*.

Item 35 makes a technical amendment. Included in Division 2 of Part 6A of the Assessment Act, dealing with departures initiated through an application from a liable parent or a carer entitled to child support, is a requirement for the Registrar to invite the other party to make a representation regarding the application (see subsection 98G(2)). Division 3 of Part 6A deals with departures initiated by the Registrar. Naturally, there is no application in this case, although the provisions are otherwise generally comparable between the two Divisions. Nevertheless, there is a mistake in the provision in Division 3 that is equivalent to subsection 98G(2). Subsection 98M(3) requires the Registrar to invite each party to the proceedings to make a representation regarding 'the application'. Since there is no application, the provision should refer instead to 'the summary'. This is the summary (mentioned in subsection 98M(2)) of the information that the Registrar used to form the view that the departure determination should be made.

Item 36 makes a technical amendment. Section 98V, in Part 6A (departure determinations), was inserted into the Assessment Act by the *Child Support Legislation Amendment Act 1998*, as part of a wholesale repeal and substitution of Part 6A. This was to improve certain aspects of the departure process, particularly addressing concerns raised by a Joint Committee of the time, and in relation to Registrar initiated departure determinations. No explicit change was intended to be made in the substitution of new section 98V over the former provision (section 98M). The new section was substituted in essentially the same form, with certain minor drafting changes. Unfortunately, a minor but critical change was made by oversight – it was never intended. This is that the word ‘no’ that was in the old section 98M was mistakenly left out of the replacement section 98V. This is being corrected.

Items 37 and 38 gives effect to the policy refinement discussed above: *recovery of overpayments between payers and payees.*

Item 39 makes a technical amendment. The term ‘child support agreement’ is defined in section 5 of the Assessment Act. However, this definition does not apply in the Registration and Collection Act, nor is the term defined in that Act itself, although the term is used in that Act and so needs a definition. Accordingly, an identical definition is being inserted into the Registration and Collection Act.

Item 40 makes a technical amendment. Section 67 of the Registration and Collection Act imposes a penalty for late payment of child support debts. The amount of such a penalty is calculated with reference to the ‘relevant annual rate’. This is defined, somewhat loosely, in subsection 67(3) as the annual rate of the penalty for unpaid income tax for the time being specified in the *Income Tax Assessment Act 1936*. The relevant provision in that Act itself would appear to be the definition of the ‘base interest rate’ in section 214A. That term in turn has the same meaning as in section 8AAD of the *Taxation Administration Act 1953*. However, the relevant annual rate mentioned in section 67 is actually supposed to link to the other term defined in section 8AAD – the ‘general interest charge rate’ (see subsection 8AAD(1)). The definition of relevant annual rate in subsection 67(3) needs to be amended so that it has the same meaning as the general interest charge rate has in subsection 8AAD(1).

Items 41 and 42 give effect to the policy refinement discussed above: *application of certain amounts to child support debts.*

Items 43 and 44 give effect to the policy refinement discussed above: *recovering lesser amounts of child support related debts from third parties.*

Items 45 and 46 give effect to the policy refinement discussed above: *duty of payee to notify change of name or address.*

Child support offence provisions

Some of these minor policy refinements are to provisions containing offences. None of these measures affects the underlying rationale for the offence and its level. One of the measures is to amend the child support secrecy provisions, as discussed above under **items 1 to 20**.

Section 72A of the Registration and Collection Act is also being amended (by **items 43 and 44**) to clarify that an amount that may be recovered from a third party, from money owed by that third party to a child support debtor, may be less than either the total debt or the total amount owed by the third party to the debtor. Failure to pay an amount under the section attracts an offence (of strict liability), which would also apply in relation to this lesser amount to be recovered. Accordingly, this amendment also does not affect the rationale for, and level of, the offence.

Lastly, payees are to be included with payers in the ambit of the notification requirement imposed by section 111 of the Registration and Collection Act (**items 45 and 46**). Failure to notify attracts an offence (of strict liability). Accordingly, although the application of the offence in this case is being widened, it does not affect the rationale for, and level of, the offence. Strict liability is an appropriate basis for the offence as applied to payees, as it is to payers, because of:

- the difficulty the prosecution would have in proving fault (especially knowledge or intention) in this case;
- the fact that the offence is minor (a fine of \$1000); and
- the fact that the offence does not involve dishonesty or other serious imputation affecting the person's reputation.

Schedule 5 – Maintenance income test

Summary

This Schedule amends the maintenance income test (MIT) provisions in the Family Assistance Act.

The amendments made by **Part 1** clarify the meaning of ‘amount received’ and ‘amount payable’ in the formula used to work out the notional amount of maintenance income an individual is taken to have received under a child support agreement or court order where there is an underpayment of child support that is registered for collection by the Child Support Agency (CSA).

The amendments made by **Part 2** clarify that maintenance income received by a payee for one or more children will reduce the payee’s amount of FTB Part A above the base rate for those children only.

Part 3 makes amendments that relate specifically to the maintenance income credit (MIC) provisions. These amendments:

- ensure that the benefits of the MIC are available only where FTB is claimed through Centrelink or Medicare Australia and not through the tax system from the Australian Taxation Office (ATO);
- refine the MIC provisions so that they operate as intended; and
- reflect the new FTB treatment of child support agreements and lump sum child support under the child support reforms in the MIC provisions.

Part 1 – Notional assessments

Background

As part of the recent child support reforms, the MIT provisions for FTB and relevant definitions are being modified from 1 July 2008. For child support agreements, or court orders for non-periodic amounts that reduce a child support liability, the changes ensure that an individual’s child maintenance is not determined on the basis of the amount actually received in the relevant income year (as is currently the case). Rather, the payee’s entitlement to FTB Part A will be determined on the basis of the amount of child support that would be transferred under an administrative assessment if the agreement or order had not been made (that is, the individual’s notional assessment).

New clause 20B of Schedule 1 to the Family Assistance Act, as inserted by Schedule 5 to the New Formula Act, applies where child maintenance is payable to an individual under a child support agreement or a court order and there is, in relation to that agreement or order, a notional assessment of the annual rate of child support that would be payable to the individual for a child if worked out under the child support formula in Part 5 of the Child Support Assessment Act.

Subclause 20B(3) deals with the situation where the amount of child support received by the individual is less than the amount payable under the agreement or order. The formula in this provision ensures that the amount deemed to be the amount of child support received for the child for the period would be the proportion of the notional assessed amount commensurate with the proportion of the amount of child support payable that was received.

This formula does not currently take account of reductions in the amount payable under an agreement or order due to non-periodic payments or amounts credited against the amount payable under an administrative assessment in the case of lump sum payments. Amendments are made to address these situations.

Explanation of the changes

Item 1 inserts new subclauses 20B(3A) and 20B(3B) into Schedule 1 to the Family Assistance Act.

New subclause 20B(3A) modifies the meaning of 'amount received' in the formula in subclause 20B(3).

In the case of a non-periodic payments agreement or order, the amount received by the individual under the agreement or order for the child for the period is taken to include the amount by which the annual rate of child support payable is reduced for the period under the agreement or order.

A 'non-periodic payments agreement or order' is defined in new subclause 20B(8), inserted by **item 2**, to mean:

- an agreement containing non-periodic payment provisions; or
- a court order made under section 124 of the Child Support Assessment Act including a statement that the annual rate of child support payable under an administrative assessment is to be reduced by the child support ordered to be provided by the liable parent.

If the agreement or order is also a lump sum payments agreement or order, the amount received by the individual under the agreement or order for the child for the period is taken to include the total amount of the lump sum payment that is credited for each day in the period under section 69A of the Child Support Registration and Collection Act against the amount payable under the liability under the agreement or order.

A 'lump sum payments agreement or order' is defined in new subclause 20B(8), inserted by **item 2**, to mean:

- an agreement containing lump sum payment provisions; or
- a court order under section 123A of the Child Support Assessment Act.

New subclause 20B(3B) modifies the meaning of 'amount payable' in the formula in subclause 20B(3).

In the case of a non-periodic payments agreement or order, the amount payable to the individual under the agreement or order for the child for the period is taken to include the amount by which the annual rate of child support payable is reduced for the period under the agreement or order. New subclause 20B(8) defines the term 'non-periodic payments agreement or order' in the manner described above.

As a lump sum payment is credited under section 69A of the Child Support Registration and Collection Act rather than reducing the amount payable to an individual, a lump sum payments agreement or order does not need to be addressed when considering the meaning of 'amount payable'.

These amendments commence on 1 July 2008.

Examples of how these amendments work where there are non-periodic reductions (example 1), and crediting of a lump sum payment (example 2), are shown below.

Example 1

Agreement is for periodic payments, plus non-periodic payment provisions that reduce annual rate payable under agreement by 50 per cent. After reduction, the remaining amount payable is CSA collection.

The relevant amounts for the income year are as follows:

- Notional assessed amount = \$5,000
- Amount payable under agreement (before non-periodic reduction) = \$4,000
- Non-periodic reduction amount = \$4,000 x 50% = \$2,000
- Amount payable under agreement (after reduction) = \$4,000 - \$2,000 = \$2,000
- CSA collection amount received = \$1,000
- Amount received under agreement (including reduction amount) = \$1,000 + \$2,000 = \$3,000

Notional amount paid

[Amount received (including reduction amount) / Amount payable (including reduction amount)] x Notional assessed amount =

$$(\$3,000 / \$4,000) \times \$5,000 = \mathbf{\$3,750}$$

Example 2

Agreement is for periodic payments, plus lump sum payment that is to be credited against 50 per cent of amount payable under agreement. After crediting, the remaining amount payable is CSA collection.

The relevant amounts for the income year are as follows:

- Notional assessed amount = \$5,000
- Amount payable under agreement = \$4,000
- Amount credited = \$4000 x 50% = \$2,000
- CSA collection amount received = \$1,000
- Amount received under agreement (including amount credited) = \$1,000 + \$2,000 = \$3,000

Notional amount paid

[Amount received (including amount credited) / Amount payable] x Notional assessed amount =

$$(\$3,000 / \$4,000) \times \$5,000 = \mathbf{\$3,750}$$

Part 2 – Maintenance income ceiling

Background

As part of the recent child support reforms, the MIT provisions are amended from 1 July 2008 to ensure that maintenance income received by a payee for one or more children would reduce the payee's amount of FTB Part A above the base rate, including any rent assistance, for those children only. This is done by introducing a maintenance income ceiling that represents the amount of maintenance income that limits the maximum reduction under the MIT to the children for whom maintenance income is paid. Any amounts paid in excess of the ceiling are disregarded for the purposes of applying the MIT.

New clauses 24F and 24M of Schedule 1 to the Family Assistance Act, inserted by Schedule 8 to the New Formula Act, state when the new maintenance income ceiling provisions do not apply. These provisions currently refer to situations where there is an entitlement to maintenance income from one payer only for all of the FTB children in a household. However, it is possible for the individual to have a combination of FTB children and regular care children, and therefore to receive maintenance income for the FTB children only, and not for all the children in the household who attract payment of FTB. (A regular care child who is also a rent assistance child can attract payment of FTB in the form of rent assistance and is relevant in working out the amount of rent assistance to which the individual is eligible.)

This scenario needs to be accounted for in the maintenance income ceiling provisions so that the reduction under the MIT is limited to the children for whom maintenance income is paid.

Explanation of the changes

Items 3 and 4 amend clauses 24F and 24M respectively to include an additional condition that the individual does not have a regular care child who is also a rent assistance child. The effect is that the maintenance income ceiling provisions will not apply where there is an entitlement to maintenance income from one payer for all FTB children in the household and the individual has no regular care children who are also rent assistance children.

These changes commence on 1 July 2008.

Part 3 – Maintenance income credit

Background

An individual who is entitled to maintenance income that is registered for collection by the CSA but who does not receive the correct amount of maintenance when it is due may accrue a MIC. The individual must be eligible for FTB, or the partner of an individual who is eligible for FTB, for an accrual to occur. Accruals to the MIC represent the unused amount of the maintenance income free area (MIFA) under the MIT for FTB Part A. Before introduction of the MIC, any unused MIFA could not be carried forward from one year to the next, thereby disadvantaging families who receive child support late.

Under the MIT, any maintenance received in the relevant income year above the MIFA reduces a customer's FTB Part A by 50 cents in the dollar until the 'base rate' is reached. When the person receives arrears of maintenance income, the MIC is drawn upon to reduce the amount of arrears counted under the MIT.

The beneficial effect of the MIC for a given income year applies on income reconciliation after the end of that income year. This means that the MIC will first be applied after 1 July 2007, when reconciliation for the 2006-07 income year occurs. However, the earliest date for accrual to a MIC balance is the later of 1 July 2000 or when the individual or their partner became eligible for FTB.

The rules relating to the MIC are set out in Subdivision B of Division 5 of Part 2 of Schedule 1 to the Family Assistance Act (clauses 24A to 24E of Schedule 1 refer).

FTB claims through the tax system and the MIC

In broad terms, families may receive their FTB payments by fortnightly instalments or an annual lump sum through Centrelink or Medicare Australia, or as an annual lump sum or reduced tax withholdings through the tax system.

To implement the MIC measure into the tax system, a significant number of changes would be required to ATO IT systems and the FTB tax claim form and instructions. Fewer than 400 families a year who claim their FTB through the tax system are estimated to receive arrears of child support and potentially benefit from the MIC. Given the relatively small number of families, it is more cost effective to have these families claim their FTB through Centrelink or Medicare Australia. Amendments are therefore made to ensure that the benefits of the MIC are available only where an individual claims FTB from Centrelink or Medicare Australia and not through the tax system with the ATO. Any potential ATO claimants from July 2007 will be advised that they must claim FTB for 2006-07 through Centrelink or Medicare Australia to benefit from the MIC.

While this approach limits the FTB delivery choices for these families, other families claiming rent assistance, health care cards and income support payments are already required to claim FTB from Centrelink or Medicare Australia.

Minor amendments to the maintenance income credit provisions

The process of developing the IT system for the MIC and other implementation tasks have identified a number of changes and refinements that are required to the MIC provisions so that they work in the required manner.

Changes are required to ensure that a MIC balance for a registered entitlement at the end of an income year (starting with 30 June 2006) cannot exceed the total arrears owing from that registered entitlement at that time. The existing provisions refer to a MIC balance 'at any particular time'.

Further rounding and annualisation rules are required.

The MIC rules also need to take account of the situation where the same entitlement to receive maintenance income may be a registered entitlement for part of an income year and not a registered entitlement for a different part of the same income year (that is, where there is a mix of CSA and private collection methods in the same income year).

Child support agreements and lump sum child support and the MIC

As part of the recent child support reforms, the MIT provisions for FTB and relevant definitions are being modified from 1 July 2008. For child support agreements, or court orders for non-periodic amounts that reduce the child support liability, the changes ensure that an individual's child maintenance is not determined on the basis of the amount actually received in the relevant income year (as is currently the case). Rather, the payee's entitlement to FTB Part A will be determined on the basis of the amount of child support that would be transferred under an administrative assessment if the agreement or order had not been made (that is, the individual's notional assessment).

Consequential amendments are required to the MIC provisions for cases involving child support agreements or orders where there is a notional assessment of child support relating to the agreement or order. The intention is that the amount of child maintenance that is due to an individual would not be determined on the basis of the amount actually due in the relevant income year but rather on the notional assessment.

Explanation of the changes

Division 1 – Amendments commencing on 1 July 2006

FTB claims through the tax system and the MIC

There are three key elements in the MIC provisions: accrual, depletion, and disregarding. MIC balances, including rules around accruals and depletions, are dealt with in clauses 24A to 24E of Schedule 1 to the Family Assistance Act. The amount by which a MIC balance is depleted in accordance with clause 24E is then disregarded in working out the individual's annualised amount of maintenance income in accordance with paragraph (c) of step 1 of the method statement in clause 20 of Schedule 1.

This measure relates to the 'disregarding' aspect of the MIC provisions only, and not to accruals or depletions. The intention is that a person should not have any arrears disregarded under paragraph (c) of step 1 of clause 20 for a period in a particular income year if the person's claim for FTB for that period is a claim made with the ATO. However, the person could still have an accrual or depletion for that year. Those aspects could impact on the application of the MIC provisions for a subsequent year if the person later claims through Centrelink or Medicare Australia.

It would be possible to satisfy the MIC disregarding for part of an income year and not satisfy it for another period in the same income year. This could happen where, for example, the person was an instalment claimant for the first part of the year but swapped to being an ATO claimant for the later part of the same income year.

Item 5 inserts new subclause 20(3) into Schedule 1. This new provision ensures that the disregard in paragraph (c) of the method statement in clause 20 of Schedule 1 does not apply to an amount received by the individual or their partner if the MIT is applied in relation to a claim for FTB for a past period that falls wholly within that year and the claim is in a form that has been approved by an officer of the ATO for the purposes of subsection 7(2) of the Family Assistance Administration Act (that is, the claim is an FTB tax claim).

Consistent with the commencement of the MIC measure, this amendment is taken to have commenced on 1 July 2006 and applies to FTB for the 2006-07 income year and later income years (**item 6** refers). As the benefits of the MIC on FTB are available on income reconciliation (after the relevant reconciliation conditions have been satisfied), this means that families will first benefit from the MIC from July 2007 for the 2006-07 income year. The amendment will therefore not have an adverse retrospective effect on families.

Minor amendments to the MIC

Subclause 24A(2) of Schedule 1 to the Family Assistance Act currently states that a MIC balance for a registered entitlement 'at any particular time' cannot exceed the total arrears owing from that registered entitlement.

The first income year for which the beneficial effect of the MIC (that is, disregarding the amount of arrears depleted from a MIC balance) can be applied is 2006-07. It would be unnecessary and administratively difficult to determine the total arrears owing at any time throughout the previous income years between 1 July 2000 and 30 June 2006. A comparison based on the amount at the end of 30 June 2006 will ensure the intended MIC balance applies before the start of 2006-07 and any depletion that may occur for that year. Comparisons based on the amounts at the end of each subsequent 30 June will ensure the intended MIC balance applies before the start of subsequent income years.

Item 7 therefore amends subclause 24A(2) to ensure that the relevant comparison occurs at the end of an income year.

Item 8 is an application provision which ensures that the comparisons under subclause 24A(2) are based on the total arrears owing at the end of 30 June 2006, and the total arrears owing at the end of each subsequent income year (that is, 30 June 2007, 30 June 2008, etc). The total arrears owing at the end of 30 June 2006 is relevant for the purposes of applying the MIC for 2006-07 which occurs on income reconciliation after July 2007. The change is therefore not retrospective in its effect on families. As subclause 24A(2) can reduce the MIC balance, and the amendment will restrict the comparison under this provision to the end of an income year rather than at any time, any impact of the change can only be beneficial.

Where the conditions in clause 24B of Schedule 1 are met, an individual can accrue an amount, for a day in an income year, to their MIC balance for a registered entitlement. The amount of accrual is worked out under clause 24C. In broad terms, the amount of accrual will equal the amount of the maintenance income free area that would have been used if the 'correct' amount of maintenance income had been received when due.

The method statement at the end of subclause 24C(1) applies where the individual has one registered entitlement (and therefore only one MIC balance) and the individual's partner (if any) does not have a registered entitlement. The method statement at the end of subclause 24C(2) applies where there are multiple registered entitlements (and therefore multiple MIC balances) and enables the accrual amount determined under the method statement in subclause 24C(1) to be apportioned between the relevant MIC balances on an equal basis, subject to a 'daily cap'.

Under step 4 of the method statement at the end of subclause 24C(1), the amount worked out under step 3 is required to be divided by 365 to arrive at a daily amount which is the amount that accrues to the MIC of the individual for the relevant day(s). **Item 9** inserts a rounding rule into step 4 so that the result is rounded to the nearest cent (rounding 0.5 cents upwards).

The first step in the method statement at the end of subclause 24C(2) is to work out a daily cap for each relevant MIC balance. The daily cap is then defined by reference to the amount due in an income year and the maintenance income received in that year.

The calculation required by step 1 works as required in cases where the registered entitlement to which the balance relates covers the whole income year. However, this is not the case where the registered entitlement covers only part of an income year. In these cases, the amount due in an income year from the registered entitlement and the amount of maintenance income received in the income year from the registered entitlement need to be annualised, consistent with the annual nature of the MIT into which the MIC provisions link (see step 1 of the method statement in clause 20 of Schedule 1 to the Family Assistance Act).

Items 10 reworks step 1 in the method statement at the end of subclause 24C(2). In working out the daily cap for each relevant balance under new step 1, the amount due in an income year from a registered entitlement is the annualised amount mentioned in paragraph 24D(1)(a). Similarly, the amount of maintenance income received in an income is annualised in accordance with the formula in new subclause 24C(4), inserted by **item 12**.

The daily cap for a relevant balance (where there are several registered entitlements and therefore more than one relevant balance) is then worked out as the excess of the annualised amount of maintenance income due in the year from the registered entitlement over the annualised amount of maintenance income received from the same entitlement, divided by 365. The amount of accrual to each relevant balance is then worked out applying apportionment rules and adding together the amounts distributed under those rules as required by step 5.

Items 10 and 11 insert rounding rules for the amounts arrived at under steps 1 and 5 of the method statement at the end of subclause 24C(2). These amounts are rounded to the nearest cent (rounding 0.5 cents upwards).

Item 13 makes a minor technical amendment to paragraph 24D(1)(a) of Schedule 1 to the Family Assistance Act to make it clear that the amounts referred to are annualised amounts. These amounts are annualised using the formula in subclause 24D(2).

Consistent with the commencement of the MIC measure, the amendments made by **items 9 to 13** are taken to have commenced on 1 July 2006. As these changes relate to accruals to a MIC balance, the amendments apply to FTB for the 2000-01 income year and later income years (**item 14** refers). Again, this is consistent with the application of the MIC accrual rules originally inserted into Schedule 1 to the Family Assistance Act. As the benefits of the MIC on FTB are available on income reconciliation (after the relevant reconciliation conditions have been satisfied), families will first benefit from the MIC from July 2007 for the 2006-07 income year. The changes will therefore not have a retrospective adverse effect on families.

Division 2 - Amendments commencing on 1 July 2007

This Division contains amendments to the MIC provisions to take account of cases where the same entitlement to receive maintenance income is a 'registered entitlement' (as defined in subsection 3(1) of the Family Assistance Act) for part of an income year, and is not a 'registered entitlement' for part of the same income year. This arises when the method of collection swaps during an income year between CSA collection and private collection of the same entitlement.

Any accrual to a MIC balance for a registered entitlement should only apply for the days in the income year that the entitlement is a registered entitlement (that is, CSA collection). The current provisions correctly reflect this.

However, the calculation of an annualised amount due for a registered entitlement that has a mix of CSA and private collection methods in an income year should combine the amount due in the income year under both CSA and private collection. Similarly, the number of days in the income year covered by the registered entitlement should count all the days in that year covered by CSA and private collection for that entitlement. This is because the annualised amount due should be consistent with how the annualised amount of maintenance income is calculated. Annualised maintenance income for a mixed collection method entitlement combines the amount received in the income year from both CSA and private collection, and the relevant period under clause 20A for calculating annualised maintenance income from the entitlement covers both CSA and private collection.

Item 21 inserts new subclause 24D(5) that defines 'private collection entitlement'. A private collection entitlement of an individual means an individual's entitlement to receive maintenance income from a payer where the payer's liability is a registrable maintenance liability but not an enforceable maintenance liability. Under new subclause 24D(4), a private collection entitlement is related to an individual's registered entitlement if the two relate to the same registrable maintenance liability (that is, the same liability has a mix of CSA and private collection).

This new concept of a related private collection entitlement is then incorporated as appropriate into step 1 in the method statement at the end of subclause 24C(2), new subclause 24C(4) (as inserted by Division 1 of Part 3 of this Schedule), paragraph 24D(1)(a) and subclauses 24D(2) and (3). The relevant amendments are made by **items 15 to 20**.

The amendments made by Division 2 commence on 1 July 2007 and apply to FTB for the 2007-08 income year and later income years (**item 22** refers).

An example of how these changes would work is set out below.

Example

An individual is entitled to receive maintenance income under a maintenance liability for the whole of an income year. The individual has CSA collection of the liability for the first six months of the income year (184 days), and private collection of the liability for the second six months (181 days). The amount due in the income year from CSA collection of the liability is \$2,000, and the amount due in the income year from private collection of the liability is \$3,000. The amount received in the income year from CSA collection of the liability is \$1,000, and the amount received in the income year from private collection of the liability is \$3,000.

Currently, the amount worked out using the formula in subclause 24D(2) would be $\$2,000 \times 365 / 184 = \$3,967.39$. Applying the formula as amended, the amount worked out using the formula in subclause 24D(2) would be $\$5,000 / 365 \times 365 = \$5,000$.

Division 3 – Amendment commencing on 1 July 2008

This Division makes a consequential amendment to the MIC provisions to use a notional amount due rather than the actual amount due in certain circumstances. For accruals to a MIC balance, the unused MIFA will be based on the notional assessment rather than the actual entitlement. Similarly, for depletions from a MIC balance and the resulting disregarding of arrears, the depletion and disregarding will be based on the notional arrears rather than the actual arrears.

References in the MIC provisions to ‘annualised amount of maintenance income’ or to ‘maintenance income received’ would automatically be affected by the deeming rules in subclauses 20B(2), (3) and (4) that commence from 1 July 2008. That is, a notional rather than actual amount received would apply. However, this is not the case with references to ‘amount due’, which still require modification. The relevant MIC provisions affected are subclause 24B(5), step 1 of the method statement in subclause 24C(2) which refers to the formula in subclause 24D(2), subclause 24D(2), subclause 24D(3) and paragraphs 24E(1)(b) and (2)(a).

Item 23 inserts new clause 24EA that modifies references to amount due in the relevant provisions.

New clause 24EA applies if an individual receives child maintenance for an FTB child under a child support agreement or court order that is wholly or in part a registered entitlement and there is, in relation to the agreement or order, a notional assessment (subclause 24EA (1) refers).

In these circumstances, the ‘amount due’ under the agreement or order (whether from the registered entitlement or from a related private collection entitlement) for the period is taken to be the amount that would have been due if the amount due to the individual had been the annual rate of child support for the period that is included in the notional assessment. This rule is in subclause 24EA(2).

New subclause 24EA(3) clarifies that subclause 24EA(2) does not apply to the reference to total arrears owing from a registered entitlement as mentioned in subclause 24A(2).

This amendment commences on 1 July 2008.

Schedule 6 – Baby bonus amendments

Summary

This Schedule amends the family assistance law to:

- ensure that under 18 year old claimants are paid the baby bonus in 13 fortnightly instalments;
- require registration of the birth with the relevant state/territory authority as a condition of eligibility for the baby bonus;
- rename maternity payment to 'baby bonus'.

Part 1 – Baby bonus payments to those under 18

Background

Under the existing rules, maternity payment is generally payable as a lump sum. However, there is discretion for the Secretary to pay maternity payment in six fortnightly instalments in appropriate circumstances or in another way. The relevant payment provision is section 47 of the Family Assistance Administration Act.

Maternity payment is currently \$4,133, is subject to indexation on 20 March and 20 September each year and will increase to \$5,000 on 1 July 2008 (unless the amount is already greater on that date because of indexation).

There are concerns about the appropriateness of paying a large lump sum to young people with no experience in managing large amounts of money. For young claimants, the payment of such a large amount of money in one payment can cause unintended negative consequences, primarily due to their lack of financial literacy and management skills, or the pressure placed on them by partners and other relatives to use the payment for other than its intended purpose.

The current discretionary arrangements in section 47 of the Family Assistance Administration Act are insufficient to address these issues. Accordingly, from 1 July 2007, amendments are made to the payment provision for maternity payment (which will be renamed baby bonus from that date) so that a baby bonus must be paid in 13 fortnightly instalments to claimants who are under 18 years of age.

Explanation of the changes

Section 47 of the Family Assistance Administration Act provides for the payment of maternity payment (to be renamed baby bonus) and maternity immunisation allowance. **Items 2 to 6** amend various provisions in section 47 to ensure that the baby bonus is paid in 13 fortnightly instalments to claimants who are under 18.

The amendment made by **item 2** ensures that a baby bonus cannot be paid to a claimant aged under 18 in 6 fortnightly instalments. It does so by inserting an additional requirement into subsection 47(2) that the claimant has turned 18 on the day on which the claim for baby bonus is made. A note at the end of this item modifies the heading to subsection 47(2) accordingly.

Item 3 repeals existing subsection 47(3). Subsection 47(3) currently defines 'instalment period'. This definition is relocated, without substantive change, into new subsection 47(9) by **item 6**.

New subsection 47(3) applies where the claimant has not turned 18 on the day on which the claimant makes a claim for baby bonus and the claimant is entitled to be paid baby bonus in respect of a child. In these circumstances, the Secretary must pay the claimant their baby bonus in 13 fortnightly instalments. As a general rule, the payments must be made at such times as the Secretary considers appropriate and to the credit of a bank account nominated and maintained by the person. However, new subsection 47(3A) enables the Secretary to direct that payments be made in a manner other than by direct credit into a bank account.

Subsection 47(4) enables the Secretary to change the day on which instalment periods are to begin in relation to a claimant or a class of claimants. This rule currently applies in relation to payment by instalments under subsection 47(2). **Item 4** ensures that this rule also applies in relation to the payment of baby bonus by instalments under new subsection 47(3). This item also inserts an appropriate heading for subsection 47(4).

Subsection 47(6) enables the Secretary to change the day on which an instalment is paid where payment cannot reasonably be made on the designated day (for example, if the day is a public holiday). **Item 5** ensures that this rule also applies in relation to the payment of baby bonus by instalments under new subsection 47(3).

Item 1 makes a consequential amendment to subparagraph 38(c)(ii) of the Family Assistance Act so that any unpaid baby bonus to a claimant aged under 18 can be paid to a third party if the eligible individual dies before receiving their full entitlement.

These amendments commence on 1 July 2007 and apply to claims for payment of baby bonus made after commencement (**item 7** refers).

Part 2 – Registration of birth

Background

Relevant State and Territory laws require the birth of a child to be registered (generally within 60 days of the birth) and it is usually the parents of the child who have joint responsibility for registration of the birth of the child.

A proportion of parents delay registering their child's birth, sometimes for an extended period. This change will improve the timeliness and accuracy of birth statistics and enhance the integrity of the payment.

Explanation of the changes

The eligibility rules for maternity payment (to be renamed baby bonus) are set out in Division 2 of Part 3 of the Family Assistance Act.

Amendments are made to insert a new birth registration requirement for parents claiming the baby bonus. The relevant provision is subsection 36(2) of the Family Assistance Act which sets out the eligibility requirements applicable to a parent claiming baby bonus in respect of a child.

Item 8 amends subsection 36(2) by inserting new paragraph (c) which outlines the new birth registration requirement.

The requirement would apply to an individual who is responsible (whether jointly with another person or alone) for the registration of the birth of the child under the relevant State or Territory law relating to the registration of births.

Such an individual would satisfy the registration requirement if, at the time of claiming baby bonus, the birth of the child has been registered.

An individual would also satisfy the registration requirement if the individual has made an application to have the birth of the child registered in accordance with the relevant State/Territory law at the time the claim is made.

The third way in which the registration requirement can be satisfied is if the Secretary is notified, or becomes aware, within 26 weeks of the birth of the child, that the individual has applied to have the birth registered. This 26 week time frame is consistent with the time limit for claiming payment (paragraph 39(2)(a) of the Family Assistance Administration Act refers).

Under new subsection 36(2A), inserted by **item 9**, the Secretary would have a discretion to extend the 26 week time limit where the Secretary is satisfied that the individual was unable to claim payment of baby bonus because of severe illness associated with the birth of the child concerned. Again, this new rule is consistent with the rule in subsection 39(3) of the Family Assistance Administration Act that enables the time limit for claiming to be extended beyond the usual 26 week period.

The changes made by **Part 2** commence on 1 July 2007 and apply to claims for payment of baby bonus made in relation to children born on or after that date (**item 10** refers).

Part 3 – Name change to baby bonus

Background

From 1 July 2007, maternity payment will be renamed as the baby bonus. Maternity payment has always been commonly referred to as the baby bonus, and changing its official name is expected to reduce confusion.

Explanation of the changes

Amendments to the family assistance law

Amendments are made to the maternity payment provisions in the Family Assistance Act and the Family Assistance Administration Act to rename maternity payment as baby bonus. This is achieved by amending all existing references to maternity payment to reflect the name change. Changes are also made to the headings of provisions as appropriate.

Items 11 to 24 amend the relevant references in the Family Assistance Act, while **items 25 to 36** amend the relevant references in the Family Assistance Administration Act.

Item 37 sets out the application provisions for the renaming of maternity payment to baby bonus. The changes will apply to claims for payment of baby bonus made on or after 1 July 2007. Claims for maternity payment that are undetermined on 1 July 2007 will be treated as claims for baby bonus, noting that the new rules relating to payment of baby bonus by instalments and the birth registration requirement have their own application rules. 'Incorrect' claims for maternity payment made after 1 July 2007 will be treated, as a matter of administration, as claims for baby bonus (rather than requiring claimants to reclaim using a very similar form).

For example, a claim for maternity payment is made after 1 July 2007 by a claimant who is 17 years old in respect of a child born before 1 July 2007. The claim would be determined as if it were a claim for baby bonus. The birth registration requirement would not apply as the child in respect of whom the claim was made was born before 1 July 2007. If the claimant is otherwise eligible for baby bonus and the claim is granted, then baby bonus would be payable to the customer in 13 fortnightly instalments, as the claim was made on or after 1 July 2007 and the claimant was aged under 18 at the time of claim.

Income Tax Assessment Acts

Consequential amendments are also made to the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* to reflect the name change.

Subsection 159J(6) of the *Income Tax Assessment Act 1936* defines 'separate net income' for the purpose of working out a taxpayer's rebate for dependants. Currently, 'separate net income' in relation to a dependant does not include maternity payment. **Item 38** inserts a reference to baby bonus to maintain this current treatment for baby bonus.

Item 39 includes a reference to baby bonus in section 11-15 of the *Income Tax Assessment Act 1997* (table item headed 'family assistance') while **item 40** amends section 52-150 by inserting a reference to baby bonus. These changes are to retain the tax exempt status of the new baby bonus on the same basis as the existing maternity payment.

These changes commence on 1 July 2007.

Schedule 7 – Portability of family tax benefit

Summary

Changes are being made to allow the FTB portability period of 13 weeks for full payment to be extended for members of the Australian Defence Force (ADF) and certain Australian Federal Police (AFP) personnel of the International Deployment Group (IDG) who are deployed overseas as part of their duties and, as a result, remain overseas for longer than 13 weeks.

A minor technical change is also made to the heading of a table in the rent assistance provisions relevant for FTB Part A.

Background

Portability of FTB

Section 62 of the Family Assistance Act modifies the way in which an individual's rate of FTB is calculated where the individual has been absent from Australia for longer than 13 weeks. Such an individual can only attract the base rate of FTB Part A and cannot receive rent assistance or FTB Part B while they remain overseas. The maximum period of eligibility while overseas is three years (section 24 of the Family Assistance Act refers).

Section 63A of the Family Assistance Act enables the Secretary to extend the 13 week portability period where the person is unable to return to Australia within the portability period because of a prescribed event (such as war in the country in which the person is located). However, the 13 week period cannot be extended unless the event occurred or began during the initial 13 week period of absence and, in the case of political or social unrest, industrial action or war, the person is not willingly involved, or willingly participating, in the event. This restriction is set out in subsection 63A(2).

This means that FTB customers who are members of the ADF and have been deployed overseas for longer than 13 weeks may have their FTB entitlements reduced after 13 weeks because there is no capacity to extend their portability period under section 63A. The situation is similar for certain AFP personnel of the IDG who are deployed overseas. The IDG was established within the AFP to manage the deployment of Australian and Pacific Island police offshore and to contribute to regional stability and security on behalf of the Australian Government by contributing to offshore law enforcement initiatives and participating in capacity development programs within the law and justice sector. The reduction of FTB is not an appropriate outcome for these groups.

Amendments are therefore made to the portability rules for FTB to enable the 13 week portability period to be extended for uniformed members of the ADF and certain AFP personnel of the IDG who are deployed overseas, where they remain otherwise eligible for FTB.

Technical amendment to clause 38D of Schedule 1

Part 1 of Schedule 8 to the New Formula Act makes amendments relating to FTB for regular care children, with effect from 1 from July 2008.

The amendments include new clause 38D in Schedule 1 to the Family Assistance Act. Clause 38D applies to set the rate of rent assistance for an individual who has at least one FTB child and who is not a relevant shared carer. The heading of the table in clause 38D refers to '(Part A-Method 1 or 3)'.

Method 1 is the calculation process that it used to determine an individual's rate of FTB (including rent assistance) where, among other things, the individual has at least one FTB child. Rent assistance is not available under Method 2. Method 3 applies where the individual does not have an FTB child (but has a regular care child). Method 3 cannot apply to cases covered by clause 38D.

The reference to Method 3 in the heading of the table to clause 38D is misplaced and is therefore omitted.

Explanation of the changes

Item 1 inserts new subsection 63A(4) into the Family Assistance Act. This new provision enables the Secretary to extend an individual's 13 week portability period (as referred to in subsection 62(2)) if the Secretary is satisfied that the individual is unable to return to Australia within that period in prescribed situations.

The first situation is where a member of the Defence Force is deployed outside Australia under conditions specified in a determination made under the Defence Act 1903 that relates to such deployment.

The second situation is where a member, a special member or a protective service officer of the AFP is deployed outside Australia for the purposes of capacity-building or peacekeeping functions. This wording reflects the functions of the IDG as opposed to any broader activities that the AFP might be involved in overseas.

The amendment commences on 1 July 2007 and applies to individuals whose deployment starts on or after that date (**item 2** refers).

Item 3 omits the superfluous reference to 'or 3' from the heading to the table in clause 38D of Schedule 1.

Schedule 8 – Remote area allowance

Summary

The remote area allowance (RAA) provisions in the Social Security Act and the Veterans' Entitlements Act are amended from 1 July 2008 to ensure that an additional allowance is payable for each FTB child and regular care child of a person.

Background

As part of the child support reforms that come into effect from 1 July 2008, the concept of 'FTB child' will be redefined to mean a child in respect of whom an individual has 35 per cent or more care, provided the child also meets all other relevant eligibility criteria such as Australian residence. An individual with this level of care will continue to attract all relevant existing components of FTB (Parts A and B) including the child specific rates.

A child in respect of whom an individual has 14 per cent or more and less than 35 per cent care, where the child meets all other relevant eligibility criteria, will be a 'regular care child' of the individual.

These changes to the concept of FTB child and the introduction of the concept of a regular care child have implications for RAA.

For most social security income support payments, an additional RAA allowance is currently payable for each FTB child of the person. For youth allowance and austudy payment, an additional RAA allowance is currently payable for each FTB child that attracts more than the base rate of FTB. Without amendment, regular care children would not attract the additional allowance.

The RAA provisions are therefore amended to ensure that each FTB child and regular care child attracts an additional RAA allowance, consistent across all relevant payment types.

Similar amendments are made to the RAA provisions in the Veterans' Entitlements Act.

Explanation of the changes

Social Security Act amendments

RAA is a component of rate, provided for in a separate module in each relevant rate calculator. In broad terms, the amendments made by this Schedule ensure that an additional RAA allowance is also available in respect of each regular care child of the person, and ensure that the RAA provisions otherwise work in the same way, irrespective of whether a person has an FTB child or a regular care child.

Section 1064 of the Social Security Act sets out the rate calculation process for age pension, disability support pension, disability wage supplement (for people who have turned 21), wife pension, carer payment, mature age and mature age partner allowances.

The rules relating to RAA are set out in module H.

The rate of a person's RAA is worked out under point 1064-H2 and includes an additional allowance for each FTB child. **Item 1** amends this provision so that an additional allowance is also available for each regular care child of the person.

Points 1064-H5 and H6 ensure that an FTB child of a person who is a member of a couple but who is not receiving a pension or benefit or an additional allowance in respect of the child is also an FTB child of the other member of the couple who is qualified for an amount by way of RAA. **Items 2 to 6** amend these provisions so that these rules also apply in relation to a regular care child. Notes make the required consequential amendments to headings.

Point 1064-H7 enables the additional allowance to continue to be paid up to 14 weeks after the death of an FTB child, as if the child had not died. **Item 7** amends this provision so that the same rule also applies in relation to a regular care child. A note amends the heading accordingly. **Item 8** makes a consequential amendment to the note at the end of point 1064-H7.

The remaining items in this Schedule make comparable amendments to the other payment rate calculators.

For youth allowance and austudy payment, additional changes are made to align the RAA rules for these payments with the RAA rules that will apply in relation to other payment types, so that an additional amount of RAA can be paid for each FTB child and regular care child of the person, irrespective of whether or not the child attracts more than the base rate of FTB. The Youth Allowance Rate Calculator is amended by **items 43 to 51** while the Austudy Payment Rate Calculator is amended by **items 52 to 60**.

The concept of 'regular care child' is defined in subsection 23(1) of the Social Security Act as having the same meaning as in subsection 3(1) of the Family Assistance Act. This definition is inserted into the Social Security Act, from 1 July 2008, by Schedule 8 to the New Formula Act.

Veterans' Entitlements Act amendments

Item 80 inserts a new definition of 'regular care child' into subsection 5F(1) which has the same meaning as given by subsection 3(1) of the Family Assistance Act. This new definition is listed in the section 5 Index of definitions by **item 79**.

In broad terms, subsections 5R(11) and (12) of the Veterans' Entitlements Act allow the Commission to make a written determination that has the effect of continuing to include RAA in a person's rate of service pension or income support supplement where the person is absent from a remote area in specified circumstances and while the person has an FTB child.

Items 81 to 86 amend these provisions by inserting references to regular care child wherever there is an existing reference to an FTB child. This would enable the Commission to make a similar determination where the person concerned has a regular care child.

Schedule 6 to the Veterans' Entitlements Act provides for the calculation of rates of service pension and income support supplement. A possible component of rate is RAA, the rules for which are set out in Module G. These rules are similar to the RAA rules that apply in relation to social security pensions.

Items 87 to 96 amend various provisions in Module G to ensure that an additional RAA amount is also payable for each regular care child of a person (as well as each FTB child) and that the RAA rules otherwise apply in the same way in relation to both FTB and regular care children. References to regular care child are inserted wherever an FTB child is referred to and the relevant headings are changed accordingly.

The changes made by this Schedule commence on 1 July 2008, at the same time as the relevant child support reform changes to FTB.

Schedule 9 – Dependant and housekeeper rebates, and Medicare levy

Summary

This Schedule contains amendments to the *Income Tax Assessment Act 1936* (the ITAA) that are made as a consequence of recently enacted child support reforms that included changes to 'FTB child' and the introduction of a concept of 'regular care child'.

Background

As part of the child support reforms that come into effect from 1 July 2008, the concept of 'FTB child' will be redefined to mean a child in respect of whom an individual has 35 per cent or more care, provided the child also meets all other relevant eligibility criteria such as residence. An individual with this level of care will continue to attract all relevant existing components of FTB (Parts A and B) including the child specific rates.

A child in respect of whom an individual has 14 per cent or more and less than 35 per cent care, where the child meets all other relevant eligibility criteria, will be a 'regular care child' of the individual. A regular care child who is also a rent assistance child will be relevant for the purposes of determining an individual's eligibility for, and amount of, rent assistance. However, a child-related amount of FTB Part A and FTB Part B will not be available in respect of a regular care child.

These changes have consequential implications for the ITAA.

Dependant and housekeeper rebates

Currently, individuals who are eligible for the dependant rebates and the housekeeper rebate (provided by sections 159J and 159L, respectively, of the ITAA) and receive FTB Part B at the shared care rate receive a reduced entitlement to the relevant dependant related rebate. Their proportional entitlement to the rebate is calculated having regard to the individual's shared care percentage, as determined under subsection 59(1) of the Family Assistance Act, which is relevant in calculating the individual's rate of FTB Part B.

Both subparagraphs 159J(3AB)(b)(ii) and 159L(5B)(b)(ii) of the ITAA currently refer to a 'particular specified percentage determination under subsection 59(1)' of the Family Assistance Act. Under the new FTB rules effective from 1 July 2008, the equivalent to this concept will be an individual's 'shared care percentage', defined in subsection 3(1) of the Family Assistance Act as having the meaning given by section 59 of that Act. Consequential changes are required to reflect this.

Medicare levy

Prescribed persons without dependants are exempt from the Medicare levy. However, the inclusion of dependants can reduce the Medicare levy exemption that is available to prescribed persons.

Subsection 251R(5) of the ITAA apportions a dependent child between separated parents for the purposes of the Medicare levy exemption for prescribed persons, consistent with shared care percentages determined under the family assistance law.

An example of how the current law works is as follows. In 2005-06, Leanne was a single person and a member of the defence forces for the whole year and shared care of her child, Daniel. Leanne received FTB Part A based on a shared care percentage rate of 40 per cent, as determined under subsection 59(1) of the Family Assistance Act. Forty per cent shared care translated to 146 days that Daniel was considered Leanne's dependant for Medicare levy purposes (applying subsection 251R(5) of the ITAA). Assuming Leanne had no other dependants and Daniel did not pay the Medicare levy, then Leanne would have been entitled to a full exemption from the Medicare levy for 219 days and would have been entitled to a half exemption for the 146 days that Daniel was considered her dependant.

The intention is that prescribed persons who are eligible for FTB Part A for a child (whether an FTB child or a regular care child) should continue to have their exemption apportioned according to their share of care for the dependent child, even if that care is for less than 35 per cent of the time. Amendments are therefore made to link apportionment for Medicare levy purposes with the percentage of care determined under new subsection 22(6A) of the Family Assistance Act, as in force from 1 July 2008.

Under new subsection 22(6A), the Secretary will be able to determine a percentage of a period of shared care during which a particular child was, or will be, in the care of the individual concerned. This determination will be relevant in determining whether the child concerned is an FTB child or a regular care child.

A technical amendment is also made to subsection 251R(5) to address a minor defect in the current wording of the provision.

Explanation of the changes

Items 1 and 2 make consequential amendments to subparagraphs 159J(3AB)(b)(ii) and 159L(5B)(b)(ii) of the ITAA. The existing references to a particular specified percentage determination under subsection 59(1) of the Family Assistance Act are replaced by references to a shared care percentage for an FTB child, defined in the Family Assistance Act by reference to a determination under section 59.

Paragraph 251R(5)(c) currently refers to parents or spouses being eligible for FTB at the Part A rate for a child in respect of the relevant period. **Item 3** makes a minor consequential change to the wording of this provision to make it clear that the child can be an FTB child or a regular care child.

Paragraph 251R(5)(d) currently refers to a determination under subsection 59(1) of the Family Assistance Act that each parent is entitled to a specified percentage of that FTB Part A. **Item 4** remakes paragraph (d) so that the provision refers instead to a determination under subsection 22(6A) of the Family Assistance Act of the percentage of the period during which the child was, or will, in the care of each parent or spouse, as the case requires. A determination under subsection 22(6A) is made in respect of an FTB child and a regular care child. The reference to both parent and spouse in the new paragraph (d) rectifies an anomaly in the current wording and is consistent with the wording in paragraph (c).

Consistent with the commencement of the FTB changes, the amendments made by this Schedule will commence on 1 July 2008. The amendments will apply to the 2008-09 year of income and later years (**item 5** refers).

Schedule 10 – Extension of the assets test exemption period

Summary

This Schedule amends the Social Security Act and the Veterans' Entitlement Act to provide a discretion to extend the assets test exemption for proceeds from the sale of the principal home from 12 months to up to 24 months in certain circumstances. This Schedule also provides a discretion to extend the current 12 months temporary absence from principal home rule for absences of up to 24 months, in relation to people who have suffered loss of or damage to their homes, including through a natural disaster.

Background

This measure is intended to address community concern that, in some markets, the average time to build homes is extending. Also, in the event of a natural disaster, the reduced supply of housing and the increased demand for labour in the building industry can increase the time it takes for a house to be purchased, rebuilt or repaired.

Proceeds from the sale of a person's home

Currently, the proceeds of the sale of a principal home is assets test exempt, if the person is likely to use the proceeds to buy or build another home within 12 months. Consequently, after 12 months have passed, the proceeds of the sale (and, if the sale proceeds have been used to rebuild a new home, the unfinished home and the land), become an assessable asset. Further, a customer is only considered a 'homeowner' within 12 months from the sale of the principal home. After the expiry of that period, if a new principal home is not acquired, the customer becomes a 'non-homeowner'.

People who have suffered a loss of or damage to their homes

The current legislation also allows a person to be temporarily absent from their principal home for any reason, and their principal home remains exempt from the assets test for up to 12 months. If the absence is beyond 12 months, the principal home becomes an assessable asset.

Further, the current legislation provides an exemption for insurance or compensation proceeds for up to 12 months. There is discretion to extend this 12 month assets test exemption to a longer period for 'any special reason'. Consequently, while insurance or compensation proceeds can be exempted beyond the 12 month period, the value of buildings or plant being rebuilt or repaired with the insurance proceeds cannot be exempted.

Explanation of the changes

Proceeds from the sale of a person's home

The Schedule amends the Social Security Act and the Veterans' Entitlement Act to provide a discretion to extend the assets test exemption for proceeds from the sale of the principal home from 12 months to up to 24 months where the person who has sold their home is making efforts to purchase or build a new home, has begun those efforts within a reasonable timeframe from the date of sale, and has experienced delays beyond their control.

Where the customer has purchased land prior to the sale of the principal home, that land (up to the value that will be regarded as their principal home) will also be exempt from the assets test, from the date of the sale, if the income support recipient intends to build a new principal home on that land, at the time of the sale of the home.

The Schedule also amends the Social Security Act and the Veterans' Entitlement Act to clarify that the exemption of the proceeds from the sale of a home would also apply to land that has been purchased with the sale proceeds and the unfinished home being built with the sale proceeds.

Under this measure, the exempt asset value can never exceed the value of the proceeds of sale of the principal home.

People who suffered a loss of or damage to their homes

The bill provides for a discretion to extend the current 12 months temporary absence from principal home rule for absences of up to 24 months, where the person has suffered loss of or damage to their home, the person is making an effort to repair or sell their existing home, or to build or purchase a new home, and has begun those efforts within a reasonable timeframe.

The measure would also allow insurance or compensation proceeds received by a person whose building or plant (including their principal home) is lost or destroyed to have the value of that plant or building as it is rebuilt or repaired with the insurance proceeds exempted for up to 12 months or longer as determined by the delegate. This is provided the person is making efforts to have the plant or building rebuilt or repaired, and has begun those efforts within a reasonable timeframe, and has experienced delays beyond their control. The exemption will only apply while the plant or building is being rebuilt or repaired.

Where the person intends to repair or rebuild their existing principal home, their home and land (up to the value that will be regarded as their principal home) will continue to be exempt from the assets test (subject to the time limit above).

Where the person intends to rebuild a new principal home on a different block of land, the land (that is, the land that will be included in a reference to the principal home) on which they intend to build a new principal home will be exempt from the assets test (subject to the time limit above). However, the value of their former home (if any) and land would be assessed as an asset under the assets test.

Social Security Act amendments

Homeowner

Item 1 repeals paragraph 11(4)(c) and substitutes a new provision. New paragraph 11(4)(c) provides that a person is regarded as a homeowner for the period in which:

- the whole or a part of the proceeds of the sale of the person's principal home are disregarded in calculating the value of a their assets under subsection 1118(2); or
- the value of a residence, land or structure is disregarded under subsection 1118(2).

As currently applies, where the person who sells their principal home is a member of a couple, both that person and their partner can be regarded as homeowners under this provision.

Temporary absence

Item 2 amends paragraph 11A(9)(a) in consequence of new subsection 11A(9A). Paragraph 11A(9) currently allows a person's residence to continue to be regarded as their principal home if they are temporarily absent from that home for up to 12 months. New paragraph 11A(9)(a) recognises that a period of temporary absence can be extended beyond the current 12 month limit to any longer period of up to 24 months as determined under new subsection 11A(9A).

Item 3 inserts new subsection 11A(9A), which specifies that the Secretary may determine, in writing, a period of temporary absence of up to 24 months, if the Secretary is satisfied that all of the conditions set out in paragraphs 11A(9A)(a) to (e) are met. These conditions are:

- (a) a person's principal home is lost or damaged, such as by a natural disaster;
- (b) the loss or damage was not wilfully or intentionally caused by the person;
- (c) as a result of the loss or damage, the person is making reasonable attempts to either:
 - to rebuild or repair the principal home, or
 - to sell the home in order to purchase or build another residence that is to be the person's principal home; or

- purchase or build another residence that is to be the person's principal home;
- (d) the person has made those attempts within a reasonable period after the loss or damage; and
- (e) the person has experienced delays beyond their control in rebuilding, repairing or selling the principal home, or purchasing or building the other residence.

The combined effect of **items 2 and 3** is that the Secretary can determine that, if the conditions under paragraphs 11A(9A)(a) to (e) are met, the residence of a person is to be taken to continue to be the person's principal home, even if a person is absent from their residence for a period of more than 12 months, but no more than 24 months.

Ineligible homeowner

Item 4 amends paragraph (a) of the definition of ineligible homeowner in subsection 13(1), by deleting the reference in parentheses to 'proceeds of sale of principal home disregarded for 12 months'. These words merely signpost the effect of current paragraph (a) and are of no substantive effect. Rather than amend this reference to take account of the extension to the 12 month rule for disregarding proceeds from the sale of a person's principal home, the words have been removed altogether.

Item 5 makes a minor drafting amendment to paragraph 1118(1)(s) to make clear that the insurance or compensation payments received by the person can be received because of the loss of *or* damage to buildings, plant or personal effects.

Application of insurance and compensation payments to rebuilding etc.

Item 6 inserts new paragraph 1118(1)(sa) which provides for an additional category of asset that are exempt from the assets test. Currently, paragraph 1118(1)(s) applies to exempt, for 12 months or a longer period determined by the Secretary, the amount of any insurance or compensation payment received because of the loss of or damage to buildings, plants or personal effects. The new category of exempt assets provides for when the insurance or compensation payments resulting from loss of or damage to a building or plant (including a person's principal home) are *applied* to build, rebuild, repair or renovate the building or plant. The amount that may be disregarded is worked out by reference to subsection 1118(1AB), and the period during which the amount may be disregarded is worked out by reference to subsection 1118(1AC).

Item 7 inserts new subsections 1118(1AA), 1118(1AB) and 1118(1AC). Subsection 1118(1AA) provides for conditions to be met before subsection 1118(1AB) applies. Subsection 1118(1AA) provides that subsection 1118(1AB) applies if a person receives any insurance or compensation payments because of loss of or damage to a building or plant (including the person's principal home), and either:

- the person applies those payments to build another building or plant to replace the lost building or plant; or
- the person applies those payments to rebuild, repair or renovate the building or plant.

Subsection 1118(1AB) provides for determining the amount that may be disregarded for the purposes of new paragraph 1118(1)(sa). The effect of paragraph 1118(1AB)(a) is that the value of the building or plant that is being built, rebuilt, repaired or renovated can be disregarded only to the extent that insurance or compensation proceeds have been so applied.

Paragraph 1118(1AB)(b) provides that, if the building referred to in paragraph 1118(1AB)(a) is to be the person's principal home, the amount that may be disregarded is:

- the value of the land on which the building is being built, rebuilt, repaired or renovated to the extent that, once the building becomes the person's principal home, the land will, under section 11A, be included in a reference to the *principal home*; and
- the value of any other structure (including an incomplete structure) on that land, that is to be the person's principal home to the extent that the structure was built before the person began applying the insurance or compensation payments.

Subsection 1118(1AC) provides that the period of time in which the amount under subsection 1118(1AB) may be disregarded, begins when the insurance or compensation payment are received, and ends at the earlier of the following times:

- 12 months after the receipt of the insurance or compensation payment (or such longer period as the Secretary determines for any special reason);
- when the building, rebuilding, repair or renovation of the building or plant is complete.

Application of proceeds of sale of principal home

Item 8 and 9 inserts new subsections 1118(1B) and (2), which provide for circumstances when the application of proceeds of the sale of a principal home may be disregarded in calculating a person's assets.

New subsection 1118(1B) provides that new subsection 1118(2) applies if a person sells their principal home (paragraph (a)) and the person either:

- does not have a right or interest in a principal home; or
- the person has a right or interest in a principal home that the Secretary is satisfied does not give the person reasonable security of tenure (paragraph (b)).

Subsection 1118(1B) further requires (at paragraph (c)) that, within 12 months from the sale, or any longer period as determined under subsection 1118(2B), one or more of the following applies:

- the person intends to apply the sale proceeds to build, rebuild, repair or renovate another residence that is to be the person's principal home (subparagraph 1118(1B)(c)(i));
- the person applies the sale proceeds to build, rebuild, repair or renovate another residence that is to be the person's principal home (subparagraph 1118(1B)(c)(ii));
- the person intends to apply the sale proceeds to purchase another residence that is to be the person's principal home (subparagraph 1118(1B)(c)(iii)).

Where the person who intends to apply or applies the proceeds to purchase, build, rebuild, repair or renovate the person's principal home is a member of a couple, both that person and their partner are regarded as intending to apply, or applying, those proceeds under this section.

Subsection 1118(2) provides for the period of time, and the amount that is to be disregarded, if proceeds from the sale of a person's principal home are intended to be applied or are applied.

Paragraph 1118(2)(a) provides that, if subparagraph 1118(1B)(c)(i) applies, (that is, the person intends to apply the sale proceeds to build, rebuild, repair or renovate another residence that is to be the person's principal home) the sale proceeds, to the extent that the person intends to apply those proceeds to build, rebuild, repair or renovate the other residence, are to be disregarded, until the earlier of the following times:

- the period of 12 months after the sale (or any longer period as determined by subsection 1118(2B)) ends;
- the time the Secretary becomes satisfied that the person has ceased to have that intention.

Paragraph 1118(2)(b) provides that, if subparagraph 1118(1B)(c)(ii) applies, (that is, the person applies the sale proceeds to build, rebuild, repair or renovate another residence that is to be the person's principal home) the following are to be disregarded, until 12 months after the sale (or any longer period as determined by subsection 1118(2B)), to the extent that the person applies those proceeds to build, rebuild, repair or renovate that other residence:

- the value of the other residence;
- the value of the land on which the other residence is being built, rebuilt, repaired or renovated, to the extent that, once the building becomes the person's principal home, the land will, under section 11A be included in a reference to the *principal home*; and

- the value of any other structure on that land, that is to be the person's principal home to the extent that the structure was built before the person began applying those sale proceeds.

The maximum asset value that can be exempted from the assets test under this provision is the value of the proceeds of sale from the person's principal home.

Paragraph 1118(2)(c) provides that, if subparagraph 1118(1B)(c)(iii) applies, (that is, the person intends to apply the sale proceeds to purchase another residence that is to be the person's principal home), the sale proceeds are to be disregarded, to the extent that the person intends to apply those proceeds to purchase another residence, until the earliest of the following times:

- the period of 12 months after the sale (or any longer period as determined by subsection 1118(2B)) ends; and
- the time the Secretary becomes satisfied that the person has ceased to have that intention.

Item 10 inserts new subsection 1118(2B), which provides for conditions that must be met for the Secretary to have the discretion to determine a period of longer than 12 months, but no more than 24 months, in which sale proceeds may be disregarded. Those circumstances are:

- a person who has sold their principal home is making reasonable attempts to purchase, build, repair or renovate another residence;
- the person has been making those attempts within a reasonable period after selling the principal home; and
- the person has experienced delays beyond their control in purchasing, building, repairing or renovating the other residence.

Veterans' Entitlements Act amendments

Items 11 to 18 make corresponding amendments to the Veterans' Entitlements Act. The following table sets out the corresponding amendments in the two Acts.

Social Security Act		Veterans' Entitlements Act	
Item number	Provision in the Social Security Act	Item number	Provision in the Veterans' Entitlements Act
1	11(4)(c)	11	5L(4)(c)
2	11A(9)(a)	12	5LA(9)(a)
3	11A(9A)	13	5LA(9A)
4	13(1)	14	5N(1)
5	1118(1)(s)	N/A	N/A
6	1118(1)(sa)	15	52(1)(oa)
7	1118(1AA), 1118(1AB), 1118(1AC)	16	52(1B), 52(1C), 52(1D)
8	1118(1B)	16	52(1E)
9	1118(2)	17	52(2)
10	1118(2B)	18	52(2A)

Schedule 11 – Amendments relating to income streams

Summary

This Schedule amends the Social Security Act and the Veterans' Entitlements Act to make a number of non-Budget amendments aimed at enhancing and improving the efficiency and effectiveness of various income streams rules.

Background

Definition of 'income stream'

The definition of an 'income stream' in paragraph (d) of subsection 9(1) of the Social Security Act and in subsection 5J(1) of the Veterans' Entitlements Act states that an income stream means 'an income stream provided by a life insurance business (within the meaning of the *Life Insurance Act 1995*)'.

The definition describes an income stream in terms of 'life insurance business', as defined in the *Life Insurance Act 1995* (Life Insurance Act), not 'a life insurance business' as currently defined in the Social Security Act.

Definition of 'defined benefit income stream'

The current definition of a defined benefit income stream in both the Social Security Act and the Veterans' Entitlements Act inadvertently excludes certain defined benefit income streams acquired from 3 May 2006 and sourced from public sector and other corporate defined benefit superannuation funds established before 20 September 1998. These amendments ensure that these income streams are included in the definition so that they also qualify for the 100 per cent exemption from the assets test.

Reversion of life expectancy income streams

This amendment provides that a life expectancy income stream purchased before 20 September 2004, which reverts to a reversionary beneficiary, will only retain asset test exempt status if the remaining term of the income stream matches the reversionary beneficiary's life expectancy at the point of reversion. This requirement was inadvertently removed from both Acts in legislation that took effect from 20 September 2004.

Income from certain low-payment assets-tested income streams

This amendment is consequential to the recent superannuation amendments in the *Tax Laws Amendment (Simplified Superannuation) Act 2007* (the Simplified Superannuation Act) and proposed changes to the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations).

Currently, sections 1099DAA of the Social Security Act and 46YA of the Veterans' Entitlements Act stipulate that a specified minimum amount of income must be assessed for the purposes of the social security and Veterans' Entitlements Act means tests in relation to allocated (that is, account based) income streams, even if the actual amount of income withdrawn is lower than amount to be assessed specified for social security and Veterans' Entitlements Act purposes. Without amendments to sections 1099DAA and 46YA, as a result of the proposed changes to the SIS Regulations, section 1099DAA or section 46YA may no longer apply to all forms of account based products, as is the case currently. In addition, the stipulated minimum amount of income currently assessed under section 1099DAA for social security means test purposes or under section 46YA for the purposes of the Veterans' Entitlements Act would exceed the minimum amount of income that could actually be withdrawn under the new limits specified in proposed amendments to the SIS Regulations, which is contrary to the intent of the new arrangements arising from the Government's Super Plan.

Allocation of unallocated reserves

Currently, due to the operation of paragraph 1118(1)(h) of the Social Security Act or paragraph 52(1)(g) of the Veterans' Entitlements Act, unallocated reserves, within a superannuation fund's trust account, are not assessable in relation to a social security customer under the social security means test or a service pensioner or income support supplement recipient under the Veterans' Entitlements Act . One of the reasons for the enactment of the 'trusts and companies' measures in 2001 (in Part 3.18 of the Social Security Act and Division 11A of Part IIIB of the Veterans' Entitlements Act), was that certain interests in trusts were not able to be assessed against social security customers or service pensioners and income support supplement recipients, which resulted in a substantial loophole for customers who took advantage of these structures. Part 3.18 of the Social Security Act and Division 11A of Part IIIB of the Veterans' Entitlements Act specifically exclude superannuation funds from the scope of their operation. This policy needs to be extended to small superannuation funds and requires legislative backing.

Definition of 'deductible amount'

The definition of 'deductible amount' in section 9 of the Social Security Act and section 5J of the Veterans' Entitlements Act was recently amended by Part 2 of Schedule 8 to the Simplified Superannuation Act, due to the Government's Super Plan. The definition is now subject to further amendment, as it may lead to the deductible amount for some social security customers and service pensioners or income support supplement recipients being lower under the new definition in Part 2 of Schedule 8 to the Simplified Superannuation Act than it was under the old definition. This is contrary to the intention of the Government's Super Plan so an amendment is required.

Explanation of the changes

Social Security Act amendments

Item 1 repeals paragraph (d) of the definition of income stream under subsection 9(1) of the Social Security Act and substitutes a new definition. Paragraph (d) provides that an income stream issued as 'life insurance business' under the Life Insurance Act by a life company regulated under that same act will be an 'income stream' for social security purposes.

Item 2 repeals paragraph (e) of the definition of income stream under subsection 9(1) of the Social Security Act.

Item 3 amends paragraph 9(1F)(b) to provide that, where a superannuation fund established before 20 September 1998 provides a defined benefit income stream to a person, then that income stream does not need to meet the requirements of paragraph 9(1F)(b) of the Social Security Act (that is, the income stream does not need to be provided under rules that meet the standards of subregulation 1.06(2) of the SIS Regulations) to be a defined benefit income stream. However, such an income stream must still meet the requirements of paragraphs (a) and (c) of that definition.

Item 4 inserts a new paragraph (ba) in subsection 9(1F) of the Social Security Act. This new paragraph provides that, where a superannuation fund established before 20 September 1998 provides an income stream to a person, the income stream is a defined benefit income stream if it is provided under rules that meet the standards determined by the Minister in a legislative instrument. To be a defined benefit income stream, the income stream must also meet the requirements of paragraphs 9(1F)(a) and (c).

The amendment made by **Item 5** means that regardless of whether an income stream meets the requirements of paragraphs 9(1F)(b) or (ba), to be a defined benefit income stream it must also satisfy paragraph 9(1F)(c).

Item 6 inserts a new paragraph (d) in subsection 9B(1A) of the Social Security Act. Where a life-expectancy income stream, purchased prior to 20 September 2004, is paid to the reversionary beneficiary of the income stream and that beneficiary's remaining life expectancy at the point of reversion is equal to the remaining term of the income stream, the income stream will retain its asset test exempt status on reversion. Both the beneficiary's remaining life expectancy period and the remaining term of the income stream need to be calculated on the basis of whole years.

Item 7 inserts into subparagraph 1099DAA(1)(b)(i) a power for the Minister to apply, by legislative instrument, the minimum withdrawal limits that will apply to all account based pensions from 1 July 2007. This will allow the Minister to accommodate the proposed changes to the SIS Regulations that will apply from that date.

Item 8 replaces the reference to the SIS Regulations in subparagraph 1099DAA(1)(b)(ii) with a power for the Minister to apply, by legislative instrument, the minimum withdrawal limits that will apply to account based income stream products from 1 July 2007. Again this will allow the Minister to accommodate the proposed changes to the SIS Regulations.

Item 9 changes the words 'minimum limit' to 'minimum amount' in the formula contained subsection 1099DAA(3) of the Social Security Act. This will align the wording in the Act with the wording in the proposed changes to the SIS Regulations.

Items 10 and 11 repeals and replaces the current definition of 'minimum limit' with 'minimum amount' in subsection 1099DAA(3) of the Social Security Act to align the wording in the Act with the wording in the proposed changes to the SIS Regulations. The definition provides for the minimum amount to be calculated in accordance with the method determined, by legislative instrument, by the Minister.

Item 12 inserts new section 1120C in the Social Security Act. Section 1120C provides for the unallocated reserves in a superannuation trust fund to be assessed against the beneficiaries of that fund in the same proportions as the allocated reserves of the fund are held by those beneficiaries.

Subsection 1120C(1) states that section 1120C applies in calculating the value of a person's investment in a superannuation fund if the fund has four or fewer members and the fund has reserves (within the meaning of section 115 of the *Superannuation (Industry) Supervision Act 1993*).

Subsection 1120(2) provides a formula to assess the unallocated reserves that are included in the value of the person's investment in the superannuation fund, for social security means test purposes. This section applied regardless of whether these reserves would have otherwise been an exempt asset in relation to the person, due to the operation of paragraph 1118(1)(h) of the Social Security Act.

Subsection 1120(3) provides a formula if it is not possible to determine the proportion of the allocated reserves of the fund allocated to each beneficiary. If it is not possible to calculate this, the unallocated reserve should be split equally between all beneficiaries of the fund for social security purposes.

Item 13 inserts a transitional provision into Part 3 of Schedule 1A to the Social Security Act. New section 136 amends the definition of 'deductible amount' so that, where the deductible amount calculated for social security customers is lower, under the definition in Part 2 of Schedule 8 to the Simplified Superannuation Act, than it would have been under the old definition in the Social Security Act, then the calculations under the old definition should prevail. The intention is to ensure that social security customers who are receiving an income support payment before the trigger day continue to have their deductible amount assessed under the old definition.

Subsection 136(1) provides the following rules to determine whether the calculation of the deductible amount under the old definition, for the purposes of the social security law, should continue in relation to a person's income stream rather than using the 'new' deductible amount. This subsection applies if:

- a) a person has received at least one payment from a defined benefit income stream before 1 July 2007, and is still receiving payments from the income stream; and
- b) the person receives an income support payment in respect of a continuous period starting before, and ending on or after, the trigger day; and
- c) the amount of the income support payment received before the trigger day was affected by the deduction of a deductible amount (within the meaning of the Social Security Act) from the amount of the payments payable to the person for a year under the income stream; and
- d) if the person's trigger day is after 1 July 2007 and the income stream has not been partially commuted on or after 1 July 2007 and before the trigger day.

Paragraph (d) only applies if the person's trigger day is after 1 July 2007. In effect, this means that, if a person is 60 years or over before 1 July 2007, they only need to satisfy paragraphs (a), (b) and (c) to continue to have their 'old' deductible amount applied in respect of their income stream payments.

Subsection 136(2) provides that, despite the amendment of the Social Security Act by Part 2 of Schedule 8 to the Simplified Superannuation Act, for the purposes of working out the amount of the income support payment received by the person on or after the trigger day in respect of the remaining part of the period mentioned in paragraph 1(b), the deductible amount is the greater of:

- a) the deductible amount mentioned in paragraph 1(d); or
- b) the sum of the amounts that are tax free components of the payments received from the income stream during the year (worked out under Subdivision 307-C of the *Income Tax Assessment Act 1997*).

In effect, this provision now displaces the amendments made under Part 2 of Schedule 8 to the Simplified Superannuation Act. If a person makes a claim for an income support payment after 1 July 2007, the amended definition of 'deductible amount' in Part 2 of Schedule 8 to the Simplified Superannuation Act applies.

If a person is receiving an income support payment and at any time after 1 July 2007 ceases to receive that payment, then if the person later starts to receive an income support payment again, the person's deductible amount is to be calculated according to the definition of 'deductible amount' in Part 2 of Schedule 8 to the Simplified Superannuation Act (that is, the new deductible amount). Any provisions that preserve the period in which a person is taken to receive a payment (for example, section 38B of the Social Security Act) may also operate in these types of cases and may allow a person to keep their 'old deductible amount', even where that person ceased to receive an income support payment for a certain period

Subsection 136(3) provides that the trigger day for a person is either:

- a) the day the person turns 60, if the person is under 60 years at the end of 30 June 2007; or
- b) 1 July 2007, if the person is 60 years or over at the end of 30 June 2007.

Veterans' Entitlements Act amendments

Item 1 repeals paragraph (d) of the definition of income stream under subsection 5J(1) of the Veterans' Entitlements Act and substitutes a new definition. Paragraph (d) provides that an income stream issued as 'life insurance business' under the Life Insurance Act by a life company regulated under that same act will be an 'income stream' for the purposes of the Veterans' Entitlements Act.

Item 2 repeals paragraph (e) of the definition of income stream under subsection 5J(1) of the Veterans' Entitlements Act.

Item 3 amends paragraph 5J(1E)(b) to provide that, where a superannuation fund established before 20 September 1998 provides a defined benefit income stream to a person, then that income stream does not need to meet the requirements of paragraph 5J(1E)(b) of the Veterans' Entitlements Act (that is, the income stream does not need to be provided under rules that meet the standards of subregulation 1.06(2) of the SIS Regulations) to be a defined benefit income stream. However, such an income stream must still meet the requirements of paragraphs (a) and (c) of that definition.

Item 4 inserts a new paragraph (ba) in subsection 5J(1E) of the Veterans' Entitlements Act. This new paragraph provides that, where a superannuation fund established before 20 September 1998 provides an income stream to a person, the income stream is a defined benefit income stream if it is provided under rules that meet the standards determined by the Minister in a legislative instrument. To be a defined benefit income stream, the income stream must also meet the requirements of paragraphs 5J(1E)(a) and (c).

The amendment made by **Item 5** means that regardless of whether an income stream meets the requirements of paragraphs 5J(1)(b) or (ba), to be a defined benefit income stream it must also satisfy paragraph 5J(1E)(c).

Item 6 inserts a new paragraph (d) in subsection 5JB(1A) of the Veterans' Entitlements Act. Where a life-expectancy income stream, purchased prior 20 September 2004, is paid to the reversionary beneficiary of the income stream and that beneficiary's remaining life expectancy at the point of reversion is equal to the remaining term of the income stream, the income stream will retain its asset test exempt status on reversion. Both the beneficiary's remaining life expectancy period and the remaining term of the income stream need to be calculated on the basis of whole years.

Item 7 inserts into subparagraph 46YA(b)(i) a power for the Minister to apply, by legislative instrument, the minimum withdrawal limits that will apply to all account based pensions from 1 July 2007. This will allow the Minister to accommodate the proposed changes to the SIS Regulations that will apply from that date.

Item 8 replaces the reference to the SIS Regulations in subparagraph 46YA(b)(ii) with a power for the Minister to apply, by legislative instrument, the minimum withdrawal limits that will apply to account based income stream products from 1 July 2007. Again this will allow the Minister to accommodate the proposed changes to the SIS Regulations.

Item 9 changes the words 'minimum limit' to 'minimum amount' in the formula contained subsection 46YA(3) of the Veterans' Entitlements Act. This will align the wording in the Act with the wording in the proposed changes to the SIS Regulations.

Items 10 and 11 repeal and replace the current definition of 'minimum limit' with 'minimum amount' in subsection 46YA(3) of the Veterans' Entitlements Act to align the wording in the Act with the wording in the proposed changes to the SIS Regulations. The definition provides for the minimum amount to be calculated in accordance with the method determined, by legislative instrument, by the Minister.

Item 12 inserts new section 52BC in the Veterans' Entitlements Act. Section 52BC provides for the unallocated reserves in a superannuation trust fund to be assessed against the beneficiaries of that fund in the same proportions as the allocated reserves of the fund are held by those beneficiaries.

New subsection 52BC(1) states that section 52BC applies in calculating the value of a person's investment in a superannuation fund if the fund has 4 or fewer members and the fund has reserves (within the meaning of section 115 of the *Superannuation (Industry) Supervision Act 1993*).

New subsection 52BC(2) provides a formula to assess the unallocated reserves which are included in the value of the person's investment in the superannuation fund, for the purposes of the Veterans' Entitlements Act means test. This section applied regardless of whether these reserves would have otherwise been an exempt asset in relation to the person, due to the operation of paragraph 52(1)(g) of the Veterans' Entitlements Act.

New subsection 52BC(3) provides a formula if it is not possible to determine the proportion of the allocated reserves of the fund allocated to each beneficiary. If it is not possible to calculate this, the unallocated reserve should be split equally between all beneficiaries of the fund for the purposes of the Veterans' Entitlements Act.

Item 13 inserts a transitional provision in Schedule 5 to the Veterans' Entitlements Act. New clause 11B amends the definition of 'deductible amount' so that, where the deductible amount calculated for a service pensioner or income support supplement was calculated under section 27H of the *Income Tax Assessment Act 1936*, and after a trigger day the deductible amount is calculated under subsections 307-125(4) to (7) of the *Income Tax (Transitional Provisions) Act 1997*, and the new deductible amount results in the person receiving a lower rate of income support pension, then the calculations under the old definition should prevail. The intention is to ensure that service pensioners and income support supplement recipients who are receiving an income support payment before the trigger day do not receive less pension as a result of the new definition being applied.

New subclause 11B(1) provides the following rules to determine whether the calculation of the deductible amount under the old definition, for the purposes of the Veterans' Entitlements Act, should continue in relation to a person's income stream rather than using the 'new' deductible amount. This subsection applies if:

- a) a person has received at least one payment from a defined benefit income stream before 1 July 2007, and is still receiving payments from the income stream; and
- b) the person receives an income support payment in respect of a continuous period starting before, and ending on or after, the trigger day; and
- c) the amount of the income support payment received before the trigger day was affected by the deduction of a deductible amount (within the meaning of the Veterans' Entitlements Act) from the amount of the payments payable to the person for a year under the income stream; and
- d) if the person's trigger day is after 1 July 2007 and the income stream has not been partially commuted on or after 1 July 2007 and before the trigger day.

Paragraph (d) only applies if the person's trigger day is after 1 July 2007. In effect, this means that if a person is 60 years or over before 1 July 2007, they only need to satisfy paragraphs (a), (b) and (c) to continue to have their 'old' deductible amount applied in respect of their income stream payments.

New subclause 11B(2) provides that, despite the amendment of the Veterans' Entitlements Act by Part 2 of Schedule 8 to the Simplified Superannuation Act, for the purposes of working out the amount of the income support payment received by the person on or after the trigger day in respect of the remaining part of the period mentioned in paragraph 1(b), the deductible amount is the greater of:

- a) the deductible amount mentioned in paragraph 1(d); or
- b) the sum of the amounts that are tax free components of the payments received from the income stream during the year (worked out under subsections 307-125(4) to (7) of the *Income Tax (Transitional Provisions) Act 1997*).

In effect, this provision now displaces the amendments made under Part 2 of Schedule 8 to the Simplified Superannuation Act. If a person makes a claim for an income support payment after 1 July 2007, the amended definition of 'deductible amount' in Part 2 of Schedule 8 to the Simplified Superannuation Act applies.

If a person is receiving an income support payment and at any time after 1 July 2007 ceases to receive that payment, then if the person later starts to receive an income support payment again, the person's deductible amount is to be calculated according to the definition of 'deductible amount' in Part 2 of Schedule 8 to the Simplified Superannuation Act (that is, the new deductible amount). Any provisions that preserve the period in which a person is taken to receive a payment may also operate in these types of cases and may allow a person to keep their 'old deductible amount', even where that person ceased to receive an income support payment for a certain period.

New subclause 11B(3) provides that the trigger day for a person is either:

- a) the day the person turns 60, if the person is under 60 years at the end of 30 June 2007; or
- b) 1 July 2007, if the person is 60 years or over at the end of 30 June 2007.

Schedule 12 – Other minor and technical amendments

Summary

This Schedule makes various amendments of a minor or technical nature to the social security law and child support Acts.

Background

The amendments in this Schedule are mainly to correct technical errors such as repealing redundant provisions, correcting errors in cross-references, adjusting notes to provisions and similar matters.

There are also two minor measures not directly related to the other Schedules to this bill. The first applies to the Australian Government Disaster Recovery Payment (AGDRP) measure that commenced on 1 December 2006. The first amendment relating to this is of a technical nature and corrects a reference in paragraph 1061K(1)(b)(iv) of the Social Security Act. The second amendment is to subsection 31(1) of the Social Security Administration Act and clarifies that a person who is included in a specified class of Australian citizen, but is not an Australian resident, and who wishes to lodge a claim relating to a major disaster that occurred in Australia, is able to lodge a claim for the Australian Government Disaster Recovery Payment.

The third minor amendment is to provide for the Executive Director of the SSAT a power to delegate his or her powers to a member of staff of the SSAT. Apart from new powers under the child support legislation, the Executive Director has various powers under the social security law, including those relating to practical matters for arranging hearings, such as setting the time and place for hearings and sending out what can amount to thousands of pieces of correspondence. The capacity to delegate some of these powers will considerably assist the Executive Director, particularly in managing the increased caseload of reviews since child support reviews have come before the SSAT.

This arrangement is comparable to the Secretary of many Commonwealth departments being able to delegate powers to 'an officer', including under the social security law itself. It will be particularly useful for the SSAT, given its deliberately decentralised structure. The intention would be to delegate such powers to SSAT Office Managers, who are senior administrative staff. It is not feasible to delegate such powers to staff at the equivalent of the Senior Executive Service level because there are only five of those throughout the SSAT structure (other than the Executive Director), those five being State Directors, and the smaller states and territories having no equivalent level staff. Powers that go to the substance of the consideration of reviews would continue to be exercised strictly by SSAT members.

Some of the technical amendments made by this Schedule have retrospective commencement dates, to make corrections with effect from the dates of any errors. In all these cases, there is no adverse impact on any person.

Explanation of the changes

Items 1 to 6 amend several provisions in the Social Security Act to reflect the fact that provisions to do with administrative matters, notably the review provisions, were relocated from that Act to the Social Security Administration Act in 1991. **Item 6**, however, repeals a note, rather than amending it, in line with general policy to reduce use of notes in the social security law.

Item 7 repeals the reader's guide to the Social Security Act, which is now out of date and no longer used.

Items 8 and 12 remove references to provisions that have been repealed, or are being repealed in this bill.

Items 9, 11 and 16 repeal redundant provisions.

Items 10, 14 and 15 are relevant to the AGDRP.

Item 10 amends subparagraph 1061K(1)(b)(iv) of the Social Security Act by omitting the reference to subsection 1061K(3) and replacing it with a reference to the correct subsection, subsection 1061K(2). (Subsection 1061K(2) enables the Minister to determine in writing that a specified class of Australian citizens who are not Australian residents can qualify for an AGDRP.) **Item 10** commences immediately after the commencement of new Part 2.24 of the Social Security Act (the AGDRP provisions), on 1 December 2006. This amendment does not disadvantage claimants for the payment and gives effect to the original intent of the AGDRP measures.

Item 14 amends subsection 31(1) of the Social Security Administration Act, which provides an exception to the general rule that a person be 'an Australian resident' and 'in Australia' to make a claim for a social security payment (section 29 of the Social Security Administration Act). Subsection 31(1) currently provides that section 29 does not apply to a claim for the AGDRP if the claim relates to a major disaster that occurred *outside* Australia. As a consequence, subsection 31(1) currently does not apply where the person wishing to lodge a claim for the AGDRP is not an Australian resident and the claim relates to a major disaster that occurred *in* Australia. The amendment made by **item 14** would enable a person who is included in a specified class of Australian citizen, but is not an Australian resident, and who wishes to lodge a claim relating to a major disaster that occurred in Australia, to be able to lodge a claim for the AGDRP.

Items 14 and 15 commence immediately after the commencement of Part 2.24 of the Social Security Act (the AGDRP provisions), on 1 December 2006. Consistent with the commencement of both items, **item 15** also clarifies that the amendment made by **item 14** applies to any claim for an AGDRP that is made after that item commences. The amendments made by both items are beneficial in nature and benefit persons who are not Australian residents who wish to claim AGDRP in respect of a major disaster that occurred in Australia.

Item 13 inserts into table item 11 in subsection 1217(4) of the Social Security Act a signpost to a relevant provision that modifies the effect of the item.

Item 17 provides the new capacity, mentioned above, for the Executive Director of the SSAT to delegate powers to a member of staff of the SSAT.