

2010 -2011

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Child Support (Registration and Collection) Amendment Bill 2011

EXPLANATORY MEMORANDUM

(Circulated by authority of the Honourable Tanya Plibersek MP, Minister for Human Services)

CHILD SUPPORT (REGISTRATION AND COLLECTION) AMENDMENT BILL 2011

OUTLINE

The Child Support (Registration and Collection) Amendment Bill 2011 (the Bill) purposes are to:

- Broaden the powers of the Child Support Registrar to delegate powers to perform his or her duties under the *Child Support (Registration and Collection) Act 1988* to persons outside the Department to enable more efficient service delivery; and
- To amend a number of criminal penalty provisions to ensure that the offences contained therein can be successfully prosecuted, protecting the integrity of the Child Support Scheme.

The Bill amends the *Child Support (Registration and Collection) Act 1988*.

Financial Impact Statement

The cost of implementing the changes will be negligible. Depending on the success of outsourced collection activities, there may be potential savings to the child support program operating costs.

CHILD SUPPORT (REGISTRATION AND COLLECTION) AMENDMENT BILL 2011

NOTES ON INDIVIDUAL CLAUSES

Clause 1 – Short Title

1. Once enacted, the short title of the Bill will be the *Child Support (Registration and Collection) Amendment Act 2011*.

Clause 2 – Commencement

2. The provisions of this Bill will commence on the day after Royal Assent.
3. As the offences inserted in this Bill by Items 5, 9, 11 and 13 in the Schedule are existing offences, the commencement date is the day after Royal Assent rather than a later commencement which would be usual for new offences. The offences are being redrafted to clarify the operation of the offences.

Clause 3 – Schedules

4. This clause provides that an Act that is specified in a Schedule that is amended or repealed as set out in that Schedule, and any other item in a Schedule operates according to its terms.

Schedule 1 - Amendments

Item 1 – Delegations power

5. This provision is added to enable the Registrar to delegate his or her powers, as necessary, to persons engaged by the Commonwealth (however described) to enable the outsourcing of powers and functions currently performed exclusively by the Registrar and the Department. This will allow the Registrar to engage specialist services, such as debt collection services, which may be more effectively performed by providers from outside the Department and therefore will assist with the more efficient administration of the child support scheme.
6. The text of the provision is based upon paragraph 234(7)(c) of the *Social Security (Administration) Act 1999* and subsection 303(1) of the *Paid Parental Leave Act 2010*. As the Department of Human Services moves towards an integrated service model, it is appropriate to align the scope of the delegation powers to ensure consistency of service delivery opportunities.

Item 2 – Remove existing penalty

7. This item will remove the existing penalty as the penalty is included in the new provision inserted by Item 5.

Item 3 – Repeal nature of offence and defence provisions

8. This item will repeal subsection 46(1A) as the nature of the penalty is included in the new provision inserted by Item 5.
9. This item also repeals subsection 46(3) as the content of this subsection is now included as a defence to subsection 46(4A) in the new subsection 46(4B) inserted by Item 5.

Item 4 – Protected earnings amount

10. This item includes the definition of ‘protected earnings amount’ in subsection 46(4) as this is the first time the expression is used. The definition of ‘protected earnings amount’ is currently contained in subsection 46(3) which is repealed by Item 3.

Item 5 – Offence provision – section 46

11. This item articulates the offence against subsection 46(1), making it clear that a failure to deduct as required by subsection 46(1) is an offence. This amendment does not change the existing offence.
12. Proposed subsection 46(4A) is an offence of strict liability. The existing subsection 46(1) is already an offence of strict liability. It is therefore appropriate to maintain the strict liability of the offence in the new subsection 46(1A).
13. The appropriateness of strict liability for the offence in section 46 was reconsidered in accordance with Report 6/2002 of the Scrutiny of Bills Committee: Application of Absolute and Strict Liability Offences in Commonwealth Legislation.
14. Strict liability remains appropriate as compliance by a person is not an onerous or difficult obligation and is an action in the control of the employer, and not subject to reliance on actions of third parties. The intention of the provision is to require deduction of child support amounts from employees pay to be paid to the Registrar as child support. Failure to deduct may result in child support not being paid.
15. The offence relates to the outcome from non compliance, with the state of mind of the employer not relevant to the offence.
16. Including a provable fault element would likely undermine the integrity of the provision, as it would be difficult to prove fault in most instances. Alternatively, the fault element would need to be drafted to include all states of mind that could lead to non compliance, effectively making the offence strict liability.
17. Subsection 46(4B) provides a defence to the offence in subsection 46(4A).
18. The appropriateness of including subsection 46(4B) as a defence was considered in light of advice from the Attorney General’s Department. A defence provision

is considered appropriate as the information required to ascertain the defence can only be supplied by the employer.

Item 6 – Update reference

19. This item updates the reference in subsection 46(5) to refer to the new subsection 46(4A) rather than subsection 46(1).

Item 7 – Update reference

20. This item updates the reference in subsection 46(8) to refer to subsections (4) and (4B) as subsection (3) is repealed by Item 3 and subsection (4B) is inserted by Item 5.

Item 8 – Remove existing penalties

21. This item will remove the existing penalties in subsection 47(1), (1A), (2) and (3) as those penalties will be included in new provisions inserted by Item 9.

Item 9 – Offence provisions – Section 47

22. This item repeals the current subsection 47(3A) which describes the nature of the offence in subsections 47(1A), (2) and (3), and substitutes new provisions that clarify the existing offences contained in subsections 47(1), (1A), (2) and (3).
23. The new subsection 47(3A) clarifies that it is an offence if the employer refuses or fails to comply with the requirement in subsection 47(1).
24. The new subsection 47(3B) clarifies that it is an offence if the employer refuses or fails to comply with the requirements in subsections 47(1A) or (2).
25. The new subsection 47(3C) clarifies that it is an offence if the employer refuses or fails to comply with the requirement in subsection 47(3).
26. The new subsection 47(3D) preserves the strict liability nature of the existing offences in subsections 47(1A), (2) and (3).
27. The appropriateness of strict liability for the offences in subsections 47(1A), (2) and (3) was reconsidered in accordance with Report 6/2002 of the Scrutiny of Bills Committee: Application of Absolute and Strict Liability Offences in Commonwealth Legislation.
28. Strict liability remains appropriate as compliance by a person is not an onerous or difficult obligation and is an action in the control of the person, and not subject to reliance on actions of third parties. The actions of subsections 47(1A), (2) and (3) are providing the relevant paperwork following from compliance with section 46.
29. As with other strict liability offences in this Bill, it is the outcome of failure of the employer to perform the requirements that is the impugned conduct, not the reason for the employer failing to comply.

30. Including a provable fault element would likely undermine the integrity of the provision, as it would be difficult to prove fault in most instances. Alternatively, the fault element would need to be drafted to include all states of mind that could lead to non compliance, effectively making the offence strict liability.

Item 10 – Clarify the requirement

31. This item amends subsection 59(2) to make clear that the employer must keep records in accordance with subsection 59(1). This clarification will also allow the offence inserted by Item 11 to clearly apply where the obligation is not met by the employer.

Item 11 – Offence provisions – Section 59

32. This item repeals the existing penalty provision and substitutes a new penalty provision in subsection 59(3) that clarifies that the offence is a refusal or failure to comply with subsection 59(1) or (2).
33. The new subsection 59(4) provides a defence to the offence in the new subsection 59(3).
34. The new subsection 59(5) preserves the strict liability nature of the existing offences in subsections 59(1) and (2).
35. The appropriateness of strict liability for the offences in section 59 was reconsidered in accordance with Report 6/2002 of the Scrutiny of Bills Committee: Application of Absolute and Strict Liability Offences in Commonwealth Legislation.
36. Strict liability remains appropriate as compliance by a person is not an onerous or difficult obligation and is an action in the control of the person, and not subject to reliance on actions of third parties. The purpose of section 59 is to ensure an employer keeps records of their compliance with Part IV. Failure to do so is an offence, however, it can also result in the ability of an investigation to identify non compliance offences against section 46 and 47.
37. As with other strict liability offences in this Bill, it is the outcome of failure of the employer to perform the requirements that is the impugned conduct, not the reason for the employer failing to comply.
38. Including a provable fault element would likely undermine the integrity of the provision, as it would be difficult to prove fault in most instances. Alternatively, the fault element would need to be drafted to include all states of mind that could lead to non compliance, effectively making the offence strict liability.
39. The appropriateness of including subsection 59(4) as a defence was considered in light of advice from the Attorney General's Department. A defence provision is considered appropriate as the information required to ascertain the defence can only be supplied by the employer.

Item 12 – Remove existing penalty

40. This item will remove the existing penalty in subsection 72W(1) as that penalty will be included in the new provision inserted by Item 13.

Item 13 – Offence provision – Section 72W

41. This item repeals the existing provision describing the nature of the offence and substitutes a new provision that clarifies the existing offence contained in subsection 72W(1).
42. The new subsection 72W(3) preserves the strict liability of the existing offence in subsection 72W(1).
43. The appropriateness of strict liability for the offence in subsection 72W(2) was reconsidered in accordance with Report 6/2002 of the Scrutiny of Bills Committee: Application of Absolute and Strict Liability Offences in Commonwealth Legislation.
44. Strict liability remains appropriate as compliance by a person is not an onerous or difficult obligation and is an action in the control of the person, and not subject to reliance on actions of third parties. The purpose of section 72W is to require a person to produce a Departure Authorisation Certificate (DAC) that they sought and were granted by the Registrar, to an authorised officer so that the person may leave the country. This provision is linked to the prohibition on departure provided under section 72F.
45. As with other strict liability offences in this Bill, it is the outcome of failure of the person to produce the DAC that is the impugned conduct, not the reason for the person not producing the document.
46. Including a provable fault element would likely undermine the integrity of the provision, as it would be difficult to prove fault in most instances. Alternatively, the fault element would need to be drafted to include all states of mind that could lead to non compliance, effectively making the offence strict liability.

Item 14 – Update reference and description of offences

47. This item amends paragraph 121(1)(a) to update the reference to the offence provision in section 47. This item also moves the description of the offences into this paragraph from where they appear later in the subsection.

Item 15 – Remove unnecessary words

48. This item amends paragraph 121(1)(b) to simplify the section by removing an unnecessary reference to the provisions already described by paragraph 121(1)(a) and replacing with a simpler reference to the earlier paragraph.

Item 16 – Remove unnecessary words

49. This item removes words made unnecessary by the amendment made by Item 14.