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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

**Child Support (Assessment)
Amendment Bill 1997**

EXPLANATORY MEMORANDUM

Circulated by the Hon. L R S Price MP

Child Support (Assessment) Amendment Bill 1997

OUTLINE

The Child Support (Assessment) Amendment Bill 1997 amends the Child Support (Assessment) Act 1989. The purpose of the Bill is to enact changes recommended by the Joint Select Committee on Certain Family Law Issues. That Committee, which reported in December 1994, made a number of recommendations to change the way in which the child support arrangements operate.

Financial Impact

The amendments proposed by this Act are not expected to have any impact on Commonwealth revenue or expenditure, they are concerned with arrangements and obligations in respect of persons involved with child support payment.

**CHILD SUPPORT
(ASSESSMENT) AMENDMENT
BILL 1997**

Clause 1 SHORT TITLE

When enacted this Act would be entitled the *Child Support (Assessment) Amendment Act 1997*.

Clause 2 COMMENCEMENT

The amendments to this Bill would commence on the day on which it receives the Royal Assent.

Clause 3 SCHEDULES

The amendments of the *Child Support (Assessment) Act 1989* are set out in the applicable items in Schedule 1.

Schedule 1

Item 1 — This amendment provides that the term “excluded” be used in the definition of “exempted income amount”, instead of the present term “exempted”.

Item 2 — This item inserts a new definition into section 5 of the Principal Act - a definition of “ordinary income free area”, providing that the term has the same meaning as in Section 1064 of the Social Security Act.

Item 3 — Section 12 of the Principal Act provides the circumstances which are “terminating events” in respect of child support. Paragraph 3 of subsection 12(1) provides that a terminating event occurs when a child turns 18, and the amendment proposed by item 3 of the Bill would replace that provision with a provision that a terminating event occurs when a child turns 18 or gains full-time employment.

Item 4 — The amendment proposed by Item 4 is a consequence of the amendment proposed by Item 22, which is to insert a provision that even though a child has turned 18 or is to turn 18, the Registrar may determine that it is necessary that child support be continue to be paid to enable the child to continue his or her education or because of a mental or physical disability of the child. The amendment proposed by Item 4 makes a related change to section 31, sub-paragraph (1)(d)(ii) of

which deals with the end of a period in which child support is payable.

Item 5 — Section 36 of the Principal Act contains the basic formula for the calculation of the annual rate of child support that is payable, and Item 5 of this Bill provides that the word “exempted” be omitted and replaced by the word “excluded”.

Item 6 — This item deals with the calculation of a liable parent’s exempted income amount. The amendment proposed by item 6 refers to the liable parent’s “excluded” income amount, as recommended by the Joint Committee. It also provides that the present reference to the annual amount of the relevant single rate of Social Security pension to be replaced by reference to 120% of the annual rate of the unpartnered Social Security pension, and for the reference to twice the annual amount of the relevant married rate of the Social Security pension to be replaced by a reference to 220% of the relevant partnered rate of the Social Security pension.

Item 7 — This item inserts a new section 40A in the Principal Act which will ensure that the annual rate of child support payable is reduced by 50% for any period during which the child is in receipt of Jobsearch or Newstart Allowance or Austudy.

Item 8 — This item amends section 41 of the Principal Act by replacing the word “exempted” by the word “excluded”.

Item 9 — This item inserts a new section in the Principal Act to replace the existing provisions for the cap on child support. The present formula refers to 2.5 times Average Weekly Earnings (AWE) minus the excluded income amount. The new formula is twice AWE minus the excluded income amount.

Item 10 — This item amends section 44 of the Principal Act. The effect of the amendment is to provide that a liable parent's adjusted income amount is reduced by 50% of the excess (where an entitled custodian's child support income amount exceeds the disregarded income amount).

Item 11 — This item replaces existing section 46 of the Principal Act with a new section. The new section provides that an entitled custodian's disregarded income amount is the relevant unpartnered rate of Social Security pension plus the ordinary income free area.

Item 12 — This item replaces the word "exempted" by the word "excluded" in section 48 (Application of the basic formula etc.).

Item 13 — This item adds a reference to subsection (3A) in subsection 60(1). This is a consequence of the substantive amendment proposed by item 14.

Item 14 — This item inserts a new subsection (3A) in section 60. Section 60 provides for elections in respect of a person's estimated income. The amendment provides that where a person has made an election in respect of their estimated income and the person later becomes aware that their income is likely to be 15% or more higher than the estimated figure, they must notify the Registrar of the details of the estimated increase at the first available opportunity.

Item 15 — This item provides that section 61A (effect of election after 30 June 1993) is amended so as to provide that the regulations dealing with the determination of a person's child support income amount may provide for days earlier than the day on which the person made the election (under section 60), but that it must not be later than 30 days after the day on which the election was made (new subsection 61A(1A)).

Item 16 — This amendment inserts a reference to subsection 61A(1A) in subsection 61A(2) as a consequence of the change made by item 15.

Item 17 — This amendment inserts a reference to subsection 61A(1A) in subsection 61A(3) as a consequence of the change made by item 15.

Item 18 — This item replaces existing subsection 66(1) with a new subsection (1). The effect is that, unless the Registrar is satisfied that special circumstances exist, even if an amount of child

support payable is calculated to be less than \$260, \$260 is still payable.

Item 19 — This item inserts a new subsection (1A) in section 66. The effect is that where the Registrar has determined that a rate of “nil” is justified, but the liable parent’s monthly taxable income has later increased by 15% or more, the liable parent must notify the Registrar of the increase at the first available opportunity.

Item 20 — This item amends section 75 so as to allow the Registrar to amend an administrative assessment if satisfied that information provided establishes that either a liable parent’s or a custodian’s taxable income has declined by 15% or more from that recorded in that person’s child support assessment.

Item 21 — This item provides that the word “exempted” is replaced by the word “excluded” in section 98D (Determinations that may be made under Part 6A).

Item 22 — This item inserts a new provision into section 98D of the Principal Act to the effect that, even though a child has turned 18, or is to turn 18, the Registrar may determine that it is necessary that child support should continue to be paid to enable the child to continue his or her education or because of a mental or physical disability of the child.

Item 23 — This item omits paragraph (b) from section 98F. That section provides for circumstances in which the Registrar may refuse to make a determination after considering an application for a departure from an administrative assessment of child support.

Item 24 — This item amends section 117 by removing subparagraph 117(1)(b)(ii). This subparagraph contains a provision that, in making an order for a departure from an administrative assessment in special circumstances, as well as being satisfied that there are relevant special circumstances, the Court must also be satisfied that it would be both just and equitable as regards the child, the custodian and the liable parent, and otherwise proper. The item removes these additional requirements.

Item 25 — This item inserts in section 117 a provision to make one of the special circumstances in which a Court can order departure from an administrative assessment the situation where, even though a child has turned 18 or is to turn 18, the continued payment of child support is necessary to enable the child to complete his or her education or because of a mental or physical disability of the child.

Item 26 — This item amends section 117 by inserting a new subsection, subsection (2A), to provide that, for the purposes of section 117, a parent is considered to have a duty to maintain a

partner where, although the parent may not be legally married to the partner, the conditions of subsection 4(2) of the *Social Security Act 1991* are met in respect of the couple. (Those provisions state that, for the purposes of the Act, a person is a member of a couple where, even if not married to the other person, he or she is living with the person in a 'marriage-like relationship'.)

Item 27 — This item provides that the word "exempted" is replaced by the word "excluded" in section 118 (orders that may be made under Division 4).

Item 28 — This item amends section 148 to provide that the Registrar's annual report must contain information on the suitability of the inflation and indexation measures used for the purposes of the Act.

Item 29 — This item provides for a new section 159A to be inserted in the Act. The provisions of existing section 159 provide penalties for false or misleading statements, and proposed section 159A provides for penalties in respect of statements made recklessly etc.

Item 30 — This item inserts a new section 159B in the Principal Act. The new section provides for penalties to be imposed where persons fail, intentionally or recklessly, to notify the Registrar of information they are required to provide under section 60 or 66.









