

1989
THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

CORRECTION

CHILD SUPPORT (ASSESSMENT) BILL 1989

SUPPLEMENTARY EXPLANATORY MEMORANDUM

AMENDMENT (48) - OMISSION OF EXISTING CLAUSE 53 AND INSERTION OF NEW CLAUSE 53 - TAXABLE INCOME ASSESSED UNDER INCOME TAX ASSESSMENT ACT TO BE TAXABLE INCOME FOR CHILD SUPPORT PURPOSES, NEW CLAUSE 53A - TAXABLE INCOME FOR CHILD SUPPORT PURPOSES WHERE TAXABLE INCOME DETERMINED TO BE NIL UNDER INCOME TAX ASSESSMENT ACT ETC. AND NEW CLAUSE 53B - TAXABLE INCOME FOR CHILD SUPPORT PURPOSES WHERE TAXABLE INCOME UNDER INCOME TAX ASSESSMENT ACT NOT READILY ASCERTAINABLE

Page 12, paragraph 51 - at the conclusion of the paragraph insert 'The assessment would also have finality unless a notice had been served on a person that no tax is payable after an assessment had issued.' This makes it clear that new clause 53A prevails in this circumstance.

Page 14, paragraph 59 - at the conclusion of the paragraph insert 'but after the making of the most recent relevant notice of the kind mentioned in subclauses (1) and (2). This makes it clear that subclauses 53A (1) and (2) prevail in this circumstance.

AMENDMENT (49) - INSERTION OF NEW SUBDIVISION B - CHILD SUPPORT INCOME DETERMINED BY REFERENCE TO ESTIMATE OF TAXABLE INCOME FOR CURRENT CHILD SUPPORT YEAR

Page 18, paragraph 72 - omit the paragraph as it is unnecessary in view of new subclause 53N(3)(c).

Page 18, paragraphs 73 and 74 - substitute the reference to new subclauses 53P(3) and 53P(4) with subclauses 53P(2) and 53P(3), respectively.

Page 19, paragraph 80 - after "New subclause 53R(4) provides that" insert "subject to new clause 53P,".

(Circulated by authority of the Minister for Social Security,
the Hon Brian Howe, MP)

Amendment (6): Clause 5 - Interpretation - definitions

11. The amendment provides that in the examples given on the operation of the last relevant year of income, the second column should be headed 'Most recently ended year of income'.

Amendment (7): Clause 5 - Interpretation - definitions

12. The amendment omits the definition of "liable parent" and substitutes a new definition which provides that a liable parent has the meaning given by clause 29 or, in relation to a case in which the liability to pay child support arose because of the acceptance by the Registrar of a child support agreement, new clause 63P.

13. The amendment also omits the definition of "married person" and substitutes a new definition which provides that "married person" means a person who is a legally married person who is not living separately and apart from his or her spouse on a permanent basis or a person who is living with another person of the opposite sex as the spouse of the other person on a genuine domestic basis although not legally married to the other person.

Amendment (8): Clause 5 - Interpretation - definitions

14. The amendment makes a minor drafting change to the definition of 'parent'.

Amendment (9): Clause 5 - Interpretation - definitions

15. The amendment makes clear that in relation to a liable parent, a relevant dependent child does not include a child in respect of whom that parent is liable to pay child support.

Amendment (10): Clause 5 - Interpretation - definitions

16. The amendment makes a minor drafting change to the definition of 'relevant married rate of Social Security pension'.

Amendment (11): Clause 5 - Interpretation - definitions

17. The omission of the definition of "spouse" is consequent upon the insertion of a new definition of "married person" outlined above.

Amendment (12): Clause 5 - Interpretation - definitions

18. The amendment provides that an "unmarried person" means a person who is not a "married person" as defined in clause 5.

Amendment (13): Clause 8 - Interpretation - when substantial access is shared ongoing daily care

19. The amendment makes a minor drafting change.

Amendment (14): Interpretation - when substantial access is shared ongoing daily care

20. The amendment inserts a new subclause 8(2) which qualifies the operation of subclause 8(1) by allowing the Registrar not to be bound by the criterion of 40 per cent of nights in determining whether a parent shares substantially equally the ongoing daily care of a child.

Amendment (15): Interpretation - meaning of "approved form"

21. The amendment makes a minor drafting change.

Amendment (16): Insertion of New Clause 11A - Interpretation - happening of child support terminating events

22. New clause 11A provides for a definition of a child support terminating event. The definition describes a number of events, which, as the name suggests, will statutorily operate to end the liable parent's liability to pay child support. They are:

- . the child's death (paragraph 11A(1)(a));
- . the child ceases to be an eligible child under regulations made under subclause 20(2) (paragraph 11A(1)(b));
- . the child turns 18 (paragraph 11A(1)(c));
- . the child is adopted (paragraph 11A(1)(d));
- . the child becomes a married person (paragraph 11A(1)(e));
- . the custodian's death (paragraph 11A(2)(a));
- . the custodian ceases to be an eligible custodian of the child (paragraph 11A(2)(b));
- . the liable parent's death (paragraph 11A(3)(a));
- . the liable parent ceases to be a resident of Australia (paragraph 11A(3)(b));

- . the custodian elects by a notice complying with clause 94 (Election by custodian entitled to child support to end administrative assessment) that liability for child support is to end from a specified day (paragraph 11A(4)(a)(i)) and the specified day arrives (paragraph 11A(4)(b));
- . the Registrar accepts a child support agreement which includes a provision that liability for child support is to end on a specified day (paragraph 11A(4)(a)(i)) and the specified day arrives (paragraph 11A(4)(b)).

Amendment (17): Insertion of New Part 1A - Counselling

23. The amendment inserts a new Part 1A, dealing with counselling.

New Clause 15A - Court counselling facilities to be made available

24. New clause 15A which is based on section 61A of the Family Law Act 1975, provides for the availability of counselling services to persons involved in the child support assessment process.

25. New subclause 15A(1) provides that a parent or an eligible custodian who is not the parent of the child (for example, the child's grandmother) may seek the assistance of the counselling facilities of the Family Court or a Family Court of a State.

26. When assistance is sought the Principal Director of Court Counselling of the Family Court or an appropriate officer of the Family Court of a State must as far as practicable make those facilities available (new subclause 15A(2)).

Amendment (18): Part 2 - Children who may be covered by Act

27. The amendment to the heading makes a minor drafting change.

Amendment (19): Clause 23 - Persons who may apply

28. The amendment makes a minor drafting change.

Amendment (20): Clause 25 - Formal requirements for applications

29. The amendment makes a minor drafting change.

Amendments (21), (22), (23), (24) and (25): Clause 29 - Liability to pay child support arises on acceptance of application etc.

30. Paragraphs 29(c) and (d) set out the time from which, and the period for which, child support is payable by the liable parent, respectively.

31. The amendments provide that child support would be payable for each child by the liable parent to the custodian entitled to child support beginning on :

- . the earliest date on which an application for administrative assessment could have been made by the custodian entitled to child support (provided that the application is made to the Registrar within 28 days after that date); or
- . in any other case, from the day the application was made to the Registrar;

(new paragraph 29(1)(c)).

32. The amendments also provide that liability to pay child support would end on the day immediately before the day on which a child support terminating event occurs (new paragraph 29(1)(d)).

33. The amendments to subclause 29(2) provide that the Registrar would be required to assess as quickly as practicable the annual rate of child support payable by the liable parent to the custodian entitled to child support and that further assessments of the annual rate of child support payable by the liable parent to the custodian entitled to child support be made before or as early as practicable after the beginning of each subsequent child support year, provided liability continues.

Amendment (26) : Insertion of new Clause 29A – Withdrawal of application by applicant

34. New clause 29A enables applicants for administrative assessment to withdraw their applications before the Registrar has made a formal decision to accept or refuse the application. If an application has been withdrawn, it would be taken not to have been made.

Amendment (27): Clause 30 – Notice to be given to unsuccessful applicant

35. The amendment omits the existing subclause 30(2) and inserts a new subclause 30(2) which makes clear that when an applicant is notified that his or her application has been refused, the notice must include or be accompanied by, a statement that the applicant has a right to apply, subject to the Family Law Act 1975, to the court for a declaration under clause 71 that he or she was entitled to administrative assessment of child support for the child from the person in question.

Amendment (28): Clause 31 - Notice to be given to person from whom child support sought

36. The amendment omits the existing subclause 31(2) and inserts a new subclause 31(2) which makes clear that when the Registrar notifies the applicant and the person from whom child support is sought that the application has been accepted, the notice must include or be accompanied by a statement that the person from whom child support is sought is able to apply to a court, subject to the Family Law Act 1975, for a declaration under clause 72 that the applicant was not entitled to administrative assessment of child support for the child from the person in question.

Amendments (29) and (30) : Clause 32 - Application of basic formula to determine annual rate of child support

37. The amendments provide that Division 1 of Part 4 applies to the administrative assessment of child support subject to any provisions of a child support agreement which have effect for the purposes of the Bill.

38. The amendments also make a minor drafting change.

Amendment (31) : Omission of existing Clause 37 and insertion of new Clause 37 - Division subject to departure orders and child support agreements

39. The amendment omits the existing clause 37 and inserts a new clause 37 which provides that Division 1 of Part 4 (Administrative assessment of child support) applies subject to any order made by a court under Division 4 of Part 5 (Orders for departure from administrative assessment in special circumstances) and subject to any provisions of a child support agreement which have effect under the Bill.

Amendments (32), (33) and (34) : Clause 38 - Child support not payable if child support income amount does not exceed exempted income amount

40. The amendments make minor drafting changes.

Amendments (35), (36) and (37): Clause 39 : Cap on child support if child support income amount exceeds 2.5 times yearly equivalent of relevant AWE amount

41. The amendments make minor drafting changes.

Amendment (38) : Clause 42 - Custodian's child support income amount

42. The amendment makes a minor drafting change.

Amendment (39) : Clause 43 - Custodian's disregarded income amount

43. The amendment makes a minor drafting change.

Amendment (40): Clause 45 - Application of the basic formula etc.

44. The amendment makes a minor drafting change as a result of concern raised by the Senate Scrutiny of Bills Committee to a the use of the expression "half a child".

Amendment (41): Clause 45 - Application of the basic formula etc.

45. The amendment provides that where the number of children for whom either of the relevant parents (refer to clause 44) is a liable parent in relation to the other, is 5 or more, the child support percentage is 36.0 per cent.

Amendment (42): Clause 44 - Cases in relation to which Subdivision applies

46. The amendment makes clear that the Subdivision applies whether or not both relevant parents have applied for administrative assessment of child support against each other.

Amendments (43) and (44): Clause 51 - Application of the basic formula etc.

47. The amendments make a minor drafting change as a result of concern raised by the Senate Scrutiny of Bills Committee to the use of the expression "half a child".

Amendments (45) and (46): Clause 51 - Application of the basic formula etc.

48. The amendments make minor drafting changes.

Amendment (47) : Insertion of new Subdivision heading into Division 3 - Child support income amount

49. The amendment inserts a new heading, 'Subdivision A - Child support income amount determined by reference to taxable income for the last relevant year of income' immediately after the heading to Division 3.

Amendment (48): Omission of existing Clause 53 and insertion of new Clause 53 - Taxable income assessed under Income Tax Assessment Act to be taxable income for child support purposes. new Clause 53A - Taxable income for child support purposes where taxable income determined to be nil under Income Tax Assessment Act etc. and new Clause 53B - Taxable income for child support purposes where taxable income under Income Tax Assessment Act not readily ascertainable

50. Child support income is defined in clauses 35 and 42 as taxable income for the last relevant year of income.

New Clause 53: Taxable income assessed under Income Tax Assessment Act to be taxable income for child support purposes

51. The amendment omits the existing clause 53 and replaces it with a new clause 53. The new clause 53 would provide that the most recent assessment of taxable income issued by the Commissioner of Taxation for the last relevant year of income would be used to make an administrative assessment of child support. The assessment of child support would have finality on that basis, even if a subsequent amendment is made to the assessment of taxable income for the last relevant year of income after an administrative assessment of child support has been made, unless there has been a failure to disclose income to the Commissioner leading to an avoidance of tax or in prescribed circumstances. Where there has been such avoidance or the prescribed circumstances occur and the Commissioner subsequently issues an amended income tax assessment, child support would then be assessed on the basis of the amended taxable income (new subclauses 53 (1), (2) and (3)).

52. New subclause 53(4) provides that where the Registrar assesses child support on the basis of taxable income as last assessed under subclause (1) and a subsequent assessment of taxable income issues and subclause (3) does not apply, then, other than for the purposes of Subdivision B (Child support

income amount to be determined by reference to estimate of taxable income for current child support year), the subsequent assessment of taxable income is to be disregarded.

53. An assessment of taxable income is to be taken to have been made on the date of the notice, where the notice is dated (new subclause 53(5)).

54. New subclause 53(6) provides that nothing in this clause is to be taken to prevent a court from making an order under clause 84 (Orders for departure from administrative assessment) or the parties from making an agreement including provisions with effect as if they were an order under clause 84 made by consent.

New Clause 53A: Taxable income for child support purposes where taxable income determined to be nil under Income Tax Assessment Act etc.

55. New subclause 53A(1) provides that for child support purposes, a person's taxable income for a year of income would be taken to be nil where the person's taxable income under the Income Tax Assessment Act 1936 has been determined to be nil.

56. New subclause 53A(2) provides that where a person is a resident taxpayer and, before the allowance of any rebate or credit, no tax was payable or if not a resident taxpayer for that year of income and before the allowance of any rebate or credit, tax would not have been payable under the Income Tax Assessment Act 1936 for the year of income if they were resident taxpayers, and the Commissioner has determined that no tax was payable, the person's taxable income for child support purposes is to be taken to be nil.

57. New subclause 53A(3) provides that for child support purposes, a person's taxable income for a year of income is to be taken to be nil if the Commissioner of Taxation has served a

notice that his or her income for the year of income was nil and the determination is to be taken to have been made on the date of the notice.

58. New subclause 53A(4) provides that where a notice that no tax is payable, before the allowance of any rebate or credit, has been served on a person, the Commissioner is to be taken to have made a determination that no tax was payable on the taxable income of a person and the determination is to be taken to have been made on the date of the notice.

59. New subclause 53A(5) provides that, subject to subclause (8), subclauses (1) and (2) do not apply if the Commissioner has issued an assessment of the person's taxable income before the administrative assessment has been made.

60. New subclause 53A(6) provides that, subject to subclause (7), subclauses (1) and (2) would continue to apply despite the making of an assessment of taxable income subsequent to the making of an administrative assessment.

61. New subclause 53A(7) provides that subclause (6) does not apply if the subsequent assessment was made because the person did not make a full and true disclosure of all the material facts necessary for the Commissioner's assessment.

62. New subclause 53A(8) provides that where the Registrar, using subclauses (1) and (2) assessed the annual rate of child support and a subsequent assessment of taxable income is made and subclause (7) does not apply, then, other than giving effect to Subdivision B (Child support income amount determined by reference to estimate of taxable income for current child support year) the subsequent assessment of taxable income is to be disregarded.

63. New subclause 53A(9) provides that an assessment of taxable income is to be taken to have been made on the date of the notice of assessment.

64. New subclause 53A(10) provides that nothing in this clause is to be taken to prevent a court from making an order under clause 84 or the parties from making an agreement that includes provisions with effect as if they were an order under clause 84 made by consent.

New Clause 53B: Taxable income for child support purposes where taxable income under Income Tax Assessment Act not readily ascertainable

65. New subclause 53B(1) provides that where the Registrar is unable to readily find out a person's taxable income for a year of income and the Registrar has required the person to furnish a return or give information and the person has refused or failed to comply with the requirement, the Registrar may assess child support on the basis of the person having 2.5 times the yearly equivalent of the relevant AWE amount for the child support year.

66. New subclause 53B(2) requires the Registrar, when and if he or she subsequently finds out the person's taxable income, to immediately reassess any assessment made under subclause (1) on the basis of that taxable income.

Amendment (49) : Insertion of new Subdivision B - Child support income determined by reference to estimate of taxable income for current child support year

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

New Clause 53M: Interpretation

67. This new clause is an interpretative clause which ascribes a particular meaning to a term used in this Subdivision unless the contrary intention appears.

'income amount order' for a custodian means:

a court order under clause 84 varying the annual rate of child support payable or varying the custodian's child support income amount or the way that amount is calculated or directing that clause 49 is not to apply (subparagraph (a)(i)); or

provisions of a child support agreement accepted by the Registrar which have effect for the purposes of Part 4 as if they were an order made by consent of a kind referred to in subparagraph (a)(i) (subparagraph (a)(ii));

'income amount order' for a liable parent means:

a court order under clause 84 in similar terms to those described in subparagraph (a)(i) (subparagraph (b)(i)); or

provisions of a child support agreement accepted by the Registrar having effect as if they were an order referred to in subparagraph (b)(i) made by consent (subparagraph (b)(ii)).

New Clause 53N: Election where taxable income for child support estimated to have fallen at least 15%

68. New subclause 53N(1) provides that, subject to new subclause 53N(3), where before or during a child support year, a person estimates that his or her taxable income will be 85% or less of his or her taxable income (adjusted by the prescribed inflation factor) for the last relevant year of income, that person could give notice to the Registrar that he or she elects to have the estimate of income as the child support income amount for the child support year.

69. New subclause 53N(2) provides that the notice to the Registrar should:

- . be in an appropriate approved form; and
- . be given to the Registrar before or during the child support year; and
- . specify the person's estimate of his or her taxable income for the child support year; and
- . include whatever information about the way the assessment was made as the form requires.

70. New subclause 53N(3) provides that a person may only make such an election once every three months.

New Clause 53P: Effect of the election

71. If an election is made in compliance with clause 53N, new subclause 53P(1) provides that the person's child support income amount for that child support year would be taken to be and always to have been the amount of the person's estimate of taxable income for that year.

72. New subclause 53P(2) provides that the Registrar should immediately take the necessary action to give effect to subclause (1) whether by amending assessments or otherwise.

73. New subclause 53P(3) provides that in subsequently making an administrative assessment, the Registrar must act in accordance with subclause (1).

74. New subclause 53P(4) provides that nothing in this clause should be taken to prevent a court from making an order under clause 84 (Orders for departure from administrative assessment in special circumstances), varying the person's child support income amount.

New Clause 53Q: Revocation of election

75. New subclause 53Q(1) provides that a person who has made an election under clause 53N may give notice to the Registrar that the election is revoked.

76. New subclause 53Q(2) provides that the notice must be in an approved appropriate form and given to the Registrar before or during the child support year.

New Clause 53R: Effect of revocation

77. New subclause 53R(1) provides that if an election made under clause 53N is revoked under clause 53Q, the person's child support income amount would be taken to be and always to have been, the amount it would have been if the election had not been made.

78. New subclause 53R(2) requires the Registrar to take whatever action necessary to give effect to subclause (1).

79. New subclause 53R(3) provides that in making any subsequent administrative assessment, the Registrar should act in accordance with the revocation (subclause (1)).

80. New subclause 53R(4) provides that nothing in this clause should be taken to prevent a court from making an order under clause 84 varying the income amount of the person.

New Clause 53S: Reconciliation of estimated and actual taxable income at the end of child support year

81. New subclause 53S(1) provides that this clause would apply if an election was made under clause 53N (whether or not it was subsequently revoked under clause 53Q and whether or not more than one election was made) and the amount of the person's taxable income for the child support year is more than his or her estimate for that year.

82. New subclause 53S(2) provides that where the person is a liable parent, he or she would be required to pay the custodian the difference between the child support paid on the basis of an underestimate of taxable income and the amount of child support which would have otherwise been payable.

83. New subclause 53S(3) provides that where the person is a custodian entitled to child support, the amount of child support payable by the liable parent would be reduced by the amount child support paid exceeds child support which should have been paid if the custodian's actual taxable income was taken into account.

84. New subclause 53S(4) provides that if a person is both a liable parent and a custodian for the child support year, subclauses (2) and (3) are to be applied separately to the person as a liable parent and as a custodian.

85. New subclause 53S(5) provides that if there are two or more persons who are liable parents or custodians for the child support year, subclauses (2) and (3) are to be applied separately to those persons.

86. New subclause 53S(6) provides that the Registrar is to take whatever action is necessary to give effect to this clause.

Amendment (50): Insertion of new clause 53X - How assessment is made, new Clause 53Y - Minimum rate of child support and new Clause 53Z - Assessment to relate to all children for whom child support payable by liable parent

New Clause 53X: How assessment is to be made

87. New clause 53X provides that the Registrar may act on the basis of documents and information in his or her power in making an administrative assessment and is not required to conduct any inquiries or investigations into the matter or require that any document or information be produced.

New Clause 53Y: Minimum rate of child support

88. New clause 53Y provides that where the annual rate of child support payable by a liable parent to an eligible custodian is assessed to be less than \$260 per annum, the annual rate of child support is nevertheless to be assessed as nil (new subclause 53Y(1)) and this applies in giving effect to any court order, or provisions of any child support agreement, to the contrary (new subclause 53Y(2)).

New Clause 53Z: Assessment to relate to all children for whom child support payable by liable parent

89. New subclause 53Z(1) provides that where a liable parent is liable to pay child support to a custodian for 2 or more

children, the assessment of the child support payable would relate to all of the children and not the children separately.

90. This applies irrespective of whether the assessment resulted from 2 or more separate applications for assessment not made in the same form, the acceptance of 2 or more child support agreements made otherwise than in the same form, or the acceptance of an application for child support and a child support agreement, subclause 53Z(2).

91. New subclause 53Z(3) provides that subclause 53Z(1) does not require a single assessment of child support payable by a liable parent to 2 or more custodians.

Amendment (51) : Clause 57 - Assessments for part of child support year

92. The amendment provides that the Registrar may apply the Bill as if the beginning and end of the period were respectively the beginning and end of a full child support year when making an assessment of the annual rate of child support payable for part of a child support year.

Amendment (52): Insertion of new Clause 59A - Registrar to give effect to happening of child support terminating events etc. and new Clause 59B - Amendment of assessments

New Clause 59A - Registrar to give effect to happening of child support terminating events etc.

93. New subclause 59A(1) requires the Registrar to immediately take action to give effect to the happening of a child support terminating event (defined in new clause 11A) or the happening of an event that affects the rate at which child support is payable under the Bill.

94. New subclause 59A(2) provides that nothing in subclause 59A(1) is to be taken to prevent the Registrar from taking action on the basis of a likely happening of an event or change of circumstances of which the Registrar is notified or becomes aware of to amend any administrative assessment currently in force or other action.

New Clause 59B: Amendment of assessments

95. New Clause 59B provides the Registrar's core power to amend assessments on the basis of court orders, changed circumstances or child support agreements.

96. New subclause 59B(1) allows the Registrar to amend any administrative assessment at any time by making any alterations or additions as are necessary to give effect to the Bill.

97. New subclause 59B(2) provides that subclause 59B(1) has effect even if child support has been paid under the assessment, or if the period to which the assessment relates is over or partly over, or if the proceedings are pending in a court against the assessment.

98. New subclause 59B(3) provides that without limiting subclause 59B(1), the Registrar could amend assessments to correct the effect of any misleading or false statement made to the Registrar (whether as Registrar or Commissioner), give effect to a child support terminating event, give effect to a change of circumstances which affects the rate of child support payable, give effect to a child support agreement or to a court order.

99. New subclause 59B(4) provides that where the Registrar is authorised expressly to amend an assessment elsewhere in the Bill, that does not limit the Registrar's power to amend the assessment under this clause or otherwise.

100. New subclause 59B(5) provides that except as otherwise expressly provided for in the Bill, an amended assessment is to be taken to be an administrative assessment for all purposes of the Bill.

Amendment (53): Clause 60 - Notice of assessment to be given to liable parent etc.

101. The amendment omits existing subclauses 60(2) and (3) and inserts new subclauses 60(2) and (3).

102. New subclause 60(1) provides that once an assessment is made or amended the Registrar is required to send a notice of assessment to the liable parent and the custodian entitled to child support.

103. The amendment sets out those matters which, at the least, must be included in the notice (new subclause 60(2)).

104. New subclause 60(3) provides that the notice should also include or be accompanied by a statement that specifically draws the parties attention to their rights, subject to the Family Law Act 1975, to apply to a court as provided for in this Bill under clause 76 or clause 84 if either of them is aggrieved or any of the particulars if the assessment or to apply for an order that child support be provided in a form other than periodic amounts under clause 87D. The notice should also include or be accompanied by a statement that specifically draws to the attention of the liable parent and the custodian the effect of clause 87H (Pensioners entitled to have assessed child support not reduced by more than 25%).

Amendment (54): Clause 63 – Recovery of amounts of child support

105. The amendment provides that child support debts may also be recovered in a court having jurisdiction under the Bill, for example, the Family Court.

Amendment (55): Insertion of new Part 4A – Consent Arrangements

106. This Part sets out which agreements between liable parents and custodians covered by the Bill would be child support agreements and given effect to under the Bill. It also sets out the relationship between agreements and administrative assessment and the ways agreements could be varied or discharged either by agreement between parents and custodians or, where there is disagreement, by the court on the application of a party to the agreement.

New Division 1 – Introduction

New Clause 63A: Cases in relation to which Part applies

107. New subclause 63A(1) sets out the parties to whom this Part would apply. It would apply to the parents of an eligible child, or the parent or parents and a custodian (where the custodian is not a parent) who want to give effect to an agreement between themselves for child support.

108. New subclause 63A(2) provides that this Part would apply whether or not an administrative assessment is already in force.

New Division 2 - Child support agreement requirements

New Clause 63B: Child support agreement requirements generally

109. This clause summarises the provisions of the Bill an agreement should comply with to be a child support agreement under the Bill. They are:

- . clause 63C (Children in relation to whom agreements may be made)
- . clause 63D (Persons who may be parties to agreements)
- . clause 63E (Matters in relation to which agreements may make provision) and
- . clause 63F (Formal requirements for agreements).

New Clause 63C: Children in relation to whom agreements may be made

110. New subclause 63C(1) provides that an agreement would be a child support agreement if it is made for a child for whom an application for administrative assessment under clause 22 could have been made on the day the agreement was entered into.

111. New subclause 63C(2) states that if an agreement is made for another child not covered by subclause 63C(1), that child would be disregarded for the purposes of this Bill.

112. New subclause 63C(3) states that subclause 63C(2) would not affect the operation of the agreement for the disregarded child for any other purpose.

New Clause 63D: Persons who may be parties to agreements

113. New subclause 63D(1) provides that an agreement would be a child support agreement only if it is made between a person who under clause 23 could otherwise make an application for administrative assessment of child support and a person from whom under clause 24 child support could otherwise be sought.

114. New subclause 63D(2) states that if there is a party to the agreement to whom subclause 63D(1) does not apply, that party would be disregarded for the purposes of the Bill.

115. New subclause 63D(3) states that subclause 63D(2) would not affect the agreement's operation for the disregarded party for any other purpose.

New Clause 63E: Matters in relation to which agreements may make provision

116. New subclause 63E(1) sets out the kinds of provisions an agreement should include to be a child support agreement. They are:

- . provisions under which one party is to pay child support in the form of periodic amounts at a specified annual rate to another;
- . provisions which allow the annual assessed rate of child support to be varied to a specified annual rate;
- . provisions which allow child support to be provided in a form other than periodic amounts;
- . provisions agreeing any other matter that could be included in an order made by a court under clause 84 (Orders for departure from administrative assessment in special circumstances);

provisions agreeing that an existing liability to pay child support would end from a specified day.

117. New subclause 63E(2) provides that if an agreement states that child support in a form other than periodic amounts is to be provided, it should also state whether it is to be credited against the liable parent's liability under an administrative assessment.

118. New subclause 63E(3) provides that if an agreement includes provisions described in subclause 63E(2) and they state that the agreed child support is to be credited against an administrative assessment the agreement should also state either that the agreed child support has a specified annual value and should reduce the assessment of child support by that amount for a specified period or it should state that the agreed child support is to count for a particular percentage of child support payable under administrative assessment.

119. New subclause 63E(4) states that an agreement could make different arrangements for different child support years and different parts of a child support year.

120. New subclause 63E(5) states that provisions of an agreement not described in subclauses 63E(1), (2), (3) or (4) would not have effect for the purposes of this Bill.

121. New subclause 63E(6) states that subclause (5) would not affect the operation of those provisions for any other purpose.

122. New subclause 63E(7) provides that, without limiting the operation of subclause 63E(6), nothing in this Part should be taken to prevent an agreement from being both a child support agreement and either a child agreement made under Part VII of the Family Law Act 1975 or a maintenance agreement under that Act.

123. This provision is to enable parents and custodians to put all matters relating to the welfare of a child, child support and maintenance in one document if they prefer it.

124. New subclause 63E(8) provides that if an agreement includes provisions mentioned in subclause (2) and it does not, apart from this subclause, comply with subclauses (2) and (3) it is to be taken to state that the agreed child support is not to be credited against an administrative assessment.

New Clause 63F: Formal requirements for agreements

125. This clause provides that an agreement is a child support agreement only if it is in writing and signed by the parties to it.

New Clause 63G: Child support agreement may be entered into before commencing day etc.

126. This clause provides that an agreement could be a child support agreement regardless of whether it is entered into before, on or after the commencing day and whether it is entered into in or outside Australia.

New Clause 63H: Agreement may be made in relation to 2 or more children

127. New subclause 63H(1) provides that if an agreement is made in the same document for two or more children, the document could be treated as if it contained separate agreements for each child.

128. New subclause 63H(2) provides that if an agreement for one or each child is made in a document for two or more children and child support is payable by two or more parties to

the agreement then the document could be treated as if it contained separate agreements for one or each child by each of the parties otherwise liable to pay child support.

New Division 3 - Applications to Registrar for acceptance of child support agreements

New clause 63J: Application requirements generally

129. This clause provides that an application for acceptance by the Registrar of an agreement made for a child would be properly made if the agreement meets the requirements for a child support agreement set out in Division 2 and if the application complies with clause 63K.

New Clause 63K: Formal requirements for applications

130. New subclause 63K(1) states that an application for acceptance by the Registrar of an agreement for a child should be in the appropriate form and made to the Registrar.

131. New subclause 63K(2) states that the application should be verified as required by the application form and accompanied by documents required by the application form.

New Clause 63L: Application for 2 or more separate agreements may be made in same form

132. This clause provides that if an application is made in the same form for acceptance of 2 or more agreements made for one or more children (whether the agreements have been made in the same document or not) the form could be treated as if it contained separate applications for each agreement.

New Division 4 - Decisions on applications

New Clause 63M: How decision is to be made

133. This clause provides that the Registrar could act on the basis of the application for acceptance of the agreement, the documents accompanying the application and the agreement itself in determining whether the agreement is a child support agreement. The Registrar would not be required to conduct inquiries or investigations into the matter.

New Clause 63N: Decision on application

134. New subclause 63N(1) requires the Registrar to accept an application for acceptance of an agreement if the Registrar is satisfied that the application has been properly made.

135. New subclause 63N(2) provides that if the Registrar is not satisfied he or she could refuse to accept the application.

New Clause 63P: Liability to pay child support arises on acceptance of application where child support not already payable etc.

136. New subclause 63P(1) provides that if the Registrar accepts a child support agreement and either child support is not already payable for the child, or it is already payable but the person to whom assessed child support is payable is not the person to whom child support is payable under the agreement or the person liable to pay child support under the assessment is not the person by whom the agreed child support is payable (for example because of a change in custody) certain consequences would follow. The consequences are that:

- . the payee under the agreement is a custodian entitled to child support for the child; and
- . the payer under the agreement is a liable parent; and
- . child support is payable by the liable parent to the custodian; and
- . if the application for acceptance of the agreement was made to the Registrar within 28 days after the agreement was made and the agreement specifies a day from which child support would be payable, it is payable by the liable parent to the custodian from that specified day; or
- . if the application was made to the Registrar within 28 days after the agreement was entered into and the agreement does not specify a day on and from which child support is payable, it would be payable from the date the agreement was entered into; or
- . in any other case, child support would be payable from the day the application was made to the Registrar; and
- . child support would end on the day immediately before the day a child support terminating event (new clause 11A) happens to the child, the custodian or the liable parent.

137. New subclause 63P(2) requires the Registrar to assess as quickly as possible the annual rate of child support payable for the balance of the child support year in which the application was made (and any earlier child support years to which the agreement relates) and as close as possible to the beginning of each subsequent child support year to assess the annual rate of child support payable by the liable parent.

137A. New subclause 63P(3) requires the Registrar to act in accordance with clause new 63R (Effect of certain provisions of accepted child support agreements) in making any assessment.

New Clause 63Q: Registrar to take action to give effect to accepted child support agreement where child support already payable

138. New subclause 63Q(1) provides that if the Registrar accepts a child support agreement and child support is already payable for the child the Registrar should immediately give effect to the agreement in relation to any current administrative assessment.

139. New subclause 63Q(2) requires the Registrar to act in accordance with new clause 63R in making or amending any assessment.

New Clause 63R: Effect of certain provisions of accepted child support agreements

140. New subclause 63R(1) states that this clause would apply to a child support agreement accepted by the Registrar.

141. New subclause 63R(2) provides that if an agreement includes provisions:

- . under which child support is payable in the form of periodic amounts at a specified rate;
- . under which the annual rate of child support is to be varied to a specified rate;
- . agreeing any other matter that may be included in an order under clause 84 (Orders for departure from administrative assessment in special circumstances)

those provisions would have effect for the purposes of the Bill, as if they were a court order made by consent under clause 84.

142. New subclause 63R(3) states that if the agreement includes a provision that child support is to be provided in a form other than periodic amounts, the provision would have effect for the purpose of the Bill as if it were a court order made by consent made under new clause 87D (Orders for the provision of child support otherwise than in the form of periodic amounts paid to the custodian entitled to child support) and if the agreement is registered in a court with jurisdiction under Part VII of the Family Law Act 1975, it may be enforced under that Act as if the provisions were a decree made by that court made under that Part.

143. New subclause 63R(4) provides that if the agreement includes a provision stating that child support in a form other than periodic amounts is to be credited against a party's liability under an administrative assessment during the period or part of a period for which the agreement is in effect and stating either:

- . that the agreed child support has a specified annual value which should reduce the annual rate payable under an assessment; or
- . that the agreed child support is to count for a specified percentage of the child support payable under an assessment;

the provisions would have effect for the purposes of this Bill (including new clause 87G - Effect of orders on administrative assessment of child support and new clause 87H - Pensioners entitled to apply to have assessed child support not reduced by more than 25 per cent) as if they were provisions in a statement included in a court order under new clause 87E (Court to state relationship between order and assessed child support).

144. New subclause 63R(5) states that the provisions of an agreement would be effective despite any inconsistency with a court order made before the agreement was entered into.

145. New subclause 63R(6) provides that where any difficulty arises in applying this clause in relation to a particular proceeding the court could give any directions or make any orders it considers appropriate to resolve the difficulty on the application of a party to the proceeding or on its own motion.

New Division 5 - Notice of the decision

New Clause 63S: Notice of decision to be given

146. New subclause 63S(1) requires the Registrar to notify each party to an agreement if the Registrar accepts or refuses to accept an agreement.

147. New subclause 63S(2) states that the notice should include a statement that a party aggrieved by the decision subject to the Family Law Act 1975, could appeal against the decision under new clause 87M to a court having jurisdiction under this Bill.

148. New subclause 63S(3) provides that a contravention of subclause 63R(2) does not affect the validity of the decision.

New Division 6 - Variation of child support agreements

New Clause 63T: Child support agreement may be varied by subsequent agreement

149. This clause states that the provisions of a child support agreement accepted by the Registrar could be varied by a subsequent child support agreement accepted by the Registrar.

New Clause 63U: Variation etc. of provisions of child support agreement by court order

150. New subclause 63U(1) provides that where the provisions of a child support agreement have effect under this Bill as if they were court orders, the provisions could be discharged, suspended, revived or varied by a court having jurisdiction under this Bill in the same way and circumstances as the court could discharge, suspend, revive or vary the provisions of an order of that kind made by it.

151. New subclause 63U(2) provides that where any difficulty arises in applying subclause 63U(1) in a particular proceeding the court could give any directions or make any orders it considers appropriate to resolve the difficulty on the application of a party to the proceeding or on its own motion.

152. New subclause 63U(3) provides that subclause 63U(1) would not limit by implication the operation of new clause 63R.

Amendments (56), (57), (58), (59), (60), (61), (62) and (63):
Clause 65 - Applications of Family Law Act

153. The amendments provide that the Family Law Act 1975 (other than Part X of that Act which deals with appeals) and the Regulations made under that Act, would apply to proceedings

under the Bill (other than proceedings under paragraph 63(a) - recovery of child support debts in a court having jurisdiction for recovery of that debt apart from the Bill) as if those proceedings were proceedings under Part VII of that Act, subject to modifications made by those Rules in relation to proceedings under the Bill.

154. The amendments also insert a new subclause 65(1A) which provides that without limiting subclause 65(1), a decree made under the Bill may be enforced under the Family Law Act 1975 as if it were a decree made by a court under Part VII of that Act.

155. The amendments also make minor drafting changes.

156. The amendments also ensure that where any difficulties arise in the application of new subclause 65(1A), a court is empowered (by subclause 65(2)) to give directions and make orders.

Amendment (64): Clause 66 - Appellate jurisdiction of Family Court under Act

157. The amendment makes a minor drafting correction.

Amendments (65), (66) and (67): Clause 67 - Appeals to Family Court under Act

158. The amendments insert a new subclause 67(1A) which provides that an appeal would lie to a Full Court of the Family Court, but only with the leave of a Full Court of the Family Court, from a decree or decision of a Judge exercising original or appellate jurisdiction under the Bill rejecting an application that he or she disqualify himself or herself from further hearing of a matter.

159. The amendments provide that an application for leave to appeal under subclause 67(1A) must also be made within the time prescribed, or the further time allowed, by the Rules of Court.

160. The amendments also provide that on an appeal to the Full Court of the Family Court, the Full Court would be able to affirm, reverse or vary the decree or decision that is the subject of the appeal. It could make such decree or decision as it considers ought to have been made in the first instance or it could order a rehearing of the matter.

Amendment (68): Clause 69 - Appeals to High Court

161. The amendment makes a minor drafting change.

Amendment (69): Clause 70 - Appeals from courts of summary jurisdiction

162. The amendment makes a minor drafting correction.

Amendments (70) and (71): Clause 71 - Application for declaration by unsuccessful applicant for administrative assessment

163. The amendment to subclause 71(3) is consequent upon the omission of clause 73 and the insertion of new clause 90A (Registrar may intervene in proceedings).

164. The amendment to subclause 71(5) provides that the effect of a declaration in favour of the applicant is that the Registrar would be deemed to have accepted the application.

Amendment (72): Clause 72 - Application for declaration by person from whom administrative assessment for child support sought

165. The amendment is consequent upon the omission of clause 73 and insertion of a new clause 90A (Registrar may intervene in proceedings).

Amendment (73): Omission of Clause 73 - Registrar may intervene in proceeding

166. The omission of clause 73 is consequent upon the insertion of a new clause 90A (Registrar may intervene in proceedings).

Amendment (74): Clause 75 - Pending application not to affect assessment

167. The amendment makes a minor drafting change.

Amendments (75), (76) and (77): Clause 76 - Appeals

168. The amendments omit subclause 76(1) and insert new subclauses 76(1) and 76(1A).

169. New subclause 76(1) provides that a person could apply to a court with jurisdiction under the Bill on the basis that he or she was aggrieved by any of the particulars of the administrative assessment.

170. New subclause 76(1A) provides that the grounds of appeal include:

- . that the rate of child support was incorrectly assessed;

- . that the day on and from which child support is payable was incorrectly determined;
- . that a rate of child support set out in the assessment is no longer correctly assessed and the Registrar has failed to give effect to clause 59A (Registrar to give effect to happening of child support terminating events etc) or any other provision of the Bill in relation to the assessment.

171. The amendment to subclause 76(3) is consequent upon the omission of clause 77 and the insertion of new clause 90A (Registrar may intervene in proceedings).

172. The amendments also make a minor drafting change.

Amendment (78): Omission of Clause 77 - Registrar may intervene in appeal

173. The omission of clause 77 is consequent upon the insertion of new clause 90A (Registrar may intervene in proceedings).

Amendment (79): Omission of existing Clause 79 and insertion of new Clause 79 - Implementation of decisions

174. The omission of existing clause 79 is consequent upon the insertion of new clause 79.

175. New subclause 79(1) is designed to ensure that the Registrar acts promptly to give effect to the court's decision in relation to any assessment whether by amending any relevant assessment or otherwise.

176. New subclause 79(2) provides that if the Registrar makes any further assessments he or she must act on the basis of the court decision to the extent to which it is applicable.

Amendment (80): Clause 80 - Pending appeal not to affect assessment

177. The amendment makes a minor drafting change.

Amendment (81): Insertion of new Clause 81A - Cases in relation to which Division applies

178. The clause provides that Division 4 applies where in the special circumstances of the case, a custodian or a liable parent wants a court with jurisdiction under the Bill to make an order having the effect that the provisions of the Bill dealing with administrative assessment be departed from.

Amendment (82): Clause 82 - Application for order under Division

179. The amendment omits the existing subclauses 82(1) and (2) and inserts new subclauses 82(1) and 82(2).

180. New subclause 82(1) provides that a person would be able to apply to a court with jurisdiction under the Bill for an order under Division 4 for a child in the special circumstances of the case.

181. New subclause 82(2) provides that an application could only be made to a court by a liable parent or the custodian entitled to child support for an order to depart from the administrative assessment in the special circumstances of the case if an administrative assessment is in force in relation to the child, the custodian entitled to child support and the liable parent.

Amendment (83): Clause 82 - Application for order under Division

182. The amendment is consequent upon the omission of clause 85 and insertion of new clause 90A (Registrar may intervene in proceedings).

Amendments (84), (85), (86), (87), (88), (89), (90), (91), (92), (93) and (94): Clause 83 - Matters as to which court must be satisfied before making order

183. Clause 83 sets out the circumstances in which the court may depart from the formula .

184. The amendments omit the existing subclause 83(1) and insert a new subclause 83(1) which provides that where an application is made to a court with jurisdiction under the Bill for an order under Division 4 for a child in the special circumstances of the case and the court is satisfied that one or more grounds for departure in subclause 83(2) exists or exist and that it would be both just and equitable as regards the child, the custodian entitled to child support and the liable parent and otherwisw proper to make a particular order under Division 4, it may make the order.

185. The amendments provide that one of the specified grounds of departure which the court may satisfy itself exists to make an order to depart from the administrative assessment is that in the special circumstances of the case, the costs of maintaining the child are significantly affected because of the high costs involved in enabling a parent access to the child or special needs of the child or because the child is being cared for, educated or trained in the manner that was expected by his or her parents.

186. The amendments also provide that another of the specified grounds for departure is that in the special circumstances of the case, application of administrative assessment of child

support would result in an unjust or inequitable determination of the level of financial support to be provided by the liable parent for the child because of the income, earning capacity, property and financial resources of either the parent or the child or any payments, and any transfer or settlement of property previously made (whether under the Bill, the Family Law Act 1975 or otherwise) by the liable parent to the child, to the custodian or to any other person for the benefit of the child.

187. The amendments further provide that the court, in determining whether it would be just and equitable as regards the child, the custodian entitled to child support and the liable parent to make a particular order under Division 4 must have regard to the nature of the duty of a parent to maintain a child (as stated in clause 3), and the proper needs of the child, the income, earning capacity, property and financial resources of the child and of each parent who is a party to the proceeding, and the commitments of each parent who is a party to the proceeding that are necessary to enable the parent to support himself or herself or any other child or person that the person has a duty to maintain and the direct and indirect costs incurred by the custodian entitled to child support in providing care for the child. The court must also consider whether in making or refusing to make a particular order under Division 4, any hardship would be caused to the child or a custodian entitled to child support, as against on the other hand, any hardship would be caused to the liable parent and any other child or person that the liable parent has a duty to support.

188. The amendments provide that when considering whether a result was "proper", the court would have to have regard to the priority that the duty to maintain a child is accorded in the objects of the Bill as set out in clause 3, and in particular that it is the parents of a child themselves who have a primary duty to maintain the child.

189. The amendments omit subclauses 83(6), 83(7) and 83(8) and insert new subclauses 83(6), 83(7), 83(8) and 83(9).

190. New subclause 83(6) requires the court to consider the manner in which the child is being, and in which the parents expected the child to be cared for, educated or trained, and any special needs of the child, when having regard to the proper needs of the child.

191. New subclause 83(7) requires the court to:

- . consider the capacity of the child or parent to earn or derive income, including any assets of, under the control of or held for the benefit of the child or parent that do not produce, but are capable of producing income; and

- . disregard:

- the income, earning capacity, property, financial resources of any person who does not have a duty to maintain the child, or who has such a duty but is not a party to the proceeding unless, in the special circumstances of the case, the court considers that it is appropriate to have regard to them; and
- any entitlement of the child or custodian entitled to child support to an income tested pension, allowance or benefit;

when having regard to the income, earning capacity, property and financial resources of the child or a parent of the child.

192. New subclause 83(8) requires the court to consider the income and earning capacity foregone by the custodian entitled to child support in providing that care when having regard to the direct and indirect costs incurred by the custodian in providing care for the child.

193. New subclause 83(9) provides that subclauses 83(4) to (8) do not limit other matters which the court may consider.

194. The amendments also make minor drafting changes.

**Amendments (95), (96), (97), (98), (99) and (100): Clause 84
- Orders that may be made under Division**

195. The amendments provide that the court may make specified types of orders under Division 4 of Part 5, as it considers just and equitable as regards the liable parent, the custodian entitled to child support and the child, and proper, in the special circumstances of the case.

196. The amendments omit existing subclauses 84(2), (3) and (4) and insert a new subclause 84(2) which provides that an order made under subclause 84(1) may make different provision in relation to different child support years and in relation to different parts of a child support year.

197. The amendments provide that one of the specified types of order that the court may make is that clause 38 (Child support not payable if child support income amount does not exceed exempted income amount, or that clause 39 (Cap on child support if child support income amount exceeds 2.5 times yearly equivalent of relevant AWE amount) or that clause 49 (Cap on combined child support liabilities of 2 liable parents) is not to apply in relation to the child

198. Where a court makes an order under clause 84, the amendments provide that the court will be required to give reasons for making that order including reasons for its satisfaction as required by paragraph 83(1)(b) and to ensure that those reasons are entered in the records of the court.

199. New subclause 84(5) provides that this will not apply, however, to orders made by consent.

200. The amendments also make minor drafting changes.

Amendment (101): Omission of clauses 85 and 86 and insertion of new Clause 86 - Implementation of orders

201. The omission of clause 85 is consequent upon the insertion of new clause 90A (Registrar may intervene in proceedings).

202. The omission of old clause 86 is consequent upon the insertion of new clause 86.

203. New subclause 86(1) requires that the Registrar act promptly to give effect as necessary to an order made by a court under clause 84 in relation to any assessment, whether by amending the assessment or otherwise.

204. Whilst the order made under clause 84 is in force, the Registrar would be required to act on the basis of the provisions of the Bill as modified by the court's decision when making or amending an assessment in relation to the child, the custodian entitled to child support and the liable parent.

Amendment (102): Insertion of new Division 4A - Orders for the provision of child support otherwise than in the form of periodic amounts paid to the custodian

205. The new Division 4A sets out the powers of the court on the application of either parent or custodian to substitute child support in forms other than periodic amounts available by way of administrative assessment where an administrative assessment is currently in force. It also sets out the manner and extent to which the court would be able to order that child support in a form other than periodic amounts can be offset by the Registrar against the liable parent's assessed liability to pay child support in the form of periodic amounts.

206. The Division provides that custodians would be able to apply to the Registrar to limit the extent that their entitlement to periodic amounts of child support is offset by child support in another form, to 25 per cent of their entitlement to periodic amounts where they are receiving an income tested pension, allowance or benefit.

New Clause 87A: Additional and particular objects of Division

207. New clause 87A adds further objects as aids to the court in making orders under this Division to substitute child support in forms other than periodic amounts available by way of administrative assessment. The objects are that:

- . children have their proper needs met from reasonable and adequate shares in the income, earning capacity, property and financial resources of both their parents (paragraph 87A(1)(a)); and
- . parents share equitably in the support of their children (paragraph 87A(1)(b)).

208. The clause reproduces subsection 66A(2) of Division 6 (Maintenance of Children) of the Family Law Act 1975.

New Clause 87B: Cases in relation to which Division applies

209. New clause 87B provides that Division 4A applies where either the custodian entitled to child support wants the liable parent to provide, or the liable parent wants to provide, child support in forms other than periodic amounts paid to the custodian.

Clause 87C: Application for order under Division

210. New subclause 87C(1) provides for an application to be made to a court having jurisdiction under the Bill for an order that the liable parent provide child support in a form other than periodic amounts paid to the custodian.

211. New subclause 87C(2) provides that an application could be made by either the custodian or the liable parent, but only if an administrative assessment is in force in relation to the child, the custodian entitled to child support and the liable parent.

212. New subclause 87C(3) requires that before hearing the application, a court must hear and determine any pending application made to the court for an order under Division 4 (Orders for departure from administrative assessment in special circumstances) in relation to the child.

213. New subclause 87C(4) provides that the parties to an application would be the custodian and the liable parent, subject to the Registrar's right to intervene in and argue any question in a proceeding under this Bill (clause 90A).

New clause 87D: Orders for the provision of child support otherwise than in the form of periodic amounts paid to the custodian entitled to child support

214. New subclause 87D(1) sets out that in making an order the court would need to be satisfied that it would be just and equitable as regards the child, the custodian and the liable parent and otherwise proper to make an order.

215. New subclause 87D(2) sets out what the court should do in determining the application. The court should:

- . consider the administrative assessment in force;

- . have regard to any order in force under Division 4 (Orders for departure from administrative assessment in special circumstances);
- . consider whether the custodian is in receipt of an income tested pension, allowance or benefit or whether the circumstances of the custodian are such that, taking into account the effect of the proposed order, the custodian would be unable to support himself or herself without an income tested pension, allowance or benefit; and
- . consider the effect on the proposed order of an application by the custodian under new clause 87H (Pensioners entitled to apply to have assessed child support not reduced by more than 25 per cent) and its effect on any statement included in the order under new clause 87E (Court to state relationship between orders and assessed child support).

216. New subclause 87D(3) requires the court to consider the matters mentioned in subclauses 83(4), (6), (7) and (8) in deciding whether it would be just and equitable to make an order under subclause 87D(1).

217. New subclause 87D(4) requires the court to consider the matters mentioned in subclause 83(5) in deciding whether it would be otherwise proper to make an order under subclause 87D(1).

218. New subclause 87D(5) provides that subclauses (2), (3) and (4) do not limit the matters the court may consider.

New Clause 87E: Court to state relationship between orders and assessed child support

219. New subclause 87E(1) sets out a requirement that a court making an order under new clause 87D should state in the order whether the child support it has ordered is to be credited against the liable parent's liability under any administrative assessment relating to the period or part of a period covered by the order.

220. New subclause 87E(2) modifies the operation of subclause 87E(1) by providing that the court may only state that the ordered child support is not to be credited against any administrative assessment if it is satisfied in the special circumstances of the case that it would be just and equitable for the child, the custodian and the liable parent and otherwise proper that the child support is not credited.

221. New subclause 87E(3) requires the court to state in its order the annual value that the annual rate of administratively assessed child support is to be reduced by or the percentage of the annual rate of administratively assessed child support which the ordered child support is to represent.

222. New subclause 87E(4) allows the court to vary the annual value or percentage which the ordered child support is to represent under subclauses 87E(1) and 87E(3) for different child support years or parts of a child support year.

224. New subclause 87E(5) requires the court to consider the matters mentioned in subclauses 83(4), (6), (7) and (8) in deciding whether it would be just and equitable to make a statement of the kind referred to in new subclause 87E(2).

225. New subclause 87E(6) requires the court to consider the matters mentioned in 83(5) in deciding whether it would be otherwise proper to make a statement of the kind referred to in new subclause 87E(2).

226. New subclause 87E(7) states that new subclauses (5) and (6) do not limit the matters to which the court could have regard.

New Clause 87F: Court to give reasons for order

227. New subclause 87F(1) requires the court to give reasons for making an order under new clause 87D and the statement or statements included in the order under new clause 87E and to enter the reasons in the court's records.

228. New subclause 87F(2) provides that the court would not be required to give reasons where an order is made by consent.

229. New subclause 87F(3) provides that failure to provide reasons for making the order would not make the order invalid.

New Clause 87G: Effect of orders on administrative assessment of child support

230. New subclause 87G(1) provides that this clause would apply where a court makes an order under new clause 87D which includes a statement that ordered child support is to be credited against the liable parent's liability under any administrative assessment.

231. New subclause 87G(2) requires the Registrar to take immediate action to give effect to the order in relation to any current administrative assessment that has been made when the court's decision becomes final.

232. In making or amending an administrative assessment, new subclause 87G(3) requires the Registrar to work out the liable parent's annual rate of child support payable to the custodian, to reduce the annual rate by the amount or percentage specified

in the statement included in the order and then make the assessment on the basis of that reduced annual rate of child support.

New Clause 87H: Pensioners entitled to apply to have assessed child support not reduced by more than 25 per cent

233. This clause ensures that a custodian who is in receipt of an income tested pension, allowance or benefit is always entitled to apply to the Registrar to receive at least 75% of his or her assessed child support by way of periodic amounts.

234. New subclause 87H(1) provides that this clause would apply where a court makes an order under new clause 87D which includes a statement that ordered child support is to be credited against the liable parent's liability under an administrative assessment and where the custodian is in receipt of an income tested pension, allowance or benefit, whether or not he or she was in receipt of the pension, allowance or benefit at the time the order was made.

235. New subclause 87H(2) requires the Registrar to immediately give effect to the custodian's application from the time the application was made for an administrative assessment to be made as required by this clause, whether by amending the assessment or otherwise.

236. New subclause 87H(3) requires the Registrar to work out whether the annual rate of child support otherwise payable would be reduced by more than 25 per cent because of the statement included in the order made under clause 87D and if it would, to work out whether if the annual rate were reduced by only 25 per cent the custodian would still be entitled to receive the income tested pension, allowance or benefit. If the custodian would be entitled to receive the pension, allowance or benefit, the Registrar should reduce the annual rate of child support by only 25 per cent.

237. New subclause 87H(4) provides that such an application would no longer be in force if the custodian notifies the Registrar that he or she no longer wants to receive at least 75% of his or her assessed child support by way of periodic amounts or if the custodian ceases to be in receipt of an income tested pension, allowance or benefit or if a child support terminating event happens in relation to the child, the custodian or the liable parent.

238. New subclause 87H(5) provides that if the application stops being in force, the Registrar should immediately amend any relevant assessment in force so that the assessment is made as required by the Bill (apart from new clause 87H).

New Clause 87J: Modification of orders under Division

239. This clause sets out the grounds on which and the ways the court can modify orders made under new Division 4A.

240. New subclause 87J(1) provides that where an order under new clause 87D is in force, whether or not all matters ordered to be done have been done, and the order is registered in a court with jurisdiction under this Bill, the court could discharge the order, suspend its operation wholly or in part for a time determined by the court, revive a suspended order wholly or in part, or vary the order (including the statement under new clause 87E) in any way.

241. This subclause reproduces in a modified form subsection 66N(1) of Division 6 (Maintenance of Children) of the Family Law Act 1975.

242. New subclause 87J(2) provides that a court should not make such an order under subclause 87J(1) unless it is satisfied, considering in particular the statement under new

clause 87E, that it would be just and equitable regarding the child, the custodian and the liable parent and otherwise proper, to make the order.

243. New subclause 87J(3) requires the court not to vary an order unless it is also satisfied that there has been a change of circumstances of the child, the custodian or the liable parent since the order was last varied or made; or that the custodian has made an application under new clause 87H (Pensioners entitled to apply to have assessed child support not reduced by more than 25 per cent) and the order is no longer appropriate; or there has been a change in the cost of living since the order was last varied or made; or if the order was made by consent, it is not proper or adequate; or material facts were withheld from the court when it made or varied the order or material evidence was false.

244. This subclause reproduces in a modified form subsection 66N(2) of Division 6 (Maintenance of Children) of the Family Law Act 1975.

245. New subclause 87J(4) requires the court to consider whether it should vary any statement under new clause 87E if it proposes to vary the order in any other way.

246. New subclause 87J(5) requires the court to consider the matters mentioned in subclauses 83(4), (6), (7) and (8) in deciding whether it would be just and equitable to make an order under this clause.

247. New subclause 87J(6) requires the court to consider the matters mentioned in subclause 83(5) in deciding whether it would be otherwise proper to make it.

248. New subclause 87J(7) provides that subclauses (5) and (6) do not limit the matters the court could consider.

249. New subclause 87J(8) requires the court to consider any payments and any transfer or settlement of property previously made by the liable parent to the child, the custodian or any other person for the benefit of the child in satisfying itself that the existing order is no longer appropriate because the custodian has made an application under new clause 87H (paragraph 3(b)) or in the case of a consent order, that the order is not proper or adequate (paragraph 3(d)).

- 250. This subclause reproduces in a modified form subsection 66N(5) of Division 6 (Maintenance of Children) of the Family Law Act 1975.

251. New subclause 87J(9) requires the court to consider any changes in the Consumer Price Index published by the Australian Statistician in satisfying itself as to whether the cost of living has changed (paragraph (3)(c)).

252. New subclause 87J(10) requires the court, in deciding whether or not to vary an order, not to consider changes to the cost of living unless at least 12 months had passed since the order was made or last varied because of a change in the cost of living.

253. These subclauses reproduce subsections 66N(3) and (4) of Division 6 (Maintenance of Children) of the Family Law Act 1975.

254. New subclause 87J(11) provides that subject to any order made under clause 87L the discharge of an order would not affect the recovery of arrears under the order, or under this Bill, when the discharge takes effect.

New Clause 87K: Court to give reasons for modifications

255. New subclause 87K(1) requires a court making an order under new clause 87J to give reasons for making the order and if the court varies an order otherwise than by varying any

statement included in the order under clause 87E and does not order the variation of the statement, give reasons for not ordering the variation of the statement. The court must enter the reasons in the court's records.

256. New subclause 87K(2) makes subclause (1) inapplicable to orders made by consent.

257. New subclause 87K(3) ensures that a contravention of subclause (1) would not affect the validity of the order.

New Clause 87L: Court may make orders consequential upon the discharge of orders

258. New subclause 87L(1) sets out that this clause would apply where an order under new clause 87D has been discharged by a court under new clause 87J or ceases to be in force because of new clause 89B (Cessation of Orders under Act).

259. New subclause 87L(2) allows courts having jurisdiction under the Bill to make orders (including an order for the transfer of property) as it considers just and equitable to preserve or adjust the rights of the child and those who are or were the custodian and the liable parent.

260. New subclause 87L(3) provides that an order under new subclause 87L(2) could be made in the proceeding in which the order is discharged or in another proceeding brought on the application of the person who is or was a liable parent or the custodian.

261. New subclause 87L(4) requires the court in exercising its powers under this clause to consider the interests of a bona fide purchaser or other interested person and should make any order proper to protect them.

262. This subclause reproduces section 79A(2) of Part VII (Property, Spousal Maintenance, Agreements) of the Family Law Act 1975.

DIVISION 4B - AGREEMENTS MADE IN RELATION TO CHILDREN

263. This Division sets out the court's powers to direct that the Registrar accept or reject a child support agreement, the effect on administrative assessments otherwise in force of appeals against the Registrar's decision, and the court's powers to set agreements aside and make consequential orders to preserve and adjust the rights of the child and the parties to an agreement.

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

New Clause 87M: Appeals

264. New subclause 87M(1) provides that if a party to an agreement made for a child is aggrieved by a decision of the Registrar under new clause 63N accepting or refusing to accept the agreement, he or she may appeal against the decision.

265. New subclause 87M(2) requires an appeal to be instituted within the time prescribed by the Rules of Court or within such further time as the Rules of Court allow.

266. New subclause 87M(3) states that the parties to an appeal would be the parties to the agreement, subject to new clause 90(A) (Registrar may intervene in proceedings).

267. New subclause 87M(4) states that subclause 87M(1) has effect subject to Chapter 111 of the Constitution and despite section 9 of the Administrative Decisions (Judicial Review) Act 1977. This subclause recognises that a court hearing an appeal

pursuant to subclause 87M(1) is subject to constitutional limitations, in that it is not open to the court to consider the merits of a decision in the same manner as would a Tribunal under the Administrative Appeals Tribunal Act 1975. Subject to that limitation, it is intended that the courts exercising jurisdiction under the Bill should deal with appeals on the widest possible grounds, including, but not limited to, the question whether the decision appealed against was, in all the circumstances, correct in fact or law (paragraph 4(a)). Paragraph 4(a) would ensure that a State court exercising jurisdiction under the Bill would not be prevented from granting relief.

New Clause 87N: Powers of court hearing appeal

268. This clause provides that a court hearing an appeal under this subdivision could make orders which it considers appropriate in directing the Registrar to accept or refuse to accept the agreement.

New Clause 87P: Implementation of decisions

269. This clause requires the Registrar to immediately take action to implement the court's decision (including amending any administrative assessment) when the decision becomes final.

New Clause 87Q: Pending appeal not to affect assessment

270. This clause states that subject to clause 89 (Stay orders) the fact that an appeal is pending under this subdivision would not in the meantime affect or interfere with any administrative assessment whether or not the assessment gives effect to the agreement. It also provides that the assessment could be registered under the Child Support (Registration and Collection) Act 1988 and child support and other amounts could be recovered as if no appeal were pending.

**Subdivision B - Setting aside of accepted
child support agreements**

New Clause 87R: Power of court to set aside agreements

271. New subclause 87R(1) provides that a court with jurisdiction under the Bill could set aside a child support agreement if it is satisfied that the concurrence of the party was obtained by fraud or undue influence. The court could only set aside the agreement on the application of one of the parties to the agreement.

272. New subclause 87R(2) states that the parties to the appeal under new subclause 87R(1) would be the parties to the agreement, subject to new clause 90A (Registrar may intervene in proceedings).

New Clause 87S: Court may make orders consequential on setting aside of agreement

273. New subclause 87S(1) states that this clause would apply where a child support agreement is set aside under new clause 87R.

274. New subclause 87S(2) provides that a court with jurisdiction under this Bill could make any consequential orders which it considers just, which may include transferring property, to preserve or adjust the rights of the child and the parties to the agreement.

275. New subclause 87S(3) allows an order under subclause 87S(2) to be made in the same proceeding in which the agreement is set aside or in another proceeding on the application of a party to the agreement.

276. New subclause 87S(4) requires the court in exercising its powers under this clause to consider the interests of a bona fide purchaser or other interested person and should make any order proper to protect them.

New Clause 87T: Implementation of decisions

277. This clause requires the Registrar to immediately give effect to the court's decision for the purposes of the Bill when the court's decision becomes final whether by amending the assessment or otherwise.

Amendment (103): Clause 88 - Urgent maintenance orders

278. Clause 88 preserves the interim maintenance jurisdiction of courts for applicants who have urgent need of financial assistance.

279. The amendment provides that the order made under subclause 88(1) would operate for the period specified in the order provided that that period does not end after either a final determination has been made under the Bill that no child support is payable for the child or receipt by the custodian of or on account of the first payment of child support, if a final determination is made under the Bill that child support is payable.

280. The amendments make it clear that interim maintenance proceedings may be instituted under clause 88 by a person who has applied for administrative assessment against the person from whom the application sought payment of child support.

Amendments (104) and (105): Clause 89 - Stay orders

281. The amendments omit the existing subclause 89(1) and insert a new subclause 89(1) which enables a party who has instituted proceedings in a court having jurisdiction under the Bill to apply subject to the Family Law Act 1975, to a court for a stay pending the outcome of those proceedings.

282. The amendments also make a minor drafting change.

Amendment (106): Insertion of new Division 5A - Provisions relating to court orders

283. The amendment inserts a new Division 5A, dealing with provisions relating to the general powers of the court and cessation of certain court orders.

New Clause 89A: General powers of court

284. The types of orders which the court may make when exercising its powers under Part 4 of the Bill are listed in (new subclause 89A(1)). The orders at the court's disposal would include an order to pay a lump sum, a periodic amount, the transfer of property, payment to a third party, an order by consent or to make an order at any time.

285. New subclause 89A(2) provides that a court could make a subsequent order under this Bill or otherwise in relation to a child notwithstanding that a court has already made an order that a specified transfer or settlement of property be made of or has made any other order under the Bill.

286. New subclause 89A(3) enables Rules of Court made under the Family Law Act 1975 to be made to facilitate the enforcement of orders made under the Bill and the collection of any maintenance payable under those orders.

New Clause 89B: Cessation of orders under Act

287. New subclause 89B(1) provides that if a child support terminating event happens in relation to a child, or if there is a custodian entitled to child support and a liable parent and a child support terminating event happens in relation to that custodian, the liable parent or all 3 of them or if there is not a custodian entitled to child support and a liable parent in relation to the child and the person on whose application the order was made dies or is no longer an eligible custodian or the person against whom the order was made dies or is no longer a resident of Australia then an order made under the Bill would no longer be in force.

288. Any arrears due under the order when it ceased to be in force would still be able to be recoverable (new subclause 89B(3)).

New Clause 89C: Amounts paid where no liability to pay exists etc.

289. New subclause 89C(1) provides that a person could take recovery proceedings in a court having jurisdiction under the Bill if he or she paid an amount of child support to another person and he or she is not liable, or subsequently becomes not liable, to pay the amount to the other person.

290. New subclause 89C(2) provides that a person could take recovery proceedings in a court having jurisdiction under the Bill if he or she paid an amount to another person for a child for a period under an order made under clause 88 (Urgent maintenance orders) and it is determined that no child support is payable by that person to another person for the child for that period.

291. By new subclause 89C(3), a court would have a wide enough power to make such orders which it considers just and equitable to adjust or give effect to the rights of the parties and the child.

292. By new subclause 89C(4), an amount paid to the Commonwealth under section 30 of the Child Support (Registration and Collection) Act 1988 would be taken, for the purposes of this clause, to have been paid to the person to whom, apart from section 30, the amount would have been payable.

Amendment (107): Insertion of new Clause 90A – Registrar may intervene in proceedings and new Clause 90B – Copies of orders to be forwarded to Registrar

New Clause 90A: Registrar may intervene in proceedings

293. New subclause 90A(1) allows the Registrar to intervene in proceedings to argue a question arising under the Bill, should he or she choose to do so.

294. New subclause 90A(2) provides that if the Registrar intervenes in a proceeding under the Bill, then the Registrar is considered to be a party to the proceedings and has all the rights, duties and liabilities of a party.

295. New subclause 90A(3) provides that clause 90A does not limit Part IX (Intervention) of the Family Law Act 1975.

New Clause 90B: Copies of orders to be forwarded to Registrar

296. New clause 90B will provide an important source of information to the Registrar.

297. New subclause 90B(1) requires the Registrar or other responsible officer of a court that makes an order under the Bill to send to the Registrar certified or sealed copies of those orders within 28 days of the day the order is made.

298. New subclause 90B(2) allows some flexibility in relation to satisfying the requirements of subclause 90B(1). The Registrar may give written notice to the registrar or other

responsible officer of any court that varies the requirements of subclause 90B(1) in such instances and to the extent the Registrar thinks fit.

Amendment (108): Clause 93 - Delegation

299. The amendment to subclause 93(1) enables the Registrar to also delegate all or any of his or her powers or functions under the Bill to a Deputy Registrar, the Secretary to the Department of Social Security, an officer or employee of the branch of the Australian Public Service under the direct control of the Registrar or an officer or employee of the Department of Social Security.

Amendment (109): Insertion of new Clause 93A - Secrecy

New Clause 93A: Secrecy

300. This clause sets out to who and for what purposes information or documents obtained or made in the course of administering the Bill may be disclosed. It provides a penalty for unauthorised disclosure of information or documents.

301. New subclause 93A(1) is an interpretative provision which would ascribe particular meanings to terms used in this section unless a contrary intention appears.

'court' includes any tribunal, authority or person with power to require production of documents or information;

'person to whom this clause applies' means a person who is or has been the Registrar or Deputy Registrar or the Secretary to the Department of Social Security; or an officer or employee of the branch of the Australian Public Service under the direct control of the Registrar (whether as Registrar or Commissioner) or the Department of Social Security; or otherwise appointed or employed by or a provider of services for the Commonwealth;

'produce' includes permits access to

'protected document' means a document that contains information that concerns a person and is obtained or made by a person to whom this section applies in the course of or because of the person's duties under or in relation to this Bill;

'protected information' means information that concerns a person and is disclosed to or obtained by a person to whom this section applies in the course of or because of the person's duties under or in relation to this Bill;

302. New subclause 93A(2), subject to new subclause 93A(3), prohibits a person to whom this section applies from:

- . making a record of any protected information or
- . directly or indirectly divulging or communicating to a person any protected information concerning another person

unless the record is made or the information divulged or communicated for the purposes of this Bill or in the performance of duties in relation to this Bill.

303. Breaching the prohibition is an offence punishable on conviction by imprisonment for one year.

304. New subclause 93A(3) provides that new subclause 93A(2) would not prevent the Registrar or Deputy Registrar or a person authorised by either of them from communicating protected information

- . to the Secretary to the Department of Social Security or an officer or employee of that Department for the purpose of administering this Bill; or

- . to the Secretary to the Department of Social Security or the Department of Veterans Affairs or an officer or employee of either Department for the purpose of administering any Commonwealth law relating to pensions, allowances or benefits; or
- . to a person performing duties under or in relation to an Act of which the Registrar (as Registrar or Commissioner) has general administration or under regulations made under such an Act to enable the person to perform the duties; or
- . to the Secretary to the Attorney General's Department or an officer or employee of that Department for enforcement outside Australia of child support liabilities or maintenance liabilities which arose under the law of an external Territory or a foreign country.

305. New subclause 93A(4) provides that a person would communicate protected information in contravention of subclause 93A(2) if the person communicates the information to any Minister.

306. New subclause 93A(5) provides that a person would not be required to communicate protected information or produce a protected document in court except if it is necessary to do so to carry out the provisions of this Bill.

307. New subclause 93A(6) provides that nothing in an Act administered by the Commissioner should be taken to prohibit the Commissioner, a Second Commissioner, a Deputy Commissioner or a person authorised by one of them from communicating any information to a person performing duties under this Bill or to enable a person to perform those duties.

308. New subclause 93A(7) provides that nothing in an Act administered by the Commissioner should be taken to prohibit the Commissioner, a Second Commissioner, a Deputy Commissioner or a person authorised by one of them from communicating or producing to a court information or documents obtained or made for the purposes of this Bill.

309. New subclause 93A(8) provides that a person would be obliged to make an oath or declaration in a manner and form specified by the Registrar or Deputy Registrar in writing to maintain secrecy in accordance with this clause if and when required by either one to do so.

310. New subclause 93A(9) provides that this clause would have effect subject to section 64(11)B of the Family Law Act 1975.

Amendment (110): Omission of existing Clause 94 and insertion of new Clause 94 - Election by custodian entitled to child support to end administrative assessment of child support, insertion of new Clause 94A - Offsetting where liabilities overlap and insertion of new Clause 94B - Evidentiary certificates by Registrar.

311. The omission of existing clause 94 is consequent upon the insertion of new clause 94B.

New Clause 94: Election by custodian entitled to child support to end administrative assessment of child support

312. By new subclause 94(1) a custodian can notify the Registrar that he or she wants the liability of a liable parent to pay or provide child support for the child to the custodian to end on a specified day.

313. New subclause 94(2) requires that such notice be in an approved form, verified as required by the form of notice and accompanied by such documents as are required by the form of notice.

314. New subclause 94(3) requires that a document accompanying the notice must also be verified as required by the form of notice.

New Clause 94A: Offsetting where liabilities overlap

315. New subclause 94A(1) provides that new clause 94A applies to a child (the 'relevant child') and a day if:

- . under an administrative assessment an amount of child support (the 'first amount') is payable for a period (the 'first period') that includes the day (whether or not the child support is also for another child or other children and whether or not the assessment amount has been paid in whole or part); and

- . under a court order or a court registered maintenance agreement an amount (the 'second amount') of maintenance or child support for the relevant child is, apart from this clause, payable for a period (the 'second period') that includes the day (whether or not the maintenance or child support is also for another child or other children and whether or not the court amount has been paid in whole or part).

316. New subclause 94A(2) provides that new subclause 94A(1) applies in relation to an amount as if the amount were, payable by the person to the other person if, because of section 30 of the Child Support (Registration and Collection) Act 1988, the person is liable to pay the amount to the Commonwealth.

317. New subclause 94(3) provides that if new subclause 94A(1) applies in relation to the relevant child and a day then:

- . if the daily rate of the child's part of the second amount equals or is more than the daily rate of the child's part of the first amount, the second amount is reduced in relation to that day by the daily rate of the child's part of the first amount;
- . if the daily rate of the child's part of the second amount is less than the daily rate of the child's part of the first amount, the assessment amount is reduced (but not below 0) in relation to that day by the daily rate if the child's part of the second amount.

318. New subclause 94A(4) is an interpretative provision:

- . 'child's part of the first amount' means, in relation to the relevant child, the first amount if the first amount only relates to that child or the amount worked out by dividing the first amount by the total number of children to whom the first amount relates if the first amount also relates to another child or other children;
- . 'child's part of the second amount' means, in relation to the relevant child, the second amount if the second amount only relates to that child or the amount worked out by dividing by the total number of children to whom the second amount relates if the second amount also relates to another child or other children;
- . 'daily rate' means, in relation to the child's part of the first amount, the amount worked out by dividing the child's part of the first amount by the number of days in the first period, and in relation to the child's part of the second amount, means the amount worked out by dividing the child's part of the second amount by the number of days in the second period.

New Clause 94B: Evidentiary certificates by Registrar

319. This clause ensures that a certificate of the Registrar that:

- . a person was a resident of Australia, at a particular time (paragraph 94B(a)); or
- . a person had ceased to be a resident of Australia, at a particular time (paragraph 94B(b)); or
- . an application for assessment of child support seeking payment of child support for a child from another person, had been made at a particular time (paragraph 94B(c)); or
- . a person had not made an application for assessment of child support seeking payment of child support for a child from another person on or before a particular time (paragraph 94B(d)); or
- . a notice had been served on a person under the Income Tax Assessment Act 1936 to the effect that the taxable income of that person under that Act for a specified year of income was nil or to the effect that no tax was payable (before the allowance of any rebate or credit) under that Act on his or her taxable income for a specified year of income (paragraph 94B(e)); or
- . a notice mentioned in paragraph 94B(e) was dated as at a specified day (paragraph 94B(f)):

would be prima facie evidence of that fact.

Amendment (111): Insertion of new Clause 100A – Notification requirements

320. New subclause 100A(1) provides that the Registrar could give a written notice to a person to or by whom child support is payable, requiring the person to notify the Registrar, within 14 days and in the manner specified in the notice, if a specified event or change of circumstance happens or if the person becomes aware that a specified event or change of circumstance is likely to happen.

321. New subclause 100A(2) provides that specified events or changes of circumstances would be limited to those events or changes of circumstances which might affect the payment of child support or the annual rate at which it is payable.

322. New subclause 100A(3) provides that a person who, without reasonable excuse, refuses or fails to comply with a notice under new subclause 100A(1) to the extent that the person is capable of doing so, is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 6 months.

323. New subclause 100A(4) provides that it is a reasonable excuse for a person to fail to comply with a requirement under new subclause 100A(1) if compliance with the requirement could tend to self incrimination.

Amendment (112): Part 8 – Amendments of the Child Support Act 1988

324. The amendment to the heading is consequent upon the insertion of additional amendments to the Child Support Act 1988 (to be retitled the Child Support (Registration and Collection) Act 1988).

Amendment (113): Insertion of new clauses and Parts

325. The amendments to the Child Support Act 1988 are consequent on the Child Support (Assessment) Bill 1989.

New Clause 107 - Interpretation

326. This clause amends and inserts certain definitions in subsection 4(1) of the Child Support Act 1988 (to be retitled the Child Support (Registration and Collection) Act 1988, referred to as the Principal Act in Part 8 of the Bill.

327. New paragraphs 107(a) and 107(b) amend the definition of 'appealable refusal decision' in subsection 4(1) of the Principal Act to include decisions made under new subsection 24A(1) and new section 37A of the Principal Act, respectively. See notes below on the new subsection 24A(1) and the new section 37A.

328. New paragraph 107(c) amends the definition of 'court order' in the Principal Act to include an order made by a court under the Bill .

329. New paragraph 107(d) inserts some additional definitions in subsection 4(1) of the Principal Act:

- . "child support" is defined to mean financial support under the Bill including financial support by way of lump sum payment or by way of transfer or settlement of property.
- . "child support assessment" is defined to mean an assessment made under the Bill.

- . "court having jurisdiction under this Act" does not include a court that has jurisdiction under the Bill only in relation to the recovery of amounts of child support.
- . "maintenance" is defined to include child support.

New Clause 108: Delegation

330. New clause 108 amends section 15 of the Principal Act by omitting subsection 15(1) and inserting new subsection 15(1). The new subsection 15(1) will enable the Registrar to delegate all the powers or functions under the Bill to a Deputy Registrar, the Secretary to the Department of Social Security, an officer or employee in the branch of the Public Service under the direct control of the Registrar or an officer or employee in the Department of Social Security.

New Clause 109: Secrecy

331. New clause 109 repeals the existing section 16 of the Principal Act and replaces it with a new section 16.

332. The purpose of the amendment is to ensure that the secrecy provisions of the Principal Act are identical with the secrecy provisions of the Bill (new clause 93A), thus ensuring that information and documents relating to a person are afforded the same protection, and persons subject to the secrecy provisions have the same obligations, under both the assessment and collection processes. See notes on clause 93A.

New Clause 110 – Liabilities in relation to children that are registrable maintenance liabilities

333. This clause amends section 17 of the Principal Act to provide that subject to section 19 of the Principal Act a liability is also a registrable maintenance liability if it arises under a child support assessment. Section 19 of the Principal Act provides for the exclusion of liabilities by regulation.

New Clause 111 – Exclusion of liabilities by regulation

334. By subsection 19(1) of the Principal Act Regulations may provide that specified liabilities, or liabilities in specified classes of liabilities are not registrable under the Principal Act.

335. To that end and without limiting subsection 19(1), subsection 19(2) identifies the kind of tests or parameters that may be reflected in any regulation made under that section to exclude certain registrable maintenance liabilities.

336. Paragraph 19(2)(b) of the Principal Act outlines the kinds of matters by reference to which particular liabilities or classes of liabilities may be excluded from the scope of the Principal Act.

337. New paragraph 111(a) of the Bill would provide that a liability arising from an assessment could be excluded from being a registrable maintenance liability on the basis of the date that the assessment was made, registered etc.

338. New paragraph 111(b) of the Bill would provide that a liability could be excluded from being a registrable maintenance liability depending on whether or not the liability arose under an order made under clause 88 of the Bill (Urgent maintenance orders).

New Clause 112 - Payer and payee to notify Registrar when registrable maintenance liability arises etc.

339. In order for the for the Registrar to operate effectively, it is essential that the Registrar receives timely information in relation to orders or agreements that give rise to a potential registrable maintenance liability.

340. New Clause 112 provides that any obligations imposed on persons under section 23 of the Principal Act would also arise where an order is made under clause 88 of the Bill (Urgent maintenance orders).

New Clause 113 - Registrar to register liability in Child Support Register on making of child support assessment

341. New Clause 113 inserts a new section 24A in the Principal Act.

342. By new subclause 24A(1) a duty would be imposed on the Registrar, where he or she has made a child support assessment under which a registrable maintenance liability arises, to effect registration immediately.

343. New subclause 24A(2) provides that this duty does not arise in relation to a registrable maintenance liability if:

- . the payee is not in receipt of an income tested pension, allowance or benefit at the time the assessment is made (paragraph (2)(a)); and
- . the payee elected in the relevant application for assessment of child support not to have the liability enforced by the Registrar (paragraph (2)(b)).

~~New Clause 114 - Particulars of liability to be entered in Child Support Register~~

344. Certain information must be entered in the Child Support Register in relation to each registered maintenance liability.

345. New Clause 114 amends section 26 of the Principal Act to provide that details in the Register would include particulars of the child support assessment under which the liability arose and particulars of any subsequent amendment that affects the initial assessment that identifies the basis of the liability (paragraphs (a), (b) and (c)).

~~New Clause 115: Single entry in relation to all liabilities with same payer and payee~~

346. Section 27 of the Principal Act allows the Registrar to include particulars of liabilities in respect of the same payer and payee in the same entry in the Child Support Register.

347. New Clause 115 amends section 27 of the Principal Act to ensure that this will be the case whether or not the liabilities arise under the same child support assessment and whether or not the liabilities are in relation to the maintenance of the same person.

~~New Clause 116: Day on which liability first becomes enforceable under Act~~

348. Section 28 of the Principal Act establishes the various days on which a liability that is registered under that Act will come into effect.

349. New Clause 116 inserts a new paragraph (ba) into section 28 of the Principal Act and provides that for a liability which arose under a child support assessment and was registered under

the new subsection 24A(1) (see notes on new subsection 24A(1)) would be enforceable from the day as and from which child support is payable under the assessment.

New Clause 117: Payee to notify Registrar of court order varying registered maintenance liability etc.

350. New Clause 117 amends paragraph 33(1)(a) of the Principal Act to provide that a payee of a registered maintenance liability is also required to notify the Registrar where an order is made by a court under the Bill and the order varies or otherwise affects a registered maintenance liability.

351. The payee would not be required to notify the Registrar if the payee had previously elected not to have the liability enforced under section 38 of the Principal Act.

New Clause 118: Payee to notify Registrar of happening of affecting event

352. This clause inserts a new subsection 34(4) into the Principal Act to provide that the requirement to notify the Registrar of an affecting event (defined in subsection 4(1) of the Principal Act) does not apply in relation to a liability that arises under a child support assessment.

New Clause 119: Payer may apply to Registrar for variation of Child Support Register

353. This clause inserts a new subsection 35(3) into the Principal Act to provide that the section - which allows a payer to apply to the Registrar, if the payer desires, for variation of particulars entered in the Register as a result of an order, agreement or event, as the case may be - does not apply in relation to a liability that arises under a child support assessment.

New Clause 120: Registrar may vary Child Support Register to give effect to court order etc.

354. New Clause 120 amends paragraph 37(a) of the Principal Act to provide that the Registrar may vary the particulars entered in the Register in relation to an enforceable maintenance liability to take account of an order made under the Bill and that order varies or otherwise affects a registered maintenance liability.

New Clause 121: Registrar to vary Child Support Register on amendment of child support assessment

355. New Clause 121 inserts a new section 37A into the Principal Act.

356. The Registrar would be required to vary the particulars entered in the Child Support Register that the Registrar considers necessary or desirable to enable the amended child support assessment to be given full effect under the Act.

New Clause 122: Jurisdiction of courts under Act

357. This clause amends section 104 of the Principal Act to confer jurisdiction on those courts which are to exercise jurisdiction in relation to all matters arising under that Act.

New Clause 123: Application of Family Law Act

358. Subsection 105(1) of the Principal Act provides that the Family Law Act 1975 (other than Part X of that Act which deals with appeals) and the Regulations and Rules made under that Act apply to proceedings under the Principal Act as if those proceedings were proceedings under the Family Law Act. The Family Law Act and the Regulations and Rules made under it may be modified by those Rules in relation to proceedings under the Principal Act.

359. New paragraph 123(a) amends subsection 105(1) of the Principal Act to provide that that subsection will not apply to proceedings under the proposed subparagraph 113(c)(i) of the Principal Act (recovery of debts). (See notes on clause 127.)

360. New paragraph 123(b) inserts a new subsection 105(1A) to provide that in the application of subsection 105(1) to proceedings under the Principal Act, references in paragraphs (a) to (e) (inclusive) to the Family Law Act 1975 are to be taken to be references to Part VII (Children) of that Act.

New Clause 124: Appellate jurisdiction of Family Court under Act

361. This clause amends subsection 106(1) of the Principal Act to provide that the Family Court has jurisdiction with respect to all matters arising under the Principal Act in relation to which appeals from the Family Court or from courts of summary jurisdiction are instituted under sections 107 and 110 of the Principal Act respectively.

New Clause 125: Appeals to Family Court under Act

362. This clause makes a minor drafting correction to subparagraph 124(1)(b)(ii) of the Principal Act.

New Clause 126: Appeals from courts of summary jurisdiction

363. This clause makes a minor drafting correction to subsection 110 of the Principal Act.

New Clause 127: Recovery of debts

364. Section 113 of the Principal Act enables the recovery of debts due to the Commonwealth as established by the Principal Act with the exception of overpayments made to payees.

365. New Clause 127 amends section 113 of the Principal Act by omitting paragraph 113(b) and inserting new paragraphs 113(b) and (c).

366. The new paragraphs 113(b) and (c) provide that child support debts could be recovered either in a court exercising civil jurisdiction or a court exercising Family Law Act jurisdiction, respectively.

New Clause 128: Order to comply with requirement

367. This clause makes a minor drafting correction to section 121 of the Principal Act.

PART 9 - AMENDMENTS OF THE FAMILY LAW ACT 1975

New Clause 129: Principal Act

368. This clause provides that, in this Part of the Bill, the Family Law Act 1975 is referred to as the Principal Act.

Clause 130: Certain proceedings to be instituted only under Part

369. Section 63A of the Principal Act provides that proceedings that may be instituted under Part 7 (Children) of that Act could not be instituted otherwise than under Part 7, after 1 April 1988.

370. Clause 130 inserts a new subsection 63A(2) into the Principal Act to provide that the section does not apply in relation to the institution of proceedings under the Child Support (Assessment) Bill.

New Clause 131: Application of Division to children to whom Child Support (Assessment) Act applies

371. This clause provides that a court could not exercise power under Part VII of the Principal Act in relation to an application dealing with the maintenance of a child if the person making that application against another person could have made an application against that same person under the Child Support (Assessment) Bill for the payment of child support for the child.

New Clause 132: Matters to be taken into consideration in relation to spousal maintenance

372. This clause amends section 75 of the Principal Act by requiring a court to take into account in ordering spousal maintenance, any child support under the Child Support (Assessment) Bill that a party to a marriage has provided or is to provide and by removing as a factor that the court should consider the terms of any order made or proposed to be made under section 79 about the property of the parties (subparagraph 75(2)(n)).

New Clause 133: Alteration of property interests

373. New clause 133 amends section 79 of the Principal Act by inserting a new paragraph 79(4)(g) that provides that any child support under the Child Support (Assessment) Bill that a party to the marriage has provided, or is to provide, for a child of the marriage, is a matter for the court to take into account when considering what order (if any) should be made under section 79 in proceedings with respect to any property of the parties to a marriage or either of them.

New Clause 134: Registered maintenance agreements

374. New clause 134 inserts a new subsection (3B) into section 86 of the Principal Act to provide that where a maintenance agreement is registered at any time under subsection 86(1) of the Principal Act, and the maintenance agreement provides for the maintenance of a child but an application could have been made at that time under the Child Support (Assessment) Bill by one of the parties to the agreement for assessment of child support for the child, seeking payment of child support by the other party to the agreement, then the maintenance agreement to the extent that it provides for the maintenance of the child has no effect and is unenforceable.

New Clause 135: Operation of maintenance agreements entered into in substitution for rights under Act

375. New clause 135 inserts a new subsection (4D) into section 87 the Principal Act to provide that where a court at any time approves a maintenance agreement that operates in relation to the financial matters dealt with in the agreement in substitution for any rights of the parties to the agreement and the maintenance agreement provides for the maintenance of a child but an application could have been made at that time under the Child Support (Assessment) Bill by one of the parties for assessment of child support by the other party to the agreement, then the maintenance agreement to the extent that it provides for the maintenance of the child has no effect and is unenforceable.

**PART 10 - AMENDMENTS OF THE SOCIAL SECURITY
ACT 1947**

New Clause 136: Principal Act

376. This clause provides that, in this Part of the Bill, the Social Security Act 1947 is referred to as the Principal Act.

New Clause 137: Interpretation

377. This clause inserts some additional definitions in subsection 3(1) of the Principal Act:

'child support' is defined to mean financial support under the Child Support (Assessment) Bill including financial support by way of lump sum payment or by way of transfer or settlement of property;

'maintenance' is defined to include child support.

New Clause 138: Secrecy

378. This clause inserts a new subsection 19(5A) into the Principal Act to enable information concerning a person obtained under or for the purposes of the Social Security Act 1947 to be divulged or communicated to another person for the purposes of the Child Support (Registration and Collection) Act 1988 and the Child Support (Assessment) Bill.

**PART 11 - AMENDMENTS OF THE TAXATION ADMINISTRATION
ACT 1953**

New Clause 139: Principal Act

379. This clause provides that, in this Part of the Bill, the Taxation Administration Act 1953 is referred to as the Principal Act

**New Clause 140: Application of Subdivision in relation to
Child Support Acts**

380. This clause amends section 8WD of the Taxation Administration Act 1953 to provide that, for the purposes of Subdivision BA of that Act only, a reference to a taxation law shall be taken to include a reference to the Child Support (Registration and Collection) Act 1988 (the proposed new title of the Child Support Act 1988) and the Child Support (Assessment) Bill.

381. This will ensure that the Commissioner, in his capacity as Registrar, is able to use tax file numbers in the administration of the Child Support (Registration and Collection) Act 1988 and the Child Support (Assessment) Bill.







