

1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

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CHILD SUPPORT LEGISLATION AMENDMENT BILL (NO. 1) 1996

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EXPLANATORY MEMORANDUM

(Circulated by the authority of the Assistant Treasurer,  
Senator the Hon Jim Short)







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## **General outline and financial impact**

### **Updating references to the Social Security Act**

Amends the *Child Support (Assessment) Act 1989* to eliminate outdated references to the *Social Security Act 1947*, to reflect the changes made in the rewrite of the *Social Security Act 1991* and recent amendments to that Act.

**Date of effect:** On the 28th day after the day on which the Act receives the Royal Assent.

**Proposal announced:** Not announced.

**Financial Impact:** None

**Compliance cost impact:** None

### **Use of election where income changed**

The *Child Support (Assessment) Act 1989* allows a client to elect to use an estimate of their income where this income is at least 15 per cent less than the income used to assess their child support liability. The Assessment Act also allows clients to subsequently revoke this election and make a new estimate where further changes to income occur.

This measure amends the *Child Support (Assessment) Act 1989* so that the effect of this election will be prospective.

The date of effect for the estimate will usually be the date of lodgment of the estimate. Child support liabilities incurred before the estimate would be credited against the new child support liability figure taking into account their revised income estimate for the year. The child support liabilities for the remainder of the period would be calculated to ensure that the amount of the child support paid in that period reflects the income estimate for that year.

**Date of effect:** These amendments will commence on a day to be fixed by Proclamation. However, if the item does not commence by proclamation within the period of 6 months beginning on the day on which the Act receives Royal Assent, they commence on the first day after the end of that period. These amendments will apply in relation to elections made after the commencement of these items.

**Proposal announced:** 1995-96 Budget

**Financial Impact:** There are annual savings in running costs within CSA of \$0.3m which are made up of the reduced workload for staff in recovering overpayments. Drawings on consolidated revenue for refunds of overpayments will substantially reduce.

**Compliance cost impact:** The amendments will reduce considerably the numbers of cases where the payee is required to repay an overpayment up to the date of the estimate. The amendment will also ensure the amount of child support for which a payer is liable will reflect their current income.

## **Electing for employer withholding not to apply**

The *Child Support (Registration and Collection) Act 1988* requires the Registrar to have employers deduct child support from payers' salary and wages wherever practicable.

This measure amends the *Child Support (Registration and Collection) Act 1988* to allow an existing or future payer of child support to make an election to make payments directly to the Child Support Registrar (the Registrar). The Registrar will accept this election if he is satisfied the payer is likely to make timely payments. Payers will have the right to object to and appeal against a decision by the Registrar to refuse to accept this election.

If a payer defaults the Registrar will be able to require payments to be deducted from the payer's salary and wages and the payer will be unable to lodge another election for a period of 6 months. A payer who defaults will have strictly limited future access to this arrangement. A general restriction of 2 months will apply between the lodgment of elections in normal circumstances.

**Date of effect:** On the 28th day after the day on which the Act receives the Royal Assent.

**Proposal announced:** 1995-96 Budget

**Financial Impact:** Currently, approximately 30 per cent of payers are having child support withheld at source by employers from salary and wages. It is estimated that one in five of these payers are likely to take the

option of opting out of employer withholding and pay directly to the Registrar. A small number of these payers may default and require the Registrar to request that the employer commence withholding child support. Annual net running costs of \$0.663m are anticipated due to the cost of removing payers from employer withholding scheme, establishing direct payment arrangements, re-establishing deduction arrangements following default in payment of child support.

**Compliance cost impact:** The amendments will reduce the intrusion into payers' private affairs. The compliance costs for employers will reduce as the number of payers electing to pay directly to the Registrar increases.

## Family Law Act 1975 changes

Amends the *Child Support (Assessment) Act 1989* to reflect the relevant recent changes made to the presumptions of parentage of the *Family Law Act 1975*.

**Date of effect:** On the 28th day after the day on which the Act receives the Royal Assent.

**Proposal announced:** Not announced.

**Financial Impact:** None

**Compliance cost impact:** None

## Employer record keeping requirements

Amends the *Child Support (Registration and Collection) Act 1988* to make the child support record keeping requirements consistent with the requirements under the *Income Tax Assessment Act 1936*.

**Date of effect:** On the 28th day after the day on which the Act receives the Royal Assent.

**Proposal announced:** Not announced.

**Financial Impact:** None

**Compliance cost impact:** Difficult to quantify but likely to reduce compliance costs borne by employers.

## **Consideration of child support liabilities in property and spousal maintenance proceedings**

Amends the *Family Law Act 1975* to enable the Court to take into account a paying parent's potential child support liability in property and in spousal maintenance proceedings even in the absence of an administrative assessment under the *Child Support (Assessment) Act 1989*.

***Date of effect:*** On the 28th day after the day on which the Act receives the Royal Assent.

***Proposal announced:*** 1995-96 Budget

***Financial Impact:*** Nil

***Compliance cost impact:*** Nil



## Chapter

# 1

## **Updating references to the Social Security Act**

### **Overview**

1.1 *Items 1 to 14, 18 to 20 and 26 to 28 of Schedule 1* of the Bill will amend the *Child Support (Assessment) Act 1989* (the Assessment Act) to delete references to the repealed *Social Security Act 1947*. The amendments substitute equivalent provisions from the *Social Security Act 1991* (the Social Security Act). The amendments will also update references to the revised family payment provisions introduced in the *Social Security Legislation Amendment (Family Measures) Act 1995* (the Family Measures Act).

### **Summary of the amendments**

#### **Purpose of the amendments**

1.2 The purpose of the proposed amendments is to ensure that references in the Assessment Act to the Social Security Act are up to date.

#### **Date of effect**

1.3 The amendments will apply from the 28th day after the day on which the Act receives Royal Assent.

### **Background to the legislation**

#### **Changes to family payments in 1995**

1.4 A range of amendments were made in the *Social Security Legislation Amendment (Family Measures) Act 1995* which included a merging of basic family payments and additional family payments into a single family payment structure. There were a number of consequential changes to the Assessment Act which were included in that Act involving replacing the term 'additional family payment' in paragraph 89(4)(b), and

subparagraphs 91A(1)(b)(ii) and 92(4)(a)(ii) of the Assessment Act with the term 'more than the minimum rate of family payment'. However, consequential amendments to the Assessment Act were not made at the time to all references to 'additional family payment'.

1.5 As there is no longer any such payment as 'additional family payment' in the Social Security Act the definition of that term in section 5 of the Assessment Act is no longer required. The definition of 'claimant' in section 5 is also being amended by omitting the term 'additional'.

### **Replacing obsolete references to the Social Security Act 1947**

1.6 Section 39 of the Assessment Act still refers to provisions in the repealed *Social Security Act 1947* as the source for determining the liable parent's exempted income amount in the child support formula. Provisions in the *Social Security Act 1991* are the appropriate references which need to be reflected in the Assessment Act. This also requires that the new concepts of the Social Security Act also need to be reflected in the Assessment Act.

## **Explanation of the amendments**

### **Changes to family payments in 1995**

1.7 The proposed amendments will repeal the now obsolete definition of 'additional family payment' in section 5 and also amend the definition of 'claimant' in section 5. *[Item 1 - repeals definition in section 5; Item 2 - amend definition of "claimant" in section 5]*

### **Definition of "relevant partnered rate of Social Security pension"**

1.8 There were a number of relevant expressions which were replaced during the 1991 rewrite of the Social Security Act on the basis that they were potentially misleading and which need to be changed in the Assessment Act:

- 'member of a couple' replaces 'married person' (existing definition of married person specifically includes people who are living together but not legally married) *[Item 3 - repeals definition of 'married person' in section 5; Item 4 - new definition of 'member of couple' in section 5; Item 6 - amend definition of relevant dependant child in section 5; Item 12 - amended paragraph 12(1)(e)]*

'partnered' replaces 'married' *[Item 19 - amended subparagraph 39(1)(b)(i); Item 27 - amended paragraph 155(b)]*

**'partner' replaces 'spouse' [Item 5 - insert definition of 'partner'; Item 14- amended paragraph 25(1)(b)]**

- 1.9 The proposed amendments insert a new definition of 'relevant partnered rate of Social Security pension' to replace the previous 'relevant married rate of Social Security pension' which was drawn from similar definitions in the *Social Security Act 1947*. The new definition of 'relevant partnered rate of Social Security pension' provides the reference to the applicable rate in the appropriate Pension Rate Calculator in order to arrive at a liable parent's exempt income **[Item 7 - repeal definition of 'relevant married rate of Social Security pension' in section 5; Item 8 - new definition of 'relevant partnered rate of Social Security']**

#### **Definition of 'relevant unpartnered rate of Social Security pension'**

1.10 There were a number of relevant expressions which were replaced during the 1991 rewrite of the Social Security Act on the basis that they were potentially misleading. These expressions also need to be changed:

- 'not a member of a couple' replaces 'unmarried person' **[Item 11 - repeal definition of 'unmarried person' in section 5; Item 13 - subparagraph 24(a)(iii)]**
- 'unpartnered' replaces 'single' **[Item 18 -amended paragraph 39(1)(a); Item 26 - amended paragraph 155(b)]**

1.11 The proposed amendments insert a new definition of 'relevant unpartnered rate of Social Security pension' to replace the previous definition of 'relevant single rate of Social Security pension' which was drawn from similar definitions in the *Social Security Act 1947*. The new definition of 'relevant unpartnered rate of Social Security pension' provides the reference to the applicable rate in the appropriate Pension Rate Calculator, in order to arrive at a liable parent's exempt income. **[Item 9 - definition of 'unmarried rate of Social Security pension' in section 5 repealed; Item 10 - new definition inserted in section 5]**

#### **Additional exempted income amount for each relevant dependent child**

1.12 The liable parent's exempted income, based on the relevant partnered rate of Social Security pension includes an additional amount for each relevant dependent child. The amount depends on the age of the child and is currently determined by reference to provisions in the *Social Security Act 1947*.

1.13 The new provision alters the previous order of presentation in subsection 39(2), by providing for children over 16 in the first paragraph and replacing the previous equation of 25 percent of twice the annual

amount of the relevant partnered rate with the simpler 50 percent of annual amount of the relevant partnered rate.

1.14 Because of changes to the structure of the Social Security Act it is no longer possible to refer to one subparagraph to locate the additional amount for relevant children under 16. The new provision provides a formula for arriving at this amount by referring to definitions and rates in the *Social Security Act 1991*. Paragraph 39(2)(b) requires that the appropriate standard family rate for each child under 16 be determined and deduct from this amount the minimum family payment child rate as defined, to arrive at the additional amount for each child [**Item 20 - new subsection 39(2); Item 28 - amended paragraph 155(d)**]

## ***Use of election where income changed***

### **Overview**

2.1 *Items 21 to 25 of Schedule 1* of the Bill propose to amend the *Child Support (Assessment) Act 1989* ( the Assessment Act ) to modify the effect of making an income estimate election on a child support liability. The proposed amendments will generally leave undisturbed the amounts payable prior to making the income estimate election and only affect future amounts payable.

### **Summary of the amendments**

#### **Purpose of the amendments**

2.2 The proposed amendments will :

- reduce the incidence of overpayments to persons receiving child support which currently arise because of the retrospective effect of an income estimate election;
- better reflect a payer's future capacity to pay because the amount payable will only be changed for the months remaining after the estimate has been lodged;
- reduce the level of child support arrears that may arise when payers spend amounts refunded to them as overpayments, but later do not have the funds to meet their revised ongoing child support liability.

#### **Date of effect**

2.3 The amendments are proposed to commence on a day to be fixed by Proclamation. If Proclamation has not occurred within six months from the day the amending Act receives Royal Assent, the commencement day will be the day after that six month period. Regulations are essential to the operation of this measure. The Regulations will provide for the date of effect of the election and will change how the annual rate of child support is converted into a new rate for the remaining period.

## **Background to the legislation**

2.4 Child support assessments are based on each parent's relevant income for the child support year. This income is arrived at by starting with the amount of taxable income shown in a person's return two years prior to the child support year in question and then adjusting it for the movement in average weekly earnings in the intervening period. Section 60 of the Assessment Act provides that, where either before or during a child support year a parent's current income is estimated to have reduced by at least 15% of this figure, a person may elect for a child support assessment to be based on an estimate of his or her current annual income.

2.5 The Assessment Act was amended in 1992 to provide for the regulations to determine a person's child support income amount in respect of an election made after 30 June 1993. Section 61A specifies the effect of such an election, whereas section 61 specifies the effect of an election made on or before 30 June 1993. An election to use an estimate of income currently amends the child support assessment from the beginning of the child support year. Subsections 62(1) and 62(1A) provide for the circumstances where an income estimate election (before and after 1 July 1983 respectively) may be revoked. The current sections 63 and 63A specify the effect of revoking an income estimate election for an election (before and after 1 July 1993 respectively).

2.6 Both a paying parent and parent receiving child support may make an election as to their income estimate for the year. The majority of income estimate elections are made by parents who pay child support and often result in overpayments. Where the parent paying child support has made the election, the person receiving child support is often put in the difficult position of having to repay money which they have spent to support the child. Frequently, some of this money is returned to them as child support payments over the remaining period.

2.7 The Joint Select Committee on Certain Family Law Issues (the Committee), which carried out an examination of the Child Support Scheme recognised this difficulty. The Committee's recommendation 124 proposed that an income estimate election should only take effect from the month following the person's application for reassessment.

## **Explanation of the amendments**

2.8 The proposed amendments will give effect to the thrust of the Committee's Recommendation 124. However, the proposed amendment will generally take effect from the date of lodgment of the election, rather than one month after the election, as proposed by the Committee. Under the proposed amendments, the parent paying child support will still pay the correct amount for the year based on the income estimate.

However, any overpayment to the person receiving child support up to the date of lodgment of the estimate will serve to reduce the remaining future liability for the year. Similarly, any underpayment arising from an income election by a parent receiving child support will be offset evenly over the rest of the year. The only time an estimate of income will have effect earlier than the date of lodgment, is where the parent paying child support has already paid more than the amount payable for the whole year. When this occurs, an overpayment will still occur.

#### **How often can an income estimate be made?**

2.9 The proposed amendments will retain the two month restriction between elections but it will run from the date of effect of an election rather than the date from which election is made. In most cases the date of effect will be the same as the date of lodgment of an election. *[Item 21 - repealed paragraph 60(3)(b) and substituted new paragraph 60(3)(b)]*

#### **What is the effect of making an election?**

2.10 The current section 61 applies only to elections made on or before 30 June 1993. Since an election cannot be made after the close of a child support year, this provision is no longer necessary and will be repealed. The provision which will govern all income elections will now be an amended version of section 61A re-enacted as section 61. *[Item 22 repeals sections 61 and 61A and substitutes a new section 61. The new subsections 61(2) to (5) retain the provisions of the current subsections 61(2) to (5)]*

2.11 The new subsection 61(1) will specify that the person's child support income amount is the amount of the person's estimate and applies from a date determined in accordance with the regulations. The date will ordinarily be the date on which the election was made. However, the regulations will prescribe the circumstances where an earlier date will apply.

#### **What is the effect of revoking an election?**

2.12 The current subsection 62(1) applies only to elections made before 1 July 1993. Since a person cannot revoke an election after the close of a child support year, this provision is no longer necessary and will be repealed. The reference in subsection 62(1A) to child support assessments beginning after 30 June 1993 is removed to enable this provision to apply to all revocations. *[Item 23 - repealed subsection 62(1); Item 24 - amended subsection 62(1A)]*

2.13 The current section 63 applies only to revocations made before 1 July 1993. Since a revocation cannot be made after the close of a child support year, this provision is no longer necessary and will be repealed.

The provision which will govern the revocation of income elections will now be an amended version of section 63A re-enacted as section 63. ***[Item 25 - repealed sections 63 and 63A and substituted new section 63. The proposed new subsections 63(2) to (5) will re-enact the existing provisions contained in subsection 63A(2) to (5).]***



## ***Electing for employer withholding not to apply***

### **Overview**

3.1 *Items 29 to 38 of Schedule 1* of the Bill will amend the *Child Support (Registration and Collection) Act 1988* (the Registration and Collection Act) to enable parents paying child support to elect to pay directly to the Registrar. The Registrar will accept an election where he is satisfied that the payer is likely to make timely payments.

3.2 The amendments will provide for the Registrar to require an employer to withhold child support from a person's salary and wages if the payer fails to make timely payments.

3.3 The amendments will also change the terminology used to describe the action of withholding amounts from a payer's salary and wages from the term 'automatic withholding' to the term 'employer withholding'.

3.4 The proposed amendments also seek to replace the terms 'regular and timely' with the term 'timely'.

### **Summary of the amendments**

#### **Purpose of the amendments**

3.5 The proposed amendments will:

- reduce the level of intrusiveness of the child support scheme for payers who make timely child support payments direct to the Registrar
- provide greater flexibility to the Registrar in the way he administers the collection of child support and, by encouraging voluntary compliance, reduce administration costs over time
- reduce employers costs of compliance wherever possible

**Dat of Eff ct**

3.6 On the 28th day after the day on which the Act receives the Royal Assent.

**Background to the legislation**

3.7 Where the payee does not elect to receive child support payments privately from the payer, they are collected by the Registrar. The Registration and Collection Act provides the legislative framework for the collection activities of the Registrar.

3.8 Section 43 provides a general rule of collection by withholding in the case of employees wherever practicable. This collection method was seen as one of the prime means of overcoming the difficulties in enforcing collection of child support. The term 'automatic' which was used in connection with the word 'withholding' was intended to reinforce this.

3.9 Section 44 currently sets out the cases in which withholding is not applicable. The limited situations in which withholding does not apply are:

- The paying parent's liability arose before the commencement of the Registration and Collection Act (that is, prior to 1 June 1998) [Subsections 44(1) and 44(1A)]
- The Court has, in maintenance proceedings ordered that employer withholding is not to apply either because of special circumstances relating to privacy or pending the disposal of proceedings before the court [Subsections 44(2), (3) and (4)]
- The Registrar is satisfied that in the particular circumstances of the case that withholding is not an efficient method of collection [Subsection 44(6)]

3.10 The Joint Select Committee on Family Law Matters, in its examination of the Child Support Scheme, found that community attitudes towards paying child support had changed significantly. The Committee considered that it was time that the level of intrusiveness of the scheme be minimised and that parents should be given a choice in deciding the means by which they pay their child support liability. The Committee was of the view that this would avoid unnecessary disclosure of a paying parent's personal information to third parties such as employers and offer an incentive to parents paying child support to comply voluntarily with their child support obligations (Recommendations 55, 56 and 57).

## **Explanation of proposed amendments**

3.11 For many parents paying child support, employer withholding is a convenient way to meet their child support obligations. However, the proposed amendments give effect to the recommendations of the Committee to provide payers with a choice of how to pay their child support. The proposed amendments will also provide safeguards to ensure that the collection of child support is not put at an unreasonable risk. The level of intrusiveness of the scheme will depend on the paying parent's voluntary compliance with his or her child support obligations.

## **Who has the right to make an election?**

3.12 The right of a payer to make an election, is intended to apply to existing payers who have a liability registered for collection with the Registrar and to payers who will be registered in the future. *[Item 32 - new subsection 44(1) and (2)]*

3.13 The proposed amendments will give all payers a new right. The existing right to apply to a court on very limited grounds would no longer be necessary. The main benefits of the proposed rights over the limited existing rights are:

- the right applies to more payers
- there are reduced costs because the payer does not have to go to court to apply for this right.
- there is no longer a requirement for an election to be lodged within 28 days of registration of the liability

3.14 The proposed amendments will affect the following rights of some payers:

- the right to elect that withholding is not to apply, where the liability arose before the commencement of the Act (that is prior to 1 June 1988)
- the right to seek an order from a court that withholding is not to apply either because of special circumstances relating to privacy or pending the disposal of proceedings before the court

## **How to make an election?**

3.15 The election will be made to the Registrar on an approved form. *[Item 32 - new subsection subsection 44(3)]*

**Discretion of the Registrar to accept or refuse an election**

3.16 The Registrar will need to satisfy himself that the payer will make timely payments. The factors which will be taken into account by the Registrar in arriving at his decision will be set out in a policy guideline by the Registrar after carrying out community consultation.

3.17 If he is satisfied, then he will make the necessary statements or adjustments to the Child Support Register to reflect that employer withholding is not to apply. However, if he is not satisfied he will refuse to make the necessary statements or adjustments to the Child Support Register. In such circumstances, the payer will have the right to have this decision reviewed (both administratively and judicially through the existing review rights).

**What if the payer subsequently defaults?**

3.18 In the event that a payer defaults the Registrar will have the power to require that the payer's employer commence to withhold child support. *[Items 33 and 35 - new subsections 44(5) and (7) respectively]*

3.19 The Registrar must vary the particulars in the Child Support Register to state that employer withholding is to apply unless he is satisfied that the collection of payments using this method is not an efficient method of collection or that the default was an isolated incident and the payer is likely to make timely payments. *[Items 33 and 35 - new subsections 44(5A) and (7A) respectively]*

3.20 If the Registrar decides to vary the particulars in the Child Support Register so that employer withholding applies in relation to the liability, then the payer will not be able to lodge another election for a period of 6 months from the date the Registrar made the variation. The reason for this restriction is that in the event of a default by the payer, the Registrar needs to provide some level of assurance of continuity of payments to persons receiving child support.

3.21 The Registrar is responsible for ensuring the collection of child support payments in a timely manner and is conscious that the implications for children where a payer defaults are often severe. Accordingly, the Registrar will require that 6 months must elapse (during which time employer withholding has taken place) before he will consider another application to elect that employer withholding should not apply. *[Items 35 - new subsections 44(7B)]*

**What restrictions are there on making a subsequent election?**

3.22 It is necessary to limit the number of times that a person may make an election to ensure the efficient administration of the Child Support Scheme. A limit of once every two months provides a reasonable

balance between the needs of payers and the need to ensure efficient administration of the Child Support Scheme. This also represents a reasonable period within which circumstances may have changed sufficiently to warrant a fresh look at the payer's circumstances (For example there is a two month restriction in lodging income estimates elections). *[Items 35 - new subsections 44(7C)]*

**Change 'automatic' withholding to 'employer' withholding**

3.23 The proposed amendments of terminology from 'automatic' to 'employer' withholding reflect the fact that withholding will no longer be automatic and that payers will have more opportunity to pay direct to the Registrar. It also reflects the responsibilities of employers in withholding payments. *[Item 29 - amended paragraph 26(2)(b), Item 30 - repeal heading and substitute new; Item 31 - amended section 43(2), Item 34, 36 and 38 - amended subsection 44(6), subsection 44(8) and subsection 44(10) respectively]*

**Change 'regular and timely' to timely**

3.24 The proposed amendments seek to replace the terms 'regular and timely' with the term 'timely'. The term 'timely' is considered to mean payment of the full amount payable on time by the due date, therefore the word 'regular' is considered to be superfluous in this context. The term 'timely' has been reflected in all the new provisions. The words 'regular and' have been omitted from sections which have merely been amended. *[Item 37 - amended subsection 44(9)]*

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REPORT OF THE COMMISSIONER OF THE GENERAL LAND OFFICE

1914

ANNUAL REPORT OF THE COMMISSIONER OF THE GENERAL LAND OFFICE  
FOR THE YEAR 1914  
CONTAINING A SUMMARY OF THE LAND AND MINERAL RESOURCES OF THE UNITED STATES  
AND A DESCRIPTION OF THE LANDS AND MINERALS OWNED BY THE UNITED STATES

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## **Family Law Act 1975 changes**

### **Overview**

4.1 *Items 15 to 17 of Schedule 1* of the Bill will amend sub-section 29(2) of the *Child Support (Assessment) Act 1989* (the Assessment Act) to ensure that child support legislation which allows the Registrar to be satisfied a person is a parent of a child continues to be closely aligned with similar provisions in the *Family Law Act 1975*.

### **Summary of the amendments**

#### **Purpose of the amendments**

4.2 The purpose of the amendments is to more closely align the Assessment Act with the new parentage provisions of the *Family Law Act 1975*.

#### **Date of Effect**

4.3 The amendment will apply from the 28th day after the day on which the bill receives Royal Assent.

### **Background to the legislation**

4.4 The *Family Law Reform Act 1995* re-enacted a number of the parentage presumptions with some changes. The current amendments are required as a consequence of these changes.

## **Explanation of the amendments**

### **Prescribed court**

4.5 Paragraph 29(2)(c) of the *Child Support (Assessment) Act 1989* currently refers to 'an Australian court or a court of a prescribed overseas jurisdiction'. The enactment of section 69S to replace the former section 66S of the *Family Law Act* has replaced the term 'an Australian court' with the term 'prescribed court'. This is defined to mean 'a federal court, a court of a state or Territory or a court of a prescribed overseas jurisdiction'.

4.6 The proposed amendment will reflect this change in terminology as well as incorporating the new wording of the parentage presumption arising from findings of Court contained in the *Family Law Act 1975*.  
**[Item 15 - new paragraph 29(2)(c)]**

### **Replacing months with weeks**

4.7 References to the period of '10 months' in the former parentage provisions have been replaced in the new sections 69P and 69Q with '44 weeks'.

4.8 The proposed amendments will reflect this change.**[Item 16 - amended paragraph 29(2)(f), subparagraph 29(2)(g)(iv) and the new paragraph 29(2)(h) which is outlined in paragraph 4.9 below]**

### **Presumption arising from cohabitation**

4.9 The presumption arising from cohabitation has been amended in the new section 69Q from requiring a period of not less than 6 months cohabitation, including the time 10 months before the birth, and replaced with a presumption arising from cohabitation which arises during the time when conception is most likely to occur.

4.10 The proposed amendments will reflect this change.**[Item 17 - new paragraph 29(2)(h).]**



## ***Employer record keeping requirements***

### **Overview**

5.1 *Item 39 of Schedule 1* of the Bill amends paragraph 59(1)(b) of the *Child Support (Registration and Collection) Act 1988* in relation to record keeping requirements for employers.

### **Summary of the amendment**

#### **Purpose of the amendment**

5.2 The purpose of the amendment is to bring employer child support record keeping requirements into line with the 1990 amendments to the *Income Tax Assessment Act 1936*. The requirement will be for employers to retain their records for five years.

#### **Date of effect**

5.3 The amendment will apply from the 28th day after the day on which the Bill receives Royal Assent.

### **Background to the legislation**

5.4 The *Income Tax Assessment Act 1936* was amended in 1990 to reduce from seven years to five years the period an employer must retain records which are relevant to their acts and duties under that Act. Many of the records which employers must keep in relation to maintenance deductions and other duties performed under the Registration and Collection Act serve the same purpose as records which the Income Tax Assessment Act requires employers to keep. It is therefore desirable that both Acts should specify the same retention requirements for records which serve the same purposes.

## **Explanation of the amendment**

5.5 The amendment to paragraph 59(b) reduces the period an employer must keep records of the kind specified in subsection 59(1) from seven years to five years . *[Item 39 - amended paragraph 59(1)(b)]*

## **Consideration of child support in property and spousal maintenance proceedings**

### **Overview**

6.1 **Items 40 and 41 of Schedule 1** of the Bill will amend the *Family Law Act 1975* to enable the Court to consider future child support liabilities in property and spousal maintenance proceedings even in the absence of an administrative assessment under the *Child Support (Assessment) Act 1989*.

### **Summary of the amendments**

#### **Purpose of the amendments**

6.2 To enable paying parents to have their future child support obligations recognised and taken into account by the Court in property and spousal maintenance proceedings irrespective of whether an administrative assessment of child support has been made.

#### **Date of Effect**

6.3 On the 28th day after the day on which the Act receives the Royal Assent.

### **Background to the legislation**

6.4 In some circumstances where proceedings are before the Court and the parent receiving child support has not applied for a child support assessment, the non-custodial parent cannot obtain an assessment to enable the Court to take the child support liability into account in determining what is a just and equitable property settlement under section 79 of the *Family Law Act 1975*. After the property proceedings have been determined, the custodial parent can then proceed to apply for an assessment which could include substantial arrears which the Court did

not take into account in the property proceedings. The Joint Select Committee suggested in Recommendation 156 that this problem for paying parents needed to be addressed.

6.5 Although the problem raised by the Committee only concerned property proceedings, the same problem may occur in relation to spousal maintenance proceedings. It is therefore considered appropriate that amendments should also be made to section 75 of the *Family Law Act 1975* to remove this problem.

### **Explanation of proposed amendments**

6.6 The proposed amendment allows the Court to refer to an amount which would be payable under the *Child Support (Assessment) Act 1989*. this solution does not require parents to apply for an administrative assessment. Ultimately parents can still determine whether they wish to settle matters privately or require the involvement of the Child Support Registrar. **[Item 40 and 41 - amend paragraphs 75(2)(na) and paragraph 79(4)(g) respectively]**



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