

1990

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CHILD SUPPORT LEGISLATION AMENDMENT BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Treasurer, the Hon. P.J. Keating, M.P.)

GENERAL OUTLINE

This Bill provides for amendments to the Child Support (Registration and Collection) Act 1988, the Child Support (Assessment) Act 1989 and the Family Law Act 1975.

Its provisions contain measures for:

- . a private child support agreement or an order of the court which contains a reference to a periodic payment of child support for any period shall be acceptable to the Registrar;
- . an updating of the references to certain enforcement provisions of the Family Law Act 1975 in the child support legislation following upon amendments to that legislation in 1989;
- . permitting Family Court counsellors to bring to the attention of State Child Welfare authorities suspected cases of child abuse or neglect which come to their notice during the course of counselling without the fear of breaching the secrecy provisions of the child support legislation;
- . a limited and very specific freeing up of the secrecy provisions to enable the Child Support Agency to provide information to custodial parents about the progress of the recovery of amounts due to them;
- . courts not to be able to make, revive or vary an order or agreement on the application of a respondent (payer) to pay child support to the applicant where that applicant (payee) is entitled to child support assessed under the Act
- . the death of a custodian payee to terminate the liability payable under an order where the now deceased is named as the recipient of the maintenance and the order does not otherwise make provision for the liability to continue.

FINANCIAL IMPACT

The effect on revenue of these measures when taken together will be marginal. There will be some savings flowing from the inability of respondent payers (non custodians) to seek orders to pay maintenance which should otherwise be considered under the child support legislation only after an application is made by the custodian (applicant). In all other respects the revenue effects will be neutral.

MAIN FEATURES

The main features of the Child Support (Amendment) Bill 1990 are as follows:

- . private agreements made between the parties in these matters must comply with certain requirements to be acceptable to the Registrar. One of those requirements is that the amount of periodic maintenance be expressed as an annual amount. This requirement has not always been complied with. It is understandable that parties to consent maintenance agreements continue to look upon maintenance payments occurring with a greater frequency than annually. This requirement is to be removed from the legislation and in future to allow any periodic amounts in private agreements to be acceptable to the Registrar.
- . the Family Law Act was amended in 1989 to revise the provisions of the Act relating to the enforcement of court orders. The Bill will update references in the Child Support legislation to take account of amended enforcement provisions of the Family Law Act. The objective is to achieve consistency between both sets of laws.
- . Family Court counsellors come within the scope of the secrecy provisions of the Child Support legislation to the extent that they provide counselling to child support payees and payers. An amendment to these secrecy provisions is necessary in order to permit counsellors to report suspected cases of child abuse to State child welfare authorities.
- . the secrecy provisions are also amended to reflect a new reference to the Family Law Act about orders made on the registrar to provide the address of a child or the custodian where the child is subject to a warrant issued under the Family Law Act.

- . a new clause is to be inserted in the existing section 113 which will enable the Registrar to inform custodians (payees) of the progress that has been made in the recovery of amounts that are due to them.
- . section 66BA of the Family Law Act is to be amended to not allow courts to make, revive or vary orders on the application of a respondent (non custodian) to pay maintenance to a person who should be an applicant for administrative assessment.
- . section 66M of the Family Law Act is to be amended to include the death of the custodian (the person entitled to maintenance) as an event which ends the liability to pay maintenance under that specific order provided the order itself does not make provision for the liability to otherwise continue.

PART 1 PRELIMINARY

Clause 1 - Short Title

Provides for the Act to be cited as The Child Support Legislation Amendment Act 1990.

Clause 2 - Commencement

Provides that the Act shall come into force on the day it receives Royal Assent.

PART 2 - AMENDMENTS OF THE CHILD SUPPORT (ASSESSMENT) ACT 1989

Clause 3 - Principal Act

3. Formal.

Clause 4 amends section 84 to remove references to the requirement to specify amounts only as annual amounts in consent agreements. As a result there is now to be no requirement to specify the periods in a particular manner to be acceptable to the Registrar. This amendment will recognise that parties who are able to come to their own private arrangements for child support can specify those periods according to their own preferences.

Clause 5 makes two separate changes to section 95. The first change complements the change to section 84 by removing the requirement to specify annual amounts of child support in child support agreements accepted by the Registrar.

The second change updates enforcement references only in section 95(3) of the Principal Act. It means that if an agreement accepted by the Registrar contains provision for child support other than in the form of periodic amounts, the provisions of that agreement will have the same effect as if it was an order of the court AND if the agreement or provisions are registered in a court having jurisdiction under the Family Law Act Parts XIII (Enforcement of Decrees) and XIII A (Sanctions for Failure to comply with orders and contempt of court) apply to the provisions as if the agreement was an order of the court made under Part VII of the Family Law Act.

Clause 6 amends section 100 in an identical fashion to the second change made to section 95(3) above. The effect is to extend Parts XIII (Enforcement of Decrees) and XIII A (Sanctions for failure to comply with orders and contempt of court) of the Family Law Act to any decree or order made by a court under this Act to be enforceable under the Family Law Act .

Clause 7 removes the requirement for a court which makes an order to depart from an administrative assessment to specify an amount as an annual amount. This change complements the change with respect to consent agreements.

Clause 8 amends the secrecy provisions of the Assessment Act. The amendment excludes Family Court counsellors and other marriage counsellors, who provide counselling to parents in accordance with section 17 of the Assessment Act, from the secrecy obligations of that Act. This amendment will ensure that, while counsellors will remain subject to the confidentiality provisions of the Family Law Act in relation to information they acquire in the course of their duties, they will be free to report cases of suspected child abuse to State child welfare authorities.

Clause 8 also updates the references in the Assessment Act to the enforcement provisions of the Family Law Act which were amended in 1989

Clause 9 deletes a further reference to an annual amount and complements the earlier changes.

PART 3 - AMENDMENTS OF THE CHILD SUPPORT (REGISTRATION AND COLLECTION)ACT 1988.

Clause 10 - Principal Act

10. Formal

Clause 11 updates a reference in the Act to the Family Law Act which was amended in 1989 and is a complement to the amendment specified in clause 8 above.

Clause 12 inserts an authority to enable the Registrar to inform payees (custodians) of the progress made in the recovery of amounts due to them under the liability registered with the Agency without the possibility of breaching the general secrecy provisions. The Privacy Commissioner has approved of the change.

PART 4 - AMENDMENTS OF THE FAMILY LAW ACT 1975.

Clause 13 - Principal Act.

13. Formal

Clause 14 amends section 66BA of the Family Law Act to ensure the provisions of the Child Support Assessment Act cannot be avoided by a respondent (non custodian) making application to a court to pay child support to any person who should be an applicant for child support under the Child Support Assessment Act.

Clause 15 amends section 66M of the Family Law Act to make clear that the death of a custodian payee ends the liability of the non-custodian payer under a court order unless the court order provides for the continued payment to someone other than the custodian. The amendment is necessary to overcome the problem of the proper ownership of moneys collected on behalf of the deceased custodian by the Child Support Agency. The amendment brings the Family Law Act into line with the Child Support (Assessment) Act 1989 [s.12(2)] which ends the liability under a child support assessment upon the death of a custodian.

