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**THE PARLIAMENT OF THE COMMONWEALTH OF  
AUSTRALIA**

**SENATE**

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**CHILD SUPPORT LEGISLATION AMENDMENT  
BILL 1994**

**EXPLANATORY MEMORANDUM**

(Circulated by the authority of the Treasurer  
the Hon. Ralph Willis MP.)

**THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE  
HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED**



## **CHILD SUPPORT LEGISLATION AMENDMENT BILL 1994**

### **Statement of Policy and Purpose**

### **General Outline and Financial Impact**

The Child Support Legislation Amendment Bill 1994 will amend the *Child Support (Assessment) Act 1989*, the *Child Support (Registration and Collection) Act 1988* and the *Social Security Act 1991*. The amendments introduce two new policy initiatives to the child support scheme and extend the application of two other existing policies to provide greater convenience and flexibility for clients of the Child Support Agency.

There is inflexibility in certain provisions of the child support legislation and it is the intention of this Bill to remove some of that inflexibility.

### **Presumption of Parentage**

The *Child Support (Assessment) Act 1989* allows the Registrar to be satisfied that a person is a parent of a child when:

- the child was born during a marriage to which that person was a party;
- that person is named on a birth certificate as a parent of the child;
- a court has found that person to be a parent of the child;
- that person has acknowledged, in writing, that they are a parent of the child; or
- the child was adopted by the person.

The *Family Law Act 1975* includes other provisions that establish the presumption of parentage in the first instance. It is proposed to align more closely the child support legislation with the provisions of the *Family Law Act 1975* by allowing the Registrar to be satisfied that a man is a parent of a child when:

- a child is born to a woman within 10 months after a purported marriage has been annulled, and that man was a party to the marriage
- a child is born to a woman who was married to that man and they separated, resumed cohabitation on one occasion for a period of not

more than 3 months and separated again, and that child is born within 10 months after the cohabitation and after the dissolution of the marriage

a child is born to a woman who cohabited with that man for a period of at least 6 months and this period included the time 10 months before the birth of the child

The outcome will be to assist clients in these particular circumstances to lodge an application nominating the putative father consistent with the ***Family Law Act 1975*** provisions and this will speed the processing of their applications.

One other minor extension of an existing facility to acknowledge parentage is also proposed in this Bill.

*Proposal announced:* 6 April 1994 by the Assistant Treasurer.

Minor extension of existing policy to be announced in second reading speech.

*Financial Impact:* This amendment is at no cost.

***Child Support Agreements and Department of Social Security clients***

The first new initiative is to require Department of Social Security clients who enter into a child support agreement to have that agreement examined for its adequacy under the reasonable action for maintenance provisions of the ***Social Security Act 1991***. This is being done to ensure children receive adequate parental support under an agreement. There is emerging evidence that child support agreements are being drawn up for amounts which are substantially less than would be payable under formula assessment. Currently, the Registrar must accept these agreements and this acceptance is at the expense of the taxpayer and the welfare of the children. The outcome of this change will ensure that both parents contribute to the support of their children according to their capacity to pay while minimising social security outlays.

*Proposal announced:* 6 April 1994 by the Assistant Treasurer.

*Financial Impact:* This amendment is at no cost and minimises Government outlays.

### **Periods of Non Enforcement**

A new initiative establishes periods when child support liabilities ordered by the court made under the *Family Law Act 1975* and registered under Stage 1 of the child support scheme may not be enforced by the Child Support Agency. If a liable parent receives income support from the Department of Social Security and their total income from all sources, including pension or benefit, does not exceed the current single rate of pension, the Agency will not enforce the liability for that period. Information on the income of these persons will be provided by DSS under the present exchange of information arrangements. It will not involve the client providing the income information to the Agency. Nor will it require the Agency to undertake separate calculations.

In practical terms the change is targeting payers who are unemployed and have reduced or no capacity to pay child support. At present, liabilities continue to accrue to the Commonwealth on behalf of the payee during these periods. The liable parent must apply to court to have the amount payable varied. This often does not occur because of the cost involved in returning to court.

A similar arrangement will be available if a child leaves the care of a person named in a court order made under the *Family Law Act 1975* and registered under Stage 1 of the child support scheme. At present, the maintenance liability continues to accrue to the Commonwealth on behalf of the payee until the order is changed by the court. This amendment will allow the Agency to not enforce a liability for any period where the parties agree the child is not in the care of the person named to receive the maintenance. Should either party wish to end that agreement, it will be open to either to inform the Registrar that they wish to end the former agreement and have the liability enforced again.

The outcome will be an ability for clients and the Agency to respond to these two relatively common changes in circumstances as they arise without the need for expensive court action by clients.

*Proposal announced:* 6 April 1994 by the Assistant Treasurer.

*Financial Impact:* This amendment is at no cost.

### **Extension of Private Payment Arrangements**

Amendments made to the *Child Support (Assessment) Act 1989* effective in 1992 and again in 1993 allowed clients who are receiving certain

income tested payments from the Department of Social Security to choose when applying for registration with the Agency, to collect child support privately. Large numbers make that election and the Agency only becomes involved with these people when the private payment arrangements fail. Once registered for collection with the Agency, no custodial parent can elect at a later date to receive payments privately.

Custodial parents who have been in receipt of an income tested pension, benefit or allowance since before the 1992/93 amendments were required to register for collection with the Child Support Agency and remain unable to elect to collect privately.

This proposal will enable any custodial parent in receipt of an income tested pension, benefit or allowance to exercise a choice for private collection at any time after registration, provided certain criteria are met. The outcome will be greater flexibility in the choice for private collection.

*Proposal announced:* 6 April 1994 by the Assistant Treasurer.

*Financial Impact:* This amendment is at no cost.

# Chapter 1

## *The Child Support (Assessment) Act 1989*

### *Presumptions of Parentage*

#### *Overview*

*Extends the basic presumptions  
of parentage to align more closely  
with the Family Law Act 1975*

## The Child Support (Assessment) Act 1989

### Part 2 Division 1

#### Amendments relating to Presumption of Parentage

Summary of proposed amendments
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- 1.1 The Bill will amend subsection 29(2) of the Principal Act in two respects. Firstly, it extends an existing facility relating to instruments which may be signed by a person acknowledging parentage. At present the facility applies to fathers only. The amendment extends it to mothers. Secondly, it will more closely align the provisions in the child support legislation which allow the Registrar to be satisfied a person is a parent of a child with similar provisions in the *Family Law Act 1975*.

Background to the legislation
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- 1.2 Documentary evidence of parentage is always required in an application for child support if a child has been born outside marriage. An easy avenue is to simply acknowledge parentage in writing by executing an instrument, typically a statutory declaration. It is only open to the father to execute such an instrument acknowledging he is the father. This facility was restricted to them on the understanding fathers are often not named on the birth certificate.
- 1.3 Increasingly, neither parent has a copy of the birth certificate and the mother is the liable parent. Under the law at present, acknowledgment of parentage in writing by executing an instrument cannot be used by mothers. The Bill extends this arrangement to them.
- 1.4 The *Child Support (Assessment) Act 1989* currently allows the Registrar to be satisfied that a person is a parent of a child when:

the child was born during a marriage to which that person was a party;



that person is named on a birth certificate as a parent of the child;

a court has found that person to be a parent of the child;

that person has acknowledged, in writing, that they are a parent of the child; or

the child was adopted by the person.

- 1.5 The *Family Law Act 1975* includes other provisions that establish the presumption of parentage in the first instance. Experience has now shown that scope exists to include more of the existing presumption of parentage grounds that already apply in the *Family Law Act 1975* into the *Child Support (Assessment) Act 1989*.

Explanation of the proposed amendments
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- 1.6 A person able to execute an instrument acknowledging they are a parent will now extend to a mother of a child *[Clause 4(b)]*.
- 1.7 *[Clause 4(c)(f)]* inserts the first of a series of additional grounds that may be used to satisfy the Registrar that a person is a parent of a child. If a child is born to a woman within 10 months after a purported marriage has been annulled, the child will be deemed to be a child of the man and the woman who were parties to that marriage. This mirrors part of the existing section 66P(2) of the *Family Law Act 1975*.
- 1.8 Second, if a child is born to a woman who has separated from her husband, but who resumed cohabitation with her husband on an occasion for a period of not more than 3 months and then separated again, and the child is born within 10 months after the cohabitation and after the dissolution of the marriage, the former husband and wife are deemed to be the parents of the child *[Clause 4(c)(g)]*. This mirrors the existing section 66P(3) of the *Family Law Act 1975*.

- 1.9 Third, if a child is born to a woman who cohabited with a man for a period of at least 6 months and this period included the time 10 months before the birth, that man is deemed to be the father of that child [*Clause 4(c)(h)*]. This is based upon the original intention of section 66Q of the *Family Law Act 1975*.
- 1.10 The above grounds, with the exception of paragraph 1.9, apply at present in the *Family Law Act 1975*. The ground included in paragraph 1.9 is a modification of the similar ground in the *Family Law Act 1975*. The provision in the *Family Law Act 1975* has an unintended consequence in that the period of cohabitation does not necessarily cover the period when conception is most likely to have occurred. If included without change in the *Child Support (Assessment) Act 1989*, a person could be presumed to be the father when in fact that is clearly not the case. The modified provision in paragraph 1.9 prevents this.
- 1.11 There is now a possibility that with an increased number of presumptions available to the parties there is scope for conflict between presumptions and it is therefore appropriate to have an avenue to decide between conflicting presumptions [*Clause 4 (d)*].
- 1.12 The likelihood of this conflict is very small. It could arise where, for example, a man is named on a birth certificate as the father but in a subsequent application for child support the mother indicates that there was another relationship which satisfies another presumption. If the person in the relationship became aware they had been named in the child support application and that another man's name was on the birth certificate and this was made known to the Registrar before a decision was made pursuant to subsection 29(2), the Registrar would be required to choose between two presumptions. If the information was not provided before that decision is made, the Registrar is entitled to proceed on the basis of the application and the only avenue for review thereafter is to the court.
- 1.13 The application form, and associated documents provided to applicants will explain each of the new grounds.

Evidence will generally be sought if readily available but, in its absence, the applicant will be able to identify the relevant ground and name the putative father.

Commencement date
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- 1.14      These amendments will apply to all applications for a child support assessment on and after the date of the Royal Assent.

Clauses involved in the proposed amendments
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- Clause 2(1)*      proposes that these amendments will commence on the date of the Royal Assent.
- Clause 4(b)*      extends the facility of acknowledging parentage by execution of an instrument to mothers.
- Clause 4(c)*      inserts the new grounds, reflecting the principle of the *Family Law Act 1975*, upon which the Registrar is to be satisfied that a person is a parent of a child.
- Clause 4(d)*      inserts a new subsection to allow the Registrar to choose the more or most likely presumption to give the correct result, if there are conflicting presumptions.



## Chapter **2**

### *The Child Support (Assessment) Act 1989*

#### *Child Support Agreements and Department of Social Security*

#### **Overview**

*Requires child support agreements entered into  
by certain Department of Social Security clients  
to meet the reasonable action for maintenance  
provisions of the Social Security Act 1991.*

## **The Child Support (Assessment) Act 1989**

### **Part 2 Division 3**

#### **Amendments Relating to Child Support Agreements**

<b>Summary of proposed amendments</b>
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- 2.1 The Principal Act will be amended to ensure that a child support agreement entered into by a custodian who is in receipt of certain social security payments meets the reasonable action to obtain maintenance provisions in the *Social Security Act 1991*. The amendment ***does not apply*** to child support agreements lodged for acceptance with the Registrar as part of the administrative review process. The Registrar will continue to be able to consider these agreements separately. If the parties enter into an agreement during the process, the Registrar can only accept the agreement if satisfied that the agreement meets the just, equitable and otherwise proper requirements contained in the Act.

<b>Background to the legislation</b>
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- 2.2 Since 1 October 1989 the amount of child support payable has been determined by the application of an administrative formula. A private child support agreement always overrides a formula assessment. If the agreement meets certain formal criteria and the application for acceptance is properly made, it must be accepted by the Registrar. The Registrar has no discretion to consider the adequacy of the amount payable, even where the custodial parent is in receipt of certain income support payments.
- 2.3 The privately agreed amounts, which can be made up of cash, non cash and capitalised maintenance, are often less than the amount payable under the formula.
- 2.4 There is growing evidence that this avenue is being used to reduce liable parents' child support liabilities, to reduce the financial support of children and transfer costs to the taxpayer through higher rates of social security payments.

Explanation of the proposed amendments
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- 2.5 The amendments allow the form of application to require the custodian to declare whether he or she is in receipt of, or has claimed, certain social security payments at the date the application for acceptance of the agreement is made. **[Clause 8]**. If the custodian is in receipt of or has claimed one of those social security payments, the Registrar must forward a copy of the agreement to the Secretary of the Department of Social Security **[Clause 9(2)]**. The Secretary must, as soon as practicable after the application is made, decide whether the custodian would cease to be qualified to receive certain social security payments if the Registrar was to accept the agreement **[Clause 9(3)]**. If the Secretary decides the person would no longer qualify for that payment if the agreement were accepted, that is defined as an adverse decision. The Secretary must advise the Registrar of the decision **[Clause 9(4)]** and advise both parties to the agreement if the decision is adverse **[Clause 9(5)]**. If the decision is not adverse and the agreement otherwise complies with the Act, the Registrar will accept the agreement and notify both parties. This acceptance and notification will be under the provisions of the Act as they presently exist.
- 2.6 The decision on the adequacy of the agreement will be made by the Secretary of the Department of Social Security, or a delegate, under the child support legislation as if it were a decision under the *Social Security Act 1991* **[Clause 9(6)]**. This will facilitate a review of that decision under the Social Security Act.
- 2.7 If an adverse decision is made by the Secretary, the Registrar must refuse to accept the agreement **[Clause 10(b)(3)]**. Appeals against decisions of the Secretary will be under Chapter 6 of the *Social Security Act 1991*. If the Registrar refuses to accept an agreement that has met the reasonable action for maintenance requirements, an appeal may be made under the existing section 132 of the *Child Support (Assessment) Act 1989*. That appeal cannot be

based on a challenge to the Secretary's decision. Adverse decisions of the Secretary will give rise to appeal rights for both parties under the *Social Security Act 1991* and the *Administrative Appeals Tribunal Act 1975*. Amendments to the *Social Security Act 1991* are made separately in the Schedule [Clause 11]. See paragraphs 2.10 to 2.30 for details.

- 2.8 If the Registrar receives an application for acceptance of an agreement from a custodian in receipt of certain social security payments and no child support assessment is in force at the time the application is made, the Registrar must also refuse to accept the agreement [Clause 10(b)(4)].

Commencement date
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- 2.9 These amendments will apply to all child support agreements lodged for acceptance with the Registrar on and after the date of the Royal Assent.

Clauses involved in the proposed amendments
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|--------------------|---|
| <i>Clause 2(1)</i> | proposes that these amendments will commence on the date of the Royal Assent.   |
| <i>Clause 8</i>    | allows the Registrar to ask the custodial parent to declare their social security status in an application for acceptance of a child support agreement.                           |
| <i>Clause 9(2)</i> | requires the Registrar to forward to the Secretary a copy of the agreement in cases where the custodial parent is a social security client.                                       |
| <i>Clause 9(3)</i> | requires the Secretary to decide whether the agreement, if accepted by the Registrar, will mean the custodial parent will no longer qualify for certain social security payments. |
| <i>Clause 9(4)</i> | requires the Secretary to advise the Registrar of the decision  |
| <i>Clause 9(5)</i> | requires the Secretary to advise both parties of an adverse decision.   |



- Clause 9(6)* ensures that decisions can be made by the Secretary under delegated authority.
- Clause 10(b)(3)* prevents the Registrar from accepting a child support agreement if an adverse decision is made by the Secretary.
- Clause 10(b)(4)* prevents the Registrar from accepting an agreement from certain social security clients if an administrative assessment has not been issued.
- Clause 11* amends the *Social Security Act 1991* as set out in the separate Schedule.

**AMENDMENTS TO THE SOCIAL SECURITY ACT 1991**

- 2.10 Amendments to the *Social Security Act 1991* involve setting up a review mechanism for child support agreements. They are consequential upon introduction of the child support agreements changes to be made in the Child Support Legislation Amendment Bill 1994.

**SCHEDULE: AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 RELATING TO DECISIONS OF THE SECRETARY UNDER SECTION 91A**

Summary of proposed amendments
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- 2.11 Both parties to a child support agreement will be able to utilise the existing social security review mechanisms to appeal a decision made by an officer of the Department of Social Security.

Background to the legislation
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- 2.12 Currently, child support agreements may override a child support assessment and must be registered by the CSA without regard to the assessed child support amount, even where the payee is a DSS client.
- 2.13 The amendments to the *Child Support (Assessment) Act 1989* will ensure that custodial parents who are DSS clients and wish to enter into a child support agreement satisfy the requirements to take reasonable action to obtain maintenance. This reflects previous decisions of Government that are directed at ensuring that all social security clients obtain their full entitlement of maintenance.

- 2.14 As a DSS client the custodial parent has a clear right of appeal against the decision that reasonable action has not been taken to obtain maintenance. This may arise where a payee enters into a child support agreement that includes a maintenance amount below their child support assessment amount. However, there are no existing avenues of appeal for non-custodial parents as they are not clients of the Department of Social Security in relation to this decision. Under the proposed changes to the *Social Security Act 1991*, the non-custodial parent will also be given a right of appeal to DSS.
- 2.15 A comprehensive system of review and appeal is already available to clients of the Department of Social Security who are dissatisfied with departmental decisions. The first step is appeal to an authorised review officer (ARO) who provides an independent internal review. If dissatisfied with the ARO's decision, a client may then appeal to the Social Security Appeals Tribunal (SSAT). That Tribunal has determinative powers. Following review by the SSAT, appeals may next be made to the Administrative Appeals Tribunal by the client or by the Department.
- 2.16 These rights of review will be extended to non-custodial parents who are affected by the decision that the custodial parent has not taken reasonable action to obtain maintenance because of the terms of a child support agreement.

Explanation of the proposed amendments
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- 2.17 **Items 1 and 2** extend the definition of "officer" in the *Social Security Act 1991* to include a person exercising powers under subsection 91A(3) of the *Child Support (Assessment) Act 1989*. Subsection 91A(3) deals with the Secretary of the Department of Social Security deciding whether a child support agreement satisfies the reasonable action to obtain maintenance test.

- 2.18 **Items 3 and 4** insert new paragraph 1239(1)(d) to enable an internal review of a decision made under subsection 91A(3) of the *Child Support (Assessment) Act 1989*. **Item 15** inserts new paragraph 1245(1)(c) to enable review by the Social Security Appeals Tribunal and **item 24** amends subsection 1282(1) to enable review by the Administrative Appeals Tribunal.
- 2.19 **Items 5 and 6** insert new paragraph 1240(1)(d) in subsection 1240(1) to enable a person affected by the Secretary's decision under subsection 91A(3) of the *Child Support (Assessment) Act 1989* to seek a review by an authorised review officer.
- 2.20 **Item 7** inserts new subsection 1240(1A) to enable both parties to an agreement to be able to seek a review of the decision. It states that where an officer makes a decision about an agreement both parties to the agreement (custodian and non-custodian) are taken to be persons affected by the agreement (thus enabling either party to seek a review of the decision). Where one party appeals the other party will not be able to appeal separately but must be given the opportunity to make a submission in connection with the appeal.
- 2.21 Limiting the appeal rights to only one of the parties ensures that there are not two appeals relating to the same decision. The other party affected by the decision is not excluded from providing information in connection with the appeal and any information that they provide will be taken into account in deciding the appeal.
- 2.22 **Item 8** inserts a new subsection 1243(3) to ensure that both parties to the child support agreement are notified of the authorised review officer decision, not just the applicant.
- 2.23 **Items 9 to 14** amend the notification of further rights of review provision in the *Social Security Act 1991* (section 1244) to reflect the fact that by bringing in reviews of

decisions about child support agreements three parties may be involved in a review - the decision maker and the two parties to the child support agreement.

- 2.24 **Item 16** inserts a new subsection 1247(1AA) to enable an application for review of decisions under 91A(3) of the *Child Support (Assessment) Act 1989* to the Social Security Appeals Tribunal (SSAT).
- 2.25 **Items 17 and 18** insert new subsection 1260(5) that enables the National Convener of the SSAT to order that where one of the parties to a child support agreement applies to the SSAT for review, the other person is made a party to the review. The other person can choose to waive their rights to be a party to the review if they wish.
- 2.26 **Item 19** ensure that arrangements for the hearing of applications to the SSAT include the review of decisions under s91A(3) of the *Child Support (Assessment) Act 1989*.
- 2.27 **Item 20** inserts new subsection 1264(4) that provides for a written notice informing both of the parties to the child support agreement that an application for review has been made to the SSAT.
- 2.28 **Items 21 and 22** include decisions made under s91A(3) of the *Child Support (Assessment) Act 1989* in section 1279 of the *Social Security Act 1991*. This section provides for directions as to the procedures for hearings by the SSAT (s1279).
- 2.29 **Item 23** ensures that where a party to the child support agreement has given the SSAT a notice under s1260(5) waiving their rights to be a party to the review, they will receive a copy of the statement setting out the SSAT's decision on the review.
- 2.30 **Item 25** adds a subsection to section 1283 to ensure that where the Administrative Appeals Tribunal reviews a decision under 91A(3) of the *Child Support (Assessment)*

*Act 1989* both of the parties to the child support agreement are taken to be persons whose interest are affected by the decision.

Clauses involved in the proposed amendments
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<i>Items 1 and 2</i>	Amend section 23(1) dealing with the definition of an officer.
<i>Items 3 and 4</i>	Inserts new paragraph 1239(1)(d) dealing with decisions the Secretary may review.
<i>Items 5 and 6</i>	Inserts new paragraph 1240(1)(d) dealing with application for review.
<i>Item 7</i>	Inserts new subsection 1240(1A) providing for the joining in of both parties to the appeal to the Authorised Review Officer.
<i>Item 8</i>	Inserts new subsection 1243(3) dealing with informing both parties to an agreement of the review decision.
<i>Items 9 to 14</i>	Amend section 1244(1) and paragraphs 1244(1)(a); 1244(1)(b); 1244(1)(b)(ii); and 1244(1)(c) dealing with notification of further rights of appeal.
<i>Item 15</i>	Inserts new paragraph 1245(1)(c) dealing with the application of Part 6.2 - Review by the Social Security Appeals Tribunal (SSAT).
<i>Item 16</i>	Inserts new subsection 1247(1AA) dealing with application for review by the SSAT.
<i>Item 17 and 18</i>	Inserts new subsection 1260(5) dealing with parties to a SSAT review.
<i>Item 19</i>	Amend subsection 1263(1) dealing with arrangements for hearing of an application to the SSAT.
<i>Item 20</i>	Inserts subsection 1264(4) dealing with notice of application to a person affected by a decision of the SSAT.

- Item 21* Amend paragraph 1279(1)(a) dealing with directions as to the procedure for SSAT hearings.
- Item 22* Inserts paragraph 1279(5)(ac) dealing with directions as to the procedure for SSAT hearings.





## Chapter **3**

### *The Child Support (Registration and Collection) Act 1988*

#### *The enforcement of certain maintenance liabilities*

##### **Overview**

*Enables the Registrar to respond to  
certain changed circumstances and not  
require the parties to return to Court.*

## **The Child Support (Registration and Collection) Act 1988**

### **Part 3 Division 1**

#### **Amendments relating to the Enforcement of**

#### **Certain Maintenance Liabilities**

<b>Summary of proposed amendments</b>
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- 3.1 The Bill will insert new provisions in the Principal Act to allow the Registrar to not enforce liabilities arising from court orders or court registered agreements when:
- (A) a payer's income is below a threshold amount and he or she is receiving a social security pension or benefit; or
  - (B) a child has left the ongoing care of a person and the parties agree that the change has occurred.

<b>Background to the legislation</b>
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- 3.2 Parents with a registrable court order or court registered agreement may have the amount of maintenance payable collected by the Child Support Agency. The liability continues to be payable until the order or agreement is changed and this can only be done by the court. The Agency has no authority to change the liability or to not enforce it until the change is made by the court.
- 3.3 Personal circumstances do change and many parents are reluctant to go to court due to the cost involved even though it is likely the court would change the order in both sets of circumstances targeted in this amendment.
- 3.4 Where the liability is based on an assessment, it is possible to amend that assessment where income drops or there is a change of custody. If income drops an

estimate of current year income may be lodged to reduce the liability. If a child leaves the care of the custodial parent, the liable parent is no longer liable to pay for that child under the assessment.

3.5 By contrast, where the liability is based on a court order, the means of review is less accessible to many parties. These parties must incur significant costs to have orders changed in fairly straightforward situations.

3.6 The inability of the Agency to act when circumstances change in these cases has been a very difficult issue to manage and has been at the source of a number of complaints against both the scheme and the Agency. Clients have come to expect that the Agency should be able to respond to certain changes and the two scenarios that this Bill provides for are clear cut and easily administered.

3.7 The court order *is not changed* as a result of this amendment. It will always remain open to either party to have the order varied or for the payee to enforce the amount in his or her own right for the period. The amendment simply gives the Registrar the ability to not enforce a registered liability for the period involved. No debt accrues to the Commonwealth for that period. It will remain the responsibility of parents to apply to court to have the terms of the order or agreement varied to reflect changes in their circumstances. The Agency will continue to encourage people to seek assistance to apply to court in these situations. Importantly however, this will no longer occur under the pressure of escalating debt.

3.8 The Agency will perform background checks to ensure that the period of non enforcement has not ended. There will also be a requirement for payers to inform the Registrar when they resume employment. Failure to comply is an offence and when prosecuted may attract a monetary penalty.

3.9 The liability will not be affected by temporary absences, including normal periods of access and

temporary short term changes to access arrangements. A child at boarding school will not be deemed to have left the care of the payee. It is not the intention of this amendment to allow payers to obtain "credits" against their liability for each and every day they may have their children. The parties must agree in writing that a substantial change in the care arrangements has occurred and it is likely to be ongoing. It will be open to either party to end that agreement if circumstances again change.

- 3.10 Both parties will have objection rights against any decision the Registrar may make in these cases.

Explanation of the proposed amendments
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Low Income Non Enforcement Periods

- 3.11 *[Clause 15]* inserts a new section 37B in the Principal Act which establishes a low income non enforcement period. A payer may apply to the Registrar to have a liability no longer enforced if they are in receipt of, or have made a claim for, a social security pension or benefit *[Clause 15(2)]*. The payer cannot apply if the order already provides for the liability to be reduced during periods of unemployment or where the payer's income is substantially reduced. *[Clause 15(3)]*.
- 3.12 If the payer has made the application referred to at 3.11 and his or her income from all sources (including the pension or benefit) is below a prescribed level, the low income non enforcement period will commence on the day on which the application is made or an earlier day determined by the Registrar but not before the pension or benefit was payable *[Clause 15(4)]*. The period will end when the payment of pension or benefit ceases or income from all sources rises above the prescribed level *[Clause 15(5)]*.
- 3.13 The income test to be prescribed will require income from all sources, including pension or benefit, to not exceed the maximum basic rate of pension payable to a person. At present that is \$321.60 per fortnight or

\$8361.60 per annum, indexed. This test is a machinery matter and is to be included in the Regulations.

- 3.14 The Court order remains unchanged by this amendment and the amount payable remains enforceable by the payee privately.
- 3.15 *[Clauses 15 (6) and (7)]* require the Registrar to vary the details of the liability in the child support register both at the start and end of the low income non enforcement period. If the amount of the liability is not being enforced because of an earlier election under section 38 (an election by the payee to not have the liability enforced by the Registrar) or 39B (an amount is not being enforced for a child or children who have left the payee's care), the Registrar cannot take action under the low income non enforcement provisions. If a liability is not being enforced because of a low income non enforcement period a client cannot then elect under section 38 to stop enforcement or elect under section 39 to have the liability enforced again *[Clauses 16 and 17]*. These are purely technical amendments to ensure the new non enforcement provisions do not conflict with the existing non enforcement provisions.
- 3.16 During any low income non enforcement period the total liability is taken to be enforceable for the purposes of section 111. This section imposes a duty on payers if the liability is being enforced to inform the Registrar whenever they obtain employment. This requirement will therefore apply in these periods even though the liability is not being enforced and is one mechanism to allow the Registrar to exercise some control over these non enforcement periods *[Clause 19]*.

Payee no longer main provider of ongoing daily care

- 3.17 A new section 39B is inserted in the Principal Act which establishes an overall non care period during which a liability may not be enforced by the Child Support Agency *[Clause 18 (1) and (2)]*. The non care period will commence at the time a payee ceases to be the main provider of ongoing daily care of a child and

end when either party elects to have the liability enforced again *[Clause 18(2) and (5)]*.

- 3.18 The non care period will be triggered by an election (an agreement) made by both the payee and payer that a liability should no longer be enforced because the payee is no longer the main provider of ongoing daily care. The period will commence at the start of the non care period if the election is made within 28 days of that period commencing or when the election is made, whichever is the later. An election cannot be made on this ground if the period is already contained in a low income non enforcement period pursuant to section 37B *[Clause 18(3)]*.
- 3.19 The Registrar is required to vary the child support register both at the start and end of a non care period *[Clause 18(8)]*. Because the non care period will be made by election it will be necessary for the Registrar to know what has been agreed when the parties jointly elect. Therefore, the form of election may require the parties to make a declaration about the circumstances at the beginning and end of the period *[Clause 18(9)]*.
- 3.20 Objection rights are provided against all decisions that the Registrar may make under new sections 37B and 39B. An objection is also available against the Registrar's decision under subsection 37B(4) to select a particular date or refusing to determine a date for the commencement of a low income non enforcement period *[Clause 14]*.

Commencement date
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- 3.21 These amendments will apply to low income non enforcement periods and overall non care periods which commence on and after the date of Royal Assent.

Clauses involved in the proposed amendments
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- Clause 2(1)* proposes that these amendments will commence on the date of Royal Assent.

- Clause 14* provides objection rights against decisions of the Registrar made under sections 37B, 37B(4) and 39B.
- Clause 15(2)* allows payers to apply to not have a liability enforced under the Act.
- Clause 15(3)* prohibits applications if the order or agreement already provides for reductions in amounts because of unemployment or low income.
- Clause 15(4)* specifies the start date of low income non enforcement periods.
- Clause 15(5)* specifies the end date of low income non enforcement periods.
- Clause 15(6)* requires the Registrar to vary the entry in the child support register for the start of a low income non enforcement period.
- Clause 15(7)* requires the Registrar to vary the entry in the child support register for the end of a low income non enforcement period.
- Clause 15(8)* defines social security benefit and pension as having the same meaning as in the *Social Security Act 1991*.
- Clause 16* does not allow the Registrar to vary the child support register following an election under section 38 to cease all collection if the liability has already become non enforceable because of a low income non enforcement period pursuant to section 37B.
- Clause 17* does not allow the Registrar to vary the child support register following an election under section 39 to commence collecting if the liability has already become non enforceable because of a low income non enforcement period pursuant to section 37B.

- Clause 18* establishes amounts that are not enforceable during periods in which the payee is not the main provider of care for a child.
- Clause 18(2)* sets the overall non care period.
- Clause 18(3)* requires the election during a non care period to be a joint election.
- Clause 18(4)* establishes that the liability ceases to be enforceable, either in full or in part, once the election is made.
- Clause 18(5)* allows a reversal of a previous election to be made either by the payer or the payee and sets the end date of the non care period.
- Clause 18(6)* specifies when a reversal of a previous election has effect.
- Clause 18(8)* requires the Registrar to vary the register to either begin or end the non enforcement period.
- Clause 18(9)* the election forms may require the parties to declare the terms of the agreement about non care and the start and end of the non care period.
- Clause 18(10)* enforceable liabilities include both liabilities that are enforceable in total or partially because of a joint election under this section.
- Clause 19* a payer must advise the Registrar if, during a low income non enforcement period, they become employed.



## Chapter **4**

### *The Child Support (Registration and Collection) Act 1988*

#### *Extension of Private Payment Arrangements*

##### **Overview**

*Allows DSS clients who have been receiving payments  
regularly through the Child Support Agency to elect  
to receive future payments directly from the payer.*

**Child Support (Registration And Collection) Act 1988****Part 3 - Division 3****Extension Of Private Payment Arrangements**

Summary of proposed amendments
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- 4.1 The Bill will amend the Principal Act by allowing payees who are receiving DSS payments to elect to not have the maintenance liability enforced by the Registrar in certain circumstances, ie, to receive payments privately. A payee will be able to make such an election where the payer has a satisfactory payment record. There will be limits on the number of times an election may be made by such a payee. They may also elect to have the liability collected again if they wish.

Background to the legislation
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- 4.2 At the time a maintenance liability arises, the payee of that liability has a choice about whether that liability is registered and enforced under the ***Child Support (Registration and Collection) Act 1988***. If the choice is made at the outset not to enforce the liability through the Agency, technically the case is not registered and the payee can collect payments directly from the payer.
- 4.3 Once a liability is registered and is enforceable by the Agency, the amounts payable under that liability become a debt due to the Commonwealth under the Principal Act. The payee cannot collect payments privately or enforce payment of those amounts.
- 4.4 If a decision at the outset is to have the liability enforced by the Agency, the payee is able to subsequently elect to not have the liability enforced under the Act. However, this election cannot be made if the payee receives an income tested pension, allowance or benefit. As a result, many DSS clients do not have the flexibility to receive payments privately.

- 4.5 This amendment is designed to allow all payees to make arrangements for payment to be made privately, whether or not they are DSS clients. However, in cases where the payee is a DSS client, this choice will only be able to be exercised by them where the payer has a good payment record. The change recognises that, where the payer has a satisfactory payment record, an opportunity should and will be given to registered clients to receive payments privately.
- 4.6 *If a private arrangement fails, the payee will be able to elect once again to have the liability enforced under the Act. The Registrar will also be able to collect defined amounts of arrears which were not paid to the payee during the period of non-enforcement.*

Explanation of the proposed amendments
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Elections to now receive payments privately after the original registration asked for collection by the Agency

- 4.7 The restriction on payees in receipt of an income tested pension, allowance or benefit which currently appears in section 38 will be removed. A new subsection will be added to section 38 to allow elections to be made by payees who are in receipt of an income tested pension, allowance or benefit. The Registrar must not vary the Register after the election is made if the payer has an unsatisfactory payment record (to be prescribed in the Regulations) or if the payee has, in the 5 years prior to the latest election, made two previous elections under section 38 which have failed [*Clause 22 (a) and (b)*].
- 4.8 Details of the necessary payment record are of a machinery nature and are therefore to be placed in the Regulations. It is proposed the good payment record will require that no arrears be outstanding at the date of the election and for the 6 month period immediately before the election all payments have been on time.
- 4.9 Section 39 will continue to allow an election made under section 38 to be reversed.

Reversal of a decision to receive payments privately

- 4.10 Where the payee has previously made an election under section 38 to not have the liability enforced they may decide subsequently to reverse that election under section 39. A new section 39A will be inserted to allow the Registrar to collect arrears where an election was originally made by the payee under section 38 to not have the liability registered under the Act. Where the payee subsequently applies for the liability to be registered, subsection 39A(4) will allow the payee to apply for collection of amounts unpaid in relation to the maximum arrears period [*Clause 23(4)*]. This period will be a maximum of nine months and cannot start earlier than the period to which the liability relates (that is, the date the liability arises under the order or first becomes payable under an assessment) or the date this amendment commences [*Clause 23(3)*].
- 4.11 When the liability is re registered, the payee applies for collection of the amounts unpaid while the liability was not registered and the arrears period covered by the application does not exceed three months, subsection 39A(5) provides that the Registrar must accept the application to collect arrears [*Clause 23(5)*].
- 4.12 If the period covered by the payee's application exceeds three months, subsection 39A(6) will provide that the Registrar must only accept the application if he is satisfied that there are exceptional circumstances. If there are no exceptional circumstances but amounts remain outstanding in the most recent 3 months, the application will be treated as being for the most recent 3 months and will be granted. Only where there are no exceptional circumstances and no unpaid amounts are payable in the most recent 3 months will the application be refused [*Clause 23(6)*].
- 4.13 If the Registrar grants a payee's application for collection of these unpaid amounts, subsection 39A(7) provides that those amounts become part of the child support debt in relation to the child support enforcement period. The Registrar must make such

variations to the Register as are necessary to show these amounts as part of the debt in relation to that period *[Clause 23(7)]*.

Election to now have payments collected after the original decision on an application was not to register for collection

- 4.14 Persons who previously chose to have private payment from the outset will also have the facility to have arrears collected when they re register. A new section 28A will be inserted to allow the Registrar to collect arrears where an election was originally made by the payee under subsection 23(3) or 24A(2) to not have the liability enforced by the Agency. Section 28A mirrors section 39A (paragraphs 4.10 to 4.13) in all respects in relation to the Registrar's ability to register and collect arrears in these circumstances *[Clause 21]*.

Objections against decisions

- 4.15 A decision of the Registrar to refuse to grant the payee's application for collection of unpaid amounts in either the most recent 3 month period or up to 9 months under paragraph 28A(5)(d) or (e) or paragraph 39A(6)(b) or (c) will be included in the definition of "appealable refusal decision" in subsection 4(1) of the principal Act *[Clause 20]*. In practice the payee may appeal against a decision that there were no exceptional circumstances or, in the absence of exceptional circumstances, there were no unpaid amounts in the most recent three months.
- 4.16 If the Registrar grants a payee's application for collection of these unpaid amounts, subsections 28A(6) provides that the amounts become part of the child support debt in relation to the child support enforcement period. The Registrar must make such variations to the Register as are necessary to show these amounts as part of the debt in relation to that period *[Clauses 21(6)]*.

Commencement date
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- 4.17            These amendments will apply on and after the date of the Royal Assent. Section 22 which amends section 38 will commence immediately after section 16 which also amends section 38.

Clauses involved in the proposed amendments
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- Clause 2(1)*            proposes that these amendments will commence on the date of the Royal Assent.
- Clause 2(2)*            proposes section 22 will commence immediately after section 16.
- Clause 20*              provides the objection rights against certain decisions of the Registrar made under section 28A(5)((d) or (e) and 39A(6)(b) or (c).
- Clause 21*              provides for the reversal of an election made at the outset to not have a liability registered for collection and the arrears to be collected upon the reversal are debts due to the Commonwealth.
- Clause 22*              provides the facility for DSS payee clients to elect to receive payments privately providing the payer has a satisfactory payment record.
- Clause 23*              section 39 provides for the reversal of an election originally made under section 38 (Clause 22) to not have a liability enforced and for arrears, which become debts due to the Commonwealth, to be collected.





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