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**THE PARLIAMENT OF THE COMMONWEALTH OF
AUSTRALIA**

HOUSE OF REPRESENTATIVES

**CHILD SUPPORT LEGISLATION AMENDMENT BILL
(No. 2) 1992**

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Treasurer,
the Hon. John Dawkins M.P.)

General Outline and Financial Impact

The Child Support Legislation Amendment Bill No.2 1992 will amend the Administrative Decisions (Judicial Review) Act 1977, the Child Support (Assessment) Act 1989 and the Child Support (Registration and Collection) Act 1988 by making the following changes:

The Administrative Decisions (Judicial Review) Act 1977

Decisions of the Registrar under Part 6A of the Child Support (Assessment) Act 1989

- Schedule 1 to the Act will be amended to include decisions under Part 6A of the Child Support (Assessment) Act 1989, being a decision to which the Act does not apply.
- *Proposal announced:* Second reading speech.
- *Financial impact:* This amendment is at no cost.

The Child Support (Assessment) Act 1989

Substantial access to a child

- Amends the child support formula to take account of substantial access to a child.
- *Proposal announced:* 1992/3 Budget

Financial impact: This amendment has an estimated cost of \$m1.7 in each of the next 3 years through lower DSS clawback.

Definition of an approved form

Amends the definition of an approved form.

- *Proposal announced:* Second reading speech
- *Financial impact:* This amendment is at no cost.

Application of the Act

- Extends the application of the Act to Queensland.
- *Proposal announced:* Second reading speech.
- *Financial impact:* This amendment is at no cost.

Taxable income not readily ascertainable

- Allows the Registrar a degree of flexibility to choose a taxable income that is considered appropriate for use in the child support formula when one is not available.
- *Proposal announced:* Second reading speech
- *Financial impact:* The amendment itself is at no cost but being able to select a more realistic taxable income up to a maximum figure will provide continuity in payments to custodians and DSS savings.

Income Estimates

- Removes from the Act the provisions setting out the effect of income estimates and the revocation of estimates and allows Regulations to be prescribed for that purpose. Other changes to improve the operation of income estimates are also included.
 - *Proposal announced:* Second reading speech
- Financial implications:* This amendment is at no cost.

Penalty for underestimation of taxable income

Imposes a penalty where an estimate or estimates of income are less than the actual income returned.

- *Proposal announced:* Second reading speech
- *Financial impact:* This amendment is at no cost but may add to the recovery of some costs.

Grounds for departing from an assessment

- Extend the grounds for departure to include high costs of access to a child or another person who is not part of the child support assessment.
- *Proposal announced:* Second reading speech.
- *Financial impact:* The amendment itself is at no cost but there may be a very small cost to DSS outlays in the event an assessment is reduced on this ground.

Secrecy provisions

- Allows the Registrar to disclose to a law enforcement officer a threat has been made against a person if there is reason to believe the threat is evidence that an offence has been or may be committed.
- *Proposal announced:* Second reading speech.
- *Financial impact:* This amendment is at no cost.

Correction of drafting errors and omissions

- There were a number of minor errors and omissions in amendments in the Child Support Legislation Amendment Act No.13 1992 which are corrected in this Bill. They are to sections 13, 76, 98A, 98EA, 98G, 98M, 115, 140, and 149.

Proposal announced: Second reading speech.

Financial impact: The amendments are all at no cost.

The Child Support (Registration and Collection) Act 1988

Definition of an approved form

- Amends the definition of an approved form.
- *Proposal announced:* Second reading speech
- *Financial impact:* This amendment is at no cost.

Secrecy provisions

- Allows the Registrar to disclose to a law enforcement officer a threat has been made against a person if there is reason to believe that the threat is evidence that an offence has been or may be committed.
- *Proposal announced:* Second reading speech.
- *Financial impact:* This amendment is at no cost.

Private maintenance for Stage I clients

- Allows new claimants for additional family payment to opt for private collection of maintenance.
- *Proposal announced:* 1992/3 Budget

Financial impact: The estimated savings from this measure in 1992/3 is \$m0.32, in 1993/4, 1994/5 and 1995/6 \$m1.06 in each year.

Penalty for late payment of child support

- Modifies penalty imposition by removing the flat penalty amount and substituting a pro rata per annum amount on the total amount outstanding at the end of each month.
- *Proposal announced:* 1992/3 Budget
- *Financial impact:* The amendment is estimated to save \$m0.50 in 1992/3, and \$m1.00 in each of the next three out years

Overpayments to payees

- Changes the ownership of all child support overpayments from the Secretary of the Department of Social Security to the Registrar of Child Support.
- *Proposal announced:* Second reading speech.
- *Financial impact:* This amendment is at no cost.

Objections against credits made under section 71

- Extends the grounds of objection against a decision of the Registrar to credit an amount of maintenance against a liability.
 - *Proposal announced:* Second reading speech.
- Financial impact:* This amendment is at no cost.

Averments

Allows a statement or averment as prima facie evidence of a matter in a prosecution.

- *Proposal announced:* Second reading speech.
- *Financial impact:* This amendment is at no cost.

Application of payments

- Allows Regulations to be made specifying how payments received may be applied by the Registrar.
- *Proposal announced:* Second reading speech
- *Financial impact:* This amendment is at no cost.

CHAPTER **1**

***ADMINISTRATIVE DECISIONS
(JUDICIAL REVIEW) ACT 1977***

***DECISIONS OF THE REGISTRAR
UNDER PART 6A***

OVERVIEW

*Excludes decisions under
Part 6A from the provisions of
the AD(JR) Act 1977*

ADMINISTRATIVE DECISIONS (JUDICIAL REVIEW) ACT 1977

SCHEDULE 1

Summary of proposed amendment

- 1.1 The Bill will amend Schedule 1 to the Act to include decisions of the Registrar made under Part 6A of the Child Support (Assessment) Act 1989.

Background to the legislation

- 1.2 It was never the intention that decisions made by the Registrar under the new administrative review process should be subject to the Administrative Decisions (Judicial Review) Act 1977. There are appeal provisions already contained in the Assessment Act for persons who are dissatisfied with the outcome of a review.

Explanation of the proposed amendment

- 1.3 The proposed amendment inserts a new paragraph (s) in Schedule 1 to the Act [*Clause 4*]

Commencement date

- 1.4 The amendment will apply from the date the Royal Assent is given to the Child Support Legislation Amendment Bill No.2 1992.

Clauses involved in the proposed amendment

Clause 2 proposes that this provision in the Act proposed by the Bill will commence when Royal Assent is given.

Clause 4 amends Schedule 1 by inserting a new paragraph (s)

CHAPTER 2

THE CHILD SUPPORT ASSESSMENT ACT 1989

SUBSTANTIAL ACCESS TO A CHILD MODIFICATION OF THE CHILD SUPPORT FORMULA

OVERVIEW

*Modifies the formula
where a parent has substantial
access to a child*

THE CHILD SUPPORT (ASSESSMENT) ACT 1989
PRELIMINARY AND PART 5 - SUB DIVISIONS E AND G
SUBSTANTIAL ACCESS TO A CHILD

Summary of proposed amendments

- 2.1 This amendment will establish the concepts of major and substantial access as factors to be taken into account in the child support formula. The effect will be to reduce the amount payable under the formula where one parent has access to a child for at least 30% but less than 40% of the nights in a child support year
- 2.2 The amendment proposes that such a person be deemed to have substantial access to the child for 35% of the nights and be entitled to a concession in the formula. That person will not however qualify for the higher self support exemption amount used in the formula. The other person is deemed to have major access to the child for 65% of the nights.

Background to the legislation

- 2.3 A person is not at present deemed to be sharing the care of a child equally with another person until they have the child for at least 40% of the nights. There is now recognition of the need to have a level of care below the threshold of shared care in the legislation.
- 2.4 Significant costs are incurred by a person who has substantial access. As a result, both the capacity to pay at the full rate is reduced and the need to pay at that rate, given the extent of access, is not necessary. There is to be a new set of percentages in the shared care formula for such cases.

Explanation of the proposed amendments

- 2.5 Persons who have major and substantial access will both be included in the definition of an eligible custodian [**Clause 6(a)**]. This means that each person may lodge an application for assessment against the other with only the difference in the 2 amounts being payable. If a person has a low income and therefore no liability to the other person, the child support percentage applied in the formula for the other parent is reduced and this will usually be where the benefit is obtained.
- 2.6 In the event that the person with major access has a large income and the other person a low income, the person with major access may in fact pay maintenance to the person who has substantial access.
- 2.7 To ensure there is a clear distinction in the law between the terms "shared on going care" and other types of care, "substantial access" and "major access" are now included as defined terms [**Clauses 6(c) and 7**].
- 2.8 A new modified table of child support percentages replaces the existing table in two places in the Act [**Clauses 10(b), 11(a) and 11(b)**]. A person who has substantial access to one child will be able to receive the benefit of an assessment based on 8% of the child support income amount of the person with major access in cash or offset against an assessment based on 14% of their child support income amount. If more than one child is involved multiples, as provided for in the new tables, will apply with a special rounding provision to arrive at the percentage amount in section 54 calculations [**Clause 11(c)**]. An example of this calculation is now inserted in the Act [**Clause 11(d)**].
- 2.9 In applying the new percentages in substantial access cases a provision is inserted to deny the person with substantial access the higher exempted income amount in the formula [**Clause 10(a)**].

Consequential amendment

- 2.10 The definition of "relevant dependent child" is amended to remove an apparent internal anomaly in the wording and to ensure *a liable parent who has the major care and access qualifies for the higher income self support exemption amount [Clause 6(b)]*.

Commencement date

- 2.11 The amendments will apply to all assessments that commence on and after 1 July 1993.

Clauses involved in the amendment

- Clause 2* proposes that these provisions in the Act will commence on 1 July 1993.
- Clause 6(a)* proposes that a person who has substantial access will be an eligible custodian.
- Clause 6(b)* removes an internal anomaly in the definition of "relevant dependent child" and ensures the major access parent is entitled to the higher self support exemption.
- Clause 6(c)* inserts "substantial access" and "major access" as defined terms.
- Clause 7* actually defines major and substantial access and major access.
- Clause 10(a)* inserts a provision to deny a person with substantial access the higher self support income amount.
- Clauses 10(b) and 11(a) and (b)* insert the modified table of percentages in two places.
- Clauses 11(c) and (d)* insert a rounding facility and an example assessment calculation

CHAPTER **3**

*THE CHILD SUPPORT
ASSESSMENT ACT 1989*

*MEANING OF AN
APPROVED FORM*

OVERVIEW

*Modifies the definition
of an approved form*

THE CHILD SUPPORT (ASSESSMENT) ACT 1989

PRELIMINARY - INTERPRETATION

Summary of proposed amendment

- 3.1 This amendment will allow the Registrar to approve forms for the purposes of this Act without the requirement to prescribe Regulations.

Background to the legislation

- 3.2 The requirements of the two Child Support Acts are different for approved forms. One requires them to be gazetted before they can be used and for the other Regulations have to be prescribed before they are used.
- 3.3 The Child Support Registrar is charged with the administration of the child support legislation and it seems an unnecessary requirement that forms that are prepared have to be either gazetted or Regulations made. The Privacy Act operates to protect the rights of persons in this area and to ensure information is collected and used only for legal purposes. All forms under the new Sales Tax Legislation are forms approved by the Registrar as Commissioner.

Explanation of the proposed amendment

- 3.4 The amendment modifies the definition of what is an approved form for the purposes of the Act [*Clause 8*].

Commencement date

- 3.5 The amendment will apply from the date the Royal Assent is given to the Child Support Legislation Amendment Bill No.2 1992.

Clause involved in the proposed amendment

Clause 2 The amendment will apply from the date the Royal Assent is given to the Child Support Legislation Amendment Bill No.2 1992.

Clause 8 amends the definition contained in section 11.

CHAPTER 4

THE CHILD SUPPORT ASSESSMENT ACT 1989

TAXABLE INCOME FOR CHILD SUPPORT PURPOSES WHERE IT IS NOT READILY ASCERTAINABLE

OVERVIEW

*Allows the Registrar to select a figure of
taxable income up to the existing maximum*

THE CHILD SUPPORT (ASSESSMENT) ACT 1989

DIVISION 3 - CHILD SUPPORT INCOME AMOUNT

**TAXABLE INCOME FOR CHILD SUPPORT PURPOSES
NOT READILY ASCERTAINABLE**

Summary of proposed amendments

- 4.1 The Bill amends section 58 in two ways. Firstly to allow the Registrar to select such amount as a taxable income as is considered appropriate, not exceeding 2.5 times average weekly earnings (which remains the maximum taxable income amount under the legislation) for use in child support assessments and secondly to provide the legislative authority to use figures of taxable income obtained either orally or in writing or from a document.

Background to the legislation

- 4.2 The child support formula is based upon an historic taxable income of the parties which is inflated by a factor each year to arrive at the child support income amount. It is this amount which is used as the child support income figure in child support assessments. In the absence of a taxable income there is no starting point for an assessment.
- 4.3 Section 58 presently requires that an amount of 2.5 times average weekly earnings be used in *all* cases where a figure is not available from the Tax Office or from other oral or documentary sources. In the vast majority of cases, using this figure gives an assessment result which is unrealistic and usually causes a break in regular payments to custodians in reassessment cases or a failure of payments to start in new cases.
- 4.4 The Child Support Evaluation and Advisory Group has reported in its final report (Assessment Issues - Chapter 11.4) that this mechanism is somewhat of a "blunt instrument" and more flexibility should be available to

the Registrar in selecting when the full 2.5 times is to be used.

- 4.5 Allowing the Registrar to select a figure ***up to the maximum*** will give a more realistic outcome in more cases and help the continuity of payments to custodians and continued DSS clawback.
- 4.6 Doubt has been expressed as to whether an amount that is obtained from other sources can in fact be used and the intent of the other amendment is to insert a new section 58(1A) to give that authority.

Explanation of the proposed amendments

- 4.7 The proposed amendment substitutes for "2.5 times" "such amount as the Registrar considers appropriate , not exceeding 2.5 times" [***Clause 12(a)***]. It also inserts a new sub section (1A) to provide the authority to use a figure from another source [***Clause 12(b)***].

Consequential amendments

- 4.8 Section 58(2)(a) is amended by inserting a reference to the new subsection (1A) [***Clause 12(c)***].

Commencement date

- 4.9 The amendment will apply from the date the Royal Assent is given to the Child Support Legislation Amendment Bill No.2 1992.

Clauses involved in the proposed amendments

Clause 2 proposes that this provision in the Act proposed by the Bill will commence on the date the Royal Assent is given.

Clause 12(a) amends section 58 to allow a figure of taxable income to be selected as appropriate

Clause 12(b) inserts a new subsection (1A) in section 58 to provide the authority to use another figure from a different source

Clause 12(c) consequentially amends section 58(2)(a) to take account of the new subsection 58(1A).

CHAPTER 5

THE CHILD SUPPORT ASSESSMENT ACT 1989

INCOME ESTIMATES

OVERVIEW

*Enables a change in the way income
estimates operate from 1 July 1993*

THE CHILD SUPPORT (ASSESSMENT) ACT 1989

DIVISION 3 - CHILD SUPPORT INCOME AMOUNT

Subdivision B - Child support income amount determined by reference to an estimate of taxable income

Summary of proposed amendments

- 5.1 This amendment proposes the following changes:
- (1) Modifies the circumstances in which a second or subsequent estimate of income in a child support year may be made compared with the first,
 - (2) Reduces the minimum life of an estimate from 3 months to 2 for more flexibility,
 - (3) Removes the effect and revocation provisions of estimates from the Act and allows Regulations to be made which specify their effect,
 - (4) Provides transitional arrangements for the change.

Background to the legislation

- 5.2 It is a necessary and fundamental requirement that persons who are named in child support assessments have the facility to have an assessment amended quickly based upon the fact that the historic income amount used in the assessment now bears no relationship to current income, from or under which child support is actually paid or received. The facility is similar in principle to the process of varying provisional tax in a tax assessment and is a popular mechanism in the Scheme.
- 5.3 The present provisions do not however work well and can disadvantage both parties in different circumstances. The fundamental problem is that an estimate is retrospective in effect back to the start of the child support year. The Child Support Evaluation and

Advisory Group reported on this matter in their final report at Chapter 11 under "Changes in Income" and recommended that any reassessment made because of a change in income should only have effect from the next month after making the estimate. This is generally what the Regulations will ultimately prescribe and final details are being carefully examined to minimise any possible unintended outcomes.

- 5.4 The effect of revocation of an income estimate will also be shifted from the Act to the Regulations for similar reasons and for consistency.
- 5.5 The existing provisions which specify the effect of estimates and later revocation will remain in the Act but be amended to state that they have effect only for assessments which end before 1 July 1993. This will ensure that any late estimates can still be processed under the appropriate provisions and this effectively provides the transition provisions.
- 5.6 The Act also needs to be amended to ensure that a person who elects to use an estimate must stay with estimates for the rest of that child support year. As a consequence and, because of the penalty provisions to be introduced simultaneously (see Chapter 11), a fresh estimate may now be lodged after 2 months rather than 3, and, as a necessary flow on, the rules for making second and subsequent estimates in a child support year are to be relaxed to provide greater flexibility.
- 5.7 The law presently requires that an assessment reverts to one based on the historic child support income amount after revocation but in reality this can be a nonsense in these cases. If a person's income has changed at some stage during the year it is in principle improper to return to the earlier amount (unless of course it is really going to be the current income and then it may be used in the new estimate) as it is most unlikely that the income will be what it was 2 years earlier. Some people are using this mechanism to delay payment into the next year and otherwise distort outcomes.

- 5.8 A by-product of this amendment will be to close off a loophole where a person who elects to use an estimate during the year revokes that estimate immediately before the end of the year does not have the reconciliation provisions apply. By being required to stay with an estimate those provisions will apply.
- 5.9 The outcome being sought is a fair process for estimate cases so that child support payments are properly made in accordance with current income and neither party is disadvantaged and thereafter given every opportunity to get the income amount correct.

Explanation of the proposed amendments

- 5.10 Section 60(1)(b) is amended to differentiate between the first or only estimate and any second or subsequent estimate lodged in a child support year [**Clause 13(a)**]. Section 60(3)(b) is amended by substituting "2" for "3" [**Clause 13(b)**].
- 5.11 Section 61 is to be amended by modifying its application only to assessments that end before 1 July 1993 [**Clause 14**] and a new section 61A is inserted specifying the effect of estimates on assessments that start on and after 1 July 1993. The effect of the estimate will be determined in accordance with Regulations made for that purpose [**Clause 15**]. The new subsection (1A) will allow the law to prescribe that different child support income amounts apply to different parts of the child support year and eliminate retrospectivity. All other parts of the existing section 61 are repeated in section in the new section 61A [**Clause 15**].
- 5.12 Subsection 62(1) is amended by inserting the requirement at the end of the section to have to lodge another estimate at the time a previous estimate is revoked otherwise the revocation has no effect and to distinguish between estimates revoked for assessments before and after 1 July 1993 [**Clauses 16(a) and (b)**].

- 5.13 Section 63 is amended by modifying its application to assessments that end before 1 July 1993 [**Clause 17**] and a new section 63A is inserted specifying the effect of revocations on assessments that start on and after 1 July 1993 [**Clause 18**]. The effect of the revocation will be determined in accordance with Regulations made for that purpose. The new subsection (1A) will allow the law to prescribe that different child support income amounts apply to different parts of the child support year and eliminate retrospectivity. All other parts of the existing section 63 are repeated in the new section 63A.

Commencement date

- 5.14 The amendment will apply to all assessments based on estimates of taxable income that commence on and after 1 July 1993, regardless of when the estimate is made.

Clauses involved in the proposed amendments

Clause 2 proposes that the amendment will apply to all child support assessments for the years starting on and after 1 July 1993.

Clause 13 amends section 60

Clause 14 amends section 61

Clause 15 inserts the new section 61A

Clause 16 amends section 62 by requiring a fresh election to be made when an existing estimate is revoked, otherwise the revocation has no effect

Clauses 17 amends section 63

Clause 18 inserts the new section 63A for revocations of estimates in assessments on and after 1 July 1993.

CHAPTER **6**

*THE CHILD SUPPORT
ASSESSMENT ACT 1989*

*PENALTY FOR UNDERESTIMATION
OF TAXABLE INCOME*

OVERVIEW

*Imposes a penalty for underestimation
of taxable income*

THE CHILD SUPPORT (ASSESSMENT) ACT 1989
DIVISION 3 - CHILD SUPPORT INCOME AMOUNT

Penalty for underestimation of taxable income

Summary of proposed amendments

- 6.1 The amendment proposes to impose a penalty on the amount that is payable by a person as a result of the reconciliation of the estimate of taxable income with the actual taxable income returned. The penalty will be a single up front flat rate of 10% of the additional amount payable on the reassessment and apply only to assessments that are subject to estimate that start on and after 1 July 1993.
- 6.2 The additional child support payable (but not the flat rate penalty), if registered for collection, will be subject to late payment penalty under section 67 of the Child Support (Registration and Collection) Act 1988 until paid.

Background to the legislation

- 6.3 There is no deterrent in the present law to minimise the incorrect use of the estimate facility which can delay the payment of child support to the custodian.
- 6.4 The estimate facility is a necessary one and must remain an integral part of the law but without a sanction to penalise when used incorrectly it is open to abuse by some people.
- 6.5 The income tax law contains a penalty provision for cases where a taxpayer lodges an estimate of income for provisional tax purposes which later is found to be incorrect. In tax terms a short term benefit is gained as it is in child support cases but the difference is taxpayers can be penalised for underestimation whereas

child support clients are not and they inflict unnecessary distress on the custodian and the children.

Explanation of the proposed amendments

- 6.6 A new section 64A is inserted to impose a penalty in cases where an estimate of income has been in force in a child support year beginning after 30 June 1993 and section 64 applies to the case, ie, a reassessment has been made based upon the actual taxable income. The amount of penalty is to be a flat 10% of the amount payable on the section 64 assessment, ie, the difference between the annual rate payable on the actual taxable income and the annual rate payable on the last estimate. That amount is to be due and payable immediately upon the issue of the assessment and the Registrar may remit all or part of the penalty because of a change in the income tax law, the issue of a Ruling during the year which applied to the person's taxable income or because there are other circumstances and it is fair and reasonable to remit [*Clause 19*].

Commencement date

- 6.7 The amendment will apply to all assessments based on estimates that commence on and after 1 July 1993.

Clauses involved in the proposed amendments

Clause 2 proposes the amendment will apply to all assessments that commence on and after 1 July 1993.

Clauses 19(1) and (2) establishes that a penalty is payable, specifies the rate of the penalty and the amount on which it is imposed

Clauses 19(3) and (4) specify the amount is due and payable to the Commonwealth immediately and allows the Registrar to remit depending upon circumstances.

CHAPTER 7

THE CHILD SUPPORT ASSESSMENT ACT 1989

MATTERS AS TO WHICH A COURT MUST BE SATISFIED BEFORE MAKING AN ORDER

OVERVIEW

*Extends the grounds for
departure from assessments*

THE CHILD SUPPORT (ASSESSMENT) ACT 1989**PART 7 DIVISION 4-ORDERS FOR DEPARTURE FROM
ADMINISTRATIVE ASSESSMENT IN SPECIAL
CIRCUMSTANCES****MATTERS AS TO WHICH A COURT MUST BE
SATISFIED BEFORE MAKING ORDER****Summary of proposed amendments**

- 7.1 The proposed amendment extends the grounds for departure from administrative assessment available in respect of children and other persons who are part of an assessment to children and other persons *who are not part of the assessment* if there is a duty to maintain.

Background to the legislation

- 7.2 Section 117(2)(b)(i)(A) recognises that where a person has high costs associated with enabling access to a child included in the assessment, it is open to a child support review officer or a court to allow the assessment to be departed from on this ground. The ground does not extend to children or other persons who the person has a duty to maintain and who are not part of the assessment.
- 7.3 On grounds of equity persons should be able to seek a departure in these circumstances.

Explanation of the proposed amendments

- 7.4 Section 117(2)(a) is amended by the insertion of a new sub section (iv), the wording of which is basically the same as in 117(2)(b)(i)(A) [**Clause 26(a)**]. The other changes are to improve grammatically the expression "enabling a parent access" to "enabling a parent to have access" [**Clauses 26(b) to (e)**].

Commencement date

- 7.5 The amendment will apply from the date the Royal Assent is given to the Child Support Legislation Amendment Bill No.2 1992.

Clauses involved in the proposed amendments
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- Clause 2* proposes that this provision in the Act proposed by the Bill will commence on the date Royal Assent is given.
- Clause 26(a)* inserts a new subsection (iv) to section 117(2)(a)
- Clauses 26(b) to (e)* change to the expression "enabling a parent access" to "enabling a parent to have access".

CHAPTER 8

THE CHILD SUPPORT ASSESSMENT ACT 1989

SECRECY

OVERVIEW

*Extends the grounds where the
Registrar may disclose information and
extends the coverage of the Act
to persons who obtain information
under the Act*

THE CHILD SUPPORT (ASSESSMENT) ACT 1989**PART 8-ADMINISTRATION****SECRECY****Summary of proposed amendments**

- 8.1 The proposed amendment seeks to extend the range of persons to whom the Registrar may disclose information obtained in the course of the administration of the Act and to ensure all those persons who obtain information are themselves bound by the secrecy provisions.

Background to the legislation

- 8.2 The administration of the child support legislation can be in some cases a very difficult and traumatic experience for staff. There have now been a number of instances where threats have been made against the lives of staff and frequently against clients of the Agency.
- 8.3 Some threats have been serious and capable of being carried out by the perpetrator. The Agency believes that they should be able to report such cases to a law enforcement officer. Under the present law such releases cannot be made; to do so would have the staff member in breach of the law. A report should be capable of being made if for no other reason on the grounds that if the threat was actually carried out, the officer and the Agency would be placed in an intolerable position. They were aware of the threat but were unable to report the matter and an offence is committed.
- 8.4 Section 150 needs to be amended for these reasons. All persons who obtain information under the Act are to be included as persons to whom the section applies. This would appear to be an omission, as far as Attorney General's officers are concerned, from the present section.

Explanation of the proposed amendment

- 8.5 Section 150 is amended by inserting in sub section (1) the definition of law enforcement officer [*Clause 29(a)*] and by extending the definition of "person to whom this section applies" [*Clause 29(b)*]. Subsection (3) has a new part (e) added allowing a report to be made to a law enforcement officer if there is reason to suspect that the threat may afford evidence that an offence has been or may be committed [*Clause 29(c)*]. The information when received by the law enforcement officer can only be used in the course of prevention, investigation or prosecution and not for any other purpose. The information, although communicated for this specific purpose, is deemed to be for the purposes of this Act [*Clause 29(d)*]. There are also two small grammatical simplifications to the wording of the section [*Clauses 29(e) and (f)*].

Commencement date

- 8.6 The amendment will apply from the date the Royal Assent is given to the Child Support Legislation Amendment Bill No.2 1992.

Clauses involved in the proposed amendment

Clause 2 proposes that this provision in the Act proposed by the Bill will commence on the date the Royal Assent is given.

Clauses 29(a) and 29(b) amends section 150(1) to include the definition of a law enforcement officer and amends the definition of "person to whom this section applies".

Clause 29(c) amends subsection 150(3) by inserting a new subsection (e).

Clause 29(d) inserts a new subsection (5A) to ensure that information supplied to officers of the Attorney General's Department and to a law enforcement officer

under the Act is protected information for the purposes of this Act.

Clauses 29(e) and (f) tidy up the grammar.

CHAPTER **9**

*THE CHILD SUPPORT
ASSESSMENT ACT 1989*

*CORRECTION OF DRAFTING
ERRORS AND OMISSIONS*

OVERVIEW

*Corrects a number of minor
errors and omissions in the Act*

THE CHILD SUPPORT (ASSESSMENT) ACT 1989**VARIOUS PARTS AND DIVISIONS****Summary of proposed amendments**

- 9.1 These amendments are being made to correct a number of minor errors and omissions in amendments made in the Child Support Legislation Amendment Act No.13 1992. They in no way change the basic thrust of the existing legislation. They are as follows:
- (1) Section 13 is amended to reflect the fact that Queensland have now referred their powers over ex nuptial children to the Commonwealth [**Clause 9**].
 - (2) Section 76. A new sub section (now 76(3)[aa]) should have been inserted to require the Registrar to issue a statement to parties to assessments of their right to seek a review under Part 6A [**Clause 20(a)**]. This happens in practice but should be a requirement at law. Section 76(3)(b) is amended consequentially to the amendment to section 115 [**Clause 20(b)**].
 - (3) Section 98A is amended to ensure all assessments before those starting on 1 July 1992 may not be reviewed by the Registrar [**Clause 21**].
 - (4) A new section 98EA is inserted to allow the Registrar to refer to the court cases for determination which are too complex to be dealt with under Part 6A. [**Clause 22**]. This is an extension of the existing provision of allowing courts to otherwise hear departure cases if there is another matter pending before it.
 - (5) Amend section 98G consequential upon the insertion of the new section 98EA [**Clause 23**].
 - (6) Insert a new section 98M to ensure child support assessments remain payable during the period a review is pending under Part 6A [**Clause 24**].

(7) Repeal the existing section 115 and replace it with a new section 115. The new section ensures that there are three distinct types of cases that can go directly to court or ***be considered by a court under the departure provisions [Clause 25]***.

The intention is that all pre Part 6A cases are eligible to be considered by a court, that cases where the Registrar has made, or refused to make, a determination under Part 6A may go to court and ***any other case at all where another matter is pending before the court (including pre Part 6A cases and Part 6A cases already decided by the Registrar) and the court is of the view that an assessment for a year starting on and after 1 July 1992 should be departed from, may be considered at the same time as the other matter, notwithstanding that it should otherwise go before the Registrar under Part 6A.*** This avoids the situation of having to apply to different places when the one place, the court, can consider and decide all the matters together.

(8) Section 140 is amended to allow persons to obtain a stay order from the court while there is an outstanding review under Part 6A ***[Clause 27]***.

(9) Section 149 is amended to allow the Registrar to delegate all or any of his powers under the Act to a person who is not an employee of the Australian Public Service and is engaged for the purposes of Part 6A ***[Clause 28]***.

Explanation of the proposed amendments

- 9.2 All of the amendments are corrections and/or necessary consequential amendments from the Child Support Legislation Amendment Bill 1992.

Commencement date

- 9.3 The amendments will apply from the date the Royal Assent is given to the Child Support Legislation Amendment Bill No.2, 1992.

Clauses involved in the proposed amendments
--

Clause 2 proposes that these provisions in the Act proposed by the Bill will commence on the date the Royal Assent is given.

Clause 9 amends section 13

Clause 20 amends section 76

Clause 21 amends section 98A

Clause 22 inserts a new section 98EA

Clause 23 consequentially amends section 98G

Clause 24 inserts a new section 98M

Clause 25 replaces the old section 115 with a new section

Clause 27 amends section 140

Clause 28 amends section 149

CHAPTER 10

THE CHILD SUPPORT (REGISTRATION AND COLLECTION)

ACT 1988

MEANING OF AN APPROVED FORM

OVERVIEW

*Modifies the definition
of an approved form*

THE CHILD SUPPORT(REGISTRATION AND COLLECTION) ACT 1988

PRELIMINARY

INTERPRETATION

Summary of proposed amendment

- 10.1 This amendment will allow the Registrar to approve forms for the purposes of this Act without the requirement to place a notice in the Commonwealth Gazette.

Background to the legislation

- 10.2 The requirements of the two Child Support Acts are different for approved forms. One requires them to be gazetted before they can be used and for the other Regulations have to be prescribed before they are used.
- 10.3 The Child Support Registrar is charged with the administration of the child support legislation and it seems an unnecessary requirement that forms that are prepared have to be either gazetted or Regulations made. The Privacy Act operates to protect the rights of persons in this area and to ensure information is collected and used only for legal purposes. All forms under the new Sales Tax Legislation are forms approved by the Registrar as Commissioner.

Explanation of the proposed amendment

- 10.4 The amendment modifies the definition of what is an approved form for the purposes of the Act [*Clause 31(b)*].

Commencement date

- 10.5 The amendment will apply from the date the Royal Assent is given to the Child Support Legislation Amendment Bill No.2 1992.

Clause involved in the proposed amendment
--

Clause 2 proposes that these provisions in the Act proposed by the Bill will commence on the date the Royal Assent is given.

Clause 31(b) amends the definition contained in section 4(2).

CHAPTER 11

THE CHILD SUPPORT

(REGISTRATION AND COLLECTION)

ACT 1988

SECRECY

OVERVIEW

*Extends the grounds where the
Registrar may disclose information and
extends the coverage of the Act
to persons who obtain information
under the Act*

THE CHILD SUPPORT (REGISTRATION AND COLLECTION) ACT 1988

PART II-ADMINISTRATION

SECRECY

Summary of proposed amendments

- 11.1 The proposed amendment seeks to extend the range of persons to whom the Registrar may disclose information obtained in the course of the administration of the Act and to ensure all those persons who obtain information are themselves bound by the secrecy provisions.

Background to the legislation

- 11.2 The administration of the child support legislation can be in some cases a very difficult and traumatic experience for staff. There have now been a number of instances where threats have been made against the lives of staff and frequently against clients of the Agency.
- 11.3 Some threats have been serious and capable of being carried out by the perpetrator. The Agency believes that they should be able to report such cases to a law enforcement officer. Under the present law such releases cannot be made; to do so would have the staff member in breach of the law. A report should be capable of being made if for no other reason on the grounds that if the threat were actually carried out, the officer and the Agency would be placed in an intolerable position. They were aware of the threat but were unable to report the matter and an offence is committed.
- 11.4 Section 16 needs to be amended for these reasons. All persons who obtain information under the Act are to be included as persons to whom the section applies. This would appear to be an omission, as far as Attorney General's officers is concerned, from the present section.

Explanation of the proposed amendment

- 11.5 Section 16 is amended by inserting in sub section (1) the definition of law enforcement officer [**Clause 32(a)**] and by extending the definition of "person to whom this section applies" [**Clause 32(b)**]. Subsection (3) has a new part (e) added allowing a report to be made to a law enforcement officer if there is reason to suspect that the threat may afford evidence that an offence has been or may be committed [**Clause 32(c)**]. The information when received by the law enforcement officer can only be used in the course of prevention, investigation or prosecution and not for any other purpose. The information, although communicated for this specific purpose, is deemed to be for the purposes of this Act [**Clause 32(d)**]. There are also two small grammatical simplifications to the wording of the section [**Clauses 32(e) and (f)**].

Commencement date

- 11.6 The amendment will apply from the date the Royal Assent is given to the Child Support Legislation Amendment Bill No.2 1992.

Clauses involved in the proposed amendment

- Clause 2* proposes that this provision in the Act proposed by the Bill will commence on the date Royal Assent is given.
- Clauses 32(a) and 32(b)* amends section 16(1) to include the definition of a law enforcement officer and amends the definition of "person to whom this section applies".
- Clause 32(c)* inserts new subsection 16(3)(e) for law enforcement officers.
- Clause 30(d)* inserts a new subsection (5A) to ensure that information supplied to officers of Attorney Generals and to a law enforcement officer under the Act is protected information for the purposes of this Act.

Clauses 32(e) and (f) tidy up the grammar

CHAPTER 12

THE CHILD SUPPORT

(REGISTRATION AND COLLECTION)

ACT 1988

PRIVATE COLLECTION AVAILABLE FOR NEW STAGE I CLIENTS WHO ARE SOCIAL SECURITY RECIPIENTS

OVERVIEW

*Extends the availability of
private collection to new stage I
clients who are Social Security beneficiaries*

THE CHILD SUPPORT (REGISTRATION AND COLLECTION) ACT 1988

PART III DIVISION 2 - REGISTRATION OF MAINTENANCE LIABILITIES

PAYER AND PAYEE TO NOTIFY REGISTRAR WHEN REGISTRABLE MAINTENANCE LIABILITY ARISES

Summary of proposed amendment

- 12.1 From 1 January 1993 persons who are new applicants for additional family payment will not be forced under law to register court orders and court registered agreements with the Agency *for collection*.

Background to the legislation

- 12.2 A change to the Child Support (Assessment) Act 1989 was made in the Child Support Legislation Amendment Act No.13 1992 to allow pensioners the opportunity to receive assessed amounts directly and privately if that is their wish. This amendment extends that facility to pensioners who separated before 1 June 1988 and are only now either obtaining court orders or have been required to take reasonable action for maintenance under the DSS guidelines.
- 12.3 The benefit to be gained is that it will largely offset the effects of the 8 week delay and providing they continue to receive payments directly the arrangements will be allowed to continue. In the event that payments cease the custodian will be required to *register for collection*.
- 12.4 This facility does not extend to persons who are already registered for collection.

Explanation of the proposed amendments

- 12.5 Section 23(4) is repealed [*Clause 33*]

Commencement date

- 12.6 The amendment will apply to new recipients of additional family payment from 1 January 1993.

Clauses involved in the proposed amendment

Clause 2 proposes that this provision in the Act will commence on 1 January 1993.

Clause 33 repeals section 23(4).

CHAPTER 13

THE CHILD SUPPORT (REGISTRATION AND COLLECTION)

ACT 1988

REGISTRAR TO REGISTER LIABILITY ON RECEIPT OF APPLICATION

OVERVIEW

*Clarifies the sections under
which the Registrar must
register applications*

THE CHILD SUPPORT (REGISTRATION AND COLLECTION) ACT 1988

PART III DIVISION 2 - REGISTRATION OF MAINTENANCE LIABILITIES

REGISTRAR TO REGISTER LIABILITY ON RECEIPT OF APPLICATION

Summary of proposed amendment

- 13.1 This amendment will clarify how section 24 will operate to register applications under Stage I of the Scheme.

Background to the legislation

- 13.2 The Act is structured such that there is always a requirement to notify whether a person wants the order or agreement registered for collection. Very often the notification is late and there has always been some doubt as to the proper start date in these cases.
- 13.3 The intention is that *only* those applications made in respect of orders and registered agreements made after 1 June 1988 that are received within the 14 days required under the law will be registered under section 24(1) from the date in the order or agreement. In all other cases the Registrar will register the liability under section 24(2) and start the liability under the Act from a date determined by the Registrar but not before the date in the order or agreement. ***The Registrar will normally start the liability from the date the application is received.***
- 13.4 The provisions of section 24(2) have always allowed the Registrar to register a liability even though an application has not been lodged and this is not changed with this amendment. There may be circumstances where it is desirable to do so (pensioners) but it is not normal practice to register without an application. In the rare case where a liability is registered in these circumstances the start date under the Act will normally

be ***the date a decision is taken by the Registrar to register*** and not back to the date in the order or agreement.

Explanation of the proposed amendments

- 13.5 The words "even though the form has not been furnished" are replaced by "even though the form has not been furnished within that period or has not been furnished at all" [***Clause 34***].

Commencement date

- 13.6 The amendment will apply from the date the Royal Assent is given to the Child Support Legislation Amendment Bill No.2 1992.

Clauses involved in the proposed amendments

Clause 2 proposes that this provision in the Act proposed by the Bill will commence on the date the Royal Assent is given.

Clause 34 amends section 24(2)

CHAPTER 14

THE CHILD SUPPORT

(REGISTRATION AND COLLECTION)

ACT 1988

PENALTY FOR LATE

PAYMENT OF CHILD SUPPORT

OVERVIEW

*Amends the penalty provisions
by repealing the initial flat rate
penalty and substituting a per annum rate on
on the balance outstanding each month*

**THE CHILD SUPPORT (REGISTRATION AND
COLLECTION) ACT 1988**

**PART 5 - PAYMENT AND RECOVERY OF CHILD
SUPPORT DEBTS**

PENALTY FOR LATE PAYMENT OF CHILD SUPPORT

Summary of proposed amendments

- 14.1 This amendment removes the flat rate \$20 penalty each month and modifies the way the ongoing monthly calculation is made.

Background to the legislation

- 14.2 The present penalty provisions impose a flat rate penalty of \$20 on every monthly amount of child support that is not paid by the due date. While the amount remains unpaid it separately attracts a penalty calculated at the rate of 20% per annum (s67). The two penalties are mutually exclusive in that it is only the greater that is ultimately payable. In other words when the per annum rate amount exceeds \$20 it is the former amount that is payable.
- 14.3 The administrative and accounting complications that this causes are extensive. The Agency is required to continually monitor the per annum rate against the flat rate to see which penalty is payable. In practice it is not always done and clients of the Agency cannot easily be kept informed of penalty amounts accruing on their accounts.
- 14.4 The decision to repeal the flat rate in favour of a single per annum calculation will enable system savings to be achieved and more importantly enable the Agency to calculate each month the penalty which has accrued and inform the client.

Explanation of the proposed amendments

- 14.5 The amendment repeals sub section 67(1) and replaces it with a new subsection (1) and (1A) the effect of which is to impose a penalty *on the balance outstanding each month* at a rate specified in the Income Tax Assessment Act for unpaid income tax [*Clause 35*].
- 14.6 Subsection 67(1A) is inserted for the purpose of breaking the legislative nexus between monthly payment liabilities and the balance outstanding at any time. The balance outstanding is simply the sum of all the monthly amounts unpaid and it is this amount which attracts penalty each month.

Consequential amendments

- 14.7 Section 4 is amended to include the definition of "month" as one of the 12 months of the year [*Clause 31(a)*] and section 116 is amended to ensure that a certificate produced by the Registrar as evidence may specify a single figure of the outstanding amount [*Clause 41*].

Commencement date

- 14.8 The amendment will apply to amounts of child support unpaid on and after 1 January 1993.

Clauses involved in the proposed amendment

Clause 2 proposes the amendment apply from 1 January 1993

Clause 31(a) inserts the definition of "month" in the Interpretation Part

Clause 35(1) amends the basis of the penalty calculation

Clause 35(1A) breaks the nexus for penalty purposes between monthly payment liabilities and the balance outstanding

Clause 41 ensures evidentiary requirements are met if a certificate which contains a single figure of the total amount outstanding is produced by the Registrar.

CHAPTER 15

THE CHILD SUPPORT

(REGISTRATION AND COLLECTION)

ACT 1988

OVERPAYMENTS OF PAYEES

OVERVIEW

*Changes the ownership of
child support overpayments from the Secretary of the
Department of Social Security to the Child Support Registrar*

**THE CHILD SUPPORT (REGISTRATION AND
COLLECTION) ACT 1988**

PAYMENTS TO PAYEES

OVERPAYMENT OF PAYEES

Summary of proposed amendments

- 15.1 These amendments shift the ownership of all overpayments that have occurred since the start of the child support scheme from the Secretary of the Department of Social Security to the Child Support Registrar.

Background to the legislation

- 15.2 The child support legislation recognises that there will be times when custodians are overpaid. This will arise where retrospective variations to court orders are made or under Stage II where income estimates have been lodged thus reducing retrospectively the annual rate payable.
- 15.3 The Department of Social Security has the task of making payments to custodians and it was agreed at the outset that the responsibility for recovery of overpayments should be with the paying rather than the collecting Department. As a result the Secretary of the Department of Social Security was given that responsibility at law (s79).
- 15.4 In practice however that Department has not recovered any amounts and an informal arrangement has existed whereby the Agency has recovered the amounts. What happens in practice is now to be recognised at law.
- 15.5 In future the Secretary of the Department of Social Security will only recover amounts from DSS beneficiaries who no longer have a child support entitlement being collected through the Agency. This

will be achieved by the Registrar delegating the power to the Secretary under section 15.

Explanation of the proposed amendments

- 15.6 Section 79 is amended by replacing the word "Secretary" with "Registrar" wherever it occurs in the section [Clause 36].

Consequential amendment

- 15.7 Section 113 is amended to delete reference to section 79 overpayments which are now to be recoverable by the Registrar [Clause 39].

Commencement date

- 15.8 The amendment will apply to all overpayments that have arisen under the law since 1 June 1988.
- 15.9 The effective date of this amendment is backdated to 1 June 1988 so as to ensure the legal transfer of ownership of all existing overpayments. The retrospectivity has no impact on clients.

Clause involved in the proposed amendment

Clause 2 proposes the amendment will apply from 1 June 1988

Clause 36 proposes that it be the Registrar to whom all overpayments should be repaid.

Clause 39 consequentially amends section 113 to enable the Registrar to recover all debts under the Act.

CHAPTER 16

THE CHILD SUPPORT (REGISTRATION AND COLLECTION)

ACT 1988

OBJECTIONS TO DECISIONS OF THE CHILD SUPPORT REGISTRAR

OVERVIEW

*Provide a ground of objection
to a decision to credit an amount
to a liability under section 71*

THE CHILD SUPPORT (REGISTRATION AND COLLECTION) ACT 1988

PART VII - REVIEW OF DECISIONS

OBJECTIONS AGAINST CREDITS UNDER SECTION 71

Summary of proposed amendments

- 16.1 This amendment proposes that there be another ground for an objection against a decision of the Registrar in cases where an amount is credited to a liability under section 71.

Background to the legislation

- 16.2 Payments which are made directly between the parties or to third parties whilst a liability is registered for collection by the Agency may, upon application, be credited against the liability as if the payment was made to the Registrar.
- 16.3 There is provision for the payer to object if the Registrar refuses to credit an amount but no such ground for a payee if an amount is so credited.
- 16.4 Decisions on whether a payment should be credited often get down to a consideration of the balance of probabilities based on all of the evidence provided by the parties. In the event that a person believes the amount should not have been credited there should be a ready avenue to have the matter reconsidered.

Explanation of the proposed amendment

- 16.5 A new section 84A is inserted to provide the ground for objection [*Clause 37*]. The conditions attaching to the objection are the same as all other objections under the Act.

Commencement date

- 16.6 The amendment will apply from the date the Royal Assent is given to the Child Support Legislation Amendment Bill No.2 1992.

Clauses involved in the proposed amendment

Clause 2 proposes that this provision in the Act proposed by the Bill will commence on the date the Royal Assent is given.

Clause 37 inserts the new section 84A.

CHAPTER 17

THE CHILD SUPPORT

(REGISTRATION AND COLLECTION)

ACT 1988

MISCELLANEOUS POWERS

OVERVIEW

Provide the Registrar with

averment powers in prosecutions

THE CHILD SUPPORT (REGISTRATION AND COLLECTION) ACT 1988

PART IX - MISCELLANEOUS

AVERMENT POWERS IN PROSECUTIONS

Summary of proposed amendment

- 17.1 This amendment inserts in the Act a general power of averment in prosecutions undertaken by the Registrar.

Background to the legislation

- 17.2 The Registrar is presently required to prove all matters of fact in prosecutions under the Act rather than be able to simply aver or state from the bar table that a particular matter is fact.
- 17.3 Averment provisions are contained in the revenue laws and this amendment is seeking to extend a power the Commissioner has already under those laws to his position as Registrar.
- 17.4 Averment provisions do not deny a person natural justice and usually simplify for all the process of establishing as fact that certain procedural matters occurred. These matters are usually confirmed before any prosecution action is taken and it is not normally something that is denied.

Explanation of the proposed amendments

- 17.5 A new section 111A is inserted to provide a general power of averment in prosecutions [*Clause 38*].

Commencement date

- 17.6 The amendment will apply from the date Royal Assent is given to the Child Support Legislation Amendment Bill No.2 1992.

Clauses involved in the proposed amendments

Clause 2 proposes that these provisions in the Act proposed by the Bill will commence on the date the Royal Assent is given.

Clauses 38 inserts section 111A.

CHAPTER 18

THE CHILD SUPPORT (REGISTRATION AND COLLECTION)

ACT 1988

MISCELLANEOUS POWERS

OVERVIEW

*Regulations may be made with
respect to the application of payments received*

THE CHILD SUPPORT (REGISTRATION AND COLLECTION) ACT 1988

PART IX - MISCELLANEOUS APPLICATION OF PAYMENTS

Summary of proposed amendment

- 18.1 This amendment proposes to remove from section 114 the restriction from making Regulations for the purposes of the application of payments received by the Registrar. At present they can only be made where the person paying does not specify how the payment is to be applied.

Background to the legislation

- 18.2 It is very rare for persons to specify to the Registrar how they wish a payment to be applied to a liability. Regulations have not been made for the purposes of section 114 to date but there is now a need to specify in Regulations generally how payments are to be applied.
- 18.3 This is because of the different types of debts that are now being kept on the child support account. There are debts to consolidated revenue arising from top up of payments and overpayments being recovered, there are penalty amounts and there are maintenance amounts both current and old.

Explanation of the proposed amendments

- 18.4 Section 114 is repealed and a new section inserted without restrictions on when Regulations can be made [*Clause 40*].

Commencement date

- 18.5 The amendment will apply from the date Royal Assent is given to the Child Support Legislation Amendment Bill No.2 1992.

Clause involved in the proposed amendment

Clause 2 proposes that this provision in the Act proposed by the Bill will commence on the date the Royal Assent is given with Regulations to be made at a later time.

Clause 40 amends section 114 by repealing the old section and inserting a new section 114.

