

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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*(As read a first time)*

**CHILD SUPPORT (ASSESSMENT) BILL 1989**

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1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time, 1 June 1989

*(Minister for Social Security)*

## A BILL

FOR

### **An Act to make provision for determining the financial support payable by parents for their children, and for other purposes**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

#### **PART 1—PRELIMINARY**

##### **Short title**

5       1. This Act may be cited as the *Child Support (Assessment) Act 1989*.

##### **Commencement**

      2. (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

10       (2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.

**Duty of parents to maintain their children**

3. (1) The parents of a child have the primary duty to maintain the child.

(2) Without limiting subsection (1), the duty of a parent to maintain a child:

(a) is not of lower priority than the duty of the parent to maintain any other child or another person; and

(b) has priority over all commitments of the parent other than commitments necessary to enable the parent to support:

(i) himself or herself; and

(ii) any other child or another person that the parent has a duty to maintain; and

(c) is not affected by:

(i) the duty of any other person to maintain the child; or

(ii) any entitlement of the child or another person to an income tested pension, allowance or benefit.

**Objects of Act**

4. (1) The principal object of this Act is to ensure that children receive a proper level of financial support from their parents.

(2) Particular objects of this Act include ensuring:

(a) that the level of financial support to be provided by parents for their children is determined according to their capacity to provide financial support and, in particular, that parents with a like capacity to provide financial support for their children should provide like amounts of financial support; and

(b) that the level of financial support to be provided by parents for their children should be determined in accordance with the legislatively fixed standards; and

(c) that persons who provide ongoing daily care for children should be able to have the level of financial support to be provided for the children readily determined without the need to resort to court proceedings; and

(d) that children share in changes in the standard of living of both their parents, whether or not they are living with both or either of them.

(3) It is the intention of the Parliament that this Act should be construed, to the greatest extent consistent with the attainment of its objects:

(a) to permit parents to make private arrangements for the financial support of their children; and

(b) to limit interferences with the privacy of persons.

**Interpretation—definitions**

5. In this Act, unless the contrary intention appears:

“adjusted income amount”, in relation to a liable parent, has the meaning given by subsection 33 (2);

5 “administrative assessment” means assessment under Part 4;

“annual rate” includes an annual rate of nil;

“child eligible for administrative assessment” means a child in relation to whom an application may, under section 22, be made to the Registrar for administrative assessment of child support;

10 “child support” means financial support under this Act;

“child support income amount” has the meaning given by:

(a) in the case of a liable parent—section 35 and Division 3 of Part 4; and

15 (b) in the case of a custodian entitled to child support—section 42 and Division 3 of Part 4;

“child support percentage” has the meaning given by section 34 or, in relation to a case to which Subdivision E of Division 2 of Part 4 applies, section 45;

“child support year” means:

20 (a) the period starting on the commencing day and ending on the next 30 June; or

(b) a subsequent financial year;

“commencing day” means the day on which this Act commences;

25 “custodian entitled to child support” has the meaning given by section 29;

“de facto spouse” means a person who is living with another person of the opposite sex as the spouse of the other person on a *bona fide* domestic basis although not legally married to the other person;

30 “disregarded income amount”, in relation to a custodian entitled to child support, has the meaning given by section 43;

“eligible child” has the meaning given by Part 2;

“eligible custodian”, in relation to a child, means:

(a) a person who is the sole or principal provider of ongoing daily care for the child; or

35 (b) a person who shares ongoing daily care of the child substantially equally with another person;

“exempted income amount”, in relation to a liable parent, has the meaning given by section 36;

40 “Family Law Act 1975” includes the regulations and Rules of Court made under that Act;

“last relevant year of income”, in relation to a person in relation to a child support year, means the person’s year of income immediately before the person’s year of income last completed before the child support year;

## Examples of operation of definition of last relevant year of income

Child support year	Last completed year of income	Last relevant year of income
1989-90	1988-89	1987-88
1990-91	1989-90	1988-89
1991-92	1990-91	1989-90
1992-93	1991-92	1990-91

**“liable parent”** has the meaning given by section 29;

**“married person”** includes a de facto spouse but does not include a legally married person (not being a de facto spouse) who is living separately and apart from his or her spouse on a permanent basis;

**“parent”** means:

- (a) when used in relation to a child who has been adopted—an adoptive parent of the child; and
- (b) when used in relation to a child born to a woman as a result of the carrying out of an artificial conception procedure—a person who is a parent of the child under section 60B of the *Family Law Act 1975*;

**“Registrar”** means the Child Support Registrar;

**“relevant AWE amount”**, in relation to a child support year, means the estimate of the full-time adult average weekly total earnings for persons in Australia for the latest period for which such an estimate was published by the Australian Statistician before 1 January immediately before the child support year;

*Example:* For the child support year 1989-90, the latest period for which such an estimate was published by the Australian Statistician before 1 January 1989 was the pay week ending on or before 19 August 1988. The estimate for that period was \$502.40. The relevant AWE amount for the child support year 1989-90 is, therefore, \$502.40.

**“relevant dependent child”**, in relation to a liable parent, means a child of whom the liable parent is both a parent and an eligible custodian, being a child who:

- (a) is under 18 years of age; and
- (b) is an unmarried person; and
- (c) is not a shared custody child;

**“relevant married rate of Social Security pension”**, in relation to a child support year, means the maximum rate at which pension under Part IV of the *Social Security Act 1947* was payable on 1 January immediately before the child support year to a married person:

- (a) whose spouse was in receipt of a prescribed pension within the meaning of that Act; and
- (b) who did not have a dependent child within the meaning of that Act; and
- (c) who was not permanently blind within the meaning of that Act; and
- (d) to whom section 36 of that Act did not apply;



*Example:* The maximum rate of that pension on 1 January 1989 was \$5,384.60 per annum. The relevant married rate of Social Security pension for the 1989-90 child support year is, therefore, \$5,384.60 per annum.

**“relevant single rate of Social Security pension”**, in relation to a child support year, means the maximum rate at which pension under Part IV of the *Social Security Act 1947* was payable on 1 January immediately before the child support year to an unmarried person:

- 5
- (a) who did not have a dependent child within the meaning of that Act; and
  - (b) who was not permanently blind within the meaning of that Act; and
  - (c) to whom section 36 of that Act did not apply;

*Example:* The maximum rate of that pension on 1 January 1989 was \$6,461 per annum. The relevant single rate of Social Security pension for the 1989-90 child support year is, therefore, \$6,461 per annum.

10 **“resident of Australia”** has the meaning given by section 10;

**“Rules of Court”** means Rules of Court made under the *Family Law Act 1975*;

**“separated”** has the meaning given by section 9;

15 **“shared custody child”** means a child of whom each of the parents is an eligible custodian because he or she shares ongoing daily care of the child substantially equally with the other parent;

**“spouse”** includes a de facto spouse;

**“this Act”** includes the regulations;

**“unmarried person”** means a person who is not a married person;

20 **“yearly equivalent of the relevant AWE amount”**, in relation to a child support year, means 52 times the relevant AWE amount in relation to the child support year;

**“year of income”**, in relation to a person, has the same meaning as in the *Income Tax Assessment Act 1936*.

25 **Interpretation—expressions used in Child Support (Registration and Collection) Act**

6. Unless the contrary intention appears, expressions used in this Act, and in the *Child Support (Registration and Collection) Act 1988*, have the same respective meanings as in that Act.

30 **Interpretation—expressions used in Part VII of Family Law Act**

7. Unless the contrary intention appears, expressions used in this Act, and in Part VII of the *Family Law Act 1975*, have the same respective meanings as in that Part.

**Interpretation—when substantial access is shared ongoing daily care**

35 **8.** For the purposes of this Act, if:

- (a) a person is the sole or principal provider of ongoing daily care for a child; and

- (b) another person has care of the child for at least 40% of the nights of the child support year concerned;

the other person is to be taken to share ongoing daily care of the child substantially equally with the first-mentioned person.

**Interpretation—meaning of “separated”**

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9. For the purposes of this Act, the parents of a child are to be taken to have separated in circumstances in which the parties to a marriage are, under the *Family Law Act 1975*, taken to have separated.

**Interpretation—meaning of “resident of Australia”**

10. For the purposes of this Act, a person is a resident of Australia on a day if on that day the person is a resident of Australia for the purposes of the *Income Tax Assessment Act 1936* otherwise than because of subsection 7A (2) of that Act.

10

**Interpretation—meaning of “approved form”**

11. A reference in a provision of this Act to an approved form is a reference to a form made available by the Registrar for the purposes of the provision, being a form that deals with such matters as are prescribed in relation to the provision for the purposes of this section.

15

**Extension and application of Act in relation to maintenance of children**

12. (1) Subject to subsections (4) and (5), this Act so far as it relates to the maintenance of children extends to New South Wales, Victoria, South Australia and Tasmania.

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(2) If:

- (a) the Parliament of Queensland or Western Australia refers to the Parliament of the Commonwealth the matter of the maintenance of children or matters that include, or are included in, that matter; or  
 (b) Queensland or Western Australia adopts this Act so far as it relates to the maintenance of children;

25

then, subject to subsections (4) and (5), this Act so far as it relates to the maintenance of children also extends to Queensland or Western Australia, as the case may be.

30

(3) This Act so far as it relates to the maintenance of children applies in and in relation to the Territories.

(4) This Act extends to a State because of subsection (1) or (2) only for so long as there is in force:

35

- (a) an Act of the Parliament of the State by which there is referred to the Parliament of the Commonwealth:  
 (i) the matter of the maintenance of children; or  
 (ii) matters that include or are included in that matter; or  
 (b) a law of the State adopting this Act so far as it applies in relation to the maintenance of children.

40

(5) This Act extends to a State at any time because of subsection (1) or paragraph (2) (a) only so far as it makes provision with respect to:

(a) the matters that are at that time referred to the Parliament of the Commonwealth by the Parliament of the State; or

5 (b) matters incidental to the execution of any power vested by the Constitution in the Parliament of the Commonwealth in relation to those matters.

**Additional application of Act in relation to maintenance of children**

10 13. (1) Without prejudice to its effect apart from this section, this Act so far as it relates to the maintenance of children also has effect as provided by this section.

(2) This Act so far as it relates to the maintenance of children has, because of this section, the effect that it would have if:

15 (a) each reference to a child were, by express provision, confined to a child of a marriage; and

(b) each reference to the parents of the child were, by express provision, confined to the parties to the marriage;

20 and has that effect only so far as it makes provision with respect to the rights and duties of the parties to the marriage in relation to the child, including, for example, provision with respect to the rights and duties of the parties in relation to the maintenance of the child.

**Corresponding State laws**

25 14. (1) If the Minister is satisfied that a law of a State makes adequate and appropriate provision for determining the financial support payable for children, the Minister may, by *Gazette* notice, declare the law to be a corresponding State law.

30 (2) If the Minister becomes satisfied that the State law no longer makes adequate and appropriate provision for determining the financial support payable for children, the Minister may, by *Gazette* notice, revoke the declaration of the law as a corresponding State law.

(3) It is the intention of the Parliament that the Registrar should have and be subject to the powers, functions, rights, liabilities and duties conferred or imposed on the Registrar by a corresponding State law that are additional to those conferred or imposed by this Act.

35 **Act to bind Crown**

15. (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

40 (2) Nothing in this Act permits the Crown to be prosecuted for an offence.

**PART 2—COVERAGE OF ACT****Act applies only in relation to eligible children**

16. This Act applies only in relation to children who are eligible children.

**Children born on or after commencing day are eligible children**

17. A child born on or after the commencing day is an eligible child. 5

**Children of parents who separate on or after commencing day are eligible children**

18. (1) Where:

(a) the parents of a child born before the commencing day have cohabited; and 10

(b) the parents separate on or after the commencing day;  
the child is an eligible child.

(2) Subsection (1) applies in relation to the child whether or not the parents:

(a) are or were at any time legally married; or 15

(b) have separated on an earlier occasion; or

(c) have resumed cohabitation.

**Children with a brother or sister who is an eligible child are eligible children**

19. Where: 20

(a) a child would, apart from this section, not be an eligible child; and

(b) another child is born to the parents of the first-mentioned child on or after the commencing day;

the first-mentioned child is an eligible child.

**Exclusion of certain children from coverage of Act 25**

20. (1) The regulations may provide that children who are in the custody of, or under the guardianship, care and control or supervision of, a person under a child welfare law are not eligible children.

(2) Sections 17, 18 and 19 have effect subject to any regulations made under subsection (1). 30

**PART 3—APPLICATIONS TO REGISTRAR FOR ADMINISTRATIVE ASSESSMENT OF CHILD SUPPORT*****Division 1—Application requirements*****Application requirements generally**

21. An application for administrative assessment of child support is properly made if it complies with the following provisions: 35

(a) section 22 (children in relation to whom applications may be made);

- (b) section 23 (persons who may apply);
- (c) section 24 (persons from whom child support may be sought);
- (d) section 25 (formal requirements for applications).

**Children in relation to whom applications may be made**

5       **22.** Application may be made to the Registrar for administrative assessment of child support for a child only if:

- (a) the child is:
  - (i) an eligible child; and
  - (ii) under 18 years of age; and
  - 10       (iii) an unmarried person; and
- (b) either or both of the following subparagraphs applies or apply in relation to the child:
  - (i) the child is present in Australia on the day on which the application is made;
  - 15       (ii) the child is an Australian citizen, or ordinarily resident in Australia, on that day.

**Persons who may apply**

20       **23. (1)** Application may be made to the Registrar for administrative assessment of child support for a child only if the person making the application:

- (a) is an eligible custodian of the child; and
  - (b) is not living with the person from whom payment of child support is sought as the spouse of that person on a *bona fide* domestic basis (whether or not legally married to that person); and
  - 25       (c) complies with subsections (2) and (3) so far as those subsections are applicable.
- (2) Subject to subsection (3), where:
- (a) 2 or more persons jointly are the sole or principal providers of ongoing daily care for a child; or
  - 30       (b) 2 or more persons jointly share ongoing daily care of a child substantially equally with another person or other persons;

35       application may be made to the Registrar for administrative assessment of child support for the child by any, but not more than one, of the persons (in subsection (3) called the “**joint custodians**”) who jointly are the sole or principal providers of the ongoing daily care of the child or who jointly share ongoing daily care of the child substantially equally with another person or other persons.

(3) If either or any of the joint custodians is a parent of the child, the application must be made by or on behalf of the person who is the parent.

**Persons from whom child support may be sought**

24. Application may be made to the Registrar for administrative assessment of child support for a child only if the application seeks payment of the child support from a person who is:

- (a) a parent of the child; and 5
- (b) a resident of Australia on the day on which the application is made.

**Formal requirements for applications**

25. (1) An application for administrative assessment of child support must be:

- (a) in the appropriate approved form; and 10
- (b) made to the Registrar.

(2) The application must be:

- (a) verified as required by the form of application; and
- (b) accompanied by such documents as are required by the form of application to accompany the application. 15

(3) A document that accompanies the application must also be verified as required by the form of application.

**Application for child support for 2 or more children made in same form etc.**

26. (1) If application is made in the same form for administrative assessment of child support for 2 or more children, the form may be treated as if it contained separate applications made for administrative assessment for each of the children. 20

(2) If:

- (a) application is made in the same form for administrative assessment of child support for a child or 2 or more children; and 25
- (b) payment of child support is sought from 2 or more persons for the child or any of the children;

the form may be treated as if it contained separate applications made for administrative assessment of child support for the child or each of the children from each of the persons from whom payment of child support is sought. 30

***Division 2—Decision on application*****How decision is to be made**

27. (1) Subject to subsection (2), in determining whether an application for administrative assessment of child support complies with sections 22, 23 and 24, the Registrar may act on the basis of the application and the documents accompanying the application, and is not required to conduct any inquiries or investigations into the matter. 35

(2) The Registrar is to be satisfied that a person is a parent of a child only if the Registrar is satisfied:

- 5 (a) that the person is or was a party to a marriage and the child was born to the person, or the other party to the marriage, during the marriage; or
- (b) that the person's name is entered in a register of births or parentage information, kept under the law of the Commonwealth or of a State, Territory or prescribed overseas jurisdiction, as a parent of the child; or
- 10 (c) that, whether before or after the commencement of this Act, an Australian court or a court of a prescribed overseas jurisdiction has found, or could reasonably be inferred to have found, that the person is the father or mother of the child, and the finding has not been altered, set aside or reversed; or
- 15 (d) that, whether before or after the commencement of this Act, the person has, under the law of the Commonwealth or of a State, Territory or prescribed overseas jurisdiction, executed an instrument acknowledging that he is the father of the child, and the instrument has not been annulled or otherwise set aside; or
- 20 (e) that the child has been adopted by the person.

**Decision on application**

28. (1) If the Registrar is satisfied that an application has been properly made for administrative assessment of child support for a child, the Registrar must accept the application.

25 (2) If the Registrar is not so satisfied, the Registrar may refuse to accept the application.

**Effect of acceptance of application by Registrar**

29. (1) If the Registrar accepts an application for administrative assessment of child support for a child:

- 30 (a) the applicant is a custodian entitled to child support in relation to the child; and
- (b) the person from whom the application sought payment of child support for the child is a liable parent in relation to the child; and
- 35 (c) child support is payable for the child by the liable parent to the custodian entitled to child support on and from the day on which the application was made to the Registrar; and
- (d) child support continues to be payable for the child by the liable parent to the custodian entitled to child support until:
  - 40 (i) the liable parent ceases to be a liable parent in relation to the child; or
  - (ii) the custodian entitled to child support ceases to be a custodian entitled to child support in relation to the child.

(2) The Registrar must, under this Act:

- (a) immediately assess the annual rate of the child support payable for the child in relation to the days in the child support year in which the application is accepted (and any earlier child support years) in relation to which child support is payable for the child; and
- (b) before the start of each later child support year in which the child support continues to be payable for the child, assess the annual rate of the child support payable for the child in relation to the days in the later child support year in relation to which child support is payable for the child. 5

### ***Division 3—Notice of decision*** 10

#### **Notice to be given to unsuccessful applicant**

30. (1) If the Registrar refuses to accept an application for administrative assessment of child support for a child, the Registrar must immediately notify the applicant in writing.

(2) The notice must include, or be accompanied by, a statement to the effect that the applicant may, subject to the *Family Law Act 1975*, apply to a court having jurisdiction under this Act for a declaration that the applicant was entitled to administrative assessment of child support for the child payable by the person from whom the application sought payment of child support. 15  
20

(3) A contravention of subsection (2) in relation to a decision does not affect the validity of the decision.

#### **Notice to be given to person from whom child support sought**

31. (1) If the Registrar accepts an application for administrative assessment of child support for a child, the Registrar must immediately notify the applicant, and the person from whom the application sought payment of child support, in writing. 25

(2) The notice must include, or be accompanied by, a statement to the effect that the person from whom the application sought payment of child support may, subject to the *Family Law Act 1975*, apply to a court having jurisdiction under this Act for a declaration that the applicant was not entitled to administrative assessment of child support for the child payable by the person. 30

(3) A contravention of subsection (2) in relation to a decision does not affect the validity of the decision. 35

## **PART 4—ADMINISTRATIVE ASSESSMENT OF CHILD SUPPORT**

### ***Division 1—The basic formula***

#### **Application of basic formula**

32. This Division applies in relation to the assessment of child support payable for a child by a liable parent: 40



- (a) except to the extent otherwise provided in Division 2 (Modifications of the basic formula for certain cases); and
- (b) subject to any order made by a court under Division 4 of Part 5 (Orders for departure from administrative assessment in special circumstances).

**The basic formula**

33. (1) The annual rate of the child support payable, in relation to a day in a child support year, by a liable parent for the child, or all of the children, for whom child support is payable by the liable parent is the amount calculated, in relation to the liable parent in relation to that day, using the formula:

$$\text{child support percentage} \times \text{adjusted income amount.}$$

(2) The **adjusted income amount** is the amount (being an amount not below 0) calculated, in relation to the liable parent in relation to that day, using the formula:

$$\text{child support income amount} - \text{exempted income amount.}$$

**Liable parent's child support percentage**

34. The liable parent's **child support percentage** is the percentage ascertained using the following table:

TABLE OF CHILD SUPPORT PERCENTAGES

Number of children for whom the person is a liable parent	Child support percentage
1	18%
2	27%
3	32%
4	34%
5 or more	36%

**Liable parent's child support income amount**

35. The liable parent's **child support income amount** is, subject to Division 3, the liable parent's taxable income under the *Income Tax Assessment Act 1936* for the liable parent's last relevant year of income in relation to the child support year.

**Liable parent's exempted income amount**

36. (1) The liable parent's **exempted income amount** is:

- (a) if the liable parent does not have a relevant dependent child—the annual amount of the relevant single rate of Social Security pension for the child support year; and
- (b) if the liable parent has a relevant dependent child—the aggregate of:

- (i) twice the annual amount of the relevant married rate of Social Security pension for the child support year; and
- (ii) the additional amount ascertained under subsection (2) for each child who is a relevant dependent child of the liable parent.

5

(2) The additional amount for a child who is a relevant dependent child of the liable parent is:

- (a) if the child will be under 13 at the end of the child support year—the amount per year referred to in paragraph 33 (4) (a) of the *Social Security Act 1947* that is applicable in relation to 1 January immediately before the child support year; and
- (b) if the child will be 13 or over, but under 16, at the end of the child support year—the amount per year referred to in paragraph 33 (4) (b) of the *Social Security Act 1947* that is applicable in relation to that 1 January; and
- (c) if the child will be 16 or over at the end of the child support year—25% of twice the annual amount of the relevant married rate of Social Security pension for the child support year.

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## ***Division 2—Modifications of the basic formula for certain cases***

### ***Subdivision A—General***

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#### **Division subject to certain court orders**

37. This Division applies subject to any order made by a court under Division 4 of Part 5 (Orders for departure from administrative assessment in special circumstances).

### ***Subdivision B—Liable parents with low child support income***

25

#### **Child support not payable if child support income amount does not exceed exempted income amount**

38. If, in relation to a day in a child support year, a liable parent's child support income amount does not exceed the liable parent's exempted income amount, child support is not payable by the liable parent in relation to that day.

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### ***Subdivision C—Liable parents with high child support income***

#### **Cap on child support if child support income amount exceeds 2.5 times yearly equivalent of relevant AWE amount**

39. If, in relation to a day in a child support year, a liable parent's child support income amount exceeds 2.5 times the yearly equivalent of the relevant AWE amount for the child support year, the liable parent's adjusted income amount in relation to that day is the amount calculated using the formula:

35

**2.5 times yearly equivalent of the relevant AWE amount**  
 — exempted income amount.

40

**Subdivision D—Custodial parents with child support income of more than disregarded income amount**

**Cases in relation to which Subdivision applies**

5 40. This Subdivision applies in relation to a liable parent by whom child support is payable to a custodian entitled to child support (in this Subdivision called the “entitled custodian”) for a child or children if:

- (a) the entitled custodian is a parent of the child or any of the children; and
- 10 (b) the liable parent is not an eligible custodian of any child eligible for administrative assessment of whom the entitled custodian is a parent.

**Reduction of child support if custodian’s child support income amount exceeds custodian’s disregarded income amount**

15 41. (1) If, in relation to a day in a child support year, the entitled custodian’s child support income amount exceeds the entitled custodian’s disregarded income amount, then, subject to subsection (2), the liable parent’s adjusted income amount in relation to that day is to be reduced by the excess.

20 (2) The annual rate of the child support payable, in relation to that day, by the liable parent to the entitled custodian is not to be reduced below 25% of the annual rate that would, but for subsection (1), be payable in relation to that day.

**Custodian’s child support income amount**

25 42. The entitled custodian’s **child support income amount** is, subject to Division 3, the entitled custodian’s taxable income under the *Income Tax Assessment Act 1936* for the entitled custodian’s last relevant year of income in relation to the child support year.

**Custodian’s disregarded income amount**

30 43. (1) The entitled custodian’s **disregarded income amount** is the sum of:

- (a) the yearly equivalent of the relevant AWE amount for the child support year; and
- (b) the additional amount (if any) worked out under subsection (2) for the child or children in relation to whom the entitled custodian is both a parent and custodian entitled to child support and the liable parent is a liable parent.

35 (2) The additional amount for the child or children is the aggregate of:

- (a) for the first or only child who is under 6 at the start of the year—11.5% of the yearly equivalent of the relevant AWE amount for the child support year; and
- 40 (b) for each subsequent child who is under 6 at the start of the year—2.5% of the yearly equivalent of the relevant AWE amount for the child support year; and

- (c) for each child who is 6 or over, but under 12, at the start of the year—5% of the yearly equivalent of the relevant AWE amount for the child support year.

***Subdivision E—Children shared or divided between parents***

**Cases in relation to which Subdivision applies**

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44. This Subdivision applies in relation to the parents (in this Subdivision called the “relevant parents”) of a child or children eligible for administrative assessment if either or both of the following paragraphs applies or apply:

- (a) both of the parents are eligible custodians of the child or of one or more of the children;
- (b) one of the parents is an eligible custodian of one or more of the children and the other parent is an eligible custodian of another or other of the children.

10

**Application of the basic formula etc.**

45. In working out the annual rate of child support that would, apart from section 46, be payable, in relation to a day in a child support year, by either of the relevant parents to the other (or would, apart from that section, be payable, in relation to that day, by either of the relevant parents to the other if each of the relevant parents were a liable parent in relation to the other):

15

- (a) Division 1 (The basic formula) and, to the extent that they are applicable, Subdivisions B and C of this Division (which deal respectively with Liable parents with low child support income and Liable parents with high child support income) are to be applied to each of the relevant parents in turn, but with the modifications made by paragraphs (c), (d) and (e); and
- (b) Subdivision D (Custodial parents with child support income of more than disregarded income amount) is not to be applied in relation to the relevant parents; and
- (c) each of the relevant parents is to be taken to be a liable parent in relation to each of their children who is a child eligible for administrative assessment and for whom the other parent is an eligible custodian, and the other parent is to be taken to be a custodian entitled to child support in relation to each such child; and
- (d) in determining in relation to either of the relevant parents the exempted income amount any child who is a shared custody child is to be disregarded; and
- (e) the child support percentage of either of the relevant parents is the percentage ascertained using the following table (with each shared custody child taken to be half a child):

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MODIFIED TABLE OF CHILD SUPPORT PERCENTAGES

Number of children for whom either of the relevant parents is a liable parent in relation to the other	Child support percentage
0.5	12.0%
1.0	18.0%
1.5	24.0%
2.0	27.0%
2.5	30.0%
3.0	32.0%
3.5	33.0%
4.0	34.0%
4.5	35.0%
5.0	36.0%

**Offsetting of child support liabilities**

46. The annual rate of child support that would, apart from this section, be payable, in relation to a day in a child support year, by either of the relevant parents to the other is to be reduced (but not below 0) by the annual rate of child support that would, apart from this section, be payable in relation to that day by the other (or would, apart from this section, be payable in relation to that day by the other if each of the relevant parents were a liable parent in relation to the other).

**Subdivision F—Children with 2 liable parents**

10 **Cases in relation to which Subdivision applies**

47. This Subdivision applies in relation to the parents (in this Subdivision called the “relevant parents”) of a child or children if:

- (a) both of the parents are liable parents of the child or of one or more of the children; and
- (b) the person who is the custodian entitled to child support in relation to the child or children (in this Subdivision called the “relevant child or children”) is a person other than either of the parents.

**Application of the basic formula etc.**

48. In working out the annual rate of child support payable (or that would, apart from section 49, be payable), in relation to a day in a child support year, by each of the relevant parents for the relevant child or children, Division 1 (The basic formula) and, to the extent that they are applicable, Subdivisions B and C of this Division (which deal respectively with Liable parents with low child support income and Liable parents with high child support income) are to be applied in relation to each of the relevant parents in turn, but with the modification made by section 49.

**Cap on combined child support liabilities**

49. (1) If, in relation to a day in a child support year, the sum (in this subsection called the “combined liability amount”) of the annual rates of child support that would, apart from this section, be payable by the relevant

parents for the relevant child or children exceeds 1.5 times the maximum possible child support liability, the annual rate of child support payable, in relation to that day, by either of the relevant parents for the relevant child or children is to be calculated by multiplying the annual rate of child support that would, apart from this section, be payable by the relevant parent for the relevant child or children by the factor calculated using the formula:

$$\frac{1.5 \times \text{maximum possible child support liability}}{\text{combined liability amount.}}$$

(2) In subsection (1):

“**maximum possible child support liability**” means the annual rate of child support that would be payable in relation to that day by a person who is a liable parent if:

- (a) the number of children for whom the person was a liable parent were the number of children for whom the 2 relevant parents are both liable parents and not eligible custodians; and
- (b) the person’s child support income amount were 2.5 times the yearly equivalent of the relevant AWE amount for the child support year; and
- (c) the person did not have a relevant dependent child; and
- (d) the custodian entitled to child support was not a parent of any of the children for whom child support was payable by the person.

***Subdivision G—Liable parents with 2 or more custodians entitled to child support***

**Cases in relation to which Subdivision applies**

**50.** This Subdivision applies in relation to a liable parent if the liable parent is a liable parent in relation to 2 or more custodians entitled to child support.

**Application of the basic formula etc.**

**51.** In working out the annual rate of child support payable, in relation to a day in a child support year, by the liable parent to any one of the custodians entitled to child support:

- (a) Division 1 (The basic formula) and, to the extent that they are applicable, the other Subdivisions of this Division (Modifications of the basic formula in certain cases) are to be applied as if the custodian entitled to child support were the only custodian entitled to child support in relation to the liable parent, but with the modifications made by paragraphs (b), (c) and (d); and
- (b) the child support percentage of the liable parent in relation to the custodian entitled to child support is to be taken to be the child support percentage that would, apart from this section but subject

to paragraph (c), be applicable in relation to the liable parent multiplied by the factor calculated using the formula:

$$\frac{\text{number of children in custodian's custody}}{\text{total number of children}}$$

where:

- 5        **number of children in custodian's custody** is the number of children in relation to whom the liable parent is a liable parent in relation to the custodian entitled to child support (with each shared custody child (if any) taken to be half a child);
- 10        **total number of children** is the number of children in relation to whom the liable parent is a liable parent in relation to all of the custodians entitled to child support (with each shared custody child of the liable parent (if any) taken to be half a child); and
- 15        (c) if Subdivision E (Children shared or divided between parents) is applicable in relation to the liable parent in relation to any of the custodians entitled to child support, the child support percentage that would, apart from this section, be applicable in relation to the liable parent is to be taken to be the percentage that would be
- 20        ascertained using the table in section 45 if the reference in the table to the number of children for whom either of the relevant parents is a liable parent in relation to each other were a reference to the number of children in relation to whom the liable parent is a liable parent in relation to all of the custodians entitled to child support
- 25        (with each shared custody child of the liable parent taken to be half a child); and
- (d) Subdivision F (Children with 2 liable parents) is to be applied (if it is applicable in relation to the liable parent) as if section 49 were disregarded.

30                                    **Division 3—Child support income amount**

**Updating of taxable income**

**52.** In working out a person's child support income amount in relation to a day in a child support year, the person's taxable income under the *Income Tax Assessment Act 1936* for the person's last relevant year of

35        income is to be multiplied by the inflation factor (if any) applicable to the child support year under the regulations.

**Taxable income assessed under Income Tax Assessment Act to be taxable income for child support purposes**

**53. (1)** Where a person's taxable income under the *Income Tax Assessment Act 1936* for a year of income has been assessed under that Act, then, in making an administrative assessment, the person's taxable

40        income under that Act for the year of income is to be taken to be the person's taxable income under that Act for the year of income as assessed

or last assessed under that Act before the making of the administrative assessment.

(2) Subject to subsection (3), subsection (1) has effect despite the subsequent making under that Act of an amendment to the relevant assessment of the person's taxable income (whether or not the amendment is made because of an objection, appeal or review in relation to the assessment).

(3) Subsection (2) does not apply in relation to an amendment of an assessment that is made under subsection 170 (2) of the *Income Tax Assessment Act 1936* or a provision of that Act prescribed for the purposes of this subsection.

#### ***Division 4—Provisions relating to the making of assessments***

##### **Assessment to relate to whole or part of single child support year**

54. (1) An administrative assessment of child support is to relate to all the days of, or some of the days of, a single child support year.

(2) Subsection (1) does not prevent a single notice of assessment under section 60 dealing with more than one administrative assessment.

##### **Conversion of annual rates into daily rates of payment**

55. Where the Registrar assesses the annual rate of child support payable for a child or children, in relation to a day in a child support year, by a liable parent, the Registrar must, in accordance with the regulations, convert that annual rate into a daily rate and specify both the annual and daily rates in the notice of assessment given under section 60 in relation to the assessment.

##### **Evidence relating to assessments**

56. (1) The production of a notice of administrative assessment, or of a document signed by the Registrar or a Deputy Registrar that appears to be a copy of a notice of administrative assessment, is conclusive evidence of the proper making of the assessment and, except in proceedings under Division 3 of Part 5 on an appeal relating to the assessment, that all the particulars of the notice of assessment are correct.

(2) The production of a document signed by the Registrar or a Deputy Registrar that appears to be a copy of or an extract from any return or notice of administrative assessment is evidence of the matters in the document to the same extent as the original would be if it were produced.

##### **Assessments for part of child support year**

57. In making an administrative assessment of the annual rate of child support payable in relation to the days of a period of less than a full child support year, the Registrar may apply this Part as if the beginning and end of the period were respectively the beginning and end of a full child support year.



**Validity of assessments**

58. Except in an appeal under Division 3 of Part 5, the validity of an assessment is not affected because any of the provisions of this Act have not been complied with.

5 **Assumptions as to future events**

59. In assessing the annual rate at which child support is payable in relation to a day in the future, the Registrar may act on the assumption that the state of affairs known to the Registrar at the time the assessment is made will remain unchanged on that day.

10 **Notice of assessment to be given to liable parent etc.**

60. (1) When the Registrar makes an administrative assessment, the Registrar must immediately give written notice of the assessment to the liable parent, and the custodian entitled to child support, in relation to whom the assessment is made.

15 (2) The notice must include, or be accompanied by, a statement to the effect that:

20 (a) if the liable parent or the custodian entitled to child support is aggrieved by a rate of child support assessed by the Registrar, he or she may, subject to the *Family Law Act 1975*, appeal to a court having jurisdiction under this Act against the assessment on the ground that the rate has been incorrectly assessed; and

25 (b) application may, subject to the *Family Law Act 1975*, be made by the liable parent or the custodian entitled to child support to a court having jurisdiction under this Act for an order that the provisions of this Act relating to administrative assessment of child support be departed from in relation to a child in the special circumstances of the case.

(3) The contravention of subsection (2) in relation to an assessment does not affect the validity of the assessment.

30 **Division 5—Liability to pay child support as assessed**

**Effect of assessment**

61. Where the Registrar:

35 (a) assesses the annual rate of child support payable for a child or children, in relation to a day in a child support year, by a liable parent to a custodian entitled to child support; and

(b) converts the annual rate into a daily rate and specifies both rates in a notice of assessment given under section 60 in relation to the assessment;

40 the amount of the child support payable for the child or children in relation to that day by the liable parent to the custodian entitled to child support is the amount of the daily rate specified in the notice of assessment.

**When amounts of child support due and payable**

62. An amount of child support payable in relation to a day in any month is due and payable:

- (a) on the 7th day of the following month; or
- (b) on the 30th day after the liable parent concerned was given a notice of assessment under section 60 specifying the annual and daily rates of child support in relation to that day; 5

whichever is the later.

**Recovery of amounts of child support**

63. An amount of child support due and payable by a liable parent to a custodian entitled to child support is a debt due and payable by the liable parent to the custodian entitled to child support, and may be sued for and recovered in a court that has, apart from this Act, jurisdiction for the recovery of debts up to an amount not less than the amount of the child support. 10  
15

**PART 5—JURISDICTION OF COURTS*****Division 1—General*****Jurisdiction of courts under Act**

64. (1) Jurisdiction is conferred on the Family Court and, subject to subsection (7), the Supreme Court of the Northern Territory, and each Family Court of a State is invested with federal jurisdiction in relation to matters arising under this Act. 20

(2) Subject to subsections (5) and (7), each court of summary jurisdiction of each State is invested with federal jurisdiction, and jurisdiction is conferred on each court of summary jurisdiction of each Territory, in relation to matters arising under this Act. 25

(3) The Governor-General may, by Proclamation, fix a day as the day on and after which proceedings in relation to matters arising under this Act may not be instituted in, or transferred to, a court of summary jurisdiction in a specified State or Territory. 30

(4) A Proclamation under subsection (3) may be expressed to apply only in relation to:

- (a) proceedings of specified classes; or
- (b) the institution of proceedings in, or the transfer of proceedings to, a court of summary jurisdiction in a specified part of a State or Territory. 35

(5) A court of summary jurisdiction must not hear or determine proceedings under this Act otherwise than in accordance with any Proclamation in force under subsection (3).

5 (6) The Governor-General may, by Proclamation, declare that a Proclamation under subsection (3) is revoked on and from a specified day and, on and from the specified day, this Act (including subsection (3)) has effect as if the revoked Proclamation had not been made, but without prejudice to the effect of the revoked Proclamation before the specified day.

10 (7) Jurisdiction in relation to a matter arising under this Act in relation to which a proceeding is instituted under this Act is not conferred on a court of a Territory unless at least one of the parties to the proceeding (other than the Registrar) is, on the day on which the proceeding is instituted in or transferred to that court, ordinarily resident in the Territory.

(8) The jurisdiction conferred on or invested in a court by this section includes jurisdiction in relation to matters arising under this Act in relation to which proceedings are transferred to that court under another law of the Commonwealth.

15 (9) The jurisdiction conferred on or invested in a court by this section is in addition to any jurisdiction conferred on or invested in the court apart from this section.

#### Application of Family Law Act

20 65. (1) The *Family Law Act 1975* (other than Part X of that Act) applies, subject to this Act and with such modifications as are prescribed by the Rules of Court, to proceedings under this Act as if:

- 25 (a) the proceedings were proceedings under that Act; and  
(b) the proceedings were proceedings instituted under that Act; and  
(c) a court having or exercising jurisdiction in the proceedings were a court having or exercising jurisdiction under that Act; and  
(d) a decree made in the proceedings were a decree made under that Act; and  
(e) matters arising in the proceedings were matters arising under that Act; and  
30 (f) any other necessary changes were made.

35 (2) Where any difficulty arises in the application of subsection (1) in or in relation to a particular proceeding, the court exercising jurisdiction in the proceeding may, on the application of a party to the proceeding or of its own motion, give such directions, and make such orders, as it considers appropriate to resolve the difficulty.

#### Appellate jurisdiction of Family Court under Act

40 66. (1) The Family Court has jurisdiction with respect to matters arising under this Act in relation to which:

- (a) applications for leave to appeal referred to in section 67 or 70 are made; and  
(b) appeals referred to in section 67 or 70 are instituted.

(2) Subject to section 67, in an appeal under section 67 or 70, the Family Court must have regard to the evidence given in the proceedings out of which the appeal arose and has power to draw inferences of fact and, in its discretion, to receive further evidence on questions of fact.

(3) The further evidence may be given by affidavit, by oral examination before the Family Court or a Judge or in such other manner as the Family Court directs. 5

### **Appeals to Family Court under Act**

67. (1) An appeal lies, with the leave of a Full Court of the Family Court, to a Full Court from: 10

(a) a decree of the Family Court, constituted otherwise than as a Full Court, exercising original or appellate jurisdiction under this Act; or

(b) a decree of:

(i) a Family Court of a State; or

(ii) the Supreme Court of the Northern Territory constituted by a single Judge; 15

exercising original or appellate jurisdiction under this Act.

(2) An application for leave to appeal under subsection (1) must be made within the time prescribed by the Rules of Court or within such further time as is allowed under the Rules of Court. 20

(3) On an appeal to the Full Court, the Full Court may affirm, reverse or vary the decree the subject of the appeal and may make such decree as, in the opinion of the Full Court, ought to have been made in the first instance, or may, if it considers appropriate, order a re-hearing, on such terms and conditions (if any) as it considers appropriate. 25

### **Cases stated**

68. (1) If, in proceedings in a court under this Act, being proceedings in which a decree to which subsection 67 (1) applies could be made, a question of law arises that the Judge and at least one of the parties wish to have determined by a Full Court of the Family Court before the proceedings are further dealt with, the Judge shall state the facts and question in the form of a special case for the opinion of a Full Court, and a Full Court shall hear and determine the question. 30

(2) The Full Court may draw, from the facts and the documents, any inference, whether of fact or law, that could have been drawn from them by the Judge. 35

### **Appeals to High Court**

69. In spite of anything contained in any other Act, an appeal does not lie to the High Court from a decree of a court exercising jurisdiction under this Act, whether original or appellate, except: 40

(a) by special leave of the High Court; or

- (b) on a certificate of a Full Court of the Family Court that an important question of law or of public interest is involved.

### Appeals from courts of summary jurisdiction

5 70. (1) Subject to subsection (2), an appeal lies from a decree of a court of summary jurisdiction of a State or Territory exercising jurisdiction under this Act to the Family Court or:

(a) in the case of a court of summary jurisdiction of a State that has a Family Court of the State—to the Family Court of the State; or

10 (b) in the case of a court of summary jurisdiction of the Northern Territory—to the Supreme Court of the Northern Territory.

(2) An appeal lies to a court under subsection (1) only with the leave of the court.

15 (3) An application for leave to appeal under subsection (1) must be made within the time prescribed by the Rules of Court or within such further time as is allowed under the Rules of Court.

20 (4) A Family Court of a State is invested with federal jurisdiction, and jurisdiction is conferred on the Supreme Court of the Northern Territory, with respect to matters arising under this Act in relation to which applications for leave to appeal are made under subsection (1) and appeals are instituted under that subsection.

(5) The Governor-General may, by Proclamation, fix a day as the day on or after which applications may not be made to the Family Court of a State or the Supreme Court of the Northern Territory for leave to appeal under subsection (1).

25 (6) A court hearing an appeal under subsection (1):

(a) subject to subsection (7), is to proceed by way of a hearing *de novo*, but may receive as evidence any record of evidence given, including any affidavit filed or exhibit received in the court of summary jurisdiction; and

30 (b) may make such decrees as it considers appropriate, including a decree affirming, reversing or varying the decree the subject of the appeal.

(7) Where a court has granted leave to appeal under subsection (1), the court may refer the appeal to a Full Court of the Family Court.

35 (8) Where an appeal is referred to a Full Court of the Family Court under subsection (7), the Full Court may:

(a) proceed by way of a hearing *de novo*, but may receive as evidence any record of evidence given, including any affidavit filed or exhibit received in the court of summary jurisdiction; and

40 (b) order that questions of fact arising in the proceedings be tried by a Judge; and

- (c) determine questions of law arising in the proceedings and remit the appeal to a Judge for hearing in accordance with directions given by it; and
- (d) make such other decrees as it considers appropriate, including a decree affirming, reversing or varying the decree the subject of the appeal. 5

***Division 2—Declarations in relation to entitlement to administrative assessment***

**Application for declaration by unsuccessful applicant for administrative assessment** 10

71. (1) Where the Registrar refuses to accept an application for administrative assessment of child support for a child, the applicant may apply to a court having jurisdiction under this Act for a declaration that the applicant was entitled to administrative assessment of child support for the child payable by the person from whom the application sought payment of child support. 15

(2) The application must be made within the time prescribed by the Rules of Court or within such further time as is allowed under the Rules of Court.

(3) Subject to section 73, the parties to the proceeding are the applicant and the person from whom the application sought payment of child support. 20

(4) If the court is satisfied:

(a) that the child was, under section 22, a child in relation to whom the application for administrative assessment of child support was entitled to be made; and 25

(b) that the applicant was, under section 23, a person entitled to make the application for the child; and

(c) that the person from whom the application sought payment of child support was, under section 24, a person from whom payment of child support was entitled to be sought for the child; 30

the court may grant the declaration.

(5) If the court grants the declaration, the Registrar is to be taken to have accepted the application for administrative assessment of child support for the child on the day on which it was made to the Registrar.

**Application for declaration by person from whom administrative assessment of child support sought** 35

72. (1) Where the Registrar accepts an application for administrative assessment of child support for a child, the person from whom the application sought payment of child support may apply to a court having jurisdiction under this Act for a declaration that the applicant was not entitled to administrative assessment of child support for the child payable by the person. 40

(2) The application must be made within the time prescribed by the Rules of Court or within such further time as is allowed under the Rules of Court.

5 (3) Subject to section 73, the parties to the proceeding are the person from whom the application sought payment of child support and the applicant for administrative assessment of child support.

(4) If the court is satisfied:

10 (a) that the child was not, under section 22, a child in relation to whom the application for administrative assessment of child support was entitled to be made; or

(b) that the applicant was not, under section 23, a person entitled to make the application for the child; or

15 (c) that the person from whom the application sought payment of child support was not, under section 24, a person from whom payment of child support was entitled to be sought for the child;

the court may grant the declaration.

(5) If the court grants the declaration, the application for administrative assessment of child support is to be taken never to have been accepted by the Registrar.

20 **Registrar may intervene in proceeding**

73. (1) The Registrar may intervene in, and contest and argue any question arising in, a proceeding under this Division.

25 (2) If the Registrar intervenes in a proceeding under this Division, the Registrar is to be taken to be a party to the proceeding with all the rights, duties and liabilities of a party.

(3) This section does not limit Part IX of the *Family Law Act 1975*.

**Implementation of decisions**

30 74. When a decision of a court under this Division becomes final, the Registrar must immediately take such action as is necessary to give effect to the decision.

**Pending application not to affect assessment**

35 75. (1) Subject to section 89, the fact that a proceeding is pending under this Division in relation to a person does not, in the meantime, interfere with, or affect, any administrative assessment made in relation to the person, and any such assessment may be registered under the *Child Support (Registration and Collection) Act 1988*, and amounts of child support and other amounts recovered in relation to the assessment, as if no proceeding were pending.

40 (2) Subsection (1) does not apply in relation to a person in relation to a child if:

- (a) the person has made an application under section 72 in relation to the child; and
- (b) a ground of the application is that the person was not, under section 24, a person from whom payment of child support was entitled to be sought for the child because the person is not a parent of the child; and 5
- (c) there is not a decision of a court determining that ground of the application that has become final.

(3) Subsection (2) does not apply in or in relation to the Territories and only extends to a State at a particular time if this Act does not, at that time, extend to the State because of subsection 12 (1) or (2). 10

### ***Division 3—Appeals against incorrect assessments***

#### **Appeals**

76. (1) If a liable parent or a custodian entitled to child support is aggrieved by a rate of child support assessed by the Registrar, he or she may appeal to a court having jurisdiction under this Act against the assessment on the ground that the rate has been incorrectly assessed. 15

(2) The appeal must be instituted within the time prescribed by the Rules of Court or within such further time as is allowed under the Rules of Court. 20

(3) Subject to section 77, the parties to the appeal are the liable parent, and the custodian entitled to child support, in relation to whom the assessment was made.

(4) Subsection (1) has effect:

- (a) subject to Chapter III of the Constitution; and 25
- (b) in spite of section 9 of the *Administrative Decisions (Judicial Review) Act 1977*.

#### **Registrar may intervene in appeal**

77. (1) The Registrar may intervene in, and contest and argue any question arising in, an appeal under this Division. 30

(2) If the Registrar intervenes in an appeal under this Division, the Registrar is to be taken to be a party to the appeal with all the rights, duties and liabilities of a party.

(3) This section does not limit Part IX of the *Family Law Act 1975*.

#### **Powers of court hearing appeal**

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78. A court hearing an appeal under this Division may make such orders in relation to the assessment to which the appeal relates as it considers appropriate, including an order setting aside, confirming or varying the assessment.



**Implementation of decisions**

5 79. When a decision of a court under this Division (including an order made under section 78) becomes final, the Registrar must immediately take such action (including amendment of the assessment concerned) as is necessary to give effect to the decision.

**Pending appeal not to affect assessment**

10 80. Subject to section 89, the fact that an appeal is pending under this Division in relation to an administrative assessment does not, in the meantime, interfere with, or affect, the assessment, and the assessment may be registered under the *Child Support (Registration and Collection) Act 1988*, and child support and other amounts recovered in relation to the assessment, as if no appeal were pending.

***Division 4—Orders for departure from administrative assessment in special circumstances***

15 **Additional particular objects of Division**

81. Additional particular objects of this Division include ensuring:

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

**Application for order under Division**

25 82. (1) Application may be made to a court having jurisdiction under this Act for an order that the provisions of this Act relating to administrative assessment of child support be departed from in relation to a child in the special circumstances of the case.

(2) The application may be made by a liable parent, or a custodian entitled to child support, in relation to the child.

(3) Subject to section 85, the parties to the application are the liable parent and the custodian entitled to child support.

30 **Matters as to which court must be satisfied before making order**

83. (1) Where:

(a) application is made to a court having jurisdiction under this Act for an order that the provisions of this Act relating to administrative assessment of child support be departed from in relation to a child  
35 in the special circumstances of the case; and

(b) the court is satisfied:

(i) of one or more of the matters falling within subsection (2);  
and

(ii) that it would be:

40 (A) just and equitable as regards the parties to the application; and

(B) otherwise proper;  
to make the order;

the court may make the order.

(2) The following matters are the matters of which the court must be satisfied for the purposes of subparagraph (1) (b) (i):

(a) that, in the special circumstances of the case, the capacity of either parent to provide financial support for the child is significantly reduced because of:

(i) the duty of the parent to maintain any other child or another person; or

(ii) special needs of any other child or another person that the parent has a duty to maintain; or

(iii) commitments of the parent necessary to enable the parent to support:

(A) himself or herself; or

(B) any other child or another person that the parent has a duty to maintain;

(b) that, in the special circumstances of the case, the costs of maintaining the child are significantly affected because of:

(i) high costs involved in enabling a parent access to the child; or

(ii) special needs of the child;

(c) that, in the special circumstances of the case, application in relation to the child of the provisions of this Act relating to administrative assessment of child support would result in an inequitable determination of the level of financial support to be provided by the liable parent for the child because of the income, earning capacity, property and financial resources of either parent or the child.

(3) For the purposes of subparagraph (2) (b) (i), costs involved in enabling a parent access to the child are not, if those costs are costs of a parent and not costs of another person, to be taken to be high unless the total of those costs during a child support year is more than 5% of the child support income amount for the year in relation to the parent concerned.

(4) In determining whether it would be just and equitable as regards the parties to the application to make the order, the court must have regard to:

(a) the nature of the duty of a parent to maintain a child (as stated in section 3); and

(b) any hardship that would be caused:

(i) to:

(A) the child; or

(B) the custodian entitled to child support;

by the making of, or the refusal to make, the order; and

(ii) to:

- (A) the liable parent; or
- (B) any other child or another person that the liable parent has a duty to support;

5 by the making of, or the refusal to make, the order.

(5) In determining whether it would be otherwise proper to make the order, the court must have regard to:

- (a) the nature of the duty of the parent to maintain a child (as stated in section 3); and
- 10 (b) the effect that the making of the order would have on:
  - (i) any entitlement of the child, or the custodian entitled to child support, to an income tested pension, allowance or benefit; or
  - 15 (ii) the rate of any income tested pension, allowance or benefit payable to the child or the custodian entitled to child support.

(6) Subsections (4) and (5) do not limit other matters to which the court may have regard.

(7) If the court makes the order, the court must:

- (a) give reasons for making the order; and
- 20 (b) cause the reasons to be entered in the records of the court.

(8) A contravention of subsection (7) in relation to an order does not affect the validity of the order.

#### **Ancillary orders**

25 **84. (1)** If a court having jurisdiction under this Act makes an order under subsection 83 (1), the court may make such of the following orders as it considers just and equitable as regards the parties to the application, and otherwise proper, in the special circumstances of the case:

- 30 (a) an order varying the annual rate of child support payable by the liable parent concerned in relation to a child support year or a particular period of a child support year;
- (b) an order varying the child support percentage, adjusted income amount, child support income amount or exempted income amount of the liable parent in relation to a child support year or a particular period of a child support year;
- 35 (c) an order making provision of a kind permitted under the regulations with respect to the calculation of any such amount in relation to the liable parent;
- (d) an order varying the child support income amount or disregarded income amount of the custodian entitled to child support concerned in relation to a child support year or a particular period of a child support year;
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- (e) an order making provision of a kind permitted under the regulations with respect to the calculation of any such amount in relation to the custodian entitled to child support;
- (f) an order directing that section 49 is not to apply in relation to the child;
- (g) an order varying a factor ascertained under paragraph 51 (b).

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(2) In determining whether it would be just and equitable as regards the parties to the application to make an order under subsection (1), the court must have regard to the matters referred to in paragraphs 83 (4) (a) and (b).

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(3) In determining whether it would be otherwise proper to make an order under subsection (1), the court must have regard to the matters referred to in paragraphs 83 (5) (a) and (b).

(4) Subsections (2) and (3) do not limit the matters to which the court may have regard.

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- (5) If the court makes an order under this section, the court must:
  - (a) give reasons for making the order; and
  - (b) cause the reasons to be entered in the records of the court.

(6) A contravention of subsection (5) in relation to an order does not affect the validity of the order.

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### **Registrar may intervene in proceeding**

85. (1) The Registrar may intervene in, and contest and argue any question arising in, a proceeding under this Division.

(2) If the Registrar intervenes in a proceeding under this Division, the Registrar is to be taken to be a party to the proceeding with all the rights, duties and liabilities of a party.

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- (3) This section does not limit Part IX of the *Family Law Act 1975*.

### **Implementation of decisions**

86. When a decision of a court under this Division (including an order made under section 84) becomes final, the Registrar must immediately take such action (including amendment of the assessment concerned) as is necessary to give effect to the decision.

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### **Pending proceeding not to affect assessment**

87. Subject to section 89, the fact that a proceeding is pending under this Division in relation to a person does not, in the meantime, interfere with, or affect, any administrative assessment made in relation to the person, and any such assessment may be registered under the *Child Support (Registration and Collection) Act 1988*, and amounts of child support and other amounts recovered in relation to the assessment, as if no proceeding were pending.

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**Division 5—Urgent maintenance orders and stay orders**

**Urgent maintenance orders**

5 88. (1) Where, at any time after an application has been made to the Registrar for administrative assessment of child support for a child (whether or not the Registrar has accepted or refused to accept the application), a court having jurisdiction under this Act is of the opinion that the child is in urgent need of financial assistance, the court may order the payment of such periodic or other amount as the court considers appropriate.

10 (2) Where a person pays an amount for a child in relation to a period under an order made under subsection (1), the amount is to be credited against any child support that becomes payable by the person for the child in relation to the period.

**Stay orders**

15 89. (1) Where:

(a) an application is made under section 72 for a declaration under that section; or

(b) an appeal is instituted under section 76 against an administrative assessment; or

20 (c) an application is made under section 82 for an order of the kind referred to in that section;

a party to the proceeding may, subject to the *Family Law Act 1975*, apply to the court in which the proceeding is pending for an order under this section.

25 (2) If the court considers that it is desirable to do so taking into account the interests of the persons who may be affected by the outcome of the proceeding, the court may make such orders staying or otherwise affecting the operation or implementation of this Act as the court considers appropriate pending the hearing and final determination of the proceeding.

30 (3) The court may, by order, vary or revoke an order made under subsection (2).

(4) An order under subsection (2):

(a) is subject to such conditions as are specified in the order; and

35 (b) operates for such period as is specified in the order or, if no period is specified, until the decision of the court determining the proceeding becomes final.

**Division 6—Miscellaneous**

**Determining when decision of a court becomes final**

90. For the purpose of determining when a decision of a court becomes final:

40 (a) if the decision is not a decision of the Full Court of the Family Court and an application is not made for leave to appeal against

the decision within the period for making such an application—the decision becomes final at the end of that period; or

- (b) if the decision is a decision of the Full Court of the Family Court and an application is not made for special leave to appeal to the High Court within the period of 30 days after the making of the decision—the decision becomes final at the end of that period.

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## PART 6—ADMINISTRATION

### Registrar has general administration of Act

91. The Registrar has the general administration of this Act.

### Annual report

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92. (1) The Registrar must, as soon as practicable after 30 June in each year, give to the Minister a report on the working of this Act.

(2) The Minister must cause a copy of the report to be laid before each House of the Parliament.

(3) For the purposes of section 34C of the *Acts Interpretation Act 1901*, a report that is required by subsection (1) to be furnished as soon as practicable after 30 June in a year is to be taken to be a periodic report relating to the working of this Act during the year ending on that 30 June.

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### Delegation

93. (1) The Registrar may, in writing, delegate to a Deputy Registrar, or the person occupying a specified office in the branch of the Australian Public Service under the direct control of the Registrar (whether as Registrar or Commissioner), all or any of the Registrar's powers or functions under this Act.

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(2) A delegation under subsection (1) may be made subject to a power of review and alteration by the Registrar, within a period specified in the delegation, of acts done under the delegation.

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(3) A delegation under subsection (1) continues in force even though there has been a change in the occupancy of, or there is a vacancy in, the office of Registrar, but, for the purposes of the application of subsection 33 (3) of the *Acts Interpretation Act 1901* in relation to such a delegation, nothing in any law is to be taken to preclude the revocation or variation of the delegation by the same or a subsequent holder of the office.

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## PART 7—MISCELLANEOUS

### Certificate by Registrar as to residency

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94. A certificate signed by the Registrar stating that a specified person was, on a specified day, a resident of Australia is *prima facie* evidence that the person was on that day, and has since continued to be, a resident of Australia.

**Changes in published AWE figures to be disregarded**

5 95. If, at any time, the Australian Statistician publishes an estimate of the full-time adult average weekly total earnings for persons in Australia for a period for which such an estimate was previously published by the Australian Statistician, the publication of the later estimate is to be disregarded for the purposes of this Act.

**Publication of AWE figures etc.**

96. The Registrar must, as soon as practicable after 1 January in each child support year, cause to be published in the *Gazette*:

- 10 (a) the yearly equivalent of the relevant AWE amount for the following child support year; and
- (b) the relevant married rate of Social Security pension for the following child support year; and
- 15 (c) the relevant single rate of Social Security pension for the following child support year; and
- (d) the amounts referred to in paragraphs 36 (2) (a) and (b) that are applicable in relation to the following child support year.

**Rounding of amounts**

20 97. (1) If an amount that is calculated or worked out under or for the purposes of this Act is not, apart from this section, a number of whole dollars, the amount is to be rounded to the nearest whole dollar.

(2) If the amount that is calculated or worked out is an amount consisting of a number of whole dollars and 50c, the amount is to be rounded up to the nearest whole dollar.

25 (3) This section does not apply in relation to the conversion of an annual rate of child support into a daily rate of child support.

**Appearance by Registrar in proceedings etc.**

30 98. (1) In any action, prosecution or other proceeding under, or arising out of, this Act, the Registrar or a Deputy Registrar, may appear personally or may be represented by:

- (a) a person enrolled as a barrister, solicitor, barrister and solicitor or legal practitioner of a federal court or of the Supreme Court of a State or Territory; or
- 35 (b) a person authorised by the Registrar or a Deputy Registrar, in writing, to appear.

(2) The appearance of a person, and the statement of the person that the person appears with the authority of the Registrar or a Deputy Registrar, is *prima facie* evidence of that authority.

**Judicial notice of signature of Registrar etc.**

**99.** All courts and tribunals, and all judges and persons acting judicially or authorised by law or consent of parties to hear, receive and examine evidence, must take judicial notice of the signature of a person who holds or has held the office of Registrar or Deputy Registrar.

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**False or misleading statements**

**100. (1)** A person who:

- (a) makes a statement to an officer that the person knows is false or misleading in a material particular; or
- (b) omits from a statement made to an officer any matter or thing without which the statement is, to the knowledge of the person, misleading in a material particular;

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is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 6 months.

**(2)** In a prosecution of a person for an offence against subsection (1), if, having regard to:

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- (a) the person's abilities, experience, qualifications and other attributes; and
- (b) all the circumstances surrounding the alleged offence;

the person ought reasonably to have known that the statement to which the prosecution relates was false or misleading in a material particular, the person is to be taken to have known that the statement was false or misleading in a material particular.

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**(3)** A reference in subsection (1) to a statement made to an officer is a reference to a statement made to a person exercising powers under or in relation to this Act, whether the statement is made orally, in a document or in any other form, and includes, for example, a statement:

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- (a) made in an application, form, notification, appeal or other document made, given or lodged, or purporting to be made, given or lodged, under this Act; or
- (b) made in answer to a question asked of the person under this Act; or
- (c) made in any information given, or purporting to be given, under this Act.

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**Obtaining of information and evidence**

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**101. (1)** The Registrar may, where it is reasonably necessary for the purposes of this Act, by written notice, require a person:

- (a) to give to the Registrar, within a reasonable period (being a period of not less than 7 days), and in a reasonable manner, specified in the notice, such information as the Registrar requires; and
- (b) to attend before the Registrar, or before an officer authorised by the Registrar for the purpose, at a reasonable time and place specified in the notice, and then and there answer questions; and

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(c) to produce to the Registrar, at a reasonable time and place specified in the notice, any documents in the custody or under the control of the person.

5 (2) The regulations must prescribe scales of expenses to be allowed to persons required to attend under this section.

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

10 (4) It is a reasonable excuse for a person to refuse or fail to comply with a requirement under subsection (1) if complying with the requirement may tend to incriminate the person.

**Order to comply with requirement**

102. (1) Where:

15 (a) a person is convicted before a court of an offence against subsection 101 (3); or

(b) a court makes an order under section 19B of the *Crimes Act 1914* in relation to a person in relation to an offence against subsection 101 (3);

20 in relation to the refusal or failure of the person to comply (whether in whole or part) with a requirement made by or under this Act, the court may, in addition to imposing a penalty on the person or making such an order in relation to the person, as the case may be, and even though the time for complying with the requirement or any other such requirement has  
25 passed, order the person to comply with:

(c) the requirement; and

(d) such other requirements made, or that could be made, in relation to the person by or under this Act as the court considers necessary to ensure the effectiveness of the first-mentioned requirement;

30 within a specified time or at a specified place and time.

(2) If an order under subsection (1) is not given orally by the court to the person to whom the order is addressed, the proper officer of the court must cause a copy of the order to be served on the person in the prescribed manner.

35 (3) A person who contravenes an order under subsection (1) is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 12 months.

**Act not a taxation law**

40 103. This Act is not a taxation law within the meaning of the *Taxation Administration Act 1953*.

**Regulations**

**104** The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular, may make regulations prescribing penalties not exceeding a fine of \$1,000 for offences against the regulations.

**PART 8—AMENDMENT OF THE CHILD SUPPORT ACT 1988****Principal Act** 10

**105.** In this Part, “Principal Act” means the *Child Support Act 1988*<sup>1</sup>.

**Short title**

**106.** Section 1 of the Principal Act is amended by omitting “*Child Support Act 1988*” and substituting “*Child Support (Registration and Collection) Act 1988*”.

**NOTE**

1. No. 3, 1988, as amended. For previous amendments, see No. 132, 1988.











