



Child Support Legislation Amendment (Reform of the Child Support Scheme— New Formula and Other Measures) Act 2006

Act No. 146 of 2006 as amended

This compilation was prepared on 3 March 2010

**[This Act was amended by Act No. 82 of 2007; No. 63 of 2008;
No. 8 of 2010]**

Amendments from Act No. 82 of 2007 (as amended by No. 73 of 2008)

[Schedule 1 (item 1) amended subsection 2(1)]

Schedule 1 (item 20) amended section 4

Schedule 1 (item 21) added Schedule 9

Schedule 1 (item 99) amended item 115 of Schedule 2

Schedule 1 (item 100) added item 116A to Schedule 2

Schedule 1 (item 212) repealed and substituted item 104 of Schedule 2

Schedule 1 (item 213) repealed items 1 and 2 of Schedule 6

Schedule 1 (item 214) repealed item 4 of Schedule 6

Schedule 1 (item 1) commenced immediately after 6 December 2006

Schedule 1 (items 20 and 21) commenced on 22 June 2007

Schedule 1 (items 99 and 100) commenced immediately before 1 January 2008

Schedule 1 (item 212) commenced immediately before 1 July 2008

Schedule 1 (items 213 and 214) commenced immediately before 1 July 2008

For application provision *see* Act No. 82, 2007, Schedule 1 (item 80)]

Amendments from Act No. 63 of 2008

[Schedule 6 (item 16) repealed and substituted item 73 and added item 73A to Schedule 5

Schedule 6 (item 17) amended subitem 74(2) of Schedule 5

Schedule 6 (items 16 and 17) commenced immediately after 6 December 2006]

Amendments from Act No. 8 of 2010

[Schedule 2 (item 2) repealed and substituted heading to item 114 of Schedule 2

Schedule 2 (item 3) added item 114A to Schedule 2

Schedule 2 (items 2 and 3) commenced immediately after 1 July 2008]

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An Act to amend the law relating to child support, and for related purposes

[Assented to 6 December 2006]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Child Support Legislation Amendment (Reform of the Child Support Scheme—New Formula and Other Measures) Act 2006*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 6 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	6 December 2006
2. Schedule 1	1 July 2008.	1 July 2008
3. Schedule 2, items 1 to 91	1 July 2008.	1 July 2008
3A. Schedule 2, items 92 to 96	1 January 2008.	1 January 2008
3B. Schedule 2, items 97 to 116	1 July 2008.	1 July 2008
3C. Schedule 2, item 116A	1 January 2008.	1 January 2008
3D. Schedule 2, item 117	1 July 2008.	1 July 2008

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Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
4. Schedule 2, item 118	The day on which this Act receives the Royal Assent.	6 December 2006
5. Schedule 3	1 January 2007.	1 January 2007
6. Schedule 4	Immediately after the commencement of Schedule 3 to this Act.	1 January 2007
7. Schedule 5, Part 1, Division 1	1 July 2008.	1 July 2008
8. Schedule 5, Part 1, Division 2	Immediately after the commencement of Schedule 1 to this Act.	1 July 2008
9. Schedule 5, Part 1, Division 3	Immediately after the commencement of Division 2 of Part 1 of Schedule 5 to this Act.	1 July 2008
10. Schedule 5, Part 2	The day on which this Act receives the Royal Assent.	6 December 2006
11. Schedule 5, Part 3	1 July 2008.	1 July 2008
12. Schedules 6 and 7	1 July 2008.	1 July 2008
13. Schedule 8, items 1 to 5	1 July 2008.	1 July 2008
14. Schedule 8, item 6	The day on which this Act receives the Royal Assent.	6 December 2006
15. Schedule 8, items 7 to 13	1 July 2008.	1 July 2008
16. Schedule 8, item 14	The day on which this Act receives the Royal Assent.	6 December 2006
17. Schedule 8, items 15 to 19	1 July 2008.	1 July 2008
18. Schedule 8, item 20	The day on which this Act receives the Royal Assent.	6 December 2006
19. Schedule 8, items 21 to 157	1 July 2008.	1 July 2008
<p>Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.</p>		

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- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Obtaining information

- (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
 - (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.
- (2) The regulations must prescribe scales of expenses to be allowed to persons required to attend under this section.
- (3) A person commits an offence if the person fails to comply with a requirement under subsection (1).

Penalty: 60 penalty units.

- (4) Subsection (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

5 Definitions

In this Act:

Assessment Act means the *Child Support (Assessment) Act 1989*.

Registration and Collection Act means the *Child Support (Registration and Collection) Act 1988*.

6 Regulations

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Act.

Schedule 1—The formulas (commencing on 1 July 2008)

Child Support (Assessment) Act 1989

1 Part 5

Repeal the Part, substitute:

Part 5—Administrative assessment of child support

Division 1—Preliminary

35A Simplified outline

The following is a simplified outline of this Part:

- This Part includes the formulas used for assessing the annual rate of child support payable by a parent for a child for a day in a child support period (other than in cases where that rate is worked out in accordance with a child support agreement, a Registrar's determination under Part 6A or a court order).
- The Costs of the Children Table published by the Secretary each year (based on the table in Schedule 1 to this Act) sets out the costs to parents of raising children in various age ranges.
- Those costs are to be met by both parents (by paying child support or by caring for their children) according to each parent's capacity to meet the costs.
- To determine each parent's capacity to meet those costs, the parents are assessed in respect of the costs of the child.
- Generally, both parents' income is taken into account in determining each parent's capacity to meet the costs of their children.

- The formulas also allow child support payable to non-parent carers of children to be worked out.

Division 2—The formulas

Subdivision A—Preliminary

35B Simplified outline

The following is a simplified outline of this Division:

- The Costs of the Children Table published by the Secretary each year (based on the table in Schedule 1 to this Act) sets out the costs to parents of raising children in various age ranges.
- These costs are to be met by both parents (by paying child support or by caring for their children) according to each parent's capacity to meet the costs.
- To determine each parent's capacity to meet the costs, the parents are assessed in respect of the costs of the child.
- Formulas 1 and 2 apply if both parents' incomes are taken into account in determining each parent's capacity to meet the costs of their children, and each parent only has one child support case.
- Formulas 3 and 4 apply if both parents' incomes are taken into account in determining each parent's capacity to meet the costs of their children, and at least one of the parents has multiple child support cases.
- Formulas 5 and 6 apply if only one parent's income is taken into account in determining the parent's capacity to meet the costs of his or her children (such as because the other parent is not a resident of Australia).
- Formulas 2, 4, 5 and 6 also allow child support payable to non-parent carers of children to be worked out.

- In some cases, the annual rate of child support payable by a parent is assessed under Subdivision B of Division 8 (low income parents and minimum annual rates of child support).

35C Application of Part to determine annual rate of child support

This Part applies in relation to the assessment of child support payable by a parent for a child, subject to:

- (a) any determination made by the Registrar under Part 6A (departure determinations); and
- (b) any order made by a court under Division 4 of Part 7 (departure orders); and
- (c) any provisions of a child support agreement that have effect, for the purposes of this Part, as if they were such an order made by consent.

Subdivision B—Working out annual rates of child support using incomes of both parents in single child support case

35D Application of Subdivision

The annual rate of child support payable for a child for a day in a child support period is assessed under this Subdivision if:

- (a) both parents of the child are to be assessed in respect of the costs of the child; and
- (b) both parents are to be assessed only in respect of the costs of:
 - (i) that child; and
 - (ii) any other child in the child support case that relates to that child.

35 Formula 1: Method statement using incomes of both parents in single child support case with no non-parent carer

This is how to work out the annual rate of child support payable for a child for a day in a child support period if no non-parent carer has a percentage of care for the child for the day.

Method statement

- Step 1.* Work out each parent's child support income for the child for the day (see section 41).
- Step 2.* Work out the parents' combined child support income for the child for the day (see section 42).
- Step 3.* Work out each parent's income percentage for the child for the day (see section 55B).
- Step 4.* Work out each parent's percentage of care for the child for the day (see section 48).
- Step 5.* Work out each parent's cost percentage for the child for the day (see section 55C).
- Step 6.* Work out each parent's child support percentage for the child for the day (see section 55D).
- Step 7.* Work out the costs of the child for the day (see sections 55G and 55H).
- Step 8.* If a parent has a positive child support percentage under step 6, the **annual rate of child support** payable by the parent for the child for the day is worked out using the formula:

$$\begin{array}{c} \text{Parent's} \\ \text{child support percentage} \\ \text{for the child for the day} \end{array} \times \begin{array}{c} \text{Costs of the child} \\ \text{for the day} \end{array}$$

Note: If a parent's percentage of care for a child is more than 65%, the parent's annual rate of child support for the child is nil (see section 40C).

36 Formula 2: Working out annual rates of child support using incomes of both parents in single child support case with a non-parent carer

- (1) This is how to work out the annual rate of child support payable for a child for a day in a child support period if one or more non-parent carers have a percentage of care for the child for the day.

- (2) Follow steps 1 to 8 of the method statement in section 35 for each parent (disregarding subsection 55D(2) (negative child support percentages)).

Annual rate payable by parent

- (3) If a parent's (the **first parent's**) child support percentage under step 6 of the method statement in section 35 is positive, then the **annual rate of child support** payable by the first parent for the child for the day is the annual rate of child support for the child worked out under step 8 of the method statement.

Annual rate payable only to non-parent carers

- (4) If:
- (a) the second parent's child support percentage is also positive; or
 - (b) the second parent's child support percentage is nil or negative, and the second parent does not have at least shared care of the child during the relevant care period;
- then, subject to section 40B, the first parent must pay the annual rate of child support that is payable by the first parent for the child under subsection (3) to the non-parent carer or carers in accordance with section 40A.

Note 1: If both parents have a positive child support percentage, then the non-parent carer or carers are entitled to be paid the total of the 2 annual rates of child support that are payable by the parents for the child.

Note 2: Under section 40B, a non-parent carer of a child is not entitled to be paid child support unless he or she applies under section 25A in relation to the child.

Annual rate payable to parent and non-parent carer

- (5) If the second parent's child support percentage is negative, and the second parent has at least shared care of the child during the relevant care period, then:
- (a) the first parent must pay to the second parent the annual rate of child support for the child worked out under step 8 of the method statement using the second parent's negative child support percentage (expressed as a positive); and

- (b) subject to section 40B, the first parent must pay to the non-parent carer an annual rate of child support for the child that is the difference between:
 - (i) the annual rate of child support payable by the first parent for the child under subsection (3); and
 - (ii) the rate referred to in paragraph (a) of this subsection.

Subdivision C—Working out annual rates of child support using incomes of both parents in multiple child support cases

36A Application of Subdivision

The annual rate of child support payable for a child for a day in a child support period is assessed under this Subdivision if:

- (a) both parents of the child are to be assessed in respect of the costs of that child; and
- (b) at least one of the parents of the child is to be assessed in respect of the costs of another child in another child support case.

37 Formula 3: Method statement using incomes of both parents in multiple child support cases with no non-parent carer

This is how to work out the annual rate of child support payable for a child for a day in a child support period if no non-parent carer has a percentage of care for the child for the day.

Method statement

- Step 1.* Follow steps 1 to 8 in the method statement in section 35 for each parent.
- Step 2.* Work out each parent's multi-case cap (if any) for the child for the day (see section 55E).
- Step 3.* If a parent has a positive child support percentage under step 6 of the method statement in section 35, the **annual rate of child support** payable by the parent for the child for the day is the lower of:

- (a) the annual rate of child support for the child worked out under step 8 of the method statement; and
- (b) the parent's multi-case cap (if any) for the child for the day.

Note: If a parent's percentage of care for a child is more than 65%, the parent's annual rate of child support for the child is nil (see section 40C).

38 Formula 4: Working out annual rates of child support using incomes of both parents in multiple child support cases with a non-parent carer

- (1) This is how to work out the annual rate of child support payable for a child for a day in a child support period if one or more non-parent carers have a percentage of care for the child for the day.
- (2) Follow steps 1 to 8 of the method statement in section 35 for each parent (disregarding subsection 55D(2) (negative child support percentages)).
- (3) Work out each parent's multi-case cap (if any) for the child for the day (see section 55E).

Annual rate payable by parent

- (4) If a parent's (the **first parent's**) child support percentage under step 6 of the method statement in section 35 is positive, then the **annual rate of child support** payable by the first parent for the child for the day is the lower of:
 - (a) the annual rate of child support for the child worked out under step 8 of the method statement; and
 - (b) the first parent's multi-case cap (if any) for the child for the day.

Annual rate payable only to non-parent carers

- (5) If:
 - (a) the second parent's child support percentage is also positive;or

- (b) the second parent's child support percentage is nil or negative, and the second parent does not have at least shared care of the child during the relevant care period;

then, subject to section 40B, the first parent must pay the annual rate of child support that is payable by the first parent for the child under subsection (4) to the non-parent carer or carers in accordance with section 40A.

Note 1: If both parents have a positive child support percentage, then the non-parent carer or carers are entitled to be paid the total of the 2 annual rates of child support that are payable by the parents for the child.

Note 2: Under section 40B, a non-parent carer of a child is not entitled to be paid child support unless he or she applies under section 25A in relation to the child.

Annual rate payable to parent and non-parent carer

- (6) If:

- (a) the second parent's child support percentage is negative; and
(b) the second parent has at least shared care of the child during the relevant care period;

then, subject to section 40B, the first parent must pay the annual rate of child support that is payable by the first parent for the child under subsection (4) to the second parent and the non-parent carer in accordance with section 40A.

Subdivision D—Working out annual rates of child support using income of one parent

38A Application of Subdivision

The annual rate of child support payable for a child for a day in a child support period is assessed under this Subdivision if only one parent of the child is to be assessed in respect of the costs of the child.

39 Formula 5: Method statement using income of one parent where other parent not a resident of Australia or in special circumstances

This is how to work out the annual rate of child support payable for a child for a day in a child support period if a non-parent carer of

the child has applied for a parent of the child to be assessed in respect of the costs of the child because of subparagraph 25A(b)(ii) or (iii) (non-resident of Australia or special circumstances).

Method statement

- Step 1.* Work out the parent's child support income for the day (see section 41) and double that income.
- Step 2.* Work out the parent's percentage of care for the child for the day (see section 48).
- Step 3.* Work out the parent's cost percentage for the child for the day (see section 55C).
- Step 4.* Work out the costs of the child for the day (see sections 55G and 55H), assuming, in applying section 55G and Schedule 1, that the reference to the child support income of the parent in the Costs of the Children Table is a reference to the amount worked out under step 1.
- Step 5.* Work out the following rate:
- $$\frac{1}{2} \times \left[\text{Costs of the child for the day} - \left(\text{Parent's cost percentage for the child for the day} \times \text{Costs of the child for the day} \right) \right]$$
- Step 6.* If the parent is not assessed in respect of the costs of another child who is in another child support case, the **annual rate of child support** payable by the parent for the child for the day is the rate worked out under step 5.
- Step 7.* If the parent is assessed in respect of the costs of another child who is in another child support case, work out the parent's multi-case cap for the child for the day (see section 55E).
- Step 8.* The **annual rate of child support** payable by the parent for the child for the day is the lower of:

- (a) the rate worked out under step 5; and
- (b) the parent's multi-case cap for the child for the day.

Step 9. If there is only one non-parent carer who has a percentage of care for the child for the day, the parent must pay the annual rate of child support that is payable for the child under step 5 or 8 to the non-parent carer. If there are 2 non-parent carers who have a percentage of care for the child for the day, then, subject to section 40B, the parent must pay the annual rate of child support that is payable for the child under step 5 or 8 to the non-parent carers in accordance with section 40A.

Note: Under section 40B, a non-parent carer of a child is not entitled to be paid child support unless he or she applies under section 25A in relation to the child.

40 Formula 6: Method statement using income of one parent where other parent deceased

This is how to work out the annual rate of child support payable for a child for a day in a child support period if a non-parent carer of the child has applied for a parent of the child to be assessed in respect of the costs of the child because of subparagraph 25A(b)(iv) (deceased parent).

Method statement

- Step 1.* Work out the parent's child support income for the day (see section 41).
- Step 2.* Work out the parent's percentage of care for the child for the day (see section 48).
- Step 3.* Work out the parent's cost percentage for the child for the day (see section 55C).
- Step 4.* Work out the costs of the child for the day (see sections 55G and 55H).

Step 5. Work out the following rate:

$$\text{Costs of the child for the day} - \left(\text{Parent's cost percentage for the child for the day} \times \text{Costs of the child for the day} \right)$$

Step 6. If the parent is not assessed in respect of the costs of another child who is in another child support case, the **annual rate of child support** payable by the parent for the child for the day is the rate worked out under step 5.

Step 7. If the parent is assessed in respect of the costs of another child who is in another child support case, work out the parent's multi-case cap for the child for the day (see section 55E).

Step 8. The **annual rate of child support** payable by the parent for the child for the day is the lower of:

- (a) the rate worked out under step 5; and
- (b) the parent's multi-case cap for the child for the day.

Step 9. If there is only one non-parent carer who has a percentage of care for the child for the day, the parent must pay the annual rate of child support that is payable for the child under step 5 or 8 to the non-parent carer. If there are 2 non-parent carers who have a percentage of care for the child for the day, then, subject to section 40B, the parent must pay the annual rate of child support that is payable for the child under step 5 or 8 to the non-parent carers in accordance with section 40A.

Note: Under section 40B, a non-parent carer of a child is not entitled to be paid child support unless he or she applies under section 25A in relation to the child.

Subdivision E—General provisions

40A Cases where there is more than one person entitled to child support

- (1) If, in applying:
- (a) subsection 36(4) or 38(5) or (6); or
 - (b) step 9 in the method statement in section 39 or 40; or
 - (c) subsection 65A(5);
- child support is payable to:
- (d) a parent and a non-parent carer of a child; or
 - (e) 2 non-parent carers of a child;
- then, the annual rate of child support for the child for a day in the child support period that each parent or non-parent carer (as the case requires) is, subject to section 40B, entitled to be paid is:

$$\begin{array}{c} \text{Total rate to which parent} \\ \text{and non-parent carers} \\ \text{are entitled to be paid} \\ \text{for the day} \end{array} \times \frac{\begin{array}{c} \text{Parent's or non-parent carer's} \\ \text{cost percentage for the child for the day} \end{array}}{\begin{array}{c} \text{Total of parent's and non-parent carer's} \\ \text{cost percentages for the child for the day} \end{array}}$$

Note: Under section 40B, a non-parent carer of a child is not entitled to be paid child support unless he or she applies under section 25A in relation to the child.

- (2) In applying subsection (1), even if a non-parent carer is not entitled to be paid an annual rate of child support because of section 40B, the non-parent carer's cost percentage is taken into account.

40B Non-parent carer must have applied for child support

- (1) A non-parent carer of a child is not, under section 36, 38, 39, 40, 65A or 66, entitled to be paid an annual rate of child support for the child for a day in a child support period unless the non-parent carer has made an application under section 25A in relation to the child.
- (2) If a non-parent carer is not entitled to be paid child support for a child for a day in a child support period under subsection (1), the **annual rate of child support** payable by the parent for the child for the day is reduced by the amount that is not payable because of subsection (1).

(3) If:

- (a) a non-parent carer of a child has not so applied at the time the administrative assessment of child support for the child for the child support period is made; but
- (b) the non-parent carer does so during the child support period; then:
- (c) the non-parent carer is entitled to be paid an annual rate of child support for the child worked out under this Part from the day on which the non-parent carer makes the application under section 25A; and
- (d) despite paragraph 7A(2)(a), a new child support period is not started by that application.

40C Parents with more than 65% care

The *annual rate of child support* payable by a parent for a child for a day in a child support period is nil if:

- (a) the parent's annual rate of child support for the child is worked out under section 35 or 37 (income of both parents, no non-parent carer); and
- (b) the parent's percentage of care determined for the purposes of the administrative assessment of child support for the child is more than 65%.

40D Parents with nil child support percentage

The *annual rate of child support* payable by a parent for a child for a day in a child support period is nil if the parent's child support percentage for the child for the day is nil.

Division 3—Child support income

Subdivision A—Preliminary

40E Simplified outline

The following is a simplified outline of this Division:

- The income used in determining a parent's capacity to meet the costs of his or her children might be reduced by the following amounts:
 - (a) the self-support amount (to take account of the parent's need to support himself or herself);
 - (b) a relevant dependent child amount (if the parent cares for a relevant dependent child or step-child of the parent);
 - (c) a multi-case allowance (if the parent has multiple child support cases).
- The relevant dependent child amount and the multi-case allowance take account of the costs of relevant dependent children, and children in other child support cases, in a similar way to the way in which the costs of the children are worked out for children in a child support case.
- A parent's adjusted taxable income for a year of income can be reduced under section 44 in respect of a particular child if the parent earns additional income during the first 3 years after separating from the other parent of the child.

Subdivision B—Child support income and combined child support income

41 Working out parent's child support income

Single child support case—no relevant dependent children

- (1) If:
- (a) a parent is to be assessed in respect of the costs of a child in only one child support case; and
 - (b) the parent does not have a relevant dependent child;
- the parent's ***child support income*** for the child for a day in a child support period is the amount worked out using the formula:

$$\begin{array}{rcccl} \text{Parent's adjusted taxable} & & \text{Parent's} & & \\ \text{income for the child} & - & \text{self-support amount} & & \\ \text{for the day} & & \text{for the day} & & \end{array}$$

Single child support case—relevant dependent children

(2) If:

- (a) a parent is to be assessed in respect of the costs of a child (the ***particular child***) in only one child support case; and
 - (b) the parent has at least one relevant dependent child;
- the parent's ***child support income*** for the particular child for a day in a child support period is the amount worked out using the formula:

$$\begin{array}{rcccl} \text{Parent's adjusted} & & \text{Parent's} & & \text{Parent's} \\ \text{taxable income} & - & \text{self-support amount} & - & \text{relevant dependent} \\ \text{for the} & & \text{for the day} & & \text{child amount} \\ \text{particular child} & & & & \text{for the day} \\ \text{for the day} & & & & \end{array}$$

Multiple child support cases—no relevant dependent children

(3) If:

- (a) a parent is to be assessed in respect of the costs of a child (the ***particular child***); and
 - (b) the parent is also to be assessed in respect of the costs of another child in another child support case; and
 - (c) the parent does not have a relevant dependent child;
- the parent's ***child support income*** for the particular child for a day in a child support period is the amount worked out using the formula:

$$\begin{array}{rcccl} \text{Parent's adjusted} & & \text{Parent's} & & \text{Parent's} \\ \text{taxable income} & - & \text{self-support amount} & - & \text{multi-case allowance} \\ \text{for the} & & \text{for the day} & & \text{for the} \\ \text{particular child} & & & & \text{particular child} \\ \text{for the day} & & & & \text{for the day} \end{array}$$

Multiple child support cases—relevant dependent children

(4) If:

- (a) a parent is to be assessed in respect of the costs of a child (the ***particular child***); and

- (b) the parent is also to be assessed in respect of the costs of another child in another child support case; and
 - (c) the parent has at least one relevant dependent child;
- the parent's **child support income** for the particular child for a day in a child support period is the amount worked out using the formula:

$$\begin{array}{ccccccc} \text{Parent's} & & & & \text{Parent's} & & \text{Parent's} \\ \text{adjusted} & & & & \text{self-support} & & \text{relevant} \\ \text{taxable income} & - & \text{amount} & - & \text{dependent} & - & \text{multi-case} \\ \text{for the} & & \text{for the day} & & \text{child amount} & & \text{allowance} \\ \text{particular child} & & & & \text{for the day} & & \text{for the} \\ \text{for the day} & & & & & & \text{particular child} \\ & & & & & & \text{for the day} \end{array}$$

Negative result taken to be nil

- (5) A parent's **child support income** for a day in a child support period is taken to be nil if the amount worked out using a formula in this section is negative.

42 Working out parents' combined child support income

Work out the parents' **combined child support income** for a child for a day in a child support period by adding together each parent's child support income for the child for the day.

Subdivision C—Working out the components of child support income

43 Working out parent's adjusted taxable income

- (1) Subject to subsection (2), a parent's **adjusted taxable income** for a child for a day in a child support period is the total of the following components:
 - (a) the parent's taxable income for the last relevant year of income in relation to the child support period;
 - (b) the parent's reportable fringe benefits total for that year of income;
 - (c) the parent's target foreign income for that year of income;
 - (d) the parent's net rental property loss for that year of income;
 - (e) the total of the tax free pensions or benefits received by that parent in that year of income.

Note 1: Other provisions that relate to a person's adjusted taxable income are section 34A and Subdivisions B and C of Division 7.

Note 2: The components of the definition of *adjusted taxable income* are defined in section 5.

- (2) If the Registrar amends an assessment under section 44, then for the purposes of the assessment, the person's *adjusted taxable income* for a child to whom the assessment relates, for a day in the child support period, is the amount determined by the Registrar.

44 Post-separation costs

Application for post-separation income to be excluded

- (1) A parent (the *applicant*) of a child may apply to the Registrar to amend an administrative assessment of child support payable by or to the parent for the child for part of a child support period if:
- (a) the applicant and the other parent of the child lived together on a genuine domestic basis for at least 6 months; and
 - (b) the last separation of the applicant from the other parent before the application for administrative assessment of child support for the child was made under section 25 or 25A occurred within the last 3 years; and
 - (c) at the time of the application under this section, the applicant and the other parent remain separated; and
 - (d) in the last relevant year of income the applicant earned, derived or received income:
 - (i) in accordance with a pattern of earnings, derivation or receipt that was established after the applicant and the other parent first separated; and
 - (ii) that is of a kind that it is reasonable to expect would not have been earned, derived or received in the ordinary course of events.
- (2) If the applicant makes an application under this section, the Registrar may determine that the applicant's adjusted taxable income for the child for a day in the child support period is a specified amount that excludes the income referred to in paragraph (1)(d).
- (3) However, the Registrar may make a determination under subsection (2) only if the determination:

- (a) reduces the applicant's adjusted taxable income for the child for a day in the child support period by 30% or less; and
- (b) applies in respect of a day in the child support period, being a day that is less than 3 years after the last separation referred to in paragraph (1)(b).

Registrar to implement determinations

- (4) The Registrar is to take such action as is necessary to give effect to the determination by amending any administrative assessment that has been made in relation to the child support period.

Notice to be served if Registrar refuses application

- (5) If the Registrar refuses to make a determination under subsection (2), the Registrar must serve written notice of the decision on the applicant.
- (6) The notice must include, or be accompanied by, a statement to the effect:
 - (a) that the applicant may, subject to the Registration and Collection Act, object to the particulars of the assessment in relation to which the applicant sought to make the application; and
 - (b) that if the applicant is aggrieved by the decision on the objection, he or she may, subject to that Act, apply to the SSAT for review of the decision.
- (7) This section does not prevent the Registrar from making a new assessment for part of the child support period.

Note: This section does not limit the power under section 75 to amend assessments (see subsection 75(5)).

45 Working out the self-support amount

A parent's *self-support amount* for a day in a child support period is:

$$\frac{1}{3} \times \begin{array}{l} \text{Annualised MTAWWE figure} \\ \text{for the relevant September quarter} \end{array}$$

Note: A parent's self-support amount can be varied by a determination or order under section 98S or 118.

46 Working out parent's relevant dependent child amount

A parent's *relevant dependent child amount* for a day in a child support period is the total of the amounts worked out for each relevant dependent child of the parent using this method statement.

Method statement

- Step 1.* Work out the difference between the parent's adjusted taxable income for the child for the day and the parent's self-support amount for the day (see sections 43 and 45).
- Step 2.* Work out the parent's percentage of care for the child for the day (see section 48).
- Step 3.* Work out the parent's cost percentage for the child for the day (see section 55C).
- Step 4.* Work out the costs of the child for the day (see sections 55G and 55H) as if:
- (a) the parent's annual rate of child support were assessed under Subdivision D of Division 2; and
 - (b) the reference in subsection 55G(2) to the parent's child support income were a reference to the amount worked out under step 1; and
 - (c) references in sections 55G and 55H to children in the child support case that relates to the child were references to all of the parent's relevant dependent children.
- Step 5.* Work out the following amount for the child for a day in the child support period:
- $$\begin{array}{ccc} \text{Parent's cost percentage} & & \\ \text{for the child} & \times & \text{Costs of the child} \\ \text{under step 3} & & \text{under step 4} \end{array}$$

Note: Section 73A deals with the Registrar discovering, after making an administrative assessment, that a parent has a relevant dependent child.

47 Working out multi-case allowances

A parent's **multi-case allowance** for a child (the **particular child**) for a day in a child support period is worked out using this method statement.

Method statement

Step 1. Work out the following amount:

$$\begin{array}{r} \text{Parent's adjusted taxable income} \\ \text{for the particular child} \\ \text{for the day} \end{array} \quad - \quad \begin{array}{r} \text{Self-support amount} \\ \text{for the day} \end{array}$$

Step 2. If the parent has a relevant dependent child, take the parent's relevant dependent child amount (see section 46) for the day from the amount worked out under step 1.

Step 3. Work out the costs of the children for the day for all children (the **multi-case children**) for whom the parent is assessed in respect of the costs of the child, as if:

- (a) the parent's annual rate of child support were assessed under Subdivision D of Division 2; and
- (b) the reference in subsection 55G(2) to the parent's child support income were a reference to the amount worked out under step 1 or 2 (as the case requires); and
- (c) references in section 55G to children in the child support case that relates to the child were references to all of the parent's multi-case children.

Step 4. Work out the parent's **multi-case child costs** for the particular child for the day using the formula:

$$\frac{\begin{array}{r} \text{Costs of the children} \\ \text{worked out under step 3} \end{array}}{\begin{array}{r} \text{Total number of} \\ \text{multi-case children} \end{array}}$$

Step 5. The parent's **multi-case allowance** for the particular child for the day is the following amount:

$$\begin{array}{rcl} \text{Multi-case child costs} & & \text{Number of multi-case children} \\ \text{for the particular child} & \times & \text{in other child support cases} \\ \text{for the day} & & \text{that do not relate} \\ & & \text{to the particular child} \end{array}$$

Division 4—Percentage of care

Subdivision A—Preliminary

47A Simplified outline

The following is a simplified outline of this Division:

- A person's (whether the person is a parent or a non-parent carer of a child) percentage of care for the child for a day in a child support period is the percentage of care of the child that the person is likely to have during a 12 month period.
- A percentage of care for a child is as determined by an oral agreement or a parenting plan made by the parents of the child (or a parent and a non-parent carer), or as determined by a court order.
- The Registrar can make a determination of a person's percentage of care for a child in certain cases (such as if there is no such agreement, plan or order, or if care of the child changes).
- A parent's percentage of care for a child is used in section 55C to work out the parent's cost percentage for the child.
- A non-parent carer's percentage of care is used in section 40A to work out how much child support the non-parent carer is entitled to be paid for the child.

47B Meaning of *court order*

In this Division:

court order means:

- (a) a family violence order within the meaning of section 4 of the *Family Law Act 1975*; or
- (b) a parenting order within the meaning of section 64B of the *Family Law Act 1975*; or
- (c) a State child order registered in accordance with section 70D of the *Family Law Act 1975*; or
- (d) an overseas child order registered in accordance with section 70G of the *Family Law Act 1975*.

Subdivision B—Determining percentages of care

48 Working out percentage of care

- (1) A person's ***percentage of care*** for a child for a day in a child support period is the percentage of care of the child that the person is likely to have during the period (the ***care period***) of 12 months from:
 - (a) the day on which an application is made under section 25 or 25A for a parent to be assessed in respect of the costs of the child; or
 - (b) the day on which the Registrar becomes aware of the following:
 - (i) a change of at least 7.1% in the percentage of care of the child that the person has;
 - (ii) that the person's percentage of care for the child has fallen below 14%;
 - (iii) that the person's percentage of care for the child has increased to 14%, or above 14%.

Note: The Registrar is not entitled to amend an administrative assessment in respect of a person's percentage of care unless the Registrar becomes aware of an event mentioned in paragraph (1)(b) (see subsection 75(2)).

- (2) The percentage of care is to be worked out in accordance with this Subdivision.

Note: Generally, a person's percentage of care for a child is worked out based on the number of nights that the child is likely to be in the care of the person during the care period.

- (3) If a person's percentage of care worked out in accordance with this Subdivision is not a whole percentage:
- (a) if the percentage is greater than 50%—the percentage is rounded up to the nearest whole percentage; and
 - (b) if the percentage is less than 50%—the percentage is rounded down to the nearest whole percentage.

49 Agreements, parenting plans and court orders may determine percentage of care

The percentage (if any) of care of a child that a parent or non-parent carer is likely to have during a care period is determined in accordance with the following agreement, plan or order if the Registrar is satisfied that the agreement, plan or order allows such a percentage to be determined:

- (a) if the relevant application for administrative assessment for child support for the child is made under subparagraphs 25A(b)(ii) to (iv) (application by non-parent carer in relation to one parent):
 - (i) an oral or written agreement, or parenting plan, between the parent and a non-parent carer of the child that the Registrar is satisfied has been made; or
 - (ii) a court order that relates to the parent and a non-parent carer of the child, or that relates to the child;
- (b) otherwise:
 - (i) an oral agreement between the parents of the child that the Registrar is satisfied has been made; or
 - (ii) a parenting plan for the child that has been entered into by the parents; or
 - (iii) a court order that relates to the parents, or that relates to the child.

50 Registrar determinations where no agreement, plan or order

- (1) The Registrar must determine the percentage (if any) of care of a child that a parent or non-parent carer of the child is likely to have during the relevant care period if there is no agreement, plan or

order that allows such a percentage to be determined under section 49.

- (2) In making the determination, the Registrar must take into account such period as is required in order for the Registrar to be satisfied that there is, has been, or will be, a pattern of care for the child.
- (3) The Registrar may revoke or vary a determination made under this section.

Subdivision C—Changes to percentages of care

51 Person no longer agrees with oral agreement

If:

- (a) an oral agreement determines, under section 49, a percentage of care of a child that a parent or non-parent carer is likely to have during a care period; and
- (b) the Registrar becomes aware that a parent or non-parent carer of the child no longer agrees with that percentage of care; and
- (c) immediately before the oral agreement was made, a parenting plan or court order determined the percentage of care of the child that each parent or non-parent carer would have during the care period;

the percentage of care of the child that a parent or non-parent carer is likely to have during the care period is as determined in accordance with the parenting plan or court order.

52 Interim Registrar determinations where parent or non-parent carer does not agree with percentages of care

- (1) The Registrar may determine the percentage (if any) of care of a child that a parent or non-parent carer of the child is likely to have during the relevant care period if:
 - (a) there is an agreement, plan or order that allows such a percentage to be determined under section 49; and
 - (b) a parent or non-parent carer of the child does not agree that the care of the child that is actually taking place is in accordance with the percentage so determined; and
 - (c) in the circumstances of the case, the percentage so determined would result in an unjust and inequitable

determination of the level of financial support to be provided by a parent for the child; and

- (d) a parent or non-parent carer of the child has taken reasonable action:
 - (i) to seek to reach agreement; or
 - (ii) to seek a court order; or
 - (iii) to enforce a court order;about the care of the child; and
- (e) a parent or non-parent carer of the child applies for the determination.

Note: If the Registrar refuses to make a determination under this section, the Registrar must give the applicant a notice under section 54.

- (2) In making the determination, the Registrar must take into account such period as is required in order for the Registrar to be satisfied that there is, has been, or will be, a pattern of care for the child.
- (3) The Registrar may revoke or vary a determination made under this section.
- (4) Before the end of 6 months after a determination is made under this section, the Registrar:
 - (a) must review the determination; and
 - (b) may make another determination under this section.

53 Registrar determination where parent's care falls below 14%

Making a determination

- (1) The Registrar may determine the percentage (if any) of care of a child that a parent or non-parent carer is likely to have during a care period if:
 - (a) a parent (the ***first parent***) was to have at least regular care of the child during the relevant care period under an oral agreement, parenting plan or court order; and
 - (b) the first parent has no care, or has a pattern of care that is less than regular care, of the child despite the other parent or a non-parent carer making the child available to the first parent; and
 - (c) the other parent or a non-parent carer of the child applies for the determination.

Note: If the Registrar refuses to make a determination under this section, the Registrar must give the applicant a notice under section 54.

Day on which determination commences

- (2) The determination must specify, in accordance with subsections (4) and (5), the first day in the child support period to which the determination is to apply.
- (3) The determination applies to the day specified, and later days in the child support period.
- (4) If the Registrar is satisfied that the other parent or the non-parent carer who applied for the determination failed, within a reasonable period, to notify the Registrar that the first parent had no care, or less than regular care, of the child during the relevant care period, the day specified must be the day on which the determination is made.
- (5) Otherwise, the day specified must be:
 - (a) if the first parent never established a pattern of care in accordance with the oral agreement, parenting plan or court order—the day on which the plan or court order was entered into or made; or
 - (b) if the first parent established a pattern of care in accordance with the oral agreement, parenting plan or court order, but later ceased the established pattern of care—the day on which the parent ceased the previously established pattern.
- (6) To avoid doubt, a parent never establishes a pattern of care if:
 - (a) the parent could not have established the pattern of care until a particular period that occurs later in the child support period; and
 - (b) the parent does not establish that pattern during that particular period.
- (7) The Registrar may revoke or vary a determination made under this section.

Registrar to make determination under this section (and not interim determination)

- (8) If the Registrar could make a determination under section 52 and this section in respect of the percentage of care for a child, the
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Registrar must make a determination under this section and not section 52.

54 Notice to be served if Registrar refuses application

- (1) If the Registrar refuses to make a determination under section 52 or 53, the Registrar must serve written notice of the decision on the person who made the application.
- (2) The notice must include, or be accompanied by, a statement to the effect:
 - (a) that the person may, subject to the Registration and Collection Act, object to the particulars of the assessment in relation to which the person sought to make the application; and
 - (b) that if the person is aggrieved by the decision on the objection, he or she may, subject to that Act, apply to the SSAT for review of the decision.

Subdivision D—Where there is more than one agreement, plan, order or determination

55 Where there is more than one agreement, plan, order or determination

- (1) If more than one agreement, plan, order or determination applies, under section 49, 50, 52 or 53, to a day in a child support period, then the percentage of care of a child that a parent or non-parent carer is likely to have during the care period is as determined by the most recent agreement, plan, order or determination.
- (2) However, the most recent agreement, plan or determination is subject to any court order made in respect of the percentage of care of a child that specifies that the order cannot be altered by agreement between the persons in respect of whom the order is made.

Division 5—Working out other elements for the formulas

Subdivision A—Preliminary

55A Simplified outline

The following is a simplified outline of this Division:

- A parent's income percentage represents the parent's capacity to meet the costs of the child.
- A parent's cost percentage represents the extent to which the parent is taken to have met the costs of the child through care.
- A parent's child support percentage is the difference between the parent's income percentage and his or her cost percentage. Generally, if the parent has a positive child support percentage, the annual rate of child support payable by the parent is that percentage of the costs of the child.
- If a parent has multiple child support cases, the annual rate of child support payable by the parent for a child is capped by the parent's multi-case cap for the child.

Subdivision B—Working out other elements for the formulas

55B Working out income percentages

Work out each parent's *income percentage* for a child for a day in a child support period using the formula (worked out to 2 decimal places, rounding up if the third decimal place is 5 or more):

$$\frac{\text{Parent's child support income for the child for the day}}{\text{Parents' combined child support income for the child for the day}}$$

55C Working out cost percentages

A parent's or non-parent carer's *cost percentage* for a child for a day in a child support period is the percentage worked out using

the table based on the parent's or non-parent carer's (as the case requires) percentage of care for the child for the day.

Cost percentages		
Item	Column 1	Column 2
	Percentage of care	Cost percentage
1	0 to less than 14%	Nil
2	14% to less than 35%	24%
3	35% to less than 48%	25% plus 2% for each percentage point over 35%
4	48% to 52%	50%
5	more than 52% to 65%	51% plus 2% for each percentage point over 53%
6	more than 65% to 86%	76%
7	more than 86% to 100%	100%

55D Working out child support percentages

- (1) Work out each parent's **child support percentage** for a child for a day in the child support period using the formula:

$$\text{Parent's income percentage for the child for the day} - \text{Parent's cost percentage for the child for the day}$$

- (2) A parent's **child support percentage** for a day in a child support period is taken to be nil if the amount worked out using the formula is negative.

55E Working out the multi-case cap

- (1) Work out a parent's multi-case cap for a child (the **particular child**) for a day in a child support period in accordance with subsection (2) if:
- (a) the parent's annual rate of child support for the particular child is assessed for the day under section 37, 38, 39 or 40; and
 - (b) if section 37 or 38 applies—the parent has a positive child support percentage for the particular child under step 6 of the method statement in section 35; and

- (c) in any case—the parent is assessed for the day in respect of the costs of another child who is in another child support case.
- (2) The parent's **multi-case cap** for the particular child for the day is worked out using the formula:

$$\left(100\% - \frac{\text{Parent's cost percentage for the particular child for the day}}{\text{for the particular child for the day}} \right) \times \frac{\text{Multi-case child costs for the particular child for the day}}{\text{for the particular child for the day}}$$

Division 6—The costs of the child

Subdivision A—Preliminary

55F Simplified outline

The following is a simplified outline of this Division:

- The costs of the children are worked out using the rules in this Division and the Costs of the Children Table in Schedule 1.
- The costs of the children are based on the number of children in a child support case and the ages of those children.
- The costs of the child are the costs of the children divided by the number of children in the child support case.
- The Costs of the Children Table is updated every year to reflect changes to the annualised MTAW figure.

Subdivision B—The costs of the child

55G Working out the costs of the children

- (1) If an annual rate of child support for a day in a child support period is assessed for a child under section 35, 36, 37 or 38 (Formulas 1 to 4), identify the column in the Costs of the Children Table for that child support period that covers the combined child support income of the parents of the child.

Note: The Secretary publishes the updated Costs of the Children Table in the *Gazette* each year for child support periods that begin in the next year (see section 155).

- (2) If an annual rate of child support for a day in a child support period is assessed for a child under Subdivision D of Division 2 (Formulas 5 and 6), identify the column in the Costs of the Children Table for that child support period that covers the child support income of the parent of the child.

Note: This subsection also applies in working out the relevant dependent child amount and the multi-case allowance (see step 4 of the method statement in section 46 and step 3 of the method statement in section 47).

- (3) Identify the number of children (the ***child support children***) in the child support case that relates to the child.
- (4) Identify the ages of the child support children at the time the administrative assessment is made. If there are more than 3 child support children, use the ages of the 3 oldest children.
- (5) Identify the item in the relevant column in the Costs of the Children Table that covers that number of child support children of those ages.
- (6) The amount worked out for the item in accordance with Schedule 1 to this Act is the ***costs of the children***.

55H Working out the costs of the child

The ***costs of a child*** for a day in a child support period is:

- (a) if there is only one child support child—the costs of the children; and
- (b) otherwise—the costs of the children divided by the number of child support children.

Division 7—Assessments and estimates of adjusted taxable income

Subdivision A—Preliminary

55J Simplified outline

The following is a simplified outline of this Division:

- A parent's taxable income is generally the amount of taxable income that is assessed under an Income Tax Assessment Act.
- The Registrar might make a determination of a parent's adjusted taxable income if the parent has not lodged a tax return.
- There are limits on the Registrar's ability to amend an assessment for past periods if the parent later lodges his or her tax return.
- A parent can estimate the amount of his or her adjusted taxable income for days in a child support period.

Subdivision B—Adjusted taxable income determined by reference to taxable income for last relevant year of income

56 Taxable income is as assessed under Income Tax Assessment Act

Meaning of taxable income

- (1) For the purposes of assessing a parent in respect of the costs of a child in relation to a child support period, if the parent's taxable income has been assessed under an Income Tax Assessment Act for the last relevant year of income in relation to the child support period, the parent's **taxable income** for that year is the amount as so assessed.

Note: Sections 34A and 57 are also relevant to a person's taxable income.

When amended tax assessment may be taken into account

- (2) If, after an administrative assessment of child support is made, the assessment (the **tax assessment**) of a parent's taxable income is amended (whether or not because of an objection, appeal or review), the Registrar must not amend the administrative assessment to take account of the amendment to the tax assessment unless one of the following applies:
 - (a) the amendment to the tax assessment is made under item 5 of the table in subsection 170(1) of the *Income Tax Assessment Act 1936* (amendment due to fraud or evasion);

- (b) the amendment to the tax assessment is made under provisions of an Income Tax Assessment Act that are prescribed by the regulations for the purposes of this paragraph;
- (c) the amendment is made in circumstances prescribed for the purposes of this paragraph;
- (d) the amendment is made solely for the purposes of working out the parent's adjusted taxable income for the last relevant year of income for the purposes of subsection 60(3) of this Act (first estimate must be lower than adjusted taxable income).

Date of assessment of a parent's taxable income taken to be date of notice of the assessment

- (3) For the purposes of this section, if:
 - (a) notice of an assessment (including an amended assessment) of a parent's taxable income under an Income Tax Assessment Act has been served on the parent under the *Income Tax Assessment Act 1936*; and
 - (b) the notice is dated;then the assessment is taken to have been made on the date of the notice.

Section not to affect determinations, court orders or consent orders

- (4) This section does not prevent:
 - (a) the Registrar from making any determination under Part 6A (departure determinations); or
 - (b) a court from making any order under Division 4 of Part 7 (departure orders); or
 - (c) the making, and acceptance by the Registrar, of a child support agreement that includes provisions that have effect for the purposes of this Part as if they were such an order made by consent.

57 Taxable income for child support purposes where taxable income determined to be nil under Income Tax Assessment Act

- (1) This section does not apply to a parent for a year of income if the parent has a component of adjusted taxable income mentioned in paragraphs 43(1)(b) to (e) for the year of income.

Determinations that taxable income nil or no tax payable

- (2) A parent's **taxable income** for a year of income is nil if the parent's taxable income for that year has been determined to be nil under an Income Tax Assessment Act.
- (3) A parent's **taxable income** for a year of income is also nil if:
- (a) the Commissioner has determined under an Income Tax Assessment Act that no tax was payable (before the allowance of any rebate or credit) under that Act on the parent's taxable income for the year of income; and
 - (b) either of the following subparagraphs applies in relation to the person:
 - (i) Part 1 of Schedule 7 to the *Income Tax Rates Act 1986* (or any other law prescribed by the regulations for the purposes of this paragraph in relation to the year of income) applied in relation to the parent for the year of income;
 - (ii) no tax would have been payable (before the allowance of any rebate or credit) under that Act by the person on his or her taxable income if Part 1 of Schedule 7 to the *Income Tax Rates Act 1986* (or any other law prescribed by the regulations for the purposes of this paragraph in relation to the year of income) had applied in relation to the parent for the year of income.
- (4) Subsections (2) and (3) do not apply in relation to an administrative assessment made in relation to a parent if:
- (a) before the administrative assessment is made; but
 - (b) after the most relevant notice mentioned in subsection (5) or (6) is made;
- an assessment is issued under the *Income Tax Assessment Act 1936* of the person's taxable income for the year of income under an Income Tax Assessment Act.
-

Notices issued under the Income Tax Assessment Act 1936

- (5) If a parent has been served a notice under the *Income Tax Assessment Act 1936* to the effect that the taxable income of the parent under an Income Tax Assessment Act for a year of income is nil, then:
 - (a) the parent's taxable income for that year is taken to have been determined to be nil under an Income Tax Assessment Act; and
 - (b) if the notice was dated—the determination is taken to have been made on the date of the notice.
- (6) If a parent has been served a notice under the *Income Tax Assessment Act 1936* to the effect that no tax is payable (before the allowance of any rebate or credit) under an Income Tax Assessment Act on the taxable income of the parent for a year of income, then:
 - (a) the Commissioner is taken to have determined under the Income Tax Assessment Act that no tax was payable (before the allowance of any rebate or credit) under that Act on the parent's taxable income for the year of income; and
 - (b) if the notice was dated—the determination is taken to have been made on the date of the notice.

When amended tax assessment may be taken into account

- (7) If, after an administrative assessment of child support is made, the assessment (the **tax assessment**) of the parent's taxable income is amended (whether or not because of an objection, appeal or review), the Registrar must not amend the administrative assessment to take account of the amendment to the tax assessment unless either of the following applies:
 - (a) the subsequent assessment was made because the parent had not made to the Commissioner a full and true disclosure of all the material facts necessary for the Commissioner's assessment, or in other circumstances prescribed for the purposes of this subsection;
 - (b) the amendment is made solely for the purposes of working out the parent's adjusted taxable income for the last relevant year of income for the purposes of subsection 60(3) (first estimate must be lower than adjusted taxable income).

Date of assessment of a parent's taxable income taken to be date of notice of the assessment

- (8) For the purposes of this section, if:
- (a) notice of an assessment (including an amended assessment) of a parent's taxable income under an Income Tax Assessment Act has been served on the parent under the *Income Tax Assessment Act 1936*; and
 - (b) the notice is dated;
- then the assessment is taken to have been made on the date of the notice.

Section not to affect determinations, court orders or consent orders

- (9) This section does not prevent:
- (a) the Registrar from making any determination under Part 6A (departure determinations); or
 - (b) a court from making any order under Division 4 of Part 7 (departure orders); or
 - (c) the making, and acceptance by the Registrar, of a child support agreement that includes provisions that have effect for the purposes of this Part as if they were such an order made by consent.

58 Registrar determination of adjusted taxable income

- (1) For the purposes of assessing a parent in respect of the costs of a child in relation to a child support period, the Registrar may determine, in accordance with this section, that an amount that he or she considers appropriate is the parent's adjusted taxable income for a year of income.

Note: The Registrar is required to amend an administrative assessment made on the basis of such a determination if the parent's adjusted taxable income is subsequently ascertained or the Registrar makes a later determination under this section (see section 58A).

Determinations where parent fails to comply with requirement

- (2) The Registrar may make a determination if:
- (a) a parent has not, under an Income Tax Assessment Act, lodged a tax return for the year of income; and

- (b) the Registrar or the Commissioner of Taxation is unable to readily ascertain the parent's adjusted taxable income for the year of income on the basis of the documents and information in his or her possession; and
 - (c) the Registrar or the Commissioner has, for the purposes of ascertaining that adjusted taxable income, required the parent:
 - (i) to give a return; or
 - (ii) to give information (whether orally or in writing); or
 - (iii) to produce a document; and
 - (d) the parent has refused or failed to comply with the requirement.
- (3) If the parent also has not lodged a tax return for the year of income before the year of income referred to in subsection (1), the amount determined for the parent's adjusted taxable income for the year of income must be determined to be two-thirds of the annualised MTAW figure for the relevant September quarter.

Determination if Registrar given taxable income or total

- (4) The Registrar may make a determination if:
- (a) a parent has not, under an Income Tax Assessment Act, lodged a tax return for the year of income; and
 - (b) the Registrar or the Commissioner is unable to readily ascertain the parent's adjusted taxable income for the year of income on the basis of the documents and information in his or her possession; and
 - (c) the Registrar or the Commissioner has, for the purposes of ascertaining that adjusted taxable income, been given:
 - (i) information (whether orally or in writing); or
 - (ii) a document; and
 - (d) either:
 - (i) an amount was specified in that information or document as the parent's adjusted taxable income for the last relevant year of income; or
 - (ii) that information or document allowed the parent's adjusted taxable income for the last relevant year of income to be worked out; and

- (e) the amount determined by the Registrar under subsection (1) was the amount specified or worked out under paragraph (d) of this subsection.

58A Subsequently ascertaining components of a parent's adjusted taxable income

- (1) The Registrar must immediately amend an administrative assessment of child support payable by or to a parent in relation to a child support period if:
 - (a) the assessment was made on the basis of a determination under section 58; and
 - (b) either:
 - (i) the Registrar subsequently ascertains the amount of the parent's adjusted taxable income for the last relevant year of income; or
 - (ii) the Registrar makes a later determination under section 58; and
 - (c) either:
 - (i) if subparagraph (b)(i) applies—the amount that was subsequently ascertained is different from the amount that was determined under section 58; or
 - (ii) if subparagraph (b)(ii) applies—the later amount that the Registrar determines is different from the earlier amount determined under section 58.

Retrospective determinations

- (2) If:
 - (a) at the time the Registrar is to amend the administrative assessment under this section, the parent could lodge his or her tax return by the date required under Part IV of the *Income Tax Assessment Act 1936* (taking into account any deferral under section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*); or
 - (b) paragraph (a) of this subsection does not apply and:
 - (i) the amount subsequently ascertained, as mentioned in subparagraph (1)(b)(i), is higher than the amount that was determined under section 58; or

- (ii) the later amount that the Registrar determines, as mentioned in subparagraph (1)(b)(ii), is higher than the earlier amount determined under section 58;

then the Registrar must immediately amend the administrative assessment for the child support period on the basis that the parent's adjusted taxable income for that year of income is, and has always been, the amount that was subsequently ascertained or later determined (as the case requires).

Prospective determinations

- (3) If subsection (2) does not apply, then the Registrar must immediately amend the administrative assessment for the child support period on the basis that for each later day in the period the parent's adjusted taxable income for that year of income is the amount that was subsequently ascertained or later determined (as the case requires).

No taxation assessment required

- (4) This section applies whether or not the Commissioner of Taxation has made an assessment under an Income Tax Assessment Act of the parent's taxable income for that year of income.

Subdivision C—Child support income determined by reference to estimate of adjusted taxable income for rest of current child support period

60 Choosing adjusted taxable income for remainder of child support period

Election that adjusted taxable income is estimated amount

- (1) Before or during a child support period, a parent may elect that the parent's adjusted taxable income for assessing the parent in respect of the costs of a child of the parent for the remaining days in a child support period is to be the amount the parent works out using the method in subsection (5) (with the modification in subsection (6), if appropriate).

Election prohibited if income amount order in force

- (2) However, a parent may not make an election relating to a child support period if an income amount order is in force in relation to the parent and any part of the period.

First election must be for amount less than adjusted taxable income for last relevant year of income

- (3) The parent may make a first election relating to a child support period only if the amount that he or she works out under this section is not more than 85% of the total of the parent's adjusted taxable income for the last relevant year of income for the child support period.

Other elections may be made at intervals of at least 2 months

- (4) The parent may make one or more later elections relating to the child support period at intervals of at least 2 months if:
- (a) the parent revokes the immediately preceding election under section 62 when making each later election; and
 - (b) the amount worked out under this section for each later election is greater or less than the amount of the first election relating to the period.

Method of estimation of adjusted taxable income

- (5) The method is as follows:

Method statement

Step 1. Work out the length of the period (the **remaining period**):

- (a) starting on the day the parent makes the estimate or the day the child support period starts, whichever is later (or either day if they are the same); and
- (b) ending 15 months after the start of the child support period.

Step 2. Estimate the amount that would be the parent's adjusted taxable income for the remaining period if that period were a year of income.

Step 3. If the remaining period is shorter or longer than 12 months:

- (a) divide the total from step 2 by the number of days in the remaining period; and
- (b) multiply the quotient by 365.

Parent may treat remaining period as 12 months even if it is longer

- (6) If the remaining period is more than 12 months, the parent may apply the method in subsection (5) as if the remaining period were exactly 12 months, starting on the day worked out under paragraph (a) of step 1 of the method statement in subsection (5).

How election is made

- (7) The parent makes the election by giving notice of it to the Registrar in the manner specified by the Registrar. The notice must specify:
- (a) the amount that the parent elects is to be his or her adjusted taxable income; and
 - (b) the amount the parent estimated at step 2 of the method statement in subsection (5); and
 - (c) that the remaining period was treated as being 12 months, if the parent chose to do so under subsection (6).

60A Registrar may refuse to accept election

- (1) The Registrar may refuse to accept the parent's election if the Registrar is satisfied that the amount the parent estimated at step 2 of the method statement in subsection 60(5) is likely to be less than the actual amount that would be the parent's adjusted taxable income for the remaining period if that period were a year of income.
- (2) In making the decision as to whether to refuse the election, the Registrar:
- (a) may act on the basis of information that the Registrar has received or obtained as to the financial circumstances of the parent; and

- (b) may, but is not required to, conduct an inquiry into the matter.
- (3) Except for the purposes of Parts VII, VIIA and VIII of the Registration and Collection Act (dealing with objections and appeals), if the Registrar refuses to accept an election, the election is taken never to have been made.

60B Notice to be given if Registrar refuses to accept election

- (1) If the Registrar refuses to accept an election under section 60A, the Registrar must serve written notice of the decision on the parent who sought to make the election.
- (2) The notice must include, or be accompanied by, a statement to the effect:
 - (a) that the parent may, subject to the Registration and Collection Act, object to the particulars of the assessment in relation to which the parent sought to make the election; and
 - (b) that if the parent is aggrieved by the decision on the objection, he or she may, subject to that Act, apply to the SSAT for review of the decision.
- (3) A contravention of subsection (2) in relation to a decision does not affect the validity of the decision.

61 Effect of election

- (1) If a parent makes an election under section 60 relating to a child support period, then for the purposes of assessing the parent in respect of the costs of a child of the parent for each later day in the child support period, the parent's adjusted taxable income is the amount the parent elected.
- (2) Subsection (1) has effect subject to an income amount order that is made after the making of the election that applies in relation to the parent and any part of the child support period.
- (3) The Registrar must immediately take such action as is necessary to give effect to subsection (1) in relation to any administrative assessment that has been made in relation to the parent and the child support period (whether by amending the assessment or otherwise).

- (4) Subject to section 63, in subsequently making any administrative assessment in relation to the parent and the child support period, the Registrar must act in accordance with this section.
- (5) This section does not prevent:
 - (a) the Registrar making any determination under Part 6A (departure determinations); or
 - (b) a court making any order under Division 4 of Part 7 (departure orders); or
 - (c) the making, and acceptance by the Registrar, of a child support agreement that includes provisions that have effect for the purposes of this Part as if they were such an order made by consent.

62 Revocation of election

- (1) Subject to subsection (3), a parent who has made an election under section 60 in relation to a child support period may, by notice given to the Registrar, revoke the election, but the revocation has no effect unless, at the same time, the parent substitutes a new election for that period under section 60.
- (2) The notice must be given in the manner specified by the Registrar.

Note: Section 150A provides for the Registrar to specify the manner in which a notice may be given.
- (3) The parent may not revoke the election if an income amount order made after the making of the election is in force in relation to the parent and the child support period.

63 Effect of revocation

- (1) If:
 - (a) a parent makes an election under section 60 relating to a child support period; and
 - (b) the parent revokes the election and substitutes a new election;then for the purposes of assessing the parent in respect of the costs of a child of the parent for each later day in the child support period, the parent's adjusted taxable income is the amount the parent elected in the new election.

- (2) Subsection (1) does not apply in relation to any day in the child support period in relation to which an income amount order made after the making, but before the revocation, of the election applies in relation to the parent.
- (3) The Registrar must immediately take such action as is necessary to give effect to subsection (1) in relation to any administrative assessment that has been made in relation to the parent and any part of the child support period (whether by amending the assessment or otherwise).
- (4) Subject to any further election made under section 60, in subsequently making any administrative assessment in relation to the parent and the child support period, the Registrar must act in accordance with subsection (1).
- (5) This section does not prevent:
 - (a) the Registrar making any determination under Part 6A (departure determinations); or
 - (b) a court making any order under Division 4 of Part 7 (departure orders); or
 - (c) the making, and acceptance by the Registrar, of a child support agreement that includes provisions that have effect for the purposes of this Part as if they were such an order made by consent.

63A Amendment of assessment based on election if event affecting accuracy of estimate occurs

- (1) This section allows the Registrar to amend an assessment of child support payable by or to a parent for some days in a child support period if:
 - (a) the parent has made an election under section 60 relating to the period; and
 - (b) the Registrar has given the parent a notice under section 160 requiring the parent to notify the Registrar of the occurrence of an event that may affect the accuracy of an estimate on which the election is based.
- (2) If the parent gives notice of the event as required by section 160, the Registrar may amend the assessment to affect the annual rate of

child support payable by or to the parent for the days in the child support period on or after the day the parent gives notice.

- (3) If the parent does not give notice of the event as required by section 160, the Registrar may amend the assessment to affect the annual rate of child support payable by or to the parent for the days in the child support period on or after the day the event occurred.
- (4) This section does not:
 - (a) affect the operation of section 160; or
 - (b) prevent the Registrar from making a new assessment for part of the child support period.

Note: This section does not limit the power under section 75 to amend assessments (see subsection 75(5)).

63B Amendment of assessment based on election if Registrar asks for information supporting estimate

- (1) This section allows the Registrar to amend an assessment of child support payable by or to a parent for some days in a child support period if:
 - (a) the parent has made an election under section 60 relating to the period; and
 - (b) the Registrar has given the parent a notice under section 161 requiring the parent to:
 - (i) give the Registrar information; or
 - (ii) attend before a person and answer questions; or
 - (iii) produce documents containing information;relevant to determining the accuracy of an estimate on which the election is based.
- (2) If the parent complies with section 161 (in relation to the notice), the Registrar may amend the assessment to affect the annual rate of child support payable by or to the parent for the days in the child support period on or after the day the parent complies.
- (3) If the parent does not comply with section 161 (in relation to the notice), the Registrar may amend the assessment to affect the annual rate of child support payable by or to the parent for the days in the child support period on or after:
 - (a) the day the election was made; or

(b) if:

- (i) before the Registrar gave the notice but after the election was made, the Registrar had given the parent another notice (the *earlier notice*) of the kind described in paragraph (1)(b); and
 - (ii) the parent complied with section 161 in relation to the earlier notice;
- the day on which the parent complied with section 161 in relation to the earlier notice.

(4) This section does not:

- (a) affect the operation of section 161; or
- (b) prevent the Registrar from making a new assessment for part of the child support period.

Note: This section does not limit the power under section 75 to amend assessments (see subsection 75(5)).

63C Amendment of assessment in minimum rate cases

- (1) This section allows the Registrar to amend an assessment of child support payable by a parent for all the children in a child support case for some days in a child support period if:
 - (a) the parent has made an election under section 60 relating to the period; and
 - (b) the period has ended; and
 - (c) the annual rate of child support payable by the parent for all the children in the child support case for the days in the period was the minimum annual rate for the period or lower.
- (2) The Registrar may amend the assessment to affect the annual rate of child support payable by the parent for the days in the child support period.
- (3) This section does not prevent the Registrar from making a new assessment for part of the child support period.

Note: This section does not limit the power under section 75 to amend assessments (see subsection 75(5)).

64 Reconciliation of estimated and actual adjusted taxable income after end of child support period

- (1) This section applies if:
 - (a) an election made by a parent under section 60 in relation to a child support period has not been revoked at the end of the period; and
 - (b) the parent's real remaining period adjusted taxable income is more than the amount the parent estimated at step 2 of the method statement in subsection 60(5) for the purposes of making the election; and
 - (c) the annual rate of child support payable by the parent for all the children in a child support case for a day in the child support period is greater than the minimum annual rate for the period.
- (2) For the purposes of assessing the parent in respect of the costs of a child of the parent for days on or after the election was made but before the end of the child support period, the parent's adjusted taxable income is taken to be (and always to have been):
 - (a) if the remaining period was 12 months—the parent's real remaining period adjusted taxable income; and
 - (b) otherwise, the amount worked out by:
 - (i) dividing the parent's remaining period adjusted taxable income by the number of days in the remaining period; and
 - (ii) multiplying the quotient by 365.
- (3) Subsection (2) does not apply in relation to any day in the child support period in relation to which an income amount order made before the making of the election applies in relation to the parent.
- (4) Where an income amount order made after the making of the election applies in relation to the parent and any part of the child support period, subsection (2) has effect subject to the order.
- (5) The Registrar is to take such action as is necessary to give effect to this section in relation to the parent (whether by amending any administrative assessment that has been made in relation to the child support period or otherwise).
- (6) In this section:

real remaining period adjusted taxable income of a parent who made an election under section 60 is the amount that would have been the parent's adjusted taxable income for the remaining period had the remaining period been a year of income.

64A Penalty for underestimating adjusted taxable income

- (1) A parent is liable to pay the Registrar a penalty of the amount worked out under subsection (2) if:
 - (a) the parent made an election under section 60 relating to a child support period; and
 - (b) the total of the parent's real remaining period adjusted taxable income is at least 110% of the amount the parent estimated at step 2 of the method statement in subsection 60(5) for the purposes of making the election.
- (2) The amount of the penalty is 10% of the difference between:
 - (a) the administrative assessment of child support that would have been made if it were based entirely on the amount of adjusted taxable income in the election; and
 - (b) the administrative assessment of child support made under section 64.
- (3) The penalty is due and payable upon the issue of the administrative assessment under section 64 and is a debt due to the Commonwealth.
- (4) The Registrar may remit the whole or a part of the penalty if:
 - (a) paragraph (1)(b) applies because of an amendment of an Income Tax Assessment Act, or because of a ruling or determination under an Income Tax Assessment Act; or
 - (b) paragraph (1)(b) applies for some other reason, and the Registrar is satisfied that it would be fair and reasonable in the circumstances to remit the whole or that part of the penalty.
- (5) If the Registrar makes a decision to remit only part of a penalty payable under this section, or not to remit any part of the penalty, the Registrar must serve written notice of the decision on the parent by whom the penalty is, or but for the remission would be, payable.

- (6) The notice must include, or be accompanied by, a statement to the effect:
- (a) that the parent may, subject to the Registration and Collection Act, object to the decision (the *original decision*); and
 - (b) that if the parent is aggrieved by a later decision on an objection to the original decision, he or she may, subject to that Act, apply to the SSAT for review of the later decision.
- (7) A contravention of subsection (6) in relation to a decision does not affect the validity of the decision.
- (8) In this section:
- real remaining period adjusted taxable income* of a parent who made an election under section 60 has the meaning given by subsection 64(6).

Division 8—Provisions relating to the making of assessments

Subdivision A—Preliminary

64B Simplified outline

The following is a simplified outline of this Division:

- In making an administrative assessment, the Registrar may act on the basis of the documents and information in his or her possession.
- In some cases, the Registrar may assess, under this Division, the annual rate of child support for a child that is payable by a parent who is not receiving an income support payment.
- The Registrar may also assess, under this Division, the annual rate of child support payable by a parent for all the children in a child support case as the minimum annual rate of child support.

- Subdivision C contains rules relating to making administrative assessments (such as when the Registrar can amend an administrative assessment and when the Registrar needs to give a notice of assessment).

Subdivision B—Annual rates of child support for low income parents and minimum annual rates of child support

65A Annual rate of child support for low income parents not on income support

Assessment of annual rate

- (1) The Registrar must assess an annual rate of child support payable by a parent for a child for a day in a child support period as the rate specified in subsection (2) if:
 - (a) the parent did not receive an income support payment during the last relevant year of income; and
 - (b) the following amount is less than the pension PP (single) maximum basic amount:
 - (i) the parent's adjusted taxable income for the last relevant year of income;
 - (ii) if an election by the parent under section 60 is in force for the day—the amount worked out for the parent under step 2 of the method statement in subsection 60(5) using the parent's estimate; and
 - (c) the parent does not have at least shared care of the child during the relevant care period.

How much is the annual rate

- (2) The annual rate of child support payable is \$1060.

Note: The annual rate of child support specified in subsection (2) is indexed under section 153A.

- (3) The Registrar must not assess the total annual rate of child support payable by a parent under subsection (1) (including any child support that is not actually payable because of subsection 40B(1)) for a day in a child support period as more than 3 times the rate specified in subsection (2).

- (4) If an annual rate of child support is payable by a parent under subsection (1) (including any child support that is not actually payable because of subsection 40B(1)) for more than 3 children for a day in a child support period, then the annual rate of child support payable by the parent for each child for a day in the child support period is:

$$\frac{3 \times \text{Annual rate specified in subsection (2)}}{\text{Total number of children for whom child support is payable by the parent under subsection (1)}}$$

Paying the annual rate to more than one person

- (5) If, (disregarding section 40B) the rate under subsection (2) or (4) would be payable for a child to:
- (a) a parent and a non-parent carer of the child; or
 - (b) 2 non-parent carers of the child;
- then, subject to section 40B, the annual rate of child support for the child worked out under this section is payable in accordance with section 40A.

Note: Under section 40B, a non-parent carer of a child is not entitled to be paid child support unless he or she applies under section 25A in relation to the child.

65B Application for section 65A not to apply

- (1) If the Registrar makes an assessment of an annual rate of child support payable by a parent for a day in a child support period under section 65A:
- (a) the parent may apply to the Registrar for the section not to apply; or
 - (b) the parent is taken to have applied to the Registrar for the section not to apply if, immediately before the end of the previous child support period, the section did not apply because of a determination under this section.
- (2) The parent making the application must provide evidence to the Registrar concerning the parent's income (within the meaning of subsection 66A(4)) to demonstrate that his or her current income is:

- (a) less than the pension PP (single) maximum basic amount;
and
 - (b) that it would be unjust and inequitable to expect him or her to pay the amount assessed under this section.
- (3) An assessment issued by the Commissioner of Taxation for the last relevant year of income shall not be sufficient evidence of the income of the parent for the purposes of this section.
- (4) If the parent makes an application, the Registrar may determine in writing that the section not apply to the parent if the parent's current income (within the meaning of subsection 66A(4)) is less than the pension PP (single) maximum basic amount and it would be unjust and inequitable to expect him or her to pay the amount assessed under this section.

Note: If the Registrar refuses to grant an application under this section, the Registrar must serve a notice on the applicant under section 66C.
- (3) The Registrar must specify the day in the child support period on which the section ceases to apply to the parent. The day may be any day from the first day of the child support period on which an annual rate of child support under section 65A became payable by the parent.

66 Minimum annual rate of child support

Assessment of annual rate

- (1) The Registrar must assess the total of the annual rates of child support payable by a parent for all the children in a child support case for a day in a child support period as the minimum annual rate of child support for the child support period if:
 - (a) the parent does not have at least regular care of at least one of the children in the child support case for the day; and
 - (b) either of the following applies:
 - (i) the parent receives an income support payment at the maximum basic rate during the child support period;
 - (ii) if subparagraph (i) does not apply—the total payable by the parent for all the children in the child support case would (apart from this section) be assessed as less than the minimum annual rate of child support for the child support period.

Note: The Registrar must not make an assessment under this subsection in certain cases (see subsections (2) and (8)).

- (2) To avoid doubt, the Registrar must not make an assessment in respect of a parent whose annual rate of child support could be assessed under section 65A (low income parents not on income support) unless the Registrar has determined under section 65B that section 65A does not apply.

When assessment applies

- (3) An assessment in respect of a parent covered by subparagraph (1)(b)(i) applies to each day in the period:
- (a) beginning on the first day in the child support period on which the parent receives the income support payment at the maximum basic rate; and
 - (b) ending:
 - (i) if the parent continues to receive the income support payment at the maximum basic rate until the end of the child support period—at the end of the child support period; or
 - (ii) if the parent ceases to receive the income support payment at the maximum basic rate before the end of the child support period—28 days after the day on which the parent ceases to receive the payment at that rate (even if that day is after the end of the child support period).
- (4) An assessment in respect of a parent covered by subparagraph (1)(b)(ii) applies to each day in the period:
- (a) beginning on the first day in the child support period on which the total payable by the parent in respect of the child support case would (apart from this section) be assessed as less than the minimum annual rate of child support for the child support period; and
 - (b) ending:
 - (i) if the parent would be so assessed until the end of the child support period—at the end of the child support period; or
 - (ii) otherwise—28 days after the day on which the person would cease to be so assessed (even if that day is after the end of the child support period).
-

How much is the minimum annual rate

- (5) The **minimum annual rate of child support** is \$320.

Note: The minimum annual rate of child support specified in subsection (5) is indexed under section 153A.

- (6) If:

- (a) the Registrar makes an assessment in respect of a parent under subsection (1); and
- (b) the parent is assessed (whether under subsection (1) or otherwise) for a day in a child support period in respect of the costs of children in more than 3 child support cases;

then the **annual rate of child support** payable by the parent for a day in the child support period for a particular child support case is:

$$\frac{3 \times \text{Minimum annual rate of child support}}{\text{Total number of parent's child support cases}}$$

Paying the minimum annual rate to more than one person for a single child support case

- (7) If the rate worked out under subsection (5) or (6) is payable by a parent for a child support case to:

- (a) the parent of the children to whom the case relates and to one or more non-parent carers of those children; or
- (b) 2 or more non-parent carers of those children;

then:

- (c) if 2 or more persons have equal percentages of care of the children, and those percentages are the highest percentages—each of those persons is entitled to be paid an equal proportion of the annual rate of child support that is payable by the parent; and
- (d) otherwise—only the person who has the highest percentage of care of the children is entitled to be paid the annual rate of child support that is payable by the parent.

Registrar not to make minimum rate assessment in certain cases

- (8) The Registrar must not make an assessment under subsection (1) in relation to the child support payable by a parent:
-

- (a) in accordance with a determination made under Part 6A (departure determinations); or
- (b) in accordance with an order made under Division 4 of Part 7 (departure orders); or
- (c) in accordance with provisions of a child support agreement that have effect, for the purposes of this Part, as if they were such an order made by consent.

*Definition of **income support payment***

- (9) In this Act:

income support payment:

- (a) has the meaning given by subsection 23(1) of the *Social Security Act 1991*; and
- (b) includes a payment under the ABSTUDY scheme that includes an amount identified as living allowance, being an allowance that is paid at the maximum basic rate.

66A Registrar may reduce an assessment to nil in certain cases

- (1) If the Registrar has made an assessment under section 66 in respect of the annual rate of child support payable by a parent for all the children in a child support case, the Registrar may, on application made by the parent in accordance with the regulations, reduce the annual rate of child support payable by the parent for those children for a day in the child support period to nil.

Note: If the Registrar refuses to grant an application under this section, the Registrar must serve a notice on the applicant under section 66C.

- (2) The Registrar must not grant an application under subsection (1) unless the Registrar is satisfied that the parent's income (as defined in subsection (4)) for the 12 month period starting on the day on which the parent applies is less than the total of the number of the parent's child support cases multiplied by the minimum annual rate of child support for the child support period.
- (3) An assessment in respect of a parent under this section applies to each day in the period to which the assessment under section 66 would have applied (see subsections 66(3) and (4)).
- (4) In this section:

income, in relation to a person, means:

- (a) any money earned, derived or received by the parent for his or her own use or benefit, other than money earned, derived or received in a manner, or from a source, prescribed by the regulations for the purposes of this paragraph; or
- (b) a periodical payment by way of a gift or allowance, other than a payment of a kind prescribed by the regulations for the purposes of this paragraph.

66C Notice to be given to unsuccessful applicant

- (1) If the Registrar refuses to grant an application under section 65B or 66A, the Registrar must serve written notice of the decision on the parent.
- (2) The notice must include, or be accompanied by, a statement to the effect:
 - (a) that the parent may, subject to the Registration and Collection Act, object to the particulars of the assessment in relation to which the unsuccessful application was made; and
 - (b) that if the parent is aggrieved by the decision on the objection, he or she may, subject to that Act, apply to the SSAT for review of the decision.
- (3) A contravention of subsection (2) in relation to a decision does not affect the validity of the decision.

Subdivision C—Making administrative assessments

66D How assessment is to be made

In making an administrative assessment, the Registrar may act on the basis of the documents and information in his or her possession, and is not required to conduct any inquiries or investigations into the matter or to require (whether under this Act or otherwise) the giving of any information or the production of any document.

67 Assessment to relate to all children for whom child support is payable by parent

- (1) If child support is payable by a parent to a person for 2 or more children for a day in a child support period, any administrative assessment of the child support payable by the parent in relation to the day is to relate to all of the children and not to any of the children separately.
- (2) Subsection (1) applies whether or not the child support is payable because of:
 - (a) the acceptance by the Registrar of 2 or more separate applications for administrative assessment made otherwise than in the same form; or
 - (b) the acceptance by the Registrar of 2 or more child support agreements made otherwise than in the same document; or
 - (c) the acceptance by the Registrar of an application for administrative assessment and of an application for acceptance of a child support agreement.
- (3) Subsection (1) does not require a single administrative assessment to be made of the child support payable by a parent to 2 or more other persons.

67A Offsetting of child support liabilities

The annual rate of child support that would, apart from this section, be payable for a child or children in a child support case, for a day in a child support period, by one parent to the other parent is to be reduced (but not below nil) by the annual rate of child support that would, apart from this section, be payable to that parent in relation to that day by the other parent for the child or the children in the child support case.

68 Assessment to relate to whole or part of single child support period

- (1) An administrative assessment of child support is to relate to all the days, or some of the days, of a single child support period.
- (2) Subsection (1) does not prevent a single notice of assessment under section 76 dealing with more than one administrative assessment.

69 Conversion of annual rates into daily rates of payment

If the Registrar assesses the annual rate of child support payable by a parent for a child or children in a child support case, for a day in a child support period, 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 76 in relation to the assessment.

70 Evidence relating to assessments

- (1) The production of a notice of administrative assessment, or of a document signed by the Registrar that appears to be a copy of a notice of administrative assessment, is prima facie evidence of:
 - (a) the proper making of the assessment; and
 - (b) except in proceedings under Part VIIA, or under Subdivision B of Division 3 of Part VIII, of the Registration and Collection Act 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 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.

71 Assessment for part of a child support period

In making an administrative assessment of the annual rate of child support payable for days in a period (the *part period*) that is not a whole child support period, the Registrar may apply this Act as if the beginning and end of the part period were the beginning and end respectively of a child support period.

72 Validity of assessments

Except in an appeal under Part VIIA, or under Subdivision B of Division 3 of Part VIII, of the Registration and Collection Act, the validity of an assessment is not affected because any of the provisions of this Act have not been complied with.

73 Assumptions as to future events

In assessing the annual rate at which child support is payable for 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.

73A Registrar becoming aware of relevant dependent child

If:

- (a) an administrative assessment of child support is in force in relation to a parent; and
- (b) the Registrar is later notified, or otherwise becomes aware, of the fact that the parent has a relevant dependent child who was not taken into account for the purposes of making the assessment;

then, for the purposes of working out the parent's relevant dependent child amount under section 46, the parent is taken to have the relevant dependent child:

- (c) if the Registrar was notified, or otherwise became aware, of the fact that the child is a relevant dependent child of the parent within 28 days after the day on which the child became such a child—on and from the day the child became such a child; or
- (d) if the Registrar was notified, or otherwise became aware, of the fact within 28 days after the notice of the assessment was given—on and from the day the notice was given; or
- (e) if neither paragraph (c) nor (d) applies—on and from the day the Registrar was notified, or otherwise became aware, of the fact that the child is a relevant dependent child of the parent.

74 Registrar to give effect to happening of child support terminating events etc.

(1) If:

- (a) child support is payable for a child; and
- (b) the Registrar is notified of, or otherwise becomes aware of:
 - (i) the happening of a child support terminating event in relation to the child, a liable parent, or a carer entitled to child support, or all 3; or

- (ii) the happening of an event or change of circumstances that affects the annual rate at which the child support is payable under this Act;

the Registrar must immediately take such action as is necessary to take account of the happening of the event or change of circumstances (whether by amending any administrative assessment or otherwise).
- (2) Nothing in subsection (1) is to be taken to prevent the Registrar from taking such action as the Registrar considers appropriate to take account of the likely happening of an event or change of circumstances of which the Registrar is notified or otherwise becomes aware (whether by amending any administrative assessment or otherwise).

74A Date of effect of change in care

If:

- (a) child support is payable for a child; and
 - (b) the Registrar is notified, or otherwise becomes aware, that:
 - (i) a person's percentage of care for the child has changed by at least 7.1%; or
 - (ii) a person's percentage of care for the child has fallen below 14%; or
 - (iii) a person's percentage of care for the child has increased to 14%, or above 14%; and
 - (c) as a result, the Registrar amends an administrative assessment under section 75 to alter the annual rate at which the child support is payable for the child;
- the altered annual rate is to apply on and from the day the Registrar was notified, or otherwise became aware, of the change of percentage referred to in paragraph (b).

Note: 7.1% is one night per fortnight.

75 Amendment of assessments

- (1) The Registrar may, at any time, amend any administrative assessment by making such alterations and additions as the Registrar considers necessary to give effect to this Act.

- (2) However, if the amendment relates to a person's percentage of care for a child, the Registrar must not amend an administrative assessment unless:
- (a) the change to the person's percentage of care is at least 7.1%; or
 - (b) the person's percentage of care falls below 14%; or
 - (c) the person's percentage of care increases to 14%, or above 14%.

Note: 7.1% is one night per fortnight.

- (3) Subsection (1) has effect despite the fact that:
- (a) child support has been paid under the administrative assessment; or
 - (b) the child support period, or the part of the child support period, to which the administrative assessment relates has ended; or
 - (c) proceedings are pending in a court having jurisdiction under this Act against or in relation to the administrative assessment.
- (4) Without limiting subsection (1), the Registrar may amend any administrative assessment for the purpose of:
- (a) correcting any error or mistake (whether or not made by the Registrar); or
 - (b) correcting the effect of any false or misleading statement made to the Registrar; or
 - (c) giving effect to the happening of a child support terminating event in relation to a child, the liable parent, the carer entitled to child support, or all 3; or
 - (d) giving effect to the happening of an event or change of circumstances that, under this Act, affects the annual rate at which child support is or was payable; or
 - (e) giving effect to the acceptance of a child support agreement by the Registrar; or
 - (f) giving effect to a decision or order of a court having jurisdiction under this Act.
- (5) Where a provision of this Act expressly authorises the Registrar to amend an administrative assessment, that provision does not by implication limit the power of the Registrar (whether under this section or otherwise) to amend the assessment.
-

- (6) Except as otherwise expressly provided in this Act, every amended administrative assessment is to be taken to be an administrative assessment for all the purposes of this Act.

76 Notice of assessment to be given

- (1) When the Registrar makes an administrative assessment, the Registrar must immediately give written notice of the assessment to the liable parent and the carer entitled to child support.
- (2) The notice must (in addition to specifying the matters that section 69 (daily rate conversion) requires to be specified in the notice) specify at least the following matters:
- (a) the adjusted taxable income, and child support income, of any parent (the *assessed parent*) who was assessed in respect of the costs of the children in the child support case to which the assessment relates;
 - (b) the names and dates of birth of those children;
 - (c) the age ranges of any relevant dependent children of an assessed parent;
 - (d) the age ranges of any other children in other child support cases of an assessed parent;
 - (e) an assessed parent's, and non-parent carer's, percentage of care for each child in the child support case to which the assessment relates;
 - (f) whether a carer entitled to child support was in receipt of an income tested pension, allowance or benefit when the assessment was made;
 - (g) the costs of each child in the child support case to which the assessment relates;
 - (h) such other matters as are prescribed.
- (3) The notice must also include, or be accompanied by, statements of the following kinds:
- (a) a statement that specifically draws the attention of the liable parent and the carer entitled to child support to the right:
 - (i) to object, subject to the Registration and Collection Act, to particulars of the assessment; and
 - (ii) if aggrieved by the decision on an objection to particulars of the assessment (no matter who lodges the

objection but subject to that Act), to apply to the SSAT for review of the decision;

- (b) a statement that specifically draws the attention of the liable parent and the carer entitled to child support to the right, if aggrieved by a decision of the SSAT in relation to the percentage of care of the liable parent or the carer entitled to child support, to apply to the AAT for review of the decision;
- (c) a statement that specifically draws the attention of the liable parent and the carer entitled to child support to the right to apply to the Registrar for a determination under Part 6A having the effect that the provisions of this Act relating to administrative assessment of child support will be departed from in relation to a child in the special circumstances of the case;
- (d) a statement that specifically draws the attention of the liable parent and the carer entitled to child support to the right, subject to the *Family Law Act 1975*, to apply to a court having jurisdiction under this Act for an order under section 124 that a parent provide child support for the child otherwise than in the form of periodic amounts.

Division 9—Liability to pay child support as assessed

76A Simplified outline

The following is a simplified outline of this Division:

- The amount of child support payable for a child or children for a day in a child support period is the daily rate specified in the notice of assessment.

77 Effect of assessment

- (1) This section applies if the Registrar:
 - (a) assesses the annual rate of child support payable for a child or children in a child support case, for a day in a child support period, by a liable parent to a carer 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 76 in relation to the assessment.
- (2) Child support is payable for the child or children by the liable parent to the carer entitled to child support for each day in the child support period.
- (3) The amount of child support payable for the child or children for the day by the liable parent to the carer entitled to child support is the amount of the daily rate specified in the notice of assessment.

78 When amounts of child support due and payable

An amount of child support payable by a liable parent in relation to a day in any month is due and payable on the later of the following days:

- (a) the seventh day of the following month;
- (b) the 30th day after the liable parent was given a notice of assessment under section 76 specifying the annual and daily rates of child support in relation to that day.

Note: Section 66 of the Registration and Collection Act deals with when child support debts become due and payable.

79 Recovery of amounts of child support

An amount of child support due and payable by a liable parent to a carer entitled to child support is a debt due and payable by the liable parent to the carer, and may be sued for and recovered in:

- (a) a court having jurisdiction for the recovery of debts up to the amount of the child support; or
- (b) a court having jurisdiction under this Act.

Note: Amounts covered by section 30 of the Registration and Collection Act are debts due to the Commonwealth.

2 At the end of the Act

Add:

Schedule 1—The Costs of the Children Table

Note: See section 55G.

1 The Costs of the Children Table

The Costs of the Children Table has effect.

Costs of the Children Table						
Parents' combined child support income or parent's child support income						
Fraction of MTAWE	0 to 0.5	0.5 to 1	1 to 1.5	1.5 to 2	2 to 2.5	Over 2.5
Child support children						
Costs of the children						
All children aged 0-12 years						
1 child	17%	15%	12%	10%	7%	
2 children	24%	23%	20%	18%	10%	
3 children	27%	26%	25%	24%	18%	
All children aged 13+ years						
1 child	23%	22%	12%	10%	9%	
2 children	29%	28%	25%	20%	13%	
3 children	32%	31%	30%	29%	20%	
At least one child aged 0-12 years and one child aged 13+ years						
2 children	26.5%	25.5%	22.5%	19%	11.5%	
3 children	29.5%	28.5%	27.5%	26.5%	19%	

2 Child support income ranges—fraction of MTAWE row

- (1) In each column of the Fraction of MTAWE row are specified 2 amounts. These amounts refer to:
 - (a) the parents' combined child support income; or
 - (b) if only one parent's income is to be used—the parent's child support income.
- (2) To work out the first dollar amount in each column (other than the first column), take the second amount in the previous column (worked under subclause (3)) and add one dollar.

Note: The first dollar amount in each column is the lowest combined child support income, or child support income, covered by that column.

- (3) To work out the second dollar amount in each column (other than the last column), multiply the second fraction specified in that column by the annualised MTAW figure for the relevant September quarter.

Note: The second dollar amount in each column is the highest combined child support income, or child support income, covered by that column.

3 Costs of the children

- (1) Each item in the Costs of the Children Table sets out a method of working out the costs of the children.
- (2) If, under section 55G, an item is identified in the first column of the table, the ***costs of the children*** is the amount that is the percentage specified in that item of the parents' combined child support income, or the parent's child support income, (as the case requires).
- (3) If, under section 55G, an item (the ***relevant item***) is identified in a row in the second, third, fourth or fifth column (the ***relevant column***), the ***costs of the children*** is the total of the following amounts:
- (a) the total of the amounts worked out for each item in that row in each of the previous columns by multiplying the percentage specified in that item by the highest combined child support income, or child support income, covered by that column;
 - (b) the amount worked out by multiplying the percentage specified in the relevant item by the difference between:
 - (i) the parents' combined child support income, or the parent's child support income, (as the case requires); and
 - (ii) the highest combined child support income or child support income in the previous column.
- (4) If, under section 55G, an item is identified in a row in the last column, the ***costs of the children*** is the total of the amounts worked out for the items in that row in each of the previous columns in accordance with paragraph (3)(a).
-

Schedule 2—Consequential amendments and application and saving provisions relating to the formulas

Part 1—Consequential amendments

A New Tax System (Family Assistance) Act 1999

1 Paragraph 2(1)(b) of Schedule 3

Omit “adjusted fringe benefits total”, substitute “reportable fringe benefits total”.

2 Clauses 4 and 5 of Schedule 3

Repeal the clauses, substitute:

4 Reportable fringe benefits total

An individual’s **reportable fringe benefits total** for an income year for an individual who is an employee (for the purposes of the *Fringe Benefits Tax Assessment Act 1986*, whether it applies of its own force or because of the *Fringe Benefits Tax (Application to the Commonwealth) Act 1986*) means the employee’s reportable fringe benefits total (as defined in the *Fringe Benefits Tax Assessment Act 1986*) for the income year.

5 Target foreign income

- (1) An individual’s **target foreign income** for an income year is:
- (a) the amount of the individual’s foreign income (as defined in section 10A of the *Social Security Act 1991*) for the income year that is neither:
 - (i) taxable income; nor
 - (ii) received in the form of a fringe benefit (as defined in the *Fringe Benefits Tax Assessment Act 1986*, as it applies of its own force or because of the *Fringe Benefits Tax (Application to the Commonwealth) Act 1986*) in relation to the individual as an employee (as

Schedule 2 Consequential amendments and application and saving provisions relating to the formulas

Part 1 Consequential amendments

defined in the *Fringe Benefits Tax Assessment Act 1986*) and a year of tax; and

- (b) any amount of income that is not covered by paragraph (a) that is exempt from tax under section 23AF or 23AG of the *Income Tax Assessment Act 1936*, reduced (but not below nil) by the total amount of losses and outgoings (except capital losses and outgoings) incurred by the individual in deriving that exempt income.
- (2) If it is necessary, for the purposes of this Act, to work out an amount of foreign income expressed in a foreign currency received in an income year, the amount in Australian currency is to be worked out using the market exchange rate for 1 July in that income year.
 - (3) If there is no market exchange rate for 1 July in the income year (for example, because of a national public holiday), the market exchange rate to be used is the market exchange rate that applied on the last working day immediately before that 1 July.
 - (4) For the purposes of this clause, the appropriate market exchange rate on a particular day for a foreign currency is:
 - (a) if there is an on-demand airmail buying rate for the currency available at the Commonwealth Bank of Australia at the start of business in Sydney on that day and the Secretary determines that it is appropriate to use that rate—that rate; or
 - (b) in any other case:
 - (i) if there is another rate of exchange for the currency, or there are other rates of exchange for the currency, available at the Commonwealth Bank of Australia at the start of business in Sydney on that day and the Secretary determines that it is appropriate to use the other rate or one of the other rates—the rate so determined; or
 - (ii) otherwise—a rate of exchange for the currency available from another source at the start of business in Sydney on that day that the Secretary determines it is appropriate to use.

Child Support (Assessment) Act 1989

3 Paragraph 4(2)(b)

Omit “the legislatively fixed standards”, substitute “the costs of the children”.

4 Section 5

Before “In this Act”, insert “(1)”.

5 Section 5 (definition of *adjusted income amount*)

Repeal the definition.

6 Section 5

Insert:

adjusted taxable income has the meaning given by section 43.

7 Section 5

Insert:

annualised MTAWE figure has the meaning given by section 5A.

8 Section 5

Insert:

care period has the meaning given by section 48.

9 Section 5 (definition of *carer application*)

Repeal the definition.

10 Section 5 (definition of *carer entitled to child support*)

Repeal the definition, substitute:

carer entitled to child support, in relation to a child, means:

- (a) in the case of an administrative assessment—a parent, or non-parent carer, of the child who, under the administrative assessment, is entitled to be paid child support in relation to the child; and
- (b) in the case of a child support agreement—has the meaning given by subsection 93(1).

11 Section 5

Insert:

child support case, in relation to a child, is the administrative assessments for child support for all children who are children of both of the parents of the child.

12 Section 5

Insert:

child support income has the meaning given by section 41.

13 Section 5 (definition of *child support income amount*)

Repeal the definition.

14 Section 5 (definition of *child support percentage*)

Repeal the definition, substitute:

child support percentage has the meaning given by section 55D.

15 Section 5

Insert:

combined child support income has the meaning given by section 42.

16 Section 5

Insert:

cost percentage has the meaning given by section 55C.

17 Section 5

Insert:

costs of a child has the meaning given by section 55H.

18 Section 5

Insert:

Costs of the Children Table means the table in clause 1 of Schedule 1 to this Act.

19 Section 5

Insert:

court order, in Division 4 of Part 5, has the meaning given by section 47B.

20 Section 5 (definition of *disregarded income amount*)

Repeal the definition.

21 Section 5 (definition of *EAW* amount)

Repeal the definition.

22 Section 5 (definition of *exempted income amount*)

Repeal the definition.

23 Section 5

Insert:

income amount order means:

- (a) a determination under Part 6A (departure determinations), or an order under Division 4 of Part 7 (departure orders), that:
 - (i) varies the annual rate of child support payable by a parent for a child or for all the children in a child support case; or
 - (ii) varies the adjusted taxable income, or the child support income, of a parent or provides for the calculation of that amount; or
- (b) provisions of a child support agreement that has been accepted by the Registrar that have effect, for the purposes of Part 5, as if they were such an order made by consent.

24 Section 5

Insert:

income percentage has the meaning given by section 55B.

25 Section 5

Insert:

income support payment has the meaning given by subsection 66(9).

26 Section 5

Insert:

Income Tax Assessment Act means the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.

27 Section 5 (definition of *index number*)

Omit “subsection 66(4)”, substitute “subsection 153A(2)”.

28 Section 5 (definition of *last day*)

Repeal the definition, substitute:

last day, in relation to a child’s secondary school year, means:

- (a) if the child is not required to sit an examination—the day determined by the secondary school to be the last day of classes for the school year; and
- (b) if the child is required to sit an examination—the later of:
 - (i) the day determined by the secondary school to be the last day of the period of examinations for the child’s year level; and
 - (ii) the day determined by the secondary school to be the last day of classes for the school year.

29 Section 5 (definition of *last relevant year of income*)

Repeal the definition, substitute:

last relevant year of income in relation to a child support period means the last year of income that ended before the start of the period.

Note: For example, in working out Philippe’s last relevant year of income for the child support period that began on 1 January 2008, the last relevant year of income is 2006-07.

30 Section 5 (definition of *liable parent*)

Repeal the definition, substitute:

liable parent, in relation to a child, means:

- (a) in the case of an administrative assessment—a parent by whom child support is payable for the child under the administrative assessment; and
- (b) in the case of a child support agreement—has the meaning given by subsection 93(1).

31 Section 5 (definition of *liable parent application*)

Repeal the definition.

32 Section 5 (definition of *major care*)

Repeal the definition.

33 Section 5 (definition of *minimum annual rate of child support*)

Omit “subsection 66(4)”, substitute “subsection 66(5)”.

34 Section 5

Insert:

multi-case allowance has the meaning given by section 47.

35 Section 5

Insert:

multi-case cap has the meaning given by section 55E.

36 Section 5

Insert:

multi-case child costs has the meaning given by step 4 of the method statement in section 47.

37 Section 5

Insert:

net rental property loss, in relation to a parent for a year of income, means:

- (a) if the expenses incurred by the parent on rental property during that year exceed the parent’s gross rental property income for that year—the amount by which those expenses exceed that gross rental property income; or

- (b) if the expenses incurred by the parent on rental property during that year do not exceed the parent's gross rental property income for that year—nil.

38 Section 5

Insert:

non-parent carer of a child means an eligible carer of the child who is not a parent of the child.

39 Section 5

Insert:

parenting plan has the meaning given by section 63C of the *Family Law Act 1975*.

40 Section 5

Insert:

pension PP (single) maximum basic amount is the sum of:

- (a) the amount that would have been a person's maximum basic rate under Module B of the Pension PP (Single) Rate Calculator if the person was receiving parenting payment under the *Social Security Act 1991*; and
- (b) the amount that would have been the person's pension supplement under Module BA of the Pension PP (Single) Rate Calculator if the person was receiving parenting payment under that Act.

41 Section 5

Insert:

percentage of care has the meaning given by section 48.

42 Section 5

Insert:

regular care has the meaning given by subsection (2).

43 Section 5 (definition of *relevant dependent child*)

Repeal the definition, substitute:

relevant dependent child, in relation to a parent, means a child or step-child of the parent, but only if:

- (a) the parent has at least shared care of the child or step-child during the relevant care period; and
- (b) either:
 - (i) the child or step-child is under 18; or
 - (ii) the last day of the secondary school year in which the child turns 18 has not yet occurred; and
- (c) the child or step-child is not a member of a couple; and
- (d) in the case of a step-child:
 - (i) an order is in force under section 66M of the *Family Law Act 1975* in relation to the parent and the step-child; or
 - (ii) the parent has the duty, under section 124 of the *Family Court Act 1997* of Western Australia, of maintaining the step-child; and
- (e) in the case of a child—the parent is not assessed in respect of the costs of the child (except for the purposes of step 4 of the method statement in section 46).

44 Section 5

Insert:

relevant dependent child amount has the meaning given by section 46.

45 Section 5 (definition of *relevant partnered rate of Social Security pension*)

Repeal the definition.

46 Section 5

Insert:

relevant September quarter has the meaning given by subsection 5A(2).

47 Section 5 (definition of *relevant unpartnered rate of Social Security pension*)

Repeal the definition.

48 Section 5

Insert:

remaining period, in relation to a parent who has made an election under section 60, means the period that the parent used as the remaining period in applying the method in subsection 60(5).

49 Section 5

Insert:

self-support amount has the meaning given by section 45.

50 Section 5

Insert:

shared care has the meaning given by subsection (3).

51 Section 5 (definition of *shared care child*)

Repeal the definition.

52 Section 5 (definition of *shared ongoing daily care*)

Repeal the definition.

53 Section 5 (definition of *substantial care*)

Repeal the definition.

54 Section 5 (definition of *supplementary amount*)

Repeal the definition.

55 Section 5

Insert:

target foreign income has the meaning given by section 5B.

56 Section 5

Insert:

taxable income has the meaning given by sections 56 and 57.

57 Section 5

Insert:

tax free pension or benefit means any of the following pensions or benefits:

- (a) a disability support pension under Part 2.3 of the *Social Security Act 1991*;
- (b) a wife pension under Part 2.4 of the *Social Security Act 1991*;
- (c) a carer payment under Part 2.5 of the *Social Security Act 1991*;
- (d) an invalidity service pension under Division 4 of Part III of the *Veterans' Entitlements Act 1986*;
- (e) a partner service pension under Division 5 of Part III of the *Veterans' Entitlements Act 1986*;
- (f) income support supplement under Part IIIA of the *Veterans' Entitlements Act 1986*;
- (g) Defence Force Income Support Allowance under Part VIIAB of the *Veterans' Entitlements Act 1986*;

to the extent to which the payment:

- (h) is exempt from income tax; and
- (i) is not a payment by way of bereavement payment, pharmaceutical allowance, rent assistance, language, literacy and numeracy supplement or remote area allowance.

58 Section 5 (definition of *yearly equivalent of the EAW* amount)

Repeal the definition.

59 At the end of section 5

Add:

*Definitions of **regular care** and **shared care***

- (2) A person has ***regular care*** of a child if the person has:
 - (a) at least 14%; but
 - (b) less than 35%;of the care of the child during a care period.
- (3) A person has ***shared care*** of a child if the person has:
 - (a) at least 35%; but

- (b) no more than 65%;
of the care of the child during a care period.

60 After section 5

Insert:

5A Definition of *annualised MTAW figure*

- (1) The *annualised MTAW figure* for a relevant September quarter means the figure that is 52 times the amount set out for the reference period in the quarter under the headings “Average Weekly Earnings—Trend—Males—All Employees Total Earnings” in a document published by the Australian Statistician entitled “Average Weekly Earnings, Australia”.
- (2) The *relevant September quarter*, in relation to a child support period, means the quarter ending on 30 September of the last calendar year ending before the child support period begins.
- (3) If at any time (whether before or after the commencement of this section), the Australian Statistician publishes the amount referred to in subsection (1):
 - (a) under differently described headings (the *new headings*); or
 - (b) in a document entitled otherwise than as described in subsection (1) (the *new document*);then the annualised MTAW figure is to be calculated in accordance with subsection (1) as if the references to:
 - (c) “Average Weekly Earnings—Trend—Males—All Employees Total Earnings”; or
 - (d) “Average Weekly Earnings, Australia”;were references to the new headings and/or the new document, as the case requires.
- (4) For the purposes of this section, the *reference period* in a particular quarter is the period described by the Australian Statistician as the pay period ending on or before a specified day that is the third Friday of the middle month of that quarter.

5B Definition of *target foreign income*

- (1) A parent’s *target foreign income* for a year of income is:
-

- (a) the amount of the parent's foreign income (as defined in section 10A of the *Social Security Act 1991*) for the year of income that is neither:
 - (i) taxable income; nor
 - (ii) received in the form of a fringe benefit (as defined in the *Fringe Benefits Tax Assessment Act 1986*, as it applies of its own force or because of the *Fringe Benefits Tax (Application to the Commonwealth) Act 1986*) in relation to the parent as an employee (as defined in the *Fringe Benefits Tax Assessment Act 1986*) and a year of tax; and
 - (b) any amount of income that is not covered by paragraph (a) that is exempt from tax under section 23AF or 23AG of the *Income Tax Assessment Act 1936*, reduced (but not below nil) by the total amount of losses and outgoings (except capital losses and outgoings) incurred by the parent in deriving that exempt income.
- (2) If it is necessary, for the purposes of this Act, to work out an amount of foreign income expressed in a foreign currency received in a year of income, the amount in Australian currency is to be worked out using the market exchange rate for 1 July in that year of income.
- (3) If there is no market exchange rate for 1 July in the year of income (for example, because of a national public holiday), the market exchange rate to be used is the market exchange rate that applied on the last working day immediately before that 1 July.
- (4) For the purposes of this section, the appropriate market exchange rate on a particular day for a foreign currency is:
- (a) if there is an on-demand airmail buying rate for the currency available at the Commonwealth Bank of Australia at the start of business in Sydney on that day and the Secretary determines that it is appropriate to use that rate—that rate; or
 - (b) in any other case:
 - (i) if there is another rate of exchange for the currency, or there are other rates of exchange for the currency, available at the Commonwealth Bank of Australia at the start of business in Sydney on that day and the Secretary determines that it is appropriate to use the other rate or one of the other rates—the rate so determined; or

- (ii) otherwise—a rate of exchange for the currency available from another source at the start of business in Sydney on that day that the Secretary determines it is appropriate to use.

61 Subsections 7A(2) and (3)

Repeal the subsections, substitute:

When does a child support period start?

- (2) Each of the following times is the start of a child support period:
 - (a) the beginning of the day on which an application for an administrative assessment of the child support payable for a child is properly made under Part 4;
 - (b) the beginning of the day mentioned in paragraph 93(1)(g) (child support payable under a child support agreement accepted by Registrar);
 - (c) the start of the first day for which a child support agreement described in section 34B is to affect the rate of child support payable for a child;
 - (d) immediately after the end of the preceding child support period that relates to child support payable for the child (whether it was a period starting as described in paragraph (a), (b) or (c) or this paragraph).

Note: Despite paragraph (2)(a), a child support period might not start if a non-parent carer applies for an administrative assessment of child support during a child support period (see section 40B).

End of the child support period

- (3) The child support period ends at whichever of the following times occurs soonest after the start of the period:
 - (a) the time 15 months after the period started;
 - (b) the end of the named month during which the Registrar makes an assessment relating to the annual rate of child support payable for the child as required by section 34A (assessment when new tax figure is available);
 - (c) the time immediately before the day mentioned in paragraph 93(1)(g) (child support payable under a child support agreement accepted by Registrar);

- (d) the end of the day immediately before the first day for which a child support agreement described in section 34B is to affect the rate of child support payable for the child.

62 Subsection 7B(1)

Repeal the subsection, substitute:

- (1) In this Act, *eligible carer*, in relation to a child, means a person who has at least shared care of the child.

63 Sections 8 and 8A

Repeal the sections.

64 Paragraph 23(b)

Omit “eligible carers”, substitute “parents”.

65 Paragraph 23(c)

Omit “parents other than eligible carers”, substitute “non-parent carers”.

66 Sections 25 to 26A

Repeal the sections, substitute:

25 Persons who may apply—parents

A parent (the *applicant*) of a child may apply to the Registrar under this section for administrative assessment of child support for the child if:

- (a) the applicant applies for both parents to be assessed in respect of the costs of the child; and
- (b) the applicant is not living with the other parent as his or her partner on a genuine domestic basis (whether or not legally married to the other parent); and
- (c) the applicant complies with any applicable requirements of section 26 (dealing with joint care situations) and section 26A (dealing with children cared for under child welfare laws).

Note: A parent by whom child support is payable must be a resident of Australia on the day on which the application is made (see section 29A).

25A Persons who may apply—non-parent carers

A person who is not a parent of a child (the *applicant*) may apply to the Registrar under this section for administrative assessment of child support for the child if:

- (a) the applicant is an eligible carer of the child; and
- (b) one of the following also applies:
 - (i) the applicant applies for both parents to be assessed in respect of the costs of the child;
 - (ii) if one parent of the child is not a resident of Australia—the applicant applies for the other parent to be assessed in respect of the costs of the child;
 - (iii) if the Registrar is satisfied that there are special circumstances—the applicant applies for the other parent to be assessed in respect of the costs of the child;
 - (iv) if one parent of the child is dead—the applicant applies for the other parent to be assessed in respect of the costs of the child; and
- (c) the applicant is not living with either parent as the partner of that parent on a genuine domestic basis (whether or not legally married to that parent); and
- (d) the applicant complies with any applicable requirements of section 26 (dealing with joint care situations) and section 26A (dealing with children cared for under child welfare laws).

Note: A parent by whom child support is payable must be a resident of Australia on the day on which the application is made (see section 29A).

26 Requirements of applications where there are joint carers

If 2 or more persons (*joint carers*) jointly have care of a child, then only one of the joint carers may apply for administrative assessment of child support for the child. If one of those joint carers is a parent of the child, the joint carer who applies must be that parent.

26A Requirements of application if child is cared for under child welfare law

If a non-parent carer has care (however described) of a child under a child welfare law, the non-parent carer may apply for child support for the child only if the non-parent carer is a relative of the child.

67 Subsection 28(1)

Omit “(1)”.

Note: The heading to section 28 is altered by omitting “etc.”.

68 At the end of subsection 28(1)

Add:

Note: This provision applies even if the children are in different child support cases.

69 Subsection 28(2)

Repeal the subsection.

70 Subsection 29(2)

Omit “If the application is a carer application, the”, substitute “The”.

71 After section 29

Insert:

29A Person by whom child support is payable must be Australian resident

- (1) This section applies if:
 - (a) an application is made under section 25 or 25A for a parent to be assessed in respect of the costs of the child; and
 - (b) the parent is not a resident of Australia on the day on which the application is made.
 - (2) The Registrar must determine whether child support is reasonably likely to be payable by the parent.
 - (3) If the Registrar determines that child support is reasonably likely to be payable by the parent, then the application is taken not to have been properly made.
-

Note: If an application is not properly made the Registrar must refuse the application under section 30.

72 Section 31

Repeal the section, substitute:

31 Requirement to assess child support on acceptance of application

- (1) If the Registrar accepts an application for administrative assessment of child support for a child, the Registrar must, as quickly as possible:
 - (a) either:
 - (i) if the application is made under section 25—assess both parents in respect of the costs of the child under Part 5; or
 - (ii) if the application is made under section 25A (non-parent carer applications)—assess both parents, or the relevant parent, (as the case requires) in respect of the costs of the child under Part 5; and
 - (b) assess under Part 5 the annual rate of child support payable by a parent for the child for the days in the child support period that starts on the day on which the application was made.

Note: Part 4A deals with assessments for later child support periods.

- (2) Child support is payable until the day immediately before the day on which a child support terminating event happens in relation to the child, the carer entitled to child support, the liable parent or all 3 of them.

73 Subsections 33(2) and (3)

Repeal the subsections, substitute:

Refusals on ground that Registrar not satisfied that person a parent

- (3) If one of the reasons the Registrar refused to accept the application was because the Registrar was not satisfied under section 29 that a person (the *other party*) who was to be assessed in respect of the costs of the child is a parent of the child, the notice must include, or be accompanied by:

- (a) a statement that the Registrar was not satisfied under section 29 that the other party is a parent of the child; and
- (b) a statement to the effect that the applicant may apply to a court having jurisdiction under this Act for a declaration under section 106A that the applicant is entitled to administrative assessment of child support for a child because the other party is a parent of the child.

74 Section 34

Repeal the section, substitute:

34 Notices to be given in respect of application

- (1) If the Registrar accepts an application for administrative assessment of child support for a child, the Registrar must notify the applicant and any parent who is to be assessed in respect of the costs of the child.
- (2) The notice must include, or be accompanied by, a statement to the effect that:
 - (a) a person who is to be assessed in respect of the costs of the child may apply to a court having jurisdiction under this Act for a declaration under section 107 that the applicant was not entitled to administrative assessment of child support for the child because the person is not a parent of the child; and
 - (b) in any case:
 - (i) the person, may, subject to the Registration and Collection Act, object to the decision (the *original decision*) (other than because the person is not a parent of the child); and
 - (ii) the person, if aggrieved by a later decision on an objection in relation to the original decision (no matter who lodges the objection), may, subject to that Act, apply to the SSAT for review of the later decision.

75 Section 34A

Repeal the section, substitute:

34A Registrar must make assessment when new tax figure is available

Application of section

- (1) This section requires the Registrar to assess the annual rate of child support payable in some cases if:
- (a) child support is payable by a liable parent for a child for a day in a child support period (the *earlier period*); and
 - (b) during the earlier period, an assessment (the *tax assessment*) is made under an Income Tax Assessment Act of the taxable income, or any other component of the adjusted taxable income, of the liable parent or the other parent, for the latest year of income (the *last year*) that ended after the start of the earlier period.

Registrar must make assessment using new tax figures

- (2) As soon as practicable after the tax assessment is made, the Registrar must assess the annual rate of child support payable for the child for days in a child support period starting on the first day of the next named month (after the named month in which the Registrar makes the assessment).

When new assessment is not required

- (3) This section does not require the Registrar to make an assessment if:
- (a) the Registrar calculates that the tax assessment for the last year could not affect the annual rate of child support payable for the child for a day in a child support period; or
 - (b) the annual rate of child support payable for the child for the first day of the next named month is to be worked out without reference to the actual taxable income of the parent mentioned in paragraph (1)(b) because of:
 - (i) a child support agreement between the parents of the child; or
 - (ii) a determination under Part 6A (departure determination); or
 - (iii) an order made by a court under this Act or the Registration and Collection Act; or

- (c) the earlier period will end before the end of the earliest named month in which it is practicable for the Registrar to make the assessment mentioned in subsection (2).

Note: In the case of paragraph (3)(c), the Registrar must use the information from the tax assessment to make an assessment for the period starting immediately after the end of the earlier period (unless the information is not relevant to an assessment, because of an agreement, determination or order) (see section 34C).

76 Section 34C

Repeal the section, substitute:

34C Administrative assessments for child support periods not started by application or new agreement

The Registrar must assess under this Act the annual rate of child support payable for a child for days in a child support period either before, or as soon as practicable after, the start of the period unless:

- (a) the period starts when the application is made under Part 4;
or
- (b) the period starts on a day mentioned in paragraph 93(1)(g); or
- (c) an assessment of the child support payable for the child for days in the period has already been made as required by section 34A; or
- (d) the period starts on the first day for which a child support agreement described in subsection 34B(1) is to affect the annual rate of child support payable for the child.

Note 1: Section 31 requires the Registrar to make an assessment of child support payable as quickly as possible after accepting an application under Part 4.

Note 2: Subsection 93(2) requires the Registrar to make an assessment of child support payable as soon as practicable after accepting certain child support agreements.

Note 3: If a child support agreement has effect for the purposes of the child support period, it will affect the assessment (see section 95).

77 Paragraphs 83(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) 2 parents of a child who, under section 25, would be able to properly make an application for administrative assessment of child support for the child in relation to whom the

agreement is made on the day on which the agreement is entered into; or

- (b) one or both parents of a child, and a non-parent carer of the child, who, under sections 25 and 25A, would be able to properly make an application for administrative assessment of child support for the child in relation to whom the agreement is made on the day on which the agreement is entered into.

78 Subsection 98S(1)

Repeal the subsection, substitute:

- (1) The determinations the Registrar may make under this Part are as follows:
 - (a) a determination varying the annual rate of child support payable by a parent;
 - (b) a determination varying a parent's or non-parent carer's cost percentage for a child;
 - (c) a determination varying a parent's child support income;
 - (d) a determination varying the parents' combined child support income;
 - (e) a determination that:
 - (i) the column in the Costs of the Children Table that covers a parent's child support income or combined child support income that is, or is determined to be, greater than 2.5 times the annualised MTAW figure for the relevant September quarter, is the column headed "2 to 2.5"; and
 - (ii) the column is to apply as if the second dollar amount in the heading to that column did not apply;
 - (f) a determination varying a parent's child support percentage;
 - (g) a determination varying a parent's adjusted taxable income;
 - (h) a determination varying a parent's relevant dependent child amount or multi-case allowance;
 - (i) a determination varying a parent's self-support amount;
 - (j) a determination varying the costs of the children.

Note: There are limitations on the Registrar making a determination that varies an annual rate of child support payable in respect of a child support case below the minimum annual rate (see section 98SA).

79 Section 98SA

Repeal the section, substitute:

98SA Variation not to be below minimum annual rate of child support

The Registrar must not make a determination under this Part that varies, or that has the effect of varying, the annual rate of child support payable, for a day in a child support period, by a liable parent for all of the children in the child support case that relates to the child in respect of whom the determination is made to a rate below the minimum annual rate of child support for the child support period, unless the liable parent has at least regular care of at least one of the children in that child support case.

80 Section 106A

Repeal the section, substitute:

106A Declaration that a person is entitled to administrative assessment

- (1) This section applies if:
- (a) the Registrar refuses to accept from an applicant an application for administrative assessment of child support for a child under subsection 30(2); and
 - (b) one of the reasons for the Registrar so refusing was that the Registrar was not satisfied under section 29 that a person who was to be assessed in respect of the costs of the child is a parent of the child.

Applications for declarations

- (2) The applicant may apply to a court having jurisdiction under this Act for a declaration that:
- (a) if the reason referred to in paragraph (1)(b) was the only reason for the Registrar refusing to accept the application—the applicant is entitled to administrative assessment of child support for the child because the person who was to be assessed in respect of the costs of the child is a parent of the child; and

- (b) if the reason referred to in paragraph (1)(b) was one of the reasons for the Registrar refusing to accept the application—the applicant is entitled to have the Registrar reconsider the application under Division 2 of Part 4 because the person who was to be assessed in respect of the costs of the child is a parent of the child.
- (3) The application must be made within:
 - (a) the time prescribed by the applicable Rules of Court; or
 - (b) such further time as is allowed under the applicable Rules of Court.

Parties

- (4) Subject to section 145 (Registrar may intervene in proceedings), the parties to the proceeding are:
 - (a) the applicant; and
 - (b) the parent who was to be assessed in respect of the costs of the child.

Declarations

- (5) The court may grant the declaration if the court is satisfied that:
 - (a) if the reason referred to in paragraph (1)(b) was the only reason for the Registrar refusing to accept the application—the person is entitled to administrative assessment of child support because the person who was to be assessed in respect of the costs of the child is a parent of the child; or
 - (b) if the reason referred to in paragraph (1)(b) was one of the reasons for the Registrar refusing to accept the application—the applicant is entitled to have the Registrar reconsider the application under Division 2 of Part 4 because the person who was to be assessed in respect of the costs of the child is a parent of the child.
 - (6) If the court grants the declaration:
 - (a) if the reason referred to in paragraph (1)(b) was the only reason for the Registrar refusing to accept the application—the Registrar is taken to have accepted the application for administrative assessment of child support; and
 - (b) if the reason referred to in paragraph (1)(b) was one of the reasons for the Registrar refusing to accept the application—
-

the Registrar must reconsider the application under
Division 2 of Part 4.

81 Subsection 107(1)

Omit “Where the Registrar accepts a carer application for administrative assessment of child support for a child, the person from whom the application sought payment of child support”, substitute “If the Registrar accepts an application for administrative assessment of child support for a child, a person who was assessed in respect of the costs of the child”.

82 Subsection 107(3)

Omit “from whom the application sought payment of child support”, substitute “who was assessed in respect of the costs of the child”.

83 Subsection 107(4)

Repeal the subsection, substitute:

- (4) The court may grant the declaration if the court is satisfied that the applicant was not entitled to administrative assessment of child support for the child because the person who was assessed in respect of the costs of the child is not a parent of the child.

84 Paragraph 117(3B)(a)

Omit “child support income amount”, substitute “adjusted taxable income”.

85 Subsection 118(1)

Repeal the subsection, substitute:

- (1) The orders that a court may make under this Division are as follows:
- (a) an order varying the annual rate of child support payable by a parent;
 - (b) an order varying a parent’s or non-parent carer’s cost percentage for a child;
 - (c) an order varying a parent’s child support income;
 - (d) an order varying the parents’ combined child support income;
 - (e) an order that:

- (i) the column in the Costs of the Children Table that covers a parent's child support income or combined child support income that is, or is ordered to be, greater than 2.5 times the annualised MTAWWE figure for the relevant September quarter, is the column headed "2 to 2.5"; and
- (ii) the column is to apply as if the second dollar amount in the heading to that column did not apply;
- (f) an order varying a parent's child support percentage;
- (g) an order varying a parent's adjusted taxable income;
- (h) an order varying a parent's relevant dependent child amount or multi-case allowance;
- (i) an order varying a parent's self-support amount;
- (j) an order varying the costs of the children.

86 Subsection 139(1)

Omit "a carer application", substitute "an application".

87 Subparagraph 139(2A)(d)(ii)

Omit "the person from whom the application sought payment of child support", substitute "a person who was to be assessed in respect of the costs of the child".

88 Paragraph 139(2A)(d)

Omit "the person from whom the application sought payment of child support" (second occurring), substitute "the person who was to be assessed in respect of the costs of the child".

89 Subsection 139(3)

Repeal the subsection, substitute:

- (3) A proceeding under this section may be instituted by the applicant for administrative assessment of child support against a person who was to be assessed in respect of the costs of the child.

90 Paragraphs 150B(1)(b) and (c)

Repeal the paragraphs, substitute:

- (b) another person has applied for the person to be assessed in respect of the costs of a child; or

91 Subsection 150C(1) (note)

Omit “the Registrar may act on the basis that the person’s taxable income is an amount worked out”, substitute “the Registrar may determine the person’s adjusted taxable income”.

92 After subsection 151B(1)

Insert:

- (1A) If a relevant dependent child of a parent turns 18 during a year in which the child is in full-time secondary education, the parent may apply for the relevant dependent child to be taken into account in any relevant administrative assessment until the last day of the secondary school year in which the child turns 18.

93 Paragraph 151B(2)(b)

Repeal the paragraph, substitute:

- (b) in the case of an application under subsection (1) for a child support agreement to continue in force—signed by both the carer entitled to child support for the child and the liable parent in relation to the child.

94 Paragraph 151C(2)(b)

Repeal the paragraph, substitute:

- (b) either:
- (i) if the application is made under subsection 151B(1)—an administrative assessment, or a child support agreement, in relation to the child either is in force, or is likely to be in force, on the day before the child’s 18th birthday; or
 - (ii) otherwise—an administrative assessment that takes the child into account is in force, or is likely to be in force, on the day before the child’s 18th birthday; and

95 Subsections 151D(1) and (3)

Omit “section 151B”, substitute “subsection 151B(1)”.

Note: The heading to section 151D is altered by inserting “**under subsection 151B(1)**” after “**Application**”.

96 After section 151D

Insert:

151E Applications under subsection 151B(1A) in respect of administrative assessments—consequences of acceptance

Registrar to take necessary action

- (1) If the Registrar accepts an application under subsection 151B(1A), the Registrar must immediately take such action as is necessary to take account of the change to the meaning of relevant dependent child (whether by amending an administrative assessment or otherwise).

Child to be regarded as aged 17 for purposes of Part 5

- (2) If the Registrar accepts the application, the child is taken to be aged 17 for the purposes of applying Part 5 to the child throughout the period:
 - (a) beginning on the day on which the child turned 18; and
 - (b) ending on the last day of the secondary school year in which the child turns 18.

Date of effect of decision

- (3) A decision of the Registrar to accept an application in relation to a child under subsection 151B(1A) takes effect on the day before the child turns 18, whether the decision is made before, on or after that day.

97 After section 153

Insert:

153A Indexation of amounts

- (1) This section applies for the purposes of the following provisions:
 - (a) subsection 65A(2); and
 - (b) subsection 66(5).
- (2) For the purposes of this Act, the amount specified in those provisions in relation to a child support period that begins in a particular calendar year is taken to be the amount worked out using the formula:

$$\text{Amount specified in the provision} \times \frac{\text{Highest September quarter index number}}{\text{Base September quarter index number}}$$

where:

base September quarter index number means the index number for the September quarter of 2005.

highest September quarter index number means the highest index number for a September quarter since the base September quarter index number (and including the base September quarter).

index number for a quarter is the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities and is published by the Australian Statistician in respect of that quarter.

- (3) Subject to subsection (4), if at any time (whether before or after the commencement of this subsection) the Australian Statistician publishes an index number for a quarter in substitution for an index number previously published by the Australian Statistician for that quarter, the publication of the later index number is to be disregarded for the purposes of subsection (2).
- (4) If at any time the Australian Statistician changes the reference base for the Consumer Price Index, regard is to be had, for the purposes of applying subsection (2) after the change takes place, only to index numbers published in terms of the new reference base.

98 Sections 154 and 155

Repeal the sections, substitute:

155 Publication of figures

- (1) Before the end of each calendar year, the Registrar must publish in the *Gazette* for all child support periods starting in the following calendar year:
 - (a) the minimum annual rate of child support; and
 - (b) the annual rate of child support specified in subsection 65A(2) (low income parents not on income support).

- (2) Before the end of each calendar year, the Secretary must publish in the *Gazette* for all child support periods starting in the following calendar year:
 - (a) the annualised MTAWWE figure for the relevant September quarter; and
 - (b) the Costs of the Children Table, incorporating:
 - (i) the annualised MTAWWE figure for the relevant September quarter; and
 - (ii) any other amounts in items in the table that can be worked out using the annualised MTAWWE figure.
- (3) The instruments published under subsections (1) and (2) are not legislative instruments.

Child Support (Registration and Collection) Act 1988

99 Subsection 4(1)

Insert:

non-parent carer has the meaning given by section 5 of the Assessment Act.

100 Subparagraphs 17(1)(a)(i) and (ii)

After “periodic amount”, insert “to a parent or non-parent carer of the child”.

101 Paragraph 24A(2)(c)

Repeal the paragraph, substitute:

- (c) the application giving rise to the child support assessment was made by the parent by whom child support is payable.

102 Subparagraph 79B(1)(a)(iii)

Omit “the person from whom the application sought payment”, substitute “a person who was to be assessed in respect of the costs of the child”.

103 Subsection 80(5)

Repeal the subsection, substitute:

- (5) An objection to a decision of the Registrar to refuse to accept an application for administrative assessment may not be lodged if one of the reasons for the Registrar so refusing was that the Registrar was not satisfied under section 29 that a person who was to be assessed in respect of the costs of a child is a parent of the child concerned.

Note: In that case, the applicant may be able to apply to a court under section 106A of the Assessment Act for a declaration that the applicant is entitled to administrative assessment of child support for the child.

104 Subsection 85(1) (table item 4)

Omit “the person to whom or from whom the application seeks payment of child support, as the case requires”, substitute “each parent who the application sought to be assessed in respect of the costs of the child, and any non-parent carer of the child, (other than the person who objects to the decision)”.

105 Paragraph 101(3)(b)

Omit “an eligible carer, but not a parent,”, substitute “a non-parent carer”.

106 Paragraph 102(2)(b)

Omit “an eligible carer, but not a parent,”, substitute “a non-parent carer”.

107 Paragraph 103H(b)

Omit “an eligible carer, but not a parent,”, substitute “a non-parent carer”.

108 After section 103V

Insert:

103VA Appeal to AAT on decisions relating to percentages of care

- (1) A party to a review aggrieved by a decision of the SSAT under this Part relating to a party’s percentage of care for a child may apply to the AAT for review of the decision.
- (2) In subsection (1):

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

109 At the end of paragraph 103X(1)(a)

Add:

- (iii) if the decision relates to a party's percentage of care for a child—that a party may, subject to the *Administrative Appeals Tribunal Act 1975*, apply to the AAT for review of the decision, and request a statement under section 28 of that Act (except where subsection 28(4) of that Act applies); and

110 Subsection 103X(2)

After “(1)(a)(ii)”, insert “or (iii)”.

Family Law Act 1975

111 Subsection 63G(5)

Omit “seeking payment of child support by the other party to the plan”.

112 Subsection 66E(1)

Repeal the subsection, substitute:

- (1) A court having jurisdiction under this Part must not, at any time, make, revive or vary a child maintenance order in relation to a child on the application of a person (the *applicant*) against, or in favour of, a person (the *respondent*) if an application could properly be made, at that time, by the applicant under the *Child Support (Assessment) Act 1989* for the respondent to be assessed in respect of the costs of the child, or vice versa.

113 Subsection 66SA(1)

Omit “for administrative assessment of child support (within the meaning of that Act) for the child seeking payment of child support by the other person”, substitute “for the other person to be assessed in respect of the costs of the child”.

114 Paragraph 86(3B)(c)

Omit “for administrative assessment of child support (within the meaning of that Act) for the child, seeking payment of the child support by the other party to the agreement”, substitute “for the other party to the agreement to be assessed in respect of the costs of the child”.

114A Paragraph 87(4D)(c)

Omit “for administrative assessment of child support (within the meaning of that Act) for the child seeking payment of the child support by the other party to the agreement”, substitute “for the other party to the agreement to be assessed in respect of the costs of the child”.

Part 2—Application and saving provisions

115 Application

- (1) The amendments made by Schedule 1 to this Act, and this Schedule (other than items 1 and 2 and 92 to 96 of this Schedule), apply in relation to a day in a child support period, being a day that is, or is after, the day on which this item commences.
- (2) The amounts referred to in subsections 65A(2) and 66(5) of the Assessment Act (as inserted by Schedule 1 to this Act) are to be indexed in accordance with section 153A of that Act on and after 1 January 2007 as if item 1 of Schedule 1 had commenced on that day.

116 Application

The amendments made by items 1 and 2 of this Schedule apply in relation to the 2008-09 income year and later income years.

116A Application

The amendments made by items 92 to 96 of this Schedule apply in relation to a day in a child support period, being a day that is, or is after, 1 January 2008.

117 Saving assessments etc.

- (1) The amendments made by Schedule 1 do not affect the continuity of:
 - (a) any administrative assessment, in force immediately before this item commences, of the annual rate of child support that is payable by a parent; or
 - (b) any reduction, that is in force immediately before this item commences, of an annual rate of child support payable to nil under section 66A of the Assessment Act; or
 - (c) any liability that arose under section 77 of the Assessment Act before this item commences.
- (2) For the purposes of the Assessment Act, if an election made by a person under section 60 of that Act is in force immediately before this item commences:

- (a) the election continues in force for the remaining days in the child support period, despite the amendments made by Schedule 1; and
 - (b) the person is taken to have made the election for the purposes of assessing the person in respect of the costs of the child; and
 - (c) the amount specified in the relevant notice as the amount the person elects to be his or her child support income amount is taken to be specified in the notice as his or her adjusted taxable income; and
 - (d) the amounts specified as amounts estimated under steps 2 and 3 of the method statement in subsection 60(5) of that Act, as in force immediately before this item commences, are taken to be specified in the notice as the amount estimated under step 2 of the method statement in subsection 60(5) of that Act, as in force immediately after this item commences.
- (3) For the purposes of the Assessment Act, if the Registrar has acted on the basis of a determination under section 58 of that Act that is in force immediately before this item commences:
 - (a) the determination continues in force despite the amendments made by Schedule 1; and
 - (b) a determination of a person's supplementary amount for a year of income is taken to be a determination of the components of the person's adjusted taxable income referred to in paragraphs 43(1)(b) to (e) of the Assessment Act (as inserted by Schedule 1) for the year of income; and
 - (c) a determination of a person's taxable income, and the person's supplementary amount, for a year of income is taken to be a determination of the person's adjusted taxable income for the year of income.

118 Requirement to publish annualised MTAW figure

- (1) Before 1 July 2008, the Registrar must publish in the *Gazette* the annual rate of child support specified in subsection 65A(2) of the Assessment Act (as inserted by Schedule 1 to this Act) for all child support periods that start in that calendar year or the previous calendar year.
 - (2) Before 1 July 2008, the Secretary must publish in the *Gazette* for all child support periods that start in that calendar year or the previous calendar year:
-

Schedule 2 Consequential amendments and application and saving provisions relating to the formulas

Part 2 Application and saving provisions

- (a) the annualised MTAWWE figure for the relevant September quarter; and
 - (b) the Costs of the Children Table, incorporating:
 - (i) the annualised MTAWWE figure for the relevant September quarter; and
 - (ii) any other amounts in items in the table that can be worked out using the annualised MTAWWE figure.
- (3) The instruments published under subitems (1) and (2) are not legislative instruments.

Schedule 3—SSAT review of child support decisions (commencing on 1 January 2007)

Part 1—Amendments

Child Support (Assessment) Act 1989

1 Section 5

Insert:

final, in relation to a decision of a court, has the meaning given by section 144.

2 Section 5

Insert:

Registration and Collection Act means the *Child Support (Registration and Collection) Act 1988*.

3 Section 33

Repeal the section, substitute:

33 Notice to be given to unsuccessful applicant

- (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.

Refusals on grounds that Registrar not satisfied that person a parent

- (2) Subsection (3) applies if:
- (a) the application was a carer application; and
 - (b) one of the reasons for the Registrar refusing to accept the application was that the Registrar was not satisfied under section 29 that the person from whom the application sought payment of child support is a parent of the child.

- (3) The notice must include, or be accompanied by:
- (a) a statement of the reason referred to in paragraph (2)(b); and
 - (b) a statement to the effect that the applicant may apply to a court having jurisdiction under this Act for a declaration under section 106A that the applicant is entitled to administrative assessment of child support for a child because the person from whom the application sought payment of child support is a parent of the child.

Refusals on other grounds

- (4) If subsection (3) does not apply, the notice must include, or be accompanied by, a statement to the effect that:
- (a) the applicant may, subject to the Registration and Collection Act, object to the decision (the *original decision*); and
 - (b) the applicant may, if aggrieved by a later decision on an objection to the original decision, subject to that Act, apply to the SSAT for review of the later decision.

Validity of decisions

- (5) A contravention of subsection (3) or (4) in relation to a decision does not affect the validity of the decision.

4 Subsection 34(2)

Repeal the subsection, substitute:

- (2) The notice must include, or be accompanied by, a statement to the effect:
- (a) that the person from whom the application sought payment of child support for a child may apply to a court having jurisdiction under this Act for a declaration under section 107 that the applicant was not entitled to administrative assessment of child support for the child because the person is not a parent of the child; and
 - (b) that the person from whom, or to whom, the application sought payment of child support:
 - (i) may, subject to the Registration and Collection Act, object to the decision (the *original decision*) (other than on the ground that the person is not a parent of the child concerned); and

- (ii) if aggrieved by a later decision on an objection to the original decision (no matter who lodges the objection), may, subject to that Act, apply to the SSAT for review of the later decision.

5 Subsection 60A(3)

Omit “Part 6B and section 110”, substitute “Parts VII, VIIA and VIII of the Registration and Collection Act”.

6 Subsection 60B(2)

Repeal the subsection, substitute:

- (2) The notice must include, or be accompanied by, a statement to the effect:
 - (a) that the person may, subject to the Registration and Collection Act, object to the particulars of the assessment in relation to which the person sought to make the election; and
 - (b) that if the person is aggrieved by the decision on the objection, he or she may, subject to that Act, apply to the SSAT for review of the decision.
- (3) A contravention of subsection (2) in relation to a decision does not affect the validity of the decision.

7 Subsection 64A(6)

Repeal the subsection, substitute:

- (6) The notice must include, or be accompanied by, a statement to the effect:
 - (a) that the person may, subject to the Registration and Collection Act, object to the decision (the *original decision*); and
 - (b) that if the person is aggrieved by a later decision on an objection to the original decision, he or she may, subject to that Act, apply to the SSAT for review of the later decision.

8 Subsection 66C(2)

Repeal the subsection, substitute:

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

- (a) that the applicant may, subject to the Registration and Collection Act, object to the particulars of the assessment in relation to which the unsuccessful application was made; and
 - (b) that if the applicant is aggrieved by the decision on the objection, he or she may, subject to that Act, apply to the SSAT for review of the decision.
- (3) A contravention of subsection (2) in relation to a decision does not affect the validity of the decision.

9 Subsection 70(1)

Omit “Division 3 of Part 7”, substitute “Part VIIA, or Subdivision B of Division 3 of Part VIII, of the Registration and Collection Act”.

10 Section 72

Omit “Division 3 of Part 7”, substitute “Part VIIA, or Subdivision B of Division 3 of Part VIII, of the Registration and Collection Act”.

11 Subparagraph 76(3)(a)(i)

Omit “this Act”, substitute “the Registration and Collection Act”.

12 Subparagraph 76(3)(a)(ii)

Repeal the subparagraph, substitute:

- (ii) if aggrieved by the decision on an objection to particulars of the assessment (no matter who lodges the objection but subject to that Act), to apply to the SSAT for review of the decision;

13 Subsection 96(2)

Repeal the subsection, substitute:

- (2) The notice must include, or be accompanied by, a statement that specifically draws the attention of the parties to the agreement to the right:
 - (a) to object, subject to the Registration and Collection Act, to the decision (the *original decision*); and
 - (b) if aggrieved by a later decision on an objection to the original decision (no matter who lodges the objection but subject to that Act), to apply to the SSAT for review of the later decision.

14 Section 98JA

Repeal the section, substitute:

98JA Notice of refusal to be served on parties

- (1) If the Registrar refuses to make a determination under this Division, the Registrar must serve notice in writing of the decision on each of the parties to the proceeding.
- (2) The notice must include, or be accompanied by, a statement to the effect:
 - (a) that the party may, subject to the Registration and Collection Act, object to the decision (the *original decision*); and
 - (b) that if the party is aggrieved by a later decision on an objection to the original decision (no matter who lodges the objection), the party may:
 - (i) if the original decision was made under section 98E (issues too complex)—apply to a court having jurisdiction under this Act for an order under Division 4 of Part 7; or
 - (ii) otherwise—apply, subject to the Registration and Collection Act, to the SSAT for review of the later decision.
- (3) A contravention of subsection (2) in relation to a decision does not affect the validity of the decision.

15 At the end of Division 3 of Part 6A

Add:

98RA Notice of refusal to be served on parties

- (1) If, after having notified parties under section 98M, the Registrar refuses to make a determination under this Division, the Registrar must serve notice in writing of the decision on each of the parties to the proceeding.
- (2) The notice must include, or be accompanied by, a statement to the effect:
 - (a) that the party may, subject to the Registration and Collection Act, object to the decision (the *original decision*); and

- (b) that if the party is aggrieved by a later decision on an objection to the original decision (no matter who lodges the objection), the party may:
- (i) if the original decision was made under section 98R (issues too complex)—apply to a court having jurisdiction under this Act for an order under Division 4 of Part 7; or
 - (ii) otherwise—apply, subject to the Registration and Collection Act, to the SSAT for review of the later decision.
- (3) A contravention of subsection (2) in relation to a decision does not affect the validity of the decision.

16 Part 6B

Repeal the Part.

17 Part 7 (heading)

Repeal the heading, substitute:

Part 7—Court review of certain decisions

18 Before Division 1 of Part 7

Insert:

Division 1A—Preliminary

98W Simplified outline

The following is a simplified outline of this Part:

- | |
|---|
| <ul style="list-style-type: none">• Jurisdiction under this Act is conferred on certain federal and State courts.• Generally, a person may apply for an order under this Part without having first obtained internal review under Part VII of the Registration and Collection Act. |
|---|

- A court may declare that a person is, or is not, entitled to administrative assessment of child support for a child because another person is, or is not, the parent of the child.
- A court may grant leave for the making of a departure determination under Part 6A, or a departure order under Division 4 of this Part, in relation to a period more than 18 months but less than 7 years earlier.
- In special circumstances, a court may make an order equivalent to a departure determination.
- A court may order that child support be paid in a form other than periodic amounts paid to a carer.
- A court may set aside a child support agreement if the consent of one of the parties was obtained by fraud or undue influence.
- A court may make an order for the payment of child support if a child is in urgent need of financial assistance.
- If a proceeding has been instituted in a court, or before the Registrar under Part 6A, a court may make an order staying or otherwise affecting the operation of this Act during the proceeding.

19 Division 1 of Part 7 (heading)

Repeal the heading, substitute:

Division 1—Jurisdiction of courts

20 Before section 99

Insert:

98X Simplified outline

The following is a simplified outline of this Division:

- Jurisdiction under this Act is conferred on the Family Court, the Federal Magistrates Court and certain State and Territory courts.
- This Division also provides for appeals to the Family Court from other courts.

21 Division 2 of Part 7 (heading)

Repeal the heading, substitute:

Division 2—Entitlement to administrative assessment

22 Sections 106 and 106A

Repeal the sections, substitute:

106 Simplified outline

The following is a simplified outline of this Division:

- A court may declare that a person is entitled to administrative assessment of child support for a child because another person is the parent of the child.
- A court may declare that a person is not entitled to administrative assessment of child support for a child because another person is not the parent of the child.

106A Declaration that a person is entitled to administrative assessment

(1) This section applies if:

- (a) the Registrar refuses to accept from an applicant a carer application for administrative assessment of child support for a child under subsection 30(2); and
- (b) one of the reasons for the Registrar so refusing was that the Registrar was not satisfied under section 29 that the person from whom the application sought payment of child support is a parent of the child.

Applications for declarations

- (2) The applicant may apply to a court having jurisdiction under this Act for a declaration that:
 - (a) if the reason referred to in paragraph (1)(b) was the only reason for the Registrar refusing to accept the application—the applicant is entitled to administrative assessment of child support for the child because the person from whom the application sought payment of child support is a parent of the child; and
 - (b) if the reason referred to in paragraph (1)(b) was one of the reasons for the Registrar refusing to accept the application—the applicant is entitled to have the Registrar reconsider the application under Division 2 of Part 4 because the person from whom the application sought payment of child support is a parent of the child.
- (3) The application must be made within:
 - (a) the time prescribed by the applicable Rules of Court; or
 - (b) such further time as is allowed under the applicable Rules of Court.

Parties

- (4) Subject to section 145 (Registrar may intervene in proceedings), the parties to the proceeding are:
 - (a) the applicant; and
 - (b) the person from whom the application sought payment of child support.

Declarations

- (5) The court may grant the declaration if the court is satisfied that:
 - (a) if the reason referred to in paragraph (1)(b) was the only reason for the Registrar refusing to accept the application—the person is entitled to administrative assessment of child support because the person from whom the application sought payment of child support is a parent of the child; or
 - (b) if the reason referred to in paragraph (1)(b) was one of the reasons for the Registrar refusing to accept the application—the applicant is entitled to have the Registrar reconsider the application under Division 2 of Part 4 because the person

from whom the application sought payment of child support is a parent of the child.

- (6) If the court grants the declaration:
- (a) if the reason referred to in paragraph (1)(b) was the only reason for the Registrar refusing to accept the application—the Registrar is taken to have accepted the application for administrative assessment of child support; and
 - (b) if the reason referred to in paragraph (1)(b) was one of the reasons for the Registrar refusing to accept the application—the Registrar must reconsider the application under Division 2 of Part 4.

23 At the end of subsection 107(1)

Add “because the person is not a parent of the child concerned”.

Note: The heading to section 107 is replaced by the heading “**Declaration that a person is not entitled to administrative assessment**”.

24 Subsections 107(1A) and (1B)

Repeal the subsections, substitute:

- (1A) However, a person must not apply for the declaration in respect of a child if a court has already declared under section 106A that the applicant was entitled to administrative assessment of child support for the child, or to have the Registrar reconsider an application, because the person is a parent of the child.

Note: In that case, the person may be able to appeal against the declaration under Division 1 of Part 7.

25 Subsection 107(4)

Repeal the subsection, substitute:

- (4) The court may grant the declaration if the court is satisfied that the applicant was not entitled to administrative assessment of child support for the child because the person from whom the application sought payment is not a parent of the child.

26 Paragraph 109(2)(b)

Repeal the paragraph.

27 Division 6 of Part 7 (heading)

Repeal the heading, substitute:

Division 6—Setting aside accepted child support agreements

28 Subdivision A of Division 6 of Part 7

Repeal the Subdivision.

29 Subdivision B of Division 6 of Part 7 (heading)

Repeal the heading.

30 Before section 136

Insert:

135 Simplified outline

The following is a simplified outline of this Division:

- A court may set aside a child support agreement if the consent of one of the parties was obtained by fraud or undue influence.

31 Section 138

Omit “Subdivision”, substitute “Division”.

32 Before section 139

Insert:

138A Simplified outline

The following is a simplified outline of this Division:

- A court may make an order for the payment of child support if:
 - (a) a child is in urgent need of financial assistance;
and

- (b) an application has been made for an administrative assessment in relation to the child.
- If a proceeding has been instituted in a court, or before the Registrar under Part 6A, a court may make an order staying or otherwise affecting the operation of this Act during the proceeding.

33 Paragraph 139(2A)(d)

Repeal the paragraph, substitute:

- (d) if:
 - (i) the decision of the Registrar does not become final; and
 - (ii) one of the reasons for the Registrar so refusing was that the Registrar was not satisfied under section 29 that the person from whom the application sought payment of child support is a parent of the child;
at the time when a decision of a court becomes final, being a decision (whether under section 106A or on appeal from a decision of a court under that section) that the person from whom the application sought payment of child support is not a parent of the child; or
- (e) in any other case—at the time when a decision that the applicant was not entitled to administrative assessment of child support becomes final, being a decision:
 - (i) of the SSAT under Part VIIA of the Registration and Collection Act; or
 - (ii) of a court under Subdivision B of Division 3 of Part VIII of the Registration and Collection Act or on appeal from a decision of a court under that Subdivision.

34 Subsection 139(2B)

Repeal the subsection, substitute:

- (2B) For the purposes of subsection (2A), a decision of the Registrar refusing to accept an application for administrative assessment of child support becomes final if an application:
 - (a) to a court under section 106A (declarations of entitlement to administrative assessment); or

(b) to the SSAT under Part VIIA of the Registration and Collection Act;

is not made within the period for doing so. The application becomes final at the end of the period.

Note: For determining when decisions of the SSAT become final, see subsection 110W(1) of the Registration and Collection Act.

35 Before section 141

Insert:

140A Simplified outline

The following is a simplified outline of this Division:

- In exercising jurisdiction under this Act, a court has broad powers.
- An amount of child support paid when there is no liability to do so may be recovered in a court.

36 Before section 144

Insert:

143A Simplified outline

The following is a simplified outline of this Division:

- A decision of a court becomes final at the end of the period for appealing against the decision if no appeal is made.
- The Registrar may intervene in any proceeding under this Act.

37 Subsection 151C(5)

Repeal the subsection, substitute:

- (5) A notice to a person under this section must include, or be accompanied by, a statement to the effect:
- (a) that the person may, subject to the Registration and Collection Act, object to the particulars of the assessment in

relation to which the application under section 151B was made; and

- (b) that if the person is aggrieved by the decision on an objection to the particulars of the assessment (no matter who lodges the objection), he or she may, subject to that Act, apply to the SSAT for review of the decision.

Child Support (Registration and Collection) Act 1988

38 Title

Omit “related”, substitute “other”.

39 Subsection 4(1)

Insert:

AAT means the Administrative Appeals Tribunal.

40 Subsection 4(1)

Insert:

administrative assessment has the same meaning as in the Assessment Act.

41 Subsection 4(1)

Insert:

appealable collection refusal decision means a decision resulting in the failure of the Registrar to collect an amount payable under an enforceable maintenance liability, being an amount that has become due and payable and remained unpaid for at least 6 months, if:

- (a) proceedings have not been instituted in a court for recovery of the amount; or
- (b) proceedings have been instituted in a court for recovery of the amount and at least 3 months have elapsed since the proceedings were instituted.

42 Subsection 4(1) (at the end of paragraphs (a) to (bb) of the definition of *appealable refusal decision*)

Add “or”.

43 Subsection 4(1) (paragraph (c) of the definition of *appealable refusal decision*)

Omit “section 71 or 71A”, substitute “section 71, 71A or 71C”.

44 Subsection 4(1) (at the end of paragraph (c) of the definition of *appealable refusal decision*)

Add “or”.

45 Subsection 4(1) (paragraphs (d) and (e) of the definition of *appealable refusal decision*)

Repeal the paragraphs.

46 Subsection 4(1)

Insert:

Assessment Act means the *Child Support (Assessment) Act 1989*.

47 Subsection 4(1) (paragraph (a) of the definition of *court order*)

Before “the *Child Support (Assessment) Act 1989*”, insert “this Act,”.

48 Subsection 4(1)

Insert:

final:

- (a) in relation to a decision of the SSAT—has the meaning given by subsection 110W(1); and
- (b) in relation to a decision of a court—has the meaning given by subsections 110W(2) and (3).

49 Subsection 4(1)

Insert:

reconsideration of a decision has the meaning given by section 110Q.

50 Subsection 4(1)

Insert:

resumption determination means a determination made by the Registrar under subsection 79A(3) or 79B(3).

51 Subsection 4(1)

Insert:

SSAT means the Social Security Appeals Tribunal.

52 Subsection 4(1)

Insert:

SSAT Executive Director means the Executive Director of the SSAT.

53 Subsection 4(1)

Insert:

suspension determination means a determination made by the Registrar under subsection 79A(1) or 79B(1).

54 Subsection 4(1) (definition of *Tribunal*)

Repeal the definition.

55 Paragraph 4(4)(a)

Repeal the paragraph, substitute:

- (a) the Registrar is required, under section 22, subsection 24(1), 24A(1) or 25(2), or section 36, 37A, 37B, 38A, 39, 39B or 44, to do an act within a specified period; and

56 Subsection 7(3)

Omit “and the Tribunal”, substitute “, the SSAT and the AAT”.

57 Subsection 7(3)

Omit “or the Tribunal”, substitute “, the SSAT or the AAT”.

58 Paragraphs 23(1)(a), 33(1)(a), 37(a)

Before “the *Child Support (Assessment Act) 1989*”, insert “this Act,”.

59 At the end of Part III

Add:

Division 4—Notices in respect of registration decisions

42C Notices must be given to payers and payees in relation to registration decisions

Notices must be given

- (1) As soon as practicable after the Registrar:
 - (a) registers a registrable maintenance liability under this Act; or
 - (b) varies particulars entered in the Child Support Register in relation to a registrable maintenance liability;the Registrar must serve on the payer and payee of the liability a notice in writing of the particulars entered in the Child Support Register in relation to the liability, unless notice of those particulars has already been given to the payer and the payee under the Assessment Act.
- (2) As soon as practicable after the Registrar deletes an entry in relation to a registrable maintenance liability from the Child Support Register, the Registrar must serve a notice of the decision on the payer and payee.
- (3) As soon as practicable after the Registrar makes an appealable refusal decision in relation to a registrable maintenance liability, the Registrar must serve a notice in writing of the decision on the payer and payee.

Content of notices

- (4) A notice served on a person under this section in relation to a decision (the **original decision**) must include, or be accompanied by, a statement to the effect that:
 - (a) the person may, subject to this Act, object to the original decision; and
 - (b) if the person is dissatisfied by a later decision of the Registrar on an objection to the original decision (no matter who lodges the objection), the person may, subject to this Act, apply to the SSAT for review of the later decision.
- (5) A contravention of subsection (4) in relation to a decision does not affect the validity of the decision.

60 Subsection 54(3)

Repeal the subsection, substitute:

Notices of decisions

- (3) If the Registrar makes a decision under subsection (1) or (2):
- (a) to remit only part of a penalty; or
 - (b) not to remit any part of a penalty;
- the Registrar must serve written notice of the decision on the person by whom the penalty is, or but for the remission would be, payable.
- (4) The notice must include, or be accompanied by, a statement to the effect that:
- (a) the person may, subject to this Act, object to the decision (the *original decision*); and
 - (b) if the person is dissatisfied by a later decision of the Registrar on an objection to the original decision, the person may, subject to this Act, apply to the SSAT for review of the later decision.
- (5) A contravention of subsection (4) in relation to a decision does not affect the validity of the decision.

61 Section 68

Omit “Where”, substitute “(1) If”.

62 At the end of paragraph 68(a)

Add “or”.

63 At the end of subparagraph 68(b)(i)

Add “and”.

64 At the end of section 68

Add:

Notices of decisions

- (2) If the Registrar makes a decision under subsection (1):
- (a) to remit only part of a penalty; or

- (b) not to remit any part of a penalty;
the Registrar must serve written notice of the decision on the person by whom the penalty is, or but for the remission would be, payable.
- (3) The notice must include, or be accompanied by, a statement to the effect that:
 - (a) the person may, subject to this Act, object to the decision (the *original decision*); and
 - (b) if the person is dissatisfied by a later decision of the Registrar on an objection to the original decision, the person may, subject to this Act, apply to the SSAT for review of the later decision.
- (4) A contravention of subsection (3) in relation to a decision does not affect the validity of the decision.

65 After section 71D

Insert:

71E Notices must be given to payers and payees in relation to registration decisions

Notices must be given

- (1) This section applies if the Registrar decides, under section 71, 71A or 71C, to credit an amount received by the payee of an enforceable maintenance liability, or a third party, against the liability of the payer of that enforceable maintenance liability.

Note: If the Registrar refuses to credit an amount under section 71, 71A or 71C, the Registrar must give a notice under subsection 42C(3).

- (2) As soon as practicable after the Registrar credits the amount, the Registrar must serve a notice in writing of the decision on the payee and the payer.

Content of notices

- (3) A notice served on a person under this section in relation to a decision (the *original decision*) must include, or be accompanied by, a statement to the effect that:

- (a) the person may, subject to this Act, object to the original decision; and
 - (b) if the person is dissatisfied by a later decision of the Registrar on an objection to the original decision (no matter who lodges the objection), the person may, subject to this Act, apply to the SSAT for review of the later decision.
- (4) A contravention of subsection (3) in relation to a decision does not affect the validity of the decision.

66 Subsection 76(1)

Omit “section 79A”, substitute “sections 79A and 79B”.

67 Before section 79A

Insert:

Division 3—Suspension determinations

68 Section 79A

Repeal the section, substitute:

79A Suspension determinations—pending declarations that parent not entitled to administrative assessment

Suspension determinations

- (1) The Registrar must make a determination (a *suspension determination*) that a payee of a registered maintenance liability in relation to a child is not entitled under subsection 76(1) to be paid an amount that is payable for the child by a payer of the liability if:
- (a) the Registrar has notice that the payer has made an application under section 107 of the Assessment Act for a declaration that the payee was not entitled to administrative assessment of child support for the child because the payer is not the parent of the child; and
 - (b) the application is pending.

Payee not entitled to be paid amounts until resumption determination made

- (2) If the Registrar makes a suspension determination on a day, the payee is not entitled to be paid an amount from that payer for the child on that or any later day mentioned in subsection 76(1) unless and until the Registrar makes a determination under subsection (3) of this section in relation to the payee and an amount payable by that payer for the child.

Note 1: If the court grants the declaration under section 107 of the Assessment Act, the application for administrative assessment of child support is taken to have never been accepted by the Registrar, and the payee was never entitled to be paid amounts under subsection 76(1) of this Act from that payer for that child.

Note 2: The Registrar must vary the Child Support Register after making the suspension determination (see section 79C).

Resumption determinations

- (3) If:
- (a) the Registrar has made a suspension determination under subsection (1) in relation to the payee of a registered maintenance liability; and
 - (b) the Registrar is satisfied that the application referred to in paragraph (1)(a) has been:
 - (i) finally refused by the court (within the meaning of section 144 of the Assessment Act); or
 - (ii) dismissed or withdrawn; or
 - (iii) struck out by the court;
- the Registrar must make a determination (a **resumption determination**) that:
- (c) the payee is again entitled under subsection 76(1) to be paid an amount from that payer for the child; and
 - (d) if the payee has not, because of the suspension determination, been paid an amount which the payee would otherwise have been paid under subsection 76(1)—the payee is entitled to be paid that amount.

Note: The Registrar must vary the Child Support Register after making the resumption determination (see section 79C).

79B Suspension determinations—pending SSAT and court reviews

Suspension determinations

- (1) The Registrar may make a determination (a ***suspension determination***) that a payee of a registered maintenance liability in relation to a child is not entitled under subsection 76(1) to be paid an amount that is payable for the child by the payer of the liability if:
- (a) any of the following proceedings has been brought by the payer under item 9 of the table in subsection 80(1) and the proceeding is pending:
 - (i) a proceeding that the child was not a child in relation to whom the application for administrative assessment of child support was entitled to be made;
 - (ii) a proceeding that the applicant was not a person entitled to make the application for the child;
 - (iii) a proceeding that the person from whom the application sought payment was not a resident of Australia; or
 - (b) a proceeding has been brought by the payer under Subdivision B of Division 3 of Part VIII (court review) in relation to the payee's entitlement to administrative assessment of child support for the child and the proceeding is pending under that Subdivision.

Payee not entitled to be paid amounts until resumption determination made

- (2) If the Registrar makes a suspension determination on a day, the payee is not entitled to be paid an amount from that payer for the child on that or any later day mentioned in subsection 76(1) unless and until the Registrar makes a determination under subsection (3) of this section in relation to the payee and an amount payable by that payer for the child.

Note: The Registrar must vary the Child Support Register after making the suspension determination (see section 79C).

Resumption determinations

- (3) If:

- (a) the Registrar has made a suspension determination under subsection (1) in relation to the payee of a registered maintenance liability; and
- (b) the Registrar is satisfied that the proceeding referred to in subsection (1) has been:
 - (i) finally refused by the court (within the meaning of section 110W); or
 - (ii) dismissed or withdrawn; or
 - (iii) struck out by the court;

the Registrar must make a determination (a *resumption determination*) that:

- (c) the payee is again entitled under subsection 76(1) to be paid an amount from that payer for the child; and
- (d) if the payee has not, because of the suspension determination, been paid an amount which the payee would otherwise have been paid under subsection 76(1)—the payee is entitled to be paid that amount.

Note: The Registrar must vary the Child Support Register after making the resumption determination (see section 79C).

79C Varying particulars after suspension or resumption determination is made

- (1) Immediately after making a suspension determination in relation to an amount payable under a registered maintenance liability, the Registrar must vary the particulars entered in the Child Support Register in relation to the liability in whatever way the Registrar considers necessary or desirable to give effect to the determination.

Note: As soon as practicable after varying particulars under this subsection, the Registrar must serve a notice under section 42C.

- (2) Immediately after making a resumption determination in relation to an amount payable under a registered maintenance liability, the Registrar must vary the particulars entered in the Child Support Register in relation to the liability in whatever way the Registrar considers necessary or desirable to give effect to the determination.

Note: As soon as practicable after varying particulars under this subsection, the Registrar must serve a notice under section 42C.

69 Part VII

Repeal the Part, substitute:

Part VII—Internal objection procedures for certain decisions

Division 1—Preliminary

79D Simplified outline

The following is a simplified outline of this Part:

- Certain persons can object under this Part to certain decisions of the Registrar under the Assessment Act and this Act.
- If a person objects to a decision, the Registrar is required to reconsider the decision under this Part.
- If a person is dissatisfied with the reconsideration, he or she can apply to the SSAT for review of the decision under Part VIIA of this Act.
- A person can appeal from the SSAT to a court on a question of law under Subdivision B of Division 3 of Part VIII of this Act.

79E Object of this Part

The object of this Part is to provide for internal reconsideration of decisions of the Registrar before the decisions may be reviewed by the SSAT under Part VIIA.

Division 2—Decisions against which objections may be lodged

80 Decisions against which objections may be lodged

- (1) A person may lodge with the Registrar an objection in writing to a decision of the Registrar if:
 - (a) the decision is set out in an item of the following table; and
 - (b) the person is set out in that item.

Decisions/objectors		
Item	Decision	Who may object
1	to register a registrable maintenance liability	(a) the payer of the registrable maintenance liability; or (b) the payee of the registrable maintenance liability
2	as to particulars entered in the Child Support Register in relation to a registrable maintenance liability	(a) the payer of the registrable maintenance liability; or (b) the payee of the registrable maintenance liability
3	as to particulars varied in the Child Support Register in relation to a registrable maintenance liability	(a) the payer of the registrable maintenance liability; or (b) the payee of the registrable maintenance liability
4	to delete an entry from the Child Support Register in relation to a registrable maintenance liability	(a) the payer of the registrable maintenance liability; or (b) the payee of the registrable maintenance liability
5	to credit, under section 71, 71A or 71C of this Act, an amount received by the payee of a registrable maintenance liability, or a third party, against the liability of the payer of the liability to the Commonwealth	the payee of the registrable maintenance liability
6	to make an appealable refusal decision in relation to a registrable maintenance liability	(a) the payer of the registrable maintenance liability; or (b) the payee of the registrable maintenance liability
7	to make an appealable collection refusal decision in relation to a registrable maintenance liability	the payee of the registrable maintenance liability
8	in relation to the remission of a penalty under subsection 54(1) or (2) or section 68 of this Act	the person by whom the penalty is payable
9	to accept an application for administrative assessment under subsection 30(1) of the Assessment Act	(a) the person from whom the application seeks payment of child support; or (b) the person to whom the application seeks payment of child support

Schedule 3 SSAT review of child support decisions (commencing on 1 January 2007)
Part 1 Amendments

Decisions/objectors		
Item	Decision	Who may object
10	to refuse to accept an application for administrative assessment under subsection 30(2) of the Assessment Act	the applicant
11	as to the particulars of an administrative assessment	(a) the carer entitled to child support; or (b) the liable parent
12	in relation to the remission of a penalty under section 64A of the Assessment Act	the person by whom the penalty is payable
13	to terminate a child support agreement under paragraph 80G(1)(d) or (e) of the Assessment Act	a party to the agreement
14	to accept or to refuse to accept an agreement in relation to a child under section 92 or 98U of the Assessment Act	a party to the agreement
15	to make or to refuse to make a determination under Part 6A of the Assessment Act	(a) the carer entitled to child support; or (b) the liable parent

Objections to particulars in the Child Support Register

- (2) An objection to a decision of the Registrar as to particulars entered in the Child Support Register in relation to a registrable maintenance liability may be lodged:
- (a) on the ground that the relevant entry does not relate to a registrable maintenance liability; or
 - (b) on any other ground.
- (3) An objection to a decision of the Registrar as to particulars varied in the Child Support Register in relation to a registrable maintenance liability may only be made against:
- (a) the particulars varied; and
 - (b) any other particulars affected by the variation.

Objections to administrative assessments—parentage

- (4) An objection to a decision of the Registrar to accept an application for administrative assessment under subsection 30(1) of the Assessment Act may not be lodged on the ground that the person is not the parent of the child concerned.

Note: In that case, the person may be able to apply to a court under section 107 of the Assessment Act for a declaration that the applicant for the administrative assessment in question was not entitled to it.

- (5) An objection may not be lodged to a decision of the Registrar to refuse to accept a carer application for administrative assessment if one of the reasons for the Registrar so refusing was that the Registrar was not satisfied under section 29 that the person from whom the application sought payment of child support is a parent of the child concerned.

Note: In that case, the applicant may be able to apply to a court under section 106A of the Assessment Act for a declaration that the applicant is entitled to administrative assessment of child support for the child.

Division 3—Time limits on lodging objections

81 Time limits on lodging objections

- (1) An objection to a decision (other than an objection to an appealable collection refusal decision) must be lodged by a person within 28 days after a notice of the decision is served on the person.
- (2) An objection to an appealable collection refusal decision must be lodged by a person within 28 days after the decision first comes to the notice of the person.

82 Applications for extensions of time

- (1) If the period for the lodgment by a person of an objection under section 81 has ended, the person may, even though the period has ended, send the objection to the Registrar together with an application in writing requesting the Registrar to treat the objection as having been duly lodged.
- (2) The application must state fully and in detail the grounds of the application, including the circumstances concerning, and the

reasons for, the failure by the person to lodge the objection as required by section 81.

83 Consideration of applications for extensions of time for lodging objections

- (1) If an application is sent to the Registrar under section 82 in relation to an objection under this Part, the Registrar must:
 - (a) consider the application; and
 - (b) within 60 days after the application is received by the Registrar:
 - (i) either grant or refuse the application; and
 - (ii) if the application is granted—deal with the objection under subsection 87(1).
- (2) If the Registrar does not either grant or refuse to grant the application within that period of 60 days, the Registrar is taken, at the end of that period, to have refused to grant the application.
- (3) The Registrar must serve notice in writing of the decision on the person who made the application.
- (4) The notice must include, or be accompanied by:
 - (a) the reasons for the decision; and
 - (b) a statement to the effect that, if the person is aggrieved by the decision, application may be made, subject to this Act, to the SSAT for review of the decision.
- (5) A contravention of subsection (4) in relation to a decision does not affect the validity of the decision.
- (6) If an application under subsection 82(1) is granted, the person who made the application is, for the purposes of this Act, taken to have duly lodged the objection to which the application relates.

Division 4—Grounds of objections

84 Grounds of objections

The objection must state fully and in detail the grounds relied on.

85 Registrar to serve copies of grounds of objections on other parties

The following table has effect:

Recipients of grounds of objections		
Item	If a person objects to ...	the Registrar must, as soon as practicable, serve a copy of the grounds of objection on ...
1	a decision that more than one person could have objected to under section 80 of this Act	each other person who could have objected to the decision
2	a decision to credit, under section 71, 71A or 71C of this Act, an amount received by the payee of a registrable maintenance liability against the liability of the payer of the liability to the Commonwealth	the payer of the registrable maintenance liability
3	an appealable collection refusal decision in relation to a registrable maintenance liability	the payer of the registrable maintenance liability
4	a decision to refuse to accept an application for administrative assessment under subsection 30(2) of the Assessment Act	the person to whom or from whom the application seeks payment of child support, as the case requires

86 Other party may oppose or support objection

- (1) A person served with a copy of the grounds of objection under section 85 may lodge with the Registrar a written notice in opposition to, or in support of, the objection.
- (2) The notice must be lodged within 28 days after service on the person of the copy of the grounds of objection.
- (3) The notice must state fully and in detail the grounds relied on.

Division 5—Consideration of objections

87 Consideration of objections by Registrar

- (1) If an objection is lodged with the Registrar under this Part, the Registrar must:

- (a) consider the objection and any notice lodged with the Registrar under section 86 in relation to the objection; and
 - (b) within 60 days after the objection is lodged with the Registrar, either:
 - (i) disallow the objection; or
 - (ii) allow it in whole or in part.
- (2) The Registrar must serve notice in writing of the decision on:
 - (a) the person who lodged the objection; and
 - (b) each other person who was entitled to be served a copy of the grounds of objection under section 85.
- (3) A notice served on a person under subsection (2) must include, or be accompanied by:
 - (a) the reasons for the decision; and
 - (b) a statement to the effect that if the person is aggrieved by the decision on the objection:
 - (i) if the decision objected to was a decision by the Registrar under section 98E or 98R of the Assessment Act—the person may apply to a court for an order under Division 4 of Part 7 of that Act; or
 - (ii) otherwise—the person may, subject to this Act, apply to the SSAT for review of the decision.
- (4) A contravention of subsection (3) in relation to a decision does not affect the validity of the decision.

Part VIIA—SSAT review of certain decisions

Division 1—Preliminary

87A Simplified outline

The following is a simplified outline of this Part:

- If a person objects to a decision of the Registrar under Part VII, the Registrar is required to reconsider the decision under that Part.

- If a person is dissatisfied with the reconsideration, he or she can apply to the SSAT for review of the decision under this Part.
- The SSAT must pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick.
- A person can appeal from the SSAT to a court on a question of law under Subdivision B of Division 3 of Part VIII of this Act.

88 SSAT objective

In carrying out its functions under this Act, the SSAT must pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick.

Division 2—Applications for review

Subdivision A—Applications for review

89 Applications for review

- (1) A person may apply to the SSAT for review of a decision of the Registrar if:
- (a) the decision is set out in an item of the following table; and
 - (b) the person is set out in that item.

Decisions/applicants		
Item	Decision	Who may apply for review
1	a decision under subsection 83(1) on an application for an extension of time	the person who applied for the extension of time

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Part 1 Amendments

Decisions/applicants

Item	Decision	Who may apply for review
2	a decision under subsection 87(1) on an objection to a decision (the <i>original decision</i>) of the Registrar	(a) the person who objected to the original decision under section 80; or (b) a person who was entitled to be served a copy of the grounds of objection under section 85

- (2) However, a person may not apply to the SSAT for review of a decision under subsection 87(1) on an objection to a decision (the *original decision*) of the Registrar if the original decision was made under section 98E or 98R of the Assessment Act.

Note: In that case, the person may apply to a court for an order under Division 4 of Part 7 (departure orders) of the Assessment Act.

Subdivision B—Time limit on applications for review

90 Time limit on applications for review

An application for review under this Part must be made by a person within the period of 28 days starting on the day on which the relevant notice under subsection 83(3) or 87(2) is served on the person.

91 Application for extension of time

- (1) If the period for applying for review under this Part has ended, a person may make an application for review under this Part that includes a written application (the *extension application*) asking the SSAT Executive Director to consider the application for review despite the ending of the period.
- (2) The extension application must state the reasons for the person's failure to apply for the review within the period required by section 90.

92 Consideration of applications for extension of time for lodging objections

- (1) If a person applies to the SSAT under section 91 in relation to an application for review, the SSAT Executive Director must:
 - (a) consider the extension application; and
 - (b) within 60 days after the extension application is received by the SSAT, grant or refuse the extension application; and
 - (c) if the extension application is granted—deal with the application for review under this Part.
- (2) If the SSAT Executive Director does not make a decision on the extension application within 60 days after the extension application was made, the SSAT Executive Director is taken to have refused the extension application at the end of that period.
- (3) The SSAT Executive Director must give written notice of the decision granting or refusing the extension application to the person who made the extension application.
- (4) If the SSAT Executive Director refuses the extension application, the notice under subsection (3) must include, or be accompanied by, a statement to the effect:
 - (a) that the person may, subject to the *Administrative Appeals Tribunal Act 1975*, apply to the AAT for review of the decision; and
 - (b) except where subsection 28(4) of that Act applies—that the person may request a statement under section 28 of that Act.
- (5) A contravention of subsection (4) in relation to a decision does not affect the validity of the decision.
- (6) If an extension application under section 91 is granted, the person who made the application is, for the purposes of this Act, taken to have duly made the application for review under this Part to which the extension application relates.
- (7) A person whose extension application has been refused by the SSAT Executive Director may apply to the AAT for review of the decision.
- (8) In subsection (7):

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

93 Procedures on receiving applications for review not required until review of extension application completed

If an extension application is made under section 91 in relation to an application for review:

- (a) subsections 95(2) to (6) and section 96 are taken not to apply in respect of the application for review unless and until a decision of the SSAT Executive Director, the AAT or a court decides that the extension application is to be granted by the SSAT Executive Director; and
- (b) if such a decision is made—subsection 95(2) applies as if the application for review under this Part is received by an office of the SSAT on the day on which that decision is made.

Subdivision C—Application procedures

94 Application procedures

- (1) A person may apply to the SSAT for review under this Part by:
 - (a) sending or delivering a written application to:
 - (i) an office of the SSAT; or
 - (ii) an office of the Department; or
 - (iii) an office of the Commonwealth Services Delivery Agency; or
 - (iv) an office of the Department administering the *Commonwealth Services Delivery Agency Act 1997*; or
 - (b) going to an office of the SSAT and making an oral application; or
 - (c) contacting an office of the SSAT by telephone and making an oral application.
- (2) If a person makes an oral application in accordance with paragraph (1)(b) or (c), the person receiving the oral application must:
 - (a) make a written record of the details of the oral application; and
 - (b) note on the record the day on which the application is made.

- (3) If a person makes a written record of an oral application in accordance with subsection (2), this Part has effect as if the written record were a written application made on the day on which the oral application was made.
- (4) An application may include a statement of the reasons for seeking a review of the decision.

95 Procedures on receiving applications for review

Applications must be forwarded to SSAT

- (1) If an application for review under this Part is sent or delivered to an office of a Department or of the Commonwealth Services Delivery Agency under section 94, the Secretary of that Department or the CEO of the Agency, as the case requires, must send the application to the SSAT Executive Director:
 - (a) as soon as practicable; and
 - (b) in any case—not later than 7 days after the application is received at the office of that Department or Agency.

SSAT must notify applicants and Registrar of receipt of applications

- (2) If:
 - (a) an application for review under this Part is received by an office of the SSAT; or
 - (b) a Secretary or the CEO sends such an application to the SSAT Executive Director in accordance with subsection (1);the SSAT Executive Director must give the applicant, the Registrar and any other party to the review written notice that the application has been received.

Note: The parties to the review are set out in section 101.

Registrar must provide information to SSAT

- (3) Within 28 days after receiving the notice under subsection (2), the Registrar must send to the SSAT Executive Director:
 - (a) a statement about the decision under review that:
 - (i) sets out the findings of fact made by the Registrar; and

- (ii) refers to the evidence on which those findings were based; and
- (iii) gives the reasons for the decision; and
- (b) the original or a copy of every document or part of a document that:
 - (i) is in the possession, or under the control, of the Registrar; and
 - (ii) is relevant to the review of the decision.

Note: The Registrar must also send copies of the statement and documents to each party (see section 96).

- (4) If the SSAT Executive Director requests the Registrar to send the statement and documents referred to in subsection (3) by a day earlier than the day fixed by that subsection, the Registrar must take reasonable steps to comply with the request.
- (5) If:
 - (a) after the end of the period referred to in subsection (3) but before the determination of the review, the Registrar obtains possession of a document; and
 - (b) the Registrar considers that the document or a part of the document is relevant to the review; and
 - (c) a copy of the document or the part of the document has not been sent to the SSAT Executive Director in accordance with subsection (3);the Registrar must send a copy of the document or the part of the document to an office of the SSAT as soon as practicable after obtaining possession of the document.
- (6) If the Registrar must provide the SSAT with a document under this section, the Registrar must provide the SSAT with:
 - (a) if the SSAT Executive Director requests the Registrar to provide a specified number of copies of the document—that number of copies of the document; or
 - (b) otherwise—2 copies of the document.

96 Parties to be given statements about decisions under review

- (1) Within 28 days after receiving the notice under subsection 95(2), the Registrar must give each party to the review a copy of the statement and documents referred to in subsection 95(3).

Note: The parties to the review are set out in section 101.

- (2) The SSAT Executive Director may, by writing given to the person, direct a person who has received a copy of a statement or a document in accordance with subsection (1):
- (a) not to disclose information in the statement or document; or
 - (b) not to disclose information in the statement or document except in the circumstances, or for the purposes, specified in the direction.

Offence

- (3) A person commits an offence if:
- (a) the SSAT Executive Director gives a direction to the person under subsection (2); and
 - (b) the person contravenes the direction.

Penalty: Imprisonment for 2 years.

97 When document is not required to be sent

- (1) Subject to section 98, the Registrar is not required, under paragraph 95(3)(b) or subsection 93(5), to send a document, or part of a document, that is relevant to a review if:
- (a) for a document or a part of a document that is required under paragraph 95(3)(b)—within 28 days after receiving the relevant notice under subsection 95(2); or
 - (b) for a document or a part of a document that is required under subsection 95(5)—as soon as practicable;
- the Registrar:
- (c) applies to the SSAT Executive Director for a direction under section 98 in relation to the document or the part of the document; and
 - (d) sends to the SSAT 2 copies of the document or the part of the document, together with the application for the direction; and
 - (e) gives a copy of the application for the direction to each party to the application for review.
- (2) Subsection (1) does not affect the obligation of the Registrar to comply with paragraph 95(3)(b) or subsection 93(5) in relation to any document or part of a document to which subsection (1) does not apply.

98 Directions prohibiting or restricting disclosure of documents

- (1) If, after considering an application by the Registrar under section 97 for a direction in respect of a document or a part of a document, the SSAT Executive Director directs the Registrar to send the document or the part of the document under paragraph 95(3)(b) or subsection 93(5), the Registrar must do so.
- (2) The SSAT Executive Director may give directions (whether on application by the Registrar or on his or her initiative) prohibiting or restricting the disclosure to some or all of the parties to a review of the contents of a document or statement referred to in subsection 95(3) or (5) that relates to the review if he or she is satisfied that it is desirable to do so because of the confidential nature of the document or statement, or for any other reason.

Subdivision D—Effect of variations of original decisions on applications

99 Variations of decisions before reviews completed

- (1) If the Registrar varies a decision:
 - (a) after an application has been made to the SSAT under this Part for review of the decision; but
 - (b) before the determination of the review;the application for review is to be treated as if it were an application for review of the decision as varied.
- (2) If the Registrar sets a decision aside and substitutes a new decision:
 - (a) after an application has been made to the SSAT for review of the original decision; but
 - (b) before the determination of the review;the application for review is to be treated as if it were an application for review of the new decision.
- (3) If:
 - (a) a person applies to the SSAT for review of a decision; and
 - (b) before the determination of the review, the Registrar varies the decision or sets it aside and substitutes a new decision;the person may either:

- (c) proceed with the application for review of the decision as varied or the new decision, as the case may be; or
- (d) apply to the SSAT Executive Director to have the application dismissed under section 100.

Subdivision E—Dismissal of applications

99A Subdivision does not apply in relation to Registrar

This Subdivision does not apply in relation to a party if the party is the Registrar.

100 Dismissal of an application

- (1) The SSAT Executive Director may, on the application of a party or on his or her own initiative, dismiss an application for review of a decision if:
 - (a) the decision is not reviewable under this Part; or
 - (b) the application is frivolous or vexatious; or
 - (c) all of the parties consent; or
 - (d) the SSAT Executive Director is satisfied:
 - (i) after having communicated with each party; or
 - (ii) after having made reasonable attempts to communicate with each party and having failed to do so;or a combination of both, that none of the parties intend to proceed with the application; or
 - (e) all of the parties fail to attend the hearing; or
 - (f) all of the parties have been removed from the proceeding under subsection 101(5).
- (2) The SSAT Executive Director may dismiss an application under paragraph (1)(b) only if:
 - (a) one of the following applies:
 - (i) the SSAT Executive Director has received and considered submissions from the applicant;
 - (ii) the SSAT Executive Director has otherwise communicated with the applicant in relation to the grounds of the application;
 - (iii) the SSAT Executive Director has made reasonable attempts to communicate with the applicant in relation

- to the grounds of the application and has failed to do so;
and
- (b) all of the parties (other than the applicant) consent to the dismissal.

Division 3—Parties to reviews

101 Parties to reviews

- (1) The parties to a review under this Part are:
 - (a) the applicant; and
 - (b) the Registrar; and
 - (c) any other person who was entitled to apply for review of the decision under section 89; and
 - (d) any other person who has been made a party to the review under subsection (4).

SSAT Executive Director may add parties

- (2) Any person whose interests are affected by the decision may apply in writing to the SSAT Executive Director to be made a party to the review.
- (3) However, a person may not apply under subsection (2) if:
 - (a) the person is a child of a party referred to in paragraph (1)(a), (c) or (d); or
 - (b) a party referred to in paragraph (1)(a), (c) or (d) is an eligible carer, but not a parent, of the person.
- (4) The SSAT Executive Director may order that a person who has applied under subsection (2) be made a party to the review.

SSAT Executive Director may remove parties

- (5) The SSAT Executive Director may direct that a party to a review no longer be a party to the review if:
 - (a) the party consents; or
 - (b) the SSAT Executive Director is satisfied:
 - (i) after having communicated with the party; or
 - (ii) after having made reasonable attempts to communicate with the party and having failed to do so;

- that the party does not intend to participate in or proceed with the review; or
- (c) the party fails to comply with a direction or order of the SSAT or of the SSAT Executive Director given in relation to the review; or
- (d) the party fails to attend the hearing.

102 Notice of application to persons affected by decision

- (1) If:
 - (a) an application has been made to the SSAT under this Part for review of a decision; and
 - (b) the SSAT Executive Director is satisfied that the interests of a person who is not a party to the review are affected by the decision;the SSAT Executive Director must take reasonable steps to give the person written notice that an application has been made to the SSAT for review of the decision.
- (2) However, subsection (1) does not apply to a person if:
 - (a) the person is a child of a party referred to in paragraph 101(1)(a), (c) or (d); or
 - (b) a party referred to in paragraph 101(1)(a), (c) or (d) is an eligible carer, but not a parent, of the person.
- (3) The notice under subsection (1):
 - (a) must be in writing; and
 - (b) must include, or be accompanied by, notification of the person's right under subsection 101(2) to apply to the SSAT Executive Director to be added as a party to the review; and
 - (c) may be given at any time before the determination of the review.
- (4) The SSAT Executive Director must give each party to the review a copy of the notice.

Division 3A—Prehearing conferences

103 Pre-hearing conferences

- (1) The SSAT Executive Director may convene one or more conferences with the parties to a review if he or she considers that it would assist in the conduct and consideration of the review to do so.
- (2) At a conference, the SSAT Executive Director may:
 - (a) fix a day or days for the hearing; and
 - (b) give directions about the time within which submissions are to be made to the SSAT; and
 - (c) give directions about the time within which evidence is to be brought before the SSAT.

Note: Section 103W applies if the parties reach an agreement at the pre-hearing conference.

Division 4—Hearings

Subdivision A—Arrangements for hearings

103A Arrangements for hearings

- (1) The SSAT Executive Director must fix a day, time and place for the hearing of a review of a decision if:
 - (a) an application is made to the SSAT for review of the decision; and
 - (b) the parties to the review do not reach an agreement before a hearing of the review is to begin; and
 - (c) the SSAT Executive Director has not already done so at a pre-hearing conference.
- (2) The SSAT Executive Director must give the applicant and any other parties to the review written notice of the day, time and place fixed for the hearing of the application.
- (3) The notice under subsection (2) must be given a reasonable time before the day fixed for the hearing.

Subdivision B—Submissions from parties other than the Registrar

103B Subdivision does not apply in relation to Registrar

This Subdivision does not apply in relation to a party if the party is the Registrar.

103C Submissions

- (1) A party to a review under this Part may make:

- (a) oral submissions to the SSAT; or
- (b) written submissions to the SSAT; or
- (c) both oral and written submissions to the SSAT.

Note: The SSAT Executive Director may direct that a hearing be conducted without oral submissions from the parties (see section 103D).

- (2) A party to a review may have another person make submissions to the SSAT on his or her behalf.
- (3) The SSAT Executive Director may determine that submissions to the SSAT by a party or a party's representative are to be made by telephone or by means of other electronic communications equipment.
- (4) Without limiting subsection (3), the SSAT Executive Director may make a determination under that subsection in relation to an application if:
- (a) the application is urgent; or
 - (b) the party lives in a remote area and unreasonable expense would be incurred if the party or the party's representative had to travel to the place at which the hearing is to be held; or
 - (c) the party is unable to attend the hearing because of illness or infirmity; or
 - (d) the party has failed to attend the hearing and has not indicated that he or she intends to attend the hearing.
- (5) If a party is not proficient in English, the SSAT Executive Director may give directions in relation to the use of an interpreter in connection with the hearing of the review.

103D Written submissions only

- (1) The SSAT Executive Director may direct that a hearing be conducted without oral submissions from the parties if:
 - (a) the SSAT Executive Director considers that the review hearing could be determined fairly on the basis of written submissions by the parties; and
 - (b) all parties to the review consent to the hearing being conducted without oral submissions.
- (2) If the SSAT Executive Director gives a direction under subsection (1), the SSAT Executive Director must give each of the parties to the review written notice:
 - (a) informing the party of the direction; and
 - (b) inviting the party to submit written submissions; and
 - (c) specifying the address to which the written submissions are to be delivered; and
 - (d) specifying the time within which the written submissions are to be delivered.

The SSAT Executive Director must give a copy of the notice to the Registrar.

- (3) The time specified under paragraph (2)(d) must be such as to allow a reasonable period for the parties to make written submissions.
- (4) Despite subsection (1), the SSAT, as constituted for the hearing, may, if it thinks necessary after considering the written submissions made by the parties, make an order permitting the parties to make oral submissions to the SSAT at the hearing of the review.

103E Hearings without oral submissions from a party

- (1) If a party to a review has informed the SSAT Executive Director that the party does not intend to make oral submissions to the SSAT, the SSAT may proceed to hear the application for review without oral submissions from the party.
- (2) If:
 - (a) the SSAT Executive Director has determined that oral submissions to the SSAT by a party or a party's

representative are to be made by telephone or by means of other electronic communications equipment; and

- (b) on the day fixed for the hearing, the presiding member of the SSAT as constituted for the purposes of the review has been unable to contact the party or the party's representative, as the case may be, after taking reasonable steps to do so;

the SSAT Executive Director may authorise the SSAT to proceed to hear the application without oral submissions from the party or the party's representative, as the case may be.

- (3) If:

- (a) the SSAT Executive Director has not determined that oral submissions to the SSAT by a party or a party's representative are to be made by telephone or by means of other electronic communications equipment; and

- (b) the party or the party's representative, as the case may be, does not attend the hearing at the time fixed for the hearing;

the SSAT Executive Director may authorise the SSAT to proceed to hear the application without oral submissions from the party or the party's representative, as the case may be.

- (4) If the SSAT Executive Director gives an authorisation under subsection (2) or (3), the SSAT may proceed to hear the application in accordance with the authorisation.

- (5) If the hearing for the review has not been completed, the SSAT Executive Director may revoke an authorisation under subsection (2) or (3).

Subdivision C—Submissions from the Registrar

103F Submissions from the Registrar

- (1) The Registrar may make written submissions to the SSAT.

Registrar may request permission to make oral submissions

- (2) The Registrar may, by writing, request the SSAT Executive Director for permission to make:

- (a) oral submissions to the SSAT; or
(b) both oral and written submissions to the SSAT.

The request must explain how such submissions would assist the SSAT.

- (3) The SSAT Executive Director may, by writing, grant the request if, in the opinion of the SSAT Executive Director having regard to the objective laid down by section 88, such submissions would assist the SSAT.

SSAT may order Registrar to make oral submissions

- (4) The SSAT Executive Director may order the Registrar to make:
- (a) oral submissions to the SSAT; or
 - (b) both oral and written submissions to the SSAT;
- if, in the opinion of the SSAT Executive Director having regard to the objective laid down by section 88, such submissions would assist the SSAT.

Subdivision D—Other evidence provisions

103G Evidence on oath or affirmation

The SSAT may take evidence on oath or affirmation for the purposes of a review of a decision.

103H Children of parties not to give evidence

A person may not give evidence for the purposes of a review of a decision if:

- (a) the person is a child of a party referred to in paragraph 101(1)(a), (c) or (d); or
- (b) a party referred to in paragraph 101(1)(a), (c) or (d) is an eligible carer, but not a parent, of the person.

103J Provision of further information by Registrar

- (1) The SSAT Executive Director may ask the Registrar to provide the SSAT with information or a document that the Registrar has and that is relevant to the review of a decision.
- (2) The Registrar must comply with a request under subsection (1):
 - (a) as soon as practicable; and

- (b) in any event—not later than 14 days after the request is made.
- (3) If the request is for a document, the Registrar must provide the SSAT with:
 - (a) if the request specifies a number of copies—that number of copies of the document; or
 - (b) otherwise—2 copies of the document.

103K Power to obtain information

- (1) The SSAT Executive Director may, if it is reasonably necessary for the purposes of a review, by written notice given to the person, require a person:
 - (a) to give to the SSAT:
 - (i) within a reasonable period specified in the notice (being a period of not less than 7 days); and
 - (ii) in a reasonable manner specified in the notice;such information as the SSAT Executive Director requires; or
 - (b) to attend before the SSAT Executive Director (or an officer authorised by the SSAT Executive Director for the purpose):
 - (i) at a reasonable time specified in the notice; and
 - (ii) at a reasonable place specified in the notice;and then and there answer questions; or
 - (c) to produce to the SSAT:
 - (i) at a reasonable time specified in the notice; and
 - (ii) at a reasonable place specified in the notice;any documents in the custody or under the control of the person.
- (2) A person commits an offence if:
 - (a) the SSAT Executive Director gives the person a notice under subsection (1); and
 - (b) the person refuses or fails to comply with the notice.

Penalty: Imprisonment for 6 months.

- (3) Subsection (2) does not apply if complying with the notice might tend to incriminate the person.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) A person who is required to attend under this section is allowed such expenses as are prescribed by the regulations for the purposes of subsection 120(2).

103L SSAT may require Registrar to obtain information

- (1) If the SSAT Executive Director is satisfied that a person:
- (a) has information that is relevant to a review; or
 - (b) has custody or control of a document that is relevant to a review;
- the SSAT Executive Director may, for the purpose of the review, ask the Registrar to exercise the Registrar's powers under section 161 of the Assessment Act or section 120 of this Act.

Note: A person who fails to comply with a notice given under section 161 of the Assessment Act or section 120 of this Act commits an offence under that section.

- (2) The Registrar must comply with a request under subsection (1):
- (a) as soon as practicable; and
 - (b) in any event—within 7 days after the request is made.

Subdivision E—Hearing procedure

103M Chair for hearings

- (1) If the SSAT is constituted by 2 or more members for the purposes of the review of a decision, the SSAT Executive Director must designate one of those members as the member who is to preside at the hearing of the review.
- (2) If the SSAT Executive Director is one of those members, he or she may designate himself or herself as the member who is to preside.

103N Hearing procedure

- (1) The SSAT, in reviewing a decision under this Part:
- (a) is not bound by legal technicalities, legal forms or rules of evidence; and
 - (b) is to act as speedily as a proper consideration of the review allows; and

- (c) in determining what a proper consideration of the review requires, must have regard to the objective laid down by section 88.
 - (2) The SSAT may inform itself on any matter relevant to a review of a decision in any manner it considers appropriate.
- Note: The SSAT Executive Director may give directions as to the procedure to be followed in connection with reviews (see section 103ZA).

103P Hearing in private

- (1) The hearing of a review must be in private.
- (2) The SSAT Executive Director may give directions, in writing or otherwise, as to the persons who may be present at any hearing of a review.
- (3) In giving directions under subsection (2), the Executive Director must have regard to:
 - (a) the wishes of the parties; and
 - (b) the need to protect their privacy.

103Q Restrictions on disclosure of information obtained at hearing

- (1) The SSAT Executive Director may make an order directing a person who is present at the hearing of a review:
 - (a) not to disclose information obtained by the person in the course of the hearing; or
 - (b) not to disclose information obtained by the person in the course of the hearing except in the circumstances, or for the purposes, specified in the order.
- (2) A person commits an offence if:
 - (a) the SSAT Executive Director makes an order under subsection (1) in relation to the person; and
 - (b) the person contravenes the order.

Penalty: Imprisonment for 2 years.

103R Adjournment of hearings

- (1) The SSAT may adjourn the hearing of a review from time to time.

- (2) Without limiting subsection (1), the SSAT may refuse to adjourn the hearing of a review if:
 - (a) the hearing has already been adjourned on 2 or more occasions; or
 - (b) the SSAT is satisfied that to grant an adjournment would be inconsistent with the pursuit of the objective laid down by section 88.

Division 5—Decisions on review

Subdivision A—SSAT review powers

103S SSAT must affirm, vary or set aside decisions

If a person applies to the SSAT for review of a decision under this Part, the SSAT must:

- (a) affirm the decision; or
- (b) vary the decision; or
- (c) set the decision aside and:
 - (i) substitute a new decision; or
 - (ii) send the matter back to the Registrar for reconsideration in accordance with any directions or recommendations of the SSAT.

103T Powers of the SSAT for purposes of reviews

- (1) Subject to the regulations, the SSAT may, for the purpose of reviewing a decision under this Part, exercise all the powers and discretions that are conferred by this Act and the Assessment Act on the Registrar.
- (2) To avoid doubt, any limitation on the exercise of a power or discretion by the Registrar also limits the exercise of that power or discretion by the SSAT under this Part.
- (3) The regulations may specify provisions of this Act and the Assessment Act to which subsection (1) does not apply.

103U Decision of questions before SSAT

- (1) Subject to subsection (2), a question arising before the SSAT on a review is to be decided according to the opinion of a majority of the members constituting the SSAT for the purposes of the review.
- (2) If, on a question arising on a review, the opinions of the members of the SSAT are equally divided, the question is to be decided according to the opinion of the member presiding.

103V Date of effect of SSAT decisions

- (1) This section applies if the SSAT:
 - (a) varies a decision under review; or
 - (b) sets aside a decision under review and substitutes a new decision.
- (2) The decision as varied or the new decision (as the case may be) has effect, or is to be taken to have had effect, on and from:
 - (a) if the SSAT specifies a day in its decision (whether before or after the day on which the decision is given)—the day specified; or
 - (b) otherwise—the day on which the decision under review has or had effect.

Note: The SSAT cannot specify a day that the Registrar could not have specified (see subsection 103T(2)).

Subdivision B—Consent orders

103W Powers of SSAT if parties reach agreement

- (1) If, at any stage of a proceeding for a review (including at a pre-hearing conference under section 103):
 - (a) the parties (other than the Registrar) agree to the terms of a decision of the SSAT:
 - (i) in the proceeding; or
 - (ii) in relation to a part of the proceeding, or a matter arising out of the proceeding;that would be acceptable to the parties; and
 - (b) the terms of the agreement are:
 - (i) put in writing; and

- (ii) signed by or on behalf of the parties; and
- (iii) lodged with the SSAT; and
- (c) the SSAT is satisfied that a decision in those terms, or consistent with those terms, would be within the powers of the SSAT;

the SSAT may, if it appears to it to be appropriate to do so, act in accordance with whichever of subsection (2) or (3) is relevant in the particular case.

Note: The SSAT cannot make a decision that the Registrar could not have made (see subsection 103T(2)).

- (2) If the agreement reached is an agreement as to the terms of a decision of the SSAT in the proceeding, the SSAT may make a decision in accordance with those terms:
 - (a) without holding a hearing of the proceeding; or
 - (b) if a hearing has commenced—without completing the hearing.
- (3) If the agreement relates to a part of the proceeding, or a matter arising out of the proceeding, the SSAT may in its decision in the proceeding give effect to the terms of the agreement without dealing at the hearing of the proceeding with the part or matter to which the agreement relates.
- (4) The SSAT must not make a decision by consent under subsection (2) or (3) in relation to a departure from administrative assessment of child support in accordance with Part 6A of the Act unless it is satisfied that it is just and equitable and otherwise proper to do so, having regard to the matters set out in subsections 117(4) and (5).

Subdivision C—Notification and publication of decisions

103X Procedure following SSAT decision

- (1) If the SSAT makes a decision on a review, the SSAT must:
 - (a) within 14 days after making the decision, give a written notice to the parties that:
 - (i) sets out the decision; and
 - (ii) sets out the effect of section 110B (appeal made to a court on a question of law); and

- (b) return to the Registrar any document that the Registrar has provided to the SSAT in connection with the review; and
- (c) give the Registrar a copy of any other document that contains evidence or material on which the findings on any material questions of fact are based.

Note: Within the 14 days referred to in paragraph (1)(a), the SSAT must also give the parties oral or written reasons for the decision (see subsection (3)).

- (2) A failure to comply with subparagraph (1)(a)(ii) in relation to a decision of the SSAT does not affect the validity of the decision.

Statements of reasons

- (3) The SSAT must, within 14 days after making the decision, either:
 - (a) do both of the following:
 - (i) give reasons for the decision orally to the parties;
 - (ii) explain that the parties may request a written notice under paragraph (b) within 14 days after the notice is given under paragraph (1)(a); or
 - (b) give to each party a written notice (whether or not as part of the notice under paragraph (1)(a)) that:
 - (i) sets out the reasons for the decision; and
 - (ii) sets out the findings on any material questions of fact; and
 - (iii) refers to evidence or other material on which the findings of fact are based.
- (4) If the SSAT does not give a written notice to a party under paragraph (3)(b), the party may, within 14 days after the day on which the notice under paragraph (1)(a) is given to the party, request such a notice from the SSAT.
- (5) The SSAT must comply with a request under subsection (4) within 14 days after the day on which it receives the request.

103Y Correction of errors in decisions or statements of reasons

Correction of errors

- (1) If:
 - (a) the SSAT makes a decision on a review; and

- (b) the presiding member of the SSAT as constituted for the purposes of the review is satisfied that there is an obvious error in:
 - (i) the text of the decision; or
 - (ii) a written statement of reasons for the decision;the presiding member may alter the text of the decision or statement.
- (2) If the text of a decision or statement is altered under subsection (1), the altered text is taken to be the decision of the SSAT or the statement of reasons for the decision, as the case may be.

Examples of obvious errors

- (3) Examples of obvious errors in the text of a decision or statement of reasons are if:
 - (a) there is an obvious clerical or typographical error in the text of the decision or statement; or
 - (b) there is an inconsistency between the decision and the statement.

Subdivision D—Costs

103Z Costs of review

- (1) Subject to subsection (4), a party to a review must bear any expenses incurred by the party in connection with the review.
- (2) The SSAT may determine that the Commonwealth is to pay the reasonable costs that are:
 - (a) incurred by a party for travel and accommodation in connection with the review; and
 - (b) specified in the determination.
- (3) If the SSAT arranges for the provision of a medical service in relation to a party to a review, the SSAT may determine that the Commonwealth is to pay the costs of the provision of the service.
- (4) If the SSAT makes a determination under subsection (2) or (3), the costs to which the determination relates are payable by the Commonwealth.

Division 6—Other provisions

103ZA Directions as to procedure for reviews

Directions by SSAT Executive Director

- (1) The SSAT Executive Director:
 - (a) may give general directions as to the procedure to be followed by the SSAT in connection with the review of decisions under this Part; and
 - (b) may give directions as to the procedure to be followed by the SSAT in connection with a particular review.
- (2) A direction under subsection (1) must not be inconsistent with any provision of the Assessment Act or this Act.
- (3) A direction under paragraph (1)(b) may be given before or after the hearing of the particular review has commenced.

Directions by presiding member

- (4) The presiding member of the SSAT as constituted for the purposes of a particular review may give directions as to the procedure to be followed on the hearing of the review.
- (5) A direction under subsection (4) must not be inconsistent with:
 - (a) any provision of the Assessment Act; or
 - (b) any provision of this Act; or
 - (c) a direction under subsection (1).
- (6) A direction under subsection (4) may be given before or after the hearing of the particular review has commenced.

Directions must have regard to SSAT objective

- (7) Directions under this section must have due regard to the objective laid down by section 88.

Legislative instrument status of instruments

- (8) A general direction made under paragraph (1)(a) is a legislative instrument.

- (9) A direction made under paragraph (1)(b) or subsection (4) is not a legislative instrument.

70 Part VIII (heading)

Repeal the heading, substitute:

Part VIII—Court review of certain decisions

71 Before section 104

Insert:

Division 1—Preliminary

103ZB Simplified outline

The following is a simplified outline of this Part:

- Jurisdiction under this Act is conferred on certain federal and State courts.
- A person may appeal a decision of the SSAT under Part VIIA to a court on an error of law.
- The SSAT may refer a question of law arising in a proceeding under Part VIIA to a court.
- If a proceeding has been instituted in a court or before the SSAT or the Registrar, the court may make an order staying or otherwise affecting the operation of the Assessment Act or this Act during the proceeding.

Division 2—Jurisdiction of courts

103ZC Simplified outline

The following is a simplified outline of this Division:

- Jurisdiction under this Act is conferred on the Family Court, the Federal Magistrates Court and certain State and Territory courts.
- This Division also provides for appeals to the Family Court from other courts.

72 At the end of Part VIII

Add:

Division 3—Appeals and references of questions of law from SSAT to courts

Subdivision A—Preliminary

110A Simplified outline

The following is a simplified outline of this Division:

- If a person is dissatisfied with a decision of the SSAT on a question of law in relation to a review under Part VIIA of a decision of the Registrar, the person may appeal the decision to a court.
- The SSAT may refer a question of law arising in a proceeding under Part VIIA to a court.

Subdivision B—Appeals from decisions of SSAT

110B Appeals from decisions of SSAT

A party to a proceeding before the SSAT under Part VIIA may appeal to a court having jurisdiction under this Act, on a question of law, from any decision of the SSAT in that proceeding.

110C Time limits for instituting appeals

- (1) An appeal by a person under this Division must be instituted in a court:

- (a) within:
 - (i) the time prescribed by the applicable Rules of Court; or
 - (ii) such further time as is allowed under the applicable Rules of Court; and
 - (b) in such manner as is prescribed by the applicable Rules of Court.
- (2) Without limiting the grounds on which further time may be allowed under subparagraph (1)(a)(ii), further time may, in the interests of justice, be allowed on the ground that:
- (a) the SSAT made an oral statement as to the reasons for the decision under paragraph 103X(3)(a); and
 - (b) the SSAT later gave a written statement of reasons for the decision under paragraph 103X(3)(b) or subsection 103X(5); and
 - (c) the written statement contains reasons that were not mentioned in the oral statement.

110D Parties to appeals

The parties to a proceeding under this Subdivision are the people who were the parties to the proceeding before the SSAT when the SSAT made the relevant decision.

110E Constitution of courts

The jurisdiction of a court to hear and determine appeals instituted in that court in accordance with this Subdivision may be exercised by the court constituted:

- (a) as a Full Court; or
- (b) by a single Judge.

110F Powers of courts

- (1) The court must hear and determine an appeal under this Subdivision and may make such order as it thinks appropriate by reason of its decision.
- (2) Without limiting subsection (1), the orders that may be made by the court on an appeal include:

- (a) an order affirming or setting aside the decision of the SSAT;
or
- (b) an order remitting the case to be heard and decided again,
either with or without the hearing of further evidence, by the
SSAT in accordance with the directions of the court.

Constitution of SSAT if courts remit cases etc.

- (3) If the court makes an order remitting a case to be heard and
decided again by the SSAT:
 - (a) the SSAT need not be constituted for the hearing by the
person or persons who made the decision to which the appeal
relates; and
 - (b) whether or not the SSAT is reconstituted for the hearing—the
SSAT may, for the purposes of the proceeding, have regard
to any record of the proceeding before the SSAT prior to the
appeal (including a record of any evidence taken in the
proceeding), so long as doing so is not inconsistent with the
directions of the court.

110G Courts may make findings of fact

- (1) If a party to a proceeding before the SSAT appeals to a court under
this Subdivision, the court may make findings of fact if:
 - (a) the findings of fact are not inconsistent with findings of fact
made by the SSAT (other than findings made by the SSAT as
the result of an error of law); and
 - (b) it appears to the court that it is convenient for the court to
make the findings of fact, having regard to:
 - (i) the extent (if any) to which it is necessary for facts to be
found; and
 - (ii) the means by which those facts might be established;
and
 - (iii) the expeditious and efficient resolution of the whole of
the matter to which the proceeding before the SSAT
relates; and
 - (iv) the relative expense to the parties of the court, rather
than the SSAT, in making the findings of fact; and
 - (v) the relative delay to the parties of the court, rather than
the SSAT, in making the findings of fact; and

- (vi) whether any of the parties considers that it is appropriate for the court, rather than the SSAT, to make the findings of fact; and
 - (vii) such other matters (if any) as the court considers relevant.
- (2) For the purposes of making findings of fact under subsection (1), the court may:
 - (a) have regard to the evidence given in the proceeding before the SSAT; and
 - (b) receive further evidence.
- (3) Subsection (1) does not limit the court's power under paragraph 110F(2)(b) to make an order remitting the case to be heard and decided again by the SSAT.

Subdivision C—References of questions of law from SSAT

110H Reference of questions of law to courts

- (1) The SSAT may:
 - (a) of its own initiative; or
 - (b) at the request of a party;refer a question of law arising in a proceeding before the SSAT under Part VIIA to a court having jurisdiction under this Act for decision.
- (2) A question must not be so referred without the agreement of the SSAT Executive Director.
- (3) If a question of law arising in any proceeding has been referred to a court under this Subdivision, the SSAT must not, in that proceeding:
 - (a) give a decision to which the question is relevant while the reference is pending; or
 - (b) proceed in a manner, or make a decision, that is inconsistent with the opinion of the court on the question.

110J Questions to be determined by Full Courts

The jurisdiction of a court to hear and determine a question of law under this Subdivision must be exercised by the court constituted:

- (a) as a Full Court; or
- (b) by a single Judge.

Subdivision D—Other provisions

110K Sending of documents to, and disclosure of documents by, the court

When an appeal is instituted in a court, or a question of law is referred to a court, under this Division:

- (a) the SSAT Executive Director must cause to be sent to the court all documents that were before the SSAT in relation to the proceeding to which the appeal or reference relates; and
- (b) at the conclusion of the proceeding before the court in relation to the appeal or reference, the court must cause the documents to be returned to the SSAT.

73 After Part VIII

Insert:

Part VIIIA—Other provisions relating to reviews of decisions

Division 1A—Preliminary

110N Simplified outline

The following is a simplified outline of this Part:

- The reconsideration of a decision by the Registrar, the SSAT or a court does not affect the operation of the decision or prevent the taking of any action to implement the decision.
- Once a decision becomes final, the Registrar must implement the decision.

- A person might commit an offence if the person publishes an account of a proceeding, or a list of proceedings, under Part VIIA or Division 3 of Part VIII that identifies a witness or party.

Division 1—Effect of pending reconsiderations on assessments, registrations etc.

Subdivision A—Preliminary

110P Scope of Division

- (1) This Division applies for the purposes of the Assessment Act and this Act.
- (2) This Division is subject to section 111C (stay orders).

110Q Meaning of *reconsideration*

For the purposes of this Act, each of the following is a ***reconsideration*** of a decision:

- (a) an objection to the decision under Part VII;
- (b) an application to the SSAT for review of that objection under Part VIIA;
- (c) an appeal to a court from that review under Division 3 of Part VIII;
- (d) an appeal to another court from that appeal under Division 2 of Part VIII and any subsequent appeals under that Division.

Subdivision B—Effect of pending reconsiderations

110R Pending reconsiderations do not affect operation of decisions

The institution of a reconsideration of a decision does not:

- (a) affect the operation of the decision; or
- (b) prevent the taking of action to implement the decision.

110S Pending reconsiderations not to affect registrations etc.

- (1) The fact that a reconsideration of a decision in relation to a registrable maintenance liability is pending does not, in the meantime, interfere with, or affect:
 - (a) the registration of the liability; or
 - (b) the particulars entered in the Child Support Register in relation to the liability.
- (2) Amounts payable under such a liability or payable, by way of penalty, in relation to such a liability may be recovered as if no reconsideration were pending.

110T Pending reconsiderations do not affect assessments

- (1) The fact that a reconsideration of a decision is pending in relation to a person does not, in the meantime, interfere with, or affect, any administrative assessment made in relation to the person.
- (2) Any such assessment may be registered under the Assessment Act, and any amounts of child support and other amounts may be recovered in relation to the assessment, as if no reconsideration were pending.

110U Pending reconsiderations do not affect decisions under section 64A of the Assessment Act

- (1) The fact that a reconsideration of a decision of the Registrar under section 64A of the Assessment Act is pending does not, in the meantime, interfere with, or affect, the decision.
- (2) Amounts payable in relation to such a decision may be recovered as if no appeal were pending.

Division 2—Implementation of decisions

110V Registrar must implement decisions

When the Registrar, the SSAT or a court makes a decision on a reconsideration, the Registrar must immediately take such action as is necessary to give effect to the decision.

Division 3—Determining when decisions become final

110W Determining when decisions become final

SSAT

- (1) For the purposes of the Assessment Act and this Act, if:
 - (a) a decision is a decision of the SSAT under Part VIIA of this Act; and
 - (b) an appeal may be made to a court under Subdivision B of Division 3 of Part VIII of this Act against the decision; and
 - (c) an appeal is not made within the period for doing so;the decision becomes final at the end of that period.

Full Court of the Family Court

- (2) For the purposes of this Act, if:
 - (a) a decision is a decision of the Full Court of the Family Court under Part VIII; and
 - (b) an application may be made for special leave to appeal to the High Court within the period of 30 days after the making of the decision; and
 - (c) an application is not made within that period;the decision becomes final at the end of that period.

Other courts

- (3) For the purposes of this Act, if:
 - (a) a decision is a decision of a court (other than the Full Court of the Family Court) under Part VIII; and
 - (b) an application may be made for leave to appeal under Division 2 of Part VIII against the decision; and
 - (c) an application is not made within the period for doing so;the decision becomes final at the end of that period.

Division 4—Restrictions on publication of review proceedings

110X Restrictions on publication of review proceedings

Offence of publishing identifying accounts

- (1) A person commits an offence if:
- (a) the person:
 - (i) publishes in a newspaper or periodical publication, by radio broadcast or television or by other electronic means; or
 - (ii) otherwise disseminates to the public or to a section of the public by any means;
any account of any proceedings, or of any part of any proceedings, under Part VIIA or Division 3 of Part VIII; and
 - (b) the account identifies:
 - (i) a party to the proceedings; or
 - (ii) a person who is related to, or associated with, a party to the proceedings or is, or is alleged to be, in any other way concerned in the matter to which the proceedings relate; or
 - (iii) a witness in the proceedings.

Penalty: Imprisonment for 12 months.

- (2) Without limiting the generality of subsection (1), an account of proceedings, or of any part of proceedings, referred to in that subsection is taken to identify a person if:
- (a) it contains any particulars of:
 - (i) the name, title, pseudonym or alias of the person; or
 - (ii) the address of any premises at which the person resides or works, or the locality in which any such premises are situated; or
 - (iii) the physical description or the style of dress of the person; or
 - (iv) any employment or occupation engaged in, profession practised or calling pursued, by the person or any official or honorary position held by the person; or

- (v) the relationship of the person to identified relatives of the person or the association of the person with identified friends or identified business, official or professional acquaintances of the person; or
 - (vi) the recreational interests, or the political, philosophical or religious beliefs or interests, of the person; or
 - (vii) any real or personal property in which the person has an interest or with which the person is otherwise associated;
- and the particulars are sufficient to identify that person to a member of the public, or to a member of the section of the public to which the account is disseminated, as the case requires; or
- (b) in the case of a written or televised account or an account by other electronic means—it is accompanied by a picture of the person; or
 - (c) in the case of a broadcast or televised account or an account by other electronic means—it is spoken in whole or in part by the person and the person's voice is sufficient to identify that person to a member of the public, or to a member of the section of the public to which the account is disseminated, as the case requires.

Offence of publishing identifying lists

- (3) A person commits an offence if:
- (a) the person:
 - (i) publishes in a newspaper or periodical publication, by radio broadcast or television or by other electronic means; or
 - (ii) otherwise disseminates to the public or to a section of the public by any means (otherwise than by the display of a notice in the premises of the SSAT);a list of proceedings under Part VIIA or Division 3 of Part VIII; and
 - (b) the proceedings are identified by reference to the names of the parties to the proceedings.

Penalty: Imprisonment for 12 months.

Defence

- (4) Subsections (1) and (3) do not apply to, or in relation to:
- (a) the communication, to persons concerned in proceedings in any court, of any pleading, transcript of evidence or other document for use in connection with those proceedings; or
 - (b) the communication of any pleading, transcript of evidence or other document to:
 - (i) a body that is responsible for disciplining members of the legal profession in a State or Territory; or
 - (ii) persons concerned in disciplinary proceedings, against a member of the legal profession of a State or Territory, before a body that is responsible for disciplining members of the legal profession in that State or Territory; or
 - (c) the communication, to a body that grants assistance by way of legal aid, of any pleading, transcript of evidence or other document for the purpose of facilitating the making of a decision as to whether assistance by way of legal aid should be granted, continued or provided in a particular case; or
 - (d) the publishing of a notice or report in accordance with the direction of a court; or
 - (e) the publication by the SSAT of lists of proceedings under Part VIIA, or Division 3 of Part VIII, identified by reference to the names of the parties, that are to be dealt with by the SSAT; or
 - (f) the publishing of any publication intended primarily for use by the members of any profession, being:
 - (i) a separate volume or part of a series of law reports; or
 - (ii) any other publication of a technical character; or
 - (g) the publication or other dissemination of an account of proceedings or of any part of proceedings:
 - (i) to a person who is a member of a profession, in connection with the practice by that person of that profession or in the course of any form of professional training in which that person is involved; or
 - (ii) to an individual who is a party to any proceedings under this Act, in connection with the conduct of those proceedings; or

- (iii) to a person who is a student, in connection with the studies of that person; or
- (h) the publication of accounts of proceedings, where those accounts have been approved by the court.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

Criminal procedure

- (5) An offence against subsection (1) or (3) is an indictable offence.
- (6) Proceedings for an offence against subsection (1) or (3) must not be commenced except by, or with the written consent of, the Director of Public Prosecutions.

Definitions

- (7) In this section:

court includes:

- (a) an officer of a court investigating or dealing with a matter in accordance with:
 - (i) the Assessment Act; or
 - (ii) this Act; or
 - (iii) regulations made under the Assessment Act or this Act; or
 - (iv) any Rules of Court; and
- (b) a tribunal established by or under a law of the Commonwealth or of a State or a Territory.

electronic means includes:

- (a) in the form of data, text or images by means of guided or unguided electromagnetic energy; or
- (b) in the form of speech by means of guided or unguided electromagnetic energy, if the speech is processed at its destination by an automated voice recognition system.

74 Subsection 116(1)

Repeal the subsection, substitute:

- (1) The mere production of a document signed by the Registrar purporting to be a copy of the entry in the Child Support Register

in relation to a registrable maintenance liability is prima facie evidence:

- (a) that the liability is a registrable maintenance liability; and
 - (b) that the liability is duly registered under this Act; and
 - (c) that the particulars of the entry in the Child Support Register in relation to the liability are those set out in the document; and
 - (d) that all of those particulars are correct.
- (1A) Paragraphs (1)(a), (b) and (d) do not apply in relation to proceedings under Part VII or VIIA, or under Subdivision B of Division 3 of Part VIII, on an objection to a decision:
- (a) to register a registrable maintenance liability; or
 - (b) as to particulars entered in the Child Support Register in relation to a registrable maintenance liability.
- (1B) Paragraph (1)(c) does not apply in relation to proceedings under Part VII or VIIA, or under Subdivision B of Division 3 of Part VIII, on an objection to a decision as to particulars varied in the Child Support Register in relation to a registrable maintenance liability.

Family Law Act 1975

75 At the end of subsection 69B(2)

Add “or the *Child Support (Registration and Collection) Act 1988*”.

Social Security (Administration) Act 1999

76 Clause 20 of Schedule 3

Omit “or the *Employment Services Act 1994*”, substitute “, the *Employment Services Act 1994*, the *Child Support (Assessment) Act 1989* or the *Child Support (Registration and Collection) Act 1988*”.

Part 2—Application provisions

77 Application—review of decisions

Decisions of the Registrar—internal review pending or not yet started at commencement

- (1) Subject to subitem (3), Part VII (internal review) of the Registration and Collection Act (as amended by this Schedule) applies in relation to a decision made by the Registrar under that Act or the Assessment Act before or after the commencement of this item.

Note: Part VII of the Registration and Collection Act (as amended by this Schedule) also applies if a proceeding for internal review was pending under that Part or Part 6B of the Assessment Act immediately before the commencement of this item (see subitem (4)).

- (2) Part VIIA (SSAT review) of the Registration and Collection Act (as inserted by this Schedule) applies in relation to a decision made by the Registrar under subsection 83(1) or 87(1) of the Registration and Collection Act after the commencement of this item.

Decisions of the Registrar—internal review completed before commencement

- (3) If, before the commencement of this item:
- (a) a person objected under:
 - (i) Part 6B of the Assessment Act; or
 - (ii) Part VII of the Registration and Collection Act;to a decision (however described) of the Registrar (the **original decision**); and
 - (b) the Registrar made a decision (the **objection decision**) on the objection under:
 - (i) subsection 98ZC(1) of the Assessment Act; or
 - (ii) subsection 87(1) or 98(1) of the Registration and Collection Act;

those Acts, as in force immediately before that commencement, continue to apply in relation to the original decision and the objection decision.

Pending proceedings—internal reviews

- (4) A proceeding before the Registrar that, immediately before the commencement of this item, was pending under:
 - (a) Part 6B of the Assessment Act; or
 - (b) Part VII of the Registration and Collection Act;is taken, at that commencement, to be pending under Part VII of the Registration and Collection Act as amended by this Schedule.
- (5) The Assessment Act and the Registration and Collection Act, as in force immediately before the commencement of this item, continue to apply in relation to a decision made by the Registrar before that commencement under:
 - (a) subsection 98ZE(1) of the Assessment Act; or
 - (b) subsection 91(1) or 101(1) of the Registration and Collection Act.

Pending proceedings—court and AAT reviews

- (6) The amendments of the Assessment Act and the Registration and Collection Act made by this Schedule do not affect:
 - (a) any proceeding pending before a court under:
 - (i) Part 7 of the Assessment Act; or
 - (ii) section 88 of the Registration and Collection Act;immediately before the commencement of this item; or
 - (b) any proceeding pending before the Administrative Appeals Tribunal under:
 - (i) subsection 98ZE(7) or 98ZF(1) of the Assessment Act; or
 - (ii) subsection 91(5), 99(1) or 101(5) of the Registration and Collection Act;immediately before the commencement of this item; or
 - (c) any order or declaration:
 - (i) made by a court or the Administrative Appeals Tribunal under those Acts; and
 - (ii) in force immediately before the commencement of this item; or
 - (d) any appeal to a court in relation to a proceeding referred to in paragraph (a) or (b).

- (7) The amendments of the Assessment Act made by items 5, 9 and 10 of this Schedule do not apply in relation to a proceeding under Division 3 of Part 7 of that Act as in force immediately before the commencement of this item.

78 Application and saving—notices

- (1) The amendments of the Assessment Act made by items 3, 4, 6, 7, 8, 11, 12, 13, 14 and 37 of this Schedule apply in relation to notices given under that Act after the commencement of this item.
- (2) The amendments of the Registration and Collection Act made by items 59, 60, 64 and 65 of this Schedule apply in relation to decisions of the Registrar made under that Act after the commencement of this item.
- (3) The amendments of the Assessment Act and the Registration and Collection Act made by this Schedule do not affect the validity of a notice given by the Registrar under any provision of those Acts before the commencement of this item.

79 Application—section 110X of the Registration and Collection Act

Section 110X of the Registration and Collection Act (as inserted by this Schedule) applies in relation to proceedings commenced under Part VIIA, or Division 3 of Part VIII, of that Act after the commencement of this item.

80 Application of amendments in relation to Western Australian exnuptial children

If, immediately after the commencement of this item, the Assessment Act and the Registration and Collection Act do not extend to Western Australia in relation to the maintenance of exnuptial children because:

- (a) the Parliament of Western Australia has not referred to the Parliament of the Commonwealth the matter of the maintenance of exnuptial children or matters that include that matter; and
- (b) Western Australia has not adopted those Acts as amended by this Act;

items 77 to 79 of this Schedule apply in Western Australia, after Western Australia adopts those Acts as amended by this Act, in relation to the maintenance of exnuptial children as if references in those items to the commencement of those items were references to the adoption of those Acts by Western Australia as amended by this Act.

Schedule 4—Other amendments commencing on 1 January 2007

Part 1—Amendments

Child Support (Assessment) Act 1989

1 Paragraph 76(3)(aa)

Omit “, subject to subsection 98A(3),”.

2 Paragraph 76(3)(b)

Repeal the paragraph.

3 Part 6A (heading)

Repeal the heading, substitute:

Part 6A—Departure from administrative assessment of child support (departure determinations)

4 Division 1 of Part 6A

Repeal the Division, substitute:

Division 1—Preliminary

98A Simplified outline

The following is a simplified outline of this Part:

- | |
|---|
| <ul style="list-style-type: none">• The Registrar can make a determination under this Part to depart from the provisions of this Act relating to administrative assessment of child support for a child.• A liable parent or a carer entitled to child support can apply for such a determination, or the Registrar can make a determination on his or her own initiative. |
|---|

- The Registrar must not make a determination in respect of a day that is more than 18 months earlier without leave of a court under section 112.
- The grounds for deciding whether to make a determination are the same as a court uses in deciding whether to make an order under Division 4 of Part 7.
- If the Registrar is considering making a determination, the parties can make a child support agreement in relation to child support payable for the child instead of the Registrar making the determination.
- Under section 80 of the Registration and Collection Act, certain persons can object to a decision to make or refuse to make a determination under this Part.

5 Subsection 98B(1) (note)

Omit “Note”, substitute “Note 1”.

6 At the end of subsection 98B(1)

Add:

- Note 2: The Registrar may only make a determination under this Part in respect of a day that is more than 18 months earlier than the day on which the relevant application is made with a court’s leave under section 112 (see subsection 98S(3B)).

7 Subsection 98K(1) (note)

Omit “Note”, substitute “Note 1”.

8 At the end of subsection 98K(1)

Add:

- Note 2: The Registrar may only make a determination under this Part in respect of a day that is more than 18 months earlier than the day on which the relevant parties are notified under section 98M with a court’s leave under section 112 (see subsection 98S(3B)).

9 Subsection 98S(1)

Omit “Subject to section 98A, the”, substitute “The”.

10 At the end of subsection 98S(1)

Add:

Note: There are limitations on the Registrar making a determination that varies an annual rate of child support below the minimum annual rate of child support (see section 98SA).

11 After subsection 98S(3A)

Insert:

- (3B) The Registrar may only make a determination under this Part in respect of a day in a child support period, being a day that is more than 18 months earlier than:
- (a) the day on which the application for the determination is made under section 98B; or
 - (b) the day on which the Registrar notifies the relevant parties under subsection 98M(1);
- if a court has granted leave under section 112 for the determination to be made.
- (3C) If a court has granted leave under section 112, the Registrar may only make a determination under this Part in respect of a day in a child support period if the day is within the period specified by the court, under subsection 112(6), in the order granting the leave.

12 At the end of Division 4 of Part 6A

Add:

98SA Variation not to be below minimum annual rate of child support

- (1) Subject to subsection (2), the Registrar must not make a determination under this Part that varies, or that has the effect of varying, the annual rate of child support payable by a liable parent in respect of a day in a child support period under an assessment to a rate below the minimum annual rate of child support in respect of that period.
- (2) The Registrar may make a determination that varies, or has the effect of varying, the annual rate of child support payable by a liable parent in respect of a day in a child support period under an assessment to a rate below the minimum annual rate of child

support in respect of that period if section 66 does not apply in relation to the child support payable by the liable parent because of the operation of section 66B.

13 At the end of section 107

Add:

- (6) If the court grants the declaration, the court must, as soon as practicable, consider making an order under section 143.

14 Division 3 of Part 7

Repeal the Division, substitute:

Division 3—Application for amendment of administrative assessment that is more than 18 months old

110 Simplified outline

The following is a simplified outline of this Division:

- Normally, the Registrar cannot make a departure determination under Part 6A, and a court cannot make a departure order under Division 4 of this Part, in respect of a day in a child support period that is more than 18 months earlier.
- Under this Division, a liable parent, a carer entitled to child support or the Registrar can apply to certain courts for leave for a determination or order to be made in respect of a day in a child support period that is more than 18 months earlier.
- A court must not grant leave for such a determination or order to be made in respect of a day in a child support period that is more than 7 years earlier.
- If a court grants leave, the court can decide whether the Registrar should make such a determination or the court should make such an order.

111 Application for amendment of administrative assessment that is more than 18 months old

Parent or carer applications

- (1) A liable parent, or a carer entitled to child support, (the *applicant*) may apply to a court having jurisdiction under this Act for leave for:
 - (a) the Registrar to make a determination under section 98S; or
 - (b) the court to make an order under section 118;in respect of a day in a child support period, being a day that is more than 18 months, and less than 7 years, earlier than the day on which the application under this section is made.
- (2) Subject to section 145 (Registrar may intervene in proceedings), the parties to the proceeding under subsection (1) are:
 - (a) the applicant; and
 - (b) either:
 - (i) the liable parent; or
 - (ii) the carer entitled to child support.

Registrar application

- (3) The Registrar (the *applicant*) may apply to a court having jurisdiction under this Act for leave for the Registrar to make a determination under section 98S in respect of a day in a child support period, being a day that is more than 18 months, and less than 7 years, earlier than the day on which the application under this section is made.
- (4) The parties to the proceeding under subsection (3) are:
 - (a) the applicant; and
 - (b) the liable parent; and
 - (c) the carer entitled to child support.

112 Court may grant leave to amend administrative assessment that is more than 18 months old

- (1) If an application is made to a court under section 111, the court may grant leave for:
 - (a) the Registrar to make a determination under section 98S; or

- (b) the court to make an order under section 118.
- (2) The court may grant leave for an order to be made under section 118 if the court is satisfied that it would be in the interest of the parties to the proceeding for the court to consider, at the same time as it hears the application under section 111, whether an order should be made under section 118. If the court does so, the applicant is taken to have made an application to the court under section 116 for such an order.
- (3) Otherwise, the court may grant leave for the Registrar to make a determination under section 98S.

Matters to be considered

- (4) In considering whether to grant leave under subsection (1), the court must have regard to:
 - (a) any responsibility, and reason, for the delay in:
 - (i) making an application under section 98B or 116; or
 - (ii) making a determination under section 98S;as the case requires; and
 - (b) the hardship to the applicant (other than the Registrar) if leave is not granted; and
 - (c) the hardship to the other party or parties (other than the Registrar) if leave is granted.
- (5) The court may have regard to any other relevant matter.

Orders granting leave to specify period

- (6) An order granting leave under this section must specify the period in respect of which the Registrar may make a determination or the court may make an order.
- (7) The period specified under subsection (6):
 - (a) must not include a day in a child support period if the day is more than 7 years earlier than the day on which the application under section 111 was made; and
 - (b) is not limited by the terms of that application.

No requirement to make determination or order

- (8) The granting of leave under subsection (1) does not imply that:

- (a) the Registrar is required to make a determination under section 98S; or
- (b) the court is required to make an order under section 118.

113 Implementation of decisions

When a decision of a court under this Division is made, the Registrar must immediately take such action (if any) as is necessary to give effect to the decision.

113A Pending application not to affect assessment

Subject to section 140 (stay orders), 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 Registration and Collection Act, and amounts of child support and other amounts recovered in relation to the assessment, as if no proceeding were pending.

15 Division 4 of Part 7 (heading)

Repeal the heading, substitute:

Division 4—Orders for departure from administrative assessment in special circumstances (departure orders)

16 Before section 114

Insert:

113B Simplified outline

The following is a simplified outline of this Division:

- Certain courts can make an order under this Division to depart from the provisions of this Act relating to administrative assessment of child support for a child.

- A person can apply for such an order in certain limited circumstances. (If a person cannot apply for an order under this Division, the person might instead be able to apply for a determination by the Registrar under Part 6A.)
- A court can also make such an order without an application in some circumstances (such as after setting aside a child support agreement).
- A court must not make an order in respect of a day in a child support period that is more than 18 months earlier without leave of the court under section 112.

17 Section 115

Repeal the section.

18 Subsections 116(1), (1A) and (1B)

Repeal the subsections, substitute:

- (1) A liable parent or a carer entitled to child support may, in respect of an administrative assessment of child support for a child, apply to a court having jurisdiction under this Act for an order under this Division in relation to the child in the special circumstances of the case if:
 - (a) all of the following apply:
 - (i) the Registrar has, under section 98E or 98R, refused to make a determination under Part 6A in respect of the administrative assessment;
 - (ii) an objection to the refusal has been lodged under section 80 of the Registration and Collection Act;
 - (iii) the Registrar has disallowed the objection; or
 - (b) both of the following apply:
 - (i) the liable parent or carer entitled to child support is a party to an application pending in a court having jurisdiction under this Act;
 - (ii) the court is satisfied that it would be in the interest of the liable parent and the carer entitled to child support for the court to consider whether an order should be made under this Division in relation to the child in the special circumstances of the case; or

- (c) in the case of a liable parent—the administrative assessment of child support payable by the liable parent for the child is made under subsection 66(1).

Note 1: For the orders that a court may make under this Division see section 118.

Note 2: With a court’s leave, a court may make an order under this Division in respect of a day that is more than 18 months earlier than the day on which the relevant application was made (see subsection 118(2B)). A person is taken to have applied under this section if leave is granted.

19 After subsection 118(2A)

Insert:

- (2B) A court may only make an order under this Division in respect of a day in a child support period, being a day that is more than 18 months earlier than the day on which the application for the order is made under section 116, if the court has granted leave under section 112 for the order to be made.
- (2C) If the court has granted leave under section 112, the court may only make an order under this Division in respect of a day in a child support period if the day is within the period specified by the court, under subsection 112(6), in the order granting the leave.

20 Subsection 123(3)

Omit “Division 4 (Orders for departure from administrative assessment in special circumstances)”, substitute “Division 3 (administrative assessments more than 18 months old) or Division 4 (departure orders)”.

21 After paragraph 124(2)(a)

Insert:

- (aa) any determination in force under Part 6A (departure determinations) in relation to the child, the carer entitled to child support and the liable parent; and

22 Paragraph 124(2)(b)

Omit “(Orders for departure from administrative assessment in special circumstances)”, substitute “(departure orders)”.

23 After subsection 143(3)

Insert:

(3A) If:

- (a) a person (the *payer*) has paid an amount of child support to another person (the *payee*); and
- (b) the court has made a declaration under section 107 that the payee was not entitled to an administrative assessment of child support for the child because the payer is not the parent of the child; and
- (c) the court:
 - (i) is considering whether to make an order under this section; or
 - (ii) if such an order is to be made, is determining the amount that is to be recovered and whether payment is to be made in the form of a lump sum payment or a periodic amount;

then the court must have regard to the matters set out in subsection (3B). This subsection does not limit subsection (3).

(3B) For the purposes of subsection (3A), the court must have regard to the following matters:

- (a) whether the payee or the payer knew, or should reasonably have known, that the payer was not the parent of the child;
- (b) whether the payee or the payer engaged in any conduct (by act or omission) that directly or indirectly resulted in the application for administrative assessment of child support for the child being accepted by the Registrar;
- (c) whether there was any delay by the payer in applying under section 107 for a declaration once he or she knew, or should reasonably have known, that he or she was not the parent of the child;
- (d) whether there is any other child support that is, or may become, payable to the payee for the child by the person who is the parent of the child;
- (e) the relationship between the payer and the child;
- (f) the financial circumstances of the payee and the payer.

Child Support (Registration and Collection) Act 1988

24 Subsection 4(1) (definition of *registrable maintenance liability*)

After “17” insert “, 17A”.

25 After section 17

Insert:

17A Liabilities in relation to persons who have paid amounts where no liability to pay because the person is not the parent

Subject to section 19, a liability is a registrable maintenance liability if:

- (a) it is a liability of a person (the *payer*) to pay an amount to another person (the *payee*); and
- (b) it arises under a court order made under section 143 of the Assessment Act; and
- (c) the court made the order in response to a declaration under section 107 of that Act that the payer was not entitled to an administrative assessment of child support for a child because the payee is not the parent of the child.

26 Paragraph 19(2)(a)

After “17”, insert “, 17A”.

27 Subsection 30(3)

Repeal the subsection, substitute:

- (3) If a registrable maintenance liability is registered under this Act, the payee of the liability is not entitled to, and may not enforce payment of, amounts payable under the liability other than by instituting a proceeding under section 113A to recover a debt due in relation to the liability.

28 After subsection 37B(7)

Insert:

Section not to prevent payee recovery of a debt

- (7A) This section does not prevent a payee of a registered maintenance liability from instituting a proceeding under section 113A during a low-income non-enforcement period to recover a debt due in relation to the liability.

29 Section 70

Omit “Where”, substitute “(1) If”.

30 At the end of section 70

Add:

- (2) This section does not apply to amounts paid to the Registrar in accordance with a court order made in relation to a proceeding instituted by a payee of a registered maintenance liability under section 113A to recover a debt due in relation to the liability.

31 Paragraph 71AA(1)(a)

After “17”, insert “or 17A”.

32 Paragraphs 71AA(1)(b) and (c)

Repeal the paragraphs, substitute:

- (b) in respect of each debt, the Commonwealth would be required, under section 76, to pay the amount paid by one of the persons to the other person; and
- (c) for a debt that arose from a liability referred to in section 17—the liability provided for child support for a child of the 2 persons;

33 Paragraph 72D(1)(c)

Repeal the paragraph, substitute:

- (c) the Registrar is satisfied that the person has persistently and without reasonable grounds failed to pay:
 - (i) child support debts arising from a registrable maintenance liability under section 17; or
 - (ii) a child support debt arising from a registrable maintenance liability under section 17A; and

34 Subsection 72D(2)

Repeal the subsection, substitute:

- (2) For the purposes of paragraph (1)(c), the Registrar must have regard to the following matters:
- (a) the capacity of the person concerned to pay the debt or debts;
 - (b) the number of occasions on which action has been taken to recover the debt or debts, and the outcome of the recovery action;
 - (c) if subparagraph (1)(c)(i) applies—the number of occasions on which the debts mentioned in that subparagraph had not been paid on or before the day on which they became due and payable;
 - (d) if subparagraph (1)(c)(ii) applies—the length of time for which the debt mentioned in that subparagraph has remained unpaid after the day on which it became due and payable;
 - (e) such other matters as the Registrar considers appropriate.

35 Paragraph 72E(a)

After “17”, insert “or 17A”.

36 Before Part IX

Insert:

Part VIIIB—Other provisions relating to courts

111A Simplified outline

The following is a simplified outline of this Part:

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| <ul style="list-style-type: none">• In exercising jurisdiction under this Act, a court has broad powers.• If a proceeding has been instituted under this Act in a court or before the SSAT or the Registrar, a court may make an order staying or otherwise affecting the operation of the Assessment Act or this Act during the proceeding. |
|---|

- If a court makes an order under this Act, a copy of the order must be sent to the Registrar.
- The Registrar may intervene in any proceeding under this Act.
- There are specific provisions relating to a proceeding brought by a payee of a registered maintenance liability under section 113A.

111B General powers of court

- (1) A court's powers under this Act include the power to do all or any of the following:
- (a) order payment of a lump sum, whether in one amount or by instalments;
 - (b) order payment of a weekly, monthly, yearly or other periodic amount;
 - (c) order that a specified transfer or settlement of property be made;
 - (d) order that payment of an amount ordered to be paid be wholly or partly secured as the court specifies;
 - (e) order that any necessary deed or instrument be executed, and that such documents of title be produced and such other things be done, as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;
 - (f) order that payment be made to a specified person or public authority or into court;
 - (g) make a permanent order, an order pending the disposal of proceedings, an order for a fixed period, an order until a child attains a specified age or an order until further order;
 - (h) make an order expressed to be retrospective to such day as the court considers appropriate;
 - (i) make an order:
 - (i) discharging an order; or
 - (ii) suspending the operation of an order wholly or in part and either until further order or until a fixed time or the happening of a future event; or

- (iii) reviving wholly or in part the operation of an order that has been suspended; or
 - (iv) varying an order in any way;
 - (j) make an order imposing terms and conditions;
 - (k) make an order by consent;
 - (l) make any other order (whether or not of the same kind as those referred to in paragraphs (a) to (k)) that the court considers appropriate;
 - (m) make an order at any time.
- (2) The making of an order of a kind referred to in paragraph (1)(c), or of any other order under this Act, in relation to a child does not prevent a court from making a subsequent order (whether under this Act or otherwise) in relation to the child.
- (3) The applicable Rules of Court may make provision with respect to the making of orders under this Act (whether as to their form or otherwise) for the purpose of facilitating their enforcement and the collection of any child support payable under them.

111C Stay orders

- (1) This section applies if a proceeding has been instituted:
 - (a) in a court having jurisdiction under this Act; or
 - (b) before the Registrar under Part VII; or
 - (c) before the SSAT under Part VIIA.
- (2) A party to the proceeding may, subject to the *Family Law Act 1975*:
 - (a) in the case of a proceeding instituted in a court—apply to that court for an order under this section; or
 - (b) otherwise—apply to a court having jurisdiction under this Act for an order under this section.
- (3) Pending the hearing and final determination of the proceeding, the court may make such orders as the court considers appropriate staying or otherwise affecting the operation or implementation of the Assessment Act and this Act 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.

- (4) The court may, by order, vary or revoke an order made under subsection (3).
- (5) An order under subsection (3):
 - (a) is subject to such terms and conditions as are specified in the order; and
 - (b) operates for:
 - (i) such period as is specified in the order; or
 - (ii) if no period is specified—until a decision of the court, the Registrar or the SSAT determining the proceeding becomes final.
- (6) For the purposes of subparagraph (5)(b)(ii), a decision of the Registrar becomes final at the end of the period within which an application could have been made to the SSAT under Part VIIA, if an application has not been made within that period.

111D Copies of orders to be forwarded to Registrar

- (1) If a court makes an order under this Act, the registrar or other responsible officer of the court must, within 28 days after the day on which the order is made, send a certified or sealed copy of the order to the Child Support Registrar.
- (2) The Child Support Registrar may, by written notice served on the registrar or other responsible officer of a court, vary, in relation to the court, the requirement of subsection (1) in such instances and to such extent as the Child Support Registrar considers appropriate.

111E Registrar may intervene in proceedings

- (1) The Registrar may intervene in, and contest and argue any question arising in, a proceeding under this Act.
- (2) If the Registrar intervenes in a proceeding under this Act, the Registrar is 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*.

111F Court order for payment in proceedings instituted by payee to recover debt

If, in relation to a proceeding instituted by the payee of a registered maintenance liability under section 113A, the court makes an order for payment of an amount by the payer of the liability, the court may specify in the order that payment be made to:

- (a) the payee of the liability; or
- (b) the Registrar.

111G Costs in proceedings instituted by payee to recover debt

To avoid doubt, if:

- (a) a payee of a registered maintenance liability has instituted a proceeding under section 113A to recover a debt due in relation to the liability; and
 - (b) the Registrar is not a party to the proceeding;
- the Commonwealth is not liable for costs in the proceeding.

37 Subsection 113(1)

Repeal the subsection, substitute:

Debts due by a payer may be recovered by the Registrar or the payee

- (1) A debt due to the Commonwealth under this Act in relation to a registered maintenance liability:
 - (a) is payable to the Registrar in the manner and at the place prescribed; and
 - (b) may be sued for and recovered by:
 - (i) the Registrar suing in his or her official name; or
 - (ii) the payee of the liability suing in accordance with section 113A; and
 - (c) may be recovered in:
 - (i) a court having jurisdiction for the recovery of debts up to the amount of the debt; or
 - (ii) a court having jurisdiction under this Act.

38 Subsection 113(2)

After “taken”, insert “by the Registrar”.

Note: The following heading to subsection 113(2) is inserted “*Registrar to keep payee informed of action taken to recover debt*”.

39 After section 113

Insert:

113A Recovery of debts by payees

Payee to notify Registrar of intention to institute a proceeding to recover debt

- (1) A payee of a registered maintenance liability may sue for and recover a debt due in relation to the liability if the payee notifies the Registrar in writing of his or her intention to institute a proceeding to recover the debt:
 - (a) at least 14 days before instituting the proceeding; or
 - (b) in exceptional circumstances—within such shorter period as the court allows.

Note: For provisions relating to proceedings instituted under this section, see sections 111F and 111G.

Payee to notify Registrar of orders made and payments received

- (2) A payee of a registered maintenance liability who has instituted a proceeding in a court to recover a debt under subsection (1) must give notice to the Registrar, in the manner specified by the Registrar, of:
 - (a) any orders (including orders as to costs) made by the court in relation to the payee and the debt due in relation to the liability; and
 - (b) any payments received by the payee from the payer under any such order;within 14 days of the order being made or the payment being received.

Note: Section 16A provides for the Registrar to specify the manner in which a notice may be given.

- (3) A payee commits an offence if:
 - (a) either:
 - (i) the court makes an order in relation to the payee and the debt due in relation to the liability; or

- (ii) the payee receives a payment from the payer under any such order; and
- (b) the payee fails to notify the Registrar under subsection (2) of the order being made or the payment being received.

Penalty: 10 penalty units.

- (4) Subsection (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the person charged proves that the person gave the notice to the Registrar as soon as reasonably practicable after becoming aware of the making of the relevant order or of the receipt of the relevant payment, as the case may be.

40 After subsection 120(1)

Insert:

- (1A) A court having jurisdiction under this Act may, in a proceeding instituted in the court by a payee of a registered maintenance liability under section 113A to recover a debt due in relation to the liability, exercise all the powers of the Registrar under subsection (1).

41 Subsection 120(3)

After “subsection (1)”, insert “, or by a court in accordance with subsection (1A),”.

Part 2—Application provisions

42 Application

The amendments made by items 11, 14, 17, 18 and 19 of this Schedule apply in respect of:

- (a) an application made under section 98B of the Assessment Act after the commencement of this Schedule; and
- (b) a determination in respect of which parties were notified under section 98M of the Assessment Act after the commencement of this Schedule; and
- (c) an application made under section 116 of the Assessment Act after this item commences, even if the application relates to a decision made before the commencement of this Schedule:
 - (i) to make, or refuse to make, a determination under Part 6A of that Act; or
 - (ii) to make an administrative assessment under subsection 66(1) of that Act.

43 Application

The amendments made by items 13 and 23 of this Schedule apply in respect of proceedings instituted after the commencement of this Schedule in respect of declarations made under section 107 of the Assessment Act after that commencement.

44 Application

The amendments made by items 24 to 26 and 31 to 35 of this Schedule apply in respect of a court order made under section 143 of the Assessment Act in response to a declaration made under section 107 of that Act, whether the order under section 143 was made before or after the commencement of this Schedule.

45 Application

The amendments made by items 27 and 37 to 41 of this Schedule apply to debts due to the Commonwealth under that Act that are outstanding on and after the commencement of this Schedule, whether the debt arose before or after the commencement of this Schedule.

46 Application of amendments in relation to Western Australian exnuptial children

If, immediately after the commencement of this Schedule, the Assessment Act and the Registration and Collection Act do not extend to Western Australia in relation to the maintenance of exnuptial children because:

- (a) the Parliament of Western Australia has not referred to the Parliament of the Commonwealth the matter of the maintenance of exnuptial children or matters that include that matter; and
- (b) Western Australia has not adopted those Acts as amended by this Act;

items 42 to 45 of this Schedule apply in Western Australia, after Western Australia adopts those Acts as amended by this Act, in relation to the maintenance of exnuptial children as if references in those items to the commencement of this Schedule were references to the adoption of those Acts by Western Australia as amended by this Act.

Schedule 5—Amendments relating to child support agreements and court orders (commencing on 1 July 2008)

Part 1—Main amendments

Division 1—Binding and limited child support agreements

Child Support (Assessment) Act 1989

1 Section 5

Insert:

binding child support agreement has the meaning given by section 80C.

2 Section 5

Insert:

limited child support agreement has the meaning given by section 80E.

3 Section 5

Insert:

termination agreement has the meaning given by section 80D.

4 Section 34B

Repeal the section, substitute:

34B Administrative assessment for child support period started by new agreement when support already payable

- (1) The Registrar must assess the annual rate of child support payable for a child for a day in a child support period if:
 - (a) the Registrar accepts a child support agreement made in relation to the child; and

- (b) child support is already payable by a parent for the child under an administrative assessment; and
- (c) the agreement is to affect the annual rate of child support payable for the child.

The Registrar must assess the annual rate immediately after accepting the agreement.

Note: Section 95 explains how the provisions of the agreement affect the assessment.

(2) The child support period starts:

(a) if:

- (i) the application for acceptance of the agreement was made to the Registrar within 28 days after the day on which the agreement was signed; and
- (ii) the agreement states that child support is to be payable from a specified day; and
- (iii) the day specified is not earlier than the day on which child support first became payable under the administrative assessment;

on the specified day; or

(b) if:

- (i) the application for acceptance of the agreement was made to the Registrar within 28 days after the day on which the agreement was signed; and
- (ii) the agreement states that child support is to be payable from a specified day; and
- (iii) the day specified is earlier than the day on which child support first became payable under the administrative assessment;

on the day on which child support first became payable under the administrative assessment; or

(c) if:

- (i) the application for acceptance of the agreement was made to the Registrar within 28 days after the day on which the agreement was signed; and
- (ii) the agreement does not specify a day from which child support is to be payable;

on the day on which the agreement was signed; or

- (d) otherwise—on the day on which the application was made to the Registrar for acceptance of the agreement.

5 Division 1 of Part 6

Repeal the Division, substitute:

Division 1—Preliminary

80A Simplified outline

The following is a simplified outline of this Part:

- Parents (and non-parent carers) of a child can, using a child support agreement, agree between themselves the child support that is to be payable for the child.
- There are 2 sorts of agreements. The first is a binding child support agreement. Each party to the agreement must have received legal advice before entering the agreement, and must also receive legal advice before terminating the agreement.
- The second sort of agreement is a limited child support agreement. An administrative assessment must be in place before a limited child support agreement can be accepted by the Registrar. The annual rate of child support payable under the agreement must be at least the annual rate of child support otherwise payable under this Act.
- Agreements may include provisions that state that child support is to be payable otherwise than in the form of periodic amounts. There are 2 main kinds of such provisions:
 - (a) non-periodic payment provisions, under which lump sum payments and other non-periodic payments (such as school fees) may be made; and
 - (b) lump sum payment provisions, under which lump sum payments may be made.
- Payments made under non-periodic payment provisions reduce the annual rate of child support payable.

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| <ul style="list-style-type: none">• Payments made under lump sum payment provisions are credited against the liability of a party to the agreement (rather than reducing the annual rate of child support payable). |
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80B Cases in relation to which Part applies

This Part applies where the parents of an eligible child, or a parent or the parents of an eligible child and a non-parent carer of the child, want to give effect to an agreement between themselves in relation to child support payable for the child.

Division 1A—Binding and limited child support agreements

Subdivision A—Binding child support agreements

80C Making binding child support agreements

- (1) An agreement is a *binding child support agreement* if:
 - (a) the agreement is binding on the parties to the agreement in accordance with subsection (2); and
 - (b) the agreement complies with subsection 81(2).
- (2) For the purposes of subsection (1), an agreement is binding on the parties to the agreement if, and only if:
 - (a) the agreement is in writing; and
 - (b) the agreement is signed by the parties to the agreement; and
 - (c) the agreement contains, in relation to each party to the agreement, a statement to the effect that the party to whom the statement relates has been provided, before the agreement was signed by him or her, as certified in an annexure to the agreement, with independent legal advice from a legal practitioner as to the following matters:
 - (i) the effect of the agreement on the rights of that party;
 - (ii) the advantages and disadvantages, at the time that the advice was provided, to the party of making the agreement; and
 - (d) the annexure to the agreement contains a certificate signed by the person providing the independent legal advice stating that the advice was provided; and

- (e) the agreement has not been terminated under section 80D;
and
- (f) after the agreement is signed, either the original agreement or
a copy of the agreement is given to each party.

Note: For the manner in which the contents of a binding child support
agreement may be proved, see section 48 of the *Evidence Act 1995*.

80CA No variation of binding child support agreements

- (1) A binding child support agreement must not be varied.

Note: A binding child support agreement can be terminated and replaced
with a new binding child support agreement.

- (2) However, subsection (1) does not prevent a binding child support
agreement between parties from incorporating by reference the
provisions of a previous child support agreement between the
parties.

80D Terminating binding child support agreements

- (1) A binding child support agreement (the *previous agreement*) may
be terminated only by:
 - (a) a provision being included in a new binding child support
agreement made by the parties to the previous agreement to
the effect that the previous agreement is terminated; or
 - (b) the parties to the previous agreement making a written
agreement (a *termination agreement*):
 - (i) that is binding on the parties in accordance with
subsection (2); and
 - (ii) to the effect that the agreement is terminated; or
 - (c) a court order setting aside the previous agreement under
section 136.
- (2) For the purposes of subparagraph (1)(b)(i), an agreement is binding
on the parties if, and only if:
 - (a) the agreement is in writing; and
 - (b) the agreement is signed by the parties to the agreement; and
 - (c) the agreement contains, in relation to each party to the
agreement, a statement to the effect that the party to whom
the statement relates has been provided, before the agreement
was signed by him or her, as certified in an annexure to the

agreement, with independent legal advice from a legal practitioner as to the following matters:

- (i) the effect of the agreement on the rights of that party;
- (ii) the advantages and disadvantages, at the time that the advice was provided, to the party of making the agreement; and
- (d) the annexure to the agreement contains a certificate signed by the person providing the independent legal advice stating that the advice was provided; and
- (e) the agreement has not been set aside by a court under section 136; and
- (f) after the agreement is signed, either the original agreement or a copy of the agreement is given to each party.

Note: For the manner in which the contents of a termination agreement may be proved, see section 48 of the *Evidence Act 1995*.

- (3) A binding child support agreement is terminated:
 - (a) if paragraph (1)(a) applies—on the day set out in the following paragraph:
 - (i) if the new binding child support agreement specifies a day on which it takes effect—that day;
 - (ii) otherwise—the day on which the new binding child support agreement is signed; and
 - (b) if paragraph (1)(b) applies—on the day set out in the following paragraph:
 - (i) if the termination agreement specifies a day on which it takes effect—that day;
 - (ii) otherwise—the day on which the termination agreement is signed; and
 - (c) if paragraph (1)(c) applies—on the day on which the court order takes effect.

Subdivision B—Limited child support agreements

80E Making limited child support agreements

- (1) An agreement is a *limited child support agreement* if:
 - (a) it is in writing; and
 - (b) it is signed by the parties to the agreement; and
 - (c) it complies with subsection 81(2); and

- (d) it meets the conditions in subsection (2), (3) or (4), as the case requires, (assuming the agreement is accepted by the Registrar).

Note: In addition to the requirements in this section, there must be an administrative assessment in force in relation to the child in respect of whom the agreement is made (see subsection 92(3)).

Child support payable on day application for acceptance of agreement is made to Registrar

- (2) An agreement meets the condition in this subsection if:
- (a) child support is to be payable under the agreement, by one party to the agreement to the other party or parties, on the day on which the application is made to the Registrar for acceptance of the agreement; and
 - (b) the annual rate of child support that is so payable under the agreement on that day is at least the annual rate of child support that would otherwise be payable under this Act on that day.

Note: If the child support payable under the agreement is not a periodic amount, the regulations can prescribe the method by which that amount is to be converted into an annual rate (see subsection (5)).

Child support payable on day agreement commences

- (3) An agreement meets the condition in this subsection if:
- (a) child support is not to be payable under the agreement, by one party to the agreement to the other party or parties, on the day on which the application is made to the Registrar for acceptance of the agreement; but
 - (b) the annual rate of child support that is payable under the agreement, by one party to the agreement to the other party or parties, on the day on which the agreement commences is at least the annual rate of child support that would otherwise be payable under this Act on that day.

Child support payable for past period

- (4) An agreement meets the condition in this subsection if:
- (a) child support is payable under the agreement, by one party to the agreement to the other party or parties, for a period before

the day on which the application is made to the Registrar for acceptance of the agreement; and

- (b) the amount of child support that is so payable under the agreement for that period is at least the amount of child support that would otherwise be payable under this Act for that period.

Regulations

- (5) The regulations may, for the purposes of subsections (2), (3) and (4), provide a method of converting an amount of child support that is payable under an agreement otherwise than in the form of periodic amounts into an annual rate of child support.

80F No variation of limited child support agreements

- (1) A limited child support agreement must not be varied.

Note: A limited child support agreement can be terminated and replaced with a new limited child support agreement.

- (2) However, subsection (1) does not prevent a limited child support agreement between parties from incorporating by reference the provisions of a previous child support agreement between the parties.

80G Terminating limited child support agreements

- (1) A limited child support agreement (the *previous agreement*) may be terminated only by:
- (a) a provision being included in:
 - (i) a new limited child support agreement made by the parties to the previous agreement; or
 - (ii) a binding child support agreement made by the parties to the previous agreement;
to the effect that the previous agreement is terminated; or
 - (b) the parties to the previous agreement making a written agreement that is signed by those parties to the effect that the previous agreement is terminated; or
 - (c) a court order setting aside the previous agreement under section 136; or

- (d) if the notional assessment of the amount of child support that would have been payable by one party to the previous agreement to another party is varied by more than 15% from the previous notional assessment in circumstances not contemplated by the previous agreement—a party to the previous agreement giving the Registrar written notice of the termination of the agreement within 60 days of that party receiving notice of the variation; or
 - (e) if the previous agreement was made 3 or more years earlier—a party to the previous agreement giving the Registrar written notice of the termination of the previous agreement.
- (2) A limited child support agreement is terminated:
 - (a) if paragraph (1)(a) applies—on the day set out in the following paragraph:
 - (i) if the new limited child support agreement, or binding child support agreement, specifies a day on which it takes effect—that day;
 - (ii) otherwise—the day on which the new limited child support agreement or binding child support agreement is signed; and
 - (b) if paragraph (1)(b) applies—on the day set out in the following paragraph:
 - (i) if the written agreement specifies a day on which it takes effect—that day;
 - (ii) otherwise—the day on which the written agreement is signed; and
 - (c) if paragraph (1)(c) applies—on the day on which the court order takes effect; and
 - (d) if paragraph (1)(d) or (e) applies—28 days after the notice is given.
- (3) If a limited child support agreement is terminated under paragraph (1)(d) or (e), the Registrar must notify in writing the other parties to the agreement of the termination.
- (4) The notice under subsection (3) must include, or be accompanied by, a statement that specifically draws the attention of the parties to the previous agreement to the right:

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- (a) to object, subject to the Registration and Collection Act, to the decision (the *original decision*) to terminate the agreement; and
 - (b) if aggrieved by a later decision on an objection to the original decision (no matter who lodges the objection but subject to that Act), to apply to the SSAT for review of the later decision.

6 Section 81

Repeal the section, substitute:

81 *Child support agreement definition and general requirement*

- (1) An agreement is a *child support agreement* if:
 - (a) the agreement is a binding child support agreement; or
 - (b) the agreement is a limited child support agreement.

Note: For the definitions of *binding child support agreement* and *limited child support agreement*, see sections 80C and 80E.

- (2) An agreement is a binding child support agreement or a limited child support agreement if it complies with the following provisions:
 - (a) section 82 (children in relation to whom agreements may be made);
 - (b) section 83 (persons who may be parties to agreements);
 - (c) section 84 (provisions that may be included in agreements).

Note: A parenting plan under the *Family Law Act 1975* may, subject to the requirements of this Division, be a child support agreement.

7 Section 85

Repeal the section.

8 Paragraph 88(a)

Repeal the paragraph, substitute:

- (a) either:
 - (i) the agreement is a child support agreement; or
 - (ii) the agreement is a termination agreement or a written agreement referred to in paragraph 80G(1)(b); and

9 Subsection 89(1)

Omit “(1)”.

10 Subsection 89(4)

Repeal the subsection.

11 Section 91

Omit “a child support agreement”, substitute “an agreement referred to in paragraph 88(a)”.

12 Section 91A

Repeal the section.

13 Subsections 92(3) and (4)

Repeal the subsections, substitute:

- (3) The Registrar must refuse to accept a limited child support agreement if, immediately before the application for acceptance of the agreement is made, no administrative assessment is in force in relation to the child.

14 Paragraph 93(1)(g)

Repeal the paragraph, substitute:

- (g) the child support is payable from the day on which the application was made to the Registrar for acceptance of the agreement; and
- (h) the child support is payable until the earlier of the following days:
 - (i) the day immediately before the day on which a child support terminating event happens in relation to the child, the carer entitled to child support, the liable parent or all 3 of them;
 - (ii) the day on which the agreement is terminated under section 80D or 80G.

15 Subsection 93(2)

Omit “the period mentioned in paragraph (1)(g) starts”, substitute “on which the application was made to the Registrar for acceptance of the agreement”.

16 Subsection 93(2) (note)

Repeal the note, substitute:

Note: The Registrar must assess, under section 34B, the annual rate of child support payable under an agreement if an annual rate of child support is already payable and the agreement is to affect that annual rate.

17 Section 94

Repeal the section, substitute:

94 Registrar to take action to give effect to accepted child support agreement or termination agreement etc.

- (1) After the Registrar accepts a child support agreement made in relation to a child, the Registrar must immediately take such further action (if any) as is necessary to give effect to the agreement.

Note: After accepting the agreement, section 34B or 93 or Part 5 might require the Registrar to assess an annual rate of child support payable.

- (2) In making any administrative assessment in relation to the child, the Registrar must act in accordance with section 95 (effect of certain provisions of accepted child support agreements).
- (3) After the Registrar accepts a termination agreement, or a written agreement referred to in paragraph 80G(1)(b), the Registrar must immediately take such further action (if any) as is necessary to give effect to the agreement.

18 Division 6 of Part 6

Repeal the Division.

19 Paragraph 98U(4)(a)

Omit “94”, substitute “93”.

20 Section 98W

Omit:

- A court may order that child support be paid in a form other than periodic amounts paid to a carer.

- A court may set aside a child support agreement if the consent of one of the parties was obtained by fraud or undue influence.

substitute:

- A court may order that child support be paid in a form other than periodic amounts paid to a carer (including in the form of a lump sum payment).
- A court may set aside a child support agreement or termination agreement in certain circumstances (such as fraud, undue influence or change of circumstance).

21 At the end of subsection 116(1)

Add:

Note 3: A court may make an order under this Division if the court sets aside a child support agreement under section 136.

22 Paragraph 124(2)(c)

Omit “benefit; and”, substitute “benefit.”.

23 Paragraph 124(2)(d)

Repeal the paragraph.

24 Section 128

Repeal the section.

25 Paragraph 129(3)(b)

Repeal the paragraph.

26 Subsection 129(8)

Omit “(3)(b) or (d)”, substitute “(3)(d)”.

27 Section 135

Repeal the section, substitute:

135 Simplified outline

The following is a simplified outline of this Division:

-
- | |
|--|
| <ul style="list-style-type: none">• Certain courts may set aside a child support agreement or a termination agreement if:<ul style="list-style-type: none">(a) the agreement of one of the parties was obtained by fraud, undue influence or unconscionable conduct; or(b) there has been a significant change in circumstances; or(c) the annual rate of child support payable under the agreement is not proper or adequate. |
|--|

28 Section 136

Repeal the section, substitute:

136 Power of court to set aside child support agreements or termination agreements

- (1) A party to either of the following agreements may apply to a court having jurisdiction under this Act for the court to set aside the agreement:
 - (a) a child support agreement that has been accepted by the Registrar under section 92;
 - (b) a termination agreement, or a written agreement referred to in paragraph 80G(1)(b), that has been accepted by the Registrar under section 92.
- (2) If a party has applied under subsection (1), the court may set aside the agreement in accordance with the application if the court is satisfied:
 - (a) that the party's agreement was obtained by fraud or a failure to disclose material information; or
 - (b) that another party to the agreement, or someone acting for another party:
 - (i) exerted undue influence or duress in obtaining that agreement; or
 - (ii) engaged in unconscionable or other conduct; to such an extent that it would be unjust not to set aside the agreement; or

- (c) that because of a significant change in the circumstances of one of the parties to the agreement, or a child in respect of whom the agreement is made, it would be unjust not to set aside the agreement; or
 - (d) in the case of a child support agreement—that the agreement provides for an annual rate of child support that is not proper or adequate, taking into account all the circumstances of the case (including the financial circumstances of the parties to the agreement).
- (3) Subject to section 145 (Registrar may intervene in proceedings), the parties to a proceeding under subsection (1) are the parties to the agreement.
- (4) If:
 - (a) the court sets aside a child support agreement under this section; and
 - (b) the court is satisfied as mentioned in paragraph 117(1)(b) (departure orders);the court may make an order under Division 4 of Part 7 without an application having been made under section 116.
- (5) If:
 - (a) the court sets aside a child support agreement under this section; and
 - (b) the court is not satisfied as mentioned in paragraph 117(1)(b) (departure orders); and
 - (c) the payee has received or will receive benefits pursuant to the agreement;the court may still make an order that departs from the administrative assessment where it is just and equitable to do so, having regard to the benefits that the payee has already received pursuant to the agreement.

29 Subsection 137(1)

Omit “a child support agreement”, substitute “an agreement”.

Division 2—Lump sum payments

A New Tax System (Family Assistance) Act 1999

30 Subparagraphs 8(5)(b)(i) and (ii) of Schedule 3

Repeal the subparagraphs, substitute:

- (i) non-periodic payment provisions (within the meaning of that Act) under which the individual is providing child support to another individual for a child; and
- (ii) a statement that the annual rate of child support payable under any relevant administrative assessment is to be reduced by a specified amount that represents an annual value of the child support to be provided; and

Child Support (Assessment) Act 1989

31 Subsection 5(1)

Insert:

lump sum payment provisions has the meaning given by paragraph 84(1)(e).

32 Subsection 5(1)

Insert:

non-periodic payment provisions has the meaning given by paragraph 84(1)(d).

33 Subsection 5(1)

Insert:

otherwise than in the form of periodic amounts, in relation to child support, means child support that is not paid as periodic amounts, and includes child support paid in the form of:

- (a) a lump sum payment; and
- (b) a transfer or settlement of property.

Note: *Periodic amount* is defined in section 4 of the Registration and Collection Act.

34 After paragraph 76(2)(g)

Insert:

- (ga) if a child support agreement includes lump sum payment provisions, or if a court has made an order under section 123A, in respect of the children in the child support case to which the assessment relates:
 - (i) the amount of the lump sum payment specified in the agreement or order; and
 - (ii) the amount of any remaining lump sum payment (within the meaning of the Registration and Collection Act); and
 - (iii) any annual rate and daily rate of child support that remains payable under section 78 of this Act after taking into account any remaining lump sum payment that will be credited under section 69A of the Registration and Collection Act;

35 After paragraph 76(3)(c)

Insert:

- (ca) a statement that specifically draws the attention of the liable parent and the carer entitled to child support to the right to apply to a court having jurisdiction under this Act for an order under section 123A that the liable parent provide child support for the child in the form of a lump sum payment to be credited against the liability of the liable parent under any relevant administrative assessment;

36 Section 78

Before “An”, insert “(1)”.

37 At the end of section 78

Add:

- (2) An amount payable under subsection (1), in relation to a day in a month in a year of income, is taken to be paid at the time that the amount becomes due and payable, to the extent that a remaining lump sum payment will be credited, under section 69A of the Registration and Collection Act, at the end of the year of income against the liability to pay child support in relation to all or part of that amount.

38 Section 84

Repeal the section, substitute:

84 Provisions that may be included in agreements

Provisions that may be included

- (1) An agreement is a child support agreement only if it includes one or more of the following kinds of provisions:
 - (a) provisions under which a party is to pay child support for a child to another party in the form of periodic amounts paid to the other party;
 - (b) provisions under which the rate at which a party is already liable to pay child support for a child to another party in the form of periodic amounts paid to the other party is varied;
 - (c) provisions agreeing between parties any other matter that may be included in an order made by a court under Division 4 of Part 7 (departure orders);
 - (d) provisions (the ***non-periodic payment provisions***) that state:
 - (i) that a party (the ***liable party***) is to provide child support for a child to another party otherwise than in the form of periodic amounts; and
 - (ii) that the annual rate of child support payable for the child by the liable party under any relevant administrative assessment is to be reduced, in the manner specified under subsection (6), by the amount of child support to be provided by the liable party;
 - (e) provisions (the ***lump sum payment provisions***) that meet the requirements of subsection (7) and that state:
 - (i) that a party (the ***liable party***) is to provide child support for a child to another party in the form of a lump sum payment (including by way of transfer or settlement of property); and
 - (ii) that the lump sum payment is to be credited against the liable party's liability under the relevant administrative assessment in relation to amounts payable under the liability;
 - (f) provisions under which a party is to provide child support for a child to another party otherwise than in the form of periodic

amounts and that are not non-periodic payment provisions or lump sum payment provisions;

- (g) provisions under which the liability of a party to pay or provide child support for a child to another party is to end from a specified day.
- (2) The agreement may include more than one kind of provision in relation to different parts of a child support period and different child support periods.

Other kinds of provisions not to have effect

- (3) If the agreement also includes provisions of a kind not referred to in subsection (1), those provisions do not have effect for the purposes of this Act.
- (4) Subsection (3) does not affect the operation of provisions of the kind referred to in that subsection for any other purpose.

Agreement may also be parenting plan, maintenance agreement or financial agreement

- (5) Without limiting subsection (4), nothing in this Part is to be taken to prevent the same document being both a child support agreement and:
 - (a) a parenting plan; or
 - (b) a maintenance agreement or financial agreement under the *Family Law Act 1975*.

Additional requirements of agreements with non-periodic payment provisions

- (6) If an agreement includes provisions of the kind referred to in paragraph (1)(d), the statement referred to in subparagraph (1)(d)(ii) must specify either:
 - (a) that the annual rate of child support payable under the administrative assessment is to be reduced by a specified amount that represents an annual value of the child support payable; or
 - (b) that the annual rate of child support payable under the administrative assessment is to be reduced by 100% or another specified percentage that is less than 100%.

Schedule 5 Amendments relating to child support agreements and court orders
(commencing on 1 July 2008)

Part 1 Main amendments

Note: Non-periodic payment provisions are taken to have effect as if they were a statement made by a court under section 125 in an order made under section 124 (see subsection 95(3)).

Additional requirements etc. of agreements with lump sum payment provisions

(7) If an agreement includes provisions of the kind referred to in paragraph (1)(e), the provisions meet the requirements of this subsection if:

- (a) the agreement is a binding child support agreement; and
- (b) an administrative assessment, in relation to the child in respect of whom the agreement is made, is in force immediately before the application for acceptance of the agreement is made; and
- (c) the amount of the lump sum payment:
 - (i) is specified in the agreement; and
 - (ii) equals or exceeds the annual rate of child support payable for the child under the administrative assessment.

Note: If an agreement includes provisions of the kind referred to in paragraph (1)(e) (lump sum payment provisions), the lump sum payment is credited under section 69A of the Registration and Collection Act against the liable party's liability (rather than reducing the annual rate of child support payable under the administrative assessment).

(8) An agreement that includes lump sum payment provisions may also state that the lump sum payment is to be credited against the liability under the administrative assessment in relation to 100%, or another specified percentage that is less than 100%, of the child support payable under the liability.

Note: If an agreement does not specify a percentage, the lump sum payment is credited against the liability in relation to 100% of the amounts payable under the liability (see section 69A of the Registration and Collection Act).

39 Subsections 95(3) and (4)

Repeal the subsections, substitute:

(3) If the agreement includes non-periodic payment provisions:

- (a) the provisions have effect, for the purposes of this Act, as if they were a statement made by a court under section 125 in an order made under section 124; and
- (b) if the provisions or the agreement is registered in a court having jurisdiction under Part VII of the *Family Law Act 1975*—Division 13A of Part VII, and Parts XIII and XIII B, of that Act apply in relation to the provisions as if the provisions were an order made by the court under Part VII of that Act.

Note 1: The effect of paragraph (3)(a) is that the Registrar must make any subsequent administrative assessment on the basis of the annual rate of child support as reduced by the amount or percentage specified in the child support agreement (see section 127).

Note 2: This section does not deal with lump sum payment provisions (see paragraph 84(1)(e) of this Act and section 69A of the Registration and Collection Act).

40 At the end of section 96

Add:

- (4) If a child support agreement includes lump sum payment provisions, the notice must specify:
 - (a) the amount of the lump sum payment specified in the agreement; and
 - (b) any annual rate and daily rate of child support that remains payable after taking into account any remaining lump sum payment (within the meaning of the Registration and Collection Act) that will be credited under section 69A of that Act.

41 Subsection 123(1)

Repeal the subsection, substitute:

- (1) An application may be made to a court having jurisdiction under this Act for:
 - (a) an order that a liable parent provide child support otherwise than in the form of periodic amounts paid to the carer entitled to child support; or
 - (b) an order that a liable parent provide child support in the form of a lump sum payment to be credited against the liability under the relevant administrative assessment in relation to amounts payable under the liability.
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42 Subsection 123(2)

After “application”, insert “under subsection (1)”.

43 After section 123

Insert:

123A Orders for provision of child support in the form of lump sum payment to be credited against liability

- (1) The court may make an order that a liable parent provide child support for a child to a carer entitled to child support in the form of a lump sum payment to be credited against the liability under the relevant administrative assessment in relation to amounts payable under the liability if:
 - (a) the carer entitled to child support or the liable parent makes an application to a court under paragraph 123(1)(b); and
 - (b) the court is satisfied that it would be:
 - (i) just and equitable as regards the child, the carer entitled to child support and the liable parent; and
 - (ii) otherwise proper;to make an order under this section; and
 - (c) the amount of the lump sum payment equals or exceeds the annual rate of child support payable for the child under the administrative assessment.

Note: If the court makes such an order, the lump sum payment is credited under section 69A of the Registration and Collection Act against the liable parent’s liability (rather than reducing the annual rate of child support payable under the administrative assessment).
 - (2) A lump sum payment may include a payment by way of transfer or settlement of property.
 - (3) An order under subsection (1):
 - (a) must specify the amount of the lump sum payment; and
 - (b) must specify that the lump sum payment is to be credited against the liability under the administrative assessment in relation to 100%, or another specified percentage that is less than 100%, of the amounts payable under the liability.
 - (4) In determining the application made under paragraph 123(1)(b), the court must have regard to:
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- (a) the administrative assessment; and
 - (b) any determination in force under Part 6A (departure determinations) in relation to the child, the carer entitled to child support and the liable parent; and
 - (c) any order in force under Division 4 of this Part (departure orders) in relation to the child, the carer entitled to child support and the liable parent; and
 - (d) whether the carer entitled to child support is in receipt of an income tested pension, allowance or benefit; and
 - (e) if the carer entitled to child support is not in receipt of such a pension, allowance or benefit—whether the circumstances of the carer are such that, taking into account the effect of the order proposed to be made by the court, the carer would be unable to support himself or herself without an income tested pension, allowance or benefit.
- (5) In determining whether it would be just and equitable as regards the child, the carer entitled to child support and the liable parent to make an order under subsection (1), the court must have regard to the matters mentioned in subsections 117(4), (6), (7), (7A) and (8).
- (6) In having regard to the earning capacity of a parent of the child under paragraph 117(4)(da), the court may determine that the parent's earning capacity is greater than is reflected in his or her income for the purposes of this Act only if the court is satisfied as mentioned in subsection 117(7B).
- (7) In determining whether it would be otherwise proper to make an order under subsection (1), the court must have regard to the matters mentioned in subsection 117(5).
- (8) Subsections (4), (5), (6) and (7) do not limit the matters to which the court may have regard.

44 Paragraph 124(1)(a)

Repeal the paragraph, substitute:

- (a) a carer entitled to child support or a liable parent makes an application under paragraph 123(1)(a); and

45 Subsections 125(1), (2) and (3)

Repeal the subsections, substitute:

- (1) If the court makes an order under section 124, the court must state in the order whether the annual rate of child support payable by the liable parent under any relevant administrative assessment is to be reduced, in the manner specified under subsection (3), by the child support ordered to be provided by the liable parent.
- (2) The court may state that the annual rate of child support payable by the liable parent is not to be so reduced only if it is satisfied that, in the special circumstances of the case, it would be:
 - (a) just and equitable as regards the child, the carer entitled to child support and the liable parent; and
 - (b) otherwise proper;that the annual rate of child support not be reduced by the child support ordered to be provided.
- (3) If the court states in the order that the annual rate of child support is to be reduced by the child support ordered to be provided, the court must also state in the order either:
 - (a) that the annual rate of child support payable is to be reduced by a specified amount that represents an annual value of the child support to be provided; or
 - (b) that the annual rate of child support payable is to be reduced by 100% or another specified percentage that is less than 100%.

46 Subsection 126(1)

After “section” (first occurring), insert “123A or”.

47 Subparagraph 126(1)(a)(ii)

Repeal the subparagraph, substitute:

- (ii) if the order is an order under section 123A—the matters specified in the order under subsection 123A(3); and
- (iii) if the order is an order under section 124—the statement or statements included in the order under section 125;
and

48 Subsection 127(1)

Repeal the subsection, substitute:

- (1) This section applies if the court makes an order under section 124 that includes a statement under section 125 that the annual rate of
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child support payable by a liable parent under an administrative assessment is to be reduced, in the manner specified under subsection 125(3), by the child support ordered to be provided by the liable parent.

49 Subsection 129(1)

After “section” (first occurring), insert “123A or”.

50 Paragraph 129(1)(f)

Omit “included in the order under section 125”, substitute “made by a court under section 125 in an order made under section 124”.

51 Subsection 129(2)

After “section” (first occurring), insert “123A or”.

52 Subsection 129(4)

Omit “the order” (first occurring), substitute “an order made under section 124”.

53 Subparagraph 130(1)(a)(ii)

After “an order”, insert “made under section 124”.

54 Subsection 131(1)

After “section” (second occurring), insert “123A or”.

Child Support (Registration and Collection) Act 1988

55 Subsection 4(1)

Insert:

regular care has the meaning given by subsection 5(2) of the Assessment Act.

56 Subsection 4(1)

Insert:

remaining lump sum payment has the meaning given by subsection 69A(4).

57 At the end of section 66

Add:

- (3) An amount payable under subsection (1) or (2), in respect of a day in an initial period or payment period in a year of income, is taken to be paid at the time that the amount becomes due and payable, to the extent that a remaining lump sum payment will be credited, under section 69A, at the end of the year of income against a liability in relation to all or part of that amount.

58 After section 69

Insert:

69A Crediting of lump sum payments

- (1) This section applies if:
 - (a) either:
 - (i) a child support agreement accepted by the Registrar includes lump sum payment provisions in accordance with paragraph 84(1)(e) of the Assessment Act; or
 - (ii) a court has made an order under section 123A of that Act in relation to the provision of child support in the form of a lump sum payment; and
 - (b) the Registrar has been notified that the lump sum payment has been paid in accordance with the agreement or order.
- (2) The Registrar must, in accordance with subsection (3):
 - (a) in respect of an initial period or payment period, in a year of income, for a registered maintenance liability, credit the remaining lump sum payment against the liability:
 - (i) if the agreement or order states that the lump sum payment is to be credited against the liability in relation to a specified percentage of the amount payable under the liability—in relation to that percentage of the amount payable under the liability; and
 - (ii) if subparagraph (i) does not apply—in relation to 100% of the amount payable under the liability; and
 - (b) reduce, but not below nil, the remaining lump sum payment by the amount so credited.

- (3) The Registrar must credit a remaining lump sum payment and reduce the remaining lump sum payment at the end of each year of income.
- (4) The **remaining lump sum payment**, in relation to the lump sum payment paid under the agreement or order, means:
- (a) for the initial period or the first payment period that occurs after the agreement is accepted or the order is made—the lump sum payment; and
 - (b) for the first payment period that begins on or after 1 January in a calendar year (other than a payment period covered by paragraph (a))—the remaining lump sum payment for the previous initial period or payment period as indexed under subsection (5); and
 - (c) otherwise—so much of the remaining lump sum payment as remains after crediting under the previous application of this section.
- (5) The remaining lump sum payment, for the first payment period that begins on or after 1 January in a calendar year, is indexed as follows:

The remaining lump sum payment
for the previous initial period × Indexation factor
or payment period

where:

base quarter means the September quarter (before the September quarter for the previous calendar year, but after the agreement is accepted or the order is made) with the highest index number.

indexation factor means:

$$\frac{\text{Index number for the September quarter of the previous calendar year}}{\text{Index number for the base quarter}}$$

index number for a quarter is the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities and is published by the Australian Statistician in respect of that quarter.

- (6) If an indexation factor worked out under subsection (5) would be less than 1, the indexation factor is to be increased to 1.
- (7) Subject to subsection (8), if at any time (whether before or after the commencement of this subsection), the Australian Statistician publishes an index number for a quarter in substitution for an index number previously published by the Australian Statistician for that quarter, the publication of the later index number is to be disregarded for the purposes of subsection (5).
- (8) If at any time the Australian Statistician changes the reference base for the Consumer Price Index, regard is to be had, for the purposes of applying subsection (5) after the change takes place, only to index numbers published in terms of the new reference base.

Division 3—Notional assessments

A New Tax System (Family Assistance) Act 1999

59 Subsection 3(1) (definition of *capitalised maintenance income*)

After “means maintenance income”, insert “(other than child maintenance to which clause 20B or 20C of Schedule 1 applies)”.

60 Subsection 3(1)

Insert:

child support agreement has the meaning given by section 81 of the *Child Support (Assessment) Act 1989*.

61 Subsection 3(1) (paragraph (a) of the definition of *maintenance income*)

Repeal the paragraph, substitute:

- (a) child maintenance—any one or more of the following amounts:
 - (i) if clause 20B of Schedule 1 applies (notional assessments for child support agreements)—the amount worked out under that clause;
 - (ii) if clause 20C of Schedule 1 applies (lump sum payments)—the amount worked out under that clause;

- (iii) otherwise—the amount of a payment or the value of a benefit that is received by the individual for the maintenance of an FTB child of the individual and is received from a parent of the child, or the partner or former partner of a parent of the child; or

62 Subsection 3(1)

Insert:

notional assessment has the meaning given by section 146E of the *Child Support (Assessment) Act 1989*.

63 After clause 20A of Schedule 1

Insert:

20B Working out amounts of child maintenance using notional assessments

(1) If:

- (a) an individual receives child maintenance for an FTB child of the individual under a child support agreement or court order; and
- (b) there is, in relation to the agreement or order, a notional assessment of the annual rate of child support that would be payable to the individual for the child for a particular day in a child support period if that annual rate were payable under Part 5 of the *Child Support (Assessment) Act 1989* instead of under the agreement or order;

then the amount of child maintenance that the individual is taken to have received in an income year under the agreement or order for the child for a period is worked out in accordance with this clause.

Note: The amount worked out in accordance with this clause is annualised under clause 20A.

Individual taken to have received notional assessed amount

- (2) For the purposes of this Act, the amount of child maintenance that the individual is taken to have received under the agreement or order for the child for the period is, subject to this clause, the amount (the *notional assessed amount*) that the individual would have received if the individual had received the annual rate of child

support for the child for the period that is included in the notional assessment.

Underpayments

- (3) If the amount received in an income year by the individual under the agreement or order for the child for the period is less than the amount that is payable to the individual under the agreement or order for the child for the period (such that a debt arises for the period under the agreement or order), then, for the purposes of this Act, the amount of child maintenance that the individual is taken to have received under the agreement or order for the child for the period is the following amount (the ***notional amount paid***):

$$\frac{\text{Amount received by the individual under the agreement or order for the child for the period}}{\text{Amount payable to the individual under the agreement or order for the child for the period}} \times \text{Notional assessed amount for the child for the period}$$

Note: This subclause only applies in respect of enforceable maintenance liabilities (see subclause (7)).

Arrears

- (4) If the amount received in an income year by the individual under the agreement or order for the child for the period exceeds the amount that is payable to the individual under the agreement or order for the child for the period, then, for the purposes of this Act, the amount of child maintenance that the individual is taken to have received under the agreement or order for the child for the period is:

$$\text{Notional assessed amount for the child for the period} + \frac{\text{Total of the notional arrears amounts in respect of each debt arising for a previous period under the agreement or order}}{\text{Total of the notional arrears amounts in respect of each debt arising for a previous period under the agreement or order}}$$

Note: This subclause only applies in respect of enforceable maintenance liabilities (see subclause (7)).

- (5) The ***notional arrears amount***, in respect of a debt arising for a previous period under the agreement or order, is:

$$\frac{\begin{array}{c} \text{Notional assessed amount} \\ \text{for the child} \\ \text{for the previous period} \end{array} - \begin{array}{c} \text{Notional amount paid} \\ \text{for the child} \\ \text{for the previous period} \end{array}}{\begin{array}{c} \text{The amount of the debt} \\ \text{that arose for the previous period} \\ \text{under the agreement or order} \end{array}} \times \begin{array}{c} \text{Amount of the debt} \\ \text{that is paid off} \end{array}$$

- (6) For the purposes of subclause (5), if:
- (a) an individual has more than one debt that arose under an agreement or order for previous periods; and
 - (b) the amount received in an income year by the individual under the agreement or order for a child for a period exceeds the amount that is payable to the individual under the agreement or order for the child for the period;
- then:
- (c) the individual is taken to have received the excess to pay off each debt in the order in which the debts arose; and
 - (d) each debt is reduced by the amount of the debt that is paid off.
- (7) Subclauses (3) and (4) only apply in respect of enforceable maintenance liabilities (within the meaning of the *Child Support (Registration and Collection) Act 1988*).

20C Working out amounts of child maintenance in relation to lump sum payments

- (1) This clause applies if an individual receives in an income year child maintenance for an FTB child of the individual under:
- (a) a child support agreement, containing lump sum payment provisions (within the meaning of paragraph 84(1)(e) of the *Child Support (Assessment) Act 1989*), to which clause 20B does not apply; or
 - (b) a court order made under section 123A of that Act; in the form of a lump sum payment that is to be credited under section 69A of the *Child Support (Registration and Collection) Act 1988* against a liability under an administrative assessment.
- (2) For the purposes of this Act, the amount of child maintenance that the individual is taken to have received in an income year under the agreement or order for the child for a period is the amount that is

credited under section 69A of the *Child Support (Registration and Collection) Act 1988* against the liability under the administrative assessment for the child for the period.

Note: The amount worked out under this clause is annualised under clause 20A.

Child Support (Assessment) Act 1989

64 Subsection 5(1)

Insert:

notional assessment has the meaning given by section 146E.

65 Subsection 5(1)

Insert:

provisional notional assessment means a provisional notional assessment made under section 146B.

66 Subsection 34B(1) (note)

Omit “Note”, substitute “Note 1”.

67 At the end of subsection 34B(1)

Add:

Note 2: If the Registrar makes an assessment under this section, the Registrar must make a provisional notional assessment under section 146B.

68 Subsection 93(2) (note)

Omit “Note”, substitute “Note 1”.

69 At the end of subsection 93(2)

Add:

Note 2: If the Registrar makes an assessment under this section, the Registrar must make a provisional notional assessment under section 146B.

70 At the end of subsection 125(1)

Add:

Note: If the court makes a statement under this section that the annual rate of child support is to be reduced, the Registrar must make a provisional notional assessment under section 146B.

71 After Part 7

Insert:

Part 7A—Notional assessments

Division 1—Preliminary

146A Simplified outline

The following is a simplified outline of this Part:

- If the Registrar accepts a certain kind of child support agreement, or the court makes a certain kind of order, the Registrar must make a provisional notional assessment of the annual rate of child support that would be payable for a day in a child support period if child support were payable under Part 5 instead of under the agreement or order.
- The notional assessment is used in the maintenance income test in working out a person's Part A rate of family tax benefit under the *A New Tax System (Family Assistance) Act 1999*.
- A parent may estimate their adjusted taxable income for the purposes of making a provisional notional assessment.

Division 2—Notional assessments

146B Provisional notional assessments

- (1) The Registrar must make a provisional notional assessment in accordance with this section if:
 - (a) the Registrar makes an assessment under section 34B or section 93; or
 - (b) a court makes a statement under section 125, in an order under section 124, that an annual rate of child support payable is to be reduced.
- (2) The Registrar must make a provisional notional assessment of the annual rate of child support that would be payable for a child for a particular day in a child support period, by the liable parent to the

carer entitled to child support, if that annual rate were payable under Part 5 (taking into account any relevant determination under Part 6A, or any relevant order under Division 4 of Part 7) for the child for that day instead of under the agreement or order.

- (3) The Registrar must serve notice in writing of the provisional notional assessment on the liable parent and the carer entitled to child support.
- (4) The notice must specify in respect of the provisional notional assessment the matters that are required under section 69 and subsection 76(2) in respect of an administrative assessment.
- (5) The notice must include, or be accompanied by, a statement to the effect that:
 - (a) the liable parent or the carer entitled to child support can seek a variation of the provisional notional assessment in accordance with section 146C within 14 days of receiving the notice; and
 - (b) once the provisional notional assessment becomes a notional assessment under section 146E, the liable parent or the carer entitled to child support may, subject to the Registration and Collection Act, object to the particulars of the notional assessment; and
 - (c) if aggrieved by a later decision on an objection to those particulars, the liable parent or the carer entitled to child support may, subject to that Act, apply to the SSAT for review of the later decision.

146C Variation of provisional notional assessments

- (1) A liable parent or carer entitled to child support (the *applicant*) may seek a variation of a provisional notional assessment within 14 days of receiving a notice under section 146B in respect of the provisional notional assessment by doing one or more of the following:
 - (a) by notifying the Registrar of a change to the percentage of care that the liable parent or the carer entitled to child support has for the child for the particular day in the child support period in respect of which the provisional notional assessment is made;

- (b) by making an application under section 146D for a determination under Part 6A (departure determinations);
- (c) if the applicant is a parent of the relevant child—by making an election under subsection 146G(1) (estimate of adjusted taxable income).

Note: A person who does not receive a notice that is served on the person is taken to have received the notice 14 days after the notice was served (see subsection 146E(2)).

- (2) The Registrar may vary the provisional notional assessment of the annual rate of child support that would be payable for the child for the particular day if:
 - (a) an applicant seeks a variation in accordance with subsection (1); and
 - (b) any one or more of the following applies:
 - (i) if paragraph (1)(a) applies—the Registrar determines a different percentage of care for the parent or the carer for the child for the particular day under Division 4 of Part 5;
 - (ii) if paragraph (1)(b) applies—the Registrar makes a determination in respect of the child under section 98S;
 - (iii) if paragraph (1)(c) applies—the Registrar does not refuse to accept the election under section 146H.
 - (3) The Registrar may refuse to vary the provisional notional assessment if:
 - (a) the liable parent or the carer entitled to child support seeks a variation to the provisional notional assessment in accordance with subsection (1); and
 - (b) any of the following applies:
 - (i) if paragraph (1)(a) applies—the Registrar does not determine a different percentage of care for the parent or carer for the child for the particular day under Division 4 of Part 5;
 - (ii) if paragraph (1)(b) applies—the Registrar refuses to make a determination in respect of the child under section 98S;
 - (iii) if paragraph (1)(c) applies—the Registrar refuses to accept the election under section 146H; and
 - (c) if the liable parent or carer entitled to child support seeks a variation by doing more than one of the things mentioned in
-

subsection (1)—the Registrar has not already varied the provisional notional assessment under subsection (2).

- (4) The liable parent and the carer entitled to child support are not entitled:
- (a) to make an application to the SSAT under section 80 of the Registration and Collection Act; or
 - (b) to make an application to a court under section 116;
- in respect of the making of, or refusal to make, a determination under Part 6A.

Note: Instead, once the provisional notional assessment becomes a notional assessment, an objection can be made to the particulars of the notional assessment under section 80 of the Registration and Collection Act.

146D Departure determinations in respect of provisional notional assessments

- (1) A person may, by written application, ask the Registrar to make a determination under Part 6A (departure determinations) if:
- (a) a provisional notional assessment has not yet become a notional assessment under section 146E; and
 - (b) the person is of the view that, because of special circumstances that exist, the provisions of this Act relating to administrative assessment of child support should be departed from for the purposes of making the provisional notional assessment; and
 - (c) the person has not previously applied under this section in relation to the provisional notional assessment.
- (2) If a person makes an application under subsection (1), Division 2 of Part 6A applies as if:
- (a) references in that Division to an administrative assessment were references to the provisional notional assessment; and
 - (b) section 98JA did not apply.

146E Notional assessments

- (1) A provisional notional assessment becomes a **notional assessment**:
- (a) 14 days after the notice of the provisional notional assessment is received by all the parties under section 146B; or

- (b) if a liable parent or a carer entitled to child support seeks a variation to the provisional notional assessment in accordance with section 146C—on the day on which the Registrar varies, or refuses to vary, the provisional notional assessment under that section.
- (2) For the purposes of this section and section 146C, if a person does not receive a notice served under section 146B before 14 days after the day on which the notice was served on the person by post at the person's last known address, the person is taken to have received the notice on the 14th day.
- (3) To avoid doubt, subsection (2) applies whether the person receives the notice after the time referred to in that subsection or does not receive the notice at all.
- (4) After a provisional notional assessment becomes a notional assessment, the Registrar must serve notice in writing of the notional assessment on the liable parent and the carer entitled to child support.
- (5) The notice must specify in respect of the notional assessment the matters that are required by section 69 and subsection 76(2) in respect of an administrative assessment.
- (6) The notice must include, or be accompanied by, a statement to the effect that:
 - (a) the party may, subject to the Registration and Collection Act, object to the particulars of the notional assessment; and
 - (b) if aggrieved by a later decision on an objection to those particulars, may, subject to that Act, apply to the SSAT for review of the later decision.
- (7) A contravention of subsection (5) or (6) does not affect the validity of the notional assessment.

146F Later provisional notional assessments

The Registrar must make a new provisional notional assessment under section 146B:

- (a) if the relevant child support agreement or court order continues in force for more than 3 years—at the end of the 3

- year period after the most recent notional assessment relating to the agreement or order was made; or
- (b) if the relevant child support agreement was a limited child support agreement—on the request of a party to the agreement; or
- (c) in any case—if the amount of child support that is payable under the relevant child support agreement or court order for a day in the child support period changes by more than 15% from the previous day.

Division 3—Estimating adjusted taxable income for notional assessments

146G Estimating adjusted taxable income for purposes of notional assessments

- (1) Before a provisional notional assessment relating to a child becomes a notional assessment under section 146E, a parent of the child may elect that, for the purposes of making the provisional notional assessment, the parent's adjusted taxable income for the 12 month period beginning on the particular day in the child support period in respect of which the provisional notional assessment is made is the amount estimated by the parent.
- (2) However, a parent may not make an election under this section in relation to a child if an order or determination referred to in paragraph (a) of the definition of *income amount order* is in force in relation to the parent and the particular day in the child support period in respect of which the provisional notional assessment is made.

Election must be for amount less than adjusted taxable income for last relevant year of income

- (3) The parent may make an election relating to a child only if the amount that he or she estimates under subsection (1) is not more than 85% of the total of the parent's adjusted taxable income for the last relevant year of income for the child support period.

How election is made

- (4) The parent makes the election by giving notice of it to the Registrar in the manner specified by the Registrar. The notice must specify the amount the parent estimates to be his or her adjusted taxable income.

146H Registrar may refuse to accept election

- (1) The Registrar may refuse to accept the parent's election if the Registrar is satisfied that the amount the parent estimated under subsection 146G(1) is likely to be less than the actual amount that would be the parent's adjusted taxable income for that 12 month period.

Note: If the Registrar refuses to accept the election, he or she may refuse to vary the provisional notional assessment under subsection 146C(3).

- (2) In making the decision as to whether to refuse the election, the Registrar:
 - (a) may act on the basis of information that the Registrar has received or obtained as to the financial circumstances of the parent; and
 - (b) may, but is not required to, conduct an inquiry into the matter.
- (3) Except for the purposes of Parts VII, VIIA and VIII of the Registration and Collection Act (dealing with objections and appeals), if the Registrar refuses to accept an election, the election is taken never to have been made.

146J Effect of election

- (1) If a parent makes an election under subsection 146G(1) relating to a child, then, for the purposes of making the provisional notional assessment, the parent's adjusted taxable income is the amount the parent estimated.
- (2) Subsection (1) has effect subject to any order or determination referred to in paragraph (a) of the definition of **income amount order** that is made after the making of the election that applies in relation to the parent and the particular day in the child support period in respect of which the provisional notional assessment is made.

- (3) The Registrar must take such action as is necessary to give effect to subsection (1) in relation to the provisional notional assessment that has been made in relation to the parent and the child (whether by varying the provisional notional assessment or otherwise).

146K Revocation of election

- (1) Before a provisional notional assessment becomes a notional assessment under section 146E, a parent who has made an election under subsection 146G(1) in relation to a child may, by notice given to the Registrar, revoke the election.
- (2) A notice given to the Registrar must be given in the manner specified by the Registrar.

Note: Section 150A provides for the Registrar to specify the manner in which a notice may be given.

146L Effect of revocation

- (1) If a parent who made an election under section 146G relating to a child revokes the election and substitutes a new election before the provisional notional assessment becomes a notional assessment under section 146E, then, for the purposes of making the provisional notional assessment, the parent's adjusted taxable income is the amount the parent elected in the new election.
- (2) Subsection (1) has effect subject to any order or determination referred to in paragraph (a) of the definition of **income amount order** that is made after the making of the election that applies in relation to the parent and the particular day in the child support period in respect of which the provisional notional assessment is made.
- (3) The Registrar must take such action as is necessary to give effect to subsection (1) in relation to the provisional notional assessment that has been made in relation to the parent and the child (whether by varying the provisional notional assessment or otherwise).
- (4) This section does not prevent:
- (a) the Registrar making a determination under Part 6A; or
 - (b) a court making any order under Division 4 of Part 7; or
 - (c) the making, and acceptance by the Registrar, of a child support agreement that includes provisions that have effect,
-

for the purposes of Part 5, as if they were such an order made
by consent.

Child Support (Registration and Collection) Act 1988

72 Subsection 80(1) (after table item 14)

Insert:

- | | | |
|-----|---|---|
| 14A | as to the particulars of a notional
assessment | (a) the carer entitled to child
support; or
(b) the liable parent |
|-----|---|---|

Part 2—Application and transitional provisions

73 Application of amendments in relation to child support agreements

- (1) The amendments made by this Schedule (other than item 58) apply (subject to subitems (2) and (3)) in respect of a child support agreement if:
- (a) the application for acceptance of the agreement is made after Division 3 of Part 1 of this Schedule commences; and
 - (b) the agreement period for the agreement ends on or after 1 July 2008.

Note: For the definition of *agreement period*, see subitem (6).

Child support agreements that span 1 July 2008

- (2) If the agreement period for a child support agreement covered by subitem (1) begins before 1 July 2008, then:
- (a) the agreement is taken to be 2 separate agreements; and
 - (b) the first agreement is taken to have effect for the period that:
 - (i) begins at the beginning of the agreement period; and
 - (ii) ends on 30 June 2008 (including that day); and
 - (c) the second agreement is taken to have effect for the period that:
 - (i) begins on 1 July 2008 (including that day); and
 - (ii) ends at the end of the agreement period.
- (3) If a child support agreement is taken to be 2 separate agreements under subitem (2), then the Assessment Act, the Registration and Collection Act, the *A New Tax System (Family Assistance) (Administration) Act 1999* and the *Social Security Act 1991*, as in force immediately before 1 July 2008, continue to apply, after that time, in respect of the first agreement mentioned in paragraph (2)(b).
- Note: Those Acts as in force on and after 1 July 2008 apply, under subitem (1), in respect of the second agreement mentioned in paragraph (2)(c).
- (4) The Registrar or a court may make different decisions, or take different actions, in relation to the 2 separate agreements mentioned in subitem (2).

Example: The Registrar might refuse to accept the first agreement, while accepting the second agreement.

Effect of old law continues in certain cases

- (5) To avoid doubt, if:
- (a) an application is made for acceptance of a child support agreement before Division 3 of Part 1 of this Schedule commences; and
 - (b) immediately before that Division commences, the agreement has been neither accepted nor refused by the Registrar;
- then the Assessment Act, the Registration and Collection Act, the *A New Tax System (Family Assistance) (Administration) Act 1999* and the *Social Security Act 1991*, as in force immediately before 1 July 2008, continue to apply, after that time, in respect of the child support agreement.

*Definition of **agreement period***

- (6) In this item:
- agreement period**, for a child support agreement covered by subitem (1), means the period for which the child support agreement has effect.

73A Application of amendments in relation to court orders

- (1) The amendments made by this Schedule (other than item 58) apply (subject to subitem (2)) in respect of an application made to a court for an order if:
- (a) the application is made after Division 3 of Part 1 of this Schedule commences; and
 - (b) the application relates to a period that ends on or after 1 July 2008.

Applications that span 1 July 2008

- (2) If the application relates to a period that begins on a day (the **first day**) before 1 July 2008, then:
- (a) the Assessment Act and the Registration and Collection Act, as in force immediately before 1 July 2008, apply in relation to the period mentioned in paragraph (b), in relation to the following:

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Part 2 Application and transitional provisions

- (i) making an order in response to the application;
 - (ii) any appeal to another court in relation to an order made in response to the application;
 - (iii) any decision or action taken by the Registrar in relation to an order made in response to the application; and
- (b) for the purposes of paragraph (a), the period is the period that:
- (i) begins on the first day (including that day); and
 - (ii) ends on 30 June 2008 (including that day).

Note: Those Acts as in force on and after 1 July 2008 apply, under subitem (1), in respect of the period that begins on 1 July 2008.

- (3) A court may, in response to an application, make different orders for:
- (a) the period that ends on 30 June 2008; and
 - (b) the period that begins on 1 July 2008.
- (4) The Registrar may make different decisions, and take different actions, in relation to different orders made in response to an application.

Effect of old law continues in certain cases

- (5) To avoid doubt, if:
- (a) an application is made to a court before Division 3 of Part 1 of this Schedule commences; and
 - (b) immediately before that Division commences, the application has not been finally dealt with by the court;
- then the Assessment Act and the Registration and Collection Act, as in force immediately before 1 July 2008, continue to apply after that time in relation to the following:
- (c) making an order in response to the application;
 - (d) any appeal to another court in relation to an order made in response to the application;
 - (e) any decision or action taken by the Registrar in relation to an order made in response to the application.

74 Registrar to review all agreements

- (1) Before 1 July 2008, the Registrar must:
- (a) review every child support agreement made before that day that will be in force:
 - (i) immediately before that day; or
-

- (ii) after that day; and
 - (b) determine in writing whether each such agreement is:
 - (i) to be taken to be a binding child support agreement; or
 - (ii) to be terminated.
 - (2) If, in accordance with subitem 73(5), the Registrar accepts a child support agreement on or after 1 July 2008 under the Assessment Act as in force immediately before that day, the Registrar must:
 - (a) review the agreement; and
 - (b) determine in writing whether the agreement is:
 - (i) to be taken to be a binding child support agreement; or
 - (ii) to be terminated.
 - (3) After the Registrar makes a determination under subitem (1) or (2), the Registrar must serve notice in writing of the determination on each of the parties to the agreement.
 - (4) The notice must include, or be accompanied by, a statement to the effect:
 - (a) that the party may, subject to the Registration and Collection Act, object to the decision (the **original decision**); and
 - (b) that if the party is aggrieved by a later decision on an objection to the original decision (no matter who lodges the objection), the party may apply, subject to that Act, to the SSAT for review of the later decision.
 - (5) A contravention of subitem (4) in relation to a decision does not affect the validity of the decision.
 - (6) The Registration and Collection Act (as amended by Schedule 3 of this Act) applies as if the table in subsection 80(1) of that Act (as inserted by Schedule 3 of this Act) included the following table item:
- | | | |
|----|---|--------------------------|
| 16 | a determination under item 74 of
Schedule 5 to the <i>Child Support
 Legislation Amendment (Reform of
 the Child Support Scheme—New
 Formula and Other Measures) Act
 2006</i> that an agreement is to be a
binding child support agreement or
is to be terminated | a party to the agreement |
|----|---|--------------------------|
-

75 Effect of determinations

Effect of determinations

- (1) If the Registrar makes a determination under subparagraph 74(1)(b)(i) or (2)(b)(i), then, for the purposes of the Assessment Act and the Registration and Collection Act, at the time specified in subitem (4) (if the agreement has not been previously terminated):
 - (a) the agreement is taken to be a binding child support agreement; and
 - (b) the amendments made by this Schedule do not affect the continuity of any assessment, in force at that time, of the annual rate of child support that is payable under the agreement.
- (2) If the Registrar makes a determination under subparagraph 74(1)(b)(ii) or (2)(b)(ii), then, for the purposes of the Assessment Act and the Registration and Collection Act, for any day in a child support period that is on or after the time specified in subitem (4) (if the agreement has not been previously terminated), the agreement is terminated by force of this item.
- (3) Subitems (1) and (2) do not affect the operation of provisions in an agreement that do not have effect for the purposes of the Assessment Act or the Registration and Collection Act.

When determinations take effect

- (4) For the purposes of subitems (1) and (2), the following time is specified:
 - (a) if the determination is made under subparagraph 74(1)(b)(i)—the time that item 5 of this Schedule commences;
 - (b) otherwise—the latest of the following times:
 - (i) if the decision of the Registrar to make the determination becomes final—at the time when that decision becomes final;
 - (ii) if a decision of the SSAT relating to the Registrar's determination becomes final—at the time when that decision becomes final (within the meaning of subsection 110W(1) of the Registration and Collection Act);

- (iii) if neither subparagraph (i) nor (ii) applies—at the time when a decision of a court relating to the Registrar’s determination becomes final (within the meaning of subsection 110W(2) or (3) of that Act);
 - (iv) at the time when the agreement takes effect.
- (5) For the purposes of subparagraph (4)(b)(i), a decision of the Registrar becomes final at the end of the period within which an application could have been made to the SSAT under section 80 of the Registration and Collection Act (as it applies because of subitem 74(6) of this Schedule).

Terminating deemed binding child support agreements

- (6) In addition to section 80D of the Assessment Act (as inserted by this Schedule), an agreement that is taken to be a binding child support agreement under subitem (1) may be terminated by another agreement that:
 - (a) is in writing; and
 - (b) is signed by the parties to the original agreement.

76 Delegation

- (1) The Registrar may, by writing, delegate all or any of his or her powers and functions under item 74 of this Schedule to an SES employee, or acting SES employee, of the Department.
- (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Registrar.

77 Application

The amendment made by item 58 of this Schedule applies in relation to lump sum payments that are paid by a payer:

- (a) in accordance with lump sum payment provisions in an agreement under paragraph 84(1)(e) of the Assessment Act or a court order made under section 123A of that Act (as amended or inserted by this Schedule); and
- (b) after the commencement of Division 2 of Part 1 of this Schedule.

Part 3—Consequential amendments

A New Tax System (Family Assistance) (Administration) Act 1999

78 Subsection 104(1)

Omit “(1) Under”, substitute “Under”.

Note: The heading to subsection 104(1) is deleted.

79 Subsection 104(2)

Repeal the subsection.

80 Subsection 106(3)

Repeal the subsection, substitute:

Notice to be given of other review decisions

(3) If:

(a) the Secretary makes a review decision under section 105 to:

(i) vary an original decision; or

(ii) set aside an original decision and substitute a new decision; and

(b) the review decision is in respect of any other original decision that, under section 104, may be reviewed (other than a review decision referred to in subsection (1) or (2));

the Secretary must give notice of the review decision to the person whose entitlement, or possible entitlement, to family assistance or one-off payment to families is affected by the decision.

81 Subsection 108(1)

Repeal the subsection, substitute:

Decisions that may and may not be reviewed under section 109A

(1) A decision of any officer under the family assistance law must be reviewed on application under section 109A unless an exception set out in subsection (2) applies to the decision.

82 Section 109

Repeal the section.

83 Subsection 109B(3)

Repeal the subsection, substitute:

Notice to be given of other review decisions

- (3) If a review decision is in respect of any other original decision that may be reviewed under section 109A, other than an original decision referred to in subsection (2), the decision reviewer must give the applicant written notice of his or her decision:
- (a) to affirm or vary the decision reviewed; or
 - (b) to set it aside and substitute a new decision.

84 Subsection 111(1B)

Repeal the subsection.

85 Subsection 118(2A)

Repeal the subsection.

86 Subsection 122(4)

Repeal the subsection.

87 Paragraph 139(1)(a)

Repeal the paragraph, substitute:

- (a) may give general directions as to the procedure to be followed by the SSAT in connection with the review of decisions under the family assistance law; and

88 Paragraph 139(5)(aa)

Repeal the paragraph.

89 Subsection 142(5)

Repeal the subsection.

Schedule 5 Amendments relating to child support agreements and court orders
(commencing on 1 July 2008)

Part 3 Consequential amendments

Social Security Act 1991

90 Subsection 23(1) (definition of *officer*)

Omit “, the *Farm Household Support Act 1992* or subsection 91A(3) of the *Child Support (Assessment) Act 1989*”, substitute “or the *Farm Household Support Act 1992*”.

Schedule 6—Amendments relating to departure orders (commencing on 1 July 2008)

Part 1—Amendments

Child Support (Assessment) Act 1989

3 Subsection 98S(3A)

Repeal the subsection.

5 After paragraph 117(2)(a)

Insert:

- (aa) 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 the responsibility of the parent to maintain another child (the *resident child*) of the parent;

6 Subparagraph 117(2)(c)(ii)

Omit “child; or”, substitute “child.”.

7 Subparagraphs 117(2)(c)(iii) and (iv)

Repeal the subparagraphs.

8 Subsection 117(2) (note)

Repeal the note.

9 Subsection 117(3)

Repeal the subsection, substitute:

Parent’s responsibility to maintain resident child

- (2A) The ground for departure mentioned in paragraph (2)(aa) is taken not to exist in respect of a resident child unless:
 - (a) the resident child normally lives with the parent, but is not a child of the parent; and

- (b) the parent is, or was, for 2 continuous years, a member of a couple; and
- (c) the other member of the couple is, or was, a parent of the resident child; and
- (d) the resident child is aged under 18; and
- (e) the resident child is not a member of a couple; and
- (f) neither parent of the resident child is able to support the resident child due to:
 - (i) the death of the parent; or
 - (ii) the ill-health of the parent; or
 - (iii) the responsibility of the parent to care for another child; and
- (g) the court is satisfied that the resident child requires financial assistance.

High costs involved in enabling parent to care for a child

- (2B) A parent's costs involved in enabling the parent to care for a child can only be high for the purposes of subparagraph (2)(a)(iv) or (2)(b)(i) if the costs that have been or will be incurred, during a child support period, total more than 5% of the amount worked out by:
 - (a) dividing the parent's adjusted taxable income for the period by 365; and
 - (b) multiplying the quotient by the number of days in the period.
- (2C) If a parent has at least regular care of a child, then the only costs that can be taken into account for the purposes of subsection (2B) are costs related to travel to enable the parent to care for the child.

10 Section 117A

Repeal the section.

11 Subsection 118(2A)

Repeal the subsection.

Part 2—Application provision

12 Application

The amendments made by this Schedule apply in respect of:

- (a) an application made under section 98B of the Assessment Act after this item commences; and
- (b) a determination in respect of which parties were notified under section 98M of the Assessment Act after this item commences; and
- (c) an application made under section 116 of the Assessment Act after this item commences, even if the application relates to a decision made before this item commences:
 - (i) to make, or refuse to make, a determination under Part 6A of that Act; or
 - (ii) to make an administrative assessment under subsection 66(1) of that Act.

Schedule 7—Other amendments commencing on 1 July 2008

Part 1—Amendments

Child Support (Assessment) Act 1989

1 At the end of section 12

Add:

- (5) A child support terminating event happens in relation to a child and the child's parents if the parents become members of the same couple for a period of 6 months or more.

2 Before section 151

Insert:

150E Suspension of liability to pay child support where parents reconcile

Child support not payable if parents reconcile

- (1) The Registrar must make a determination (a *suspension determination*) that child support is not payable for a child by a liable parent to the other parent of the child if:
 - (a) the Registrar is notified, or otherwise becomes aware, that the parents have become members of the same couple; and
 - (b) the Registrar is satisfied that the parents have become members of the same couple.
- (2) If the Registrar makes a suspension determination, child support for the child is not payable by the liable parent to the other parent:
 - (a) from the day the Registrar determines that the parents became members of the same couple; and
 - (b) until the Registrar makes a determination under subsection (3) in relation to the parents.

Note: Under section 12, there is a child support terminating event if the parents are members of the same couple for a period of 6 months or more.

Payment of child support to continue if reconciliation not successful

- (3) If:
- (a) a child support terminating event has not happened in relation to a child and the child's parents under subsection 12(5); and
 - (b) the Register is satisfied that the parents have ceased being members of the same couple;
- then the Registrar must make a determination under this subsection that child support is again payable by the liable parent to the other parent.
- (4) If the Registrar makes a determination under subsection (3), child support is again payable by the liable parent to the other parent from the day that the Registrar is satisfied that the parents ceased to be members of the same couple.

Suspension determination not to prevent payment of child support to non-parent carers

- (5) To avoid doubt, child support is still payable by a liable parent for a child to a non-parent carer of the child despite a suspension determination being made in respect of the parents of the child.

Child Support (Registration and Collection) Act 1988

3 Subsection 39(5)

Repeal the subsection, substitute:

- (5) The Registrar must grant the application unless the Registrar is satisfied that:
- (a) the payer of the liability has been complying with his or her child support obligations in relation to the payee; or
 - (b) the payer of the liability has satisfactorily explained and rectified a failure to comply with his or her child support obligations in relation to a payee; or
 - (c) there are special circumstances that exist in relation to the liability that make it appropriate to refuse the application.

4 Section 71A

Before “Subject”, insert “(1)”.

5 Section 71A

After “section 30”, insert “and in accordance with subsections (2) and (3)”.

6 At the end of section 71A

Add:

(2) If:

- (a) the application referred to in paragraph (1)(b) specifies that the amount, or part of the amount, received by the third party is to be credited against the liability in relation to a specified percentage that is less than 100% of the amount payable under the liability; and
- (b) the Registrar is satisfied that the payer and the payee agree that the amount received is to be credited against the liability in relation to that percentage of the amount, or the part of the amount, payable under the liability;

then the Registrar must credit the amount received against the liability in relation to that percentage of the amount, or the part of the amount, payable under the liability.

- (3) Otherwise, the Registrar must credit the amount received against the liability in relation to 100% of the amount, or the part of the amount, payable under the liability.

7 Subsections 71C(1) and (2)

Repeal the subsections, substitute:

(1) If:

- (a) the payer of an enforceable maintenance liability in relation to a payment period or initial period has made one or more payments to the payee of the liability, or to another person; and
- (b) the payment is a payment of the kind specified in the regulations; and
- (c) the sum of those payments exceeds the sum of all such payments previously credited under this section against the liability for all past periods; and

(d) the payer does not, at the time at which the Registrar applies this section, have at least regular care of any of the children to whom the relevant administrative assessment relates;
then the Registrar must, despite section 30, credit the excess amount mentioned in paragraph (c), up to a maximum amount that is equal to 30% of the amount payable under the payer's liability for the period, against the liability in relation to the amount payable under the liability for the period.

Note: Subsection (1) is subject to section 71D.

8 After section 72AB

Insert:

72AC Deductions from veterans' pensions and allowances

(1) The Registrar may give a written notice to the Repatriation Commission (within the meaning of the *Veterans' Entitlements Act 1986*) if:

(a) either of the following applies:

- (i) a person is a payer of an enforceable maintenance liability under section 17 of this Act;
- (ii) a person owes a child support debt in relation to a liability under section 17 or 17A of this Act and an amount of the debt remains unpaid after the day on which the debt became due and payable under section 66 of this Act; and

(b) the person is receiving:

- (i) an age service pension under Division 3 of Part III of the *Veterans' Entitlements Act 1986*; or
- (ii) an invalidity service pension under Division 4 of Part III of that Act; or
- (iii) a partner service pension under Division 5 of Part III of that Act; or
- (iv) income support supplement under Part IIIA of that Act; or
- (v) Defence Force Income Support Allowance under Division 2 of Part VIIAB of that Act.

(2) The notice must:

- (a) specify the person's name; and

- (b) set out sufficient particulars to enable the Repatriation Commission to identify the person; and
- (c) if subparagraph (1)(a)(i) applies—instruct the Repatriation Commission to make periodic deductions prescribed in the regulations from the person’s pension or allowance from a specified day; and
- (d) if subparagraph (1)(a)(ii) applies—instruct the Repatriation Commission to make periodic deductions prescribed in the regulations from the person’s pension or allowance on the day or days specified.

Veterans’ Entitlements Act 1986

9 At the end of section 58J

Add:

- (3) The Commission must, in accordance with a notice given under section 72AC of the *Child Support (Registration and Collection) Act 1988*, for the purpose of enabling the collection of an amount that is, or may become, payable by a recipient of a pension:
 - (a) make deductions from instalments of the pension payable to the recipient; and
 - (b) pay the amount deducted to the Child Support Registrar.

Note: The heading to section 58J is altered by adding at the end “**or Child Support Registrar**”.

10 After section 122D

Insert:

122E Deductions of DFISA paid to Child Support Registrar

The Commission must, in accordance with a notice given under section 72AC of the *Child Support (Registration and Collection) Act 1988*, for the purpose of enabling the collection of an amount that is, or may become, payable by a recipient of DFISA:

- (a) make deductions from instalments of DFISA payable to the recipient; and
- (b) pay the amount deducted to the Child Support Registrar.

Part 2—Application provisions

11 Application

The amendment made by item 1 of this Schedule applies in relation to parents who become members of the same couple after the commencement of this Schedule.

12 Application

The amendment made by item 2 of this Schedule applies in relation to parents that:

- (a) the Registrar is notified, or otherwise becomes aware, have become members of the same couple; and
- (b) the Registrar is satisfied have become members of the same couple;

after the commencement of this Schedule.

13 Application

The amendment made by item 3 of this Schedule applies in relation to applications made under section 39 of the Registration and Collection Act after the commencement of this Schedule.

14 Application

The amendment made by item 6 of this Schedule applies in relation to amounts that are received, after the commencement of this Schedule, by a third party (as mentioned in subsection 71A(2) of the Registration and Collection Act as inserted by this Schedule).

15 Application

- (1) The amendment made by item 7 of this Schedule applies in relation to payments, made after the commencement of this Schedule, of the kind referred to in subsection 71C(1) of the Registration and Collection Act (as inserted by this Schedule).
- (2) To avoid doubt, the amendment does not apply to payments made before the commencement of this Schedule which have not, at the time of commencement, been credited under section 71C of that Act.

Schedule 8—Amendments relating to family tax benefit (commencing on 1 July 2008)

Part 1—Regular care children

Division 1—Amendments

A New Tax System (Family Assistance) Act 1999

1 Subsection 3(1)

Insert:

absent overseas recipient has the meaning given by section 62.

2 Subsection 3(1)

Insert:

absent overseas regular care child has the meaning given by section 63AA.

3 Subsection 3(1) (subparagraph (b)(i) of the definition of *FTB child*)

Repeal the subparagraph, substitute:

- (i) in applying paragraph 22(6A)(b) to child care benefit, the reference in that paragraph to a claim for payment of family tax benefit is to be read as a reference to a claim for payment of child care benefit; and

4 Subsection 3(1) (subparagraph (b)(ii) of the definition of *FTB child*)

Omit “benefit; and”, substitute “benefit.”.

5 Subsection 3(1) (paragraph (c) of the definition of *FTB child*)

Repeal the paragraph.

6 Subsection 3(1)

Insert:

parenting plan has the meaning given by the *Family Law Act 1975*.

7 Subsection 3(1) (paragraph (b) of the definition of *receiving*)

Omit “and 17”, substitute “and 38L”.

8 Subsection 3(1)

Insert:

regular care child of an individual (the *adult*):

- (a) means an individual who:
 - (i) would be an FTB child of the adult but for the operation of section 25 (child in individual’s care for less than 35% of a period); and
 - (ii) is in the care of the adult for at least 14% of the period referred to in subsection 22(6A); and
- (b) in relation to child care benefit—also means a child determined by the Secretary under subsection 42(2), 44(3) or 45(3) to be a regular care child of the adult.

9 Subsection 3(1) (definition of *relevant shared carer*)

Repeal the definition, substitute:

relevant shared carer means an individual who has a shared care percentage for each of his or her FTB children.

10 Subsection 3(1) (definition of *rent assistance child*)

Omit “subclause 12(2)”, substitute “clause 38B”.

11 Subsection 3(1)

Insert:

shared care percentage for an individual for an FTB child has the meaning given by section 59.

12 Paragraph 6(4)(a)

After “FTB child” (wherever occurring), insert “, or a regular care child,”.

13 Paragraph 21(1)(a)

Repeal the paragraph, substitute:

- (a) the individual:
 - (i) has at least one FTB child; or
 - (ii) is not an absent overseas recipient and has at least one regular care child who is also a rent assistance child; and

14 Paragraph 22(3)(b)

Omit “or registered parenting plan”, substitute “, registered parenting plan or parenting plan”.

15 After subsection 22(6)

Insert:

Determining percentages of care

(6A) If:

- (a) the Secretary is satisfied there has been, or will be, a pattern of care for an individual (the *child*) over a period such that, for the whole, or for parts (including different parts), of the period, the child was, or will be, under subsection (2), (3), (4), (5) or (6), an FTB child of more than one other individual; and
- (b) one of those other individuals makes, or has made, a claim under Part 3 of the *A New Tax System (Family Assistance) (Administration) Act 1999* for payment of family tax benefit in respect of the child for some or all of the days in that period; and
- (c) that individual is not a partner of at least one of those other individuals;

then the Secretary must determine the percentage of the period during which the child was, or will be, in the care of that individual.

Note: The percentage determined under subsection (6A) for an individual in respect of a child is used to work out the individual's shared care percentage for the child in section 59.

- (6B) If the percentage determined by the Secretary under subsection (6A) is not a whole percentage:
- (a) if the percentage is greater than 50%—the percentage is rounded up to the nearest whole percentage; and
 - (b) if the percentage is less than 50%—the percentage is rounded down to the nearest whole percentage.
- (6C) For the purposes of subsection (6A), a child cannot be in the care of more than one of the other individuals referred to in paragraph (6A)(a) on any particular day.
- (6D) For the purposes of subsection (6A), the Secretary must determine which of the other individuals referred to in paragraph (6A)(a) has the care of the child on any given day having regard to the living arrangements of the child.

16 Subsection 22(7)

Repeal the subsection, substitute:

Percentage of care at least 35%

- (7) If, under subsection (6A), the Secretary determines that a child was, or will be, in the care of an individual for at least 35% of a period, the child is taken to be an FTB child of that individual for the purposes of this section on each day in that period, whether or not the child was in that individual's care on that day.

Note: If the Secretary determines that a child was, or will be, in the care of an individual for less than 35% of a period, the child is taken not to be an FTB child (see section 25).

17 Paragraph 23(1)(a)

Omit "(including that subsection in its application by virtue of subsection 22(7))".

18 Subsection 23(2)

Omit "(including that subsection in its application by virtue of subsection 22(7))".

19 After subsection 23(2)

Insert:

- (3) The reference, in paragraph (1)(a) and subsection (2), to an FTB child of an individual or adult under subsection 22(2) or (3) includes a reference to:
- (a) a child who is an FTB child under subsection 22(2) or (3) in its application by virtue of subsection 22(7); and
 - (b) a child who is an FTB child under subsection 22(2) or (3), but who is taken not to be an FTB child under section 25.

Note: As a result of subsection (2) of this section, a child who is taken not to be an FTB child under section 25, but who is a regular care child, will remain a regular care child for the part of the qualifying period referred to in subsection (2) of this section.

20 Subsection 23(5) (subparagraph (c)(ii) of the definition of *qualifying period*)

Omit “or registered parenting plan”, substitute “, registered parenting plan or parenting plan”.

21 Subsection 24(1)

Repeal the subsection, substitute:

Absence from Australia of FTB or regular care child

- (1) If:
- (a) any of the following applies:
 - (i) an FTB child leaves Australia;
 - (ii) a child born outside Australia is an FTB child at birth;
 - (iii) a regular care child leaves Australia;
 - (iv) a child born outside Australia is a regular care child at birth; and
 - (b) the child continues to be absent from Australia for more than 3 years;
- during that absence from Australia, the child is neither an FTB child, nor a regular care child, at any time after the period of 3 years beginning on the first day of the child’s absence from Australia.

22 Paragraph 24(2)(a)

After “FTB child”, insert “, or a regular care child,”.

23 Subsection 24(3)

Omit “not an FTB child” (wherever occurring), substitute “neither an FTB child nor a regular care child”.

24 Section 25

Repeal the section, substitute:

25 Effect of FTB child being in individual’s care for less than 35% of a period

If, under subsection 22(6A), the Secretary determines that a child was, or will be, in the care of an individual for less than 35% of a period, the child is taken, despite section 22, not to be an FTB child of that individual for any part of the period.

25 Subsection 26(1)

After “FTB children”, insert “or regular care children”.

26 Section 27

Repeal the section, substitute:

27 Extension of meaning of FTB or regular care child in a blended family case

- (1) This section applies if:
 - (a) 2 individuals are members of the same couple; and
 - (b) either or both of the individuals have a child (the *qualifying child*) from another relationship (whether before or after the 2 individuals became members of that couple).
- (2) While the 2 individuals are members of that couple:
 - (a) each qualifying child that is an FTB child, or regular care child, of one member of the couple is taken also to be an FTB child, or regular care child, (as the case requires) of the other member of the couple; and
 - (b) if, under subsection 22(6A), the Secretary determines (whether before or after the 2 individuals became members of

that couple) a percentage of a period during which the qualifying child was, or will be, in the care of one member of the couple—the Secretary is taken to have determined that the child was, or will be, in the care of both members of the couple during that percentage of the period.

27 Paragraph 31(1)(a)

After “FTB children”, insert “or regular care children”.

Note: The heading to section 31 is altered by inserting “**or regular care**” after “**FTB**”.

28 Paragraph 31(1)(b)

Omit “the FTB children”, substitute “the children”.

29 Paragraph 31(1)(c)

Omit “one FTB child immediately before the child died”, substitute “one child immediately before the child mentioned in paragraph (1)(b) died”.

30 Subsection 31(4)

After “FTB children”, insert “, or regular care children,”.

Note: The heading to section 32 is altered by inserting “**or regular care**” after “**FTB**”.

31 Paragraph 33(1)(a)

After “FTB child”, insert “or a regular care child”.

Note: The heading to subsection 33(1) is altered by inserting “*or regular care*” after “*FTB*”.

32 Subparagraphs 33(2)(b)(i) and (ii)

After “FTB child”, insert “or regular care child,”.

Note: The heading to subsection 33(2) is altered by inserting “*or regular care*” after “*FTB*”.

33 After paragraph 36(2)(a)

Insert:

(aa) the child is an FTB child of the individual; and

34 Subparagraph 36(2)(b)(i)

Omit “in respect of the child”, substitute “in respect of the FTB child”.

35 After paragraph 36(3)(c)

Insert:

- (ca) the child is an FTB child of the individual; and

36 Subparagraph 36(3)(d)(i)

Omit “in respect of the child”, substitute “in respect of the FTB child”.

37 After paragraph 36(4)(a)

Insert:

- (aa) if the child had been born alive, the child would have been an FTB child of the individual at birth; and

38 Subparagraph 36(4)(b)(i)

Omit “in respect of the child”, substitute “in respect of the FTB child”.

39 After paragraph 36(5)(ba)

Insert:

- (bb) the child is an FTB child of the individual; and

40 Subparagraph 36(5)(c)(i)

Omit “in respect of the child”, substitute “in respect of the FTB child”.

41 After paragraph 39(2)(a)

Insert:

- (aa) the child is an FTB child of the individual; and

42 Subparagraph 39(2)(b)(iii)

Omit “in respect of the child”, substitute “in respect of the FTB child”.

43 Subsection 39(4)

Repeal the subsection, substitute:

Child dies within 2 years of birth

- (4) Third, an individual is eligible for maternity immunisation allowance in respect of a child who is born alive but dies within 2 years if, on the day of the child’s death:
 - (a) the child is an FTB child of the individual; and
 - (b) the individual either:
-

- (i) is eligible for family tax benefit in respect of the FTB child; or
- (ii) would be so eligible except that the individual's rate of family tax benefit, worked out under Division 1 of Part 4, is nil.

44 Paragraph 42(1)(a)

After "FTB child", insert " , or a regular care child ,".

45 Paragraph 42(1)(c)

Omit "FTB child", substitute "child".

46 Subsection 42(2)

Repeal the subsection, substitute:

Secretary may determine that child is a regular care child

- (2) The Secretary may determine that a child who is neither an FTB child, nor a regular care child, of an individual at a particular time is taken to be a regular care child of the individual at that time for the purposes of paragraph (1)(a).

47 Paragraph 44(1)(a)

After "FTB child", insert " , or a regular care child ,".

48 Subsection 44(3)

Repeal the subsection, substitute:

Secretary may determine that child is a regular care child

- (3) The Secretary may determine that a child who is neither an FTB child, nor a regular care child, of an individual during the session of care is taken to be a regular care child of the individual during that session for the purposes of paragraph (1)(a).

49 Paragraph 45(1)(a)

After "FTB child", insert " , or a regular care child ,".

50 Paragraph 45(1)(c)

Omit “not an FTB child”, substitute “neither an FTB child, nor a regular care child,”.

51 Subsection 45(3)

Repeal the subsection, substitute:

Secretary may determine that child is a regular care child

- (3) The Secretary may determine that a child who is neither an FTB child, nor a regular care child, of an individual during the period of care is taken to be a regular care child of the individual during that period for the purposes of paragraph (1)(a).

52 Paragraph 54(4)(a)

After “FTB child”, insert “, or a regular care child,”.

53 Subparagraph 54(5)(b)(i)

After “FTB child”, insert “, or a regular care child,”.

54 Paragraphs 54(6)(a) and (7)(b)

After “FTB child”, insert “, or a regular care child,”.

55 Section 59

Repeal the section, substitute:

59 Shared care percentages where individual is FTB child of more than one person who are not members of the same couple

- (1) An individual has a shared care percentage under this section for an FTB child of the individual if the Secretary has determined, under subsection 22(6A), a percentage of the period mentioned in that subsection during which the child was, or will be, in the care of the individual.

Note: The Secretary is taken to have made a determination under subsection 22(6A) in a blended family case (see paragraph 27(2)(b)).

- (2) The individual’s *shared care percentage* for the FTB child is the relevant percentage specified in column 2 of the table.

Schedule 8 Amendments relating to family tax benefit (commencing on 1 July 2008)
Part 1 Regular care children

Shared care percentages

Item	Column 1 Individual's percentage determined under subsection 22(6A)	Column 2 Shared care percentage
1	35% to less than 48%	25% plus 2% for each percentage point over 35%
2	48% to 52%	50%
3	more than 52% to 65%	51% plus 2% for each percentage point over 53%
4	more than 65% to 100%	100%

- (3) If the shared care percentages, specified in the table, of all of the individuals of whom the child is an FTB child add to less than 100%, then the Secretary may determine a different whole percentage for one or more of those individuals for the FTB child. Despite subsection (2), the individual's *shared care percentage* for the child is the percentage so determined for that individual.

59A Multiple birth allowance where individual is FTB child of more than one person who are not members of the same couple

- (1) If the Secretary is satisfied that:
- (a) an individual is an FTB child of an individual (*person A*); and
 - (b) the FTB child is also an FTB child of one or more other individuals who are not person A's partner; and
 - (c) the FTB child is one of 3 or more FTB children who were born during the same multiple birth;
- the Secretary may determine the manner in which multiple birth allowance under Division 2 of Part 5 of Schedule 1 is to be dealt with.
- (2) Without limiting subsection (1), the Secretary may specify that the whole of the multiple birth allowance is to be paid to one of the individuals involved.

56 Subsections 63(2) and (3)

Repeal the subsections, substitute:

(2) If:

(a) one of the following applies:

- (i) an FTB child leaves Australia;
- (ii) a child born outside Australia is an FTB child at birth;
- (iii) a regular care child leaves Australia;
- (iv) a child born outside Australia is a regular care child at birth; and

(b) the child continues to be absent from Australia for more than 13 weeks; and

(c) at the end of the period of 13 weeks beginning on the first day of the child's absence from Australia the child is an FTB child;

the child is an ***absent overseas FTB child*** for any period that occurs:

(d) during that absence from Australia; and

(e) after the end of the period mentioned in paragraph (c); and

(f) during which the child continues to be an FTB child.

(3) If:

(a) a regular care child is an absent overseas regular care child because of the application of subsection 63AA(1), (2) or (3); and

(b) during the period that the child is absent from Australia, the child becomes an FTB child of an individual;

the child is an ***absent overseas FTB child*** for any period that occurs:

(c) during the absence from Australia referred to in paragraph (b) after the child becomes an FTB child; and

(d) during which the child continues to be an FTB child.

(3A) If:

(a) either:

(i) an FTB child is an absent overseas FTB child because of the application of subsection (2) or (3) or a previous application of this subsection; or

(ii) a regular care child is an absent overseas regular care child because of the application of subsection 63AA(1), (2) or (3); and

(b) the child comes to Australia; and

- (c) the child leaves Australia less than 13 weeks after coming to Australia; and
 - (d) at the time the child leaves Australia, the child is an FTB child;
- the child is an *absent overseas FTB child* for any period that occurs:
- (e) during the absence from Australia referred to in paragraph (c); and
 - (f) during which the child continues to be an FTB child.

57 After section 63

Insert:

63AA Regular care child's absence from Australia—meaning of *absent overseas regular care child*

- (1) If:
- (a) one of the following applies:
 - (i) a regular care child leaves Australia;
 - (ii) a child born outside Australia is a regular care child at birth;
 - (iii) an FTB child leaves Australia;
 - (iv) a child born outside Australia is an FTB child at birth;and
 - (b) the child continues to be absent from Australia for more than 13 weeks; and
 - (c) at the end of the period of 13 weeks beginning on the first day of the child's absence from Australia the child is a regular care child;
- the child is an *absent overseas regular care child* for any period that occurs:
- (d) during that absence from Australia; and
 - (e) after the end of the period mentioned in paragraph (c); and
 - (f) during which the child continues to be a regular care child.

Note: Generally, an absent overseas regular care child cannot be a rent assistance child (see clause 38B of Schedule 1).

- (2) If:

- (a) an FTB child is an absent overseas FTB child because of the application of subsection 63(2), (3) or (3A); and
 - (b) during the period that the child is absent from Australia, the child becomes a regular care child of an individual;
- the child is an ***absent overseas regular care child*** for any period that occurs:
- (c) during the absence from Australia referred to in paragraph (b) after the child becomes a regular care child; and
 - (d) during which the child continues to be a regular care child.
- (3) If:
- (a) either:
 - (i) a regular care child is an absent overseas regular care child because of the application of subsection (1) or (2) or a previous application of this subsection; or
 - (ii) an FTB child is an absent overseas FTB child because of the application of subsection 63(2), (3) or (3A); and
 - (b) the child comes to Australia; and
 - (c) the child leaves Australia less than 13 weeks after coming to Australia; and
 - (d) at the time the child leaves Australia, the child is a regular care child;
- the child is an ***absent overseas regular care child*** for any period that occurs:
- (e) during the absence from Australia referred to in paragraph (c); and
 - (f) during which the child continues to be a regular care child.

58 Subsection 63A(1)

Omit “62(2) or 63(2) if the Secretary is satisfied that the individual mentioned in subsection 62(2) or the FTB child mentioned in subsection 63(2)”, substitute “62(2), 63(2) or 63AA(1) if the Secretary is satisfied that the individual mentioned in subsection 62(2), or the child mentioned in subsection 63(2) or 63AA(1),”.

59 Subsection 63A(3)

Omit “or 63(2)”, substitute “, 63(2) or 63AA(1)”.

60 Subsection 63A(3)

Omit “the FTB child mentioned in subsection 63(2)”, substitute “the child mentioned in subsection 63(2) or 63AA(1)”.

61 Paragraph 64(a)

After “FTB child”, insert “, or a regular care child, (as the case requires)”.

Note: The heading to section 64 is altered by inserting “**or regular care**” after “**FTB**”.

62 Paragraph 64(b)

After “FTB child”, insert “, or a regular care child,”.

63 Subsection 65(1) (method statement, step 1, paragraph (a))

After “FTB child”, insert “, or a regular care child, (as the case requires)”.

Note: The heading to section 65 is altered by inserting “**or regular care**” after “**FTB**”.

64 Subsection 65(1) (method statement, step 1, paragraph (b))

Omit “FTB children—that each of those children is an FTB child”, substitute “FTB children or regular care children—that each of those children is an FTB child, or a regular care child, (as the case requires)”.

65 Subsection 65(1) (method statement, step 2, paragraph (a))

After “FTB child”, insert “, or a regular care child, (as the case requires)”.

66 Section 68

Repeal the section, substitute:

68 When the maternity immunisation allowance is shared

If:

- (a) apart from this section, more than one individual is eligible for maternity immunisation allowance under subsection 39(2) or (4) in respect of the same child; and
- (b) each individual has a shared care percentage for the child;

each individual is eligible instead only for a percentage of the allowance equal to that individual's shared care percentage of family tax benefit for the child.

67 Paragraph 1(1)(a) of Schedule 1

Omit "or Part 3 (clauses 25 to 28)", substitute ", Part 3 (clauses 25 to 28) or Part 3A (clause 28A)".

68 Paragraphs 1(2)(a) and (b) of Schedule 1

Omit "if:", substitute "if the individual has at least one FTB child and:".

69 After paragraph 1(2)(b) of Schedule 1

Insert:

; and (c) use Part 3A (clause 28A) if the individual has no FTB children.

70 Clause 3 of Schedule 1

Omit "4A, 4B and 5", substitute "5, 38J and 38K".

71 Clause 3 of Schedule 1 (method statement, step 1, paragraph (d))

Omit "Division 3 of this Part (clauses 12 to 16)", substitute "Subdivision A of Division 2B of Part 5 (clauses 38B to 38H)".

72 Clause 3 of Schedule 1 (method statement, step 2)

Omit "Division 4 of this Part (clauses 17 to 19)", substitute "Division 2C of Part 5 (clauses 38L to 38N)".

73 Clauses 4A and 4B of Schedule 1

Repeal the clauses.

74 Subclause 5(1) of Schedule 1

Omit "4A and 4B", substitute "38J and 38K".

75 Clause 11 of Schedule 1

Repeal the clause, substitute:

11 Sharing family tax benefit (shared care percentages)

If an individual has a shared care percentage for an FTB child of the individual, the FTB child rate for the child, in working out the individual's standard rate, is the individual's shared care percentage of the FTB child rate that would otherwise apply to the child.

76 Divisions 3 and 4 of Part 2 of Schedule 1

Repeal the Divisions.

77 Clause 27 of Schedule 1

Repeal the clause, substitute:

27 Sharing family tax benefit (shared care percentages)

If an individual has a shared care percentage for an FTB child of the individual, the FTB child rate for the child, in working out the individual's standard rate under clause 26, is the individual's shared care percentage of the FTB child rate that would otherwise apply to the child.

78 After Part 3 of Schedule 1

Insert:

Part 3A—Part A rate (Method 3)

28A Method of calculating Part A rate

Subject to the operation of clauses 38J and 38K, if the individual's Part A rate is to be calculated using this Part, it is calculated as follows:

Method statement

Step 1. Work out the individual's rent assistance (if any) under Subdivision A of Division 2B of Part 5 (clauses 38B to 38H). The result is the individual's ***maximum rate***.

Step 2. Apply the income test in Division 2C of Part 5 (clauses 38L to 38N) to work out any reduction for adjusted taxable income. Take any reduction away from the individual's maximum rate: the result is the individual's *income tested rate*.

Step 3. The individual's *Part A rate* is the individual's income tested rate.

79 Paragraph 29B(4)(a) of Schedule 1

Repeal the paragraph, substitute:

- (a) on the day on which the other individual or his or her partner returns to paid work, the other individual has a shared care percentage for the child; and

80 Clause 31 of Schedule 1

Repeal the clause, substitute:

31 Sharing family tax benefit (shared care percentages)

(1) If:

- (a) an individual has a shared care percentage for an FTB child of the individual; and
 - (b) the child is the individual's only FTB child;
- the individual's standard rate is the individual's shared care percentage of the standard rate that would otherwise apply.

(2) If:

- (a) an individual has a shared care percentage for an FTB child of the individual; and
 - (b) the child is not the individual's only FTB child;
- the individual's standard rate is to be worked out as follows:

- (c) for each of the individual's FTB children for whom the individual does not have a shared care percentage, work out the rate that would be the individual's standard rate under clause 30 if that child were the individual's only FTB child;
- (d) for each of the individual's FTB children for whom the individual has a shared care percentage, work out the rate that would be the individual's standard rate under clause 30 if:

- (i) that child were the individual's only FTB child; and
- (ii) subclause (1) of this clause applied to the child;
- (e) the individual's standard rate is the highest of the rates obtained under paragraphs (c) and (d).

81 Subclause 31A(1) of Schedule 1

Repeal the subclause, substitute:

- (1) The amount of the FTB Part B supplement to be added in working out an individual's Part B rate under clause 29 or 29A is:
 - (a) if the individual has one FTB child, or more than one FTB child, and the individual does not have a shared care percentage for that child, or for at least one of those children—the FTB (B) gross supplement amount; or
 - (b) if the individual has only one FTB child and the individual has a shared care percentage for the child—the shared care percentage of the FTB (B) gross supplement amount; or
 - (c) if the individual has more than one FTB child and the individual has a shared care percentage for each of those children—the highest of those percentages of the FTB (B) gross supplement amount.

82 Clause 38 of Schedule 1

Repeal the clause, substitute:

38 Sharing multiple birth allowance (determinations under section 59A)

If the Secretary has made a determination under section 59A in respect of an FTB child of the individual, multiple birth allowance under this Division is to be dealt with in accordance with the determination.

83 Paragraph 38A(2)(a) of Schedule 1

Repeal the paragraph, substitute:

- (a) if the individual has a shared care percentage for the FTB child—the individual's shared care percentage of the FTB gross supplement amount; or

84 After Division 2A of Part 5 of Schedule 1

Insert:

Division 2B—Rent assistance

Subdivision A—Rent assistance

38B Rent assistance children

- (1) An individual's eligibility for, and rate of, rent assistance is affected by whether an FTB child, or a regular care child, of the individual is also a rent assistance child of the individual.
- (2) An FTB child of an individual is a *rent assistance child* of the individual if the FTB child rate for the child:
 - (a) exceeds the base FTB child rate (see clause 8); or
 - (b) would exceed the base FTB child rate but for clause 11.
- (3) A regular care child of an individual is a *rent assistance child* of the individual if:
 - (a) the regular care child is under 16 years of age; and
 - (b) the regular care child is not an absent overseas regular care child.

38C Eligibility for rent assistance

- (1) An amount by way of rent assistance for a period is to be added in working out an individual's maximum rate if:
 - (a) the individual has at least one rent assistance child; and
 - (b) the individual's claim for family tax benefit is not a claim to which subclause (2) applies; and
 - (ba) neither the individual nor the individual's partner is receiving payments of incentive allowance under clause 36 of Schedule 1A to the *Social Security Act 1991*; and
 - (c) the individual is not an ineligible homeowner; and
 - (d) the individual is not an aged care resident; and
 - (e) the individual pays, or is liable to pay, rent (other than Government rent); and

- (f) if the individual has at least one FTB child and is not a relevant shared carer—the rent is payable at a rate of more than:
 - (i) if the individual is not a member of a couple—\$3,073.30 per year; or
 - (ii) if the individual is a member of a couple but is not partnered (partner in gaol) or a member of an illness separated couple, a respite care couple or a temporarily separated couple—\$4,547.90 per year; or
 - (iii) if the individual is partnered (partner in gaol) or is a member of an illness separated couple or a respite care couple—\$3,073.30 per year; or
 - (iv) if the individual is a member of a temporarily separated couple—\$3,073.30 per year; and
 - (fa) if the individual is a relevant shared carer, or has only one or more regular care children (but no FTB children)—the rent is payable at a rate of more than:
 - (i) if the individual is not a member of a couple—\$2,332.35 per year; or
 - (ii) if the individual is a member of a couple but is not partnered (partner in gaol) or a member of an illness separated couple, a respite care couple or a temporarily separated couple—\$3,806.95 per year; or
 - (iii) if the individual is partnered (partner in gaol) or is a member of an illness separated couple or a respite care couple—\$2,332.35 per year; or
 - (iv) if the individual is a member of a temporarily separated couple—\$2,332.35 per year; and
 - (g) if the individual is outside Australia:
 - (i) the person was paying rent (other than Government rent) for accommodation in Australia immediately before the individual left Australia; and
 - (ii) the person continues to pay rent for the same accommodation while outside Australia.
- (2) This subclause applies to an individual's claim for family tax benefit if:
- (a) the claim is for family tax benefit for a past period that occurs in the first or second income year before the one in which the claim is made; and

- (b) when the claim is made the individual:
 - (i) is eligible for family tax benefit; and
 - (ii) is not prevented by section 9 of the *A New Tax System (Family Assistance) (Administration) Act 1999* from making an effective claim for payment of family tax benefit by instalment; and
- (c) the claim is not accompanied by a claim for family tax benefit by instalment.

38D Rate of rent assistance payable to individual who has at least one FTB child and who is not a relevant shared carer

The rate of rent assistance payable to an individual who has at least one FTB child and who is not a relevant shared carer is worked out using the following table. Work out the individual's family situation and calculate Rate A for the individual using the corresponding formula in column 2. This will be the individual's rate of rent assistance but only up to the individual's maximum rent assistance rate. The individual's maximum rent assistance rate is Rate B, worked out using column 3.

Rent assistance payable to individual who has at least one FTB child and who is not a relevant shared carer

(Part A—Method 1 or 3)

Column 1	Column 2	Column 3	
Family situation	Rate A	Rate B	
		Column 3A	Column 3B
		1 or 2 rent assistance children	3 or more rent assistance children
1 Not member of a couple	$\frac{(\text{Annual rent} - \$3,073.30)}{4} \times 3$	\$3,084.25	\$3,485.75

Schedule 8 Amendments relating to family tax benefit (commencing on 1 July 2008)
Part 1 Regular care children

Rent assistance payable to individual who has at least one FTB child and who is not a relevant shared carer

(Part A—Method 1 or 3)

Column 1 Family situation	Column 2 Rate A	Column 3 Rate B	
		Column 3A 1 or 2 rent assistance children	Column 3B 3 or more rent assistance children
2 Member of a couple other than a person who is partnered (partner in gaol) or a member of an illness separated couple, a respite care couple or a temporarily separated couple	$\frac{(\text{Annual rent} - \$4,547.90)}{4} \times 3$	\$3,084.25	\$3,485.75
3 Person who is partnered (partner in gaol) or a member of an illness separated couple or a respite care couple	$\frac{(\text{Annual rent} - \$3,073.30)}{4} \times 3$	\$3,084.25	\$3,485.75
4 Member of a temporarily separated couple	$\frac{(\text{Annual rent} - \$3,073.30)}{4} \times 3$	\$3,084.25	\$3,485.75

38E Rate of rent assistance payable to individual who is a relevant shared carer or who has only one or more regular care children

The rate of rent assistance payable to an individual who is a relevant shared carer, or who has only one or more regular care children (but no FTB children), is the higher of:

- (a) the rate of rent assistance that would be payable to that individual if that individual's rate were worked out using clause 38D; and
- (b) the rate of rent assistance worked out using the following table.

In working out rent assistance, work out the individual's family situation using column 1 and calculate Rate A for the individual using the corresponding formula in column 2. This will be the individual's rate of rent assistance in accordance with the table but only up to Rate B specified in column 3.

Rent assistance payable to individual who is a relevant shared carer or who has only one or more regular care children

(Part A—Method 1 or 3)

	Column 1 Family situation	Column 2 Rate A	Column 3 Rate B
1	Not member of a couple	$\frac{(\text{Annual rent} - \$2,332.35)}{4} \times 3$	\$2,638.95
2	Member of a couple other than a person who is partnered (partner in gaol) or a member of an illness separated couple, a respite care couple or a temporarily separated couple	$\frac{(\text{Annual rent} - \$3,806.95)}{4} \times 3$	\$2,478.35

Schedule 8 Amendments relating to family tax benefit (commencing on 1 July 2008)
Part 1 Regular care children

Rent assistance payable to individual who is a relevant shared carer or who has only one or more regular care children

(Part A—Method 1 or 3)

	Column 1	Column 2	Column 3
	Family situation	Rate A	Rate B
3	Person who is partnered (partner in gaol) or a member of an illness separated couple or a respite care couple	$\frac{(\text{Annual rent} - \$2,332.35)}{4} \times 3$	\$2,638.95
4	Member of a temporarily separated couple	$\frac{(\text{Annual rent} - \$2,332.35)}{4} \times 3$	\$2,478.35

38F Annual rent

Annual rent in the tables in clauses 38D and 38E is the annual rate of rent paid or payable by the individual whose rate is being calculated.

38G Rent paid by a member of a couple

If an individual is a member of a couple and is living with his or her partner in their home, any rent paid or payable by the partner is to be treated as paid or payable by the individual.

38H Rent paid by a member of an illness separated, respite care or temporarily separated couple

If an individual is a member of an illness separated, respite care or temporarily separated couple, any rent that the individual's partner pays or is liable to pay in respect of the premises occupied by the individual is to be treated as paid or payable by the individual.

Subdivision B—Offsetting for duplicate rent assistance

38J Offsetting for duplicate rent assistance under family assistance and social security law

When this clause applies

- (1) This clause applies if:
- (a) a decision (the ***social security decision***) was made that rent assistance was to be included when calculating an individual's, or an individual's eligible partner's, rate of social security payment for a day; and
 - (b) when the social security decision was made, no decision (the ***family assistance decision***) to make a determination that includes, or to vary a determination to include, rent assistance when calculating the individual's Part A rate of family tax benefit for that day had been made; and
 - (c) after the social security decision was made, the family assistance decision was made; and
 - (d) the day mentioned in paragraphs (a) and (b) comes before the day on which the family assistance decision was made.

Note: For the definition of ***eligible partner*** see subclause (5).

Part A rate to be reduced

- (2) The individual's Part A rate for that day (as calculated or recalculated because of the making of the family assistance decision) is to be reduced:
- (a) first, by the individual's annual social security RA amount for that day (see subclause (3)); and
 - (b) then, by the individual's eligible partner's annual social security RA amount for that day (see subclause (4)).

However, it is not to be reduced to less than:

- (c) if it has been calculated for the first time under clause 3 or 28A because of the making of the family assistance decision—nil; and
- (d) if it has been recalculated under clause 3 or 28A because of the making of the family assistance decision—the Part A rate as it was immediately before the recalculation.

- (3) The *individual's annual social security RA amount* for that day is the amount worked out as follows:

Method statement

- Step 1.* Work out the rate (if any) of social security payment (the **actual payment**) that was payable to the individual for that day.
- Step 2.* Work out the rate (if any) of social security payment (the **notional payment**) that would have been payable to the individual for that day if rent assistance were not included when calculating the rate of the individual's social security payment for that day.
- Step 3.* Subtract the notional payment from the actual payment. The difference is the **individual's daily social security RA amount** for that day.
- Step 4.* Multiply the individual's daily social security RA amount for that day by 365. The result is the **individual's annual social security RA amount** for that day.

- (4) The *individual's eligible partner's annual social security RA amount* for that day is the amount worked out as follows:

Method statement

- Step 1.* Work out the rate (if any) of social security payment (the **actual payment**) that was payable to the individual's eligible partner for that day.
- Step 2.* Work out the rate (if any) of social security payment (the **notional payment**) that would have been payable to the eligible partner for that day if rent assistance were not included when calculating the rate of the eligible partner's social security payment for that day.
- Step 3.* Subtract the notional payment from the actual payment. The difference is the **eligible partner's daily social security RA amount** for that day.

Step 4. Multiply the eligible partner's daily social security RA amount for that day by 365. The result is the **individual's eligible partner's annual social security RA amount** for that day.

- (5) For the purposes of this clause, an individual is the **eligible partner** of another individual if both individuals are members of a couple (other than an illness separated couple, a respite care couple or a temporarily separated couple).

38K Offsetting for duplicate rent assistance under family assistance and veterans' entitlements law

When this clause applies

- (1) This clause applies if:
- (a) a decision (the **veterans' entitlements decision**) was made that rent assistance was to be included when calculating an individual's, or an individual's eligible partner's, rate of service pension or income support supplement for a day; and
 - (b) when the veterans' entitlements decision was made, no decision (the **family assistance decision**) to make a determination that includes, or to vary a determination to include, rent assistance when calculating the individual's Part A rate of family tax benefit for that day had been made; and
 - (c) after the veterans' entitlements decision was made, the family assistance decision was made; and
 - (d) the day mentioned in paragraphs (a) and (b) comes before the day on which the family assistance decision was made.

Note: For the definition of **eligible partner** see subclause (5).

Part A rate to be reduced

- (2) The individual's Part A rate for that day (as calculated or recalculated because of the making of the family assistance decision and as reduced (if at all) under clause 38J) is to be reduced:
- (a) first, by the individual's annual veterans' entitlements RA amount for that day (see subclause (3)); and

- (b) then, by the individual's eligible partner's annual veterans' entitlements RA amount for that day (see subclause (4)).

However, it is not to be reduced to less than:

- (c) if it has been calculated for the first time under clause 3 or 28A because of the making of the family assistance decision—nil; and
- (d) if it has been recalculated under clause 3 or 28A because of the making of the family assistance decision—the Part A rate as it was immediately before the recalculation.
- (3) The ***individual's annual veterans' entitlements RA amount*** for that day is the amount worked out as follows:

Method statement

- Step 1.* Work out the rate (if any) of service pension or income support supplement (the ***actual payment***) that was payable to the individual for that day.
- Step 2.* Work out the rate (if any) of service pension or income support supplement (the ***notional payment***) that would have been payable to the individual for that day if rent assistance were not included when calculating the rate of the individual's service pension or income support supplement for that day.
- Step 3.* Subtract the notional payment from the actual payment. The difference is the ***individual's provisional veterans' entitlements RA amount*** for that day.
- Step 4.* Divide the individual's provisional veterans' entitlements RA amount for that day by 364, then multiply it by 365. The result is the ***individual's annual veterans' entitlements RA amount*** for that day.

- (4) The ***individual's eligible partner's annual veterans' entitlements RA amount*** for that day is the amount worked out as follows:

Method statement

- Step 1.* Work out the rate (if any) of service pension or income support supplement (the **actual payment**) that was payable to the individual's eligible partner for that day.
- Step 2.* Work out the rate (if any) of service pension or income support supplement (the **notional payment**) that would have been payable to the eligible partner for that day if rent assistance were not included when calculating the amount of the eligible partner's service pension or income support supplement for that day.
- Step 3.* Subtract the notional payment from the actual payment. The difference is the **eligible partner's provisional veterans' entitlements RA amount** for that day.
- Step 4.* Divide the eligible partner's provisional veterans' entitlements RA amount for that day by 364, then multiply it by 365. The result is the **individual's eligible partner's annual veterans' entitlements RA amount** for that day.

- (5) For the purposes of this clause, an individual is the **eligible partner** of another individual if both individuals are members of a couple (other than an illness separated couple or a respite care couple).

Division 2C—Income test

38L Application of income test to pension and benefit recipients and their partners

If an individual, or an individual's partner, is receiving a social security pension, a social security benefit, a service pension or income support supplement:

- (a) the individual's income excess is nil; and
- (b) the individual's income tested rate is the same as the individual's maximum rate.

38M Income test

This is how to work out an individual's reduction for adjusted taxable income if clause 38L does not apply to the individual:

Method statement

- Step 1.* Work out the individual's **income free area** using clause 38N.
- Step 2.* Work out whether the individual's adjusted taxable income exceeds the individual's income free area.
- Step 3.* If the individual's adjusted taxable income does not exceed the individual's income free area, the individual's **income excess** is nil.
- Step 4.* If the individual's adjusted taxable income exceeds the individual's income free area, the individual's **income excess** is the individual's adjusted taxable income less the individual's income free area.
- Step 5.* The individual's **reduction for adjusted taxable income** is 20% of the income excess.

38N Income free area

An individual's **income free area** is \$40,000.

85 Paragraph 39(2)(e) of Schedule 1

Omit "the income year that commenced on 1 July 2000 and every succeeding income year", substitute "an income year that commenced on or after 1 July 2000 until 1 July 2007 (inclusive)".

86 After paragraph 39(2)(e) of Schedule 1

Insert:

- (ea) the individual's adjusted taxable income for the purposes of this Act (other than Part 4 of this Schedule) for the income year that commenced on 1 July 2008 and every succeeding income year has exceeded the individual's income free area under clause 38N of this Schedule; and

87 Paragraph 39(2)(f) of Schedule 1

Omit “or 3”, substitute “, 3 or 3A”.

88 Paragraph 39(7)(a) of Schedule 1

Omit “or 3”, substitute “, 3 or 3A”.

89 Clause 2 of Schedule 4 (table items 4 and 5)

Repeal the items, substitute:

4	Rent threshold rate for rent assistance for family tax benefit (Part A—Methods 1 and 3)	FTB RA rent threshold (A1 and A3)	<p>[Schedule 1—subparagraphs 38C(1)(f)(i), (ii), (iii) and (iv)]</p> <p>[Schedule 1—subparagraphs 38C(1)(fa)(i), (ii), (iii) and (iv)]</p> <p>[Schedule 1—clause 38D—table—column 2—all amounts]</p> <p>[Schedule 1—clause 38E—table—column 2—all amounts]</p>
5	Maximum rent assistance for family tax benefit (Part A—Methods 1 and 3)	FTB RA maximum (A1 and A3)	<p>[Schedule 1—clause 38D—table—column 3—all amounts]</p> <p>[Schedule 1—clause 38E—table—column 3—all amounts]</p>

90 Clause 2 of Schedule 4 (table item 13)

Repeal the item, substitute:

13	Income free area for family tax benefit (Part A—Methods 1 and 3)	FTB free area (A1 and A3)	[Schedule 1—clause 38N]
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91 Subclause 3(1) of Schedule 4 (table items 4, 5 and 13)

Omit “(A1)”, substitute “(A1 and A3)”.

***A New Tax System (Family Assistance) (Administration) Act
1999***

92 Paragraph 28B(1)(b)

Repeal the paragraph, substitute:

(b) the individual is any of the following:

- (i) an FTB child of the claimant;
- (ii) a regular care child who is also a rent assistance child of the claimant;
- (iii) an individual in respect of whom an approved care organisation is the claimant; and

Note: The headings to subsections 16(5) and (6) are altered by inserting “*or regular care*” after “*FTB*”.

93 Paragraph 28B(2)(b)

Omit “the only FTB child”, substitute “the only individual who is either an FTB child, or a regular care child who is a rent assistance child,”.

Note: The heading to subsection 28B(2) is altered by inserting “*or regular care*” after “*FTB*”.

94 Paragraph 28B(3)(a)

Omit “the FTB child”, substitute “an FTB child, or a regular care child who is also a rent assistance child,”.

Note: The heading to subsection 28B(3) is altered by inserting “*or regular care*” after “*FTB*”.

95 Paragraph 28B(3)(b)

After “FTB child”, insert “, or regular care child who is also a rent assistance child”.

96 Paragraph 30B(1)(b)

After “an FTB child”, insert “, or a regular care child who is also a rent assistance child,”.

Note: The heading to section 30B is altered by inserting “**or regular care**” after “**FTB**”.

97 Paragraphs 30B(1)(b) and (c)

Omit “the FTB child”, substitute “the child”.

98 Paragraphs 30B(2)(a) and (b)

Repeal the paragraphs, substitute:

- (a) has the effect that the claimant is not entitled to be paid family tax benefit, if the conditions in paragraphs (1)(b) and (c) are met in relation to:
 - (i) each FTB child of the claimant; and
 - (ii) each regular care child who is also a rent assistance child of the claimant; or
- (b) has the effect that the daily rate of family tax benefit for which the claimant is entitled under the determination does not take into account the FTB child or regular care child, if the conditions in paragraphs (1)(b) and (c) are not met in relation to:
 - (i) each FTB child of the claimant; and
 - (ii) each regular care child who is also a rent assistance child of the claimant.

99 Paragraph 30B(3)(b)

After “FTB child”, insert “or regular care child”.

100 Paragraph 32D(1)(c)

Omit “clause 17”, substitute “clause 38L”.

101 Paragraph 32J(1)(b)

After “FTB child”, insert “, or regular care child,”.

102 Paragraph 32K(1)(d)

After “FTB child”, insert “, or a regular care child who is also a rent assistance child,”.

103 Paragraph 32P(1)(b)

Omit “clause 17”, substitute “clause 38L”.

104 Paragraph 32P(1)(d)

After “FTB child”, insert “, or a regular care child who is also a rent assistance child,”.

105 After paragraph 33(1)(aa)

Insert:

(ab) the individual has at least one FTB child; and

106 Subparagraphs 71E(1)(a)(i) and (2)(a)(i)

After “FTB child”, insert “, or a regular care child,”.

107 Subsection 228(3)

After “one FTB child”, insert “, or one regular care child who is also a rent assistance child,”.

108 Paragraph 228(3)(b)

Omit “not an FTB child”, substitute “neither an FTB child, nor a regular care child,”.

109 Paragraph 228(4)(a)

After “FTB child”, insert “, and each regular care child who is also a rent assistance child,”.

Child Support (Registration and Collection) Act 1988

110 Paragraph 72AB(1)(b)

Repeal the paragraph, substitute:

- (b) the child, or at least one of the children, for whom the person is eligible for family tax benefit is a designated child support child of the person and:
 - (i) an FTB child; or
 - (ii) a regular care child who is also a rent assistance child.

111 Subsection 72AB(2)

Omit “An FTB”, substitute “A”.

112 Subsection 72AB(5)

Insert:

regular care child has the same meaning as in the Family Assistance Act.

113 Subsection 72AB(5)

Insert:

rent assistance child has the same meaning as in the Family Assistance Act.

Social Security Act 1991

114 Subsection 6A(1) (after paragraph (b) of the second and third definitions of *dependant*)

Insert:

or (c) a regular care child;

115 Subsection 6A(2)

After “FTB child” (first occurring), insert “, or a regular care child,”.

116 Paragraph 6A(2)(a)

After “FTB child”, insert “, or a regular care child, (as the case requires)”.

117 Subsection 6A(3)

Repeal the subsection.

118 Subsection 23(1) (definition of *maximum Part A rate of family tax benefit*)

After “clause 3”, insert “or 28A”.

119 Subsection 23(1)

Insert:

regular care child has the meaning given by subsection 3(1) of the Family Assistance Act.

120 Subsection 23(1)

Insert:

rent assistance child has the meaning given by subsection 3(1) of the Family Assistance Act.

121 Paragraphs 992J(1)(c) and 992K(1)(c)

After “FTB child”, insert “, or a regular care child,”.

122 Subsection 1010(1)

Omit “subsections (2) and (3)”, substitute “subsections (1A) to (3A)”.

123 After subsection 1010(1)

Insert:

- (1A) If a person who is qualified for double orphan pension for a child has, under section 59 of the Family Assistance Act, a shared care percentage for the child, the rate of double orphan pension under subsection (1) is the person’s shared care percentage of the rate of double orphan pension that would otherwise apply under that subsection to the child.

124 Subsections 1010(2) and (3)

Repeal the subsections, substitute:

Children who became double orphans before 1 July 2000

(2) If:

- (a) a child became a double orphan before 1 July 2000; and
- (b) the person who is qualified for double orphan pension for the child does not, under section 59 of the Family Assistance Act, have a shared care percentage for the child; and
- (c) the current family tax benefit rate in respect of the child is less than the prior family allowance rate in respect of the child;

then the rate calculated under subsection (1) in relation to the child is increased by an amount equal to the difference between the prior family allowance rate and the current family tax benefit rate.

(2A) If:

- (a) a child became a double orphan before 1 July 2000; and
- (b) the person who is qualified for double orphan pension for the child has, under section 59 of the Family Assistance Act, a shared care percentage for the child; and
- (c) the current family tax benefit rate in respect of the child is less than the shared care percentage of the prior family allowance rate in respect of the child;

then the rate calculated under subsections (1) and (1A) in relation to the child is increased by an amount equal to the difference between:

- (d) the person's shared care percentage of the prior family allowance rate; and
- (e) the current family tax benefit rate.

Children who become double orphans on or after 1 July 2000

(3) If:

- (a) a child becomes a double orphan on or after 1 July 2000; and
- (b) the person who is qualified for double orphan pension for the child does not, under section 59 of the Family Assistance Act, have a shared care percentage for the child; and
- (c) the current family tax benefit rate in respect of the child is less than the prior family tax benefit rate in respect of the child;

then the rate calculated under subsection (1) in relation to the child is increased by an amount equal to the difference between the prior family tax benefit rate and the current family tax benefit rate.

(3A) If:

- (a) a child becomes a double orphan on or after 1 July 2000; and
- (b) the person who is qualified for double orphan pension for the child has, under section 59 of the Family Assistance Act, a shared care percentage for the child; and
- (c) the current family tax benefit rate in respect of the child is less than the shared care percentage of the prior family tax benefit rate in respect of the child;

then the rate calculated under subsections (1) and (1A) in relation to the child is increased by an amount equal to the difference between:

- (d) the person's shared care percentage of the prior family tax benefit rate; and
- (e) the current family tax benefit rate.

125 Paragraph 1061ZK(4)(b)

After "Part 2", insert "or 3A".

126 Paragraph 1061ZK(4)(c)

Omit "Division 4 of Part 2", substitute "Division 2C of Part 5".

127 After subsection 1061ZK(4)

Insert:

- (4A) This section applies to a person on a day if, on that day:
- (a) the person has a regular care child; and
 - (b) the person is not entitled, under the Family Assistance Administration Act, to be paid family tax benefit by instalment; and
 - (c) the person's income excess for the purposes of Division 2C of Part 5 of Schedule 1 to the Family Assistance Act is nil.

128 Paragraph 1061ZO(2)(c)

Omit "not an FTB child", substitute "neither an FTB child, nor a regular care child,".

129 Paragraphs 1061ZO(3)(c) and (4)(c)

After "FTB child", insert " , or a regular care child,".

130 Subparagraph 1070D(3)(a)(ii)

Omit "clause 4A", substitute "clause 38J".

131 Subparagraph 1070D(3)(b)(ii)

Omit "clause 4A or 4B", substitute "clause 38J or 38K".

132 Paragraph 1070E(d)

Omit "clause 4A", substitute "clause 38J".

133 Subparagraph 1070F(2)(c)(iv)

Omit "clause 4A", substitute "clause 38J".

134 Subparagraph 1070F(2)(d)(iv)

Omit "clause 4A or 4B", substitute "clause 38J or 38K".

135 Subparagraph 1070F(3)(c)(iv)

Omit "clause 4A", substitute "clause 38J".

136 Subparagraph 1070F(3)(d)(iv)

Omit "clause 4A or 4B", substitute "clause 38J or 38K".

137 Subparagraph 1070G(1)(c)(iv)

Omit “clause 4A”, substitute “clause 38J”.

138 Subparagraph 1070G(1)(d)(iv)

Omit “clause 4A or 4B”, substitute “clause 38J or 38K”.

139 Subparagraph 1070H(2)(c)(iv)

Omit “clause 4A”, substitute “clause 38J”.

140 Subparagraph 1070H(2)(d)(iv)

Omit “clause 4A or 4B”, substitute “clause 38J or 38K”.

141 Subparagraph 1070J(b)(iv)

Omit “clause 4A”, substitute “clause 38J”.

142 Subparagraph 1070J(c)(iv)

Omit “clause 4A or 4B”, substitute “clause 38J or 38K”.

Veterans’ Entitlements Act 1986

143 Subparagraph (b)(ii) of point SCH6-C3A of Schedule 6

Omit “clause 4B”, substitute “clause 38K”.

144 Subparagraph (b)(ii) of point SCH6-C3B of Schedule 6

Omit “clause 4A or 4B”, substitute “clause 38J or 38K”.

Division 2—Application and saving provisions

145 Application

- (1) The amendments to the *A New Tax System (Family Assistance) Act 1999* and the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Schedule apply in relation to the 2008-09 income year and later income years.
- (2) The amounts referred to in clauses 38C, 38D and 38E of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999* (as inserted by item 84 of this Schedule) are to be indexed in accordance with Schedule 4 to that Act after 19 September 2006 as if item 84 had commenced on that day.

Note: Those amounts will first be indexed on 20 September 2006.

- (3) The amount referred to in clause 38N of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999* (as inserted by item 84 of this Schedule) is to be indexed in accordance with Schedule 4 to that Act after 30 June 2007 as if item 84 had commenced on that day.

Note: That amount will first be indexed on 1 July 2007.

146 Saving determinations

If a determination that a child is an FTB child is in force under subsection 42(2), 44(3) or 45(3) of the *A New Tax System (Family Assistance) Act 1999* immediately before this item commences, the determination continues in force as if it were a determination that the child is a regular care child made under that subsection, as amended by this Schedule.

147 Saving qualification and rates for double orphan pension

- (1) This item applies if:
- (a) immediately before 1 July 2008, a person is receiving a double orphan pension for a young person under the *Social Security Act 1991*; and
 - (b) on 1 July 2008:
 - (i) the person would (apart from this item) cease to qualify for a double orphan pension for the young person because of the amendments to the *A New Tax System (Family Assistance) Act 1999* made by this Schedule; or
 - (ii) the rate of the double orphan pension payable to the person for the young person would (apart from this item) be affected by the amendments to the *Social Security Act 1991* made by items 122, 123 and 124 of this Schedule.

Continuation of qualification

- (2) If subparagraph (1)(b)(i) applies, then, on and after 1 July 2008, the person continues to qualify for a double orphan pension for the young person, despite the amendments to the *A New Tax System (Family Assistance) Act 1999* made by this Schedule.
- (3) However, the person ceases to qualify under subitem (2) for a double orphan pension for the young person if:

- (a) the person would cease to qualify for a double orphan pension for the young person under the *Social Security Act 1991* for a reason other than because of the amendments to the *A New Tax System (Family Assistance) Act 1999* made by this Schedule; or
- (b) the rate at which the double orphan pension would be payable to the person for the young person under the *Social Security Act 1991* (assuming the person continued to qualify for a double orphan pension for the young person under that Act) becomes equal to or greater than the rate at which the double orphan pension is payable under subitem (4).

Continuation of rate

- (4) On and after 1 July 2008, while the person continues to qualify for a double orphan pension for the young person (whether under subitem (2) or, if subparagraph (1)(b)(ii) applies, under the *Social Security Act 1991*), the double orphan pension is payable to the person for the young person at the lower of the following rates (the ***saved rate***):
 - (a) the rate at which the double orphan pension was payable to the person for the young person immediately before 1 July 2008, despite:
 - (i) the amendments to the *Social Security Act 1991* made by items 122, 123 and 124 of this Schedule; and
 - (ii) section 1190 of that Act (indexation);
 - (b) if the young person is an FTB child of the person on or after 1 July 2008—the rate that would be payable to the person for the young person under section 1010 of the *Social Security Act 1991* as in force immediately before 1 July 2008.
- (5) However, the double orphan pension ceases to be payable to the person for the young person at the saved rate if the rate at which the double orphan pension would otherwise be payable to the person for the young person under the *Social Security Act 1991* becomes equal to or greater than the saved rate.

Part 2—Maintenance income test

Division 1—Amendments

A New Tax System (Family Assistance) Act 1999

148 Subsection 3(1) (at the end of the definition of *capitalised maintenance income*)

Add:

Note: *Periodic amount* is defined in section 19.

149 Subsection 3(1) (at the end of the definition of *maintenance income*)

Add:

Note: This definition is affected by section 19.

150 Clause 7 of Schedule 1 (table heading)

Omit “Standard rates”, substitute “FTB child rates”.

151 Clause 7 of Schedule 1 (table, heading to column 2)

Omit “Standard rate”, substitute “FTB child rate”.

152 After clause 19A of Schedule 1

Insert:

19AA References to applying for maintenance income

A reference in this Division to an individual being, or not being, entitled to apply for maintenance income includes an individual who is, or is not, entitled to so apply under the *Child Support (Assessment) Act 1989* or the *Family Law Act 1975*.

153 Subclause 20(1) of Schedule 1 (method statement, at the end of step 1)

Add:

<p>; and (d) disregard any maintenance income that is received by the individual, or the individual's partner, from another individual if the income is over the maintenance income ceiling for the income (see Subdivisions C and D).</p>
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154 Clause 22 of Schedule 1

Omit "(other than a child for whom maintenance income is disregarded under step 1 of the method statement in clause 20).", substitute:

, disregarding any child:

- (a) for whom maintenance income is disregarded under paragraph (a) of step 1 of the method statement in clause 20; or
- (b) in respect of whom neither the individual, nor the individual's partner, is entitled to apply for maintenance income.

155 At the end of Division 5 of Part 2 of Schedule 1

Add:

Subdivision C—Maintenance income ceiling for Method 1

24F Subdivision not always to apply

This Subdivision does not apply if an individual, and an individual's partner, between them are entitled to apply for maintenance income:

- (a) from only one other individual; and
- (b) in respect of all of the FTB children of the individual.

24G Overall method for working out maintenance income ceiling for Method 1

For the purposes of paragraph (d) of step 1 of the method statement in clause 20, this is how to work out an individual's maintenance income ceiling for maintenance income received by the individual, or the individual's partner, from another individual (the ***maintenance payer***) if the individual's Part A rate is worked out using this Part (Method 1):

Method statement

- Step 1.* Work out the individual's **above base standard amount** for the maintenance income using clause 24H.
- Step 2.* Work out the individual's **RA amount** for the maintenance income using clause 24J.
- Step 3.* Work out the individual's **MIFA amount** for the maintenance income using clause 24K.
- Step 4.* Work out the individual's **maintenance income ceiling** for the maintenance income using clause 24L.

24H How to work out an individual's above base standard amount

The individual's **above base standard amount** for the maintenance income is the difference between:

- (a) the individual's standard rate under Division 2 of this Part (clauses 7 to 11) for the FTB children of the individual in respect of whom the individual, or the individual's partner, is entitled to apply for maintenance income from the maintenance payer; and
- (b) the individual's standard rate under Division 2 of Part 3 (clauses 26 and 27) for those children (assuming that the individual's Part A rate were calculated under Part 3).

24J How to work out an individual's RA (rent assistance) amount

This is how to work out the individual's **RA amount** for the maintenance income:

Method statement

- Step 1.* Work out the individual's rent assistance (if any) under Subdivision A of Division 2B of Part 5.

Step 2. Work out the amount that would be the individual's rent assistance (if any) under that Subdivision if rent assistance were paid for only those children in respect of whom neither the individual, nor the individual's partner, is entitled to apply for maintenance income.

Step 3. If the individual, and the individual's partner, between them are entitled to apply for maintenance income from only one maintenance payer, the difference between the amount worked out under step 1 and the amount worked out under step 2 is the individual's **RA amount** for the maintenance income.

Step 4. If the individual, and the individual's partner, between them are entitled to apply for maintenance income from more than one maintenance payer, the individual's **RA amount** for maintenance income received from a particular maintenance payer is worked out using the formula:

$$\frac{\text{Amount worked out under step 3}}{\text{Total number of FTB children in respect of whom either the individual, or the individual's partner, is entitled to apply for maintenance income}} \times \begin{array}{l} \text{Number of FTB children} \\ \text{in respect of whom} \\ \text{the individual,} \\ \text{or the individual's partner,} \\ \text{is entitled to apply} \\ \text{for maintenance income} \\ \text{from that maintenance payer} \end{array}$$

24K How to work out an individual's MIFA (maintenance income free area) amount

- (1) If the individual, and the individual's partner, between them are entitled to apply for maintenance income from only one maintenance payer, then the individual's **MIFA amount** for the maintenance income is the amount of the individual's maintenance income free area.

Apportioning the maintenance income free area

- (2) If the individual, and the individual's partner, between them are entitled to apply for maintenance income from more than one maintenance payer, the individual's **MIFA amount** for maintenance income received from a particular maintenance payer is worked out using the following formula:

$$\frac{\text{Individual's no child amount}}{\text{Total number of maintenance payers in respect of whom either the individual, or the individual's partner, is entitled to apply for maintenance income}} + \left(\frac{\text{Number of FTB children in respect of whom the individual, or the individual's partner, is entitled to apply for maintenance income from the maintenance payer}}{\text{Individual's additional amount for one child worked out under clause 22}} \right)$$

where:

individual's no child amount is the amount worked out using the following formula:

$$\text{Individual's basic amount worked out under clause 22} - \text{Individual's additional amount for one child worked out under clause 22}$$

24L How to work out an individual's maintenance income ceiling

The individual's **maintenance income ceiling** for the maintenance income is worked out using the following formula:

$$\left[2 \times \left(\text{Above base standard amount for the income} + \text{RA amount for the income} \right) \right] + \text{MIFA amount for the income}$$

Subdivision D—Maintenance income ceiling for purposes of comparison for Method 2

24M Subdivision not always to apply

This Subdivision does not apply if an individual, and an individual's partner, between them are entitled to apply for maintenance income:

- (a) from only one other individual; and
- (b) in respect of all of the FTB children of the individual.

24N Overall method for working out maintenance income ceiling for purposes of comparison for Method 2

For the purposes of the comparison in step 3 of the method statement in clause 25, this is how to work out an individual's maintenance income ceiling for maintenance income received by the individual, or the individual's partner, from another individual (the *maintenance payer*) if the individual's Part A rate is worked out using Part 3 of this Schedule (Method 2):

Method statement

- Step 1.* Work out the individual's **standard amount** for the maintenance income using clause 24P.
- Step 2.* Work out the individual's **LFS amount** for the maintenance income using clause 24Q.
- Step 3.* Work out the individual's **multiple birth allowance** (if any) under Division 2 of Part 5 (clauses 36 to 38) for FTB children of the individual in respect of whom the individual, or the individual's partner, is entitled to apply for maintenance income from the maintenance payer.
- Step 4.* Work out the individual's **supplement amount** for the maintenance income using clause 24R.
- Step 5.* Work out the individual's **RA amount** for the maintenance income using clause 24J.

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| <p><i>Step 6.</i> Work out the individual's MIFA amount for the maintenance income using clause 24K.</p> <p><i>Step 7.</i> Work out the individual's maintenance income ceiling for the maintenance income using clause 24S.</p> |
|--|

24P How to work out an individual's standard amount

The individual's **standard amount** for the maintenance income is the individual's standard rate under Division 2 of this Part (clauses 7 to 11) for the FTB children of the individual in respect of whom the individual, or the individual's partner, is entitled to apply for maintenance income from the maintenance payer.

24Q How to work out an individual's LFS (large family supplement) amount

This is how to work out the individual's **LFS amount** for the maintenance income:

Method statement

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| <p><i>Step 1.</i> Work out the individual's large family supplement (if any) under Division 1 of Part 5.</p> <p><i>Step 2.</i> Work out the amount that would be the individual's large family supplement (if any) under that Division if large family supplement were paid for only those children in respect of whom neither the individual, nor the individual's partner, is entitled to apply for maintenance income.</p> <p><i>Step 3.</i> If the individual, and the individual's partner, between them are entitled to apply for maintenance income from only one maintenance payer, the difference between the amount worked out under step 1 and the amount worked out under step 2 is the individual's LFS amount for the maintenance income.</p> |
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Step 4. If the individual, and the individual's partner, between them are entitled to apply for maintenance income from more than one maintenance payer, the individual's **LFS amount** for maintenance income received from a particular maintenance payer is worked out using the formula:

$$\frac{\text{Amount worked out under step 3}}{\text{Total number of FTB children in respect of whom either the individual, or the individual's partner, is entitled to apply for maintenance income}} \times \begin{array}{l} \text{Number of FTB children} \\ \text{in respect of whom} \\ \text{the individual,} \\ \text{or the individual's partner,} \\ \text{is entitled to apply} \\ \text{for maintenance income} \\ \text{from that maintenance payer} \end{array}$$

24R How to work out an individual's supplement amount

The individual's **supplement amount** for the maintenance income is the individual's FTB Part A supplement under Division 2A of Part 5 (clause 38A) for the FTB children of the individual in respect of whom the individual, or the individual's partner, is entitled to apply for maintenance income from the maintenance payer.

24S How to work out an individual's maintenance income ceiling

The individual's **maintenance income ceiling** for the maintenance income is worked out using the following formula:

$$\left(2 \times \frac{\text{Total of the amounts worked out for the income under steps 1 to 5 of the method statement in clause 24N}}{\text{Total of the amounts worked out for the income under steps 1 to 5 of the method statement in clause 24N}} \right) + \text{MIFA amount for the income}$$

156 Clause 25 of Schedule 1 (method statement, step 3, paragraph (a))

After "Part 2", insert "(but disregarding clause 24G)".

Division 2—Application provision

157 Application

The amendments made by this Part apply to the 2008-09 income year and later income years.

Schedule 9—Transitional provision relating to court orders made before 1 July 2008

1 Assessments in relation to court orders made before 1 July 2008

- (1) The Registrar is not required, after 1 July 2008:
 - (a) to make an administrative assessment under Part 4A of the Assessment Act; or
 - (b) to amend an administrative assessment under section 75 of the Assessment Act;in respect of an order made, before that time, by a court under Division 4 of Part 7 of that Act.
- (2) If such an order will be in force immediately before 1 July 2008, the Registrar must:
 - (a) review the administrative assessment that relates to that order; and
 - (b) amend the assessment, or make an administrative assessment, (as the case requires) in accordance with regulations made for the purposes of this item.
- (3) For the purposes of this item, the regulations may specify how rights and obligations arising under an order made, before 1 July 2008, by a court under Division 4 of Part 7 of the Assessment Act correspond to rights and obligations under that Act as amended by:
 - (a) this Act; and
 - (b) the *Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Act 2007*.
- (4) The notice given under section 76 of the Assessment Act in relation to the assessment must (in addition to the requirements under that section) include, or be accompanied by, a statement to the effect that the party may apply, under section 116 of the Assessment Act, to a court having jurisdiction under that Act.
- (5) A contravention of subitem (4) in relation to a decision does not affect the validity of the decision.

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- (6) The Assessment Act (as amended by this Act) applies as if subsection 116(1) of that Act included the following paragraph:
- (ac) the assessment is amended or made under item 1 of Schedule 9 to the *Child Support Legislation Amendment (Reform of the Child Support Scheme—New Formula and Other Measures) Act 2006*;
- (7) To the extent that a person who applies to court under section 116 of the Assessment Act by virtue of subitem (6) of this item would not otherwise have special circumstances, the person is taken to have special circumstances for the purposes of that section.