Date Introduced: 1 June 1989
House: House of Representatives
Presented by: Hon. Neal Blewett, M.P., Minister for Community Services and Health

Digest of Bill

Purpose
To provide for the administrative assessment of child maintenance payments in accordance with the formula contained in the Bill.

Background
The Bill will implement the second stage of the Child Support program announced by the Minister for Social Security in March 1987. The first part of the scheme was implemented by the Child Support Act 1988 which provided for the collection of maintenance by the Child Support Agency which is controlled by the Commissioner of Taxation. The first part of the scheme therefore aimed to improve the collection of maintenance obligations.

Maintenance is currently assessed by two methods, agreement and through the courts. A number of difficulties have arisen when the latter approach must be taken, including the cost of initiating the proceedings and the lack of uniformity in the decisions. The introduction of an administrative assessment of the level of child maintenance payable aims to eliminate many of these problems. The development of a formula was referred to the Child Support Consultative Group, which released its report titled Child Support - Formula for Australia, in May 1988. The Group took the general approach that the formula 'should seek to approximate the situation where the parents live together by guaranteeing the child an appropriate share in his or her parents' income'.

In its simplest form, the formula will work by taking the non-custodial parents income, reducing that by a self support component and dividing the remainder by the relevant percentage (ranging from 18 - 36% depending on the number of children). There will also be provision for certain matters to be referred to a court, such as objections to the administrative decision, matters not covered by the formula (such as a child seeking maintenance), and cases where departure from the formula is sought. There will also be a limit on the amount of income that may be taken into account. It was recommended that the self supporting component be related to the rate of pension, with adjustments for dependent children.
The Group also stated 'The Group considers that complete reform in this area will not be achieved until a guaranteed minimum maintenance payment is established, but consideration of this is outside its terms of reference.'

The Commonwealth has no direct power regarding ex-nuptial children. However, under the Constitution, States may refer their powers to the Commonwealth or adopt Commonwealth law. In regard to the maintenance of ex-nuptial children, New South Wales, Victoria, South Australia and Tasmania have referred their powers to the Commonwealth. As the remaining States have not done so, the Bill will not apply to the maintenance of ex-nuptial children in those States.

Main Provisions

The Bill will apply to the maintenance of children in the Territories, New South Wales, Victoria, South Australia and Tasmania. It will only apply in the other States if they pass an Act adopting the scheme or refer their powers in this area to the Commonwealth (clause 12) or if the maintenance relates to the children of a marriage (clause 13). These provisions result from the Constitutional difficulties referred to above.

Part 2 of the Bill deals with who is an eligible child, and the Bill will apply only to eligible children (clause 16). There will be three categories of eligible children. Firstly, those born after the commencement of the Bill (clause 17). The second category are the children of parents who separated after the commencement of the Bill (clause 18). The third category is the brothers or sisters of eligible children (clause 20). The regulations may provide that children in care etc. under a child welfare law are not eligible children (clause 20).

Applications for the administrative assessment of child maintenance may be made only in respect of eligible children under 18 who are not married if the child is in Australia or is a citizen or ordinarily resident in Australia (clause 22).

Part 4 of the Bill deals with the assessment of child maintenance. The basic formula is contained in clause 33 and is the child support percentage multiplied by the adjusted income amount. The former are listed in clause 34 and depend on the number of children for whom the parent is liable. The percentages range from 18% for one child to 36% for five or more. The adjusted income amount is defined to be the child income support amount (the person’s taxable income for the previous year adjusted for inflation - clause 52) less the exempted income amount. The exempted income amount will be the single rate of social security pension for those without dependent children and, for those with dependent children, twice the annual married rate plus an additional amount equal to that which would be paid under the social security system for that number of dependent children. If the child will be 16 or over during the year, the additional amount allowed will be 25% of twice the annual married pension rate for that year (clause 36). The basic formula will be subject to any court order issued under proposed Part 5 (clause 32).
Proposed Division 2 of Part 4 deals with modifications to the basic formula. Where the child support income amount is less than or equal to the exempted income amount for a day, maintenance will not be payable in respect of that day (clause 38). Where the child income support amount exceeds 2.5 times the average weekly earnings (AWE), that amount will be taken to be 2.5 times AWE (clause 39).

Proposed Sub-Division D deals with custodial parents whose income exceeds a certain level. Where, in relation to a day, the custodial parents child support income amount (i.e. generally the daily rate of the previous years taxable income) exceeds their disregarded income amount (see below) the liable parents adjusted income amount in respect of that day will be reduced by the amount of the excess. The maximum reduction will be to 25% of the amount of child support that would otherwise be payable (clause 41). Clause 43 deals with the disregarded income amount. This will be the relevant AWE amount (the final AWE figure for the calendar year prior to the year in which the person receives the child support) plus an additional 11.5% of the AWE figure for the first child under six at the start of the child support year, 2.5% of AWE for each additional child under six, and 5% of AWE for those aged six to 12.

The situation where both parents have custody rights of a child or both have custody of separate eligible children, is dealt with in proposed Sub-Division E. The basic formula will apply with some modifications. The main differences will be that proposed Sub-Division D will not apply; the custody of a shared child is not to be taken into account when determining the exempted income amount; and a modified child support percentage table is to be used. The table will include percentages for half children (i.e. where people have joint responsibility for the child). The percentages for whole children will be the same as for the basic formula. Clause 46 provides for the offsetting of liabilities between the parents where they are liable to each other.

Where both parents are liable in respect of a child and the person with custody is entitled to support, proposed Sub-Division F will apply. The basic formula, as modified by proposed Sub-Divisions B and C if relevant, will apply, but the maximum rate in respect of a day will be limited to the amount calculated according to the formula 1.5 times the maximum possible child support liability (see below), divided by the combined liability amount (i.e. the daily rate of the sum of the annual amounts that would be payable except for this limit). The maximum possible child support liability will be the amount that would be payable if the child support income amount was 2.5 times AWE, the person has no dependent children and the person with custody is not a parent of the child concerned.

The final situation, where the parent is liable to two or more custodians, is dealt with in proposed Sub-Division G. The main difference to the application of the basic formula and its modifications, is that the child support percentage payable to each custodian will be the normal child support percentage multiplied
by the formula contained in clause 51. This is the number of children of the
liable parent in the custodian's charge divided by the total number of children
for which that parent is liable.

If an assessment is made, clause 61 will create the liability to pay that
amount. Child support in respect of a day in a month in which a person is
liable, will be payable by the seventh day of the following month (clause 62).

The jurisdiction of the Courts is dealt with in proposed Part 5. The Family
Court of Australia, State Family Courts and, subject to one of the parties being
ordinarily resident there, the Northern Territory Supreme Court, will have
jurisdiction under the Bill. As well, Courts with summary jurisdiction will be
able to hear matters under the Bill, although the Governor-General may specify
matters that are not to be heard in such Courts (clause 64). Appeals may be
made, with leave, to the Full Court of the Family Court or, with special leave
of the Court or a certificate from the Full Court of the Family Court that an
important matter of law is involved, to the High Court (clauses 67 and 69).

Applicants who have been refused administrative assessment may apply to a
Court with jurisdiction for a review of the decision (clause 71), as may those
ordered to contribute under administrative assessment (clause 72). Generally, an
application for review will not effect the administrative assessment until a
decision is made on the review. This will not occur in a State that has not
referred the appropriate powers to the Commonwealth if the application is made
under clause 72 on the grounds that the person is not the parent of the relevant
child (clause 75). Parties may also appeal on the grounds that an incorrect
assessment was made (clause 76).

Clause 83 deals with the matters a Court must be satisfied of to issue an
order for departure from administrative assessment. If the Court is satisfied
that at least one of the matters listed below is present and that the proposed
order would be just, equitable and proper it may make the order. The matters
include: that the capacity of either parent to support the child is
significantly reduced because of the duty to maintain another child or person;
the special needs of another child or person that the person has a duty to
maintain; or the commitments necessary to support themselves. The matters also
include: that there are high costs involved in maintaining the child due to
access arrangements, or the special needs of the child; and that the
administrative assessment would be inequitable having regard to the incomes,
earning capacity and financial resources of the parents (clause 83). Such orders
may, amongst other matters, vary the rate of child support, alter the various
components of the formula or make any provision allowed under the regulations
(clause 84).

Where a Court is of the opinion that a child is in urgent need of support,
it may make an order in relation to the provision of child support (clause 88).

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References

2. Ibid., p. 7.

For further information, if required, contact the Law and Government Group.

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Bills Digest Service
Legislative Research Service

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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