2004-2005-2006

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CHILD SUPPORT LEGISLATION AMENDMENT
(REFORM OF THE CHILD SUPPORT SCHEME – NEW FORMULA AND
OTHER MEASURES) BILL 2006

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Minister for Families, Community Services and Indigenous Affairs,
the Hon Mal Brough MP)
OUTLINE

This bill provides the legislative basis for stages 2 and 3 of the Government’s major overhaul of the Child Support Scheme, flowing from the recommendations of the Ministerial Taskforce on Child Support, chaired by Professor Patrick Parkinson, and following up the stage 1 reforms enacted earlier this year.

The bill includes the measures set out below.

- A new child support formula is provided, based on recent Australian research on the costs of caring for children, taking account of both parents’ incomes after equal self-support amounts are deducted, recognising care of a child for more than 14 per cent of the time, and treating first and second families more equally.

- The role of the Social Security Appeals Tribunal is being expanded to include independent review of child support decisions, providing a review mechanism that is inexpensive, fair, informal and quick.

- The relationship between the courts and the new Child Support Scheme will be simplified. Parents will have better access to court enforcement of child support debts and courts will have increased powers to seek information and evidence in those cases and to make interim arrangements for their child support cases generally.

- The family tax benefit Part A maintenance income test will be changed so payments are reduced only for those children in the family for whom child support is paid.

- More flexible arrangements, with better legal protection, will be made for parents who want to make agreements between themselves about the payment of child support and for how lump sum payments are treated.

- The income definitions for certain tax-free amounts, foreign income and fringe benefits, as used to calculate child support on the one hand and family tax benefit and child care benefit on the other, will be aligned.

- Resident parents will keep all of their family tax benefit where a non-resident parent has care of their child for less than 35 per cent of nights in a year. Non-resident parents who have care of their child for at least 14 per cent will continue to be eligible for the rent assistance component of family tax benefit Part A and will continue to be eligible for a health care card.
• The minimum child support payment of about $6.15 per week will now, for non-resident parents who pay child support to two or more families, have to be paid to each of those families, rather than being divided between them. Parents who deliberately minimise their income to avoid paying child support will generally have a $20 per child per week minimum payment.

• Parents who are using income from second jobs and overtime to help re-establish themselves during the first three years after separation may have that income excluded from child support calculations.

• A simplified process will allow parents to suspend child support payments for a period of six months if they reconcile, and then resume the payments should they separate again, without having to apply anew.

• Parents who have financial responsibility for a step-child in a second family will now be able to apply to have the step-child considered when calculating child support for the parent’s first family, if no-one else can financially support the step-child.

• The processes and rules for ‘changes of assessment’ will be made simpler and clearer for parents.

The Social Security Appeals Tribunal and court-related measures (stage 2 of the reforms) will commence on 1 January 2007. The new child support formula and remaining measures (stage 3 of the reforms) will commence on 1 July 2008

Financial impact statement

<table>
<thead>
<tr>
<th>Financial impact</th>
<th>Total resourcing</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006-07</td>
<td>$9.5 m</td>
</tr>
<tr>
<td>2007-08</td>
<td>$36.4 m</td>
</tr>
<tr>
<td>2008-09</td>
<td>$143.1 m</td>
</tr>
<tr>
<td>2009-10</td>
<td>$131.3 m</td>
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NOTES ON CLAUSES

Clause 1 sets out how the Act is to be cited, that is, the Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006.

Clause 2 provides a table that sets out the commencement dates of the various sections in, and Schedules to, the Act.

Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.

Clause 4 enables the Registrar to obtain information from a person where it is reasonably necessary to do so for the purposes of this amending Act.

This Explanatory Memorandum uses the following abbreviations:

- ‘Child Support Registration and Collection Act’ means the Child Support (Registration and Collection) Act 1988;
- ‘Family Assistance Act’ means the A New Tax System (Family Assistance) Act 1999;
- ‘Family Assistance Administration Act’ means the A New Tax System (Family Assistance) (Administration) Act 1999;
- ‘Social Security Act’ means the Social Security Act 1991;
- ‘Social Security Administration Act’ means the Social Security (Administration) Act 1999; and
Schedule 1 – The formulas

Summary

This Schedule repeals Part 5 of the Child Support Assessment Act and replaces it with a new Part 5 that provides a new series of child support formulas. The new formulas are based on recent Australian research on the costs of caring for children, taking account of both parents’ incomes after equal self-support amounts are deducted, recognising care of a child for more than 14 per cent of the time, and treating first and second families more equally.

Background

The new administrative assessment adopts an ‘income shares’ approach to calculating the costs of raising children and sharing these costs fairly between parents. It involves working out the combined incomes of the parents, determining the costs of the parents’ children by reference to their combined incomes, then distributing those costs between the parents in proportions equal to their share of the combined income, taking into account the contribution to the costs of the children they may make through providing care for the children.

Part 5 recognises that sometimes only one parent’s income can be used for an assessment, for example, where the other parent is deceased or is not able to be found. In these situations, if a non-parent carer is providing care for a child, the surviving, or available, parent’s income only is used for the assessment.

Child support assessments will be based on the actual costs of children, which have been determined according to Australian research showing that, as parental income rises, spending on children rises in dollar terms but falls as a percentage of income, and that expenditure on children increases as they get older. The costs of children for Part 5 represent the best estimate of the amount that parents, on average, spend on their children according to their income.

Explanation of the changes

Item 1 repeals Part 5 of the Child Support Assessment Act and substitutes it with new Part 5.

INTRODUCTORY MATTERS

Part 5 has nine Divisions, which deal with:

- the simplified outline of the new assessment scheme (Division 1);
- the formulas used for assessing child support (Division 2);
- the child support income used in an assessment (Division 3);
- the amount of care that a parent or non-parent carer provides for their child (Division 4);
- other elements of the formulas (Division 5);
- the costs of the child (Division 6);
- assessments and estimates of adjusted taxable income (Division 7);
- general provisions relating to making assessments (Division 8); and
- liability to pay child support as assessed (Division 9).

A number of defined terms is used for the purposes of assessing child support under Part 5 and following is a glossary of these terms.

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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</thead>
<tbody>
<tr>
<td>Carer entitled to child support</td>
<td>A parent, or non-parent, carer who is entitled to be paid child support as a result of an administrative assessment.</td>
</tr>
<tr>
<td>Care period</td>
<td>A period of 12 months used to determine the amount of care a person provides for a child (section 48).</td>
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<tr>
<td>Child support case</td>
<td>The total of all the assessments of child support for all children who have the same parents (section 5). For example, if Joe has two children with his ex-partner, Susan, and is assessed for child support in respect of these children, this is one child support case. If Joe has another child with a different ex-partner, Nita, and is assessed in respect of this child, this is another child support case. Joe therefore has two child support cases.</td>
</tr>
<tr>
<td>Child support income</td>
<td>The income used to determine the costs of a child. It is made up of adjusted taxable income (section 43) minus a self-support amount (section 45) and, if relevant, minus a relevant dependent child amount (section 46) and/or a multi-case allowance (section 47).</td>
</tr>
<tr>
<td>Child support percentage</td>
<td>The parent’s income percentage minus their cost percentage (section 55D)</td>
</tr>
<tr>
<td>Child support period</td>
<td>The period of time for which a child support assessment applies (section 7A).</td>
</tr>
<tr>
<td>Combined child support income</td>
<td>The sum of each parent’s child support income (section 42).</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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<tr>
<td>Costs of a child</td>
<td>The costs of a child measured by reference to the parents' incomes, or parent's income, where relevant (sections 55G and 55H).</td>
</tr>
<tr>
<td>Costs of the Children Table</td>
<td>The table that provides how much children cost by reference to their parents' combined incomes, or parent's income where relevant (section 5 and Schedule 1).</td>
</tr>
<tr>
<td>Cost percentage</td>
<td>The percentage of the costs of a child that a parent meets by providing care, worked out in accordance with the table in section 55C (section 5).</td>
</tr>
<tr>
<td>Eligible carer</td>
<td>A person who has at least shared care of a child, that is, at least 35% (section 7B).</td>
</tr>
<tr>
<td>Income percentage</td>
<td>Each parent’s proportion of their combined child support income (section 55B).</td>
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<tr>
<td>Liable parent</td>
<td>A parent who is required to pay child support to a carer or carers for a child support case following an assessment (section 5).</td>
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<tr>
<td>Multi-case allowance</td>
<td>The total of the multi-case child costs for all the children who are not in the particular child support case being assessed (section 47).</td>
</tr>
<tr>
<td>Multi-case cap</td>
<td>The parent’s multi-case child costs for a particular child minus the parent’s cost percentage for this child (section 55E).</td>
</tr>
<tr>
<td>Multi-case child costs</td>
<td>The costs of each of a parent’s child support children in all of their child support cases, based on this parent’s income only (section 47, Step 4).</td>
</tr>
<tr>
<td>Non-parent carer</td>
<td>A person who has at least 35% care of a child, but who is not a parent, or the partner of a parent, of a child in respect of whom an assessment is made (section 5).</td>
</tr>
<tr>
<td>Parenting plan</td>
<td>A parenting plan as defined under section 63C of the Family Law Act.</td>
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</tbody>
</table>
Percentage of care
The amount of care a parent is likely to have for their child over a 12 month period, expressed as a percentage (section 48).

Post separation costs
The amount by which a parent’s adjusted taxable income for a year can be reduced in respect of a particular child if, within three years of separating from the other parent of the child, the parent earns additional income (section 44).

Regular care
Care provided for a child that is between 14% and less than 35% (section 5).

Relevant dependent child amount
The cost a parent incurs for a biological or adoptive child that lives with them and is not the subject of an administrative assessment (section 46).

Self-support amount
The amount deducted from a parent’s adjusted taxable income for their own support (section 45).

Shared care
Care for a child that is at least 35% and not more than 65% (section 5).

THE DIVISIONS IN PART 5

Division 1 - Simplified outline
Section 35A sets out a simplified outline for Part 5. It provides that Part 5 includes all the formulas for assessing the annual rate of child support payable by a parent for a child in a child support period (other than in cases where the rate is worked out in accordance with a child support agreement, a Registrar’s determination under Part 6A or a court order).

Section 35A also provides that the Costs of the Children Table in new Schedule 1 to the Child Support Assessment Act sets out the costs to the parents to raise children in various age ranges. These costs are to be met by both parents, either by paying child support or caring for their children, according to each parent’s capacity to meet the costs. The Costs of the Children Table is to be published by the Secretary each year.

The costs of the children are to be met by both parents (either by paying child support or 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.
Section 35A notes that, generally, both parents’ income is taken into account to determine each parent’s capacity to pay for the costs of their children.

The formulas also allow child support to be worked out for non-parent carers.

Finally, section 35A points out that, in some cases, the annual rate of child support payable by a parent is assessed under Subdivision B of Division 8, which deals with annual rates of child support payable by parents on low incomes and minimum rates of child support.

**Division 2 – The formulas**

*Division 2, Subdivision A – Simplified outline*

Section 35B provides a simplified outline of Division 2.

The outline provides that the Costs of the Children Table in Schedule 1 to the Child Support Assessment Act, published by the Secretary each year, sets out the costs to parents of raising children in various age ranges. These costs are to be met by both parents either by paying child support or caring for their children, according to each parent’s capacity to meet the costs.

The outline then refers to the six formulas in Part 5. It provides that Formula 1 applies if both parents’ incomes are taken into account to determine each parent’s capacity to meet the costs of their children, each parent only has one child support case and there is no non-parent carer involved in the assessment. Formula 2 applies if both parents’ incomes are taken into account to determine each parent’s capacity to meet the costs of their children, each parent only has one child support case and at least one non-parent carer is involved in the assessment. Formulas 3 applies if both parents’ incomes are taken into account to determine each parent’s capacity to meet the costs of their children, at least one of the parents has multiple child support cases and there is no non-parent carer involved in the assessment. Formula 4 applies if both parents’ incomes are taken into account to determine each parent’s capacity to meet the costs of their children, at least one of the parents has multiple child support cases and there is at least one non-parent carer involved in the assessment. Formula 5 applies if one parent’s income only is taken into account to determine that parent’s capacity to meet the costs of their children (for example, because the other parent is not a resident of Australia). Formula 6 applies if one parent is deceased and the surviving parent’s income only is taken into account to determine that parent’s capacity to meet the costs of their children.
Section 35C provides that the formulas contained in Part 5 are used in the administrative assessment of child support that a parent is to pay for a child, unless there is a departure determination made by the Registrar (Part 6A of the Child Support Assessment Act), a court order for departure from the administrative assessment in special circumstances (Division 4 of Part 7 of the Child Support Assessment Act) or any provisions of a child support agreement made between parents that have effect, for the purposes of Part 5, as if they were such an order made by consent. This maintains the current rule in section 35 of the Child Support Assessment Act.

The six formulas in Division 2 use a number of key concepts, largely contained in Divisions 3, 4, 5 and 6 of Part 5, which would be usefully described at this point before turning to the operation of the formulas. Consequently, these Divisions will be dealt with before dealing with the formulas in Division 2 in detail.

**Division 3 – Child support income**

*Division 3, Subdivision A – Preliminary*

Section 40E sets out a simplified outline of Division 3. It provides that the income used to determine a parent’s capacity to meet the costs of their children will be reduced by:

- a self-support amount, to take account of parents’ needs to support themselves;
- a relevant dependent child amount if the parent cares for a relevant dependent child;
- 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.

The outline then notes that either parent’s adjusted taxable income for a year can be reduced (under section 44) in respect of a particular child if, within three years of separating from the other parent of the child, the parent earns additional income (called post-separation costs).

*Division 3, Subdivision B - Child support income and combined child support income*

Subdivision B of Division 3 provides rules for determining a parent’s child support income and the parents’ combined child support income.

**The parent’s child support income**

Section 41 sets out how to work out a parent’s child support income.
Subsection 41(1) provides that if a parent is to be assessed in respect of only one child support case and has no relevant dependent children, the parent’s child support income is their adjusted taxable income minus the self-support amount.

Subsection 41(2) provides that where a parent is to be assessed in respect of only one child support case, and they have at least one relevant dependent child, the parent’s child support income is their adjusted taxable income minus the self-support amount and minus an amount to recognise the costs to the parent of the relevant dependent child living with them, called the relevant dependent child amount. The relevant dependent child amount is calculated in accordance with section 46.

Subsection 41(3) provides that if a parent is to be assessed in respect of more than one child support case and they do not have a relevant dependent child, the parent’s child support income is their adjusted taxable income minus the self-support amount and minus a multi-case allowance to recognise the costs to the parent of children in another child support case. The multi-case allowance is calculated in accordance with section 47.

Subsection 41(4) provides that where a parent is to be assessed in respect of more than one child support case and they have at least one relevant dependent child, the parent’s child support income is their adjusted taxable income minus the self-support amount minus their relevant dependent child amount minus their multi-case allowance.

Subsection 41(5) provides that a parent’s child support income is taken to be nil if the amount worked out under any of subsections 41(1) to (4) is negative.

**The parent’s combined child support income**

Section 42 provides that the parents’ combined child support income is worked out by adding together each parent’s child support income.

Division 3, Subdivision C – Working out the components of child support income

Subdivision C of Division 3 provides for how to work out the components of child support income, that is, adjusted taxable income, post-separation costs, the self-support amount, the relevant dependent child amount and the multi-case allowance.

**Adjusted taxable income**

Section 43 deals with a parent’s adjusted taxable income, which, essentially, is calculated in the same way as it is under the current scheme. Section 43 provides that it is made up of the following components for the last relevant year of income (as defined in section 5 of the Child Support Assessment Act):

- the parent’s taxable income (paragraph 43(1)(a);
- the parent’s reportable fringe benefits total (paragraph 43(1)(b);
- the parent’s target foreign income (paragraph 43(1)(c);
- the parent’s net rental property loss (paragraph 43(1)(d); and
- the total of certain tax free pensions and benefits received by the parent (paragraph 43(1)(e).

Taxable income (defined in section 56 of the Child Support Assessment Act) and reportable fringe benefits amounts are defined in the same way as they are in the current scheme (in section 5 of the Child Support Assessment Act). The term target foreign income is replacing the term exempt foreign income to ensure that, as much as possible, consistent terminology is used both for family assistance law and child support law. The definition of target foreign income is also being aligned with the definition of target foreign income in the family assistance law. Similarly, the term rental property loss is being replaced with the family assistance term net rental property loss for consistency. However, no changes are made to how it is calculated.

To also align the calculation of income for child support purposes with family tax benefit treatment, certain non-taxable income support payments will now be included in a person’s income. Under the family assistance law, certain pensions and benefits that are income tax exempt are included in the calculation of income for determining a person’s entitlement to family tax benefit. Including these income payments in the calculation of adjusted taxable income recognises that, although many parents who receive these payments may not be able to work at all, some have a capacity to contribute to the costs of their children, and these resources should therefore be included in their available income. Item 57 in Schedule 2 inserts a definition, into section 5 of the Child Support Assessment Act, of tax free pension or benefit that lists the benefits and pensions to be included in adjusted taxable income and also provides that it is only included in a person’s adjusted taxable income to the extent that it is exempt from tax and is not a payment by way of bereavement allowance, pharmaceutical allowance, rent assistance, language, literacy and numeracy supplement or remote area allowance. This mirrors the extent to which these payments are treated as income in the family assistance law.

A note at the end of subsection 43(1) provides that other provisions that relate to a person’s adjusted taxable income are section 34A and Subdivisions B and C of Division 7. A second note points out that the components of adjusted taxable income (set out in paragraphs 43(1)(a) to (e)) are defined in section 5.

Subsection 43(2) provides that if the Registrar amends an assessment under section 44, then for the purposes of the assessment, the person’s adjusted taxable income is the amount determined by the Registrar.

Further detail about assessments and estimates of adjusted taxable income is dealt with in Division 7.
Post-separation costs

Section 44 sets out how post-separation costs are to be assessed. It recognises that a parent may have extra costs to re-establish themselves following separation from the other parent of their child, whether they provide care for the child or not. As a result of these extra costs, a parent may take on overtime work or a second job. The parent’s child support liability should not necessarily be increased as a result of this extra income. However, as a parent’s costs to re-establish himself or herself diminish over time, section 44 is limited to the first three years after the parents last separated before the commencement of the child support case. Section 44 allows a new three-year period from a subsequent separation to be considered under an application so long as the other requirements are met. Subsequent separations from a different partner will attract a new three-year period if the parent has a child support case with that parent. That is, the parent would make an application in accordance with this section in relation to the new child support case. Parents will have to reapply for the lower level of income for each new child support period if applicable.

Subsection 44(1) provides that a parent (the applicant) may apply to the Registrar to amend an assessment of child support for a child for part of a child support period if certain criteria are met. These criteria are that:

(a) the applicant and the other parent lived together on a genuine domestic basis for at least six months; and
(b) the last separation of the applicant and the other parent before the application for administrative assessment was made occurred within the last three years; and
(c) at the time of the application, the applicant and the other parent remain separated; and
(d) in the last relevant year of income, the applicant earned, derived or received income in accordance with a pattern of earnings that was established after the applicant and the other parent last separated (see paragraph 44(1)(b)), and that would not have been reasonable to expect in the ordinary course of events. Income that would have been earned in the normal course of events, such as an annual pay rise, is not additional income for the purposes of paragraph 44(1)(c). An application for the lower level of income may not be necessary if, for example, the income pattern has reverted to what it was before the parents separated.

Subsection 44(2) provides that if the applicant makes an application, the Registrar may determine that the applicant’s adjusted taxable income for the child for a day in the child support period is an amount that excludes the income referred to in paragraph 44(1)(d). That is, the Registrar may set the applicant’s income at a level lower than that currently being used in the child support assessment.

Subsection 44(3) provides that the Registrar may only make a determination under subsection (2) 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. Where reducing the
applicant’s income by all of the additional amount would reduce it
by more than 30%, the Registrar can reduce it by 30%. This is
consistent with the current policy treatment of extra income in the
change of assessment process and ensures that children receive
an adequate amount of child support; and
(b) applies in respect of a day in a child support period that is less than
three years after the day on which the applicant and the other
parent last separated as mentioned in subsection 44(1)(b).

Paragraph 44(3)(b) applies as set out in the following example:

Ted has an income of $30,000 at the date of separation from his wife.
After separation, his income increases to $60,000 as he takes on a
second job. His child support liability is assessed on $60,000, as that
was his income for last relevant year of income. Ted can apply to have
his income set at $30,000 rather than $60,000, the extra $30,000 being
additional income earned for re-establishment costs. However, even if
his application is successful, his current income used in the assessment,
that is, $60,000, can only be reduced by a maximum of 30%. Therefore,
his income would be set at $42,000. Ted has $18,000 quarantined from
his income before the self-support component is deducted and his
children receive child support based on an income for him of $42,000.

Subsection 44(4) provides that 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.

Subsection 44(5) provides that if the Registrar refuses to amend an
assessment under subsection 44(1), the Registrar must serve written notice of
the decision on the parent who made the application. Subsection 44(6)
provides that the notice must include, or be accompanied by, a statement to
the effect:

(a) that the parent may, subject to the Child Support Registration and
Collection Act, object to the particulars of the assessment in
relation to which the parent sought to make the application; and
(b) that if the parent is aggrieved by the decision, he or she may,
subject to the Child Support Registration and Collection Act, apply
to the SSAT for review of the decision.

Item 11 of the table in subsection 80(1) provides that a person may object to
the particulars of an administrative assessment.
Subsection 44(7) provides that section 44 does not affect the operation of section 160 (notification requirements) or prevent the Registrar from making a new assessment for part of the child support period. A note at the end of the section provides that section 44 does not limit the power under section 75 to amend assessments.

**Self-support amount**

As with the current scheme, the self-support amount recognises the costs to the parents of supporting themselves. However, the self-support amount under the current scheme is considered too low, arguably creating a disincentive for paid work. Consequently, the self-support amount is being increased to an amount equal to 1/3rd of Male Total Average Weekly Earnings (MTAWE). In September 2005 MTAWE was $50,378, which would have made the self-support amount for 2006 $16,793. This self-support amount is defined in section 45, which also provides that the MTAWE figure to use in the calculation is the annualised MTAWE figure for the relevant September quarter. A note at the end of section 45 advises the reader that a parent’s self-support amount can be varied by a Registrar-initiated determination (under section 98S) or a court order (under section 118), as is currently the case. If a parent’s adjusted taxable income is less than the self-support amount, their child support income will be nil (subsection 41(5)), as only income above the self-support amount is taken into account for the assessment of child support.

**Relevant dependent child amount**

Under the new scheme, all biological and adoptive children are to be treated as equally as possible. Consequently, where a parent has a biological or adoptive child living with them, who is not the subject of a child support assessment, an amount is deducted from the parent’s adjusted taxable income to recognise the parent’s costs for supporting this child. This amount is called the *relevant dependent child amount*. In determining the costs of the relevant dependent child, the parent’s income only is taken into account, not the income of a new partner, as it is only the parent’s share of that child’s costs that need to be deducted from their income.

The method for calculating the relevant dependent child amount is set out in the method statement in section 46 and is determined in accordance with the following steps.

**Step 1:** work out the parent’s adjusted taxable income and the parent’s self-support amount.

**Step 2:** determine the percentage of care that the parent is likely to have of the relevant dependent child during the next 12 months (see section 48). This step recognises that, although the relevant dependent child is not a child who is the subject of another child support assessment, they may be cared for part of the time by another person. If so, the cost of this child to the parent should be reduced to reflect that the parent does not meet the costs entirely.
Step 3: work out the parent’s cost percentage for the child (see section 55C).

Step 4: determine the costs of the child, in accordance with sections 55G and 55H, as if the parent’s annual rate of child support were assessed under Subdivision D of Division 2, based on the income of the parent from Step 1, and as if references to children in the child support case in sections 55G and 55H were references to all of the parent’s relevant dependent children. The reference to Subdivision D of Division 2 ensures that subsection 55G(2) applies in working out the costs of the child, that is, that the parent’s child support income alone is used to determine the costs (not the income of their new partner or other parent).

Step 5: determine the relevant dependent child amount by using the following formula:

\[
\text{Parent’s cost percentage} \times \frac{\text{Costs of the child under step 3}}{\text{Costs of the child under step 4}}
\]

The operation of the formula in this step means that the cost of the relevant dependent child to the parent is the proportion of the total costs of the child that the parent bears through care of the child. If the parent has 100% care of the child, their relevant dependent child amount is 100% of the costs of the child. If the parent has, for example, 85% care of the child, their cost percentage is 76% (worked out under section 55C) and they will be taken to be meeting 76% of the child’s costs.

A note at the end of the section points out that section 73A deals with the situation where the Registrar discovers, after having made an assessment, that the parent has a relevant dependent child.

Example 1 – Working out a parent’s relevant dependent child amount
Johanna has a child support case for her daughter Helga, and also has two relevant dependant children, Mitchell, aged 14, and Frida, aged 11, in a new family. Mitchell and Frida live with Johanna and her new partner 100% of the time.

When Johanna is assessed for child support, a relevant dependent child amount is deducted from her income to recognise her responsibility for Mitchell and Frida. Johanna’s adjusted taxable income is $36,000.

Step 1: Work out the difference between the parent’s adjusted taxable income and their self-support amount. Johanna’s adjusted taxable income is $36,000 and her self-support amount is $16,883, so the amount worked out under this step is $19,117.
Step 2: Work out the parent’s percentage of care for the relevant dependent children. Mitchell and Frida live with Johanna full-time, so her percentage of care is 100%.

Step 3: Work out the parent’s cost percentage for the relevant dependent children. Johanna has 100% care of Mitchell and Frida so her cost percentage is 100%.

Step 4: Work out the costs of the children as if calculating the costs using sections 55G and 55H and as if subsection 55G(2) applied, that is, using Johanna’s child support income only. These sections say to calculate the cost by looking up the appropriate item in the Costs of the Children Table to find the costs of all the children. According to the Costs of the Children Table, the total cost of Mitchell and Frida is $5,066, so the cost of each child is $2,533.

Step 5: Work out the parent’s relevant dependent child amount by adding up the amount for each child obtained by multiplying that child’s cost by the parent’s cost percentage for that child. Johanna has a cost percentage of 100% for each child, and the cost for each child is $2,533, giving an amount for each child of $2,533. This makes Johanna’s relevant dependent child amount $5,066.

Multi-case allowance (section 47) and multi-case cap (section 55E)

Some parents have more than one child support case, that is, they have children with more than one ex-partner. It is intended that no parent be expected to pay in child support more than their children would cost if they all lived together in one household with the parent, even if the children were born to different ex-partners. The use of the income shares model to assess child support means that this intention needs to be achieved using two separate mechanisms.

First, the child support income that is used to calculate a parent’s child support liability in each case is reduced by an amount, called a multi-case allowance, to recognise the parent’s obligations to the children in their other child support cases. Second, a multi-case cap is applied to the parent’s liability in respect of each child for whom they are being assessed to ensure they do not pay more in child support than if the children all lived together. To ensure that children in multiple cases receive a fair amount of child support, only one of these mechanisms operates for any one child, such that where the multi-case cap applies for a child, the multi-case allowance is not deducted from the parent’s income when calculating the multi-case cap for that child.
The multi-case allowance is calculated by working out the costs of each of the parent's child support children based on their income alone, according to the same Costs of the Children Table used to assess child support. This amount is the multi-case child costs for each child. The total of the multi-case child costs for all the children who are not in the particular child support case being assessed becomes the parent's multi-case allowance for the case being assessed and is deducted from the parent's adjusted taxable income for this case. This reduction in the parent's adjusted taxable income recognises that the parent bears the costs of the other child support children either through paying child support or through providing care, and that this income is therefore not available when calculating child support for the children in this case.

The multi-case cap is the parent's multi-case child costs for a particular child less their cost percentage for that child. This is because the cap recognises that the parent may be bearing some of the child's cost through regular or shared care, and this portion of the cost must be deducted from the amount payable to find the appropriate child support amount, whereas the multi-case allowance assesses the total cost. The parent will pay in child support the lesser of the amount assessed under the formula for a particular child and the multi-case cap. This ensures that the parent does not pay more than the child would cost the parent if all the children lived in the parent's household.

The method for calculating the multi-case allowance is set out in section 47 and is determined in accordance with the following steps.

Step 1: work out the parent’s adjusted taxable income and deduct from this the self-support amount.

Step 2: if the parent has a relevant dependent child amount, deduct this amount from the result in Step 1, to recognise the costs to the parent of this dependent child. The amount determined from this step is the parent’s child support income for calculating the costs of the multi-case children.

Step 3: determine the costs of all the children (called the multi-case children) for whom the parent is assessed in all child support cases. This is calculated using sections 55G and 55H. Step 3 works with the effect that only the child support income of the parent being assessed for the multi-case allowance is relevant to determining the costs of the children and, also, as if the references in sections 55G and 55H to children in a child support case were references to all of the parent’s multi-case children. The multi-case allowance uses one parent’s income only because it is assessing only that parent’s obligations to their child support children.

Step 4: work out the parent’s multi-case child cost for each child by dividing the cost of the multi-case children worked out under Step 3 by the total number of multi-case children. This result is the amount that each multi-case child would cost on this parent’s income alone if they all lived in the parent’s household.
Step 5: the parent’s multi-case allowance for a particular child in a child support case is the product of the multi-case child costs from Step 4 and the number of multi-case children in the parent’s other child support cases.

When calculating the parent’s child support income for the purposes of assessing how much they should pay in child support for a particular child, the amount of the multi-case allowance is then deducted from the parent’s income. This has the effect of deducting the costs of the children in the other child support cases from the parent’s income when calculating child support for this particular child. When child support is calculated for the other cases, the same process applies, so that the cost of this first child is excluded from the parent’s income when assessing the other cases.

Example - Working out multi-case allowances
Ari has two child support cases, with two children, Tara, aged 11, and Maya, aged 9, in one case, and one child, Aron, aged 5, in the other case. He has 24% care of Tara and Maya, but less than 14% care of Aron. Ari’s adjusted taxable income is $40,000, and he has no relevant dependent children.

When calculating Ari’s child support for Tara and Maya, Ari has a multi-case allowance to recognise his responsibility for Aron. When calculating Ari’s child support for Aron, Ari has a multi-case allowance to recognise his responsibility for Tara and Maya.

Calculating the multi-case costs of Tara, Maya, and Aron
Step 1: Work out Ari’s adjusted taxable income minus his self-support amount. Ari’s adjusted taxable income is $40,000 and his self-support amount is $16,883, so the amount worked out under this step is $23,117.

Step 2: Ari has no relevant dependent children, so he has no relevant dependent child amount.

Step 3: Work out the costs of all the children (the multi-case children) for whom Ari is assessed using sections 55G and 55H, as if he is being assessed for child support on his income only (that is, as if subsection 55G(2) applied) and as if references to children in a child support case were references to all Ari’s multi-case children.

Then, calculate the cost of the children by looking up the appropriate item in the Costs of the Children Table to find the costs of all the children. According to the Costs of the Children Table, the total cost of Tara, Maya and Aron is $6,242.

Step 4: Work out Ari’s multi-case child costs by dividing the cost of the children from Step 3 by the total number of children. $6,242 divided by three gives a cost per child of $2,081, which is the multi-case child costs for each child.
Calculating child support for Tara and Maya

Step 5: When calculating Ari’s child support for Tara and Maya, Ari has a multi-case allowance to recognise his responsibility for Aron. This multi-case allowance is the multi-case child costs from Step 4 multiplied by the number of children in other child support cases. There is one child in another child support case, Aron, so Ari’s multi-case allowance when calculating child support for Tara and Maya is $2,081 multiplied by 1, or $2,081.

Calculating child support for Aron

Step 6: When calculating Ari’s child support for Aron, Ari has a multi-case allowance to recognise his responsibility for Tara and Maya. This multi-case allowance is the multi-case child costs from Step 4 multiplied by the number of children in other child support cases. There are two children in another child support case, Tara and Maya, so Ari’s multi-case allowance when calculating child support for Aron is $2,081 multiplied by 2, or $4,162.

Section 55E sets out how to work out the multi-case cap in respect of a particular child. Subsection 55E(1) provides that the multi-case cap is to be used if the parent is to be assessed in another child support case, that is, they have multiple child support cases, and either of the following applies:

- The parent’s annual rate of child support for a particular child is to be assessed under section 37 (Formula 3) or section 38 (Formula 4) and, in applying these formulas, the parent has a positive child support percentage for that particular child under Step 6 of the method statement in section 35.
- The parent’s annual rate of child support for a particular child is to be assessed under section 39 (Formula 5) or section 40 (Formula 6).

Subsection 55E(2) provides that the multi-case cap is to be worked out according to the following formula:

\[
\left( \frac{\text{Parent’s cost percentage}}{100} - \text{for the particular child for the day} \right) \times \text{Multi-case child costs for the particular child for the day}
\]
The multi-case cap for each child is the multi-case child costs for each child, minus the costs that the parent bears directly through care (their cost percentage). This is calculated by subtracting the parent’s cost percentage from 100% (to determine the cost that they are not bearing directly) and multiplying this percentage by the multi-case child costs. The effect of this is that the cap recognises that the parent may be bearing some of the child’s cost through regular or shared care, and this portion of the cost must be deducted from the cost to find the appropriate child support amount, whereas the multi-case allowance assesses the total cost. The parent will pay in child support the lesser of the amount assessed under the formula for a particular child and the multi-case cap. This ensures that the parent does not pay more than the child would cost if all the children lived in the parent’s household.

Example - Working out the multi-case cap
Using the immediately preceding example, because Ari has more than one child support case, the amount of child support that he can pay for each child is capped by the multi-case cap.

This ensures that Ari does not bear a greater cost for each child than he would if all the children were living with him. The multi-case cap therefore takes account of costs that Ari bears directly through care as well as the child support he pays.

The multi-case cap for each child is the multi-case child costs for each child, minus the costs that Ari bears directly through care. This is calculated by subtracting his cost percentage from 100% (to determine the cost that he is not bearing directly) and multiplying this percentage by the multi-case child costs. The multi-case child costs for each child is worked out in section 47 and is $2,081 for each of Ari’s children (see example immediately before this one).

Ari has 24% care of Tara and so has a 24% cost percentage for her. Ari’s multi-case cap for Tara is therefore $2,081 multiplied by (100%-24%), or $2,081 multiplied by 76%. This makes Ari’s multi-case cap for Tara $1,582.

Ari has 24% care of Maya and so has a 24% cost percentage for her. His multi-case cap for Maya is therefore $2,081 multiplied by (100%-24%), or $2,081 multiplied by 76%. This makes Ari’s multi-case cap for Maya $1,582.

Ari has less than 14% care of Aron and so has a 0% cost percentage for him. His multi-case cap for Aron is therefore $2,081 multiplied by (100%-0%), or $2,081 multiplied by 100%. This makes Ari’s multi-case cap for Aron $2,081.

Division 4 – Percentage of care

Division 4 deals with matters relating to the care a parent, or non-parent carer, provides for a child.
Division 4, Subdivision A – Simplified outline

Subdivision A of Division 4 deals with preliminary matters for the Division. Section 47A sets out a simplified outline of the Division. It provides that a parent’s or non-parent carer’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 a 12 month period.

A percentage of care for the 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 by a court order.

The Registrar can make a determination of a parent’s percentage of care for a child in certain cases (such as if there is no such agreement, plan or order, or if the 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 of the child.

A non-parent carer’s cost percentage for a child is used in section 40A to work out how much child support the non-parent carer is entitled to for the child.

Section 47B provides that, for the purposes of this division, court order means one of the following:

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

Division 4, Subdivision B – Determining percentages of care

Subdivision B of Division 4 deals with how to determine percentages of care for a care period.

Percentage of care

Section 48 provides that a person’s percentage of care for a day in a child support period is the percentage of care of the child that the person is likely to have for a child during a period of 12 months, called the care period. Paragraph 48(1)(a) states that the care period will start from the day on which an application for an assessment of child support is made (under section 25 or 25A). Alternatively, it may start on one of the following days:
The day the Registrar becomes aware of a change in care arrangements that results in a change of at least 7.1%, that is, the equivalent of one night per fortnight (subparagraph 48(1)(b)(i)). This threshold level of change allows for minor fluctuations in the care arrangements (for example, due to illness), which do not constitute a significant change to the pattern of care.

The day the Registrar becomes aware of a change in care arrangements that results in a parent either starting to have, or ceasing to have, 14% care of the child (subparagraphs 48(1)(b)(ii) and (iii)). This rule applies because, at this level of care, the parent is recognised as meeting 24% of the costs of the child. However, if care is below 14%, the parent is taken not to be incurring any costs for the child. It would be inequitable to not recognise that these costs are incurred by the parent as soon as they start to provide 14% care. Equally it would be inequitable to assume that the parent continued to meet those costs when their care fell below 14%.

The change in care is measured in relation to the 12 months from the date the Registrar is notified or becomes aware of the change.

A note at the end of subsection 48(1) advises the reader that, by virtue of subsection 75(2), the Registrar is not entitled to amend an administrative assessment in respect of a person’s percentage of care unless the Registrar become aware of an event mentioned in paragraph 48(1)(b). A further note at the end of subsection 48(2) advises the reader that the Registrar will generally rely on nights to calculate the percentage of care. However, this will not always be the case. For example, where there is daytime care or a mixture of daytime and night time care, the Registrar may take this into account in determining the percentage of care.

Subsection 48(2) provides that a person’s percentage of care is to be worked out in this Subdivision B.

Subsection 48(3) provides a rounding rule for percentage of care calculations. It states that if a person’s percentage of care worked out in accordance with Subdivision B is not a whole percentage, it is to be rounded up to the nearest whole percentage if it is greater than 50% and rounded down to the nearest whole percentage if it is less than 50%.

Section 49 provides that, generally, the percentage of care, if any, that a parent or non-parent carer is likely to have will be determined in accordance with the care arrangements agreed between the parents or with a court order.
In the situation where a non-parent carer has made an application against one parent only (because, for example, the other parent is dead or a non-resident of Australia), the percentage of care will be determined from an oral or written agreement between the non-parent carer and the parent, or a court order (paragraph 49(a)). In all other cases, whether involving only the parents or involving non-parent carers as well, the care arrangements, and therefore the percentage of care, will be determined by an oral agreement between the parents, a parenting plan or a court order, provided that whichever is used contains sufficient information about the care arrangements to enable such a determination to be made (paragraph 49(1)(b)).

If there is no parenting plan or court order specifying the care levels, and the parents have not come to an oral agreement for child support purposes, the Registrar is required to make a factual determination of the percentage of care each parent, or non-parent carer (if there is one) is likely to have, taking into account such period of time as is necessary to be satisfied of a pattern of care (see section 50). Subsection 50(2) provides that, in making this determination, the Registrar must take into account such period of time as is necessary to be satisfied that there is, has been or will be a pattern of care for the child. For example, if a parent has had care of the children every 2nd weekend for the past three months the Registrar can take this past period into account in determining that the percentage of care that the parent is likely to have during the next 12 months is based on the parent continuing to provide this amount of care.

Subsection 50(3) enables the Registrar to revoke or vary a determination made under this section.

**Division 4, Subdivision C – Changes to percentages of care**

Section 51 provides that where the most recent agreement between the parents is an oral agreement, and one parent ceases to agree to the oral agreement, the Registrar will revert to the most recent parenting plan or court order to determine the percentage of care each parent is likely to have. If a parent disagrees with an oral agreement and there is no previous parenting plan or court order, the Registrar will make a factual determination as to the care arrangements.
For example, the parents in a child support case enter into a parenting plan that provides the first parent with 80% care and the other parent with 20% (regular care). After six months, both parents advise the Child Support Agency that they have agreed orally to change to shared care arrangements where they have an equal care percentage. A year after the oral agreement is entered into, the first parent advises the Child Support Agency that the other parent is not exercising their care and the first parent no longer agrees to the shared care arrangements. In this case, the Registrar would vary the care percentages in the parents’ assessment to reflect the care percentages in the parenting plan. The Registrar would vary the assessment immediately upon being advised that one parent no longer agrees with the oral agreement. However, if one, or both, parents disagrees with the care percentages under the parenting plan, the Registrar can only vary the assessment with reference to section 52. Oral and written agreements are treated differently because written agreements provide clearer evidence of parents’ having made an agreement about future arrangements for care.

Section 52 gives the Registrar a discretion to determine the percentage of care of a child that a parent, or non-parent carer, is likely to have if the parent and/or non-parent carer argues that the level of care that is actually occurring is different from that specified in the agreement, parenting plan or court order that was used (under section 49) to determine the parent’s, or non-parent carer’s, percentage of care. The Registrar can determine that the parent or non-parent carer’s percentage of care is different from that set out in the agreement, parenting plan or court order provided that all the following criteria are met:

- In the circumstances of the case, the care percentage determined from the existing agreement, parenting plan or court order that is used for the calculation of child support, would be an unjust and inequitable determination of the level of financial support to be provided by a parent for the child (paragraph 52(1)(c)).
- At least one of the parents, or the non-parent, has taken reasonable action to seek agreement about the care arrangements for the child, or to seek or enforce a court order dealing with care arrangements. What constitutes reasonable action will depend on the particular circumstances of the case and there may be some circumstances in which it is not reasonable for parents to take action to seek agreement. However, reasonable action could include, for example, attempting to resolve the matter through mediation or counselling or seeking a new court order (paragraph 52(1)(d)).
- The parent or non-parent carer of the child applies for the Registrar to make this determination (paragraph 52(1)(e)).

Subsection 52(2) requires the Registrar to consider such period of time as is necessary to be satisfied that there is, has been, or will be, a particular pattern of care for the child.

Subsection 52(3) enables the Registrar to revoke or vary a determination made under section 52 at any time.
If the parents, or non-parent carer, have not resolved the conflict over the care arrangements before the end of six months from when the Registrar makes a determination under section 52, the Registrar must review the determination and has the discretion to make another determination, provided all the criteria in subsection 52(1) can still be satisfied (subsection 52(4)). The reason for limiting these determinations to six months is to reflect the principle of shared parental responsibility underlying family law and child support, which is that parents should be encouraged to agree about matters concerning their children, to take responsibility for their parenting arrangements and seek to resolve conflict about parenting arrangements. Ideally, the Registrar will not be required to determine care arrangements beyond six months, rather the parents will resolve the issues and reach agreement.

A note at the end of subsection 52(1) advises the reader that if the Registrar refuses to make a determination under this section, the Registrar must give the applicant a notice under section 54.

Section 53 enables the Registrar to determine the percentage of care that a parent or non-parent carer is likely to have during a care period if one parent was to have at least regular care of a child during the period and they did not provide that level of care, despite the child being available to them. This rule recognises that, given a parent gets a significant reduction in their child support liability because they are credited with meeting the costs of a child through regular care, they should not be entitled to the reduction if they fail to provide care at that level. In this situation, the other parent, or non-parent carer, is actually bearing the costs of the child and this should be reflected in the assessment.

For example, a parent’s parenting plan may say they have care of a child every second weekend. This means they have regular care (expressed as a percentage of care of 14%) and are taken to be meeting 24% of the costs of the child through this care, thereby reducing the amount they would otherwise pay in child support. If, despite the parenting plan, the parent stops caring for the child every fortnight, and their pattern of care becomes a weekend every month, it would be inequitable for the parent to continue to get a 24% reduction in their child support because they no longer bear significant costs for the child through care.

Paragraph 53(1)(c) requires that a parent must apply to the Registrar for a determination under section 53 to be made.

A note at the end of subsection 53(1) advises the reader that if the Registrar refuses to make a determination under this section, the Registrar must give the applicant a notice under section 54.

Subsections 53(2) and (3) provide that subsections 53(4) and (5) determine the date of commencement of a determination under section 53 and that this date may be retrospective, where appropriate.
Subsection 53(4) states that the new determination of the percentage of care must be prospective, that is, the day the determination is made or a future date. Subsection 53(5) says the rule in subsection 53(4) will not apply if the other parent, or non-parent carer, could not reasonably have known that regular care was not occurring or would not occur. It would be reasonable for a parent not to have known that regular care would not occur in the following example.

Jack’s parenting plan with Emily, made in March 2006, states that he will have Tommy for nine weeks over the Christmas school holiday period. This agreed pattern of care gives Jack regular care for the purposes of an assessment and so, in March 2006, when the administrative assessment was made, Jack was given a 24% reduction in his child support for this care. Jack tells Emily in November 2006 that he cannot care for Tommy for the Christmas school holiday period due to his work commitments. If Jack does not provide this care, he does not fulfil his obligation to provide the percentage of care needed for regular care. Until November 2006, Emily could not reasonably have known that Jack would not provide this care over the Christmas break. In this situation, the Registrar can determine that Jack never established a pattern of regular care that justified the credit he received for regular care and can backdate, to March 2006, a determination that sets Jack’s percentage of care to less than regular care.

Subsection 53(6) makes it clear that a parent never establishes a pattern of care if the pattern could not have been established until later in the child support period, as occurred in the example of Jack and Emily.

Subsection 54(1) provides that 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. Subsection 54(2) provides that the notice must include, or be accompanied by, a statement to the effect that the person may (subject to the Child Support Registration and Collection Act) object to the particulars of the assessment and if the person is aggrieved by the decision on objection, they can apply to the SSAT for review of the decision.
Division 4, Subdivision D – Where there is more than one agreement, plan, order or determination

Subsection 55(1) provides that if there is more than one oral agreement, parenting plan or court order under section 49, or Registrar determination under section 50, 52 or 53, the percentage of care that a parent is likely to have during the care period is to be determined by the most recent of the agreement, plan, court order or determination. The purpose of this provision is to ensure that parents reach agreement about care arrangements and adhere to the agreement unless they agree otherwise. For example, if there is an oral agreement that is later replaced by a parenting plan, and one of the parents then argues that the level of care actually being provided is not what is provided for in the plan and the (older) oral agreement more accurately reflects the care provided by the other parent, the Registrar will not revert to basing the percentage of care on the previous oral agreement (unless the parents both agree, in which case there is a new oral agreement that takes precedence over the parenting plan). If parents dispute the percentage of care actually occurring, they must seek to resolve the matter and reach a new oral agreement or parenting plan, or seek a court order. If the parents cannot agree and one parent applies to the Registrar under section 52, the Registrar may make a factual determination of the care arrangements if the criteria in section 52 are met.

Subsection 55(2) provides that the most recent agreement, plan or determination is subject to any court order made in respect of the parents of the child that specifies that the order cannot be altered by agreement between the parents.

Division 5 – Working out other elements for the formulas

Division 5, Subdivision A – Simplified outline

Section 55A sets out a simplified outline of other elements used in the formulas. It provides that a parent’s income percentage represents:

- the parent’s capacity to meet the costs of their child; and
- the extent that the parent is taken to have met the costs of the child through providing care for the child.

Section 55A also provides that the parent’s child support percentage is the difference between the parent’s income percentage and his or her cost percentage. 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 the parent has multiple child support cases, the annual rate of child support payable by the parent is capped by the parent’s multi-case cap for the child.
**Division 5, Subdivision B – Working out other elements for the formulas**

Subdivision B of Division 5 deals with how to work out other elements for the formulas, including income percentages, cost percentages, child support percentages and the multi-case cap.

**Income percentages**

Section 55B sets out how to work out a parent’s income percentage for a day in the child support period. Each parent’s percentage contribution to the combined child support income is called their income percentage. Section 55B provides that the formula for working out the parent’s income percentage is the parent’s child support income divided by the combined child support income, as follows:

\[
\frac{\text{Parent's child support income}}{\text{Parents' combined child support income}}
\]

This formula works in the following way. If Jack’s child support income is $40,000 and Carla’s is $25,000, the combined child support income is $65,000. Jack’s income percentage is $40,000 divided by $65,000, which is 61.54%. Carla’s income percentage is $25,000 divided by $65,000, which is 38.46%.

In determining the percentages, section 55B states that each percentage is worked out to two decimal places, rounding up if the third decimal place is five or more.

**Cost percentages**

Section 55C sets out how to work out cost percentages. A parent's or non-parent carer's cost percentage for a child is the amount of credit, expressed as a percentage, that the parent is given for providing care for a child. It is worked out according to the table in section 55C, set out below.
Once a parent’s or non-parent carer’s percentage of care is determined, this percentage is translated into a cost percentage by identifying the relevant percentage of care in column 1 of the table and then identifying the corresponding row in column 2 to locate the appropriate cost percentage.

For example, if a parent has zero to less than 14% care of a child (row 1, column 1) they have a cost percentage in row 1, column 2 of nil. Consequently, this parent is taken not to be incurring any costs for the child. Once a parent provides 14% care (row 2, column 1), they have a cost percentage of 24% (row 2, column 2) and are taken to be incurring 24% of the costs of the child. Similarly, a parent who provides more than 86% care of a child (row 7, column 1) is taken to be incurring 100% of the costs (row 7, column 2). In this latter situation, the parent is taken to be incurring 100% of the costs because any other care provided for the child must be less than 14%, and if a person provides this amount of care they are taken not to be meeting any costs of the child.

**Child support percentages**

Section 55D sets out how to work out a parent’s child support percentage. A parent’s child support percentage is used in the formulas to determine the proportion of the costs of a child that a parent should transfer to the other parent or carer, according to that parent’s share of the combined child support income and costs borne through care. Each parent will have a child support percentage, and section 55D provides it is calculated by deducting the parent’s cost percentage (the credit they receive for their percentage of care) from their income percentage (their proportion of the combined child support income), as per the following formula.

\[
\text{Parent’s income percentage for the child for the day} - \text{Parent’s cost percentage for the child for the day}
\]
The calculation under this formula has the effect that the proportion of the costs of the child that the parent is otherwise required to pay (their income percentage) is reduced by the amount of care they provide for the child (their cost percentage), recognising that they meet these costs through the care they provide.

**Multi-case cap**

Section 55E sets out how to work out a parent’s multi-case cap if the following criteria apply (subsection 55E(1)):

- a parent is to be assessed for child support under Formula 3, 4, 5 or 6 (in sections 37, 38, 39 and 40); and
- if Formula 3 or 4 (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 Formula 1 (section 35); and
- the parent is assessed in respect of children in other child support cases.

Subsection 55E(2) provides that the parent’s multi-case cap for a child is worked out using the formula:

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

This works with the effect that the *multi-case cap* is the parent’s multi-case child costs for a particular child less their cost percentage for that child. This is explained more fully, with an example, in this explanatory memorandum above under Division 3 under the heading Multi-case allowance (section 47) and multi-case cap (section 55E).

**Division 6 – The costs of the child**

*Division 6, Subdivision A - Preliminary*

Subdivision A of Division 6 sets out a simplified outline of the Division at section 55F, which provides that the costs of children are worked out using the rules in Division 6 as well as 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. These costs are divided by the number of children in the child support case to determine the costs of the particular child. The Costs of the Children Table is updated each year to reflect changes to the annualised MTAWE figure.

*Division 6, Subdivision B – The costs of the child*

Subdivision B of Division 6 sets out how to use the Costs of the Children Table, which is inserted as Schedule 1 to the Child Support Assessment Act by item 2 of this Schedule.
First, it is necessary to identify the column in the Costs of the Children Table that covers the parents’, or parent’s, relevant income range.

If both parents are assessed for child support (that is, they are assessed under section 35 (Formula 1), section 36 (Formula 2), section 37 (Formula 3) or section 38 (Formula 4), the relevant column is the one that covers the parents’ combined child support income (subsection 55G(1)).

A note at the end of subsection 55G(1) advises the reader that the Secretary publishes the updated Costs of the Children Table in the Gazette each year for child support periods that being in the next year (see section 155).

If only one parent is assessed for child support (that is, they are assessed under section 39 (Formula 5) or section 40 (Formula 6), the relevant column is the one that covers the parent’s child support income (subsection 55G(2)). A note at the end of subsection 55G(2) alerts the reader to the fact that 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).

It is then necessary to identify the number of children (the child support children) in the child support case that relates to the child of the particular assessment (subsection 55G(3)).

Next, identify the ages of the child support children at the time the administrative assessment is made. If there are more than three child support children in the case, the ages of the oldest three children are to be used (subsection 55G(4)).

Next, identify the item in the Costs of the Children Table that covers that number of child support children of those ages (subsection 55G(5)). The amount worked out for the item is the costs of the children (subsection 55G(6)).

Having worked out the costs of the children, section 55H provides for how to work out the costs of a child for a day. It provides that if there is only one child support child, the costs of the child are the costs of the children calculated under section 55G (paragraph 55H(a)). If there is more than one child, the costs of the child is the costs of the children calculated under section 55G, divided by the number of children in the child support case (paragraph 55H(b)).
Division 2 - The formulas

Division 2, Subdivision B – Working out annual rates of child support using incomes of both parents in single child support case

Section 35D provides that Subdivision B of Part 5 is to be used to determine the annual rate of child support payable where both parents are to be assessed in respect of the costs of a child for whom they are both the parents and neither of them has children in a different child support case. There are two formulas in Subdivision B, as set out in section 35 (Formula 1) and section 36 (Formula 2).

Formula 1 – two parents, single child support case, no non-parent carer

Section 35 sets out the method statement to use to calculate 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 during the relevant care period. It comprises the following steps.

Step 1 requires each parent’s child support income for the child for the day to be worked out (see section 41).

Step 2 requires the parents’ combined child support income for the child for the day to be worked out (see section 42).

Step 3 requires each parent’s income percentage for the child for the day to be worked out (see section 55B).

Step 4 requires each parent’s percentage of care for the child to be worked out (see sections 48).

Step 5 requires each parent’s cost percentage for the child for the day to be worked out (see section 55C).

Step 6 requires each parent’s child support percentage to be worked out (see section 55D).

Step 7 requires the costs of the child for a day to be worked out (see sections 55G and 55H).

Step 8 provides that if the 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 following formula:

\[
\text{Parent’s child support percentage for the child for the day} \times \text{Costs of the child for the day}
\]
The formula works, therefore, by first establishing the income each parent has available to contribute to the costs of their child. Combining both parents’ child support incomes pools the total resources available for meeting the child’s costs and is also used to calculate the actual costs of the child, because the costs of the child are based on how much parents have available to spend on them. A parent’s child support percentage is the percentage that is used to determine how much of the costs of a child the parent will be responsible for. It is calculated by deducting the parent’s cost percentage for the child from their income percentage. This has the effect that the income the parent has available to support the child is reduced by the amount of care they provide for the child, recognising that they meet these costs by providing the care. If the parent is the main carer for the child, generally, they will not have a positive child support percentage because their cost percentage will be equal to or more than their income percentage. However, a note at the end of section 35 makes it clear that, if a parent has a percentage of care that is more than 65%, the parent’s rate of child support is nil (see section 40C).

Where a parent does have a positive child support percentage, they are required to pay the amount worked out by multiplying the child support percentage by the costs of the child.

The effect of this is that each parent will meet the costs of the child according to their capacity to pay, after taking into account the costs they have met by providing care.

Example 1 - Formula 1 - one parent with regular care
Joseph and Elly have three children, Paul, who is 9, Jack, who is 7, and Kylie, who is 5. They separate, and the children live with Elly most of the time, but spend every second weekend and some school holidays with Joseph, as well as some evenings during the week.

Their care arrangements are flexible, but for all the children Joseph’s care level amounts to regular care of between 14% and 34%. Joseph has an adjusted taxable income of $50,000 and Elly has an adjusted taxable income of $30,000. Neither Joseph nor Elly has a relevant dependent child.

Step 1: Work out each parent’s child support income by deducting the self-support amount of $16,883 from each of their incomes. This gives Joseph a combined child support income of $33,117 and Elly a Child Support Income of $13,117.

Step 2: Work out the parents’ combined child support income by adding together their child support incomes. Joseph and Elly’s combined child support income is $33,117 + $13,117, or $46,234.

Step 3: Work out each parent’s income percentage by dividing their child support income by their combined child support income from Step 2. For Joseph this is $33,117 divided by $46,234, or 71.63%, and for Elly this is $13,117 divided by $46,234, or 28.37%.
Step 4: Work out the percentage of care that each parent will have of each child. Joseph has between 14% and 34% care of Paul, Jack, and Kylie. Elly has between 66% and 86% care of Paul, Jack, and Kylie.

Step 5: Work out each parent’s cost percentage for each child by looking up the table in section 55C. Joseph has a cost percentage of 24% for Paul, Jack, and Kylie, and Elly has a cost percentage of 76% for Paul, Jack, and Kylie.

Step 6: Work out each parent’s child support percentage for each child by subtracting their cost percentage for that child from their income percentage.

Joseph has a child support percentage of 71.63% – 24% = 47.63% for Paul, Jack, and Kylie. (This means that Joseph is responsible for 71.63% of the children’s cost because he has 71.63% of the combined child support income, but he bears 24% of the cost through care, so he needs to transfer 47.63% of the cost to Elly through child support.)

Elly has a child support percentage of 28.37% – 76% = –47.63% for Paul, Jack, and Kylie. This is taken to be nil, as it is negative. (This means that Elly is responsible for 28.37% of the children’s cost because she has 28.37% of the combined child support income, and bears 76% of the cost through care, so she is entitled to child support from Joseph.)

Step 7: Work out the costs of each child.
Joseph and Elly’s combined child support income is $46,234 and, according to the Costs of the Children Table, this makes the total cost of the children $12,274. This is divided by three (the total number of children), giving a cost for each child of $4,091.

Step 8: If a parent has a positive child support percentage, this is the share of the cost of the child that they need to transfer to the other parent.

As noted in Step 6, Joseph has a child support percentage of 47.63% for Paul, Jack, and Kylie, and so needs to transfer 47.63% of their costs to Elly through child support. The cost of each child is $4,091 and 47.63% of this is $1,949, so this is what Joseph owes in child support for each child. The total that Joseph needs to transfer for Paul, Jack, and Kylie is $5,847.

Elly has a nil child support percentage for Paul, Jack, and Kylie, and so does not need to transfer any child support.
Joseph transfers $5,847 to Elly. He bears $2,946 (24% of the children’s cost) through care. Elly meets her share of the cost, $3,481 (28.37% of the cost, since she has 28.37% of the combined child support income) directly through care. She uses the child support from Joseph to meet the remainder of the costs that she bears through care.

Example 2 - Formula 1- shared care, one child with each parent

Peter and Amy have two children, Jamie, who is 13, and Elissa, who is 9. They separate, and Jamie lives with Peter 100% of the time and Elissa lives with Amy 100% of the time. Peter has an adjusted taxable income of $40,000 and Amy has an adjusted taxable income of $30,000. Neither Peter nor Amy has a relevant dependent child.

Step 1: Work out each parent’s child support income by deducting the self-support amount of $16,883 from each of their incomes. This gives Peter a child support income of $23,117 and Amy a child support income of $13,117.

Step 2: Work out the parents’ combined child support income by adding together their child support incomes. Peter and Amy’s combined child support income is $23,117 + $13,117, or $36,234.

Step 3: Work out each parent’s income percentage by dividing their child support income by their combined child support income from Step 2. For Peter this is $23,117 divided by $36,234, or 63.80%, and for Amy this is $13,117 divided by $36,234, or 36.20%.

Step 4: Work out the percentage of care that each parent will have of each child. Peter has 100% care of Jamie, and Amy has 100% care of Elissa.

Step 5: Work out each parent’s cost percentage for each child by looking up the table in section 55C. Peter has a cost percentage of 100% for Jamie and 0% for Elissa, and Amy has a cost percentage of 0% for Jamie and 100% for Elissa.

Step 6: Work out each parent’s child support percentage for each child by subtracting their cost percentage for that child from their income percentage.

Peter has a child support percentage of 63.80% – 100% = –36.20% for Jamie. This is taken to be nil, as it is negative. (This means that Peter is responsible for 63.80% of Jamie’s cost because he has 63.80% of the combined child support income, but he bears 100% of Jamie’s cost through care, so he is entitled to child support from Amy.)

Peter has a child support percentage of 63.80% – 0 = 63.80% for Elissa.
(This means that Peter is responsible for 63.80% of Elissa’s cost, and does not bear any of the cost through care, so he needs to transfer 63.80% of the cost to Amy through child support.)

Amy has a child support percentage of 36.20% − 0 = 36.20% for Jamie. (This means that Amy is responsible for 36.20% of Jamie’s cost because she has 36.20% of the combined child support income, and does not bear any of the cost through care, so she needs to transfer 36.20% of the cost to Peter through child support.)

Amy has a child support percentage of 36.20% − 100% = −63.80% for Elissa. This is taken to be nil, as it is negative. (This means that Amy is responsible for 36.20% of Elissa’s cost, but she bears 100% of the cost through care, so she is entitled to child support from Peter.)

**Step 7:** Work out the costs of each child. Peter and Amy’s combined child support income is $36,234 and, according to the Costs of the Children Table, this makes the total cost of the children $9,493. This is divided by two (the total number of children), giving a cost for each child of $4,747.

**Step 8:** If a parent has a positive child support percentage, this is the share of the cost of the child that they need to transfer to the other parent.

As noted in Step 6, Peter has a nil child support percentage for Jamie, and so does not need to transfer any child support for him (he is entitled to child support from Amy for Jamie). Peter has a child support percentage of 63.80% for Elissa, and so needs to transfer 63.80% of her costs to Amy through child support. Elissa’s cost is $4,747 and 63.80% of this is $3,029, so this is what Peter owes in child support for Elissa.

Amy has a child support percentage of 36.20% for Jamie, so needs to transfer 36.20% of his costs to Peter through child support. Jamie’s cost is $4,747 and 36.20% of this is $1,718, so this is what Amy owes in child support for him. Amy has a nil child support percentage for Elissa, and so does not need to transfer any child support for her (she is getting child support from Jamie for Elissa).

The amount that Peter needs to transfer to Amy ($3,029) and the amount that Amy needs to transfer to Peter ($1,718) are offset, giving an amount of $1,311, which Peter transfers to Amy.

Even though Peter and Amy each have full care of a child, Peter has a higher income than Amy, and so there is some child support payable to Amy.
Example 3 - Formula 1 - shared care and a relevant dependant child

Tim and Wei Ling have two children, Jeremy, who is 15, and Alice, who is 13. Tim and Wei Ling have separated. Jeremy lives with Tim most of the time, but spends every second weekend and some school holidays with Wei Ling, so that Wei Ling has a care level of 24% for Jeremy and Tim has 76% care. Alice lives with Tim one week and Wei Ling the next, so that they each have 50% care of Alice. Tim has an adjusted taxable income of $40,000 and Wei Ling also has an adjusted taxable income of $40,000. Wei Ling has a new relevant dependent child, who is 9.

Step 1: Work out each parent’s child support income by deducting the self-support amount of $16,883 from each of their incomes. Wei Ling has a relevant dependent child amount that is also deducted from her income. This amount is worked out according to section 47 and is $3,930. This gives Tim a child support income of $23,117 and Wei Ling a child support income of $19,187.

Step 2: Work out the parents’ combined child support income by adding together their child support incomes. Tim and Wei Ling’s combined child support income is $23,117 + $19,187, or $42,304.

Step 3: Work out each parent’s income percentage by dividing their child support income by their combined child support income from step 2. For Tim this is $23,117 divided by $42,304, or 54.64%, and for Wei Ling this is $19,187 divided by $42,304, or 45.36%.

Step 4: Work out the percentage of care that each parent will have of each child. Tim has 76% care of Jeremy and 50% care of Alice. Wei Ling has 24% care of Jeremy and 50% care of Alice.

Step 5: Work out each parent’s cost percentage for each child by looking up the table in section 55C. Tim has a cost percentage of 76% for Jeremy and 50% for Alice, and Wei Ling has a cost percentage of 24% for Jeremy and 50% for Alice.

Step 6: Work out each parent’s child support percentage for each child by subtracting their cost percentage for that child from their income percentage.

Tim has a child support percentage of 54.64% − 76% = −21.36% for Jeremy. This is taken to be nil, as it is negative. (This means that Tim is responsible for 54.64% of Jeremy’s cost because he has 54.64% of the combined child support income, and he bears 76% of the cost through care, so he is entitled to child support from Wei Ling.)

Tim has a child support percentage of 54.64% − 50% = 4.64% for Alice.
(This means that Tim is responsible for 54.64% of Alice’s cost because he has 54.64% of the combined child support income, and he bears 50% of the cost through care, so he needs to transfer 4.64% of the cost to Wei Ling through child support.)

Wei Ling has a child support percentage of 45.36% – 24%, or 21.36% for Jeremy.
(This means that Wei Ling is responsible for 45.36% of Jeremy’s cost because she has 45.36% of the combined child support income, and bears 24% of the cost through care, so she needs to transfer 21.36% of the cost to Tim through child support.)

Wei Ling has a child support percentage of 45.36% – 50%, or –4.64% for Alice. This is taken to be nil, as it is negative.
(This means that Wei Ling is responsible for 45.36% of Alice’s cost because she has 45.36% of the combined child support income, and bears 50% of the cost through care, so she is entitled to child support from Tim.)

Step 7: Work out the costs of each child.
Tim and Wei Ling’s combined child support income is $42,304 and, according to the Costs of the Children Table, this makes the total cost of the children $12,098. This is divided by two (the total number of children), giving a cost for each child of $6,049.

Step 8: If a parent has a positive child support percentage, this is the share of the cost of the child that they need to transfer to the other parent.

As noted in Step 6, Tim has a nil child support percentage for Jeremy and so does not need to transfer any child support for him – he is getting child support from Wei Ling for Jeremy.

Tim has a child support percentage of 4.64% for Alice, so he needs to transfer 4.64% of Alice’s cost to Wei Ling through child support. Alice’s cost is $6,049 and 4.64% of this is $280, so this is what Tim owes in child support for Alice.

Wei Ling has a child support percentage of 21.36% for Jeremy, so she needs to transfer 21.36% of Jeremy’s cost to Tim through child support. Jeremy’s cost is $6,049 and 21.36% of this is $1,292, so this is what Wei Ling owes in child support for Jeremy.

Wei Ling has a nil child support percentage for Alice, and so does not need to transfer any child support for her – she is getting child support from Tim for Alice.
The amount that Tim needs to transfer to Wei Ling ($280) and the amount that Wei Ling needs to transfer to Tim ($1,292) are offset (under section 67A), giving an amount of $1,012, which Wei Ling transfers to Tim.

**Formula 2 - two parents, single child support case, one or more non-parent carers**

Subsection 36(1) states that section 36 sets out how to calculate the annual rate of child support payable for a child for a day in a child support period if a non-parent carer has a percentage of care for a child for a day in the child support period (Formula 2).

Initially, Formula 2 applies in exactly the same way as Formula 1. This is because, if a non-parent carer is providing care, the assessment is still worked out using both parents’ incomes, cost percentages and child support percentages. The only information about the non-parent carer that is relevant to the assessment is their cost percentage (based on their percentage of care). It is only the manner in which each parent’s annual rate of child support payable is distributed that differs from Formula 1, as part of the child support needs to be paid to the non-parent carer to contribute to their costs for caring for the child.

Consequently, subsection 36(2) requires Steps 1 to 8 of Formula 1 to be followed except that the rule in subsection 55D(2), which states that a parent’s child support percentage is to be disregarded if it is negative, is ignored.

Subsection 36(3) then provides that if the first parent’s child support percentage under Step 6 of the method statement in Formula 1 is positive, the annual rate of child support payable by the first parent for the child is the annual rate worked out under Step 8 of the method statement in Formula 1.

Subsection 36(4) states the rule for when an annual rate of child support for a child is payable only to a non-parent carer or carers. It provides that if the second parent’s child support percentage is also positive, the first parent must pay the annual rate of child support worked out under Step 8 of Formula 1 to the non-parent carer. Similarly, if the second parent’s child support percentage is negative, but they do not have at least shared care of the child, the first parent must pay the annual rate of child support payable under Step 8 of Formula 1 to the non-parent carer. This is because the second parent is not entitled to any child support unless they have at least shared care of the child.

Section 40A sets out how to distribute a parent’s annual rate of child support if there is more than one non-parent carer (see Division 2, Subdivision E below).

Note 1 at the end of subsection 36(4) points out that if both parents have a positive child support percentage, the non-parent carer or carers are entitled to be paid the total of the two annual rates of child support.
A further note, Note 2, points out that a non-parent carer is not entitled to be paid child support unless they make an application under section 25A in relation to the child. This is because subsection 40B(2) requires a non-parent carer to apply for an assessment if they want to be paid child support in respect of a child.

Subsection 36(5) deals with how an annual rate of child support is to be distributed if it is payable to both the other parent and a non-parent carer. Paragraph 36(5)(a) provides that if the second’s parent’s child support percentage is negative and the second parent has at least shared care of the child, the first parent must pay the annual rate of child support payable under Step 8 of Formula 1 to the second parent using the second parent’s negative child support percentage as a positive. For example, if Betty, the second parent, has a child support percentage of –35%, it is taken to be 35%, and she is entitled to be paid 35% of the first parent’s annual rate of child support.

Providing the non-parent carer has applied to be paid child support, paragraph 36(5)(b) then requires the non-parent carer to be paid the difference between the annual rate payable by the first parent and the amount paid to the second parent. In the example above, Betty is entitled to 35% of the first parent’s annual rate of child support for the child, so the non-parent carer would be entitled to the remaining 65%. (Note that this method of distribution does not apply if the first parent’s annual rate of child support for the child is determined by the multi-case cap (see section 55E)).

Example 1 - Formula 2 - one non-parent carer, one parent with care
Ben and Jacki have two children, Tom, who is 4, and Shona, who is 2. They separate, and Tom and Shona live with Ben’s mother, Lisa, most of the time, but Ben has regular care of 24% of Tom. Jacki has less than 14% care of both children. Ben has an adjusted taxable income of $45,000 and Jacki has an adjusted taxable income of $25,000. Neither Ben nor Jacki has a relevant dependent child.

Step 1: Work out each parent’s child support income by deducting the self-support amount of $16,883 from each of their incomes. This gives Ben a child support income of $28,117 and Jacki a child support income of $8,117.

Step 2: Work out the parents’ combined child support income by adding together their child support incomes. Ben and Jacki’s combined child support income is $28,117 + $8,117, or $36,234.

Step 3: Work out each parent’s income percentage by dividing their child support income by their combined child support income from Step 2. For Ben this is $28,117 divided by $36,234, or 77.60%, and for Jacki this is $8,117 divided by $36,234, or 22.40%.
Step 4: Work out the percentage of care that each parent or non-parent carer will have of each child. Ben has 24% care of Tom, and Lisa has 76% care of Tom and 100% care of Shona. Jacki does not have any care of the children.

Step 5: Work out each parent and non-parent carer’s cost percentage for each child by looking up the table in section 55C. Ben has a cost percentage of 24% for Tom and 0% for Shona, Jacki has a cost percentage of 0% for Tom and Shona, and Lisa has a cost percentage of 76% for Tom and 100% for Shona.

Step 6: Work out each parent’s child support percentage for each child by subtracting their cost percentage for that child from their income percentage.

Ben has a child support percentage of 77.60% – 24% = 53.60% for Tom.  
(This means that Ben is responsible for 77.60% of Tom’s cost because he has 77.60% of the child support income, but he bears 24% of Tom’s cost through care, so he needs to transfer 53.60% of Tom’s cost through child support.)

Ben has a child support percentage of 77.60% – 0 = 77.60% for Shona.  
(This means that Ben is responsible for 77.60% of Tom’s cost, and does not bear any of the cost through care, so he needs to transfer 77.60% of Shona’s cost through child support.)

Jacki has a child support percentage of 22.40% – 0 = 22.40% for Tom.  
(This means that Jacki is responsible for 22.40% of Tom’s cost because she has 22.40% of the child support income, and does not bear any of the cost through care, so she needs to transfer 22.40% of the cost through child support.)

Jacki has a child support percentage of 22.40% – 0 = 22.40% for Shona.  
(This means that Jacki is responsible for 22.40% of Shona’s cost because she has 22.40% of the child support income, and does not bear any of the cost through care, so she needs to transfer 22.40% of the cost through child support.)

Note that Lisa does not have a child support percentage because, although she is bearing some of the costs of the children, she has no legal obligation to financially support them, and therefore her income is not used in the child support calculation.

Step 7: Work out the costs of each child. Ben and Jacki’s combined child support income is $36,234 and, according to the Costs of the Children Table, this makes the total cost of the children $8,587. This is divided by two (the total number of children), giving a cost for each child of $4,294.
**Step 8:** If a parent has a positive child support percentage, this is the share of the cost of the child that they need to transfer in child support.

As noted in Step 6, Ben has a child support percentage of 53.60% for Tom, and so needs to transfer 53.60% of his costs through child support. Tom’s cost is $4,294 and 53.60% of this is $2,302, so this is what Ben owes in child support for Tom.

Ben has a child support percentage of 77.60% for Shona, and so needs to transfer 77.60% of her costs through child support. Shona’s cost is $4,294 and 77.60% of this is $3,332, so this is what Ben owes in child support for Shona.

Jacki has a child support percentage of 22.40% for Tom, and so needs to transfer 22.40% of his costs through child support. Tom’s cost is $4,294 and 22.40% of this is $962, so this is what Jacki owes in child support for Tom.

Jacki has a child support percentage of 22.40% for Shona, and so needs to transfer 22.40% of her costs through child support. Shona’s cost is $4,294 and 22.40% of this is $962, so this is what Jacki owes in child support for Shona.

**Step 9:** If both parents’ child support percentages are positive, then the non-parent carer is entitled to be paid the total of the child support from both parents.

Both Ben and Jacki have positive child support percentages for both children. Ben pays $2,303 for Tom and $2,332, or a total of $5,634 to Lisa. Jacki pays $962 for Tom and $962 for Shona, or a total of $1,924 to Lisa.

**Step 10:** There is only one non-parent carer, Lisa, so she receives all of the child support, that is, $7,558.

**Example 2 - Formula 2 - two non-parent carers, one parent with care**

Jeff and Kathy have one child, Trent, who is 12. They separate, and neither Jeff nor Kathy can look after Trent full-time. Trent lives 46% of the time with Jeff’s mother, Irene, and 40% of the time with Kathy’s mother, Jan. Jeff has 14% care of Trent and Kathy has less than 14% care of Trent. Jeff has an adjusted taxable income of $45,000 and Kathy has an adjusted taxable income of $25,000. Neither Jeff nor Kathy has a relevant dependent child.

**Step 1:** Work out each parent’s child support income by deducting the self-support amount of $16,883 from each of their incomes. This gives Jeff a child support income of $28,117 and Kathy a child support income of $8,117.
Step 2: Work out the parents’ combined child support income by adding together their child support incomes. Jeff and Kathy’s combined child support income is $28,117 + $8,117, or $36,234.

Step 3: Work out each parent’s income percentage by dividing their child support income by their combined child support income from step 2. For Jeff this is $28,117 divided by $36,234, or 77.60%, and for Kathy this is $8,117 divided by $36,234, or 22.40%.

Step 4: Work out the percentage of care that each parent or non-parent carer will have of each child. Jeff has 14% care of Trent, Irene has 46% care of Trent, and Jan has 40% care of Trent. Kathy does not have any care of Trent.

Step 5: Work out each parent’s cost percentage for each child by looking up the table in section 55C. Jeff has a cost percentage of 24%, because he has regular care of 14–34%. Kathy has a cost percentage of 0%.

Step 6: Work out each parent’s child support percentage for each child by subtracting their cost percentage for that child from their income percentage.

Jeff has a child support percentage of 77.60% − 24% = 53.60%. (This means that Jeff is responsible for 77.60% of Trent’s cost because he has 77.60% of the child support income, but he bears 24% of Trent’s cost through care, so he needs to transfer 53.60% of Trent’s cost through child support.)

Kathy has a child support percentage of 22.40% − 0 = 22.40% for Trent. (This means that Kathy is responsible for 22.40% of Trent’s cost because she has 22.40% of the child support income, and does not bear any of the cost through care, so she needs to transfer 22.40% of the cost through child support.)

Note that Irene and Jan do not have child support percentages because, although they are bearing some of Trent’s costs, they have no legal obligation to financially support him, and therefore their incomes are not used in the child support calculation.

Step 7: Work out the costs of the child. Jeff and Kathy’s combined child support income is $36,234 and, according to the Costs of the Children Table, this makes Trent’s cost $5,942.

Step 8: If a parent has a positive child support percentage, this is the share of the cost of the child that they need to transfer in child support.
As noted in Step 6, Jeff has a child support percentage of 53.60%, and so needs to transfer 53.60% of Trent’s costs through child support. Trent’s cost is $5,942 and 53.60% of this is $3,185, so this is what Jeff owes in child support for Trent.

Kathy has a child support percentage of 22.40% for Trent, and so needs to transfer 22.40% of his costs through child support. Trent’s cost is $5,942 and 22.40% of this is $1,331, so this is what Kathy owes in child support for Trent.

**Step 9:** If both parents’ child support percentages are positive, then the non-parent carers are entitled to be paid the total of the child support from both parents.

Both Jeff and Kathy have positive child support percentages. Jeff pays $3,185 and Kathy pays $1,331. This is a total of $4,516.

**Step 10:** Divide the child support between the eligible parents and non-parent carers according to their share of the cost percentages of all people eligible to receive child support (section 40A).

Jeff has a cost percentage of 24% (for care of 14-34%), but because he has less than 35% care, he is not eligible to receive child support.

Kathy has a cost percentage of 0%. Irene has a cost percentage of 35% (25% for 35% care + 2% for each percentage of care over 35%) and Jan has a cost percentage of 47% (25% for 35% care + 2% for each percentage of care over 35%), so the child support is divided between Irene and Jan.

The total of the cost percentages of the people entitled to receive child support is 35% + 47% = 82%. Irene’s cost percentage divided by the cost percentages of the people entitled to receive child support is therefore 35% divided by 82%, or 42.68%. Jan’s cost percentage divided by the cost percentages of the people entitled to receive child support is therefore 47% divided by 82%, or 57.31%

The total available child support is $4,516 and Irene is entitled to 42.68% of this. Irene receives $1,927. Jan is entitled to 57.31% of the child support, and receives $2,588.

**Example 3 - Formula 2 - one non-parent carer, one parent with shared care**

Sean and Tricia have one child, Sarah, who is 7. They separate, and Sarah lives 50% of the time with Tricia and 50% of the time with Tricia’s mother, Dorothy. Sean has an adjusted taxable income of $65,000 and Tricia has an adjusted taxable income of $45,000. Neither Sean nor Tricia has a relevant dependent child.
Step 1: Work out each parent’s child support income by deducting the self-support amount of $16,883 from each of their incomes. This gives Sean a child support income of $48,117 and Tricia a child support income of $28,117.

Step 2: Work out the parents’ combined child support income by adding together their child support incomes. Sean and Tricia’s combined child support income is $48,117 + $28,117, or $76,234.

Step 3: Work out each parent’s income percentage by dividing their child support income by their combined child support income from Step 2. For Sean this is $48,117 divided by $76,234, or 63.12%, and for Tricia this is $28,117 divided by $76,234, or 36.88%.

Step 4: Work out the percentage of care that each parent or non-parent carer will have of each child. Tricia has 50% care of Sarah and Dorothy has 50% care of Sarah. Sean does not have any care of Sarah.

Step 5: Work out each parent’s cost percentage for each child by looking up the table in section 55C. Tricia has a cost percentage of 50%, because she has shared care of 50%. Sean has a cost percentage of 0%.

Step 6: Work out each parent’s child support percentage for each child by subtracting their cost percentage for that child from their income percentage.

Sean has a child support percentage of 63.12% – 0% = 63.12%. 
(This means that Sean is responsible for 63.12% of Sarah’s cost because he has 63.12% of the child support income, and does not bear any of the cost through care, so he needs to transfer 63.12% of Sarah’s cost through child support.)

Tricia has a child support percentage of 36.88% – 50% = –13.12% for Trent.
(This means that Tricia is responsible for 36.88% of Sarah’s cost because she has 36.88% of child support income, but she bears 50% of the cost through care, so she is entitled to 13.12% of the cost through child support.)

Note that Dorothy does not have a child support percentage because, although she is bearing some of Sarah’s costs, she has no legal obligation to financially support her, and therefore her income is not used in the child support calculation.

Step 7: Work out the costs of the child. Sean and Tricia’s combined child support income is $76,234 and, according to the Costs of the Children Table, this makes Sarah’s cost $11,169.
**Step 8:** If a parent has a positive child support percentage, this is the share of the cost of the child that they need to transfer in child support.

As noted in Step 6, Sean has a child support percentage of 63.12%, and so needs to transfer 63.12% of Sarah’s costs through child support. Sarah’s cost is $11,169 and 63.12% of this is $7,050, so this is what Sean owes in child support for Sarah.

If the second parent has a negative child support percentage, and that parent has at least shared care, that parent is entitled to that percentage, expressed as a positive, of the costs of the child.

Tricia has a child support percentage of -13.12% for Sarah, and has shared care of her. Tricia is therefore entitled to 13.12% of Sarah’s cost. 13.12% of $11,169 is $1,465, and this is what Sean pays to Tricia in child support. Tricia also meets 36.88% of Sarah’s costs directly through care, as she has 36.88% of the combined child support income.

The non-parent carer is entitled to the remainder of the child support payable. $7,050 – $1,465 = $5,585, and this is what Sean pays to Dorothy in child support. This is 50% of the cost of Sarah.

*Division 2, Subdivision C – Working out annual rates of child support using the incomes of both parents in multiple child support cases*

Section 36A provides that Subdivision C of Division 2 of Part 5 is to be used to determine the annual rate of child support payable for a child a day in the child support period if both parents are to be assessed in respect of the costs of that child and at least one of the parents is to be assessed in respect of the costs of another child in another child support case. There are two formulas in Subdivision C, as set out in section 37 (Formula 3) and section 38 (Formula 4).

*Formula 3 – two parents, multiple child support case, no non-parent carer*

Section 37 sets out the method statement for working out the annual rate of child support payable where at least one parent has more than one child support case and no non-parent carer has a percentage of care for the child for a day in the child support period.

The method statement has three steps.

Step 1 requires Steps 1 to 8 of section 35 (Formula 1) to be followed.

Step 2 then requires that each parent’s multi-case cap (if any) be calculated in accordance with section 55E.
Step 3 then provides that if a parent has a positive child support percentage under Step 6 of the method statement in section 35 (Formula 1), the annual rate of child support payable by the parent for the child is the lesser of the annual rate of child support worked out under Step 8 of section 35 (Formula 1) and the parent’s multi-case cap for the child.

Essentially, this Formula 3 works in exactly the same way as Formula 1, except that it ensures that no parent will pay in child support more than their children would cost if they all lived together in one household, even if the children were born to different ex-partners. It does this by ensuring that a parent with multiple child support cases will pay no more in child support than their multi-case cap (the amount the children would cost if they all lived in one household).

Example - Formula 3 - parent with multiple cases
Belinda and George have one child Hugo, who is 3. George also has a child, Lucy, who is 9, with Stella. Hugo lives with Belinda most of the time, and George has less than 14% care. Lucy lives one week with George and the next week with Stella, so that each has 50% care. Belinda has an adjusted taxable income of $30,000, George has an adjusted taxable income of $40,000, and Stella has an adjusted taxable income of $35,000. There are no relevant dependent children.

Child Support for Hugo
Step 1: Work out each parent’s child support income by deducting the self-support amount of $16,883 from each of their incomes, and the multi-case allowance, if necessary. George’s multi-case allowance (which recognises George’s obligation to Lucy) is $2,774 (see section 47). This gives George a child support income of $20,343 and Belinda a child support income of $13,117.

Step 2: Work out the parents’ combined child support income by adding together their child support incomes. George and Belinda’s combined child support income is $20,343 + $13,117, or $33,460.

Step 3: Work out each parent’s income percentage by dividing their child support income by their combined child support income from Step 2. For George this is $20,343 divided by $33,460, or 60.80%, and for Belinda this is $13,117 divided by $33,460, or 39.20%.

Step 4: Work out the percentage of care that each parent will have of each child. George has care of less than 14% of Hugo, so Belinda has 100% care of Hugo.

Step 5: Work out each parent’s cost percentage for each child by looking up the table in section 55C. George has a cost percentage of 0% and Belinda has a cost percentage of 100%.
**Step 6:** Work out each parent’s child support percentage for each child by subtracting their cost percentage for that child from their income percentage.

George has a child support percentage of $60.80\% - 0\% = 60.80\%$ for Hugo.
*(This means that George is responsible for 60.80\% of Hugo’s cost, and does not bear any of the cost through care, so he needs to transfer 60.80\% of the cost to Belinda through child support.)*

Belinda has a child support percentage of $39.20\% - 100\% = -39.20\%$.
*(This means that Belinda is responsible for 39.20\% of Hugo’s cost because she has 39.20\% of the child support income, but she bears 100\% of the cost through care, so she is entitled to child support from George.)*

**Step 7:** Work out the costs of each child. Belinda and George’s combined child support income is $33,460 and, according to the Costs of the Children Table, this makes Hugo’s cost $5,525.

**Step 8:** If a parent has a positive child support percentage, this is the share of the cost of the child that they need to transfer to the other parent.

George has a child support percentage of $60.80\%$ for Hugo, so needs to transfer $60.80\%$ of his costs to Belinda through child support. Hugo’s cost is $5,525 and $60.80\%$ of this is $3,359, so this is what George owes in child support for him (subject to the operation of the multi-case cap in Step 9).

Belinda has a nil child support percentage for Hugo, and so does not need to transfer any child support for him (she is entitled to child support from George for Hugo).

Work out each parent’s multi-case cap, if any. George’s multi-case cap for Hugo is $2,774 (see section 55E). Amanda only has one child support case, so does not have a multi-case cap.

**Step 9:** The amount that George must pay in child support to Belinda is the lesser of the amounts in Step 7 and Step 8. $2,774$ is the lesser of the two amounts, so this is what George pays to Belinda in child support. This is the amount that it would cost George to look after Hugo if he was living with George and any other child support children that George has (that is, Lucy).
**Child Support for Lucy**

**Step 1:** Work out each parent’s child support income by deducting the self-support amount of $16,883 from each of their incomes, and the multi-case allowance, if necessary. George’s multi-case allowance (which recognises George’s obligation to Hugo) is $2,774 (see section 47). This gives George a child support income of $20,343 and Stella a child support income of $18,117.

**Step 2:** Work out the parents’ combined child support income by adding together their child support incomes. George and Stella’s combined child support income is $20,343 + $18,117, or $38,460.

**Step 3:** Work out each parent’s income percentage by dividing their child support income by their combined child support income from Step 2. For George this is $20,343 divided by $38,460, or 52.89%, and for Stella this is $18,117 divided by $38,460, or 47.11%.

**Step 4:** Work out the percentage of care that each parent will have of each child. George and Stella both have 50% care of Lucy.

**Step 5:** Work out each parent’s cost percentage for each child by looking up the table in section 55C. George has a cost percentage of 50% and Stella has a cost percentage of 50%.

**Step 6:** Work out each parent’s child support percentage for each child by subtracting their cost percentage for that child from their income percentage.

George has a child support percentage of 52.89% – 50% = 2.89% for Lucy. 
(This means that George is responsible for 52.89% of Lucy’s cost because he has 52.89% of the combined child support income, and bears 50% of the cost through care, so he needs to transfer 2.89% of the cost to Stella through child support.)

Stella has a child support percentage of 47.11% – 50% = –2.89%. This is taken to be nil, as it is negative. 
(This means that Stella is responsible for 47.11% of Lucy’s cost because she has 47.11% of the combined child support income, but she bears 50% of the cost through care, so she is entitled to child support from George.)

**Step 7:** Work out the costs of each child. Stella and George’s combined child support income is $38,460 and, according to the Costs of the Children Table, this makes Lucy’s cost $6,275.

**Step 8:** If a parent has a positive child support percentage, this is the share of the cost of the child that they need to transfer to the other parent.
George has a child support percentage of 2.89% for Lucy, so needs to transfer 2.89% of his costs to Stella through child support. Lucy’s cost is $6,275 and 2.89% of this is $181, so this is what George owes in child support for her (subject to the operation of the multi-case cap in Step 9).

Stella has a nil child support percentage for Lucy, and so does not need to transfer any child support for her (she is entitled to child support from George for Lucy).

**Step 9:** Work out each parent’s multi-case cap, if any. George’s multi-case cap for Hugo is $1,387 (see section 55E). Stella only has one child support case, so does not have a multi-case cap.

**Step 10:** The amount that George must pay in child support to Belinda is the lesser of the amounts in Step 7 and Step 8. $181 is the lesser of the two amounts, so this is what George pays to Stella in child support. Even though George and Stella both have 50% care of Lucy, George has a slightly higher child support income than Stella, so transfers a small amount of child support for Lucy.

**Formula 4 – two parents, multiple child support cases, non-parent carer**

Subsection 38(1) states that section 38 sets out how to calculate the annual rate of child support payable for a child for a day in a child support period if a non-parent carer has a percentage of care for a child for a day in the child support period (Formula 4).

Subsection 38(2) requires Steps 1 to 8 in section 35 (Formula 1) to be followed except that the rule in subsection 55D(2), which states that a parent’s child support percentage is to be disregarded if it is negative, is to be ignored.

Subsection 38(3) then requires that each parent’s multi-case cap (if any) be calculated in accordance with section 55E.

Subsection 38(4) provides that if a parent’s (the first parent’s) child support percentage under Step 6 of the method statement in section 35 (Formula 1) is positive, then the annual rate of child support payable by the parent for the child is the lower of:

- the annual rate of child support worked out under Step 8 of the method statement; and
- the parent’s multi-case cap (if any) for the child.
Subsection 38(5) provides for how to pay the annual rate if it is only payable to non-parent carers. It provides that if the second parent’s child support percentage is also positive, or the second parent’s child support percentage is nil or negative, but the parent does not have shared care of the child, then the first parent must pay the annual rate of child support that is payable by them under subsection 38(4) to the non-parent carers in accordance with section 40A.

Subsection 38(6) sets out how to distribute a parent’s annual rate of child support if it is payable to both the other parent and a non-parent carer. Subsection 38(6) provides that if the second parent’s child support income is negative, and the second parent has at least shared care of the child, 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 38(4) to the second parent and the non-parent carer in accordance with section 40A.

*Example - Formula 4 - multiple cases, with a non-parent carer*

Marina and Pablo have one child, Elena, who is 14. Pablo also has two children with Tessa – Bella, who is 9, and Charlie, who is 6. Elena lives with Maria most of the time, and Pablo has 24% care. Bella and Charlie live one week with Tessa and the next week with Tessa’s mother, Eleanor, so that each has 50% care. Pablo has less than 14% care with Bella and Charlie. Maria has an adjusted taxable income of $45,000, Pablo has an adjusted taxable income of $40,000, and Tessa has an adjusted taxable income of $35,000. There are no relevant dependent children.

*Child Support for Elena*

*Step 1:* Work out each parent’s child support income by deducting the self-support amount of $16,883 from each of their incomes, and the multi-case allowance, if necessary. Pablo’s multi-case allowance (which recognises Pablo’s obligation to Bella and Charlie) is $4,546 (see section 47). This gives Pablo a child support income of $18,571 and Marina a child support income of $28,117.

*Step 2:* Work out the parents’ combined child support income by adding together their child support incomes. Pablo and Marina’s combined child support income is $18,571 + $28,117, or $46,688.

*Step 3:* Work out each parent’s income percentage by dividing their child support income by their combined child support income from Step 2. For Pablo this is $18,571 divided by $46,688, or 39.78%, and for Marina this is $28,117 divided by $46,688, or 60.22%.

*Step 4:* Work out the percentage of care that each parent will have of each child. Pablo has 24% care of Elena and Marina has 76% care of Elena.
Step 5: Work out each parent’s cost percentage for each child by looking up the table in section 55C. Pablo has a cost percentage of 24% and Marina has a cost percentage of 76%.

Step 6: Work out each parent’s child support percentage for each child by subtracting their cost percentage for that child from their income percentage.

Pablo has a child support percentage of 39.78% – 24% = 15.78% for Elena.
(This means that Pablo is responsible for 39.78% of Elena’s cost, and bears 24% of the cost through care, so he needs to transfer 15.78% of the cost to Marina through child support.)

Marina has a child support percentage of 60.22% – 76% = −15.78%.
(This means that Marina is responsible for 60.22% of Elena’s cost because she has 60.22% of the child support income, but she bears 76% of the cost through care, so she is entitled to child support from Pablo.)

Step 7: Work out the costs of each child.
Marina and Pablo’s combined child support income is $46,688 and, according to the Costs of the Children Table, this makes Elena’s cost $10,525.

Step 8: If a parent has a positive child support percentage, this is the share of the cost of the child that they need to transfer to the other parent.

Pablo has a child support percentage of 15.78% for Elena, so needs to transfer 15.78% of her costs to Marina through child support.

Elena’s cost is $10,525 and 15.78% of this is $1,661, so this is what Pablo owes in child support for her (subject to the operation of the multi-case cap in Step 9).

Marina has a nil child support percentage for Elena, and so does not need to transfer any child support for her (she is entitled to child support from Pablo for Elena).

Step 9: Work out each parent’s multi-case cap, if any. Pablo’s multi-case cap for Elena is $1,727 (see section 55E). Marina only has one child support case, so does not have a multi-case cap.

Step 10: The amount that Pablo must pay in child support to Marina is the lesser of the amounts in Step 8 and Step 9. $1,661 is the lesser of the two amounts, so this is what Pablo pays to Marina in child support. Pablo also meets 24% of Elena’s costs, or $2,526, directly through care. Marina meets her 60.22% share of Elena’s costs, or $6,338, directly through care.
Child Support for Bella and Charlie

Step 1: Work out each parent’s child support income by deducting the self-support amount of $16,883 from each of their incomes, and the multi-case allowance, if necessary. Pablo’s multi-case allowance (which recognises his obligation to Elena) is $2,273 (see section 47). This gives Pablo a child support income of $20,844 and Tessa a child support income of $18,117.

Step 2: Work out the parents’ combined child support income by adding together their child support incomes. Pablo and Tessa’s combined child support income is $20,844 + $18,117, or $38,961.

Step 3: Work out each parent’s income percentage by dividing their child support income by their combined child support income from Step 2. For Pablo this is $20,844 divided by $38,961, or 53.50%, and for Tessa this is $18,117 divided by $38,961, or 46.50%.

Step 4: Work out the percentage of care that each parent or non-parent carer will have of the children. Tessa has 50% care of Bella and Charlie and Eleanor has 50% care of Bella and Charlie. Pablo has less than 14% care, so has a care percentage of 0%.

Step 5: Work out each parent’s cost percentage for each child by looking up the table in section 55C. Pablo has a cost percentage of 0% and Tessa has a cost percentage of 50%.

Step 6: Work out each parent’s child support percentage for each child by subtracting their cost percentage for that child from their income percentage.

Pablo has a child support percentage of 53.50% – 0% = 0% for Bella and Charlie.
(This means that Pablo is responsible for 53.50% of Bella and Charlie’s cost because he has 53.50% of the combined child support income, and bears none of the cost through care, so he needs to transfer 53.50% of the cost through child support.)

Tessa has a child support percentage of 46.50% – 50% = –3.50%.
(This means that Tessa is responsible for 46.50% of Bella and Charlie’s cost because she has 46.50% of the combined child support income, but she bears 50% of the cost through care, so she is entitled to child support from Pablo.)

Note that Eleanor does not have a child support percentage because, although she is bearing some of Bella and Charlie’s costs, she has no legal obligation to financially support them, and therefore her income is not used in the child support calculation.
Step 7: Work out the costs of the children. Pablo and Tessa’s combined child support income is $38,961 and, according to the Costs of the Children Table, this makes Bella and Charlie’s cost $9,215.

Step 8: If a parent has a positive child support percentage, this is the share of the cost of the child that they need to transfer in child support.

As noted in Step 6, Pablo has a child support percentage of 53.50%, and so needs to transfer 53.50% of Bella and Charlie’s costs through child support. Bella and Charlie’s cost is $9,215 and 53.50% of this is $4,930, so this is what Pablo owes in child support for Bella and Charlie (subject to the multi-case cap in Step 9).

Tessa has a negative child support percentage, and therefore does not have to transfer any child support. She is entitled to child support from Pablo.

Step 9: Work out each parent’s multi-case cap, if any. Pablo’s multi-case cap for Bella and Charlie is $3,455 (see section 55E). Tessa only has one child support case, so does not have a multi-case cap.

Step 10: The amount that Pablo must pay in child support is the lesser of the amounts in Step 8 and Step 9. $3,455 is the lesser of the two amounts, so this is what Pablo pays in child support.

Step 11: Divide the total child support between the other parent and non-parent carer according to the method in section 40A.

According to the table in section 55C, Tessa has a cost percentage of 50% and Eleanor has a cost percentage of 50%.

The total of the cost percentages of the people entitled to receive child support is 50% + 50% = 100%. Tessa’s cost percentage divided by the cost percentages of the people entitled to receive child support is therefore 50% divided by 100%, or 50%. Eleanor’s cost percentage divided by the cost percentages of the people entitled to receive child support is also 50% divided by 100%, or 50%.

The total available child support is $3,455 and Tessa and Eleanor each receive 50%, or $1,728.

Division 2, Subdivision D – Working out annual rates of child support using the incomes of both parents in multiple child support cases

Section 38A provides that Subdivision D of Division 2 is to be used to determine the annual rate of child support payable for a child a day in the child support period if only one parent is to be assessed in respect of the costs of that child. There are two formulas in Subdivision E, as set out in section 39 (Formula 5) and section 40 (Formula 6).
Formula 5 – one parent, other parent not a resident of Australia or special circumstances

Section 39 sets out the method statement to be used to work out the annual rate of child support payable for a day in a child support period if a non-parent carer of a child has applied for a parent to be assessed in respect of the costs of the child because of subparagraphs 25A(b)(ii) or (iii). Generally, a non-parent carer must apply for both parents to be assessed for child support because both parents’ incomes are needed for the assessment. However, subparagraphs 25A(b)(ii) and (iii) enable a non-parent carer to apply against one parent only if the other parent is a non-resident of Australia or there are other special circumstances for not requiring the non-parent carer to apply in respect of both parents. The method under section 39 recognises that where these special circumstances apply, there are still potentially two parental incomes in relation to the child even though only one parental income is available for the child support assessment.

The method statement has nine steps.

Step 1 requires the parent’s child support income for the child for the day to be worked out (see section 41) and doubled.

Step 2 requires the parent’s percentage of care for the child to be worked out (see sections 48 to 51B).

Step 3 requires the parent’s cost percentage for the child for the day to be worked out (see section 55C).

Step 4 requires the costs of the child for a day to be worked out, under sections 55G and 55H, using the parent’s doubled income from Step 1 of this method statement. The parent’s income is doubled because it would be unfair to expect one parent to pay more child support just because the other parent’s income was not available due to the special circumstances of the case, for example, where other parent cannot be found. Consequently, the available parent is assessed as though the other parent’s income is also being assessed and that income is identical to the parent’s who is being assessed.

Step 5 requires the following rate to be determined:

\[
\frac{1}{2} \times \left[ \text{Costs of the child for the day} - \left( \frac{\text{Parent’s cost percentage for the child for the day}}{2} \times \text{Costs of the child for the day} \right) \right]
\]

This formula in Step 5 works out the rate of child support payable by calculating the child’s costs minus the costs the parent bears through care and then calculating half of this amount. The cost is halved because the cost has been calculated as though the parent will have half the responsibility for the cost.
Step 6 provides that if the parent is not assessed in respect of the costs of another child in another child support case (that is, the parent does not have a multi-case cap) 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 requires the parent’s multi-case cap to be calculated under section 55E if the parent is assessed in respect of the costs of another child in another child support case.

Step 8 provides that the annual rate of child support payable by the parent for the child for a day in the child support period is the lesser of the rate worked out under Step 5 and the parent’s multi-case cap from Step 7.

Step 9 provides that if two non-parent carers have a percentage of care for the child during the relevant care period, the parent must pay the annual rate of child support that is payable under Step 5 or Step 8 to the carers in accordance with section 40A. If there is only one non-parent carer, the annual rate of child support payable by the parent is payable to that carer. Step 9 also states that payment to the non-parent carer is subject to the rule that the non-parent carer must have made an application for child support in order to be entitled to receive the annual amount payable by the parent.

Example - one non-parent carer applying against one parent only due to special circumstances or other parent not a resident of Australia
Nick and Carolyn have one child, Billy, who is 14. They separate and before a child assessment is made, Nick goes overseas to a country where Australia does not have a reciprocal child support agreement.

This means that Nick cannot be assessed for child support. Billy is living full-time with an uncle, Garry, who applies for Carolyn to pay child support. Because it would be unfair to expect Carolyn to pay more child support just because Nick has left the country, Carolyn is assessed as though Nick is also being assessed, on an income identical to her own. Carolyn has an adjusted taxable income of $35,000 and no relevant dependent child.

Step 1: Work out the parent’s child support income by deducting the self-support amount of $16,883 from their income, and double this income. This gives Carolyn a child support income of $36,234. This will mean that the costs of Billy are calculated as though Nick’s income was also used and assessed at $35,000.

Step 2: Work out the percentage of care that the parent has. Carolyn has less than 14% care of Billy.

Step 3: Work out the parent’s cost percentage. Carolyn’s cost percentage is 0%. 

54
Step 4: Work out the costs of the child. The child support income used to calculate Billy’s cost is $36,234, making Billy’s cost $8,225.

Step 5: Work out the rate payable, by calculating the costs of Billy minus the costs that Carolyn bears through care, and then calculating half of this amount. Carolyn does not bear any cost through care, so half of the cost is $4,113. The cost is halved because the cost has been calculated as though Nick will have half the responsibility for the cost.

Step 6: Carolyn does not have any other child support case, so $4,113 is the amount of child support that she must pay to Garry.

Formula 6 – one parent, non-parent carer, other parent deceased

Section 40 sets out the method statement to be used to work out the annual rate of child support payable for a day in a child support period if a non-parent carer of a child has applied for a parent to be assessed in respect of the costs of the child because of subparagraph 25A(b)(iv) (other parent deceased). The method under section 40 recognises that where one parent is deceased, the other parent’s income is the only parental income available in relation to the child.

The method statement has nine steps and works in much the same way as Formula 5, except that the parent’s income is not doubled and the costs of the children are not halved. This treatment reflects that where one parent is deceased, the only income available to meet the costs of the child is the surviving parent’s income.

Step 1 requires the parent’s child support income for the child for the day to be worked out (see section 41).

Step 2 requires the parent’s percentage of care for the child to be worked out (see section 48).

Step 3 requires the parent’s cost percentage for the child for the day to be worked out (see section 55C).

Step 4 requires the costs of the child for a day to be worked out (see sections 55G and 55H).

Step 5 requires the following rate to be determined:

\[
\text{Costs of the child for the day} - \left( \frac{\text{Parent’s cost percentage for the child for the day}}{\text{Costs of the child for the day}} \right) \times \text{Costs of the child for the day}
\]
Step 6 provides that if the parent is not assessed in respect of the costs of another child in another child support case (that is, the parent does not have a multi-case cap) 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 requires the parent’s multi-case cap to be calculated under section 55E if the parent is assessed in respect of the costs of another child in another child support case.

Step 8 provides that the annual rate of child support payable by the parent for the child for a day in the child support period is the lesser of the rate worked out under Step 5 and the parent’s multi-case cap from Step 7.

Step 9 provides that if two non-parent carers have a percentage of care for the child during the relevant care period, the parent must pay the annual rate of child support that is payable under Step 5 or Step 8 to the carers in accordance with section 40A. If there is only one non-parent carer, the annual rate of child support payable by the parent is payable to that carer. Step 9 also states that payment to the non-parent carer is subject to the rule that the non-parent carer must have made an application for child support in order to be entitled to receive the annual amount payable by the parent.

**Example - two non-parent carers applying against one parent only because other parent deceased**

Mustafa and Aida have one child, Imran, who is 3. They separate and later Aida dies. Imran lives 50% of the time with each of two aunts, Nadira and Sam. Mustafa has an adjusted taxable income of $40,000 and no relevant dependent child.

***Step 1:*** Work out the parent’s child support income by deducting the self-support amount of $16,883 from their income. This gives Mustafa a child support income of $23,117.

***Step 2:*** Work out the percentage of care that the parent has. Mustafa has less than 14% care of Imran.

***Step 3:*** Work out the parent’s cost percentage. Mustafa’s cost percentage is 0%.

***Step 4:*** Work out the costs of the child. The child support income used to calculate Imran’s cost is $23,117, making his cost $3,930.

***Step 5:*** Work out the rate payable, by subtracting the costs that Mustafa bears through care from Imran’s cost. Mustafa does not bear any cost through care, so the rate payable is $3,930.

***Steps 6 to 8:*** Mustafa does not have any other child support case, so $3,930 is the amount of child support that he must pay.
**Step 9:** Divide the total child support between the other parent and non-parent carer according to the method in section 40A. Sam and Nadira both have 50% of the total cost percentage of the carers, so they each receive $1,965 from Mustafa.

**Division 2, Subdivision E – General provisions**

Subdivision E of Division 2 provides for some general rules in respect of the formulas.

Subsection 40A sets out the rules for how to distribute child support where there is more than one person entitled to child support, as may happen in the following situations:

- after working out a parent’s annual rate of child support payable under Formula 2 (incomes of both parents, single child support case) or Formula 4 (incomes of both parents, multiple child support case), child support is payable to both a parent and a non-parent carer of a child (paragraph 40A(1)(a)); or
- after working out a parent’s annual rate of child support payable under Formula 5 or 6 (income of one parent only), child support is payable to two or more non-parent carers of a child (paragraph 40A(1)(b)); or
- in assessing a parent for an annual rate of child support for low income parents not on income support (section 65A), an annual rate of child support is payable to either a parent and a non-parent carer or to two non-parent carers of the child (paragraph 40A(1)(c)).

Subsection 40A(1) states that, in the above situations, the annual rate of child support that a parent or non-parent carer (as the case requires) is entitled to be paid for a child for a day in a child support period is to be determined according to the following formula.

\[
\text{Total rate to which parent and non-parent carers are entitled to be paid for the day} \times \frac{\text{Parent or non-parent carer’s cost percentage for the child for the day}}{\text{Total of parent and non-parent carer’s cost percentages for the child for the day}}
\]
This formula takes the total amount of child support to which all the carers (parent and non-parent carer/s) are entitled, then distributes it to each carer according to their cost percentage. This means that the available child support is distributed according to the amount of care each carer has for the child.

For example, Harold’s annual rate of child support is $3,000. His ex-partner, Jenny, has a cost percentage of 35% (because she cares for their child 40% of the time). Jenny’s mother, Betty, has a cost percentage of 65% (because she provides 60% of the care). Jenny and Betty therefore have 100% care of the child between them. Jenny’s cost percentage of 35% divided by the total of hers and Betty’s cost percentages (100%) is .35. Betty’s cost percentage of 65% divided by the total of hers and Jenny’s cost percentages (100%) is .65. Therefore, the annual rate of child support to which Jenny is entitled is $3,000 multiplied by .35, that is, $1,050. The annual rate of child support to which Betty is entitled is $3,000 multiplied by .65, that is, $1,950.

Subsection 40A(1) provides that these rules are subject to section 40B, which provides that a non-parent carer of a child is not entitled to be paid child support if they have not made an application under section 25A.

Subsection 40A(2) provides that even if the non-parent carer is not entitled to be paid child support because they have not applied for it, their cost percentage is still taken into account. That is, the non-parent carer’s level of care (translated into a cost percentage) is still relevant to calculating the overall care provided to the child by a parent or a non-parent carer or carers, and therefore determining who bears, or should bear, the costs for the child, even if the non-parent carer does not apply for child support.

Subsection 40B provides that a non-parent carer is not entitled to be paid child support unless they have applied for an assessment of the costs of the children in respect of both parents, or, where only one parent’s income only is relevant (as in Formulas 5 and 6), they have applied for an assessment in respect of that parent.

A non-parent carer may be involved in an assessment under Formulas 2, 4, 5 or 6, or an assessment under section 65A (annual rate of child support for low income earners not on income support) or section 66 (minimum annual rate of child support).

Subsection 40B(2) provides that if a non-parent carer is not entitled to be paid child support for a child under subsection 40B(1), the annual rate of child support that would otherwise be payable to the non-parent carer by the parent, or parents, for the child is not payable.
Subsection 40B(3) provides that if a non-parent carer of a child has not applied for child support at the time the administrative assessment of child support is made, but applies later in the child support period, the non-parent carer is entitled to be paid the annual rate of child support worked out under Part 5 from the day they make the application. That is, their entitlement to child support will not be backdated to the date of the assessment.

Paragraph 40B(3)(d) makes it clear that a new child support period will not be started when a non-parent carer makes the (later) application.

Subsection 40C provides that the annual rate of child support payable by a parent for a child is nil if the parent’s annual rate of child support is worked out under section 35 (Formula 1) or section 37 (Formula 3) (incomes of both parents, no non-parent carers) and the parent’s percentage of care for the child is more than 65%.

Section 40D provides that the annual rate of child support payable by a parent for a child is nil if the parent’s child support percentage for the child for the day is nil

**Division 7 – Assessments and estimates of adjusted taxable income**

Division 7, Subdivision A – Preliminary

Section 55J provides a simplified outline of the Subdivision. It states that a parent’s taxable income is, generally, the amount of taxable income that is assessed under an Income Tax Assessment Act. However, it notes that the Registrar may make a determination of a parent’s adjusted taxable income if the parent has not lodged a tax return. Where a parent lodges a tax return after an administrative assessment of child support has been made, there are limits on the Registrar’s ability to amend the assessment for past periods. Finally, section 55J notes that, as is currently the case, a parent can estimate the amount of his or her adjusted taxable income for days in a child support period.

Division 7, Subdivision B – Adjusted taxable income determined by reference to taxable income for the last relevant year of income

Subdivision B of Division 7 provides the rules for dealing with a parent’s adjusted taxable income, which is determined by reference to their taxable income for the last relevant year of income

Section 56 is a clarifying rewrite of current section 56 of the Child Support Assessment Act and makes no substantive changes to section 56. Minor technical amendments are made, however, to reflect the new terminology in Part 5 and delete references to redundant terminology.
Section 57 is a clarifying rewrite of current section 57 of the Child Support Assessment Act and makes no substantive changes to section 57. Minor technical amendments are made, however, to reflect the new terminology in Part 5 and delete references to redundant terminology.

Section 58 is a clarifying rewrite of current section 58 of the Child Support Assessment Act. It also amends section 58 to provide that, if the Registrar must determine an income where a parent has not lodged a tax return for two years, the Registrar must determine that the parent’s adjusted taxable income for that year of income is 2/3rd MTAWE (subsection 58(3)).

Section 58A is a new provision that requires the Registrar to amend immediately an administrative assessment of child support if the assessment was made on the basis of a determination under section 58 (Registrar determination of components of adjusted taxable income) and the Registrar subsequently finds out either the amount of the parent’s taxable income, or the total of the other components of their adjusted taxable income or information allowing further determinations under section 58, and the amount that is subsequently ascertained is different from the amount that was previously determined under section 58 (subsection 58A(1)).

Subsection 58A(2) provides that if the parent lodged, or still has time to lodge, their tax return on time in accordance with taxation rules when the Registrar ascertains their taxable income, or other component of their adjusted taxable income, or information allowing a further determination under section 58, the Registrar is to amend immediately the administrative assessment for the child support period on the basis that the parent’s taxable income, or other component of their adjusted taxable income, for that year of income is, and always has been, the amount that was subsequently ascertained. That is, the new administrative assessment will apply retrospectively. This rule will also apply if the person failed to lodge their return on time, but the subsequently ascertained taxable income, or other component of adjusted taxable income, was higher than the amount the Registrar had determined under section 58.

Subsection 58A(3) provides that if subsection 58A(2) does not apply, the Registrar must immediately amend an administrative assessment for the child support period on the basis that for each later day in the period the parent’s taxable income, or other component of adjusted taxable income, for that year of income is the amount that was subsequently ascertained. That is, the new administrative assessment will apply prospectively.

Subsection 58A(4) makes it clear that new section 58A applies irrespective of 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.
Section 60 is a clarifying rewrite of current section 60 of the Child Support Assessment Act and makes no substantive changes to section 60. Minor technical amendments are made, however, to reflect the new terminology in Part 5 and delete references to redundant terminology. In particular, current references to a person’s child support income amount, taxable income and supplementary amount are replaced with the more comprehensive new concept of the parent’s adjusted taxable income. Similarly, a reference to assessing the annual rate of child support payable by or to a person is replaced with reference to assessing the parent in respect of the costs of a child.

Section 60A replaces current section 60A of the Child Support Assessment Act and makes changes to reflect the new terminology in Part 5 and delete references to redundant terminology. Changes are also made to reflect the new arrangements for Social Security Appeals Tribunal review of child support decisions. Section 60A provides for a notice of administrative assessment to be generally treated as conclusive evidence of the proper making of the assessment and of the correctness of the particulars in the notice. The revised section 60A disapplies this rule for proceedings under specified provisions in the Child Support Registration and Collection Act. This is because section 116 of that Act already provides more generally for documents produced to be prima facie evidence, so the rule in section 70 is superfluous in those cases.

Section 60B replaces current section 60B of the Child Support Assessment Act and makes changes to reflect the new terminology in Part 5 and delete references to redundant terminology. Changes are also made to reflect the new arrangements for Social Security Appeals Tribunal review of child support decisions. Section 60B provides for a notice of administrative assessment to be generally treated as conclusive evidence of the proper making of the assessment and of the correctness of the particulars in the notice. The revised section 60B disapplies this rule for proceedings under specified provisions in the Child Support Registration and Collection Act. This is because section 116 of that Act already provides more generally for documents produced to be prima facie evidence, so the rule in section 70 is superfluous in those cases. Subsection 60B(3) provides that a contravention of subsection 60B(2) in relation to a decision does not affect the validity of the decision.

Section 61 is a clarifying rewrite of current section 61 of the Child Support Assessment Act and makes no substantive changes to section 61. Minor technical amendments are made, however, to reflect the new terminology in Part 5 and delete references to redundant terminology.
Section 62 is a clarifying rewrite of current section 62 of the Child Support Assessment Act and makes no substantive changes to section 62. Minor technical amendments are made, however, to reflect the new terminology in Part 5 and delete references to redundant terminology.

Section 63 is a clarifying rewrite of current section 63 of the Child Support Assessment Act and makes no substantive changes to section 63. Minor technical amendments are made, however, to reflect the new terminology in Part 5 and delete references to redundant terminology.

Section 63A is replaces current section 63A of the Child Support Assessment Act and makes minor technical amendments to change references to ‘person’ to ‘parent’, because the provision only applies to parents.

Section 63B replaces current section 63B of the Child Support Assessment Act and makes minor technical amendments to change references to ‘person’ to ‘parent’, because the provision only applies to parents.

Section 63C is a new provision. It provides that where a parent elected to have their child support income amount (and therefore their assessment) determined by reference to an estimate of their taxable income (under section 60) and the estimate resulted in a minimum rate assessment, the Registrar can review the estimate, once the period for which the estimate is in place has passed, to determine how it compared with the parent’s actual income and, if warranted, amend the assessment from a date determined by the Registrar.

Section 64 is a clarifying rewrite of current section 64 of the Child Support Assessment Act with minor technical amendments to reflect the new terminology in Part 5 and delete references to redundant terminology. It also adds new paragraph 64(1)(c), to provide that where an estimate results in a minimum annual rate being payable it is not subject to reconciliation. (However, the estimate can be reviewed – see section 63C above).

Section 64A replaces current section 64A of the Child Support Assessment Act and makes minor technical amendments to reflect the new terminology in Part 5 and delete references to redundant terminology. The new section also reflects, in the notification requirement in subsection (6), the new arrangements for review of child support decisions by the Social Security Appeals Tribunal, instead of by the Administrative Appeals Tribunal as at present.
Division 8 – Provisions relating to the making of assessments

Division 8, Subdivision A – Simplified outline

Division 8 of Part 5 contains provisions relating to the making of assessments.

Section 64B provides a simplified outline of the Subdivision, which provides that, in making an administrative assessment of child support, the Registrar may act on the basis of documents and information in his or her possession. In some cases the Registrar may assess the annual rate of child support for a child that is payable by a parent who is on a low income but is not receiving an income support payment. The Registrar may also assess the annual rate of child support payable by a parent for all the children in a child support case as the minimum annual rate. Section 64B states that Subdivision C of Division 8 contains rules relating to the making of administrative assessment.

Division 8, Subdivision B – Annual rates of child support for low income parents and minimum annual rates of child support

Section 65A is a new provision dealing with the annual rate of child support for low income parents not on income support.

Parents who are not in receipt of an income support payment but whose adjusted taxable income is lower than the annual parenting payment (single) maximum basic rate plus pension supplement (pension PP (single) maximum basic rate), that is, approximately $13,000, will be required to pay an annual rate of child support per child of $1,060. A definition of pension PP (single) maximum basic rate is inserted into section 5 of the Child Support Assessment Act by item 40 of Schedule 2. This new annual rate for low income parents not on income support addresses the situation where people minimise their income in a way that does not fairly represent their true income, or real capacity to pay child support, and thereby reduce or avoid the contribution they should make towards the costs of their children. The view is that if people genuinely are on a low income they would access social security, or other, income support payments. This new rule is contained in subsection 65A(1).

Subsection 65A(1) provides that this rule will also apply where a parent who is not on an income support payment has elected to have their assessment based on their estimated income (under section 60 of the Child Support Assessment Act) and their estimate of this income is less than the pension PP (single) maximum basic rate.

The annual rate of child support payable for a child by low income parents who are not on income support is $1,060 (subsection 65A(2)). This amount is to be indexed in line with CPI increases and a note to this effect is at the end of subsection 65A(2) advising the reader that the indexation rule is in section 153A.
These rules will not apply, however, if the parent has at least shared care of the child (paragraph 65A(1)(c)), recognising that the parent bears their share of the costs of the child by providing this care. If a parent has shared care in one child support case and no care in another case, they will only be required to pay the annual rate in section 65A in respect of the children in the child support case for which they do not have shared care.

The annual rate in section 65A is to be applied to a parent in respect of each of the children for whom they are assessed for child support. However, there is a cap of three on the number of section 65A annual rate liabilities that a parent can have (subsection 65A(3)). This means that although a low income parent may have four or five children, and potentially four or five section 65A annual rate liabilities, their total liability will be capped at three times this annual rate. This is consistent with the costs of children being capped at 3.

Where there are more than three children, subsection 65A(4) provides that the capped liability of three times the section 65A annual rate should be distributed equally between all the children. This is achieved by dividing the total of the three annual rates by the total number of children for whom child support is payable by the parent and paying the resulting amount to the parent or non-parent carer of each child. For example, if Fred would be liable for the annual rate for four children, the most he will pay is three times the annual rate. The other parent, or non-parent carer, of each of the four children will then be entitled to 25% of the total of the three annual rates.

Subsection 65A(5) provides for the situation where a child’s care is shared between the other parent and a non-parent carer. In this situation, if the other parent and the non-parent carer share equally the care of the child, the annual rate payable in respect of the child is distributed according to section 40A.

Some people may genuinely be on a low income and choose not to access income support payments and it would be unfair to apply this annual rate rule to them. Consequently, a parent will not be required to pay the section 65A annual rate for any of the children if they apply to the Registrar for this rule not to apply to them (paragraph 65B(1)(a)) and the Registrar is satisfied that the total financial resources available to support the person are lower than the pension PP (single) maximum basic amount (subsection 65B(2)). A parent may be deemed to have applied for a reduction if, immediately before the end of the child support period, their rate was not determined under section 65A because of an existing determination under section 65B (paragraph 65(1)(b)). In determining whether the annual rate should not apply to the parent, the Registrar will consider the current income of the parent for the 12 months commencing from the date the person applied to not have the annual rate apply. Income has the same meaning as the definition of income for subsection 66A(4) of the Child Support Assessment Act, including the ability to prescribe certain matters in the regulations.

A note at the end of subsection 65B(2) advises the reader that if the Registrar refuses to grant an application under this section, the Registrar must serve a notice on the applicant under section 66C.
The Registrar has a discretion to determine the date, including a retrospective date, in the current child support period from which the section 65A annual rate is not to apply to a person (subsection 65B(3)). It is intended that the determination will generally apply from the beginning of the current child support period, or, where there is an identifiable event that has caused the reduction in income, from the happening of the event, unless this date would cause an overpayment. The determination will then apply for the remainder of the current child support period (unless a change of assessment otherwise occurs).

If the Registrar determines, under section 65B, that the annual rate rule in section 65A should not apply to a parent, the parent's child support is to be assessed in accordance with the minimum annual rate of child support rules in section 66 of the Child Support Assessment Act.

Section 66 substitutes current section 66.

Currently, where an annual rate of child support payable for a child or children by a liable parent is assessed as less than the minimum annual rate of child support, the minimum annual rate of child support is generally payable (see section 66 of the Child Support Assessment Act). The rules in section 66 have been broadened so that the provision will now also:

- apply to income support recipients;
- not apply to a parent who would otherwise be liable for the payment if they provide at least regular care for a child in a child support case, thereby acknowledging the costs a parent bears for their children through care; and
- apply on a per child support case basis. This is different to the current position where, if a payer has a liability in more than one child support case, the minimum liability is apportioned between the payees according to how many children each has in their care (see subsection 63(3) of the Child Support Assessment Act).

Consequently, new subsection 66(1) provides that the parent will be required to pay the minimum annual rate of child support if either of subparagraphs 66(1)(b)(i) or (b)(ii) applies (see below) and they do not have at least regular care of at least one of the children in the child support case for which they are assessed (see subparagraph 66(1)(a)). So, for example, if a parent has three child support children in their child support case and provides at least regular care for any one of them, they will not be subject to the minimum rate rule for that case.
Subparagraph 66(1)(b)(i) provides that the minimum annual rate of child support will apply if a parent is on an income support payment at the maximum basic rate. Subsection 66(9) provides that the term income support payment means a payment of living allowance at the maximum rate under the ABSTUDY scheme, as well as an income support payment as defined in subsection 23(1) of the Social Security Act. The Social Security Act definition essentially covers: a social security benefit; a social security pension; an age service pension, invalidity service pension, partner service pension or carer service pension under Part III of the Veterans’ Entitlements Act 1986; and, an income support supplement under Part IIIA of the Veterans’ Entitlement Act 1986.

Subparagraph 66(1)(b)(ii) provides that the minimum annual rate rule will apply to a particular child support case if the total amount that a parent would be required to pay in that case is less than the minimum annual rate of child support.

Subsection 66(2) makes it clear that if an assessment could be made under either of section 65A (annual rate for low income parents) or section 66, the assessment must be made under section 65A.

Subsections 66(3) and 66(4) provide for when a minimum rate assessment will commence and finish.

If a parent is assessed in respect of a minimum annual rate because they receive an income support payment at the maximum basic rate, the minimum rate assessment applies from the first day in the child support period that the parent receives the income support payment at the maximum basic rate and ends either at the end of the child support period or 28 days after the parent stops receiving the payment at that rate, even if that date would be in a new child support period (subsection 66(3)). This allows parents a short period during which their child support obligations remain low, while they manage the costs of resuming employment or increasing their employment, for example, while waiting for their first payday.

If a parent is assessed in respect of a minimum annual rate and is not on an income support payment, the assessment applies from the first day in the child support period that the parent would be assessed for a minimum annual rate of child support and ends 28 days after the parent would be so assessed, even if that date would be in a new child support period (subsection 66(4)). As with subsection 66(3), this allows parents a short period during which their child support obligations remain low while they manage the costs of resuming employment or increasing their employment.

Subsection 66(5) states that the minimum annual rate of child support is $320 and a note at the end of the subsection advises the reader that this amount is indexed annually under s153A.
Subsection 66(6) caps at three the total number of minimum annual rates for which a parent can be liable and this includes cases where child support is not payable to a non-parent carer because they have not applied for it (subsection 40B(1) refers). This means that a person who has children in more than three child support cases will not pay an amount more than three times the minimum annual rate.

If a parent has more than three child support cases for which they are otherwise liable for the minimum annual rate, the distribution of the amount of money that is payable is worked out using the formula in subsection 66(6). This formula operates by dividing the total of the three annual rates by the total number of the parent’s child support cases.

For example, if Fred would be liable for the minimum annual rate in four child support cases, the most he will pay is three times the minimum annual rate of $320, which is $960. This rate is then divided by the number of cases (four) to produce an amount of $240 per child support case and this amount is distributed to the carer or carers entitled to child support in each child support case.

If the minimum annual rate, or rates, for which a person is liable is to be paid to both the other parent and a non-parent carer, or to two non-parent carers, of the children (because they share the care of the children in the child support case), the money is to be distributed to the parent or carer in accordance with subsection 66(7). This subsection provides that if the care is shared equally between the carers, the rate payable is to be shared equally, otherwise only the carer who has the greatest percentage of care of the children is entitled to be paid the rate.

As is currently the case, section 66 does not apply in relation to child support payable in respect of a child in accordance with a departure order (under Division 4 of Part 7 of the Child Support Assessment Act) or a child support agreement made by consent that has effect as if it were such an order (subsection 66(8)).

Note that, where an application for assessment is made by a non-parent carer, it is possible that two parents in the child support case may each be liable to pay the minimum rate to the non-parent carer, or that one may be liable to pay the minimum rate and the other may be required to pay an amount of child support to the non-parent carer.
In some situations, a person can elect to have their child support income amount (and therefore their assessment) determined by reference to an estimate of their taxable income (see Subdivision B of Part 5). Where an estimate has resulted in a minimum rate assessment, there is to be no reconciliation of the estimated amount with the parent’s actual adjusted taxable income after the end of the child support period. Consequently, section 64, which enables the Registrar to do reconciliations of estimates, is being amended to provide that where an estimate results in a minimum annual rate being payable it is not subject to reconciliation (see paragraph 64(1A)(c)).

Section 66A replaces existing section 66A of the Child Support Assessment Act, which currently enables the Registrar to reduce a minimum annual rate assessment under section 66 to nil if the liable parent makes an application for such a reduction and the parent’s income, for the 12 months starting from the beginning of the relevant child support period, will be less than the minimum annual rate (noting that income for this provision is defined in subsection 66A(4) and regulation 7CA of the Child Support Assessment Act regulations). These rules continue in section 66A. An assessment made under section 66A will apply to each day in the period to which the assessment under section 66 (minimum assessment) would have applied (subsection 66A(3)). A further change from current section 66A is that the 12 month period used to assess a person’s income for the purposes of section 66A starts from the date the parent’s lodges an application under this section, rather than start of child support period as is currently the case.

Section 66C replaces current section 66C with minor technical changes to reflect changed terminology and the new arrangements for Social Security Appeals Tribunal review of child support decisions. New subsection 60C(3) provides that a contravention of subsection 60C(2) in relation to a decision does not affect the validity of the decision.

Division 8, Subdivision C – Making administrative assessments

Section 66D replaces, without change, current section 65.

Section 67 replaces current section 67 without substantive change.

Section 67A replaces current section 49A, without substantive change.

Section 68 replaces current section 68.

Section 69 replaces current section 69, with minor technical changes to reflect changed terminology.
Section 70 replaces current section 70 to reflect the new arrangements for Social Security Appeals Tribunal review of child support decisions. Section 70 provides for a notice of administrative assessment to be generally treated as prima facie evidence of the proper making of the assessment and of the correctness of the particulars in the notice. The revised section 70 disapplies this rule for proceedings under specified provisions in the Child Support Registration and Collection Act. This is because section 116 of that Act already provides more generally for documents produced to be prima facie evidence, so the rule in section 70 is superfluous in those cases.

Section 71 replaces current section 71.

Section 72 replaces current section 72 to reflect the new arrangements for Social Security Appeals Tribunal review of child support decisions.

Section 73 replaces current section 73.

Section 73A replaces current subsection 39(3).

Section 74 replaces current section 74.

Section 74A replaces current section 74A and applies in the situation where child support is payable for a child and the Registrar is notified, or otherwise becomes aware, that the person’s percentage of care for the child changes by more than 7.1%, or the person’s percentage of care falls below, or increases to, 14% or more. In this situation, if, under section 75, the Registrar amends the administrative assessment to alter the rate at which child support is payable for the child, the altered rate is to apply on and from the day the Registrar was notified, or otherwise became aware of, the change to the parent’s percentage of care. This applies subject to the parents fulfilling the other requirements of having their level of care changed where they have a previous agreement, or court ordered arrangement, about care (see Subdivision B of Division 4). Where a specific provision of Subdivision C of Division 4 provides specifically for an earlier date of effect, this restriction does not apply.

Section 75 replaces current section 75 and makes a number of amendments mainly to provide for the changed terminology in Part 5. However, it also inserts a new rule that provides that, subject to section 53 the Registrar must not make amend an administrative assessment due to a change in the person’s percentage of care unless the change to the person’s percentage of care is more than 7.1%, or the person’s percentage of care falls below, or increases to, 14% or more (subsection 75(2)).
Section 76 replaces current section 76 and makes a few amendments, mainly to provide for the changed terminology and concepts in Part 5. Subsection 76(2) differs from current subsection 76(2) in that it requires a notice given under the new section to state the age ranges of children who are multi-case children, the costs of the child, and an assessed parent’s, and non-parent carer’s, percentage of care. The new section also reflects, in its requirements to specify certain review rights and further options, the new review arrangements for child support decisions, under which the Social Security Appeals Tribunal provides the first tier of external review, with Administrative Appeals Tribunal review being available in relation to percentage of care decisions if the person is aggrieved by the Social Security Appeals Tribunal decision.

**Division 9 – Liability to pay child support as assessed**

Division 9 of Part 5 deals with provisions relating to liability to pay child support.

Section 76A provides a simplified outline of the Division, which states that 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.

Section 77 is a clarifying rewrite of existing section 77 and does not make any substantive amendment.

Section 78 is a clarifying rewrite of existing section 77 and does not make any substantive amendment. However, a note is added to the end of the section to advise the reader that Section 66 of the Child Support Registration and Collection Act also deals with when child support debts become due and payable.

Section 79 replaces existing section 79 and adds a note to the end of the section to advise that amounts covered by section 30 of the Child Support Registration and Collection Act are debts due to the Commonwealth.

**Item 2** adds ‘Schedule 1 - The Costs of the Children Table’ to the end of the Child Support Assessment Act.

Clause 1 sets out ‘The Costs of the Children Table’. A note after the heading refers the reader to section 55G, which deals with how to work out the costs of children using the Costs of the Children Table.

The Costs of the Children Table sets out the cost of children according to the combined child support income of their parents, or the child support income of one parent if only one parent can be assessed.

Clauses 2 to 3 of Schedule 1 explain how the table works.
The table is composed of a number of rows and columns. Each column has two amounts, setting out the upper and lower limits of each income range used when calculating the costs of children. Different percentages apply to different bands, to reflect that spending on children is not a constant percentage of parental income as that income rises. Each row has a number of children, from one to three, in different age ranges, young, old, and mixed. Research shows that the net costs of children increase only very slightly for the fourth and subsequent children in a family, because of the economies of scale in larger households, the constraints on spending of household budgets, and the structure of family tax benefit. Therefore, where there are four or more children in a family, the same costs as for three children are used. Thus the figures to be used in calculating the costs of children for any given parents can be found by locating the appropriate row for the number and age of their children, and the appropriate column for their combined child support income amount.

To find the cost of the children, the percentage in the parents’ income band is multiplied by the amount of combined child support income that they have above the lower limit of that band. To deal with the income below the lower limit of that band, the full amount of income in each band (½ MTAWE in each, as each band is defined as ½ MTAWE) is multiplied by the percentage applicable to that band. The cost of the children is the total of all the resulting amounts.

Subclause 1(1) deals with the child support income ranges – fraction of MTAWE row, the first row in the table. Subclause (1) explains that in each column of the Fraction of MTAWE row are specified two amounts, namely, the parents’ combined child support income or the parent’s child support income amount (for when only one parent’s income is used).

Subclause 1(2) provides that to work out the first dollar amount in each column (other than the first column) of the first row, it is necessary to take the second amount in the previous column (worked out under subclause (3)) and add one dollar. A note points out that the first dollar amount in each column is the lowest combined child support income, or child support income, covered by that column.

Subclause 1(3) explains that to work out the second dollar amount in each column (other than the last column), it is necessary to multiply the second fraction specified in that column by the annualised MTAWE figure for the relevant September quarter. A note points out that the second dollar amount in each column is the highest combined child support income, or child support income, covered by that column.

Subclause 2(1) provides that each item in the Costs of the Children Table sets out a method of working out the costs of the children. Subclause 2(2) then provides that 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).
Subclause 2(3) then provides that 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 minus the lowest 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.

Finally, subclause 2(4) provides that 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).

Essentially, then, the table sets out the percentage of each dollar of the parents’ combined child support income that the parents would spend on their children. The percentages vary according to the level of the parents’ income. Because expenditure on children decreases as a percentage of income as income increases (even though expenditure in dollar terms increases), the percentages in the table decrease for each increasing band of income, from left to right in the table. Because older children cost more than younger children, there are also different categories for young children (under 13), older children (13 or over), and situations where at least one child is under 13 and one child is 13 or over.

The bands of income are defined in terms of Male Total Average Weekly Earnings. This is a measure of average income in Australia. Because this measure is published regularly by the Australian Bureau of Statistics, the amount of child support that parents pay will keep up with movements in income.

The following table shows how the Costs of the Children Table will look when populated with dollar amounts. (Note that the MTAWE figures used in this table are provided as a sample only, as they were estimates for 2006 during research on the costs of children. These figures approximate actual 2006 figures but are not identical).
## The Costs of the Children

<table>
<thead>
<tr>
<th>Parents’ combined child support income or parent’s child support income¹</th>
<th>Fraction of MTAWE</th>
<th>Costs of children</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child support children</td>
<td></td>
<td></td>
</tr>
<tr>
<td>¹</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All children aged 0–12 years</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 child</td>
<td>17c for each $1</td>
<td>$4,305 plus 15c for each $1 over $25,324</td>
</tr>
<tr>
<td>2 children</td>
<td>24c for each $1</td>
<td>$6,078 plus 23c for each $1 over $25,324</td>
</tr>
<tr>
<td>3+ children</td>
<td>27c for each $1</td>
<td>$6,837 plus 26c for each $1 over $25,324</td>
</tr>
<tr>
<td>All children aged 13+ years</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 child</td>
<td>23c for each $1</td>
<td>$5,825 plus 22c for each $1 over $25,324</td>
</tr>
<tr>
<td>2 children</td>
<td>29c for each $1</td>
<td>$7,344 plus 28c for each $1 over $25,324</td>
</tr>
<tr>
<td>3+ children</td>
<td>32c for each $1</td>
<td>$8,104 plus 31c for each $1 over $25,324</td>
</tr>
<tr>
<td>At least one child aged 0-12 years and one child aged 13+ years</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 children</td>
<td>26.5c for each $1</td>
<td>$6,711 plus 25.5c for each $1 over $25,324</td>
</tr>
<tr>
<td>3+ children</td>
<td>29.5c for each $1</td>
<td>$7,471 plus 28.5c for each $1 over $25,324</td>
</tr>
</tbody>
</table>

1. A parent’s child support income is made up of their adjusted taxable income plus, if relevant, certain other amounts (such as net rental property loss) minus a self-support amount and minus, if relevant, a relevant dependent child amount and/or multicase allowance. Combined child support income is the total of the two parent’s child support income.
2. 0.5 times MTAWE
3. MTAWE
4. 1.5 times MTAWE
5. 2 times MTAWE
6. 2.5 times MTAWE
Each year, the Table will be Gazetted in this way with updated MTAWE figures (see item 98 in Schedule 2 to this bill) and populated with dollar amounts, in the same way as the Tax Commissioner publishes a tax table each year. The tax table sets out an amount payable at the lower limit of each income tax band and a marginal rate for each dollar an income band, above the lower limit. Gazetting the Costs of the Children Table will make it simpler for parents to determine the costs of their children.

This means that to work out the costs of the children in a child support case, it is first necessary to locate the correct category of costs in terms of ages and number of children. Then locate the correct income band for the parents’ combined child support income. Subtract the lower limit of that income band from the parents’ combined child support income, and multiply the remaining income by the specified percentage. Then add the dollar amount specified in the same place. This set dollar amount is the total that is payable for all the bands below the parents’ particular band.

Using the figures in the table above, for example, this means that if two parents have a combined child support income of $78,000 and one child, they do not have to calculate 17c for every dollar up to $25,324, plus 15c for every dollar between $25,325 and $50,648, plus 12c for each dollar between $50,648 and $75,972, plus 10c for every dollar between $75,973 and their combined child support income. Rather, they can simply add $11,143 to the amount found by calculating 10c for every dollar between $75,973 and their combined child support income.
Schedule 2 – Consequential amendments and application and saving provisions relating to the formulas

Summary

The amendments made by Schedule 1 relating to the new child support formulas provide for many new and amended concepts, and generally affect numerous other provisions in the child support legislation, family assistance law and Family Law Act. This Schedule ensures that the necessary consequential amendments are made and provides for how the new formula provisions will apply on implementation.

Background

These amendments ensure that existing provisions in the various Acts affected by the new formulas are either repealed where no longer appropriate, or revised to preserve the intended effect of the provisions in light of the new arrangements. In particular, various new definitions are inserted into section 5 of the Child Support Assessment Act so that the new concepts apply accurately throughout that Act as appropriate. Further amendments reflect the new application arrangements for administrative assessment, in which there is no longer a distinction between eligible carer and liable parent applicants – now, applications may be made simply by parents or non-parent carers. Other provisions are being amended to reflect the fact that applications are now generally made on the basis of both parents being assessed for the costs of the child (thereby, giving effect to the shared-cost approach to child support recommended in the Taskforce Report).

Explanation of the changes

Part 1 – Consequential amendments

Family Assistance Act

The family tax benefit income tests use the concept of adjusted taxable income (ATI), which is defined in Schedule 3 to the Family Assistance Act. The concept is also relevant for the purposes of child care benefit.

The components of ATI are set out in subclause 2(1) of Schedule 3. These include the individual’s adjusted fringe benefits total for the relevant income year and the individual’s target foreign income for the year. The relevant definitions are in clauses 4 and 5 of Schedule 3 respectively.

The amendments made by items 1 and 2 modify these two components of ATI so that the concept of ATI for the purposes of the family assistance law is the same as that applicable under the new child support laws.
Item 2 repeals existing clauses 4 and 5.

New clause 4 uses the concept of reportable fringe benefits total and aligns the new definition for family assistance purposes with the definition of reportable fringe benefits total as it applies in the child support context. The change for family assistance purposes is that the new definition uses the gross value of reportable fringe benefits whereas the existing definition uses the net value.

The re-naming of this concept is then reflected in the amendment made by item 1 to paragraph 2(1)(b) of Schedule 3 to the Family Assistance Act.

New clause 5 inserts a new definition of target foreign income that is, in substance, the same as the new definition inserted into the Child Support Assessment Act. For family assistance purposes, the main difference is the inclusion of new paragraph 5(1)(b) which brings within the definition any amount of income not covered by (a) that is exempt from tax under section 23AF or 23AG of the Income Tax Assessment Act 1936, reduced (not below nil) by the total amount of losses and outgoings that are not of a capital nature incurred by the individual in deriving the exempt income. This will ensure that certain foreign income that is exempt from tax but currently included as income for child support purposes will also be included as income for family assistance purposes.

These amendments apply in relation to the 2008-09 income year and later income years. The relevant application provision is in item 116.

Child Support Assessment Act

Items 3 to 98 are amendments of the Child Support Assessment Act.

Item 3 amends paragraph 4(2)(b) to reflect, in relation to the objects of the Act, the fact that the Child Support Scheme is now based on the costs of children.

Item 4 changes existing section 5 to subsection 5(1), given new subsections are being added to section 5 by item 59 and 60.

Items 5 to 59 amend section 5 to add new definitions that are relevant to the operation of the new formulas, repeal redundant definitions and amend further definitions as necessary.

Item 5 repeals the definition of adjusted income amount, which is no longer needed in the Act.

Item 6 provides that the term adjusted taxable income has the meaning given by section 43.
Item 7 provides that the term *annualised MTAWE figure* has the meaning given by section 5A.

Item 8 inserts a new definition of *care period*, as having the meaning given by section 48.

Item 9 repeals the definition of *carer application*, which is no longer needed in the Act.

Item 10 repeals and substitutes the definition of *carer entitled to child support* to recognise the more complex workings of the new Child Support Scheme, in which a parent or non-parent carer becomes entitled to child support because of the assessment and allocation of costs under the new administrative assessment provisions, rather than simply on acceptance of an application for administrative assessment.

Item 11 inserts a new definition of *child support case*, which means, in relation to a child, all the assessments for child support for all children who are children of both the parents of the child. The child support case includes all the children of the parental relationship, so if the parents have more than one child from their relationship, all their children belong to the same child support case. So, for example, if two parents have an administrative assessment for each of their two children, there is one child support case in relation to those two children. If one of those parents also has an administrative assessment for a third child with a different parent, the third child would be covered by a different child support case to the case containing the first two children.

Item 12 provides that the new term *child support income* has the meaning given by section 41.

Item 13 repeals the no longer necessary current definition of *child support income amount*.

Item 14 repeals and substitutes the definition of *child support percentage*, to have the meaning given by section 55D.

Item 15 provides that the new term *combined child support income* has the meaning given by section 42.

Item 16 provides a new definition of *cost percentage*, with the meaning given by section 55C.

Item 17 provides that the new term *costs of a child* has the meaning given by section 55H.

Item 18 provides that the new term *Costs of the Children Table* means the table in Schedule 1 to the Child Support Assessment Act.
Item 19 inserts a new definition of court order for the purposes of Part 5 of the Child Support Assessment Act and provides that it has the meaning given by section 47B.

Items 20 and 22 repeal two redundant definitions, disregarded income amount and exempted income amount.

Item 21 repeals the definition of EAWE amount, which is not needed for the new Scheme.

Item 23 inserts a new definition of income amount order.

Item 24 provides that the new term income percentage has the meaning given by section 55B.

Item 25 inserts a new definition of income support payment and states it is to have the meaning given by subsection 66(9).

Item 26 inserts a new definition of Income Tax Assessment Act, as meaning either the 1936 or the 1997 Act of that name.

Item 27 makes a minor consequential amendment to the definition of index number.

Item 28 repeals and substitutes the definition of last day, in relation to a child’s secondary school year. This is being changed to clarify that the last day is the day determined by the child’s school as the last day of classes for the school year, and, if a child has to sit an examination and the last day of examinations falls after the last day of classes, then the last day is the end of the examination period.

Item 29 repeals and substitutes the definition of last relevant year of income. Although the definition itself has not changed, the example has been updated to make it more useful.

Item 30 repeals and substitutes the definition of liable parent, to recognise the more complex workings of the new Child Support Scheme, in which a parent becomes a liable parent as a result of the assessment and allocation of costs under the new administrative assessment provisions, rather than simply on acceptance of an application for administrative assessment.

Items 31 and 32 repeal the redundant definitions of liable parent application and major care.

Item 33 amends the definition of minimum annual rate of child support to pick up the relocated substantive meaning, which will now be in subsection 66(5), rather than subsection 66(4).

Item 34 provides that the new term multi-case allowance has the meaning given by section 47.
Item 35 provides that the new term *multi-case cap* has the meaning given by section 55E.

Item 36 inserts a new definition of *multi-case child costs*, with a meaning drawn from step 4 of the method statement in section 47.

Item 37 inserts a new definition of *net rental property loss* to establish an income component that equals the amount by which a parent’s gross expenses exceed gross income from rental property for a particular year, or, if those expenses do not exceed that income, equals nil.

Item 38 provides that the term *non-parent carer* means a person who is an eligible carer of a child, but who is not the parent of the child, such as, for example a grandparent. Eligible carer is defined in section 7B.

Item 39 provides that the term *parenting plan* has the meaning given by section 63C of the Family Law Act.

Item 40 inserts a new definition of a parent’s *pension PP (single) maximum basic amount*. This is the sum of the amounts that would have been payable to the parent as the maximum basic rate and pension supplement if they were receiving parenting payment (single) under the social security law.

Item 41 provides that the new term *percentage of care* has the meaning given by section 48.

Item 42 provides that the new term *regular care* has the meaning given by subsection 5(2).

Item 43 repeals and substitutes the definition of *relevant dependent child*. The revised definition achieves several things. Firstly, it recognises that a relevant dependent child is a child who is not the subject of an assessment in respect of the costs of a child. That is, the child is not a child in a child support case (even though they may be taken into account in determining a relevant dependent child amount under section 46). Secondly, it reflects the repeal from the Scheme of the concept of *major care*, replacing it with a reference to ‘at least shared care’. Thirdly, it recognises that a child may remain a relevant dependent child until the last day of the secondary school year in which the child turns 18. Lastly, it prevents double dipping by excluding a child for whom the parent is assessed under the new costs of children arrangements.

Item 44 provides that the new term *relevant dependent child amount* has the meaning given by section 46.

Items 45 and 47 repeal the now redundant definitions of *relevant partnered rate of Social Security pension* and *relevant unpartnered rate of Social Security pension*. The new definition of *pension PP (Single) maximum basic amount* will now be sufficient.
Item 46 provides that the new term *relevant September quarter* has the meaning given by subsection 5A(2).

Item 48 inserts a new definition of *remaining period* in relation to a parent who has made an election under section 60. This definition supplements the new rules under section 60.

Item 49 provides that the new term *self-support amount* has the meaning given by section 45.

Item 50 provides that the new term *shared care* has the meaning given by subsection 5(3).

Items 51 to 54 repeal the now redundant definitions of *shared care child*, *shared ongoing daily care*, *substantial care* and *supplementary amount*.

Item 55 inserts a new definition of *target foreign income*, with meaning drawn from section 5B.

Item 56 inserts a new definition of *taxable income*, with meaning drawn from sections 56 and 57.

Item 57 inserts a new definition of *tax free pension or benefit*. This means one of several stipulated income support payments to the extent that any of those payments is tax-exempt and is not a payment by way of bereavement payment, pharmaceutical allowance, rent assistance, language, literacy and numeracy supplement or remote area allowance. This new definition will align the child support income arrangements in this respect with the current arrangements for family tax benefit.

Item 58 repeals the definition of *yearly equivalent of EAWE amount*, which is not needed for the new Scheme.

Item 59 inserts new subsections 5(2) and (3). Subsection 5(2) inserts a definition of *regular care*, which provides that a person has regular care of a child if they have at least 14%, but less than 35%, care of the child during a *care period* (see section 48). Subsection 5(3) inserts a definition of *shared care*, which provides that a person has shared care of a child if they have at least 35%, but no more than 65%, care of the child during a care period.

Item 60 inserts new sections 5A and 5B. New section 5A contains the definition of *annualised MTAWE figure*. This figure, for a relevant September quarter, is 52 times the published male total average weekly earnings figure for all employees (however from time to time described) for the reference period in the quarter. The relevant September quarter is the quarter ending 30 September of the last calendar year ending before the child support period in question begins and the reference period in the quarter is the pay period officially stipulated for the purpose.
New section 5B contains the definition of target foreign income. This definition will take the place of the exempt foreign income definition in the current formula provisions. This is to ensure that, as much as possible, consistent terminology is used both for family assistance law and child support law. The definition of target foreign income is also being aligned with the definition of target foreign income in the family assistance law. Otherwise, there is no substantial difference.

**Item 61** repeals and substitutes subsections 7A(2) and (3), relating to the meaning of a child support period. This is to redraft the subsections into plainer English. No substantive change is made, although a new note is added after paragraph (2)(d). The note points out that, despite paragraph (2)(a) (which provides that a child support period generally starts at the beginning of the day when an application for administrative assessment is properly made under Part 4), a child support period might not start if a non-parent carer applies for administrative assessment during a child support period – section 40B refers.

**Item 62** repeals and substitutes subsection 7B(1) to remove redundant concepts from the current subsection and reflect instead the new criterion that an eligible carer must have at least shared care of the child.

**Item 63** repeals the now redundant sections 8 and 8A.

**Items 64 and 65** amend section 23 to reflect the new application arrangements for administrative assessment, in which there is no longer a distinction between eligible carer and liable parent applicants – now, applications may be made simply by parents or non-parent carers.

**Item 66** follows through on the last point by repealing and substituting sections 25 to 26A. Section 25 will allow a parent of a child to apply for administrative assessment of child support for the child as long as the application is for both parents to be assessed for the costs of the child (thereby giving effect to the income shares approach to child support recommended in the Taskforce Report), the two parents are not in a domestic relationship with each other, and the specified requirements about joint care situations and child welfare laws are met. A note points out that a parent by whom child support is payable must be a resident of Australia on the day the application is made (see new section 29A).
Section 25A allows a non-parent carer to apply for administrative assessment. The basic rule in this case is that the non-parent carer must apply for both parents to be assessed for the costs of the child. However, this rule will not apply if one of several situations exists that means that one parent should not, or cannot, be assessed for the costs of the child, as long as the non-parent carer applies for the other parent to be assessed. The allowable situations include when the first parent is not a resident of Australia, cannot be located, or is deceased. The other rules about a non-parent carer application are that the carer must not be in a domestic relationship with either parent and the specified requirements about joint care situations and child welfare laws are met. A note highlights that a parent by whom child support is payable must be resident of Australia on the day the application is made (see new section 29A).

Sections 26 and 26A are essentially reiterations of current sections 26 and 26A, but reflecting the changed arrangements for applying for administrative assessment.

**Items 67 to 69** amend section 28 to reflect the changed arrangements for applying for administrative assessment and the fact that the two or more children described in the section who may be included in the same application form may be in different child support cases, given that the concept of a *child support case* is now specifically recognised in the legislation (see discussion above of the new definition of that term).

**Item 70** amends subsection 29(2) to remove reference to the redundant concept of a carer application.

**Item 71** inserts new section 29A, which has the effect that an application for administrative assessment under either section 25 or 25A may not be made if a parent to be assessed under the application for the costs of the child is not a resident of Australia when the application is made and the Registrar is reasonably satisfied that child support is likely to be payable by the parent. This is because an assessment cannot be made for a parent to pay child support unless they are a resident of Australia.

**Item 72** repeals and substitutes section 31 to reflect the changed arrangements for applying for administrative assessment. The section will have a more limited effect than currently, being simply a requirement for the Registrar to assess one or both parents, as the application requires, for the costs of the child and to assess the annual rate of child support payable under Part 5 for the days in the child support period starting when the application is made.
Item 73 repeals subsections 33(2) and (3), relating to notices to be given if the Registrar refuses to accept an application for administrative assessment, and substitutes them with subsection (3). The new subsection (3) provides for the situation where the Registrar refused to accept the application for reasons that include that the Registrar was not satisfied that one of the people who was to have been assessed for the costs of the child was a parent of the child. In this situation, the notice must include, or be accompanied by, a statement to that effect that the applicant may apply to a court having jurisdiction under the Child Support Assessment Act for a declaration under section 106A that the applicant is entitled to an administrative assessment of child support for a child because the other party is a parent of the child.

Item 74 repeals and substitutes section 34, relating to notices to be given if the Registrar accepts an application for administrative assessment. The new section merely reflects the changed arrangements for applying for administrative assessment and for review by the Social Security Appeals Tribunal. There is no substantive change.

Item 75 repeals and substitutes section 34A, relating to the Registrar’s obligation to make an assessment when a new taxable income figure is available, to re-draft the provision in plain English, without making any substantive change.

Item 76 repeals and substitutes section 34C, relating to the fact that administrative assessments for child support periods are not started by an application or a new agreement. The new section reflects changed arrangements for applying for administrative assessment, focusing not on by or to whom the child support is payable, but simply on the child support payable for the child.

Item 77 repeals and substitutes paragraphs 83(1)(a) and (b), relating to people who may be parties to child support agreements. In making this specification, the current provisions refer back to the parties involved in an application for a child support assessment. The new provisions preserve this link, and are revised simply to reflect the changed arrangements for applying for administrative assessment.

Item 78 repeals and substitutes subsection 98S(1) to reflect new concepts and terminology introduced by this bill.

Item 79 repeals and substitutes section 98SA. It states that the Registrar must not make a determination under Part 6A that varies, or that has the effect of varying, the annual rate of child support payable 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 the child support case that relates to the child.

Item 80 makes consequential amendments to section 106A.
Items 81 and 83 amend section 107 to reflect the changed arrangements for administrative assessment, including the requirement to assess a parent for the costs of the child.

Item 84 amends paragraph 117(3B)(a) to reflect the changed terminology from child support income amount to adjusted taxable income, aligning with family tax benefit.

Item 85 repeals and substitutes subsection 118(1) to reflect new concepts and terminology introduced by this bill.

Items 86 to 89 amend section 139 to reflect the changed arrangements for administrative assessment, including the requirement to assess a parent for the costs of the child.

Item 90 repeals paragraphs 150B(1)(b) and (c) and substitutes a new paragraph (b) to reflect the changed arrangements for administrative assessment, including the requirement to assess a parent for the costs of the child.

Item 91 amends the note to subsection 150C(1) to reflect the changed terminology from child support income amount to adjusted taxable income, aligning with family tax benefit.

Item 92 inserts new subsection 151B(1A). A child is generally no longer an eligible child (a child for whom child support may be paid) or a relevant dependent child (a child for whom a parent may have a relevant dependent child amount, which decreases a parent’s child support income when assessing the costs of the child support children) from the day they turn 18. Although section 151B currently allows a carer to apply for an administrative assessment for an eligible child to continue in force until the last day of the secondary school year in which they turn 18, there is no equivalent application allowed for a relevant dependent child. Therefore, the treatment between eligible children (a parent’s first family) and relevant dependent children (the parent’s second family) is inequitable, which would be contrary to the general thrust of the reforms. The amendment in this item corrects this inequity.

New subsection 151B(1A) provides the desired equivalent rule for relevant dependent children, so the parent may apply for an administrative assessment that takes into account the parent’s relevant dependent child to continue in force until the last day of the secondary school year in which the child turns 18.

Item 93 repeals and substitutes paragraph 151B(2)(b) to reflect the changed arrangements for administrative assessment.
Item 94 complements the new rule, by repealing and substituting paragraph 151C(2)(b). The extra element in new paragraph (b) effectively requires the Registrar to accept an application under new subsection 151B(1A) if satisfied that an administrative assessment, or child support agreement, that takes the relevant dependent child into account is in force, or is likely to be, on the day before the child turns 18.

Item 95 makes consequential amendments to section 151D (about the consequences of acceptance of a continued administrative assessment application under section 151B) to restrict its operation to an application under the current subsection 151B(1) for in relation to an eligible child. Item 96 then inserts new section 151E to provide equivalent consequences on acceptance of a continued administrative assessment application under new subsection 151B(1A) in relation to a relevant dependent child.

Item 97 inserts new section 153A, providing one indexation mechanism for the purposes of subsection 65A(2) (relating to the annual rate of child support payable by low income parents not on income support), and subsection 66(5) (relating to the minimum annual rate of child support) rather than including the indexation provision within each of these subsections separately.

Item 98 repeals and substitutes sections 154 and 155, which currently requires the Registrar to publish certain figures relevant to the child support formula in the Gazette. The new section updates this requirement in light of new concepts and provisions introduced by this bill. Some of the Gazettal requirements now fall on the Secretary, rather than the Registrar, since they relate to core policy elements, rather than more administrative matters. Subsection 155(3) provides that the instruments published under this section are not legislative instruments. This provision is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act 2003.

Child Support Registration and Collection Act

Items 99 to 110 are amendments of the Child Support Registration and Collection Act.

Item 99 inserts a definition of non-parent carer and provides that it has the same meaning as in section 5 of the Child Support Assessment Act.

Item 100 makes a consequential amendment to subparagraphs 17(1)(a)(i) and (ii).

Item 101 repeals and substitutes paragraph 24A(2)(c), which currently relieves the Registrar of the obligation to register a liability arising from a child support assessment if the assessment was made because of a liable parent application. The new paragraph reflects the removal of the liable parent application concept, referring instead to an application by the parent by whom child support is payable.
Item 102 makes a minor consequential amendment to section 79B.

Item 103 repeals and substitutes subsection 80(5) to reflect the changed arrangements for administrative assessment, including the requirement to assess a parent for the costs of the child.

Item 104 amends table item 4 in section 85 to reflect the changed arrangements for administrative assessment, including the requirement to assess a parent for the costs of the child.

Items 105 to 107 amend sections 101, 102 and 103H to reflect the new concept of a non-parent carer.

Item 108 inserts new section 103VA, which provides that a party aggrieved by a decision of the SSAT under Part VIIA of the Child Support Registration and Collection Act, relating to a party’s percentage of care for a child to the review, may apply to the AAT for a review of the decision. Subsection 103VA(2) provides that the term decision has the same meaning as in the Administrative Appeals Tribunal Act 1975.

Item 109 inserts new subparagraph 103X(1)(a)(ii) to provide that if the SSAT makes a decision on review that relates to a person’s percentage of care for a child, the 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).

Item 110 makes a minor technical amendment to subsection 103X(2).

Family Law Act

Items 111 to 114 amend the Family Law Act.

Item 111 amends subsection 63G(5) to reflect the changed arrangements for administrative assessment.

Item 112 repeals and substitutes subsection 66E(1) to reflect the changed arrangements for administrative assessment, including the requirement to assess a parent for the costs of the child.

Items 113 and 114 amend subsections 66SA(1), 86(3B) and 87(4D) to reflect the changed arrangements for administrative assessment of child support, including the requirement to assess a parent for the costs of the child.
Part 2 – Application and saving provisions

Subitem 115(1) is an application provision that provides that amendments made by Schedule 1, and this Schedule, apply in relation to a day in a child support period that is a day that is on, or after, the day on which this Schedule commences. Essentially, all child support assessments will be reviewed prior to the commencement of the new Scheme and new assessments will be made according to new Part 5 and take effect from the commencement of new Part 5. However, this will not affect child support periods, which will continue to run.

Subitem 115(2) provides that the amounts referred to in new subsections 65A(2) (annual rate of child support payable by low income parents not on income support) and 66(5) (minimum annual rate of child support) of the Child Support Assessment Act are to be indexed in accordance with section 153A of the Child Support Assessment Act after 30 December 2006 as if item 1 of Schedule 1 had commenced on that day.

Item 116 is an application provision that provides that the amendments made by items 1 and 2 of this Schedule apply in relation to the 2008-2009 income year and later income years.

Item 117 deals with savings assessments in force prior to the commencement of the new child support scheme.

Subitem 117(1) provides that 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 Child Support Assessment Act; or
(c) any liability that arose under section 77 of the Child Support Assessment Act before this item commences.

Subitem 117(2) provides that for the purposes of the Child Support 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, is 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.

Subitem 117(3) provides that if a Registrar determination under section 58 of the Child Support Assessment Act is in force immediately before this item commences, the determination continues in force despite the amendments made by Schedule 1.

Subitem 118(1) requires the Registrar to publish in the Gazette the annual rate of child support specified in subsection 65A(2) of the Child Support Assessment Act for all child support periods that started in that calendar year or the previous calendar year.

Subitem 118(1) requires the Registrar to publish in the Gazette for all child support periods that started in that calendar year or the previous calendar year:

- the annualised MTAWE figure for the relevant September quarter;
- the Costs of the Children Table, incorporating the annualised MTAWE figure for the relevant September quarter and any other amounts in the items in the table that can be worked out using the annualised MTAWE figure.

Subitem 118(3) notes that the instruments published under subitems (1) and (2) are not legislative instruments under the Legislative Instruments Act 2003, as the instrument is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act 2003.
Schedule 3 – SSAT review of child support decisions

Summary

This Schedule expands the role of the Social Security Appeals Tribunal to include independent review of child support decisions, providing a review mechanism that is inexpensive, fair, informal and quick.

Background

Presently, if a carer or liable parent does not agree with a decision of the Child Support Registrar, he or she may object through the internal objection procedure. If the carer or liable parent is still dissatisfied with the decision, he or she must generally appeal to a court with Family Law jurisdiction. A parent who appeals to a court must bring their action against the other parent in an adversarial process. The child support legislation makes the carer and the liable parent, rather than the Child Support Registrar, parties to the appeal. This is perceived to be an unfair aspect of the child support system. The court process can be expensive and time consuming, as well as amplifying animosity between separated parents. Consequently, external review of the Registrar’s decisions is not often sought.

Schedule 3 introduces review by an independent external body, the Social Security Appeals Tribunal (SSAT), of child support decisions which have been reviewed under the Child Support Agency’s internal review procedure. The purpose of introducing this is to provide external review mechanism which is faster, less formal and less expensive than court action, while still providing just and fair outcomes. The Registrar is the primary respondent to an application for appeal, although the other parent is also a party (with the exception of limited circumstances in which the outcome cannot affect the other parent). It is an inquisitorial, rather than an adversarial, process, which may assist in reducing tensions between separated parents when resolving child support issues. Most of the current limited AAT appeals, relating to decisions primarily affecting only one parent, will now be performed by the SSAT.

Parents, and certain other people affected by a child support decision, may appeal a decision of the SSAT to a court on a question of law. Parents can still appeal directly to the courts, in a number of situations. These are applications about the making of assessments requiring parentage declarations, applications to terminate an agreement, applications for child support in a non-periodic form, applications for urgent child support pending the making of an assessment, and applications for departure determinations in some limited circumstances, such as where the decision is too complex to be finalised administratively, or the applicant seeks to vary a child support assessment from more than 18 months ago.
Subsection 79A(1) of the Child Support Registration and Collection Act is also amended to provide that if the payer disputes the administrative assessment on the basis that the payer is not a parent of the child, the Registrar, rather than having a discretion to suspend payment to the payee, must make a suspension determination. This is in order to minimise the effect of incorrect payments in the event that the payer is found not to be the father. This change is part of larger reforms to the process of applying parentage declarations for child support purposes (see Schedule 4, under the heading ‘Parentage declarations where the payer is not a parent of the child’).

**Explanation of the changes**

**Part 1 – Amendments**

*Child Support Assessment Act*

**Item 1** inserts into section 5 a definition of final and provides that in relation to a court, it has the meaning given by section 144.

**Item 2** inserts into section 5 a definition of the Child Support Registration and Collection Act.

**Items 3 and 4** deal with changes to the notification provisions to include reference to the appeal rights which will be available after the internal review procedure.

**Item 3** repeals and substitutes section 33, which deals with the notice to be given to a person whose application for administrative assessment of child support was unsuccessful. Subsection 33(1) provides that 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. It is identical to the current subsection 33(1). Subsection 33(2) sets out the situations in which subsection 33(3) applies. It provides that if the refusal to accept the application was because the application failed to establish that the person from whom the application sought child support is a parent of the child, then the notice must include, or be accompanied by, a statement that this is the reason for the refusal. Subsection 33(3) provides that the notice must also state that the applicant may apply to a court under section 106A for a declaration that the applicant is entitled to an administrative assessment (or to have the Registrar reconsider the refusal of the application if other reasons also applied) on the basis the person from whom child support was sought is a parent of the child (see paragraph 33(3)(b)). Subsection 33(4) provides that if subsection 33(3) does not apply (that is, if the refusal was on grounds other than failure to establish that the person from whom child support was sought is a parent of the child), the notice must include, or be accompanied by, a statement to the effect that:
(a) the person may object to the decision; and
(b) if aggrieved by the later decision, the person may apply to the SSAT for review of the later decision.

Subsection 33(5) provides that a contravention of subsection (3) or (4), for example, if the notice does not state that the person may apply to the SSAT for review of the decision, does not affect the validity of the decision to refuse the application.

**Item 4** repeals and substitutes subsection 34(2). Paragraph 34(2)(a) provides that a notice given when the Registrar accepts the application, to a person from whom child support for a child is sought must include, or be accompanied by, a statement to the effect that he or she may apply to a court for a declaration 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. Paragraph 34(2)(b) provides that the notice must include, or be accompanied by, a statement to the effect that the person from whom, or to whom, the application sought payment of child support may object to the decision (other than on the ground that the person is not a parent of the child) (see subparagraph 34(2)(b)(ii)), and if aggrieved by a later decision on an objection, no matter who lodged the objection, that person may apply to the SSAT (see subparagraph 34(2)(b)(iii). This ensures that if the other party lodged the objection, and the matter is resolved to that person’s satisfaction, the person referred to in subparagraph 34(2)(b)(iii) does not lose his or her right to apply to the SSAT for review of the decision.

The following items reflect consequential changes resulting from the consolidation of the provisions relating to internal review of the Child Support Assessment Act with those in the Child Support Registration and Collection Act, and the changed external review procedures generally substituting the SSAT for the courts and AAT.

**Item 5** amends subsection 60A(3) by omitting the words ‘Part 6B and section 110’ and substituting the words ‘Parts VII, VIIA and VIII of the Registration and Collection Act’. This change is required because provisions relating to the internal objections procedure for assessments are being moved from the Child Support Assessment Act to the Child Support Registration and Collection Act.

**Item 6** repeals and substitutes subsection 60B(2). It provides that the notice must include, or be accompanied by, a statement to the effect that:

(a) the person may object to the decision; and
(b) if aggrieved by the later decision, the person may apply to the SSAT for review of the later decision.
The current paragraph 60B(2)(b) provides that the notice must state that the person can appeal to a court. This change in paragraph 60B(2)(b) to refer to the SSAT reflects that the SSAT and not a court will first review decisions. New subsection 60B(3) provides that a contravention of subsection 60B(2), for example, if notice does not set out that a person may apply to the SSAT, does not affect the validity of the decision.

**Item 7** repeals and substitutes subsection 64A(6). It provides that the notice must include, or be accompanied by, a statement to the effect that:

(a) the person may object to the decision; and  
(b) if aggrieved by the later decision, the person may apply to the SSAT for review of the later decision.

New paragraph 65A(6)(c), which provides that a notice given to a person must state that if a person is aggrieved by a decision, he or she may apply to the SSAT for review of a decision. This replaces a reference to a person being notified that he or she may apply to the AAT for a review of the decision.

**Item 8** repeals and substitutes subsection 66C(2). It provides that the notice must include, or be accompanied by, a statement to the effect that:

(a) the person may object to the decision; and  
(b) if aggrieved by the later decision, the person may apply to the SSAT for review of the later decision.

The current paragraph 66C(2)(b) provides that the notice must state that the person can appeal to a court. New paragraph 66C(2)(b) reflects that the SSAT and not a court will first review decisions. New subsection 66C(3) provides that a contravention of subsection 66C(2), for example, if the notice does not refer to a person's right to apply to the SSAT, does not affect the validity of the decision.

**Item 9** omits from subsection 70(1) the words ‘Division 3 of Part 7’ and substitutes the words ‘Part VIIA or Subdivision 3 of Part VIII of the Registration and Collection Act’.

**Item 10** omits from section 72 the words ‘Division 3 of Part 7’ and substitutes the words ‘Part VIIA or Subdivision B of Division 3 of Part VIII of the Registration and Collection Act’.

**Item 11** omits from subparagraph 76(3)(a)(i) the words ‘this Act’ and substitutes the words ‘the Registration and Collection Act’.
**Item 12** repeals subparagraph 76(3)(a)(ii) and substitutes it with a new subparagraph 76(3)(a)(ii), which provides that a notice of assessment must include a notice which provides that if a parent or liable carer is aggrieved by a decision on an objection (no matter who lodges the objection), he or she may apply to the SSAT for a review of the decision. This ensures that if the other party lodged the objection, and the matter is resolved to that person’s satisfaction, the person referred to in subparagraph 76(3)(a)(ii) does not lose his or her right to apply to the SSAT for review of the decision. The current subparagraph 76(3)(a)(ii) provides that the notice must state that the person can appeal to a court. This change reflects that the SSAT and not a court will first review decisions.

**Item 13** repeals and substitutes subsection 96(2). It provides that the notice must include, or be accompanied by, a statement that specifically draws the attention of the parties to the right:

(a) to object to the decision; and
(b) if aggrieved by the later decision (no matter who lodges the objection), the person may apply to the SSAT for review of the later decision.

New paragraph 96(2)(b) provides that if the applicant is aggrieved by a decision, he or she may apply to the SSAT for review of the decision. The current paragraph 66C(2)(b) provides that the notice must state that the person can appeal to a court. This change reflects that the SSAT and not a court will first review decisions.

**Item 14** repeals and substitutes section 98JA. New subsection 98JA(1) provides that if the Registrar refuses to make a determination, the Registrar must serve notice in writing on each of the parties to the proceeding. Current subsection 98JA(1) only requires the Registrar to serve notice on the applicant. New subsection 98JA(2) sets out that a notice must include, or be accompanied by, a statement to the effect:

(a) that the party may object to the 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 to be determined administratively)—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 Child Support Registration and Collection Act, to the SSAT for review of the later decision.
Paragraph 98JA(2)(b) ensures that if the other party lodged the objection, and the matter is resolved to that person’s satisfaction, the person referred to in paragraph 98JA(2)(b) does not lose his or her right to apply to a court or the SSAT for review of the decision. New subsection 98JA(3) provides that a contravention of subsection 98JA(2), for example, if the notice does not set out that a person may apply to the SSAT for review of the decision, does not affect the validity of the decision.

**Item 15** inserts at the end of Division 3 of Part 6A a new subsection 98RA. Like section 98JA (see **item 18**) it deals with the appeals process in relation to matters which are too complex for the Registrar to deal with administratively. New subsection 98JR(1) provides that if, after having notified the parties under section 98M, the Registrar decides not to make a determination, the Registrar must serve notice in writing on each of the parties to the proceeding.

Subsection 98RA(2) sets out that a notice must include, or be accompanied by, a statement to the effect:

(a) that the party may object to the 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 to be determined administratively)—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 Child Support Registration and Collection Act, to the SSAT for review of the later decision.

Paragraph 98RA(2)(b) ensures that if the other party lodged the objection, and the matter is resolved to that person’s satisfaction, the person referred to in paragraph 98RA(2)(b) does not lose his or her right to apply to a court or the SSAT for review of the decision. New subsection 98RA(3) provides that a contravention of subsection 98RA(2), for example, if the notice does not mention a person’s right to apply to the SSAT for review of a decision, does not affect the validity of the decision.

**Item 16** repeals Part 6B. This is because the internal objections procedure is being moved from the Child Support Assessment Act to the Child Support Registration and Collection Act, and review by the AAT of certain decisions is being replaced by review by the SSAT.

**Item 17** amends Part 7 by repealing the heading and substituting ‘Part 7 – Court review of certain decisions’. Amendments are made to reflect generally the more limited jurisdiction of the courts under the Acts, based on substitution of the SSAT as the first point of external review.
Part 7 – Court review of certain decisions

Item 18 inserts the following before Division 1 of Part 7:

Division 1A – Preliminary

New section 98W sets out a simplified outline of Part 7, including setting out the jurisdiction of courts, the process for reviewing decisions, and the orders and declarations the court may make.

Item 19 amends Division 1 of Part 7 by repealing and substituting the heading.

Division 1 – Jurisdiction of courts

Item 20 inserts before section 99 a new section 98X, which sets out a simplified outline of Division 1.

Item 21 amends Division 2 of Part 7 repealing the heading and substituting ‘Division 2 – Entitlement to administrative assessment’. This change is required because Division 2 will only deal with declarations about whether a child support assessment can or cannot be made, based on a court making a parentage declaration. The other matters that are presently dealt with by Division 2, for example, that a person from whom an application sought payment of child support was not resident in Australia on the day the application was made, will be dealt with by the internal objections procedure, and then review by the SSAT or courts.

Division 2 – Entitlement to administrative assessment

Item 22 repeals and substitutes sections 106 and 106A. New section 106 is a simplified outline of Division 1.

New section 106A deals with applications requiring parentage declarations by unsuccessful carer applicants.

Subsection 106A(1) provides that that section 106A applies if the Registrar refuses to accept from an applicant a carer application for administrative assessment of child support, and one of the reasons for the Registrar so refusing was that the person from whom the application sought payment was not a parent of the child.

Applications for declarations

Subsection 106A(2) provides that the applicant may apply to a court having jurisdiction under this Act for a declaration that:
(a) if the reason referred to in paragraph 106A(1)(b) (that is, 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) was the only reason for the Registrar refusing to accept the application—the applicant is entitled to an 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.

Subsection 106A(3) provides that the application must be made within the time prescribed by the Rules of Court, or such further time is allowed by the Rules of Court.

Parties

Subsection 106A(4) sets out that, subject to the Registrar’s right to intervene in proceedings, the parties to the proceeding are the applicant and the person from whom the application sought payment of child support.

Declarations

Subsection 106A(5) provides that the court may grant the declaration if the court is satisfied that:

(a) if the reason referred to in paragraph (1)(b) (that is, 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) 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.

Subsection 106A(6) provides that if the court grants the declaration:

(a) if the reason referred to in paragraph 106A(1)(b), that is, 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, 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 106A(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 (decision on application).

If, as a result of the reconsideration, the Registrar refuses to accept the application on other grounds, the application may be reviewed through the internal review process, and then proceed to review by the SSAT or a court (see item 3 above).

The following items limit the scope of declarations by a court that an assessment should not have been under section 107, to parentage issues.

**Item 23** adds at the end of subsection 107(1) the words ‘on the grounds that the person is not a parent of the child concerned’. It also adds a note that explains that the heading to section 107 is replaced with a new heading: ‘Declaration that a person is not entitled to administrative assessment’.

**Item 24** repeals subsections 107(1A) and (1B) and substitutes a new subsection 107(1A). New subsection 107(1A) provides that a person from whom an application sought payment of child support must not apply for a declaration in respect of a child if a court has already declared under section 106A that the applicant was entitled to an 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. A note following subsection 107(1A) explains that in that case, the person may be able to appeal against the declaration under Division 1 of Part 7.

**Item 25** repeals and substitutes subsection 107(4). New subsection 107(4) provides that the court may grant the declaration if the court is satisfied that the applicant was not entitled to an administrative assessment of child support for the child because the person from whom the application sought payment was not a parent of the child. Current subsection 107(4) provides that the court may also make such a declaration if it is satisfied that the person was not a resident of Australia. However, as Division 2 now only deals with parentage declarations, and review of residency decisions will be by the SSAT, this aspect of current subsection 107(4) is no longer relevant.

**Item 26** repeals paragraph 109(2)(b). This paragraph is being repealed because the only grounds for application under section 107, to which paragraph 109(2)(a) refers and which is the first limb of satisfying subsection 109(2), is that the person was not a parent of a child concerned. Paragraph 109(2)(b) is, therefore, unnecessary.

**Item 27** amends Division 6 of Part 7 by repealing the heading and substituting ‘Division 6 – Setting aside accepted child support agreements’.

Division 6 – Setting aside accepted child support agreements
**Item 28** repeals Subdivision A of Division 6 of Part 7. This Subdivision deals with appeals to the court against acceptance or non-acceptance of agreements. It is being repealed because a decision of the Registrar in relation to acceptance or non-acceptance of child support agreements will become decisions which are appealable to the SSAT (see item 13 of the table in section 80 in **item 73**). A person will then be able to appeal a decision of the SSAT in relation to the acceptance or non-acceptance of an agreement to a court on a question of law.

**Item 29** amends Subdivision B of Division 6 of Part 7 by repealing the heading.

**Item 30** inserts before section 136 a new section 135, which is a simplified outline of Division 6.

**Item 31** omits from section 138 the word ‘Subdivision’ and substitutes it with ‘Division’. This corrects an incorrect reference.

**Item 32** inserts before section 139 a new section 138A, which is a simplified outline of Division 6.

**Item 33** repeals and substitutes paragraph 139(2A)(d). Paragraphs 139(2A)(d) and (e) set out when a court’s urgent maintenance order ceases to have effect.

Paragraph 139(2A)(d) provides that if a decision of the Registrar does not become final, and one of the reasons for the Registrar refusing to accept the application for administrative assessment was that the Registrar was not satisfied under section 29 that the person was a parent of the child, an urgent maintenance order by the court ceases to have effect at the time when a court finally decides (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.

Paragraph 139(2A)(e) provides that in any other case, for example, if the proposed payer was not an Australian resident, the court order ceases to have effect when a decision of the SSAT, or of a court, deciding that the applicant was not entitled to administrative assessment of child support, becomes final.

**Item 34** repeals and substitutes subsection 139(2B). New subsection 139(2B) provides that a decision of the Registrar refusing to accept an application for administrative assessment of child support becomes final if an application to a court under section 106A (declarations of entitlement to administrative assessment) or to the SSAT is not made within the time period for doing so. A note at the end of subsection 139(2B) explains that subsection 110W(1) of the Child Support Registration and Collection Act sets out when decisions of the SSAT become final.
**Item 35** inserts before section 141 a new section 140A, which sets out a simplified outline of Division 8.

**Item 36** inserts before section 144 a new section 143A, which sets out a simplified outline of Division 9.

**Item 37** repeals and substitutes subsection 151C(5). New subsection 151C(5) provides that a notice to a person in relation to the Registrar’s decision about an application for assessment/agreement to continue beyond a child’s eighteenth birthday must include, or be accompanied by, a statement to the effect that: It provides that the notice must include, or be accompanied by, a statement to the effect that:

(a) the person may object to the decision; and
(b) if aggrieved by the later decision on an objection, (no matter who lodges the objection), the person may apply to the SSAT for review of the later decision.

Paragraph 151C(5)(b) ensures that if the other party lodged the objection, and the matter is resolved to that person’s satisfaction, the person referred to in paragraph 151C(5)(b) does not lose his or her right to apply to the SSAT for review of the decision.

**Child Support Registration and Collection Act**

**Item 38** omits from the title the word ‘related’ and substitutes ‘other’, reflecting the increased scope of the Child Support Registration and Collection Act, which will now provide for both internal review (objections) and external review (generally SSAT appeals) of decisions of the child support registrar. Various consequential amendments are necessary to ensure all relevant concepts are defined, and links to the Child Support Assessment Act are made.

**Item 39** inserts into subsection 4(1) a definition of the term AAT, which is defined as the Administrative Appeals Tribunal.

**Item 40** inserts into subsection 4(1) a definition of the term administrative assessment, which is defined as having the same meaning as in the Child Support Assessment Act.

**Item 41** inserts into subsection 4(1) a definition of appealable collection refusal decision. It defines appealable collection refusal decision as a decision resulting in the failure of the Registrar to collect an amount payable under an enforceable maintenance liability. These decisions are amounts that have become due and payable and remained unpaid for at least six months if proceedings for recovery have not been instituted in a court, or proceedings for recovery have been instituted and at least three months have passed since those proceedings were instituted.
Item 42 amends the definition of appealable refusal decision in subsection 4(1) by adding at the end of paragraphs (a), (aaa), (aa), (b), (ba) and (bb) the word ‘or’. This is to clarify that these paragraphs are alternatives, and do not need to be satisfied cumulatively.

Item 43 omits from the definition of appealable refusal decision in subsection 4(1) the words ‘section 71 or 71A’ and substitutes ‘section 71, 71A or 71C’. This amendment ensures that payer, as well as a payee, can object to the Registrar’s decision to refuse to credit an amount under section 71C. The amendments in 1998 to subparagraph 84A(1)(a) allowed a payee to object to the Registrar’s decision to refuse to credit an amount under section 71C. The 2001 amendments to the child support law should have extended this to the payer also. The present amendment corrects this.

Item 44 amends the definition of appealable refusal decision in subsection 4(1) by adding at the end of paragraph (c) the word ‘or’. This is to clarify that these paragraphs are alternatives, and do not have to be satisfied cumulatively.

Item 45 amends the definition of appealable refusal decision in subsection 4(1) by repealing paragraphs (d) and (e), because this concept has now been included as an appealable collection refusal decision.

Item 46 inserts into subsection 4(1) a definition of Assessment Act and provides that it means the Child Support Assessment Act.

Item 47 amends the paragraph (a) of the definition of court order in subsection 4(1) by inserting the words ‘this Act,’ before the words ‘the Child Support (Assessment) Act 1989’.

Item 48 inserts into subsection 4(1) a definition of final, and provides that in relation to a decision of the SSAT, it has the meaning given by subsection 110W(1), and in relation a decision of the court, it has the meaning given by subsections 110W(2) and (3).

Item 49 inserts into subsection 4(1) a definition of reconsideration and provides that it has the meaning given by section 110Q.

Item 50 inserts into subsection 4(1) a definition of resumption determination and provides that it means a determination made by the Registrar under subsection 79A(3) or 79B(3).

Item 51 inserts into subsection 4(1) a definition of SSAT and provides that it means the Social Security Appeals Tribunal.

Item 52 inserts into subsection 4(1) a definition of SSAT Executive Director and provides that it means the Executive Director of the SSAT.
Item 53 inserts into subsection 4(1) a definition of suspension determination and provides that it means a determination made by the Registrar under subsection 79A(1) or 79B(1).

Item 54 amends subsection 4(1) by repealing the definition of Tribunal. This definition is no longer accurate because it refers only to the AAT.

Item 55 repeals and substitutes paragraph 4(4)(a). New paragraph 4(4)(a) refers to the Registrar being required to do something under a number of sections listed in the paragraph. Current paragraph 4(4)(a) refers to the Registrar being required to do something referred to in paragraph (a), (b) or (d) of the definition of appealable refusal decision in subsection 4(1). However, as paragraph (d) of the definition of appealable refusal decision is being repealed (see item 45), this change ensures that paragraph 4(4)(a) still has its intended effect in relation to the sections listed.

Items 56 and 57 omit from subsection 7(3) two references to ‘and the Tribunal’ and substitutes the words ‘the SSAT or the AAT’. This change is required to ensure that the SSAT is also subject to the restrictions and has powers imposed or created by any corresponding State laws.

Item 58 amends paragraphs 23(1)(a), 33(1)(a), and 37(a) by inserting before the words ‘the Child Support (Assessment) Act 1989’ the words ‘this Act,’. These changes are required because many of the powers of a court to review child support decisions are now set out in Child Support Registration and Collection Act, as well as in the Child Support Assessment Act.

Currently, the Registrar is not required to inform affected parties of many registration decisions. Division 4 is amended to ensure that notice is given, and to substitute notification of application for review to the SSAT for the previous court application.

Item 59 inserts at the end of Part III a new Division:

Division 4 - Notices in respect of registration decisions

New section 42C provides that notices must be given to payers and payees in relation to registration decisions. In particular, subsections 42C(1), (2) and (3) provide that the Registrar must, as soon as practicable after registering, varying the particulars of, or deleting, a registrable maintenance liability in the Child Support Register, or making an appealable refusal decision in relation to a registrable maintenance liability, serve a notice on the payer and payee. In relation to registering or varying particulars, the Registrar is not required to serve a notice under the Child Support Registration and Collection Act if he or she has already done so under the Child Support Assessment Act. Subsection 42C(4) sets out that these notices must include, or be accompanied by, a statement to the effect that:

(a) the person may object to the particulars of the assessment; and
Paragraph 42C(4)(b) ensures that if the other party lodged the objection, and the matter is resolved to that person’s satisfaction, the person referred to in paragraph 42C(4)(b) does not lose his or her right to apply to the SSAT for review of the decision. New subsection 42C(5) provides that a contravention of subsection 42C(4), for example, if the notice does not set out that a person may apply to the SSAT for review of a decision, does not affect the validity of the decision.

**Item 60** repeals and substitutes subsection 54(3). New subsection 54(3) provides that if the Registrar makes a decision under subsection 54(1) or (2) to remit only part of a penalty or not to remit any part of a penalty, the Registrar must serve notice on the person by whom the penalty is, or but for the remission would be, payable. Current subsection 54(3) only applies to amounts payable under subsection 54(2), meaning that the change in this item extends the operation of subsection 54(3). Subsection 42C(4) sets out that these notices must include, or be accompanied by, a statement to the effect that:

(a) the applicant may object to the particulars of the assessment; and
(b) if dissatisfied by a later decision of the Registrar on an objection to the original decision, apply to the SSAT for review of the later decision.

New subsection 54(5) provides that a contravention of subsection 54(4), for example, if the notice does not set out that a person may apply to the SSAT for review of a decision, does not affect the validity of the decision.

**Item 61** omits from section 68 the words ‘where’ and substitutes ‘(1) If’. This is required because of the addition of subsections to section 68.

**Item 62** adds at the end of paragraph 68(a) the word ‘or’. This clarifies that paragraphs 68(a) and (b) are alternatives and are not intended to be satisfied cumulatively.

**Item 63** adds at the end of subparagraph 68(b)(i) the word ‘and’. This clarified that the various subparagraphs of paragraph 68(b) are intended to be read cumulatively.

**Item 64** adds at the end of section 68 new subsections 68(2) and (3). New subsection 68(2) provides that if the Registrar makes a decision under subsection 68(1), in relation to a late payment penalty, to remit only part of a penalty or not to remit any part of a penalty, the Registrar must serve notice on the person by whom the penalty is, or but for the remission would be, payable. Subsection 68(3) sets out that these notices must include, or be accompanied by, a statement to the effect that:
(a) the person may object to the particulars of the assessment; and 
(b) if dissatisfied by a later decision of the Registrar on an objection to 
the original decision, apply to the SSAT for review of the later 
decision.

New subsection 68(4) provides that a contravention of subsection 68(3), that 
is, if there is, for example, an error in the notice, does not affect the validity of 
the decision.

**Item 65** inserts after section 71D a new section 71E. It provides that notices 
must be given to payees and payers in relation to registration decisions. 
Section 71E is being inserted because currently, the Child Support 
Registration and Collection Act does require the Registrar to give notices in 
relation to the crediting of non-agency payments. As these notices are the 
basis for people knowing about, and being able to object to, a decision (see 
new section 80), it is important that these notices are provided.

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

Subsection 71E(2) provides that 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.

Subsection 71E(3) sets out the content of notices. It provides that a notice 
must include, or be accompanied by, a statement to the effect that:

(a) the applicant may object to the particulars of the assessment; and 
(b) if dissatisfied by a later decision of the Registrar on an objection to 
the original decision (no matter who lodges the objection), apply to 
the SSAT for review of the later decision.

Paragraph 71E(3)(b) ensures that if the other party lodged the objection, and 
the matter is resolved to that person’s satisfaction, the person referred to in 
paragraph 71E(3)(b) does not lose his or her right to apply to the SSAT for 
review of the decision.

New subsection 71E(4) provides that a contravention of subsection 42C(4), 
for example, if the notice does not set out that a person may apply to the 
SSAT for review of a decision, does not affect the validity of the decision.

**Item 66** makes a minor technical amendment to section 79A.

**Item 67** inserts before section 79A a heading:

Division 3 – Suspension determinations
Item 68 repeals and substitutes section 79A. Currently, section 79A of the Child Support Registration and Collection Act provides that the Registrar may make a determination suspending a payee’s entitlement to be paid collected amounts where the payer has made an application under section 107 of the Child Support Assessment Act seeking a declaration that the assessment should not have been issued. New subsection 79A(1) provides that if the payer has made an application under section 107 for a declaration that the payer is not a parent of the child, and the application is pending, the Registrar, rather than having a discretion to suspend payment, must make a suspension determination. This change is in order to minimise the effect of incorrect payments in the event that the payer is found not to be the father.

New subsection 79A(2) provides that 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 unless and until the Registrar makes a resumption determination under subsection 79A(3). Two notes following subsection 79A(2) explain several other consequences which flow if the payer is found not to be a parent, and if the Registrar makes a suspension determination.

New subsection 79A(3) provides that if the Registrar has made a suspension determination, and is satisfied that the payer’s application for a parentage declaration has been finally refused by the court, withdrawn or struck out, the Registrar must make a resumption determination. A resumption determination provides that the payee is again entitled to be paid an amount from the payer, and if any amounts were not paid because of the suspension determination, then the payee is entitled to be paid the arrears. A note following subsection 79A(3) explains that the Registrar must vary the Child Support Register after making the resumption determination in accordance with section 79C.

Item 68 also inserts a new section 79B, which deals with suspension determinations if review by a court or the SSAT of the payee’s entitlement to administrative assessment is pending. Subsection 79B(1) provides that 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) if following proceeding has been brought by the payer under table item 9 of the table in subsection 80(1) (that is, to accept an application for administrative assessment under subsection 30(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 was entitled to be made;

(ii) a proceeding that the applicant was not a person entitled to make an application for the child;
(iii) a proceeding that the person from whom the application sought payment was not a resident of Australia;

(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 and the proceeding is pending under that Subdivision.

Subsection 79B(2) provides that 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 unless and until the Registrar makes a resumption determination under subsection 79B(3). Two notes following subsection 79B(2) explain several other consequences which flow if the payee is found not to be entitled to assessment, and if the Registrar makes a suspension determination.

New subsection 79B(3) provides that if the Registrar has made a suspension determination, and is satisfied that the payer’s application has been finally refused by the court, withdrawn or struck out, the Registrar must make a resumption determination. A resumption determination provides that the payee is again entitled to be paid an amount from the payer, and if any amounts were not paid because of the suspension determination, then the payee is entitled to be paid that amount. A note following subsection 79B(3) explains that the Registrar must vary the Child Support Register after making the resumption determination in accordance with section 79C.

Item 68 also inserts a new section 79C. It deals with varying particulars after a suspension or resumption determination is made. Subsections 79C(1) and (2) provide that immediately after making either a suspension or a resumption determination, the Registrar must vary the Child Support Register in whatever way that the Registrar considers necessary or desirable to give effect to the determination. A note following subsection 72C(1) explains that as soon as practicable after varying particulars under subsection 72C(1), the Registrar must serve a notice under section 42C.

Item 69 repeals and substitutes Part VII.

Part VII - Internal objections procedures for certain decisions

This new Part VII includes provisions relating to internal review which have been transferred from the Child Support Assessment Act, and consolidates them with provisions about the internal review procedure contained in the Child Support Registration and Collection Act. The objections rights, both in relation to the decisions which may be reviewed, and the parties who may apply for such review, are largely unchanged.

Division 1 - Preliminary

New section 79D sets out a simplified outline of Part VII.
New section 79E sets out that the objects of Part VII are 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 objection may be lodged

A table in subsection 80(1) sets out the decisions against which objection may be lodged, and who may object to that decision. Subsection 80(2) provides that 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 on the ground that the relevant entry does not relate to a registrable maintenance liability, or on any other ground.

Subsection 80(3) provides that 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 only be made against the particulars varied, and any other particulars affected by the variation.

Subsection 80(4) provides that an objection to a decision of the Registrar to accept an application for administrative assessment under the Child Support Assessment Act may not be lodged on the ground that the person is not the parent of the child concerned. A note following subsection 80(4) explains that an application for a parentage declaration may be made under section 107 of the Child Support Assessment Act.

Subsection 80(5) provides that an objection to a decision of the Registrar to refuse to accept an application for administrative assessment under the Child Support Assessment Act may not be lodged on the ground that the person is not the parent of the child concerned. A note following subsection 80(5) explains that an application for a parentage declaration may be made under section 106A.

Division 3 - Time limits on lodging objections

New section 81 deals with time limits on lodging objections. Subsection 81(1) provides that 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 that written notice is served on the person.

Subsection 81(2) provides that an objection to an appealable collection refusal decision must be lodged within 28 days after the decision first comes to the notice of the person. This difference in time limits on objections between appealable collection refusal decisions and other decisions arises because the Registrar will notify a person of all decisions other than an appealable collection refusal decision. However, an appealable collection refusal decision is defined as a decision resulting in a failure to collect an amount payable (see item 41). Consequently, a person would only become aware of an appealable collection refusal decision through means other than a notice from the Registrar. That is, a person would become aware through the Registrar’s failure to recover and disburse the uncollected child support.
New section 82 deals with applications for extensions of time. Subsection 82(1) provides that even if the period for the lodging an objection under section 81 has ended, the person may send the objection to the Registrar together with an application in writing requesting the Registrar to treat the objection as having been duly lodged. Subsection 82(2) provides that the application must state fully and in detail the grounds of the application, including why the person failed to lodge the objection as required by section 81.

New section 83 deals with consideration of applications for extensions of time for lodging objections. Subsection 83(1) provides that if an application is sent to the Registrar under section 82 in relation to an objection under Part VII, the Registrar must consider the application, and within 60 days, either grant or refuse the application, and if it is granted, deal with the objection under subsection 87(1). Subsection 83(2) is a deeming provisions, and provides that if the Registrar does not either grant or refuse to grant the application within 60 days, the Registrar is taken to have refused to grant the application. Subsection 83(3) provides that the Registrar must serve notice in writing of the decision on the person who made the application. Subsection 83(4) provides that the notice must include, or be accompanied by, the reasons for the decision, and a statement to the effect that if the person is aggrieved by the decision, he or she may apply to the SSAT for review of the decision. The provision of reasons for the decision will assist people in deciding whether or not they wish to apply to the SSAT for review of the decision. Subsection 83(5) provides that a contravention of subsection 83(4), for example, if the Registrar fails to send a notice, does not affect the validity of the decision. Subsection 83(6) provides that if an application made under subsection 82(1) is granted, the person who made the application is taken to have duly lodged the objection to which the application relates.

Division 4 - Grounds of objection

New section 84 provides that the objection must state fully and in detail the grounds relied on.

New section 85 includes a table which sets out the type of decisions against which objections may be lodged, and the person or persons to whom the Registrar must serve a copy of the grounds of the objection.

New section 86 provides that the other party may oppose or support the objection, by lodging with the Registrar a written notice, setting out fully and in detail the ground relied on. Such written notice must be lodged within 28 days after service on the person of the grounds of the objection.
Division 5 - Consideration of objections

New section 87 deals with consideration of objections by the Registrar. Subsection 87(1) provides that if an objection is lodged with the Registrar, the Registrar must consider the objection and any notice lodged with the Registrar under section 86, and within 60 days after the objection is lodged, either disallow the objection, or allow it in whole or in part. The process for objections under the Child Support Registration and Collection Act is varied as the Registrar is no longer deemed to have made a decision to disallow the objection if the 60 days passes without the decision being made. Subsection 87(2) provides that the Registrar must serve notice in writing of the decision on the person who lodged the objection, and each other person who was entitled to be served a copy of the objection under section 85. Subsection 89(3) provides that the notice must include, or be accompanied by, the reasons for the decision and a statement to the effect that if a person is aggrieved by a decision on the objection, if the decision objected too was a decision by the Registrar that an application for a departure from the formula was too complex (that is, a decision under either section 98E or 98R), the person may apply to a court, or otherwise, apply to the SSAT, for review of the decision. The provision of reasons for the decision will assist in deciding whether or not they wish to apply to the SSAT or a court for review of the decision. Subsection 87(4) provides that a contravention of subsection 87(3), for example, if the notice does not set out that a person may apply to the SSAT for review of the decision, does not affect the validity of the decision.

Part VIIA - SSAT review of certain decisions

Division 1 - Preliminary

Section 87A is a simplified outline of Part VIIA.

New section 88 sets out that the objective of the SSAT is to provide a mechanism of review that is fair, just, economical, informal and quick.

Division 2 - Applications for review

Subdivision A – Applications for review

New section 89 deals with applications for review. Subsection 89(1) provides that a person may apply to the SSAT for review of a decision if the decision, and the person, is set out in the table included in subsection 89(1). This table includes a decision on an application for an extension of time under section 83, and a decision under subsection 87(1) on an objection to a decision. Subsection 92(2) provides that a person may not apply to the SSAT in relation to decisions by the Registrar that the matter was too complex for him or her to deal with administratively (that is, decisions under sections 98E or 98R). A note following subsection 89(2) explains that in that case, the person may apply to court for a departure order.
Subdivision B - Time limits on applications for review

New section 90 sets out time limits on applications for review and provides that a person must apply to the SSAT for review within 28 days after being served with notice under subsection 83(3) or 87(2).

New section 91 deals with applications for extension of time. Subsection 91(1) provides that the period for applying for review has ended, a person may make an application asking the SSAT Executive Director to consider the application for review despite the ending of the period. Subsection 91(2) provides that the extension application must state the reasons for the person’s failure to apply for the review within the period required by section 90.

New section 92 deals with consideration of application for extension of time for lodging objections. Subsection 92(1) provides that if a person applies to the SSAT under section 91, the SSAT Executive Director must consider the extension application, and within 60 days, either grant or refuse the extension application, and if it is granted, deal with the application for review. However, the consideration of the application for review does not have to take place within 60 days of the application for extension of time being lodged.

Subsection 92(2) is a deeming provision and provides that if the SSAT Executive Director does not make a decision within 60 days, he or she is taken to have refused the extension application.

Subsection 92(3) provides that the SSAT Executive Director must give written notice of the decision granting or refusing the extension application to the person who made that application. Subsection 92(4) provides that if the SSAT Executive Director refuses the extension application, the notice under subsection 92(3) must include, or be accompanied by, a statement to the effect that the person may apply to the AAT for review of the decision, and may request a statement of reasons under section 28 of the Administrative Appeals Tribunal Act 1975 (the AAT Act), unless he or she has already received a document which sets out such reasons.

Subsection 95(5) provides that a contravention of subsection 92(4), for example, if a notice does not set out that a person may apply to the AAT for review of a decision, does not affect the validity of the decision.

Subsection 92(6) provides that if an extension of time application under section 91 is granted, the person who made the application is taken to have duly made the application for review under this Part to which the extension application relates.

Subsection 92(7) provides that a person whose application decision made been refused by the SSAT Executive Director may apply to the AAT for review of the decision. Subsection 92(8) provides that decision in subsection 92(7) has the same meaning as in the AAT Act.
New section 93 provides that the procedures on receiving application for review are not required to be undertaken until the review of the extension application is completed. That is, subsections 95(2) to (6) and section 96 are taken not to apply in relation to 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. In that case, the notice requirements under subsection 95(2) apply as if the application for review for SSAT review was made on the day on which the decision in relation to the extension application was made.

Subdivision C - Application procedures

New section 94 deals with application procedures for review by the SSAT. Subsection 94(1) provides that a person’s options for applying to the SSAT for review under Part VIIA are broad, and include sending or delivering a written application to an office of the SSAT, the Department, the Commonwealth Services Delivery Agency, or the Department administering the Commonwealth Services Delivery Agency Act 1997. This means that applications can be made to the Child Support Agency and Centrelink, as well as to other offices. Paragraphs 94(1)(b) and (c) provides that applications can also be made orally, either in person or by telephone to the SSAT. Subsection 94(2) provides that if a person makes an oral application in accordance with paragraphs 94(1)(b) and (c), then the person receiving the oral application must make a written record of the details and note on the record the day on which the oral application was made. Subsection 94(3) provides that the written record of an oral application has effect under Part VIIA as if the written record were a written application made on the day on which the oral application was made. Subsection 94(4) provides that an application may (but is not required to) include a statement of the reasons for seeking a review of the decision.

New section 95 deals with procedures on receiving applications for review. Subsection 95(1) provides that, where an application for review is sent to an office of the Department or another agency, the Secretary or the CEO is responsible for ensuring that it is sent to the SSAT as soon as practicable but in any case no later than seven days after the Department or Agency received it.

Subsection 95(2) provides that the SSAT Executive Director must give the applicant, the Registrar and any other party written notice that an application has been received. A note following subsection 95(2) explains that the parties to the review are set out in section 101.
Subsection 95(3) requires the Registrar to provide the SSAT with a statement about the decision under review. The statement must set out the findings of fact, refer to the evidence and give the reasons for the decision. The Registrar is also required to provide the SSAT Executive Director with all documents relevant to the decision under review. These requirements have to be complied with within 28 days of the Registrar receiving a notice of the application for review. A note following subsection 95(3) explains that the Registrar must also send copies of the statement and documents to each party (see section 96).

Subsection 95(4) provides that, where the SSAT Executive Director asks the Registrar to send the statement and documents earlier than the date specified in subsection 95(3), the Registrar must take reasonable steps to comply with this request. The SSAT Executive Director might, for example, issue a request under this subsection in cases in which financial hardship would be likely to occur, pending the determination of the appeal.

Subsection 95(5) provides for the situation where relevant documents come into the Registrar’s possession after the statement has been prepared and sent, with the relevant documents, to the SSAT Executive Director. The Registrar is required to send a copy of the later documents to the SSAT Executive Director as soon as practicable after receiving them.

Subsection 95(6) provides that if the Registrar must provide the SSAT with a document under this section, if the SSAT Executive Director requests a specified number of copies, the Registrar must provide that number of copies, or otherwise, two copies. This requirement is a new addition to the SSAT’s procedures, and does not apply in relation to social security and family assistance matters before the SSAT.

Section 96 provides that parties are to be given statements about the decisions under review. Subsection 96(1) requires the Registrar to give, within 28 days after receiving the notice, each party to the review (other than the Registrar) a copy of the Registrar’s statement of reasons, and documents relevant to the decision. A note following subsection 96(1) explains that the parties to the review are set out in section 101. If the Registrar would prefer not to have to provide a document or part of document that is relevant to the review to a party, such as a medical report or details relating to new partners of a party, to the other party for privacy reasons, the Registrar may apply to the SSAT for a direction under section 97 within the 28 day timeframe otherwise allowed for the provision of the documents. The application for a direction must be served on all the parties. If the SSAT makes the direction that the document or part of document need not be provided to the party, the Registrar need not provide it under subsection 96(1).

Subsection 96(2) enables the SSAT Executive Director to order the person receiving the above copy not to disclose any information from the statement or any information other than as specified in the order.
Subsection 96(3) provides that a person commits an offence if the SSAT Executive Director gives a direction to the person under subsection 96(2) and the person contravenes the direction. A penalty of imprisonment for two years applies for a failure to comply with the order.

New section 97 deals with when a document, or part of a document, is not required to be sent. Subsection 97(1) provides that 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 two 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.

Subsection 97(2) provides subsection 97(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 97(1) does not apply.

New section 98 deals with directions prohibiting or restricting disclosure of documents. Subsection 98(1) provides that 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 subsection 95(3) or (5), the Registrar must do so.

Subsection 98(2) provides that the SSAT Executive Director may give directions (whether on application by the Registrar under section 97 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. The SSAT Executive Director may do this 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

Section 99 deals with variations of decisions before reviews completed. Subsection 99(1) provides that 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.

Subsection 99(2) provides that 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.

Subsection 99(3) provides that 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

Section 99A provides that Subdivision E does not apply in relation to the Registrar.

Section 100 deals with dismissal of applications. Subsection 100(1) sets out the situations in which the SSAT Executive Director may, on the application of a party or on his or her own initiative, dismiss an application for review. These situations are:

(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;
   (iii) 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).
(a) The requirement in paragraph 100(1)(c) for all the parties to consent to the dismissal means that a specific withdrawal provision is not required.

The requirement in paragraph 100(1)(c) that the SSAT Executive Director can only dismiss the application, if none of the other paragraphs apply, if all the parties consent, means that there is no need for a provision which allows the parties to withdraw their application.

Subsection 100(2) provides that the SSAT Executive Director may dismiss an application because it is frivolous and vexatious 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.

The purpose of subsection 100(2) is to ensure that people are given a right to be heard, and that a matter is not dismissed without the SSAT considering the matter before deciding that it is vexatious or frivolous. In addition to dismissing an application, the SSAT Executive Director also has the power to remove parties from the review (see section 101).

Division 3 – Parties to reviews

Section 102 sets out the parties to a review by the SSAT. Subsection 101(1) provides that the parties are the applicant, the Registrar, any other person who was entitled to apply for review of the decision under section 92 (that is, a person who applied for an extension of time, a person who objected to an original decision under section 80, or a person who was entitled to be served a copy of the grounds under section 85), and any other person who has been made a party to the review under subsection 101(4).

Subsection 101(2) provides that the 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.
Subsection 101(3) limits subsection 101(2). Paragraph 101(3)(a) provides that a person may not apply to be made a party to the review if he or she is a child of the applicant, of any other person who was entitled to apply for review, or of any person who made been made a party to the review. However, paragraph 101(3)(a) does not exclude adult children of a party to a review. Paragraph 101(3)(b) provides that if a party referred to in paragraph 101(1)(a), (c) or (d) is an eligible carer, but not a parent the person, they may not apply. That is, children who are being cared for by one of the parties to the child support assessment, despite not being that party's biological child, may not apply to be joined as parties to the review.

This amendment reflects a position that children under the age of 18 should generally not become involved in reviews of child support assessments applying to them, despite the fact they will be a person whose interests are affected by the decision. This is to protect such young people from being pressured to support a particular parent's position for child support purposes, which would be damaging to the child's continuing relationship with both their parents or carers.

Subsection 101(4) provides that the SSAT Executive Director may order that a person who has applied under subsection 101(2) may be made a party to a review.

Subsection 101(5) gives the SSAT Executive Director the power to remove parties to a review. The SSAT Executive Director may do this if:

(a) the party consents; or
(b) the SSAT Executive Director is satisfied, having communicated with the party, and 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 given in relation to the review; or
(d) the party fails to attend the hearing

Section 102 deals with notice of application to persons affected by a decision. Subsection 102(1) provides that reasonable steps must be taken by the Executive Director to give written notice of the application to another person whose interests are, in the Executive Director's opinion, affected by the decision.
Subsection 102(2) limits subsection 102(1). Paragraph 102(2)(a) provides that a person may not apply to be made a party to the review if he or she is a child of the applicant, of any other person who was entitled to apply for review, or of any person who made been made a party to the review. Paragraph 102(2)(b) provides that if a party referred to in paragraph 101(1)(a), (c) or (d) is an eligible carer, but not a parent the person, they may not apply. That is, children who are being cared for by one of the parties to the child support assessment, despite not being that party's biological child, may not be given notice of the review. For further discussion of this issue, see the comments made in relation to section 101 above.

Subsection 102(3) requires the notice under subsection 102(1), which may be given at any time before the review is determined, to be in writing, and also to set out the person's right to be joined as a party under section 101. Under subsection 102(4), each party is to be given a copy of the notice.

Division 3A – Prehearing conferences

Section 103 deals with pre-hearing conferences. Subsection 103(1) provides that the SSAT Executive Director may convene one or more pre-hearing conferences if he or she considers that it would assist in the conduct and consideration of the review to do so. This subsection is broadly drafted to allow the SSAT to use pre-hearing conferences to explore the issues about which the parties are in dispute, and to narrow the ground between the parties. Subsection 103(2) provides that at a conference, the SSAT may fix a time for the hearing, and give directions about the timing of making submissions or bringing evidence. A note following section 103 provides that section 103W (which deals with the SSAT’s powers if the parties reach agreement) applies if the parties reach an agreement during the pre-hearing conference.

Division 4 – Hearings

Subdivision A – Arrangement for hearings

Section 103A deals with arrangements for hearings. Subsection 103A(1) provides that 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.
Subsection 103A(2) provides that 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. Subsection 103A(3) provides that the notice given under subsection 103A(2) must be given a reasonable time before the day fixed for the hearing. Subsection 103A(3) provides that the notice under subsection 103(2) must be given a reasonable time before the day fixed for the hearing.

Subdivision B – Submissions from parties other than the Registrar

Section 103B provides that Subdivision B does not apply in relation to the Registrar (Subdivision C deals with submissions by the Registrar).

Section 103C deals with submissions from the parties. Subsection 103C(1) provides that a party to a review may make oral, written, or both oral and written submissions. A note following subsection 103C(1) explains that the SSAT Executive Director may direct that a hearing be conducted without oral submissions from the parties (see section 103D). Subsection 103C(2) provides that another person may make submissions on a party’s behalf. Subsection 103C(3) provides that the SSAT Executive Director may determine the means by which submissions are to be made, for example, electronically or by telephone. Subsection 103C(4) provides that the SSAT Executive Director may make a determination under subsection 103C(3) in relation to an application if:

(a) the application is urgent;
(b) the party lives in a remote area and travelling to the hearing would incur unreasonable expenses;
(c) the party is unable to attend the hearing because of illness or infirmity;
(d) the party has failed to attend the hearing and has not indicated that he or she intends to attend the hearing.

However, these specific situations do not limit the SSAT Executive Director’s power to make a determination under section 103C.

Subsection 103C(5) provides that if a party is not proficient in English, the SSAT Executive Director may give directions as to the use of an interpreter.

Section 103D provides, in subsection 103D(1), that the SSAT Executive Director may direct that a hearing be conducted without oral submissions from the parties if the SSAT Executive Director considers that the review hearing could be determined fairly on the basis of written submissions by the parties and all parties to the review consent to the hearing being conducted without oral submissions.
Subsection 103D(2) provides that if the SSAT Executive Director directs that the hearing is to be conducted on written submissions only, he or she must give the parties a written notice informing them of the direction, inviting them to make written submissions, and informing them to where, and by when, submissions must be made. The SSAT Executive Director must also give a copy of the notice to the Registrar.

Subsection 103D(3) provides that the notice must give a reasonable time for written submissions to be made.

Subsection 103D(4) provides that despite any direction under subsection 103D(1), the SSAT may order, if it thinks it 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.

Section 103E deals with hearings without oral submissions from the parties. Subsection 103E(1) provides that if a party has informed the SSAT Executive Director that he or she does not intend to make oral submissions, the SSAT may proceed to hear the application without oral submissions from the party.

Subsection 103E(2) provides that if the SSAT Executive Director has determined that oral submissions are to be made by telephone or other electronic means, and on the day of the hearing, the presiding member has been unable to contact the party or his or her representative, the SSAT Executive Director may authorise the SSAT to proceed without oral submissions from the party.

Subsection 103E(3) provides that the SSAT Executive Director may authorise the SSAT to proceed without oral submissions from a party where there has been no determination that submissions from that party may be made by telephone or other electronic communications equipment and the party does not attend the hearing.

Subsection 103E(4) provides that the SSAT may proceed to hear the application where the SSAT Executive Director has given an authorisation under either subsection 103E(2) or (3). If the hearing for the review has not been completed, subsection 103E(5) allows the SSAT Executive Director to revoke an earlier authorisation made under subsection 103E(2) or (3). This may arise, for example, where contact is made with a party after the authorisation was made.
Subdivision C – Submissions from the Registrar

Section 103F deals with submissions from the Registrar. The ways in which the Registrar may make submissions are limited because review by the SSAT is, amongst other things, required to be informal, should, subject to the legislation, focus on the views of the people who are parties to the child support matter. The Registrar’s methods of giving evidence are also limited to address any perceptions of imbalance in the resources available to the Registrar to argue their position, compared to that of the parents. The SSAT’s role in child support matters is also different to its role in social security and family assistance matters, because in child support matters, the dispute invariably involves two private parties as well as the Registrar. In social security and family assistance matters, the dispute is generally between a person and the Secretary. The ways in which the Registrar may make submissions is also limited because the Registrar is a party to the proceedings before the SSAT, and thus he or she cannot intervene under section 103F.

Subsection 103F(1) provides that the Registrar may make written submissions to the SSAT. Subsection 103F(2) provides that the Registrar may request in writing the SSAT’s permission to make oral, or both written and oral, submissions. The request must explain how such submissions would assist the SSAT. Subsection 103F(3) provides that the SSAT Executive Director may, by writing, grant the request, if in his or her opinion, having regard to the SSAT’s objective of providing review that is fair, just, economical, informal and quick, such submissions would assist the SSAT. Subsection 103F(4) provides that the SSAT Executive Director may order the Registrar to make oral submissions to the SSAT, or 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

Section 103G provides that the SSAT may take evidence on oath or affirmation for the purposes of a review of a decision.

Section 103H provides that children of parties are not to give evidence. Essentially, a child may not give evidence if one of the child’s parents, or (if applicable) the child’s non-parent carer, is a party to the review. This provision reflects a position that children should generally not become involved in reviews of child support assessments applying to them, despite the fact they will be a person whose interests are affected by the decision. This is to protect children from being pressured to support a particular parent’s or carer’s position for child support purposes, which would be damaging to the child’s continuing relationship with both their parents and/or their carers.
Section 103J gives the SSAT Executive Director broad powers to ask the Registrar to provide any further information or a document that is in the Registrar’s possession that is relevant to the review. Subsection 103J provides that the Registrar must comply as soon as practicable, and in any event within 14 days. If the request is for a document, the Registrar must provide the SSAT with the number of copies requested, or otherwise, two copies of the document.

Section 103K deals with the SSAT’s power to obtain information. Subsection 103K(1) provides that the SSAT may, if it is reasonably necessary for the purposes of the review, by written notice, require a person:

- to give information to the SSAT;
- attend before the SSAT; or
- produce any documents in his or her custody or control to the SSAT.

Such notices must give a reasonable time, of at least seven days, to comply, and if necessary, give a reasonable manner of providing information, or a reasonable place for attending or providing documents.

Subsection 103K(2) creates an offence of failing to comply with a notice given by the SSAT Executive Director. The penalty is imprisonment for six months. Subsection 103K(3) provides that the offence in subsection 103L(2) is not made out if complying with the notice might tend to incriminate the person. A note following subsection 103K(3) states that a defendant bears an evidential burden in relation to the matters in subsection 103K(3). See further discussion under section 110X below about this reversal of the onus of proof.

Subsection 103K(4) provides that a person who is required to attend under section 103K is allowed such expenses as are prescribed in the regulations for the purposes of subsection 120(2). This covers such things as transport costs, and accommodation costs if the person is required to be away from home for one or more nights.

Section 103L provides that the SSAT may require the Registrar to obtain information. Subsection 103L(1) provides that if the SSAT Executive Director is satisfied that a person has information that is relevant to a review, or has custody or control of a document that is relevant to a review, the SSAT Executive Director may ask the Registrar to exercise the Registrar’s powers under section 161 of the Child Support Assessment Act or section 120 of the Child Support Registration and Collection Act. In accordance with section 103T, the SSAT itself cannot exercise the Registrar’s powers under those sections. A note following subsection 103L(1) explains that 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. Subsection 103L(2) provides that the Registrar must comply with a request under subsection 103L(1) as soon as possible, and in any event, within seven days of the request being made.
Subdivision E - Hearing procedure

Section 103M sets out how the SSAT will determine which member is to preside at the hearing of the review.

Section 103N provides that the SSAT in reviewing a decision under this Part is not bound by the legal technicalities, legal forms or rules of evidence. Instead, the SSAT is to act as speedily as a proper consideration of the review allows, and is to have regard to the SSAT’s objective of providing review that is fair, just, economical, informal and quick. The SSAT may inform itself on any matter relevant to a review that it considers appropriate. A note following section 103N explains that the SSAT Executive Director may give directions as to the procedure to be followed in connection with reviews (see section 103ZA).

Given the sensitive nature of child support proceedings, it is important that private information is treated confidentially and not disclosed. The following sections, 103P and 103Q, provide mechanisms to protect parties’ information.

Section 103P provides that the hearing of a review must be in private. The SSAT Executive Director may give directions as to the persons who may be present at any hearing, having regard to the wishes of the party, and the need to protect their privacy.

Section 103Q allows the SSAT Executive Director to impose restrictions on the disclosure of information obtaining during a hearing of a child support matter. The SSAT Executive Director may make an order directing a person present not to disclose any information obtained during the hearing, or not to disclose any information obtained except for the purposes of the hearing, and in the circumstances specified in the order. A contravention of such an order is an offence, and is punishable by imprisonment for two years.

Section 103R allows the SSAT to adjourn hearings. However, the SSAT may refuse to adjourn proceedings if the hearing has already been adjourned on two or more occasions, or if the SSAT is satisfied that to grant an adjournment would be inconsistent with the SSAT’s objective of providing review that is fair, just, economical, informal and quick.

Division 5 - Decisions on review

Subdivision A - SSAT review powers

Section 103S provides that the SSAT must affirm, vary or set aside decisions. The SSAT may also substitute a new decision or send the matter back to the Registrar for reconsideration in accordance with any directions or recommendations of the SSAT. However, the SSAT cannot make a decision that the Registrar himself or herself was not able to make (see section 103T below).
Section 103T sets out the powers of the SSAT for the purpose of reviews. It provides that the SSAT may, for the purpose of reviewing a decision under this Part, exercise all the powers and discretions that are conferred by the Child Support Assessment Act and the Child Support Registration and Collection Act on the Registrar, except if the exercise of those powers by the SSAT is limited by regulation. If the Registrar’s power is limited in some way, then the SSAT’s power is similarly limited. For example, the SSAT may not make a determination that the formula is departed from such that an amount less than the minimum child support assessment is payable, in circumstances in which the Registrar could not make such a decision. Subsection 103T(3) provides that the regulations may specify provisions of the Child Support Registration and Collection Act and the Child Support Assessment Act to which subsection 103T(1) does not apply. This restriction is included because it is not appropriate for the SSAT to exercise certain of the Registrar’s powers, such as the Registrar’s power of delegation, and the form of application for administrative assessment of child support.

Section 103U provides that a review by the SSAT is to be decided according to the opinion of the majority, except if the opinions of the members are equally divided. In that case, the question is to be decided according to the opinion of the member presiding.

Section 103V sets out the date of effect of SSAT decisions. It applies if the SSAT varies a decision, or sets aside a decision and substitutes a new decision. Subsection 103V(2) provides that the decision as varied, or the new decision, has effect, or if taken to have had effect on a day specified in the SSAT’s decision, or the day on which the decision under review has or had effect.

Subdivision B – Consent orders

Section 103W sets out the powers of the SSAT if the parties reach agreement, including at a pre-hearing conference under section 103. Paragraph 103W(1)(a) deals with the situation where, if at any stage of the review proceedings, the parties, apart from the Registrar, agree to the terms of a decision of the SSAT that would be acceptable to the parties. Paragraph 103W(1)(b) provides that if the terms of the agreement must be put in writing, signed by or on behalf of the parties and lodged with the SSAT, and, in accordance with paragraph 103W(1)(c), the SSAT is satisfied that the decision would be within the SSAT powers, then the SSAT must act in accordance with either subsection 103W(2) or (3). A note following subsection 103W(1) explains that that the SSAT cannot make a decision that the Registrar could not have made (see section 103T).
Subsection 103W(2) provides that if an agreement 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 without holding or completing a hearing. Subsection 103W(3) provides that if the agreement relates to a part of the proceeding, or a matter arising out of the proceeding, the SSAT may give effect to the agreement’s terms without dealing at the hearing with that matter.

Subdivision C – Notification and publication of decisions

Section 103X deals with the procedure following a decision by the SSAT. Subsection 103X(1) provides that within 14 days after making the decision, the SSAT must give the parties a written notice setting out the decision, and the fact that an appeal may be made to a court on a question of law. The SSAT must also return any documents to the Registrar which the Registrar provided, and give to the Registrar a copy of any document on which the findings on any material of fact are based. However, subsection 103X(2) provides that a failure to comply with subparagraph 103X(1)(a)(ii), that is, a failure to inform a party that he or she may apply to a court on a question of law, does not affect the validity of the decision.

Subsection 103X(3) provides that within 14 days after making the decision, the SSAT must either give reasons for the decision orally, and explain that the parties may request written reasons under paragraph 103X(3)(b) within 14 days after the notice is given under paragraph 103Y(1)(a), or provide written reasons. Paragraph 103X(3)(b) provides that written reasons must set out the reasons for the decision, the findings on any material questions of fact and refer to the material or evidence on which the findings of fact are based.

Subsection 103X(4) provides that if the SSAT gives its reasons orally, within 14 days after those oral reasons were given, the party may request a written notice. Subsection 103X(5) provides that the SSAT must comply with a request under subsection 103X(4) within 14 days.

Section 103Y deals with correction of errors in decisions or statement of reasons. Subsection 103Y(1) provides that if the presiding member of the SSAT as constituted for the purposes of the review is satisfied that there is an obvious error in the text of the decision, or the written statement of reasons, the presiding member alter the text of the decision or statement. Subsection 103Y(2) provides that the altered text is taken to be the SSAT’s decision or the reasons for the decision. Subsection 103Y(3) gives examples of obvious errors, including clerical or typographical errors, or inconsistencies between the decision and the statement.
Subdivision C – Costs

Section 103Z deals with the costs of review. It provides that in general, a party to a review must bear his or her own costs. However, the SSAT may determine that the Commonwealth is to pay any reasonable travel or accommodation costs specified in the determination. Also, if the SSAT arranges for the provision of a medical service in relation to a party to the review, the SSAT may determine that the Commonwealth is to pay the costs of the provision of the evidence. Subsection 103Z(4) provides that if the SSAT makes a determination under subsection 103Z(2) or (3), the costs are payable by the Commonwealth.

Division 6 – Other provisions

Section 103ZA deals with directions as to procedures for reviews. Subsection 103ZA(1) provides that the SSAT Executive Director may give both general directions as to the procedure to be followed by the SSAT, and directions in relation to a particular review. Such directions must not be inconsistent with the Child Support Assessment Act or the Child Support Registration and Collection Act (see subsection 103ZA(2)), and may be given before or after the hearing of a particular review has commenced (see subsection 103ZA(3)). The presiding member of the SSAT as constituted for a particular review may also give directions for that review (see subsection 103ZA(4)). As with directions given by the SSAT Executive Director, such directions must not be inconsistent with the Child Support Assessment Act or the Child Support Registration and Collection Act, but in addition must not be inconsistent with any directions given under subsection 103ZA(1) (see subsection 103ZA(5)). Directions may be given before or after the hearing of a particular review has commenced (see subsection 103ZA(6)). Directions given under section 103ZA must be consistent with the SSAT’s objective of providing review that is fair, just, economical, informal and quick (see subsection 103ZA(7)). A general direction made under paragraph 103ZA(1)(a) is a legislative instrument under the *Legislative Instruments Act 2003* (see subsection 103ZA(8)). A direction made under paragraph 103ZA(1)(b) or subsection 103ZA(4) is not a legislative instrument (see subsection 103ZA(9)). This provision is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

**Item 70** repeals and substitutes the heading of Part VIII:

Part VIII – Court review of certain decisions

**Item 71** inserts before section 104 various new sections dealing with court review of certain decisions.

Division 1 – Preliminary

Section 103ZB sets out a simplified outline of Part VIII.
Division 2 – Jurisdiction of courts

Section 103ZC sets out a simplified outline of Division 2 of Part VIII.

**Item 72** adds at the end of Part VIII a new Division 3:

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

Subdivision A – Preliminary

Section 110A sets out a simplified outline of Division 3 of Part VIII.

Subdivision B – Appeals from the SSAT

Section 110B deals with appeals from decisions of the SSAT. It provides that a party to a proceeding before the SSAT may appeal to a court having jurisdiction, on a question of law, from any decision of the SSAT in that proceeding. This is consistent with how matters are currently appealed from the AAT to a court. The SSAT and AAT are tribunals which consider the merits of a case, whereas a court usually only considers matters which raise a question of law.

Section 110C deals with time limits for instituting appeals. Subsection 110C(1) provides that an appeal to a court must be instituted within the time prescribed by the applicable Rules of Court, or within such further time as is allowed under the applicable Rules of Court, and in such manner as prescribed by the applicable Rules of Court. Subsection 110C(2), without limiting subparagraph 110C(1)(a)(ii), provides that further time may be allowed if the SSAT initially gave its decision orally, and later gave a written statement of reasons, and the written statement contains reasons that were not mentioned in the oral statement.

Section 110D provides that the parties to the appeal are the people who were the parties to the proceedings before the SSAT when the SSAT made the relevant decision. This section is expressed in this way to provide clarity in who are the parties to the appeal, because parties may have been joined to, or dismissed from, the SSAT proceedings, at various points.

Section 110E provides that the jurisdiction of a court to hear and determine appeals from SSAT proceedings may be exercised by the court constituted as a Full Court or by a single Judge.
Section 110F deals with the powers of courts. Subsection 110F provides that the court must hear and determine an appeal and may make such orders as it thinks appropriate. Subsection 110F(2), without limiting subsection 110F(1), provides that the orders a court may make include affirming or setting aside the SSAT’s decision, remitting the case to the SSAT to be heard and decided again, either with or without further evidence, in accordance with the court’s directions. Paragraph 110F(3)(a) provides that if a matter is remitted to the SSAT, the SSAT does not need to be constituted by the same person or persons who originally made the decision. Paragraph 110F(3)(b) provides that whether or not the SSAT is reconstituted for the hearing, the SSAT may have regard to any record of proceedings before the SSAT prior to the appeal, so long as doing so is not inconsistent with the court’s directions.

Section 110G provides that the courts may make findings of fact. Paragraph 110G(1)(a) provides that the court may make findings of fact that are not inconsistent with the findings of fact made by the SSAT (other than findings made by the SSAT as the result of an error of law). Paragraph 110G(1)(b) sets out various matters to which the court must have regard if the court chooses to exercise its discretion to make findings of fact. Subsection 110G(2) provides that the court may have regard to the evidence given in the proceeding before the SSAT and receive further evidence. Subsection 110G(3) provides that this 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

Section 110H deals with references of questions of law from the SSAT. Subsection 110H(1) provides that the SSAT may, on its own initiative, or at the request of a party, refer a question of law arising in a proceeding before it to a court for decision. Subsection 110H(2) provides that a question must not be referred without the SSAT Executive Director’s agreement. Subsection 110H(3) provides that if a question has been referred to a court, the SSAT must not give a decision to which the question is relevant while the reference is pending, or proceed in a manner, or make a decision inconsistent with, the opinion of the court on the matter.

Section 110J provides that the jurisdiction of a court to hear and determine a question of law must be exercised by the court constituted as a Full Court or by a single Judge.

Subdivision D – Other provisions

Section 110K deals with the sending of documents to, and disclosure of documents by, the court. It provides that when an appeal is instituted in a court, or a question of law is referred to a court, the SSAT Executive Director must send to the court all the documents that were before the SSAT in relation to the proceeding to which the appeal or reference relates. At the conclusion of the proceeding, the court must return the documents to the SSAT.
Item 73 inserts after Part VIII a new Part VIII A.

Part VIII A – Other provisions relating to reviews of decisions

Division 1 A – Preliminary

Section 110N sets out a simplified outline of Part VIII A.

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

Subdivision A – Preliminary

Section 110P provides that Division 1 applies for the purposes of the Child Support Assessment Act and the Child Support Registration and Collection Act and that Division 4 is subject to section 111C (stay orders).

Section 110Q sets out a number of matters which are a reconsideration, for the purposes of the Child Support Registration and Collection Act. These matters are:

(a) an objection to a decision under Part VII;
(b) an application to the SSAT for review of that decision under Part VII A;
(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

Section 110R provides that the institution of a reconsideration does not affect the operation of the decision, or the taking of action to implement the decision. For example, the SSAT may make a decision favourable to one party, which requires the Registrar to alter the Child Support Register. The fact that another party has appealed the matter to a court does not affect the Registrar’s obligation to amend the Child Support Register. Section 110R has a very broad application, and is intended to ensure the continued operation of the child support system, despite any reconsiderations which may be pending.

Section 110S provides that the fact that reconsideration of registrable maintenance is pending does not interfere with, or affect, the registration of the liability, or the particulars entered in the Child Support Register in relation to the liability. Subsection 110S(2) provides that any amounts payable under such a liability, or payable by way of a penalty may be recovered as if no reconsideration were pending. Because it deals only with reconsideration of registrable maintenance liabilities, section 110S is narrower in its operation that section 110R.
Section 110T provides, in subsection 110T(1), that the fact that 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 a person. Subsection 110T(2) provides that any such assessment may be registered under the Child Support Assessment Act and any amounts may be recovered in relation to the assessment as if no reconsideration were pending. Because it deals only with reconsideration of a decision in relation to a person, for example, whether or not a person is a resident of Australia, section 110T is narrower in its operation than section 110R.

Section 110U provides that the fact that a reconsideration of a decision of the Registrar under section 64A of the Child Support Assessment Act does not, in the meantime, interfere with, or affect the decision. Subsection 110U(2) provides that amounts payable in relation to a decision may be recovered as if no appeal were pending. Because it deals only with reconsideration of a decision in relation to a penalty for underestimating taxable income and a supplementary amount, section 110X is narrower in its operation than section 110R.

Division 2 – Implementation of decisions

Section 110V provides that 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

Section 110W sets out how to determine when a decision becomes final.

Subsection 110W(1) provides that the SSAT’s decision becomes final if an appeal could be made to a court (that is, an appeal could be made in relation to a question of law), but an appeal is not made within the period for doing so. The SSAT’s decision becomes final at the end of the period for making an application to the court.

Subsection 110W(2) provides that the Full Court of the Family Court’s decision becomes final if an application for special leave to appeal to the High Court may be made within the period of 30 days after the making of the decision, but an application is not made within that period. The Full Court’s decision becomes final at the end of the period for making a special leave application.

Subsection 110W(3) provides that the decision of any other court becomes final if an application for leave to appeal may be made, but application is not made within the period for doing so. The court’s decision becomes final at the end of the period for making the application for leave to appeal.

Division 4 – Restrictions on publication of review proceedings
Section 110X imposes restrictions on the publication of review proceedings. Subsection 110X(1) provides that a person commits an offence if a person publishes or disseminates an account of proceedings before the SSAT in relation to child support, and that account identifies a party to, or a person related to a party to, the proceedings, or a witness in the proceedings. This is punishable by imprisonment for 12 months. Subsection 110X(2) sets out what accounts are taken to identify a person. Subsection 110X(3) creates an offence of publishing identifying lists. It provides that a person commits an offence if he or she publishes or disseminates a list of proceedings before the SSAT in relation to child support. Subsection 110X(4) creates defences to the offences set out in subsections 110X(1) and (3). The defences are that the offences do not apply in relation to communications for:

(a) court proceedings; or
(b) disciplinary proceedings against a member of the legal profession; or
(c) the granting of legal aid; or
(d) publishing a notice or report in accordance with a court direction; or
(e) publication by the SSAT of lists of proceedings that are to be dealt with by the SSAT;
(f) publication for use by members of any profession for professional purposes, such as law reports; or
(g) publication or dissemination of an account for the purposes of professional training, informing a person who is a party to the proceedings, the studies of a person who is a student; or
(h) publication of accounts of proceedings, where those accounts have been approved by the court.

The defence elements discussed above in relation to sections 103K and 110X constitute a reversal of proof, which give to the defendant the onus of raising the particular matters in the defence, to resist the charge. In this case, the defendant has an evidential burden of proof so that the defendant bears the onus of pointing to, or adducing, something to raise the defence and the prosecution would bear the burden of disproving the defence beyond a reasonable doubt. This is justified because the matter would fall peculiarly within the knowledge of the defendant and it would be significantly more difficult and costly for the prosecution to prove than for the defendant to establish.

Subsection 110X(5) provides that offences against subsections 110X(1) or (3) are indictable offences, and subsection 110X(6) provides that they must not be commenced without the Director of Public Prosecution's written consent. Subsection 110X(7) sets out the definitions of a number of terms used in section 110X.
Item 74 repeals and substitutes subsection 116(1), and inserts new subsections 116(1), (1A) and (1B). The changes to subsection 116(1), and new subsections 116(1A) and (1B) ensure that the references to various proceedings correctly reflect the changes to where those proceedings will be located in the child support legislation. In addition, new subsection 116(1) is different to the current subsection 116(1) by providing that a document signed by the Registrar purporting to be a copy of an entry in the Registrar is prima facie evidence, rather than conclusive evidence of the matters set out in subsection 116(1). This change makes subsection 116(1) consistent with provisions in other Commonwealth legislation dealing with similar matters.

Family Law Act

Item 75 amends the Family Law Act by inserting at the end of subsection 69B(2) the words ‘or the Child Support (Registration and Collection) Act 1988’. This change ensures that subsection 69(1) of the Family Law Act, which provides that proceedings under Part VII of that Act must only be initiated in accordance with that Part, does not apply in relation to child support proceedings. This change is required because proceedings may now be initiated under the Child Support Registration and Collection Act, whereas under the current form of the child support law, they may only be initiated under the Child Support Assessment Act.

Social Security Administration Act

Item 76 amends the Social Security Administration Act. It omits, in clause 20 of Schedule 3, the words ‘or the Employment Services Act 1994’ and substitutes ‘, the Employment Services Act 1994, the Child Support (Assessment) Act 1989, or the Child Support (Registration and Collection Act 1988)’. This change means that the SSAT Executive Director may, in writing, delegate to a member of the SSAT all or any of his or her powers and functions.

Part 2 – Application

Item 77 sets out the application provisions for review of decisions.

Decisions of the Registrar – internal review pending or not yet started at commencement

Subitem 77(1) provides that, subject to subitem 77(3), internal review under Part VII of the Child Support Registration and Collection Act applies to decisions of the Registrar made under the Child Support Registration and Collection Act, or the Child Support Assessment Act before or after the commencement of this item. A note following subitem 77(1) explains that Part VII of the Child Support 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 Child Support Assessment Act immediately before the commencement of this item (see subitem 77(4)).
Subitem 77(2) provides that review by the SSAT applies to a decision made by the Registrar under subsection 85(1) or 89(1) of the Child Support Registration and Collection Act after the commencement of this item, that is, after 1 January 2007.

Decisions of the Registrar – internal review completed before commencement

Subitem 77(3) deals with situations where a person objected, under Part 6 of the Child Support Assessment Act or Part VII of the Child Support Registration and Collection Act, to a decision of the Registrar (the original decision), and that objection was made, and the Registrar made a decision on that objection (the objection decision) before the commencement of this Part (that is, before 1 January 2007). An original decision could include, for example, a decision relating to the particulars of an assessment or the particulars of an entry in the Child Support Register. In those situations, the Child Support Assessment Act and the Child Support Registration and Collection Act apply in the form they took before the commencement of this Schedule. This applies both in relation to the original decision and the objection decision. In other words, the person has the right to appeal to the AAT, and directly to the courts, as they do presently. A proceeding in a court under Division 3 of Part 7 of the Child Support Assessment Act may be commenced after the commencement of this item if the Registrar made a decision on an objection to the relevant particulars of the relevant administrative assessment before the commencement of this item.

Pending proceedings – internal reviews

Subitem 77(4) provides that a proceeding before the Registrar that was, before 1 January 2007, pending under Part 6B of the Child Support Assessment Act, or Part VII of the Child Support Registration and Collection Act, is taken, on 1 January 2007, to be pending under Part VII of the Child Support Registration and Collection Act.

Subitem 77(5) provides that the Child Support Assessment Act and the Child Support Registration and Collection Act, as in force before the commencement of this item, continue to apply in relation to a decision made by the Registrar under:

(a) subsection 98ZE(1) of the Child Support Assessment Act (that is, consideration of applications for extensions of time for lodging objections); or
(b) subsection 88(1) or 100(1) of the Child Support Registration and Collection Act (that is, consideration of applications for extension of time).

The joint effect of subitems 77(4) and (5) is shown by the following example:
If the Registrar makes a decision under subsection 98ZE(1) of the Child Support Assessment Act before the commencement of this Schedule, the AAT can still review the decision (the result of subitem (5)), but if the AAT grants the extension, it will be an extension to bring an application under new Part VII of the Child Support Registration and Collection Act (the result of subitem (4)).

Pending proceedings – court and AAT reviews

Subitem 77(6) provides that the amendments of the Child Support Assessment Act and the Child Support Registration and Collection Act made by this Schedule do not affect any proceeding before, or appeal made to, a court or the AAT, or any order or declaration made by a court or the AAT in force immediately before the commencement of this item.

Subitem 77(7) provides that the amendments made to the Child Support Assessment Act by items 5, 9 and 10 do not apply in relation to a proceeding under Division 3 of Part 7 of the Child Support Assessment Act as in force immediately before the commencement of this item. Items 5, 9 and 10 replace references to the objections procedure and AAT review of certain decisions (item 5), and appeals to the court against incorrect assessments (items 9 and 10) with references to Part VIIA or Subdivision B of Part VIII of the Child Support Registration and Collection Act. It ensures that proceedings covered by subitem 77(6) can continue unaffected by the amendments in this Schedule. A proceeding under Division 3 of Part 7 of the Child Support Assessment Act may be commenced after the commencement of this item if the Registrar made a decision on an objection to the relevant particulars of the relevant administrative assessment before the commencement of this item (see subitem 77(3))

Item 78 sets out application and savings provisions in relation to notices. Subitems 78(1) and (2) provide that the amendments made by various items, which amend the Registrar’s requirement to give notices, under both the Child Support Assessment Act, and the Child Support Registration and Collection Act, apply in relation to notices given after the commencement of this item. Subitem 78(3) provides that the amendments of the Child Support Assessment Act and the Child Support Registration and Collection Act do not affect the validity of a notice given by the Registrar under any provision of those Acts before the commencement of this item. Even though notices given before commencement will incorrectly refer to a right to apply to a court or the AAT for review, this will be dealt with administratively.

Item 79 sets out the application of section 110X of the Child Support Registration and Collection Act. It provides that section 110X, which imposes restrictions on the publication of review proceedings, and creates offences of publishing identifying accounts and publishing identifying lists, applies in relation to proceedings commenced under Part VIIA (review by the SSAT), or Division 3 of Part VIII (court review of certain decisions of the SSAT), of the Child Support Registration and Collection Act after the commencement of this item.
Item 80 makes specific provision for how these amendments are to apply in Western Australia in relation to exnuptial children. Under the Constitution, the Commonwealth child support legislation applies in the states in relation to exnuptial children only if the states either refer to the Commonwealth their power to make such laws, or adopt the relevant Commonwealth laws. All states have referred their power except Western Australia, which has chosen instead to adopt the child support legislation from time to time through a series of Acts.

Therefore, these amendments will apply in relation to exnuptial children in Western Australia only when the amendments have been adopted. Therefore, the application provisions discussed above are modified so that they generally apply in these cases to objection decisions made after the date of adoption, with matters in train at the date of adoption being treated in the same way as matters in train at 1 January 2007 for all other cases, as discussed above.

Item 80 does this by providing that the application arrangements in items 77 to 79 apply in relation to exnuptial children in Western Australia as if references in those items to the commencement of the items were references to the adoption of the amendments.

Until the adoption, parents of exnuptial children in Western Australia will continue to have the current access to court review of objection decisions.
Schedule 4 – Other amendments commencing 1 January 2007

Summary

This Schedule provides for the other reforms that will commence on 1 January 2007. In particular, the relationship between the courts and the new Child Support Scheme will be simplified, particularly in relation to parentage. Parents will have better access to court enforcement of child support debts and courts will have increased powers to seek information and evidence in those cases and to make interim arrangements for their child support cases generally. A further measure addresses the fact that, currently, the Child Support Registrar can backdate changes of assessment for an almost unlimited period of time. This will be amended so that the Registrar can only backdate changes of assessment for 18 months, or a court for up to seven years.

Background

BACKDATING OF CHANGES OF ASSESSMENT TO BE LIMITED TO 18 MONTHS EXCEPT IN CERTAIN CIRCUMSTANCES

Currently, an application for a change of assessment may be made for an almost unlimited period of time. Section 98B of the Child Support Assessment Act provides that ‘at any time when an administrative assessment is in place in relation to a child’, the liable parent or carer may make an application for a departure from that assessment. Subsection 98K(1) provides that if at any time when an administrative assessment is in force in relation to a child, the Registrar is of the view that special circumstances exist, the Registrar may make a determination that the administrative assessment should be departed from. That is, an application for a change of assessment may open past periods of child support to review. In some circumstances, if a parent wishes to avoid paying a large outstanding child support debt, he or she may apply for a change of assessment for a past period, thus making it difficult for the Child Support Agency to enforce that debt. This would occur if a Senior Case Officer determined it was just and equitable and otherwise proper to backdate a reduction to the assessment. A change of assessment can also be used retrospectively to create debt.
The changes in this Schedule limit the time period for which a change of assessment can be backdated to 18 months before the liable parent or carer lodged the application, or the Registrar notified the parties of his or her intention to make a determination. The exception to this rule is where the parent or liable carer, or the Registrar applies to the court for leave for the change of assessment to be backdated for a period of up to seven years. The court can grant leave for the Registrar to backdate the matter for a period of longer than 18 months. In this case, the court may order that the matter can be backdated for a specific period, such as three years, or allow the Registrar to determine the period, not longer than seven years, for which the change of assessment will be backdated. Alternatively, the court can grant leave to itself to make an order in relation to the matter.

In making its decision, either in granting leave to the Registrar, or making an order itself, the court must consider a series of factors. These factors include the responsibility and reason for the delay in making the application, and any hardship which may result if leave is not granted, as well as any other relevant factors.

**PARENTAGE DECLARATION WHERE THE PAYER IS NOT A PARENT OF THE CHILD**

These measures are to address the perception that it is difficult for a person who has paid child support and later discovers that they are not the parent of the child to recover the child support they have paid. In order to recover child support paid, the former payer must obtain a court declaration of parentage, and seek repayment of the amounts paid to the child’s carer. The role of determining the parentage of a child will remain with the courts. As with the present legislative provisions, a person who believes that they are not the parent of the child they are supporting under a child support assessment must make application to a court for a declaration that the child support assessment should not have been made. Instead of the non-parent then being required to make a separate application seeking repayment of amounts paid, the court must proceed as soon as is practicable to consider making an order under section 143 about repayment. This is in order to minimise court costs and uncertainty for both parties. Accordingly, this Schedule also inserts subsection 107(6) which requires the court to consider immediately whether any repayments should be made.
This Schedule also amends section 143 of the Child Support Registration and Collection Act, and clarifies the factors a court must consider when deciding whether or not to order that child support should be repaid. These factors allow the court to consider the situation of all parties, including the biological father, and to consider all aspects of the relationship between the former payer and the child in determining whether the child support mistakenly paid should be repaid. However, even if a payer obtains a court order that the payee should repay amounts of child support, their position in terms of enforcement of the order is subject to the former payee's resources. Accordingly, the former payer's ability to enforce this order may be quite limited. By contrast, the Registrar has powers to intervene to recover debts from a payer under a child support assessment using powers to access bank accounts, tax returns and wages. This Schedule amends the definition and application of a registrable maintenance liability. In particular, an order under section 143 for a former payee to repay child support to a former payer becomes a registrable maintenance liability. This means that a former payer of a child support liability is put in the same position as the former payee where the former payer is owed repayment of a child support related debt.

**PAYEE PRIVATE ENFORCEMENT OF CHILD SUPPORT DEBTS**

Currently, a payee who has registered a child support liability for collection with the Registrar assigns responsibility for the debt entirely. If such a payee is involved in court action to resolve, for example, the division of property, he or she must ask the Registrar to intervene in relation to the child support matters. Such a payee has no power to require the Registrar to take any particular step. A payee may opt for private collection, and cease to have the liability registered with the Registrar for collection. However, a payee cannot take action to enforce the debt, while the ongoing liability is registered with the Registrar for collection.

The present amendments allow the payee to take private enforcement action, in relation to child support debts, while the Registrar may undertake other enforcement action at the same time. This results in benefits for payees, is efficient in terms of court time and saves administrative costs.

**Explanation of the changes**

**Part 1 - Amendments**

*Child Support Assessment Act*

**Item 1** omits from paragraph 76(3)(aa) ',subject to subsection 98(3)' This change is required because section 98 is being repealed.

**Item 2** repeals paragraph 76(3)(b). This paragraph provides that a notice of assessment must draw the attention of the carer entitled to child support parent and the liable parent to the right to apply to a court for review in certain circumstances. As court review is being replaced, in the first instance, with review by the SSAT, this paragraph is no longer relevant.
**Item 3** repeals the heading of Part 6A and substitutes:

Part 6A – Departure from administrative assessment of child support (departure determinations)

**Item 4** repeals and substitutes Division 1 of Part 6A.

Division 1 – Preliminary

New section 98A sets out a simplified outline of Part 6A.

**Item 5** omits from the note at the end of subsection 98B(1) the word ‘Note’ and substitutes ‘Note 1’.

**Item 6** adds at the end of subsection 98B(1) a further note. Section 98B provides that a parent may apply for a determination that the provisions of the Act dealing with administrative assessments should be departed from in relation to the child. This section does not include any time limits on such an application. This note clarifies that 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. This relates to the amendments to subsection 98S(3B) below.

**Item 7** omits from the note at the end of subsection 98K(1) the word ‘Note’ and substitutes ‘Note 1’.

**Item 8** adds at the end of subsection 98K(1) a further note. Section 98K provides that the Registrar may initiate a determination under Part 6A. This section does not include any time limits on such an application. This note clarifies that 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. This relates to the amendments to subsection 98S(3B) below.

**Item 9** omits from subsection 98S(1) the words ‘Subject to section 98A, the’ and substitutes ‘The’. This change is required because section 98A now sets out a simplified outline of Part 6A and does not have any effect on section 98S.

**Item 10** inserts at the end of subsection 98S(1) a note which states that 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).
Item 11 inserts after subsection 98S(3A) new subsections 98S(3B) and (3C). Subsection 98S(3B) provides that the Registrar may only make a determination under Part 6A that is in respect of a day in a child support period that is more than 18 months earlier than the day on which the liable parent or carer lodged the application under section 98B, or the Registrar notified the relevant parties under subsection 98M(1) if the court has granted leave for such a determination under section 112.

Subsection 98S(3C) provides that if a court has granted leave under section 112, the Registrar may only make a determination in respect of a day if the day is within the period specified by the court. For example, if the court specifies that the change of assessment may be backdated for up to three years, the Registrar cannot make a determination that is backdated for longer than three years.

Item 12 inserts at the end of Division 4 of Part 6A a new section 98SA. Subsection 98SA(1) provides that the Registrar must not make a determination that varies, or has the effect of varying, the child support payable by a liable parent in respect of a day to less than the minimum annual rate of child support. Subsection 98SA(2) creates an exception to the general rule in subsection 98SA(1) and provides that the Registrar may make a determination that varies, or has the effect of varying, the child support payable by a liable parent to less than the minimum annual rate of child support if section 66 does not apply in relation to the child. Section 98SA will be amended by the amendments which will commence on 1 July 2008.

Item 13 inserts at the end of section 107 a new subsection 107(6). It provides that if the court grants the declaration, the court must, as soon as practicable, consider making an order under section 143. In other words, as soon as the court grants the declaration that the person is not a parent of the child, the court must consider whether to make an order that the payee is to pay back certain amounts of child support (see item 23).

Item 14 repeals and substitutes Division 3 of Part 7.

Division 3 - Application for amendment of administrative assessment that is more than 18 months old

New section 110 sets out a simplified outline of Division 3.
New section 111 deals with applications by a parent or carer. Subsection 111(1) provides that a liable parent or a carer entitled to child support may apply to a court for leave for the Registrar to make a determination under section 98S, or for a court to make an order under section 118, that the determination or order can be backdated for longer than 18 months, but for less than seven years. Subsection 111(2) sets out that, subject to the Registrar’s right to intervene in proceedings, the parties to the application under subsection 111(1) are the applicant and either the liable parent or the carer entitled to child support. Subsection 111(3) deals with applications by the Registrar and provides that the Registrar may apply to a court for leave to make a determination that is backdated for longer than 18 months, but less than seven years. Subsection 111(4) provides that the parties to the application under subsection 111(3) are the applicant (that is, the Registrar), and either the liable parent or the carer entitled to child support.

New section 112 provides that a court may grant leave to amend an administrative assessment that is more than 18 months old. Subsection 112(1) provides that the court may grant leave for the Registrar to make a determination under section 98S, or for the court to make an order under section 118.

Subsection 112(2) provides that the court may proceed to consider the matter under section 118 at the same time as it considers whether to grant leave, if the court considers it would be in the interests of the parties to do so.

Subsection 112(3) provides that the court may otherwise grant leave for the Registrar to make a determination under section 98S.

Subsection 112(4) sets out the matters that the court must consider, including the responsibility for any delay in making an application or determination, and any hardship to the applicant and other parties (other than the Registrar) if leave is granted. Subsection 112(5) provides that the court may consider any other factors.

Subsection 112(6) provides that the court must specify the period in respect of which the Registrar may make a determination, or the court may make an order. Subsection 112(7) provides that the period specified in subsection 112(6) must not include a day in a child support period if the day is more than seven years earlier than the day on which the application under section 111 was made and is not limited by the terms of that application. In other words, even if the liable parent or carer, or the Registrar specified in their application that any order should relate to a period of two years, the court is not limited by this, and make choose another period, such as five years prior to the date of application. However, the court is still limited to making this period less than seven years prior to the date of application.

Subsection 112(8) provides that the granting of leave under subsection 112(1) does not imply that the Registrar is required to make a determination or that the court is required to make an order.
New section 113 provides that when a decision of a court is made under Division 3, the Registrar must immediately take such action (if any) as is needed to give effect to the decision.

Section 113A provides that subject to any stay orders made, the fact that a proceeding is pending under this Division does not, in the meantime, interfere with or affect, any administrative assessment made in relation to the person. It also provides that any such assessment may be registered under the Child Support Registration and Collection Act, and amounts of child support and other amounts recovered in relation to the assessment as if no proceeding were pending.

**Item 15** repeals the heading of Division 4 of Part 7 and substitutes:

Division 4 - Orders for departure from administrative assessment in special circumstances (departure orders)

**Item 16** inserts before section 114 new section 113B, which sets out a simplified outline of Division 4.

**Item 17** repeals section 115. Because the range of matters in relation to which courts will have jurisdiction is more limited as a result of this Bill, section 115 is no longer correct.

**Item 18** repeals and replaces subsections 116(1), (1A) and (1B) with new subsection 116(1). New subsection 116(1) sets out the matters in relation to which a person may apply to a court. Because the SSAT will be established in order to review many matters (see Schedule 3), direct applications to the court will be limited. As with the current subsection 116(1), the person must first go through the internal review procedure. Subsection 116(1) provides that a person may apply to a court if:

(a) all of the following apply:
   (i) the Registrar has refused to make a departure determination, under section 98E or 98R because the matters are too complex to be dealt with administratively; and
   (ii) an objection to the refusal has been lodged under section 80 of the Child Support Registration and Collection Act; and
   (iii) the Registrar has disallowed the objection; or

(b) both of the following apply:
   (i) the person is a liable parent carer entitled to child support who is a party to an application pending in a court;
   (ii) the court is satisfied that it would be in the interest of the carer entitled to child support and the liable parent 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.
That is, if there are other matters before the court that involve one or the other of the parents, for example, family law or bankruptcy matters, then the parent can ask the court also to consider the child support matter, without first going through internal review. The court may consider whether to hear the child support matter together with the other matter. If the court chooses not to hear the child support matter, the parent must go through the internal review processes. In accordance with paragraph 116(1)(a), the parent may appeal to the court after the internal review process is complete if he or meets one of the conditions in paragraph 116(1)(a). If the court chooses to hear the child support matter, regardless of whether the other matter is finalised before the child support matter is heard, the court retains its jurisdiction in relation to the child support matter. The inclusion of the words in the present paragraph 116(1B)(b) ‘at the same time as it hears that application’ does not allow this.

Alternatively, a person may apply to a court in the situation set out in paragraph 116(1)(c), which provides that 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). That is, a person may apply if under subsection 66(1) the amount of child support payable by that person has been determined to be the minimum annual rate. As subsection 66(1) only applies to a payer, a payee cannot apply under paragraph 116(1)(c).

Two notes following the section explain that the orders a court may make are set out in section 118, and that the court may make an order for a period that is more than 18 months ago if the court gives leave.

Applications made under subsection 116(1) must only relate to a period 18 months prior to the date of application. If the applicant wants the court to consider a period longer than 18 months, but less than seven years, in accordance with section 111, he or she must apply to the court for leave for a court order, or departure determination to be made in relation to a period longer than 18 months prior to the day of application.

**Item 19** inserts after subsection 118(2A) new subsections 118(2B) and (2C). Subsection 118(2B) provides that a court may only make an order under this Division in respect of a day in a child support period that is more than 18 months earlier than the day on which the application for that order is made under section 116 if the court has granted leave under section 112. Subsection 118(2C) provides that the court may only make an order if it is within the period specified by the court, under subsection 112(6), in the order granting leave. Subsections 118(2B) and 118(2C), together with subsection 116(1), ensure that applications to, and orders by, the court cannot relate to a period longer than 18 months prior to the application unless the process in sections 111 and 112 is followed.
Item 20 amends subsection 123(3) by omitting ‘Division 4 (Orders for departure from administrative assessment in special circumstances)’ and substitute ‘Division 3 (administrative assessments more than 18 months old) or Division 4 (departure orders)’. This change ensures that the court must determine any application for orders in relation to administrative assessments more than 18 months old before considering any applications for provision of child support otherwise than in the form of periodic amounts paid to carer.

Item 21 inserts after paragraph 124(2)(a) a new paragraph 124(2)(aa). It provides that in determining orders for provision of child support otherwise than in the form of periodic amounts, the court must consider any determination in force under Part 6A (departure determinations) in relation to the child, the carer entitled to child support and the liable parent. Item 21 is to ensure that the court considers all the circumstances, including any changes to the child support assessment, when making orders for child support to be paid non-periodically.

Item 22 omits from paragraph 124(2)(b) the words ‘(Orders for departure from administrative assessment in special circumstances)’ and substitutes ‘(departure orders)’.

Item 23 inserts after subsection 143(3) new subsections 143(3A) and (3B). Subsection 143(3A) provides that it applies if a payer has paid child support to the payee, and the court has made a declaration under section 107 that the administrative assessment of child support should not have been made for that child the court must consider whether to make an order for repayment of child support, and if so whether the amount is to be repaid by instalments or in a lump sum. In that case, the court must have regard to the matters set out in subsection 143(3B). Subsection 143(3A) does not limit subsection 143(3). The matters set out in subsection 143(3B) are:

(a) whether the payee or the payer knew, or ought reasonably to have known, that the parent was not a parent of the child;
(b) whether the payer or payee engaged in any conduct 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 parentage 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.
Item 24 amends the definition of registrable maintenance liability in subsection 4(1) by inserting ', 17A' after ‘17’. This change is required because an order under section 143 for a payee to repay child support to the payer where the payer was not a parent of a child will become a registrable maintenance liability (see Item 25).

Item 25 inserts after section 17 a new section 17A. Section 17A provides that if a liability is a liability of a person (the payer) to pay an amount to another person (the payee), and resulted from the payer being granted a declaration under section 107 that he or she was not a parent of the child, and the court made an order under section 143 requiring the person who received the child support to repay some or all of it, that liability is a registrable maintenance liability. In other words, payer and payee, for the purposes of section 17A have a different meaning to what they usually do for child support purposes.

Item 26 amends paragraph 19(2)(a) by inserting ', 17A' after ‘17’. This change is required because an order under section 143 for a payee to repay child support to the payer where the payer was not a parent of a child will become a registrable maintenance liability (see Item 25).

Item 27 repeals and substitutes subsection 30(3). The current subsection 30(3) provides that if a registrable maintenance liability is registered under the Child Support Registration and Collection Act, the payee is not entitled to, and may not enforce payment of, amounts payable under the liability. This means that that payee cannot bring enforcement proceedings in a court in relation to a child support debt. New subsection 30(3) also provides that if a registrable maintenance liability is registered under the Child Support Registration and Collection Act, the payee is not entitled to, and may not enforce payment of, amounts payable under the liability. However, it creates an exception to this general prohibition where the payee takes enforcement action under section 113A (see item 39) to recover a debt due in relation to the liability.

Item 28 inserts after subsection 37B(7) a further subsection 37B(7A). Subsection 37B(7A) provides that section 37B 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. In general, a registered maintenance liability which is a debt under subsection 30(1) is not to be enforced by the Registrar during a low-income non-enforcement period. However, this change ensures that a payee can take action to recover a child support debt during a low-income non-enforcement period. Private enforcement proceedings brought by the payee may allow the payer to apply for the court to vary the order for child maintenance, given the payer’s circumstances.

Item 29 omits from section 70 ‘where’ and substitutes ‘(1) If’. This change is required because of the insertion of a new subsection 70(1).
Item 30 adds at the end of section 70 a new subsection 70(2). Subsection 70(2) provides that apportionment of payment between payees 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. This ensures that a payee, who has taken court action to recover child support debts, still receives any money recovered, even if the money is paid first to the Registrar, rather than directly to the payee himself or herself.

Item 31 amends paragraph 71AA(1)(a), which provides that the Registrar may offset debts where two persons each have a child support debt arising from a liability referred to in section 17, by inserting ‘, 17A’ after ‘17’. This change is required because an order under section 143 for a payee to repay child support to the payer where the payer was not a parent of a child will become a registrable maintenance liability. This amendment may mean that in a child support case, there may be one person with a debt under section 17, and one person with a debt under section 17A. These debts can be offset against each other.

Item 32 repeals and substitutes paragraphs 71AA(b) and (c). Currently, paragraph 71AA(b) deals with debts that arose in respect of a registered maintenance liability that provided for child support. However, a section 17A debt is a debt that a person is repaying because the person was not entitled to receive the child support from the person to whom they are repaying the debt. Consequently, new paragraph 71AA(b) removes the reference to a debt being in relation to child support, and provides that the Registrar may offset debts if 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. Paragraph 71AA(1)(c) deals with the matters that are currently dealt with in paragraph 71AA(1)(b). It provides an additional requirement that the Registrar may only offset debts if in respect of a debt that arose from a liability referred to in section 17 – the liability provided for child support for a child of the two persons.

Subsection 72AA(1) is limited to the Registrar requesting that deductions be made from social security pensions or benefits in relation to liabilities under subsection 17(2). However, subsection 72AA(2) is broad enough to allow the Registrar to request that deductions be made from a social security pension or benefit where a person has a liability under section 17A.

Item 33 repeals and substitutes paragraph 72D(1)(c). New paragraph 72D(1)(c) extends the Registrar’s power to make departure prohibition orders on the grounds that the person has persistently and without reasonable grounds failed to pay child support from liabilities under section 17, to liabilities under section 17A also. This change is required because an order under section 143 for a payee to repay child support to the payer where the payer was not a parent of a child will become a registrable maintenance liability.
Item 34 repeals and substitutes subsection 72D(2), which sets out the matters to which the Registrar must have regard when deciding whether paragraph 72D(1)(c) is made out. Paragraphs 72D(2)(a), (b) and (e) are identical to the current paragraphs 72D(2)(c), (b) and (d). However, current paragraph 72D(2)(a) is no longer appropriate because it requires the Registrar to consider the number of occasions on which the debt has not been paid. This is still appropriate for debts arising from a registrable maintenance liability under section 17, which occur because a payer has not paid child support on one or more occasions. However, a registrable maintenance liability arising under section 17A is a debt which occurs once, when a court order is made. Accordingly, paragraph 72D(2)(c), which deals with section 17 liabilities, requires the Registrar to consider the number of occasions on which the debt had not been paid. Paragraph 72D(2)(d), which deals with section 17A debts, requires the Registrar to consider the length of time during which the debt has remained unpaid.

Item 35 amends paragraph 72E(a), which provides that for the purposes of Part VA, a child support liability is a registrable maintenance liability mentioned in section 17, by inserting ‘, 17A’ after ‘17’. This change is required because an order under section 143 for a payee to repay child support to the payer where the payer was not a parent of a child will become a registrable maintenance liability.

Item 36 inserts before Part IX:

Part VIIIIB – Other provisions relating to courts

Section 111A sets out a simplified outline of Part VIIIIB.

Section 111B sets out the general powers of court. Subsection 111B(1) sets out what a court may do in exercising its powers under the Child Support Registration and Collection Act. It also reflects the powers that a court may exercise under section 141 of the Child Support Assessment Act. Subsection 111B(2) provides that the making of an order of the kind referred to in paragraph 111B(1)(c), that is, an order that a specified transfer or settlement of property be made, does not prevent the court from making a subsequent order (whether under this Act or otherwise) in relation to the child. Subsection 111B(3) provides that the applicable Rules of Court may make provision with respect to the making of orders under this Act for the purpose of facilitating their enforcement and the collection of any child support payable under them.
Section 111C sets out the powers of a court to make stay orders. Subsections 111C(1) and (2) set out the situations in which section 111C applies, and provide that a party to a proceeding before a court, before the Registrar under Part VII, or before the SSAT under Part VIIA may apply to either the court in which the proceedings are initiated, or a court having jurisdiction, for a stay order. Subsection 111C(3) provides that pending the hearing and final determination of the proceeding, the court may make such orders as it considers appropriate, staying or otherwise affecting the operation or implementation of the Child Support Assessment Act. The court must take into account the interests of the persons who may be affected by the outcome of the proceeding. Subsection 111C(4) provides that the court may make a further order varying or revoking a stay order it has made. Subsection 111C(5) provides that a stay order made by the court is subject to any terms and conditions specified in the order, and operates for such period as is specified, or until the decision of the court determining the proceeding becomes final. Subsection 111C(6) provides that for the purposes of subparagraph 11C(5)(b)(i), that is, for such period as is specified in a court order, 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.

Section 111D provides that copies of an order are to be forwarded to the Registrar. Subsection 111D(1) provides that if a court makes an order under the Child Support Registration and Collection Act, the court’s registrar or other responsible officer must within 28 days after the order is made, send a certified or sealed copy to the Child Support Registrar. Subsection 111D(2) provides that the Registrar may, by written notice served on the registrar of the court or other responsible officer, vary the requirements in subsection 111D(1). This means that the Registrar may specify that the court can provide orders in another form, for example, by fax, email or telephone.

Section 111E provides that the Registrar may intervene in proceedings. If the Registrar does intervene in any proceedings, the Registrar is taken to be a party to the proceedings with all the rights, duties and liabilities of a party. For example, costs may be awarded against the Registrar if he or she intervenes in proceedings. Subsection 111E(3) provides that section 111E does not limit Part IX of the Family Law Act. Part IX deals with the right of other people to intervene in cases, for example, the right of the Attorney-General to intervene in cases in the public interest, and the right of child welfare officers to intervene in cases affecting child welfare. Section 111E does not apply in relation to proceedings before the SSAT, because the Registrar is automatically a party to SSAT proceedings (see section 102).

Section 111F provides that if, in relation to a proceeding instituted under section 113A, the court makes an order for payment of an amount, the court may specify in the order that payment may be made to either the payee or the Registrar.
Section 111G makes it clear that if a person has instituted proceedings, or is joined as a party under the Child Support Registration and Collection Act, and the Registrar is not a party to the proceeding, the Commonwealth is not liable for costs in the proceeding.

**Item 37** repeals and substitutes subsection 113(1). New subsection 113(1) is similar to the current subsection 113(1) but adds that in relation to debts due by a payer may being sued for and recovered by the Registrar, the payee may also undertake recovery action in accordance with section 113A.

**Item 38** amends subsection 113(2) by inserting after ‘taken’ the words ‘by the Registrar’. This amendment makes clear that the Registrar need only take appropriate steps to keep the payee informed of recovery action, undertaken by the Registrar and not a payee. A note states that a heading is also added to subsection 113(2): ‘Registrar to keep payee informed of action taken to recover debt’.

**Item 39** inserts a new section 113A, which deals with recovery of debts by a payee. Subsection 113A(1) provides that a payee of a registered maintenance liability who wants to sue to recover a child support debt must notify the Registrar in writing of his or her intention to institute proceedings to recover the debt:

(a) at least 14 days before instituting proceedings; or
(b) in exceptional circumstances, within such shorter period as the court allows.

This requirement is to ensure that the Registrar is aware of enforcement action that is being taken in relation to a child support debt, so that the Registrar can accordingly make decisions about his or her own enforcement action. The shorter notification period in paragraph 113A(1)(b) is to deal with situations such as where the payee becomes aware that the payer is about to deal with a major asset, such as property, and wants to take action urgently to recover child support debts. A note following subsection 113A(1) explains that for provisions relating to proceedings instituted under this section, see sections 111F and 111G.

Subsection 113A(2) provides that the payee is to notify the Registrar of orders made and payments received. A payee of a registered maintenance liability who has instituted proceedings under subsection 113A(1) must notify the Registrar, in the manner specified by the Registrar, of:

(a) any orders, including costs orders, 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 orders

within 14 days of the order being made or the payment being received. A note following subsection 113A(2) explains that section 16A provides for the Registrar to specify the manner in which a notice may be given.
Subsection 113A(3) provides that the payee commits an offence if he or she does not comply with the obligations set out in subsection 113A(2). The reason for this is that the Registrar needs to be informed of any orders made or payments received so that the Registrar can amend the Register accordingly. If the Registrar is not informed of any successful enforcement action taken by a payee, the Registrar may take enforcement action for the same amounts against the payer, with the result that the payer may pay the same debt twice. This could lead to the payee being paid more than the amount to which he or she is entitled. Subsection 113A(4) provides that this offence is one of strict liability and the penalty is 10 penalty units. Strict liability is an appropriate basis for the offence because of:

- the difficulty the prosecution would have in proving fault (especially knowledge or intention) in this case;
- the fact that the offence is minor; and
- the fact that the offence does not involve dishonesty or other serious imputation affecting the person’s reputation.

Subsection 113A(5) provides that it is a defence to an offence committed under subsection 113A(3) if the person charged proves that the person gave notice to the Registrar as soon as reasonably practicable after becoming aware of the making or registration of the relevant order or the receipt of the relevant payment, as the case may be. This is to ensure that the offence in subsection 113A(3) does not apply in an unfair way, if there are genuine reasons why a person did not immediately give notice to the Registrar about the court order.

Item 40 inserts after subsection 120(1) a new subsection 120(1A). It provides that a court having jurisdiction under the Child Support Registration and Collection Act may, in a proceeding instituted by a payee of a registered maintenance liability under section 113A, exercise all of the powers of the Registrar under subsection 120(1). This gives any court undertaking enforcement at a payee’s instigation, powers to obtain information and evidence.

Item 41 amends subsection 102(3) by inserting after ‘subsection (1)’ ‘, or by a court in accordance with subsection (1A)’ . This extends the offence in that subsection of failing to comply with a requirement made by the Registrar in relation to information and evidence to a requirement made by the court in relation to information and evidence.

Part 2 – Application provisions

Item 42 sets out the application of the items in Schedule 3. It provides that the amendments made by items 11, 14, 17, 18 and 19, applications for amendment of administrative assessments more than 18 months old, apply in respect of:
(a) applications made under section 98B after this Schedule commences;
(b) determinations in respect of which the parties were notified under section 98M after this Schedule commences (that is, after 1 January 2007). In other words, if a person is notified under section 98M before 1 January 2007, then the current procedure – that the Registrar may make a determination for an almost unlimited past period – applies.
(c) an application made under section 116 after this Schedule commences (that is, after 1 January 2007), even if the application relates to a decision made before that date to make or refuse to make a determination under Part 6A, or to make an administrative assessment under subsection 66(1).

Item 43 provides that the amendments made by items 13 and 23, that is, the requirement for the court to consider, once it has made a declaration that a payer is not a parent of the child, making a repayment order under section 143, and the consideration itself under section 143, apply in respect of parentage declarations made under section 107 after commencement.

Item 44 provides that the amendments made by items 24 to 26 and 31 to 35, that is, the changes setting out that an order made under section 143 is a registrable maintenance liability, apply from the commencement date of this Schedule, whether the order made under section 143 was made before or after the commencement of this Schedule.

Item 45 sets out the application arrangements for the amendments made by items 27 and 37 to 41, that is, the amendments relating to a payee’s ability to take enforcement action. It provides that the amendments apply to debts due to the Commonwealth under the Child Support Registration and Collection Act that are outstanding on and after the commencement of this Part (that is, 1 January 2007), whether the debt arose before or after the commencement of this Schedule.

Item 46 sets out the application arrangements of the amendments in relation to Western Australian exnuptial children. Under the Constitution, the Commonwealth child support legislation applies in the states in relation to exnuptial children only if the states either refer to the Commonwealth their power to make such laws, or adopt the relevant Commonwealth laws. All states have referred their power except Western Australia, which has chosen instead to adopt the child support legislation from time to time through a series of Acts.

Therefore, these amendments will apply in relation to exnuptial children in Western Australia only when the amendments have been adopted. Therefore, the application provisions discussed above are modified so that they generally apply to applications to a court or the Registrar made after the date of adoption, with matters in train at the date of adoption being treated in the same way as matters in train at 1 January 2007 for all other cases, as discussed above.
Schedule 5 – Amendments relating to child support agreements and court orders (commencing on 1 July 2008)

Summary

This Schedule will provide more flexible arrangements, with better legal protection, for parents who want to make agreements between themselves about the payment of child support, will detail how lump sum payments are treated, and will provide for the effect of agreements on family tax benefit payments. It will also provide a simplified process to allow parents to suspend child support payments for a period of six months if they reconcile, and then resume the payments should they separate again, without having to apply anew.

Background

AGREEMENTS

There will be two types of agreements: binding and limited child support agreements. Several matters apply to both sorts of agreements.

If the parents apply to the Registrar to have the child support agreement accepted within 28 days of the child support agreement’s start date, then acceptance will be backdated to the start date of the agreement. However, if the parents apply for acceptance more than 28 days after the agreement’s start date, then acceptance will only be backdated to the day the parents applied for acceptance.

The circumstances in which a court can set aside a child support agreement are set out in section 136.

BINDING AGREEMENTS

Each party to the agreement must have received legal advice before entering the agreement, and must also receive legal advice before terminating the agreement. This change brings the child support arrangements in relation to binding agreements into harmony with financial agreements concerning property division and spousal maintenance under the Family Law Act. Placing these amendments into the child support legislation means that separated parents who were not married, as well as those parents who were married, can make binding agreements about their child support arrangements. The amount agreed on by the parents may be more or less than the amount that the payer would be assessed as paying under the notional assessment.
LIMITED AGREEMENTS

Parents who have not had legal advice about the effect of a child support agreement can enter a limited child support agreement. In order to provide safeguards on parents’ interests, in the absence of legal advice, limited agreements are of limited duration and can be terminated or set aside by the courts, in certain circumstances. Limited agreements can also be terminated by either parent if the notional amount of child support payable changes by more than 15%, or after three years.

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 payable under Part 5, or otherwise payable as a result of a change of assessment, court order or prior agreement.

LUMP SUM CHILD SUPPORT

This Schedule includes amendments giving effect to the recommendations in the Taskforce Report on lump sum payments of child support. The child support legislation already recognises that parents may make private agreements for the payment of child support in the form of periodic payments or otherwise. A lump sum may be paid under one of those agreements and these amendments do not essentially alter those arrangements, apart from clarifying them as distinct from the new lump sum arrangements being inserted.

This Schedule clarifies that the type of lump sum already recognised in the child support legislation is made under provisions of an agreement characterised as non-periodic payment provisions. These provisions must provide for the annual child support payable under any administrative assessment by the liable parent who is a party to the agreement to be reduced in whole or part, either as a dollar reduction in the annual rate payable or a percentage reduction. These provisions generally operate for a period specified in the agreement or, if not specified, until the child support case ends. Lump sums recognised in this way may be paid under either a binding or a limited child support agreement.
The new lump sum arrangements recommended by the Taskforce Report must arise from a binding child support agreement and the lump sum must at least equal the value of the total annual child support payable under an administrative assessment. This type of lump sum (made under provisions of an agreement characterised as *lump sum payment provisions*) will not reduce the annual child support payable under the administrative assessment, but will instead be credited against the payer’s liability annually until the full value of the lump sum (indexed annually according to the Consumer Price Index to protect the value of the lump sum over time) has been credited. At this point, ongoing child support payments will resume. This type of lump sum will generally be credited in this way for 100% of the annual child support payable, but may, if the agreement so provides, be credited at a specified percentage below 100%, in which case the payer would continue to make reduced ongoing child support payments, although the child support technically payable under the assessment would still be the full amount (that is, disregarding the lump sum).

Further amendments make sure that an order made by a court that provides for a lump sum payment is also characterised as one of these two types of lump sum, so that there is consistent treatment under the legislation, whether the lump sum is paid under an agreement or a court order.

Amendments that reflect the effect of the new lump sum arrangements for family tax benefit are discussed elsewhere.

**NOTIONAL ASSESSMENTS**

Presently, entitlement to Family Tax Benefit (FTB) Part A is worked out on the basis of the agreement the parents make between themselves. In order to protect government revenue, Centrelink will, in practice, only approve agreements if the amount or value of the agreement is equal to, or more than, the amount of the liability that would result if there had been an administrative assessment. This discourages many parents from making agreements, where one parent may accept a lesser amount of child support in return for other concessions, for example, possession of the family home.

In order to remove this block on agreements, the Child Support Assessment Act and the Family Assistance Act will be amended to provide that, once a child support agreement has been accepted, FTB Part A will be assessed on the *notional assessed amount* of child support. The notional assessed amount of child support is the amount that would have been paid but for the existence of the agreement between the parents.
Notional amounts will be reviewed on request by either parent if the parents are party to a limited child support agreement, or every three years if no review has been done within that three year period, or in any case, if the amount of child support that is payable under the child support agreement or court order for a day in the child support agreement changes by more than 15% from the previous day. For example, if the child support agreement contains a clause dealing with the situation where the payer loses his or her job and, as a result, pays more than 15% less child support, the Registrar must make a new provisional notional assessment (see section 146F). At these times, the CSA will calculate a provisional notional assessment based on incomes for the last relevant year of income (that is, the financial year that last ended prior to the day on which the three year period ends, or the review is requested by either parent) and the most recent information available to the CSA about the level of care of each parent. The notional assessment will be determined in the same manner as an administrative assessment of child support under Part 5 of the Child Support Assessment Act.

Parents will be advised by the Registrar of this provisional notional assessment and will then have 14 days to alter the information used in calculating that amount. For the purposes of the notional amount, parents can use the normal estimate provisions set out in section 60 of the Child Support Assessment Act to estimate their current income for the 12 months from the date of review. That is, the parents may use the estimate provisions if their income is 15% less than the income used in the provisional notional amount. Such estimates will be able to be reviewed but will not be required to be reconciled, under the reconciliation process in section 60.

Parents can also advise of a change to the level of care on the basis of care for the 12 months from the date of review. This ensures that the notional assessment accurately reflects the current situation of care between the parents. This will have consequences for the parents’ entitlement to FTB Part A. Parents will be able to access the full change of assessment process in relation to notional assessments.

After 14 days or when such elections have been finalised, whichever is the later, the provisional notional assessment will then be confirmed. The parents will have a right to object to the calculation of the notional assessment. That is, the parents can provide further information about the provisional notional assessment and then object, using the internal objections process, to the final notional assessment.

For example:
Henry and Chan make a binding child support agreement in relation to their two children. Henry’s income at the time when he and Chan separate is $70,000. Their child support agreement provides that he will pay $1,000 per month. However, the notional assessment is that he should pay $2,000 per month. Henry loses his job and he starts receiving income support payments from Centrelink. The agreement contains a clause that Henry’s payments under the agreement are to reduce to $30 per month while he is on income support payments. The Registrar acts on this clause and reduces the amount payable by the payer under the agreement to $30 per month. This is a change which is greater than 15%, therefore, the Registrar also reassesses the notional amount. The notional amount is recalculated so that it is based on Henry’s current income, leading to a new notional amount of the minimum rate of child support per month. The notional assessment would be based on Henry’s last relevant year of income which would still be a higher amount. However, as Henry is receiving income support payments, Part 5 provides that the assessment would be the minimum annual rate of child support. In any case, Henry could provide an estimate of income once he received his provisional notional amount. Centrelink will assess Chan’s entitlement to FTB on the basis of the new notional amount.

**NOTIONAL ASSESSMENTS AND FAMILY TAX BENEFIT**

The maintenance income test (MIT) is relevant for the purposes of working out an individual’s rate of FTB Part A under the Family Assistance Act. The MIT is set out in Division 5 of Part 2 of Schedule 1 and is supported by a number of definitions in subsection 3(1) of the Family Assistance Act. It is an annual means test that has regard to maintenance income actually received in a relevant income (financial) year.

The first step in the MIT is to work out the annualised amount of the individual’s maintenance income, disregarding specified amounts. Clause 20A of Schedule 1 sets out a process for annualising an individual’s maintenance income except for capitalised maintenance income which is dealt with under the apportionment rules in clause 24 of Schedule 1. If an individual is a member of a couple, the individual’s maintenance income is the sum of the annualised maintenance income of the individual and the annualised maintenance income of their partner (clause 21 of Schedule 1 to the Family Assistance Act refers).
The concept of *maintenance income* is defined in subsection 3(1) as including child maintenance, partner maintenance and direct child maintenance received by the individual. For individuals who choose to receive their FTB payments on a fortnightly basis by instalments, the MIT is initially applied on the basis of an estimate of maintenance income as determined by the Secretary (on the basis of information provided by the customer and the Child Support Agency) and under authority of subsection 20(3) of the Family Assistance Administration Act. After the end of the income year, a process of reconciliation occurs whereby an individual’s rate of FTB is reassessed as appropriate on the basis of actual maintenance income received in the relevant income year (and actual ATI as assessed by the Commissioner for Taxation and any other relevant facts).

Consistent with recommendation 17.1 and 18.2 of the Taskforce Report, the provisions and definitions relating to maintenance income as they apply in child support agreement and lump sum cases are being modified so that an individual’s child maintenance in these cases is not determined on the basis of the amount actually received in the relevant income year (as is currently the case). Rather, where child maintenance is payable for an FTB child under a child support agreement (which can include provision for the payment of a lump sum as well as periodic and non-periodic payments), the payee’s entitlement to FTB Part A will be determined on the basis of the amount of child support that would be transferred under an administrative assessment if the child support agreement had not been made (that is, the individual’s notional assessment). Where a child support agreement includes provision for the payment of a lump sum only and in the case of a court order for a lump sum, the amount of the lump sum that is credited against the amount of the child support liability will be taken to be the individual’s child maintenance for FTB Part A purposes.

**Explanation of the changes**

**Part 1 – Main amendments**

**Division 1 – Binding and limited child support agreements**

*Child Support Assessment Act*

**Item 1** inserts into section 5 a definition of *binding child support agreement*, and provides that it has the meaning given by section 80C.

**Item 2** inserts into section 5 a definition of *limited child support agreement*, and provides that it has the meaning given by section 80E.

**Item 3** inserts into section 5 a definition of *termination agreement* and provides that it has the meaning given by section 80D.
Item 4 repeals and substitutes section 34B. Section 34B deals with the situation where child support is already payable for a child (that is, the Registrar has already made an administrative assessment of child support), but an agreement to pay child support is made in relation to the child and will affect the annual rate of child support payable. Section 34B, therefore, applies to all limited child support agreements (see Subdivision B below) and applies to some binding child support agreements (see Subdivision A below). However, new subsection 34B(2) deals with when the child support agreement will start, when child support is already payable. The period of time for which a child support assessment can be backdated is being limited to provide parents with certainty about their child support assessment. The change also more clearly sets out when a child support agreement takes effect. Item 14 below deals with when a child support agreement will start when child support is not already payable. Subsection 34B(2) provides that the child support period starts:

(a) if the application for acceptance was made to the Registrar within 28 days after the day on which the agreement was signed, the agreement states that child support is to be payable from a specified day and that day is not earlier than the day on which child support first became payable, on the specified day. For example, Prashant and Jenny sign a child support agreement on 20 August 2008. Prashant applies to the Registrar for acceptance of the agreement on 23 August 2008. It is stated to come into effect on 5 July 2008. Child support first became payable on 1 July 2008. The child support period starts on 5 July 2008.

(b) if 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 the agreement states that child support is to be payable from a specified day, and the day specified is earlier than the day on which child support first became payable, on the day child support first became payable. For example, Danielle and Giles sign a child support agreement on 20 August 2008. Danielle applies to the Registrar for acceptance of the agreement on 23 August 2008. The agreement is stated to come into effect on 25 June 2007. However, child support was not payable under the administrative assessment until 14 July 2007. The child support period starts on 14 July 2007.

(c) if 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 the agreement does not specify a day from which child support is to be payable, the day on which the agreement was signed.

(d) Otherwise (that is, if application for acceptance of the agreement was not made within 28 days after the day on which the agreement was signed), on the day on which application was made to the Registrar for acceptance of the agreement.
**Item 5** repeals Division 1 of Part 6 and substitutes the following sections.

**Division 1 – Preliminary**

New section 80A sets out a simplified outline of Part 6.

New section 80B provides that Part 6 applies to cases 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**

Section 80C sets out the requirements which must be met in order for a child support agreement to be a binding child support agreement. Subsection 80C(1) provides that the agreement is binding if it is in accordance with the requirements in subsection 80C(2), and also provides that the agreement must comply with subsection 81(2). The requirements in subsection 80C(2) are:

(a) the agreement must be in writing;
(b) the agreement be signed by the parties to the agreement;
(c) the agreement must contain a statement, in relation to each of the parties to the agreement, that they have had legal advice about the agreement’s effect and its advantages and disadvantages;
(d) the agreement must include an annexure containing a signed certificate signed by the person providing the legal advice stating that the advice was provided;
(e) the agreement must not have been terminated under section 80D; and
(f) after the agreement is signed, each of the parties is given either the original or a copy of the original.

Section 80CA provides that a binding child support agreement must not be varied. A note explains, however, that a new binding child support agreement can incorporate by reference the terms of a previous agreement. This means that the process of making a new child support agreement can be simpler and easier than drafting a new agreement to cover all of the matters of the original agreement.

Section 80D deals with terminating binding child support agreements. Subsection 80D(1) provides that a binding child support agreement may only be terminated by:

(a) a provision in a new binding child support agreement to the effect that the previous agreement is terminated;
(b) the parties make a termination agreement (the requirements of which are set out in subsection 80D(2)); or
(c) a court order setting aside the agreement under section 136.

The requirements of subsection 80D(2) are that:

(a) the agreement must be in writing;
(b) the agreement be signed by the parties to the agreement;
(c) the agreement must contain a statement, in relation to each of the parties to the agreement, that they have had legal advice about the agreement’s effect and its advantages and disadvantages;
(d) the agreement must include an annexure containing a signed certificate signed by the person providing the legal advice stating that the advice was provided;
(e) the agreement has not been set aside by a court under section 136;
(f) after the agreement is signed, each of the parties is given either the original or a copy of the original.

A note following subsection 80D(2) explains that the manner in which the contents of a termination agreement may be proved is set out in section 48 of the Evidence Act 1995.

Subsection 80D(3) sets out that a binding child support agreement is terminated on:

(a) if the parties have made a new binding child support agreement which specifies a day on which it is to take effect, that day. Otherwise (that is, if the new agreement does not specify a date of effect), the day the new agreement is signed;
(b) if the parties make a termination agreement which specifies a day on which it is to take effect, that day. Otherwise, (that is, if the termination agreement does not specify a date of effect), the day the new termination agreement is signed;
(c) if a court sets aside the agreement under section 135, the day on which the court order takes effect.
Subdivision B – Limited child support agreements

Section 80E deals with matters related to the making of limited child support agreements. Subsection 80E(1) provides that an agreement is a limited child support agreement if it is in writing, is signed by the parties to the agreement, if it complies with subsection 81(2) (see comments below) and it meets the conditions in subsection 80E(2), (3) or (4) as the case requires, and assuming that the agreement is accepted by the Registrar. A note following the subsection states that there must be an administrative assessment in force in relation to the child in relation to whom the agreement is made (see item 11 below). Another fundamental requirement of limited child support agreements is that the amount of child support payable under the agreement must be more than the amount of child support which would be assessed as being payable under Part 5. As Centrelink will no longer be approving child support agreements, one safeguard which prevented agreements which were unfair for the carer, liable parent or children, from being entered has been removed. Binding child support agreements have the safeguard of the parties having received legal advice. For limited child support agreements, this safeguard is provided by the agreed amount having to exceed the assessment amount.

Subsection 80E(2) provides that if child support is payable from one party to the agreement to another party to the agreement, on the day on which application is made to the Registrar for acceptance of the agreement, the annual rate of child support that is so payable on that day must be at least the annual rate of child support that would be so payable on the day if that rate were calculated under Part 5, or otherwise payable as a result of a change of assessment, court order or prior agreement.

For example:

Prashant and Jenny sign a document. They sign the document on 18 August 2008, and apply to the Registrar for acceptance of that agreement on 20 August 2008. The agreement states that child support in accordance with its terms is payable from the date of acceptance. The agreement states that Jenny is to pay Prashant $65 per week. However, under the administrative assessment, Jenny should pay Prashant $135 per week. The document does not meet the condition under subsection 80E(2) that the child support under the agreement must be more than the assessed amount, and would not be accepted.

Subsection 80E(3) provides that if child support is not to be payable from one party to the agreement to another party to the agreement, on the day on which application is made to the Registrar for acceptance of the agreement, the annual rate of child support that is so payable on the day on which the agreement commences is at least the annual rate of child support that would be so payable on that day if the rate were calculated under Part 5, or otherwise payable as a result of a change of assessment, court order or prior agreement.
For example:

Danielle and Giles sign a limited child support agreement on 18 July 2008. It is not expressed to come into effect until 1 September 2008. They apply to the Registrar for acceptance of the agreement on 21 July 2008. The agreement states that on 01 September 2008, the amount of child support that Giles is to pay to Danielle is $300 per week. Under the administrative assessment that would be in force on 1 September 2008, Giles should pay Danielle $260 per week. Consequently, the agreement meets the condition under subsection 80E(3).

Subsection 80E(4) provides that if child support is payable from one party to the agreement to another party, for a period before the day on which application is made to the Registrar for acceptance of the agreement, the amount of child support that is so payable for that period must be at least the amount of child support that would be so payable for that period if the annual rate of child support were calculated under Part 5 or otherwise payable as a result of a change of assessment, court order or prior agreement. An agreement may cover one or more past periods. The amount of child support payable in relation to a past period does not need to be more than the rate calculated for each individual period, so long as it is more than the cumulative amount for all of the periods.

Subsection 80E(5) provides that the regulations may, for the purposes of subsections 80E(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. Such details have tended to be addressed by regulations, rather than primary legislation, under the child support scheme.

Section 80F provides that a limited child support agreement cannot be varied. However, a new limited child support agreement can incorporate by reference the terms of a previous child support agreement. This means that the process of making a new child support agreement can be simpler and easier than drafting a new agreement to cover all of the matters of the original agreement.

Section 80G deals with terminating limited child support agreements. Subsection 80G(1) provides that a limited child agreement may only be terminated by:

(a) a provision being included in a new limited or binding child support agreement to the effect that the previous agreement is terminated;
(b) the parties to the previous agreement making a written agreement that is signed by those parties to the effect that the agreement is terminated;
(c) a court order setting aside the previous agreement under section 136;
(d) if the notional assessment (see Division 3 of this Schedule) of the amount of child support that would have been payable from one party to the agreement to another party is varied by more than 15% from the previous notional assessment in circumstances not contemplated by the agreement, for example, one party loses his or her job and starts receiving a social security payment. In that case, the agreement is terminated if a party to the agreement gives the Registrar written notice of the termination of the agreement; or

(e) if the previous agreement was made three or more years earlier – a party to the previous agreement giving the Registrar written notice of the termination of the previous agreement.

Subsection 80G(2) sets out that a limited child support agreement is terminated on:

(a) if the parties have made a new binding child support agreement which specifies a day on which it is to take effect, that day. Otherwise (that is, if the new agreement does not specify a date of effect), the day the new agreement is signed;

(b) if the parties make a termination agreement which specifies a day on which it is to take effect, that day. Otherwise, (that is, if the termination does not specify a date of effect), the day the new agreement is signed;

(c) if a court sets aside the agreement under section 135, the day on which the court order takes effect.

Subsection 80G(3) provides that if a limited child support agreement is terminated because the notional assessment of the child support payable by one party changes by more than 15% from the previous notional assessment, or more than three years has passed since the agreement was made, and a party gives the Registrar written notice of the termination, the Registrar must notify the other parties in writing of the termination.

Subsection 80G(4) provides that the notice must include, or be accompanied by, a statement to the effect that the party may, subject to the Child Support Registration and Collection Act, object to the decision to terminate the agreement. Paragraph 80G(4)(b) provides that if the person is aggrieved by a later decision on an objection (no matter who lodged the objection), that person may apply to the SSAT. This ensures that if the other party lodged the objection, and the matter is resolved to that person’s satisfaction, the person referred to in paragraph 80G(4)(b) does not lose his or her right to apply to the SSAT for review of the decision.
**Item 6** repeals and substitutes section 81. New subsection 81(1) provides that an agreement is a child support agreement if it is a binding child support agreement or a limited child support agreement. Subsection 81(2) provides that a child support agreement is a limited or binding child support agreement if it complies with sections 82, 83 and 84. A note following section 81 explains that a parenting plan under the Family Law Act may, subject to the requirements of this Division, be a child support agreement.

**Item 7** repeals section 85. This section is no longer required because the formal requirements for agreements are set out in Subdivisions A and B (see above).

**Item 8** repeals and substitutes paragraph 88(a). New paragraph 88(a) provides that an application for acceptance by the Registrar of an agreement made in relation to child support is properly made if the agreement is a child support agreement, or a termination agreement or written agreement referred to in paragraph 80G(1)(b). **Item 11** omits from section 91 ‘a child support agreement’ and inserts ‘an agreement referred to in paragraph 88(a)’. These changes are required because parties to a child support agreement will be required to lodge a termination agreement or a written agreement providing that a child support agreement is terminated with the Registrar for acceptance.

**Item 9** omits ‘(1)’ from subsection 89(1). **Item 10** repeals subsection 89(4). **Item 12** repeals section 91A, which sets out the procedure where the payee is in receipt of, or a claimant for, FTB. These changes are being made because the effect of child support agreements on FTB will now be dealt with by notional assessments (see Division 3 of this Schedule).

**Item 13** repeals subsections 92(3) and (4) and substitutes a new subsection 92(3). New subsection 92(3) provides that 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.

**Item 14** repeals and substitutes paragraph 93(1)(g). New paragraph 93(1)(g) provides that child support is payable from the day on which the application was made to the Registrar for acceptance of the agreement. Paragraph 93(1)(h) provides that child support is payable until the earlier of 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 three of them; or, the day on which the agreement is terminated under section 80D or 80G.

**Item 15** omits from subsection 93(2) the words ‘the period mentioned in paragraph (1)(g) starts’ and substitutes ‘on which the application was made to the Registrar for acceptance of the agreement’. This is in order to be consistent with new paragraph 93(1)(g).
**Item 16** repeals and substitutes the note at the end of subsection 93(2). The new note refers to the fact that 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.

**Item 17** repeals and substitutes section 94. Subsection 94(1) provides that 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. A note states that this means the Registrar may assess, under section 34B or 93 or Part 5, the annual rate of child support payable under an agreement if an annual rate of child support already payable and the agreement is to affect that annual rate. Subsection 94(2) provides that in making any administrative assessment in relation to the child, the Registrar must act in accordance with section 95, which sets out the effect of certain provisions of accepted child support agreements. Subsection 94(3) provides that after the Registrar accepts a termination agreement or a written agreement providing that a child support agreement is terminated, the Registrar must immediately take such further action as is necessary to give effect to the agreement.

**Item 18** repeals Division 6 of Part 6. This is because child support agreements are not permitted to be varied under the new provisions (see sections 80CA and 80F).

**Item 19** omits from paragraph 94U(4)(a) ‘94’ and substitutes ‘93’. This change is required because now section 93, rather than section 94, deals with when a child support agreement begins.

**Item 20** omits from the simplified outline in section 98W (which is inserted by Schedule 3, and which will commence on 1 January 2007) the dot point which deals with the court’s powers in relation to child support agreements. **Item 20** then inserts dot points which set out a court’s power in relation to child support agreements under this Schedule (that is, after 1 July 2008).

**Item 21** adds at the end of subsection 116(1) a third note, which provides that a court may make an order under Division 4 if the court sets aside a child support agreement under section 136.

**Item 22** omits from paragraph 124(2)(c) ‘benefit; and’, and substitutes ‘benefit’. **Item 23** repeals paragraph 124(2)(d), which refers to the effect of making an application under section 128. These changes are required because section 128 itself if being repealed.
**Item 24** repeals section 128. Section 128 of the Child Support Assessment Act has been one of the most significant obstacles standing in the way of payment of child support as a lump sum. It provides that if a court orders that a liable parent pay child support in a manner other than by periodic payments, and if the carer is receiving an income tested pension, allowance or benefit, the carer may apply to have the assessed child support reduced. This was intended to ensure that a carer who is receiving a pension, allowance or benefit is always entitled to receive at least 75% of his or her assessed child support by way of periodic amounts, without losing entitlement to the pension, allowance or benefit. However, amendments to the social security legislation introduced after the commencement of the Child Support Assessment Act changed the way in which maintenance income is considered, and special maintenance income alone could not reduce the carer’s benefit or pension below 75% of the maximum rate of the pension or benefit. Parents may want to make a lump sum payment, for example, to allow the carer to keep the matrimonial home. However, section 128 could mean that only 25% of the value of the lump sum paid can be credited against the periodic assessment.

For example:

A lump sum agreement provides that a payment of $10,000 by the payer is to reduce his assessment by $5,000 for two years. The payer’s current assessment is $7,500 thus payment in addition to the amount from the lump sum is $2,500 per year. The payee is in receipt of Centrelink benefits. If an application under section 128 is accepted, under this agreement the payer pays $5,625 per month, and only $1,875 is credited from the lump sum because the amount which the payer is liable to pay cannot be reduced by more than 25%.

This situation discourages parents from making lump sum agreements, and gives parents less flexibility in their child support arrangements.

**Item 25** repeals paragraph 129(3)(b), which refers to an application under section 128. **Item 26** omits from subsection 129(8) ‘3(b) or (d)’ and substitutes ‘(3)(d)’. These changes are required because section 128 itself is being repealed (**item 24**).

**Item 27** repeals and substitutes section 135. New section 135 sets out a simplified outline of Division 6.

**Item 28** repeals and substitutes section 136. Subsection 136(1) provides that section 136 deals with the power of a court to set aside child support agreements or termination agreements. Subsection 136(2) provides that the court may set aside an agreement if the court is satisfied that:

(a) the agreement of a party or parties was obtained by fraud or a failure to disclose material information;

(b) another party to the agreement, or someone acting for another party, exerted undue influence or duress in obtaining that agreement, or engaged in unconscionable or other conduct;
(c) because of a significant change of 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) 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.

Subsection 136(3) provides that, subject to the Registrar’s right to intervene in proceedings, the parties to the proceedings under subsection 134(1) are the parties to the agreement.

Subsection 136(4) provides that if the court sets aside a child support agreement, and the court is satisfied that one or more of the grounds for departure exists (see paragraph 117(1)(b)), the court may make an order under Division 4 of Part 7 without an application having been made under section 116.

Item 29 omits from subsection 137(1) the words ‘a child support agreement’ and substitutes ‘an agreement’.

Division 2 – Lump sum payments

Family Assistance Act

Item 30 repeals and substitutes subparagraphs 8(5)(b)(i) and (ii) of the Family Assistance Act in a consequential amendment to the FTB maintenance income test provision identifying the value of an individual’s benefit from a child support agreement. The amendment clarifies that the benefit is the amount, specified in non-periodic payment provisions of an agreement, by which the annual rate of child support payable under any relevant administrative assessment is to be reduced.

Child Support Assessment Act

Items 31, 32 and 33 insert new definitions into section 5 of the Child Support Assessment Act. The new definitions of lump sum payment provisions (that is, the new type of lump sum arrangement) and non-periodic payment provisions (that is, the current type of lump sum arrangement) signpost the new and amended rules in paragraphs 84(1)(e) and (d) respectively. The new definition of otherwise than in the form of periodic amounts is relevant for the current type of lump sum arrangement and for arrangements under other agreements that do not involve periodic payments. The latter definition makes clear that child support paid either in the form of a lump sum, or as a transfer or settlement of property, is covered within this description.
**Item 34** inserts a new paragraph (ga) into subsection 76(2) of the Child Support Assessment Act in relation to the new type of lump sum arrangement, to complement current paragraph (f) in relation to the current type of lump sum arrangement. Subsection 76(2) sets out matters that must be specified in a notice to each party when the Registrar makes an administrative assessment (including an amended assessment). The amendment will make sure that, when the parties to a new type of lump sum agreement (or court order) are notified about their administrative assessment, the notice includes relevant details about the lump sum, including the remaining lump sum payment after crediting has been applied under the Child Support Registration and Collection Act, and whether any amounts of child support are still payable despite the crediting arrangement that will take place at the end of the year of income (that is, if the lump sum is being credited at less than 100% of the annual rate of child support payable).

**Item 35** inserts new paragraph 76(3)(ca), to add to the current list of statements that must be included in a notice under section 76. New paragraph (ca) will require the notice to include a statement drawing to attention the right of the parties to apply for an order under new section 123A that child support be provided in one of the new type of lump sum arrangements.

**Items 36 and 37** insert new subsection 78(2). This will ensure that an amount of child support payable under an administrative assessment is taken to be paid when due, to the extent that some or all of that amount will be credited (at the end of the year of income) under new section 69A of the Child Support Registration and Collection Act, inserted by **item 58**, against the payer’s liability. This avoids any implication, just because the amount is not actually credited until the end of the year of income, that the amount is not paid when due.

**Item 38** makes a key amendment to the Child Support Assessment Act in repealing and substituting section 84, which specifies the provisions that may be included in agreements – if an agreement does not meet section 84, it cannot be a child support agreement and cannot be accepted by the Registrar. The new section clarifies certain aspects of the descriptions of the currently recognised agreement provisions, including lump sums under non-periodic payment provisions, as defined. It also introduces the new concept of lump sum payment provisions.

In clarifying the lump sums under non-periodic payment provisions (new paragraph 84(1)(d) and subsection 84(6)), the amendment removes a misleading reference to the lump sum amount being credited against the liability (because the concept of crediting is to apply strictly to the new type of lump sum arrangements). It stipulates instead that the effect is for the annual rate of child support payable under any administrative assessment to be reduced in whole or part, either by a specified annual dollar amount or by a specified percentage. This makes the current arrangement clearer and is not a substantive change.
In introducing the lump sums under lump sum payment provisions (new paragraph 84(1)(e) and subsections 84(7) and (8)), the amendment stipulates that the agreement must be a binding one, there must be an administrative assessment in force for the parties immediately before one or other of them applies for acceptance of the agreement, and the lump sum (which must be specified in the agreement) is for at least the annual rate of child support payable under the assessment in force at that time. The agreement may specify a rate of crediting of the lump sum that is less than 100%, in which case the payer would continue to make reduced ongoing child support payments, although the child support technically payable under the assessment would still be the full amount (that is, disregarding the lump sum). Otherwise, the assumption is that crediting is intended to apply at 100% of the administrative assessment.

New paragraph 84(1)(f) reproduces current paragraph 84(1)(d) in relation to other types of agreement provisions – those that provide for child support but not as periodic payments, non-periodic payments or a lump sum. This type of agreement is rare and amounts paid under it would neither reduce the annual child support payable under any relevant administrative assessment, nor be credited against the liability.

Otherwise, the substituted section 84 reproduces the unaffected provisions of the current section. For example, new subsection 84(2) effectively provides that an agreement may include provisions of more than one kind, applying at different times. It should also be noted, although not explicit, that an agreement could provide different provisions in relation to different children.

Item 39 repeals subsections 95(3) and (4) of the Child Support Assessment Act and substitutes a new subsection (3). This section describes the effect under the Act of certain provisions of accepted child support agreements. New subsection 95(3) essentially allows the current lump sum arrangements to reduce the annual child support payable under the administrative assessment. The amendment therefore makes it clear that, in relation to lump sums, the subsection relates to what are now described as non-periodic payment provisions and not lump sum payment provisions (because the latter do not reduce the annual child support payable under the administrative assessment). The substituted subsection 95(3) also removes the misleading reference to the lump sum amount being credited against the liability. The remaining elements of the substituted subsections are now superfluous.
**Item 40** adds a new subsection (4) to section 96 of the Child Support Assessment Act. Section 96 requires the Registrar to give notice of a decision to accept or refuse to accept an agreement made in relation to a child. If the agreement is one that includes lump sum payment provisions, the new subsection requires the notice to include details of the lump sum amount and any annual and daily rate of child support still payable despite the crediting arrangement (that is, if the lump sum is being credited at less than 100% of the annual rate of child support payable under the administrative assessment). Such a notice would be sent only once, on acceptance of the agreement. Any revisions to the details would be dealt with in a notice under section 76, as amended (see **item 34** above), should the administrative assessment be amended.

**Items 41 to 54** make complementary amendments to the provisions of the Child Support Assessment Act dealing with orders that may be made by a court that child support be provided in a way other than periodic payments (Division 5 of Part 7). Insofar as those provisions currently relate to lump sum child support, a court is able to make an order only for the current type of lump sum, equating to the non-periodic payment provisions of the child support agreement regime as now amended. These further amendments add provisions equating to the new type of lump sum under lump sum payment provisions of a child support agreement, and clarify the distinction between the two types of order under Division 5.

**Item 41** repeals and substitutes subsection 123(1) to clarify that a person may apply to court for an order either that child support be provided otherwise than in the form of periodic payments (which would encompass the current type of lump sum payment) or that child support be provided in the form of a lump sum payment to be credited against the liability (equating to the new type of lump sum payment).

**Item 42** makes it clear that the rule in subsection 123(2), that application for an order may only be made if an administrative assessment is in force, applies to an application for both types of order.

**Item 44** restricts the current provision about the order the court may make (section 124) to applying only to an application under new paragraph 123(1)(a), that is, for an order that child support be provided otherwise than in the form of periodic payments (which would encompass the current type of lump sum payment).

**Item 43** inserts new section 123A, detailing the order the court may make in relation to an application under new paragraph 123(1)(b), that is, for an order that child support be provided in the form of a lump sum payment to be credited against the liability (equating to the new type of lump sum payment).
The new section is equivalent to the current section 124, including in relation to the merit criteria that must apply (that the court is satisfied that it would be just and equitable as regards the child, the carer and the liable parent, and otherwise proper, to make the order), but has been modified in relation to most details of the order to equate to the new type of lump sum payment under the child support agreement provisions. That is, the lump sum (which must be specified in the order) must be for at least the annual rate of child support payable and the order must specify a rate of crediting of the lump sum of 100% or less under the administrative assessment (or a default of 100% will apply under new section 69A of the Child Support Registration and Collection Act, inserted by item 58). If less than 100%, the payer would continue to make reduced ongoing child support payments, although the child support technically payable under the assessment would still be the full amount (that is, disregarding the lump sum), as a note makes clear.

Item 45 repeals and substitutes subsections 125(1), (2) and (3). Section 125 requires the court to state in the order certain details about the relationship between the order and the assessed child support. This amendment serves two purposes. Firstly, it restricts section 125 to applying only to an order made under section 124 as amended, that is, an order that child support be provided otherwise than in the form of periodic payments (which would encompass the current type of lump sum payment). This is appropriate because an order under new section 123A, that is, that child support be provided in the form of a lump sum payment to be credited against the liability (equating to the new type of lump sum payment), cannot reduce the assessed child support and so there are no details in the section 125 context for the court to state. Secondly, the amendment clarifies the language of these provisions, especially to remove the misleading reference to the lump sum amount being credited against the liability (because the concept of crediting is to apply strictly to the new type of lump sum arrangements now dealt with in new section 123A).

Items 46 and 47 make amendments to apply section 126 correctly to the new type of lump sum arrangements now dealt with in section 123A. Section 126 obliges a court to give reasons for an order under section 124. This will now extend to the new type of order, in which case, the court will need to specify relevant matters – that is, the amount of the lump sum payment and the percentage rate of crediting.

Items 48 to 54 make similar amendments to sections 127, 129, 130 and 131, to ensure that those provisions apply correctly to one or both of the two types of lump sum arrangements. Some of these items include related technical corrections to the language used in the relevant sections.

Child Support Registration and Collection Act

Item 55 inserts into the Child Support Registration and Collection a definition of regular care (linking to the definition in the Child Support Assessment Act).
**Item 56** inserts into section 4 of the Child Support Registration and Collection Act a definition of *remaining lump sum payment*, reflecting the meaning of that term in new section 69A for the purposes of other provisions.

**Item 57** inserts new subsection 66(3) of the Child Support Registration and Collection Act. This will ensure that no debt arises in respect of an amount of child support payable under an administrative assessment that will be credited (at the end of the year of income) under new section 69A, inserted by **item 58**, against the payer’s liability. This is done by taking the amount (of 100% or less of the amount payable under the liability for the relevant period) to be paid when due. This avoids any implication, just because the amount is not actually credited until the end of the year of income, that a debt arises.

**Item 58** inserts into the Child Support Registration and Collection Act the key section 69A. This describes the process by which a new type of lump sum payment will be credited against the liability. Conceptually, because this type of lump sum payment does not reduce the child support payable under the administrative assessment, the crediting mechanism is a *method of recovery* of a child support debt, as it is in the existing provisions relating to non-Agency payments, sections 71, 71A and 71C, and the process is similar. That is, for each relevant period, an amount will be credited against the liability equal to the percentage of the liability specified in the agreement or order (or, if no percentage was specified, 100%), and the balance of the lump sum will be reduced to reflect the crediting.

As in section 71C, section 69A will apply crediting in relation to each *initial period* or *payment period* for the liability. An initial period is the period (if any) between the liability first becoming enforceable under the Child Support Registration and Collection Act and the beginning of the first regular payment period. A payment period is whichever regular period (whether a week, fortnight, four-week period, month or calendar month) is established for collection of amounts under the liability (whether by deduction from salary or wages or by voluntary payments).

The distinct features of the crediting under new section 69A, however, are that:

- although the crediting will be in respect of each initial period and payment period, the crediting will actually occur only once per year, at the end of the year of income;
- the crediting will relate to the past period since the agreement was accepted or since the last crediting; and
- the balance of the lump sum, that is, the uncredited portion, will be indexed according to the Consumer Price Index each 1 January, to maintain the value of the lump sum closer to the level it would have had had it been invested over the period in question; the resulting amount will be known as the *remaining lump sum payment*.
The fact that the crediting will actually occur only once per year, and retrospectively, will not alter the requirement for the Registrar to notify the parties (as required under new Child Support Assessment Act provisions, subsection 96(4) on acceptance of the agreement, and paragraph 76(2)(ga) on any revision of the child support assessment) of the balance of the lump sum payment and any child support remaining payable. Any notification under new paragraph 76(2)(ga) that occurs in between the actual crediting described by new section 69A of the Child Support Registration and Collection Act will essentially be describing a notional level of child support still payable (noting that the child support technically payable under the assessment would still be the full amount, that is, disregarding the lump sum). Technically, because of the amendments made by items 37 and 57, the amounts to be credited will be taken to have been paid when due.

The crediting mechanism provided by new section 69A will apply to a lump sum arising under lump sum payment provisions of a child support agreement (as described in new paragraph 84(1)(e)) or under a court order under new section 123A, and when the Registrar has been notified that the lump sum has actually been paid as stipulated.

The indexation of the lump sum payment is built into new section 69A and will operate on 1 January each year, based on the preceding September quarter figure as referenced to the highest September quarter figure before that but after the agreement was accepted or order made. The indexation will never operate to reduce the lump sum payment. This indexation process is consistent with comparable social security law indexation provisions.

As the balance of the lump sum approaches zero, parents will be notified that they need to begin paying child support in cash or make other arrangements. This will normally occur prior to the end of the agreement term (the end being when the lump sum is completely depleted), when notice will be issued, advising of the new amount payable. The case will be closely monitored to ensure that the end date of the agreement can be adjusted if there is a variation to the underlying assessment.
Division 3 – Notional assessments

Family Assistance Act

The concept of *maintenance income*, as defined in subsection 3(1) of the Family Assistance Act, is currently based on actual receipt (directly or indirectly). **Item 61** modifies the child maintenance component of the definition so that an individual's maintenance income from child maintenance is worked out under new clause 20B or 20C in specified circumstances. The existing focus on actual receipt would continue to be relevant in relation to any maintenance income of the individual (or their partner) not covered by new clauses 20B and 20C (for example, partner maintenance) and would also continue to be relevant for the purposes of determining an individual's FTB Part A rate where the individual's (or their partner's) child support liability is assessed under the child support formula and the payee has an administrative assessment under Part 5 of the Child Support Assessment Act in force.

**Item 59** makes a consequential amendment to the definition of *capitalised maintenance income* so that it does not apply to maintenance income that is child maintenance to which new clause 20B or 20C applies.

**Items 60 and 62** insert new definitions of *child support agreement* and *notional assessment* into subsection 3(1) of the Family Assistance Act. A *child support agreement* has the same meaning as given by section 81 of the Child Support Assessment Act while the concept of *notional assessment* has the same meaning as given by section 146E of that Act.

**Item 63** inserts new clauses 20B and 20C into Schedule 1 to the Family Assistance Act. These new provisions outline the rules for working out an individual's maintenance income from child maintenance in prescribed circumstances. The individual's maintenance income as worked out under these new provisions, along with any other maintenance income of the individual, would then be subject to the application of the MIT, as set out in the method statement in clause 20 of Schedule 1 to the Family Assistance Act.

There are two conditions that trigger the application of new clause 20B of Schedule 1. The first is that child maintenance is payable to an individual under a child support agreement or a court order. Second, there must be, 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 a child for a particular day in a child support period if the annual rate were worked out under Part 5 of the Child Support Assessment Act (instead of under the agreement or order).

Where these conditions are met, the amount of the individual’s child maintenance under the agreement or order is worked out using new clause 20B.
The general rule is that the individual is deemed to have received the amount of child maintenance for a child for a period that the individual would have received if he or she had received the annual rate of child support for the child for the period under the individual's notional assessment. This rule is in new subclause 20B(2). The deemed amount is referred to as the *notional assessed amount*.

An exception (where the full notional assessed amount would not count as the individual’s maintenance income from child maintenance for FTB purposes) would be where the amount received by the individual is less than the amount payable to the individual under the child support agreement or order (such that a debt arises for the period). Where this happens, the amount deemed to be the individual’s child maintenance for the child for the period would be the proportion of the notional assessed amount commensurate with the proportion of the amount of child maintenance received. This exception is set out in new clause 20B(3).

For example, if the individual’s notional assessment for the year would be $5,000 and the agreement amount for the year is $4,000, but the individual payee receives nil via CSA collection, 0% of $5,000 is counted as the individual’s child maintenance for the year (that is, nil). Similarly, if only $2,000 is received via CSA collection, then 50% of $5,000 is counted (that is, $2,500). The outcome is similar where the individual’s notional assessment is less than the child support agreement amount. If, for example, the individual’s notional assessment for the year would be $5,000 and the agreement amount for the year is $8,000, but the payee receives nil via CSA collection, 0% of $5,000 is counted as the individual’s child maintenance (that is, nil). If only $4,000 is received via CSA collection, then only 50% of $5,000 is counted (that is, $2,500).

The other exception is where more than the full amount payable under the child support agreement or court order is received in a given income year. In this situation, a similar apportionment principle would apply. However, the relevant rules are expressed in a different way as they also cover the situation where an individual’s notional assessment changes from the time that a debt arises (due to underpayment of child support under an agreement or order) and when an arrears payment is made. The intention is that the factor derived from the notional and actual amounts in the income year the underpayment occurred is maintained when arrears are paid in a later income year. The relevant rules are in new subclauses 20B(4) to (7).

New subclause 20B(4) provides that where an individual received more than the amount payable under an agreement or order for the child for a period, then the amount of child maintenance that the individual is taken to have received is the sum of the notional assessed amount and the total of the *notional arrears amounts* in respect of each debt arising under the agreement or order.
New subclause 20B(5) specifies a formula under which the notional arrears amount for a particular debt is determined. The first element of the formula relates to the income year in which the debt arose and requires the notional amount paid for the child for the previous period (as referred to in new subclause 20B(3)) to be subtracted from the notional assessed amount for the child for that previous period and then divided by the amount of the debt from that previous period. The result is then multiplied by the amount of the debt that is paid off to arrive at the notional arrears amount for the particular debt. This calculation process occurs in relation to each debt covered by the arrears payment in the order, and with the effect, prescribed in new subclause 20B(6).

Under new subclause 20B(7), the rules in new subclause 20B(3) and (4) that apply where there is an underpayment or arrears payment of child support will only apply in relation to an enforceable maintenance liability under the Child Support Registration and Collection Act (that is, in CSA collection cases).

New clause 20C applies where an individual receives child maintenance for their FTB child under a lump sum child support agreement (to which new clause 20B does not apply) or under a court order made under section 123A of the Child Support Assessment Act and where the lump sum payment is credited against a liability under an administrative assessment under section 69A of the Child Support Registration and Collection Act. In this situation, 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 is the amount credited for that income year. Any additional child support payable to the individual under an administrative assessment under Part 5 of the Child Support Assessment Act would continue to be taken into account as the maintenance income is actually received, in accordance with existing rules. These rules are not changing for child maintenance that is payable under an administrative assessment.

These amendments to the Family Assistance Act apply in respect of child support agreements whose applications for acceptance are made after commencement and court orders made after commencement. Item 73 in Part 2 of this Schedule contains the relevant application provision.

The amendments commence on 1 July 2008 in accordance with the table in clause 2 of this bill.

Child Support Assessment Act

Item 64 inserts into subsection 5(1) a definition of notional assessment, and provides that it has the meaning given by section 146E.

Item 65 inserts into subsection 5(1) a definition of provisional notional assessment and provides that it means a provisional notional assessment made under section 146B.

Item 66 omits from the word ‘Note’ from the end of subsection 34B(1) and inserts ‘Note 1’.
Item 67 adds at the end of subsection 34B(1) a further note which explains that if the Registrar makes an assessment under section 34B, the Registrar must make a provisional notional assessment under section 146B.

Item 68 omits from the word ‘Note’ from the end of subsection 93(2) and inserts ‘Note 1’.

Item 69 adds at the end of subsection 93(2) a further note which explains that if the Registrar makes an assessment under section 93, the Registrar must make a provisional notional assessment under section 146B.

Item 70 adds a note at the end of subsection 125(1) which explains that if the court makes a statement under section 125 that the annual rate of child support is to be reduced, the Registrar must make a provisional notional assessment under section 146B.

Item 71 inserts after Part 7:

Part 7A – Notional assessments

Division 1 – Preliminary

Section 146A sets out a simplified outline of Part 7A.

Division 2 – Notional assessments

Section 146B sets out the requirements in relation to provisional notional assessments. Subsection 146B(1) provides that the Registrar must make a provisional notional assessment in accordance with this section if the Registrar makes an assessment under section 34B or section 93, or a court makes an order under section 125, in an order under section 124 that an annual rate of child support payable is to be reduced. That is, the Registrar must make a provisional notional assessment in relation to a child support agreement, other than a lump sum agreement, or if the court orders child support to be paid other than periodically, and states the relationship between the order and the assessed child support.

Subsection 146B(2) provides that the Registrar must make a provisional notional assessment of the annual rate of child support that would be payable for a child for a day in a child support period by one party to the agreement to each other party to the agreement if that annual rate were payable under Part 5 (taking into account any departure determinations or court orders in relation to the administrative assessment) and not under the agreement. That is, the Registrar must work out how much child support would have been payable under an administrative assessment if the parties had not made a child support agreement.

Subsection 146B(3) provides that the Registrar must serve notice in writing on each party to the agreement of the provisional notional assessment.
Subsection 146B(4) provides that the notice specify the daily rate of the annual rate that is calculated in the provisional notional assessment, as well as the matters set out in subsection 76(2). These matters are things such as the names and dates of birth of the children taken into account in making the assessment, and the liable parent’s income. Subsection 146B(5) provides that 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 notional assessment becomes a notional assessment under section 146E, the liable parent and the carer entitled to child support may, subject to the Child Support 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 and the carer entitled to child support may, subject to the Child Support Registration and Collection Act, apply to the SSAT for review of the later decision.

Section 146C deals with variation of provisional notional assessments. Subsection 146C(1) provides that a party to a child support agreement may seek a variation of a provisional notional assessment within 14 days of the party receiving a notice under section 146B in respect of the provisional notional assessment:

(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).

A note following subsection 146C(1) states that a person who does not receive a notice that is served on a person is taken to have received the notice 14 days after the notice was served (see subsection 146E(2)).

Subsection 146C(2) provides that the Registrar may vary the provisional notional assessment of the annual rate of child support that would be payable for a child for a day in the child support period. The Registrar may do this if:

(a) an applicant seeks a variation in accordance with subsection (1); and
(b) any of the following applies:
(i) if there is a change to the percentage of care for the particular day in the child support period in respect of which the provisional notional assessment is made - 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 an applicant makes an application under section 146D for a determination under Part 6A (departure determinations) - the Registrar makes a determination in respect of the child under section 98S;
(iii) if the applicant is a parent of the relevant child - by making an election under subsection 146G(1) (estimate of adjusted taxable income) - the Registrar does not refuse to accept the election under section 146H.

Subsection 146C(3) provides that the Registrar may refuse to vary the provisional notional assessment. 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 there is a change to the percentage of care for the particular day in the child support period in respect of which the provisional notional assessment is made - 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 an applicant makes an application under section 146D for a determination under Part 6A (departure determinations) - the Registrar makes a determination in respect of the child under section 98S;
   (iii) if the applicant is a parent of the relevant child - by making an election under subsection 146G(1) (estimate of adjusted taxable income) - the Registrar does not refuse 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 146C(1) (that is, by informing the Registrar of a change in percentage of care, making an application for change of assessment, or making an election in relation to adjusted taxable income) - the Registrar has not already varied the provisional notional assessment under subsection 146C(2).
Subsection 146C(4) provides that the liable parent and the carer entitled to child support are not entitled to make an application to the SSAT under section 80 of the Child Support Registration and Collection Act, or 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. A note following subsection 146C(4) states that instead, an objection can be made to the particulars of the notional assessment under section 80 of the Child Support Registration and Collection Act. There are no external review rights in relation to a provisional notional assessment because a provisional notional assessment does not have legal effect until it becomes a notional assessment. At that time, as explained in the note, external review rights are available.

Section 146D deals with departure determinations in respect of provisional notional assessments. Subsection 146D(1) provides that a person may, by written application, ask the Registrar to make a determination under Part 6A (departure determinations) if:

(a) a provisional notional assessment not yet become a notional assessment under section 146E,
(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. For example, a parent may be paying significant private school fees, a child may have special needs which are being met by a parent or a parent may have special expenses which affect their capacity to pay child support; and
(c) the person has not previously applied under this section in relation to the provisional notional assessment.

Subsection 146D(2) provides that if a person makes an application under subsection (1), Division 2 of Part 6A applies as if references in that Division to an administrative assessment were references to the provisional notional assessment, and section 98JA (notice to be given to unsuccessful applicant about Registrar’s refusal to make a determination) did not apply.

Section 146E deals with when a provisional notional assessment becomes a notional assessment. Subsection 146E(1) provides that a provisional notional assessment becomes a notional assessment:

(a) 14 days after the notice of the provisional notional assessment is received by the parties under section 146B; or
(b) if a party to the relevant child support agreement 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.
Subsection 146E(2) is a deemed service provision and sets out that 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 fourteenth day. This is a deemed notice provision, rather than an actual notice provision because once the 14 day time period has passed, the person is sent a notice about the notional assessment (see subsection 146E(3)). Review rights flow in relation to the notional assessment. This means that a person will not lose the opportunity to apply for a review of a notional assessment, even if the notice in relation to the provisional notional assessment is not actually received.

Subsection 146E(3) provides that 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.

Subsection 146E(4) provides that the notice must specify in respect of the notional assessment the daily rate of the annual rate that is calculated in the notional assessment, as well as the matters set out in subsection 76(2). These matters are things such as the names and dates of birth of the children taken into account in making the assessment, and the liable parent's income.

Subsection 146E(5) provides that the notice must include, or be accompanied by, a statement to the effect that:

(a) the party may, subject to the Child Support 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.

Subsection 146E(6) provides that a contravention of subsection 146E(4) or (5), for example, if the notice does not include the daily rate, or does not include the name of one of the children, does not affect the validity of the decision.

Section 146F deals with later provisional notional assessments. The Registrar must make a new provisional notional assessment under section 146B:

(a) if the relevant child support agreement continues in force for more than three years—at the end of the three year period after the most recent notional assessment relating to the agreement 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 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

Section 146G deals with estimating adjusted taxable income for the purposes of notional assessments.

Subsection 146G(1) provides that 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.

Subsection 146G(2) sets out a limitation on subsection 146G(1). 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 (see section 59) 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.

Subsection 146G(3) provides that 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. In other words, the election must be for an amount less than the adjusted taxable income for the last relevant year of income.

Subsection 146G(4) sets out how an election is made, and provides that 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.

Section 146H provides that the Registrar may refuse to accept an election. Subsection 146H(1) provides that 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. A note following subsection 146H(1) states that if the Registrar refuses to accept the election, he or she may refuse to vary the provisional notional assessment under subsection 146C(3).

Subsection 146H(2) provides that 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.
Subsection 146H(3) provides that except for the purposes of Parts VII, VIIA and VIII of the Child Support 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.

Section 146J sets out the effect of an election. Subsection 146J(1) provides that 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.

Subsection 146J(2) provides that subsection 146J(1) has effect subject to any order or determination referred to in paragraph (a) of the definition of income amount order (see section 59 – that is, an order for a departure determination or a court-ordered departure from administrative assessment) 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.

Subsection 146J(3) provides that the Registrar must take such action as is necessary to give effect to subsection 146J(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).

Section 146K deals with revocation of an election. Subsection 146K(1) provides that 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. Subsection 146K(2) provides that a notice given to the Registrar must be given in the manner specified by the Registrar. A note following subsection 146K(2) explains that section 150A provides for the Registrar to specify the manner in which a notice may be given.

Section 146L sets out the effect of a revocation. Subsection 146L(1) provides that 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.

Subsection 146L(2) provides that subsection 146L(1) has effect subject to any order or determination referred to in paragraph (a) of the definition of income amount order (see section 59 – that is, an order for a departure determination or a court-ordered departure from administrative assessment) 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.
Subsection 146L(3) provides that the Registrar must take such action as is necessary to give effect to subsection 146L(1) in relation to the provisional notional assessment that has been made in relation to the parent and the child (whether by amending the provisional notional assessment or otherwise).

Subsection 146L(4) provides that section 146L 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

Item 72 inserts into subsection 80(1) (after table item 14) an item 14A, which provides that a party to the relevant child support agreement may object to the particulars of a notional assessment. This ensures that a party may apply to the SSAT for review of the particulars of a notional assessment.

Part 2 – Application and transitional provisions

Item 73 sets out the application provisions for this Schedule. Subitem 73(1) provides that the amendments in this Schedule (other than item 58, which is in relation to crediting of lump sums) apply in respect of a child support agreement if the application for acceptance of the agreement is made after Division 3 of Part 1 of this Schedule commences, that is, after the amendments relating to notional assessments commence. Subject to subitem 73(3), the amendments also apply to an application made to a court after this Division, that is 1 July 2008.

Subitem 73(2) provides that to avoid doubt, if an application for acceptance of an agreement is made before the provisions relating to notional assessments commence, and immediately before that Division commences, the agreement has neither been accepted nor refused by the Registrar, then the Child Support Assessment Act, the Family Assistance Administration Act and the Social Security Act as in force before 1 July 2008 apply in relation to the application for acceptance. In other words, entitlement to FTB will continued to be calculated on the basis of the present legislative arrangements.

Subitem 74(2) also has consequences for agreements covered by subitem 73(2).

Subitem 73(3) is also an avoidance of doubt item, and provides that 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;
the Assessment Act and the Registration and Collection Act, as in force at that time, continue to apply after that time in respect of the application (including in respect of an appeal to another court in relation to any order made by the court).

**Item 74** requires the Registrar to review all agreements.

**Subitem 74(1)** provides that before 1 July 2008, the Registrar must review every child support agreement that will be in force immediately before 1 July 2008 and determine in writing whether each agreement is to be a binding child support agreement or is to be terminated.

**Subitem 74(2)** provides that if, in accordance with subitem 28(2), the Registrar accepts a child support agreement on or after 1 July 2008 under the Child Support Assessment Act as in force immediately before that day, the Registrar must review the agreement and determine whether the agreement is a binding child support agreement or is to be terminated.

**Subitem 74(3)** provides that after the Registrar makes a determination under **subitem 74(1) or (2)**, the Registrar must serve notice of the determination on each of the parties to the agreement.

**Subitem 74(4)** provides that the notice must include, or be accompanied by, a statement to the effect that the party may, subject to the Child Support Registration and Collection Act, object to the decision. Paragraph 29(3)(b) provides that if the person is aggrieved by a later decision on an objection, no matter who lodged the objection, that person may apply to the SSAT. This ensures that if the other party lodged the objection, and the matter is resolved to that person’s satisfaction, the person referred to in paragraph 29(4)(b) does not lose his or her right to apply to the SSAT for review of the decision.

**Subitem 74(5)** provides that a contravention of **subitem 29(2)**, for example, if the notice does not set out that a person may apply to the SSAT for review of a decision, does not affect the validity of the decision.

**Subitem 74(6)** provides that the Child Support Registration and Collection Act (as amended by Schedule 3 to this bill, which deals with review of child support decisions by the SSAT) applies as if the table in subsection 80(1) included table item 16. This ensures that a party to the agreement may apply to the SSAT for review in relation to a decision of the Registrar that an agreement is to be a binding child support agreement, or is to be terminated.

**Item 75** sets out the effect of a determination under **item 74**.
Subitem 75(1)(a) provides that if the Registrar makes a determination under subparagraph 74(1)(b)(i) or (2)(b)(i), then at the time specified in subitem 75(3), if the agreement has not previously been terminated, the agreement is taken to be a binding child support agreement. Paragraph 75(1)(b) provides that the amendments made by this Schedule do not affect the continuity of any assessment that is in force immediately before the new arrangements for agreements commence that affects the annual rate of child support that is payable under the agreement.

Subitem 75(2) provides that if the Registrar makes a determination under subparagraph 74(1)(b)(ii) or 74(2)(b)(ii), then, at the time specified in subitem 75(3), (if the agreement has not already been terminated), the agreement is terminated by force of this item.

Subitem 75(3) provides that subitems 75(1) and (2) do not affect the operation of provisions in an agreement that do not have effect for the purposes of the Child Support Assessment Act or the Child Support Registration and Collection Act. For example, if a child support agreement also contains provisions which relate to division of property, those provisions are not affected by the child support law.

Subitem 75(4) sets out when determinations take effect for the purposes of subitems 75(1) and (2). Paragraph 75(4)(a) provides that if the determination is made under subparagraph 29(1)(b)(i), then it takes effect on 1 July 2008. Paragraph 75(4)(b) sets out that determinations take effect on 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 (subparagraph 75(4)(b)(i)). Subitem 75(5) provides that a decision of the Registrar becomes final at the end of the time within which an application could have been made to the SSAT under section 80 of the Child Support Registration and Collection Act (as it applies because of subitem 74(2) of this Schedule – that is, whether the child support law in its present form, or its amended form, applies);

(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 Child Support Registration and Collection Act) (subparagraph 75(4)(b)(ii)); or

(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) (subparagraph 75(4)(b)(iii));

(iv) at the time when the agreement takes effect.

For example:
An agreement is made on 1 June 2008 to take effect from that date until 1 December 2009. It is lodged for acceptance with the Registrar on 14 June 2008.

If the Registrar makes a decision on 21 June 2008 to accept the agreement, then as a result, the Registrar must vary the assessment under the current provisions, from 1 June 2008 until 30 June 2008, in accordance with the agreement. The Registrar must also determine whether, from 1 July 2008, the agreement will be terminated or become a binding child support agreement. If the agreement becomes a binding child support agreement, the Registrar must vary the assessment from 1 July 2008 until 1 December 2009.

If the Registrar makes a decision on 7 July 2008 to accept the agreement, the Registrar must vary the assessment from 1 June 2008 until 30 June 2008, in accordance to the agreement. The Registrar must also determine whether, from 1 July 2008, the agreement will be terminated or become a binding child support agreement.

However, if this agreement was to take effect from 1 July 2008, instead of 1 June 2008, and was still lodged on 14 June 2008, if accepted, the Registrar would just need to determine whether the agreement would be terminated from 1 July 2008. That is, in effect the agreement would never commence or it would become a binding child support agreement when it was implemented from 1 July 2008.

If the agreement was lodged for acceptance on 2 July 2008, the new law applies and transitional arrangements are not necessary.

Subitem 75(5) provides that for the purposes of subparagraph 75(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 Child Support Registration and Collection Act (as it applies because of subitem 74(6) of this Schedule).

Subitem 75(6) provides that parties to a child support agreement may terminate that agreement by another agreement that is in writing and signed by the parties to the original agreement, as well as by making a binding termination agreement under section 80D.

Item 76 gives to the Registrar the power to delegate, in writing, all or any of his or her powers under item 74 to an SES officer, or acting SES officer, of the Department. A delegate, in exercising the Registrar’s power, must comply with any directions of the Registrar. This delegation power reflects the way that delegations are currently arranged in the Child Support Agency.
**Item 77** sets out the application provisions in relation to crediting of lump sum payments. It provides that the amendments apply to lump sum payments that are paid by a payer in accordance with lump sum payment provisions in an agreement under paragraph 84(1)(e) of the Child Support Assessment Act or a court order made under section 123A of that Act (as amended or inserted by this Schedule), and after the commencement of Division 2 of Part 1, that is, the provisions dealing with lump sums, of this Schedule.

**Part 3 – Consequential amendments**

*Family Assistance Administration Act*

The items in this Part all make consequential amendments to remove various references to subsection 91A(3) of the Child Support Assessment Act, because of the repeal of section 91A by Part 1 of this Schedule.

**Items 78 to 89** amend the Family Assistance Administration Act for this purpose.

**Item 78** amends subsection 104(1).

**Item 79** repeals subsection 104(2).

**Item 80** repeals and substitutes subsection 106(3).

**Item 81** repeals and substitutes subsection 108(1).

**Item 82** repeals section 109.

**Item 83** repeals and substitutes subsection 109B(3).

**Item 84** repeals subsection 111(1B).

**Item 85** repeals subsection 118(2A).

**Item 86** repeals subsection 122(4).

**Item 87** repeals and substitutes paragraph 139(1)(a).

**Item 88** repeals paragraph 139(5)(aa).

**Item 89** repeals subsection 142(5).

*Social Security Act*

**Item 90** amends the Social Security Act for the same purpose, by omitting words from the definition of *officer* in subsection 23(1).
Schedule 6 – Amendments relating to departure orders (commencing on 1 July 2008)

Summary

This Schedule simplifies the processes and rules for determinations or orders made under the Child Support Assessment Act to depart from the administrative assessment provisions (also known as ‘changes of assessment’), making them clearer for parents.

Background

Despite the changes made to the formula for assessing child support, there may still be circumstances, particularly where parents reside some geographical distance apart, when the formula allowance for costs enabling contact with a child may be inadequate. The costs of travel for the children to and from their non-resident parent’s home, or for the parent to travel to see the child, may be significant. When this cost is borne entirely by the non-resident parent, it can represent a large amount of the child support income of that parent. This justifies an increased allowance beyond the allowance made in the formula for regular care.

The present changes, therefore, amend section 117 to provide that where the costs involved in the parent having contact with the child have already been included in the child support assessment, for example, the payer has a lower rate of payment because he or she has a significant amount of contact with the child, the costs of enabling contact are limited to travel costs only. This means that regardless of whether the parent’s contact costs, such as the cost of providing accommodation for the child, have been taken into account in assessing the parent’s liability, the Registrar should still be able to consider travel costs required for the parent to have contact with the child, in deciding whether there should be a departure from the assessment. The amendments also provide that this ground is available where the contact has not yet occurred, that is, it applies in relation to future costs, as well as costs already incurred.

There are also many families which include children who are not biologically related to the parent of the child support children. Children not living with both biological or adoptive parents should receive support from their absent parent. Yet not all non-resident parents are in a position to contribute to the support of their child. For example, the non-resident parent may be deceased, unknown or not locatable. In such situations, the step-parent (also called a resident parent) is actually supporting the child. However, the child support scheme does not adequately recognise the responsibility that a step-parent has towards resident children. A court will rarely declare that a step-parent has a responsibility to support a step-child where the step-child is living with the step-parent against whom the order is sought.
Consequently, the present changes amend section 117 to require a court to consider a step-parent’s responsibilities towards step-children. This involves the court considering the position and capacity of the child support parent of the step-child (generally, the step-child’s biological parent), along with the impact of any change on the child support children and the payee. This ground can only be established where neither of the biological parents is in a position to support the child. The fact that the non-resident parent is unable to pay child support is not, in itself, sufficient. The parent with whom the step-parent lives must also be unable to earn an income to provide for the child’s support.

**Explanation of the changes**

**Part 1 - Amendments**

*Child Support Assessment Act*

**Item 1** omits from subsection 98C(3) ‘subsections 117(4)’ and substitutes ‘subsections 117(2A) and (4)’. **Item 2** omits from subsection 98L(2) ‘subsections 117(4)’ and substitutes ‘subsections 117(2A) and (4)’. **Item 4** omits from subsection 98U(3) ‘subsections 117(4)’ and substitutes ‘subsections 117(2A) and (4)’. These changes are required because of the insertion of new subsection 117(2A).

**Item 3** repeals subsection 98S(3A). This change is required because subsection 98S(3A) refers to subparagraphs 117(2)(c)(iii) and (iv), which are being repealed (see **item 9**).

**Item 4** omits from subsection 98U(3) ‘subsections 117(4)’ and substitutes ‘subsections 117(2A) and (4)’.

**Item 5** inserts after paragraph 117(2)(a) a further paragraph 117(2)(aa). It provides 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.

**Item 6** omits from subparagraph 117(2)(c)(ii) ‘child; or’ and substitutes ‘child.’. This change is required because subparagraphs 117(2)(c)(iii) and (iv) are being repealed (see **item 7**).

**Item 7** repeals subparagraphs 117(2)(c)(iii) and (iv). This is because the matters dealt with in these subparagraphs, that is, additional amounts of income earned derived or received by the liable parent or eligible carer for the benefit of the resident child, will be dealt with by new subsection 117(2A) (see **item 11**).

**Item 8** repeals the note following subsection 117(2), which states that section 117A deals with income earned for the benefit of resident children.
**Item 9** repeals subsection 117(3) and subsections 117(2A) and (2B). Subsection 117(2A) provides that the ground for departure mentioned in paragraph 117(2)(aa) (see **item 5**) is taken not to exist in respect of a child unless the matters set out in subsection 117(2A) are satisfied. These factors are that:

- (a) the resident child normally lives with the parent but is not a child of the parent;
- (b) the parent is, or was, for two continuous years, a member of a couple;
- (c) the other member of the couple is, or was, a parent of the resident child;
- (d) the resident child is aged under 18;
- (e) the resident child is not a member of a couple;
- (f) neither the parent of the resident child is able to support the resident child due to death, ill-health, or the responsibility of the parent to care for another child; and
- (g) the court is satisfied that the resident child requires financial assistance.

Subsection 117(2B) provides that a parent’s costs of enabling the parent to have care for the child can only be high for the purposes of making out the ground of departure that there are special circumstances relating to:

- the parent’s high costs involved in enabling a parent to have contact with any other child or another person that the parent has a duty to maintain, or
- the high costs involved in enabling a parent to have contact with the child,

if the costs that have been or will be incurred are no more than 5% of the amount worked out by the formula included in the subsection. The inclusion of the words ‘or will be incurred’ mean that future costs can also be taken into account.

Subsection 117(2C) provides that 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 117(2B) are costs related to travel to enable the parent to care for the child.

**Item 10** repeals section 117A. This change is required because consideration of the cost of maintaining a resident child is now dealt with by subsection 117(2A) (see **item 9**).

**Item 11** repeals subsection 118(2A). This change is required because subsection 118(2A) refers to subparagraphs 117(2)(c)(iii) and (iv), which are being repealed (see **item 7**).
Part 2 – Application provision

Item 12 sets out the application of the items in Schedule 5. It provides that the amendments apply in respect of:

(a) applications made under section 98B after this item commences;
(b) determinations in respect of which the parties were notified under section 98M after item 16 commences (that is, after 1 July 2008). In other words, if a person is notified under section 98M before 1 July 2008, then the current procedure – that the Registrar may make a determination for an almost unlimited past period – applies;
(c) an application made under section 116 after this item commences (that is, after 1 July 2008), even if the application relates to a decision made before that date to make or refuse to make a determination under Part 6A, or to make an administrative assessment under subsection 66(1).
Schedule 7 – Other amendments commencing on 1 July 2008

Summary
This Schedule provides for other reforms that are to commence on 1 July 2008. These amendments change the way that the Registrar considers a payee’s application to opt for collection of child support by the Registrar. This will make the process easier for the payee to opt for collection by the Registrar. Other amendments allow the Registrar to request the Repatriation Commission to make deductions from certain veterans’ entitlements in order to pay child support debts.

Background
RECONCILIATIONS BETWEEN PARENTS
Currently, if parents reconcile, the payer continues to be liable under an existing administrative assessment until the payee advises the Registrar that he or she wishes the administrative assessment to end. If the parents separate again, having previously ended the administrative assessment, they must apply for a new administrative assessment. If the parents are trying to reconcile, the requirement to end the administrative assessment, and then to make a new application if the reconciliation is not successful, may be another stress on their relationship. To deal with this, a new section 150E is being inserted. It allows parents to reconcile for period of up to six months without the administrative assessment being terminated. During such periods of reconciliation, the administrative assessment is suspended. This means that debt does not continue to accrue against the payer during these periods. If the couple separates within six months of the suspension determination in relation to the reconciliation taking effect, the administrative assessment again comes into effect. However, if the reconciliation lasts for longer than six months, the administrative assessment is terminated.
PAYEE’S APPLICATION TO OPT FOR COLLECTION OF CHILD SUPPORT BY THE REGISTRAR

Payee parents presently have limited rights to make a choice as to whether to use the Registrar to collect child support. When the liability commences, payee parents can ask the Registrar to collect on their behalf. However, the Registrar can require parents to collect child support privately, despite parents not having made an election to do so, if the Registrar is satisfied that the parents involved can make their own sustainable private collection arrangements. Section 39 of the Child Support Registration and Collection Act deals with applications for liabilities which the payee has been collecting privately to become again enforceable under the Act. This might occur if the payer and payee are finding a private collection arrangement difficult to sustain. Presently, subsection 39(5) provides that the Registrar must grant the application if the payer is taken to have an unsatisfactory payment record, or if the Registrar is satisfied that special circumstances exist in relation to the liability which make it appropriate to grant the application. However, this situation does not adequately balance the interests of the payer and the payee. Accordingly, subsection 39(5) is amended to reverse the onus, in order to make it easier for the payee to opt for collection of child support amounts by the Registrar.

NON-AGENCY PAYMENTS

This Schedule also includes refinements of the ‘non-Agency payment’ provisions of the Child Support Registration and Collection to improve the flexibility of those provisions for the way parents manage their child support payments and to align the provisions with the Taskforce recommendations.

DEDUCTIONS FROM OTHER PAYMENTS

It is important for the effectiveness of the child support scheme that administrative assessments are backed up by appropriate enforcement mechanisms if a payer will not pay voluntarily. Presently, some of a payer’s sources of income, such as social security payments, can be intercepted in order to pay a child support liability. However, many types of government payments, including various veterans’ affairs payments, cannot be intercepted. While excluding these payments from deduction recognises matters such as service to the Australian community, a parent’s obligations to his or her children should not be treated as reduced because of this service. Usually, veterans comply voluntarily with the child support obligations. However, there have been occasions where they have not complied. Consequently, the present changes allow deductions to be made from various veterans’ affairs payments.
Explanation of the changes

Part 1 – Amendments

Child Support Assessment Act

Item 1 adds to section 12 of the Child Support Assessment Act, relating to a child support terminating event, a new element for the purposes of reconciliation between parents (see mainly item 2).

Item 2 inserts before section 150 a new section 150E. Section 150E deals with suspension of liability to pay child support where parents reconcile. Subsection 150E(1) provides that 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.

The Registrar must otherwise become aware that the payer and payee are again members of the same couple, for example, through information supplied by Centrelink. It is intended that the expression ‘members of the same couple’ has the same meaning as the expression members of a couple in section 5. That is, the members of the couple are legally married to each other and are not living separately or apart on a permanent or indefinite basis, or the couple are members of the opposite sex and are living together on a genuine domestic basis although not legally married to each other.

Subsection 150E(2) provides that 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 date the Registrar determines that the parents became members of the same couple; and
(b) until the Registrar makes a determination under subsection 150E(3) in relation to the parents.

A note following subsection 150E(2) states that under section 12, there is a child support terminating event if the parents are members of the same couple for a period of six months or more.

Subsection 150E(3) provides that if, within six months of the suspension determination taking effect, the Register is satisfied that the parents have ceased being members of the same couple, the Registrar must make a determination under this subsection that child support is again payable by the liable parent to the other parent.
Subsection 150E(4) provides that if the Registrar makes a determination under subsection 150E(3), child support is again payable by the liable parent to the other parent from the date that the Registrar is satisfied that the parents ceased to be members of the same couple.

Subsection 150E(5) provides that 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.

A decision by the Registrar to suspend an administrative assessment, or to determine that child support is again payable, are reviewable decisions. Section 37A of the Child Support Registration and Collection Act provides that the Registrar must vary the Child Support Registrar on amendment of a child support assessment. Section 42C (a new section which is being introduced in Schedule 3 to this bill) provides that notices must be given to payers and payees in relation to registration decisions. Section 80 (which is set out in Schedule 3 to this bill) sets out decisions against which objections may be lodged. Table item 3, in subsection 80(1), provides that the payer or payee of a registrable maintenance liability may object to a decision of the Registrar about the particulars varied in the Child Support Register.

**Child Support Registration and Collection Act**

**Item 3** repeals and substitutes subsection 39(5). New subsection 39(5) provides that 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, 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.

New subsection 39(5) therefore reverses the onus in relation to an application for collection by the Registrar, so that a payee’s application to have a child support liability collected by the Registrar will granted unless the payer can demonstrate that it should not be granted for one of the reasons set out in subsection 39(5). Payees are in the best position to know whether, given the context of their overall relationship with the payer, collection by the Child Support Agency, would be the better option for them. This change attempts to balance better the needs of the payee, the payer and the Child Support Agency in relation a payee’s decision to opt for collection by the Child Support Agency.

**Item 4** amends section 71A by inserting ‘(1)’ before ‘Subject’.

**Item 5** amends section 71A by inserting ‘and in accordance with subsections (2) and (3)’ after ‘30’.
**Item 6** adds at the end of section 71A further subsections 71A(2) and (3). Subsection 71A(2) provides that, 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 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 against the liability in relation to that percentage of the amount, or the part of the amount, payable under the liability.

Subsection 71A(3) provides that otherwise, the Registrar must credit the amount against the liability in relation to 100% of the amount, or the part of the amount, payable under the liability.

This change is being made to clarify that non-agency payments can be credited against less than 100% of the liability. It ensures that parents are able to use this flexibility in the way that they manage their child support payments.

**Item 7** repeals subsections 71C(1) and (2), and substitutes subsection 71C(1). This is done in order to improve the clarity and comprehensibility of how crediting of prescribed non-agency payments occurs. Subsection 71C(1) provides, 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 (see Regulation 5D of the *Child Support (Registration and Collection) Regulations 1988* for a list of the payments); and

(c) the sum of those payments exceeds the sum all such payments previously credited under this section against the liability for all past periods; and

(d) the payer does not 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.

A note following subsection 71C(1) explains that subsection 71C(1) is subject to section 71D.
Item 8 inserts after section 72B a new section 72AC. Section 72AC allows the Registrar to request the Repatriation Commission to make deductions from certain payments which the Repatriation Commission administers in order to pay child support debts. Subsection 72AC(1) states that the Registrar may do this if a person is a payer of an enforceable maintenance liability, or the person owes a child support debt, and a portion of that debt remains unpaid after the day on which the debt became due and payable under section 66 of the Child Support Registration and Collection Act, and the person is receiving one of a number of payments under the Veterans’ Entitlement Act 1986. These payments are:

(i) an age service pension under Division 3 of Part III of that Act;
(ii) an invalidity service pension under Division 4 of Part III of that Act;
(iii) a partner service pension under Division 5 of Part III of that Act;
(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.

Subsection 72AC(2) sets out the requirements of the notice which the Registrar must send to the Repatriation Commission.

Veterans’ Entitlement Act 1986

Item 9 inserts at end of section 58J new subsection 58J(3). It provides that the Commission must, in accordance with a notice given under section 72AC of the Child Support Registration and Collection Act (see item 2) make deductions from instalments of the pension payable to the recipient and pay the amounts deducted to the Registrar.

Item 10 inserts after section 122D a new section 122E, which deals with deductions of Defence Force Income Support Allowance (DFISA) paid to the Registrar. It provides that the Commission must, in accordance with a notice given under section 72AC of the Child Support Registration and Collection Act (see item 2), make deductions from instalments of DFISA and pay the amount deducted to the Registrar.

Part 2 – Application provisions

Item 11 sets out the application arrangements for the provisions dealing with reconciliations between parents. It provides that this Schedule applies in relation to parents who become members of the same couple after the commencement of this Schedule.

Item 12 sets out the application of item 2. That is, it sets out the application of section 150E, which deals with the effect on administrative assessments of reconciliations between the parents. It provides that item 2 applies in relation to parents that the Registrar is notified have become members of the same couple, and the Registrar is satisfied have become members of the same couple, after the commencement of this Part (that is, 1 July 2008).
Item 13 sets out that amendments made by item 3 of this Schedule, that is, changing the onus in applications for variation to enable liability to become again enforceable under the Child Support Registration and Collection Act, apply in relation to applications made under section 39 after the commencement of this Schedule.

Item 14 sets out the application arrangements in relation to crediting of non-agency payments for less than 100% of the amount payable. It provides that the amendments apply 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 Child Support Registration and Collection Act as inserted by this Schedule) (see item 6).

Item 15 sets out the application arrangements in relation to the amendment made to crediting of prescribed non-agency payments. Subitem 15A(1) provides that 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 Child Support Registration and Collection Act (as inserted by this Schedule). Subitem 15(2) provides that 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)

Summary

Amendments are made to ensure that a child in respect of whom an individual has less than 35% care cannot be an FTB child of that individual for the purposes of attracting payment of child specific components of family tax benefit (FTB). However, individuals who have at least 14% but less than 35% care of a child (a regular care child) would continue to have access to FTB Part A in the form of income tested rent assistance and a regular care child will continue to attract a health care card under the social security law. Child care benefit (CCB) will also continue to be available in relation to care provided to a regular care child by an approved child care service or registered carer. These changes are consistent with recommendations 1.14 and 1.15 of the Taskforce Report.

The provisions of the maintenance income test (MIT), relevant in working out an individual’s FTB Part A rate, are amended to ensure that the MIT applies only to the children in a family for whom child support is payable. This change is consistent with recommendation 9.1 of the Taskforce Report.

PART 1 – REGULAR CARE CHILDREN

Background

Section 22 of the Family Assistance Act defines the concept of an FTB child. Subsection 22(7) deals with the situation where there is a pattern of care in relation to a child such that the child was, or will be, an FTB child of two or more individuals, for example, where separated parents with joint legal responsibility are sharing actual care of the child. In these circumstances, the child is deemed to be an FTB child of all relevant individuals for the period of the pattern of care. A pattern of care is determined by looking at the current care arrangements for the relevant child or children. This will generally be based on arrangements set out in a court order or parenting plan or as agreed by the parents concerned. Where care arrangements are disputed, the available evidence (such as the caring arrangements for the child across a financial year) is considered in determining whether there is a pattern of care and the shared care arrangements.

Section 25 of the Family Assistance Act currently deals with the situation where an individual has the care of a child for less than 30% of the time. There are two basic rules here. The first is that a child who is in the care of an individual for less than 10% of the time cannot be that individual’s FTB child. The second is that an individual who has at least 10% but less than 30% care of a child can waive eligibility for FTB in respect of the child for some or all days in the period of the pattern of care. Where this happens, the child is not an FTB child of the individual for the days covered by the waiver.
The capacity to determine a percentage of FTB applicable to each individual involved in a shared care arrangement is set out in section 59 of the Family Assistance Act. This determination then links into various elements of the FTB rate calculation process in Schedule 1 to the Family Assistance Act. For example, clause 11 of Schedule 1 ensures that a percentage determination is relevant in determining the FTB child rate for a particular child in working out the individual's standard rate of FTB Part A under method 1.

A percentage determination is also relevant in determining an individual's amount of maternity immunisation allowance under section 68 of the Family Assistance Act.

Consistent with recommendation 1.14 of the Taskforce Report, the existing rules relating to shared care described above are amended to ensure that FTB Parts A and B will no longer be split where an individual is providing care for a child for less than 35% of the time. Where an individual has care for 35% or more of the time, then a new methodology would generally apply to determine how FTB should be split. This methodology is set out in the table in new section 59 of the Family Assistance Act.

Under recommendation 1.14, a child in respect of whom an individual has at least 14% but less than 35% care will not be an FTB child of the individual. The effect under the current law is that the individual will not be eligible for FTB in respect of that child. However, recommendation 1.15 supports continued eligibility for rent assistance for individuals who have this level of care of a child and are not otherwise entitled to payment of FTB (because they do not have another child who is an FTB child). Consistent with recommendation 1.15, a new subcategory of FTB is introduced for individuals who do not have an FTB child but have a regular care child (a child in respect of whom the individual has at least 14% but less than 35% care) who is also a rent assistance child (for example, is aged under 16). The rate of this new subcategory of FTB payment would be the amount of rent assistance for which the individual is eligible (based on existing rules) minus any reduction for adjusted taxable income (based on the existing FTB Part A income test). The rate of the new subcategory of FTB would essentially be the rate of FTB Part A determined using method 1 but without regard to child specific rates (that is, the standard rate, large family supplement, multiple birth allowance or the FTB Part A supplement).

Where the individual has one or more FTB children and one or more regular care children who are rent assistance children, the individual would be eligible for both rent assistance and child specific FTB payments in respect of the FTB child or children while the regular care rent assistance children would only be relevant for the purposes of determining the individual's rate of rent assistance.

Neither the existing nor the new subcategory of FTB would be available to individuals with less than 14% care of a child. This is currently the position in relation to individuals with less than 10% care of a child under existing rules in the Family Assistance Act.
These changes to the concept of FTB child also have implications for eligibility for CCB, which is linked to having an FTB child. The policy is that an individual should be eligible for CCB for care provided by an approved child care service or a registered carer for a child who is an FTB child of the individual or the individual’s partner (current rule) or would be an FTB child but for the fact that the individual or partner has at least 14% but less than 35% care of the child (that is, the child is a regular care child of the individual or the individual’s partner). Amendments are made to ensure that a regular care child can attract CCB in the same way as an FTB child. This is consistent with the approach taken in preserving certain entitlements and concessions for individuals with a regular care child under recommendation 1.15.

Recommendation 1.15 also supports continued access to a health care card for individuals with a regular care child. Amendments are made to the health care card provisions in the Social Security Act to this effect.

**Explanation of the changes**

**Division 1 – Amendments**

*Family Assistance Act*

Section 3 of the Family Assistance Act contains definitions of terms and concepts used in the family assistance law.

New definitions of *absent overseas recipient, absent overseas regular care child, parenting plan, regular care child* and *shared care percentage* are inserted into subsection 3(1) by *items 1, 2, 6, 8 and 11*. These new terms are further explained in the context in which they first appear.

The definition of *relevant shared carer* is modified by *item 9* to reflect changes made to the way in which shared care percentages are determined and the new concept of *shared care percentage*.

Consequential amendments are also made to some definitions as a result of:

- the insertion of new terms (for example, the definition of *FTB child* is amended by *items 3 to 5 inclusive* as a consequence of the introduction of the new concept of *regular care child*); and

- the relocation of provisions (the amendments made by *items 7 and 10* are relevant here).

Section 6 of the Family Assistance Act sets out the immunisation requirements that are relevant for the purposes of determining eligibility for CCB and maternity immunisation allowance.
Item 12 inserts a reference to *regular care child* in paragraph 6(4)(a). The effect is that a regular care child of an individual can meet the immunisation requirements if the individual has a conscientious objection to the child being immunised and a recognised immunisation provider has certified in writing that there has been a discussion with the individual about the benefits and risks of immunisation (in the same way as an FTB child).

Section 21 of the Family Assistance Act sets out the eligibility requirements for FTB for an individual. Subsection 21(1) is modified by item 13 so that an individual can be eligible for FTB if the individual is not an absent overseas recipient and has at least one regular care child who is also a rent assistance child.

An *absent overseas recipient* is an individual who has been absent from Australia for longer than 13 weeks (see definition of *absent overseas recipient* in subsection 3(1), as inserted by item 1 and also section 62 of the Family Assistance Act).

A *regular care child* is defined in subsection 3(1) (as inserted by item 8). A regular care child is a child who would be an FTB child of an individual but for the fact the individual has less than 35% care of the child, and the individual has at least 14% care of the child. (For CCB, a regular care child is also a child determined by the Secretary under specified provisions as a regular care child.)

A rent assistance child is defined in subsection 3(1) by reference to new clause 38B of Schedule 1 to the Family Assistance Act. New clause 38B incorporates the existing definition of *rent assistance child* in respect of an FTB child (currently in clause 12 of Schedule 1 to the Family Assistance Act) and inserts a new comparable definition in respect of a regular care child. The requirements for a regular care child are described in a different way because the base FTB child rate is not relevant for regular care children who cannot attract an FTB child rate.

Section 22 of the Family Assistance Act sets out circumstances in which an individual can be an FTB child of another individual (adult).

Item 14 inserts a reference to a *parenting plan* into paragraph 22(3)(b). This is a technical amendment that recognises parenting plans as a mechanism that defines the relationship between separated individuals and a child and is therefore relevant in determining whether a child is an FTB child of an individual. A *parenting plan* has the meaning given by the Family Law Act (see definition in subsection 3(1) of the Family Assistance Act as inserted by item 6).

Item 15 inserts a series of new provisions into section 22 of the Family Assistance Act which deal with shared care.
New subsection 22(6A) applies where there is a pattern of care for a child over a period such that the child is an FTB child of more than one individual for the whole or parts of that period, one of the individuals claims FTB in respect of the child and that individual is not a partner of at least one of the other individuals involved in the pattern of care. Where these conditions are met, the Secretary must determine the percentage of the period that the child was, or will be, in the care of the claimant. This determination of care under new subsection 22(6A) then informs the shared care percentage made under section 59 (as amended). A note at the end of new subsection 22(6A) makes this connection clear.

New subsection 22(6B) contains some rounding rules that apply when the Secretary determines a percentage under new subsection 22(6A). If the percentage of care before rounding is less than 50%, then it is rounded down to the nearest whole percentage. If the percentage of care before rounding is more than 50%, then it is rounded up to the nearest whole percentage. These rules ensure that the total of the percentages in relation to a particular child among the separate carers does not exceed 100%.

New subsections 22(6C) and (6D) pick up the rules in existing subsections 25(2) and (3). These rules ensure that a child cannot be in the care of more than one individual on a particular day and it is up to the Secretary to determine which individual has the care of a child on a given day, having regard to the living arrangements of the child. These considerations are relevant in determining a percentage of care for an individual under new subsection 22(6A).

Item 16 repeals and substitutes a new subsection 22(7), which applies where the Secretary determines, under new subsection 22(6A), that an individual has at least 35% care of a child. Where this happens, the child is taken to be an FTB of the individual concerned for each day in the period of the pattern of care, irrespective of whether or not the individual has care on that day. This ensures continuity of eligibility, although the individual’s rate is affected by the percentage of care determination made under new subsection 22(6A).

A note at the end of new subsection 22(7) completes the picture by referring the reader to new section 25 which ensures that a child in respect of whom an individual has less than 35% care cannot be an FTB child of that individual.

Under section 23 of the Family Assistance Act, a child continues to be an FTB child of an individual if the child ceases to be in the individual’s care without consent and the individual takes reasonable steps to regain the care of the child. The effect of section 23 is that the individual can continue to receive FTB in respect of the child for up to 14 weeks after care ceases.
Items 17 to 19 make a number of amendments to section 23 to ensure that the provision applies in relation to a regular care child in the same way as it does for an FTB child. The effect is that a child can continue to be a regular care child of an individual for up to 14 weeks after care ceases in the circumstances prescribed and the individual can continue to be entitled to FTB Part A on that basis.

Consistent with the amendment made to subsection 22(3) of the Family Assistance Act, item 20 makes a technical amendment to subsection 23(5) to insert a reference to parenting plan in the definition of qualifying period.

Under section 24 of the Family Assistance Act, a child who is absent from Australia for longer than three years cannot be an FTB child. Amendments are made to this provision by items 21 to 23 inclusive to take account of the possibility that a child can be an FTB child or a regular care child when leaving Australia or, in relation to a child born overseas, at birth, and ensure that a child cannot be an FTB child or a regular care child after having been overseas for longer than three years.

Section 25 currently sets out a number of rules that apply where an individual has less than 30% care of an FTB child. This provision is repealed by item 24. In its place is a new section 25, which provides that a child who is in the care of an individual for less than 35% of the time, as determined under new subsection 22(6A), cannot be an FTB child of the individual, despite section 22.

Section 26 of the Family Assistance Act ensures that only one member of the same couple can be eligible for FTB in respect of an FTB child or children of the couple. Subsection 26(1) is amended by item 25 to ensure that this rule also applies in respect of a regular care child or children.

Section 27 of the Family Assistance Act ensures that an FTB child of one member of a couple will also be an FTB child of the other member. This allows a determination of FTB for an individual to be based on all the children in the household, including a step-child of the individual. Section 27 is recast by item 26 so that it applies in relation to a regular care child in the same way as it currently applies in relation to an FTB child. In addition, the new provision ensures that where a percentage of care determination has been made under new subsection 22(6A) in relation to an individual in respect of care provided to a particular child, that the determination also applies in relation to the individual’s partner in respect of the same child in a blended family situation.

Sections 28 and 29 allow for the splitting of FTB in certain blended family situations or in respect of the period before a couple separates. The capacity to determine a percentage of FTB for each relevant individual is to be found in sections 60 and 61 respectively. There are other provisions in Schedule 1 to the Family Assistance Act which cross reference these splitting rules and outline their implications. These rules do not change.
Sections 31 and 32 of the Family Assistance Act provide for continued eligibility for FTB where an FTB child dies. Eligibility for FTB will generally continue for 14 weeks after the death of the child, although there is capacity to pay out that eligibility as a lump sum payment in certain circumstances.

**Items 27 to 30** inclusive ensure that if an individual is eligible for FTB in respect of a regular care child and that child dies, then the bereavement rules in sections 31 and 32 also apply to extend the individual’s eligibility in respect of the deceased regular care child in the same way as for a deceased FTB child.

Section 33 deals with the situation where an individual who is eligible for FTB dies before receiving their entitlement and enables the Secretary to pay another individual that entitlement. The amendments made by **items 31 and 32** ensure that these same rules would apply where there is an unpaid amount of FTB in respect of a regular care child through the insertion of references to a regular care child where appropriate.

The eligibility conditions for maternity payment are set out in sections 36 and 37 of the Family Assistance Act. A common requirement in the scenarios covered by these eligibility conditions is that the individual claiming maternity payment in respect of a particular child is eligible for FTB for the child or would be so eligible except that the individual’s rate is nil. There is no specific mention of FTB child in these provisions so they could potentially apply where an individual is eligible for FTB in respect of a regular care child. The policy is that only FTB children should attract payment of maternity payment. This is consistent with the general rule for maternity payment that only one individual is eligible for maternity payment. A provision exists to apportion maternity payment between two or more individuals, but this provision is generally intended for a change of care rather than shared care. The latter would be rare in the case of a newborn child.

**Items 33 to 40** amend each of the eligibility categories in section 36 to ensure that an individual can only be eligible for maternity payment in respect of an FTB child (and not a regular care child).

The eligibility conditions for maternity immunisation allowance are set out in section 39 of the Family Assistance Act. Like maternity payment, a common eligibility requirement for the various categories of maternity immunisation allowance is the requirement to be eligible for FTB in respect of the child, without mention of an FTB child. **Items 41 to 43** amend the eligibility conditions for maternity immunisation allowance to ensure that an individual can only be eligible for maternity immunisation allowance in respect of an FTB child (and not a regular care child).

Eligibility for child care benefit is linked, in part, to having an FTB child. The relevant CCB eligibility rules are set out in sections 42, 44 and 45 of the Family Assistance Act.
In broad terms, these provisions are amended so that an individual can be eligible for CCB for care provided by an approved child care service or registered carer to a regular care child (that is, a child in respect of whom the individual or individual’s partner has at least 14% but less than 35% care where the child meets all other requirements for an FTB child). The relevant amendments are made by items 44, 45, 47, 49 and 50.

Under existing rules, the Secretary has a capacity under subsections 42(2), 44(3) and 45(3) of the Family Assistance Act, to determine that a child who is not an FTB child is taken to be an FTB child for the purposes of the relevant provision. The definition of FTB child in subsection 3(1) of the Family Assistance Act then includes such a child within the definition of FTB child as it applies for CCB purposes.

Amendments are made to these provisions by items 46, 48 and 51. The amendments enable the Secretary to determine a child who is neither an FTB child nor regular care child to be a regular care child for the purposes of the relevant eligibility provision. There is no substantive difference between the benefits available under CCB in respect of care provided to an FTB child and a regular care child. The new definition of regular care child in subsection 3(1) of the Family Assistance Act includes such a child within its definition and a consequential amendment is made to the definition of FTB child.

Also of relevance here is the savings provision inserted by item 146. This provision deems a determination that a child is an FTB child that is in force under subsection 42(2), 44(3) or 45(3) of the Family Assistance Act immediately before 1 July 2008 to be a determination that the child is a regular care child. This savings provision ensures continuity of treatment. It also means that the Secretary will not need to remake these determinations under the provisions as amended.

Section 54 of the Family Assistance Act describes the circumstances in which a limit of 50 hours for sessions of care provided by an approved child care service applies in a week of eligibility. In broad terms, this limit applies where, among other things, the FTB child of the individual or individual’s partner attracts payment of carer allowance or where the individual or partner with an FTB child are themselves disabled. Items 52, 53 and 54 amend section 54 to ensure that the 50 hours limit also applies where an individual or partner with a regular care child satisfy the stated conditions.

Item 55 repeals existing section 59 and substitutes a new section 59 under which an individual’s shared care percentage for an FTB child is determined.

Under new subsection 59(1), an individual has a shared care percentage if the Secretary has made a percentage of care determination for the individual in respect of an FTB child under new subsection 22(6A). A note at the end of this provision indicates to the reader that the Secretary is taken to have made a percentage of care determination under new subsection 22(6A) in a blended family situation by operation of new paragraph 27(2)(b).
An individual’s shared care percentage is then determined using the table in new subsection 59(2). If, for example, the individual were determined as having 58% care of a child, then the individual’s shared care percentage for the child would be 61% (that is, 51% plus (2% x 5)).

New subsection 59(3) addresses the situation where the sum of the shared care percentages under subsection 59(2) in respect of a particular FTB child would not result in 100%. For example, A and B have 40% care and C has 20% care of a child. The child is therefore an FTB child of both A and B but not of C because of the new rule in section 25 (although the child may still be a regular care child who is a rent assistance child of C). Applying the table in subsection 59(2), A and B’s shared care percentage in respect of the child would be 35% each. This means that the full possible amount of FTB would not be paid in respect of the child. This is not the intention. In this situation (and comparable situations where three or more individuals share the care of a child), the Secretary would have a discretion (under new subsection 59(3)) to depart from the table so that 100% of FTB can be paid in respect of the FTB child to eligible individuals in accordance with percentages determined by the Secretary.

Item 55 also inserts a section 59A that replaces existing subsections 59(2) and (3). New section 59A enables the Secretary to split payment of multiple birth allowance between individuals who are not members of a couple in a manner determined by the Secretary. The Secretary would also have the option of specifying that the whole of the multiple birth allowance is to be paid to one individual.

Sections 62, 63 and 63A of the Family Assistance Act outline the implications for calculating an individual’s rate of FTB where an individual and/or an FTB child leave Australia for longer than 13 weeks (subject to the short return rules).

An individual who has been absent from Australia for longer then 13 weeks (who is an absent overseas recipient) has their rate of FTB worked out using the modifications set out in subsection 62(4). Notably, an absent overseas recipient cannot attract rent assistance as part of their FTB Part A. Therefore, an individual who has one or more regular care children (and no FTB children) and who is an absent overseas recipient will not be eligible for FTB (by virtue of the new rule in paragraph 21(1)(a) of the Family Assistance Act, as amended by item 13).

Section 63 provides a similar set of rules where an FTB child is absent from Australia for longer than 13 weeks (and is therefore an absent overseas FTB child). The modifications in subsection 63(4) require that an absent overseas FTB child can only attract the base FTB child rate for the purposes of determining the individual’s standard rate of FTB Part A under clause 7 of Schedule 1 and is disregarded for the purposes of determining the individual’s standard rate of FTB Part B under clause 30 of Schedule 1.
**Item 56** reworks section 63 so that it covers the situation where a child is either an FTB child or a regular care child when leaving Australia or at birth (if born outside Australia) and where a child’s status changes from FTB child to regular care child and vice versa after being absent from Australia for longer than 13 weeks. The changes to section 63 ensure that if a child is absent from Australian for longer than 13 weeks irrespective of whether the child was an FTB child or a regular care child when leaving Australia or at birth (outside Australia), then the child is an *absent overseas FTB child* for any period that occurs after the 13 weeks’ absence and during which time the child is an FTB child. The rules in section 63 that deal with short returns to Australia of less than 13 weeks are also modified so that when the child leaves Australia within that time frame, the child is an absent overseas FTB child while overseas and while an FTB child.

The modifications set out in subsection 63(4) in respect of an absent overseas FTB child remain unchanged.

**Item 57** inserts new section 63AA into the Family Assistance Act. This new provision is similar to section 63 except that it deals with the situation where a child is a regular care child for one or more periods after being absent from Australia for longer than 13 weeks. During those periods, the child is an *absent overseas regular care child*. The effect is that the child will not be a rent assistance child (new clause 38B of Schedule 1 to the Family Assistance Act refers). Also of relevance is the new definition of *absent overseas regular care child* in subsection 3(1) of the Family Assistance Act, which directly links to new section 63AA.

Consequential amendments are made to section 63A by **items 58 to 60** to take account of the changes made to section 63 and the insertion of new section 63AA.

Sections 64 and 65 provide for the calculation of an individual’s rate of FTB where an FTB child dies. In broad terms, rate is calculated as if the child had not died (and remains an FTB child) during the bereavement period. In addition, there is capacity to convert the rate payable during the bereavement period into a lump sum payment.

As described earlier, amendments are being made to section 31 of the Family Assistance Act to enable eligibility for FTB to continue where a regular care child dies. Consequential changes are also made to sections 64 and 65 by **items 61 to 65** to enable an individual’s rate of FTB to be determined during the bereavement period as if the regular care child had not died.
The effect of the changes is as follows. Where the deceased regular care child is the individual’s only child, then the individual would continue to receive FTB in the form of an income tested rent assistance payment for the bereavement period, with capacity to convert that eligibility into a lump sum payment. Where the individual has a deceased regular care child and other FTB children or other regular care children, then the individual’s rate of rent assistance would continue to have regard to the deceased regular care child for the bereavement period.

Section 68 of the Family Assistance Act currently allows maternity immunisation allowance to be shared between eligible individuals where each individual’s percentage of FTB for the child has been determined under subsection 59(1). Item 66 reworks this provision so that maternity immunisation allowance is shared on the basis of the individual’s shared care percentage of FTB for the child. The concept of shared care percentage is newly defined in subsection 3(1) of the Family Assistance Act by reference to new section 59.

Clause 1 of Schedule 1 to the Family Assistance Act provides some broad rules about the FTB rate calculation process. FTB is an annual rate that comprises a Part A rate and a Part B rate. An individual’s Part A rate can be determined using one of two specified methods, Method 1 or Method 2. This will depend on whether the individual’s adjusted taxable income exceeds the higher income free area (set out in clause 2 of Schedule 1).

Items 67 to 69 make various amendments to clause 1 to take account of new Part 3A of Schedule 1 (as inserted by item 78). Briefly, new Part 3A outlines a new method of working out an individual’s Part A rate (Method 3) and applies where the individual has no FTB children.

Clause 3 of Schedule 1 outlines the method by which an individual’s Part A rate is worked out under Part 2 (Method 1). Items 70 to 72 make consequential amendments to various provisions in clause 3 to take account of the relocation of the rent assistance provisions to Part 5 of Schedule 1 (common provisions) and their renumbering.

Item 73 repeals clauses 4A and 4B of Schedule 1. These provisions enable offsetting to occur where duplicate rent assistance payments would otherwise be paid. These provisions are relocated in Part 5 of Schedule 1 as new clauses 38J and 38K respectively.

Item 74 makes a consequential amendment to subclause 5(1) to reflect the relocation of the rent assistance provisions to Part 5 of Schedule 1 (common provisions) and their renumbering.
Clause 11 of Schedule 1 ensures that a percentage determination in relation to an FTB child is taken into account in working out an individual’s standard rate where the individual’s Part A rate is worked out using Method 1. **Item 75** amends clause 11 to reflect the new concept of *shared care percentage* in section 59 of the Family Assistance Act (as amended).

**Item 76** repeals Divisions 3 and 4 of Part 2 of Schedule 1 to the Family Assistance Act.

Division 3 currently provides the eligibility rules and rate calculation process for rent assistance. This Division is relocated in Part 5 of Schedule 1 as new Subdivision A of new Division 2B of Part 5. (The rules relating to duplicate rent assistance become new Subdivision B of new Division 2B of Part 5.)

Division 4 sets out the income test that applies where an individual’s adjusted taxable income does not exceed the higher income free area. This Division is relocated in Part 5 of Schedule 1 as new Division 2C of Part 5.

These Divisions are relocated into Part 5 of Schedule 1 because they can apply where an individual’s Part A rate is worked out under existing Method 1 or new Method 3.

Clause 27 of Schedule 1 ensures that a percentage determination in relation to an FTB child is taken into account in working out an individual’s standard rate where the individual’s Part A rate is worked out using Method 2. **Item 77** amends clause 27 to reflect the new concept of *shared care percentage* in section 59 of the Family Assistance Act (as amended).

**Item 78** inserts a new Part 3A (Method 3) into Schedule 1 to the Family Assistance Act. New Part 3A will be used to work out an individual’s Part A rate where the individual has no FTB children (but does have at least one regular care child who is also a rent assistance child).

**Part 3A – Part A rate (Method 3)**

In broad terms, the rate of FTB Part A for an individual with one or more regular care children but no FTB children is to be worked out without reference to specified child amounts (including the FTB Part A supplement). The individual’s *maximum rate* of FTB Part A would therefore be the individual’s rent assistance (if any). This amount would be subject to the same income test that applies in working out an individual’s Part A rate using Method 1. As the individual would not be entitled to child support in respect of a regular care child under the new child support rules, the maintenance income test would not be relevant.
New clause 28A sets out a new method statement that is used to work out an individual’s Part A rate where Method 3 applies. The first step is to work out the individual’s rent assistance under Subdivision A of Division 2B of Part 5. The result is the individual’s maximum rate. The income test set out in Division 2C of Part 5 is then applied to work out any reduction for adjusted taxable income, which is then deducted from the individual’s maximum rate. The result is the individual’s income tested rate, which is the individual’s Part A rate.

An individual’s Part A rate, as worked out under Part 3A (Method 3) may be subject to reduction in accordance with clauses 38J and 38K (offsetting for duplicate rent assistance).

If the individual has one or more regular care children as well as an FTB child or children, then the individual’s Part A rate would be worked out using either Methods 1 or 2. The individual’s maximum rate would include the relevant FTB child rate or rates for any FTB children of the individual. Where Method 1 is relevant and the individual therefore has potential eligibility for rent assistance, the individual’s regular care children who are also rent assistance children would be relevant in determining the individual’s rate of rent assistance.

**Item 79** makes a consequential amendment to paragraph 29B(4)(a) of Schedule 1 to take account of the new concept of *shared care percentage* in section 59 (as amended).

Under the current rules, clause 31 of Schedule 1 ensures that an individual’s standard rate of FTB Part B has regard to a percentage determination under subsection 59(1) as appropriate. Clause 31 is reworked by **item 80** to take account of the new concept of shared care percentage in section 59 (as amended).

Similarly, clause 31A of Schedule 1 ensures that the amount of an individual’s FTB Part B supplement is worked out having regard to a relevant percentage determination under subsection 59(1). **Item 81** reworks subclause 31A(1) so that it takes account of the new concept of *shared care percentage* in section 59 (as amended).

Under the current rules, clause 38 of Schedule 1 ensures that multiple birth allowance is paid in accordance with a percentage determination made under subsection 59(2). As existing subsections 59(2) and (3) of the Family Assistance Act are being replaced with new section 59A (**item 55** makes the relevant amendment), **item 82** reworks clause 38 so that multiple birth allowance is paid in accordance with a determination under new section 59A.

Paragraph 38A(2)(a) of Schedule 1 is reworked by **item 83** so that it reflects the concept of *shared care percentage* in section 59 (as amended) instead of the existing concept of a percentage determination under subsection 59(1).
Item 84 inserts two new Divisions into Part 5 of Schedule 1.

New Division 2B contains provisions relating to rent assistance. New Subdivision A sets out the eligibility rules for rent assistance and the methods of calculating an individual’s rate of rent assistance in different circumstances. New Subdivision B deals with offsetting for duplicate rent assistance. Both of these new Subdivisions are relevant when an individual’s Part A rate is being worked out under existing Method 1 or new Method 3.

New Division 2C sets out the income test (applicable where an individual’s Part A rate is worked out using existing Method 1 or new Method 3).

Division 2B – Rent Assistance

Subdivision A – Rent Assistance

New Subdivision A is essentially existing Division 3 of Part 2 of Schedule 1 to the Family Assistance Act, relocated into Part 5, renumbered to take account of the relocation and modified to cover certain regular care children.

Under the current rules (clause 12 of Schedule 1), an individual’s eligibility for, and rate of, rent assistance is affected by whether an FTB child of the individual is also a rent assistance child. An FTB child is a rent assistance child of the individual if the FTB child rate for the child exceeds the base FTB child rate or would exceed that rate but for clause 11. The base FTB child rate is the most an FTB child can attract if the child is aged 16 or more or is an absent overseas FTB child.

Under new clause 38B, the rules that prescribe when an FTB child is a rent assistance child are the same as in existing clause 12. However, clause 38B also sets out when a regular care child is a rent assistance child. Consistent with the FTB child rules, a regular care child of an individual is also a rent assistance child of the individual if the child is under 16 and is not an absent overseas regular care child. The description of these restrictions is different for a regular care child because there is no FTB child rate or base rate for such a child.

New clause 38C sets out the eligibility requirements for rent assistance. It is modelled on existing clause 13 of Schedule 1. The main differences are as follows.

First, the eligibility requirement in paragraph (1)(fa) that applies to an individual who is a relevant shared carer (defined in subsection 3(1) as an individual who has a shared care percentage in relation to each of his or her FTB children) will also apply to an individual who has only one or more regular care children but no FTB children.

Second, the amounts specified in new clause 38C are current as at the time of introduction of the bill. Subitem 145(2) ensures that these amounts remain current by providing for their indexation.
New clauses 38D and 38E are modelled on existing clauses 14 and 14A respectively.

Under the current rules, clauses 14 and 14A of Schedule 1 set out an individual’s rate of rent assistance. Where the only children in the care of an individual are subject to a determination under subsection 59(1) of the Family Assistance Act, rent assistance is payable at the higher of the rates calculated under clauses 14 and 14A. The maximum rate payable under the table in clause 14A is comparable to the maximum rate payable under the Social Security Act to a person without children. Clause 14A acts to reduce the risk that a person, especially a person receiving a social security payment, could receive less rent assistance when they accept responsibility for the care of a child, while giving them access to the higher rate more in line with the higher costs usually associated with a larger home needed to accommodate children.

As mentioned above, the rent assistance eligibility requirements are being modified so that an individual who has one or more regular care children but no FTB children is treated in the same way as an individual who is a relevant shared carer. Consistent with this change, new clause 38E is constructed so that it applies to determine the rate of rent assistance payable to an individual who is a relevant shared carer (as is currently the case with clause 14A) and also an individual who has only one or more regular care children. This is the substantive difference between exiting clauses 14 and 14A and new clauses 38D and 38E.

The amounts specified in new clauses 38D and 38E are also current as at the time of introduction of the bill. Subitem 145(2) ensures that these amounts remain current by providing for their indexation.

New clause 38F provides that a reference to annual rent in the tables in new clauses 38D and 38E is a reference to the annual rate being paid or payable by the individual whose rate is being determined.

New clause 38G deals with rent paid by a member of a couple. This provision is the same as existing clause 16 of Schedule 1.

New clause 38H deals with rent paid by a member of an illness separated couple, respite care or temporarily separated couple. This provision is the same as existing clause 16A of Schedule 1.
Subdivision B – Offsetting for duplicate rent assistance

This Subdivision contains new clauses 38J and 38K. These provisions are substantively similar to existing clauses 4A and 4B of Schedule 1 to the Family Assistance Act. The main difference is that the new rate calculation process for FTB Part A using Method 3 will also be subject to the rent assistance offsetting rules. To this end, references to new clause 28A (which sets out the method statement for calculating an individual’s Part A rate where Method 3 applies) have been inserted into new clauses 38J and 38K where relevant.

In broad terms, the offsetting rules in new clauses 38J and 38K (and existing clauses 4A and 4B of Schedule 1) operate to prevent duplicate payments of rent assistance between FTB on the one hand and social security or veterans’ entitlements payments on the other hand. This is done by providing that any rent assistance paid as part of a social security or veterans’ entitlements payment in respect of a particular day is taken into account in calculating an individual’s entitlement to arrears of FTB Part A in respect of that day.

Division 2C – Income test

This Division contains new clauses 38L, 38M and 38N. These new clauses are substantively the same as existing clauses 17 to 19 of Schedule 1.

The income testing provisions in new clauses 38L, 38M and 38N will be relevant in determining an individual’s Part A rate using existing Method 1 (there is no substantive change here) or new Method 3.

Items 85 and 86 make some consequential amendments to paragraph 39(2)(e) of Schedule 1 to the Family Assistance Act that take account of the relocation of the FTB Part A income test and the income free area (new clause 38N) from 1 July 2008.

Items 87 and 88 make some consequential amendments to other provisions in clause 39 to take account of the possibility of an individual’s Part A rate being worked out under new Part 3A of Schedule 1 (Method 3).

Schedule 4 to the Family Assistance Act provides for the indexation of specified amounts and rates. Item 89 makes consequential amendments to items 4 and 5 of the table in clause 2 of Schedule 4 so that relevant rent assistance amounts are appropriately described and abbreviated and that the new clause references are set out in column 3. Similarly, item 90 makes consequential amendments to item 13 of the table in clause 2 of Schedule 4, which deals with the income free area. The new abbreviations are then reflected in the table in subclause 3(1) by item 91.

FTB Part B will continue to be available only to individuals with an FTB child. A regular care child would not affect the way in which an individual’s FTB Part B rate is determined under Part 4 of Schedule 1.
There are numerous provisions in the Family Assistance Administration Act that refer to an FTB child. A number of these are amended to take account of regular care children, as explained below.

Section 28B of the Family Assistance Administration Act provides for the variation of a determination that an individual is entitled to be paid FTB by instalment where an FTB child claims another specified payment. Subsection 28B(1) sets out the conditions that must be satisfied for this provision to apply. Subsections 28B(2) and (3) outline the consequences of an application of this provision on an individual’s entitlement determination where the child concerned is the individual’s only FTB child and where the individual has other FTB children.

Paragraph 28B(1)(b) is reworked by item 92 so that it also applies to a regular care child who is a rent assistance child (in the same way as it currently applies to an FTB child).

Subsection 28B(2) is amended so that it also covers cases where the child concerned is the individual’s only child (counting both FTB child and regular care child), and subsection 28B(3) is amended so that it also covers cases where the child is not the claimant’s only child (again counting both FTB child and regular care child). Items 93, 94 and 95 make the relevant amendments.

Notes at the end of some of the amendments to section 28B of the Family Assistance Administration Act change relevant headings (including the heading to subsections 16(5) and (6)) so that they also refer to a regular care child.

Under section 30B of the Family Assistance Administration Act, a claimant’s entitlement determination can be varied for failure to notify an FTB child’s departure from Australia. Amendments are made by items 96 to 99 to ensure that this provision also applies in relation to regular care children who depart Australia.

Subsection 30B(1) is amended so that it refers to a child who has left Australia without the claimant notifying, whether the child is an FTB child or a regular care child who is a rent assistance child.

Subsection 30B(2) is reworked so that a claimant’s entitlement determination is varied with the effect that the claimant is not entitled to be paid FTB where the claimant has not notified the absence of each child of the claimant (whether an FTB child or a regular care child who is a rent assistance child) or that the claimant’s rate of FTB is varied so as not to take account of an FTB child or regular care child who is a rent assistance child in respect of whom this provision applies.
Subdivision D of Division 1 of Part 3 of the Family Assistance Administration Act sets out the relevant reconciliation conditions that need to be satisfied before an individual can access the FTB Part A and B supplements.

There are currently references to an FTB child in sections 32J, 32K and 32P of the Family Assistance Administration Act. Items 101, 102 and 104 amend these provisions so they also refer to a regular care child or a regular care child who is also a rent assistance child, as appropriate. Section 32L also refers to an FTB child but applies where such a child is aged 16 or more. As a child who has turned 16 cannot be a regular care child who is a rent assistance child, a consequential amendment is not required to this provision.

Items 100 and 103 make consequential amendments to paragraphs 32D(1)(c) and 32P(1)(b) respectively to reflect the renumbering of the FTB income test provisions.

Under section 33 of the Family Assistance Administration Act, the Secretary must determine that an individual is entitled to be paid an FTB advance where specified conditions are satisfied. The intention is that an advance would not be available to an individual who is entitled to FTB for only a regular care child who is a rent assistance child. Item 105 therefore modifies subsection 33(1) so that it includes the extra condition that the individual has at least one FTB child.

Section 71E of the Family Assistance Administration Act currently refers to an FTB child in the context of a CCB debt that arises where an approved child care services certifies a rate in relation to a session of care to an FTB child and where the service knows that that rate does not apply to the child. As it will be possible for an approved child care service to certify a rate of fee reduction for a regular care child who is at risk or whose carer is experiencing a specified kind of hardship under section 76 of the Family Assistance Act, item 106 amends this provision to also include a references to a regular care child where appropriate.

Section 228 of the Family Assistance Administration Act enables an amount to be deducted from an individual’s entitlement to FTB where a notice has been given under subsection 72AB(3) of the Child Support Registration and Collection Act to this effect. The amount of the deduction will depend on, among other things, whether some or all of the person’s FTB children are designated child support children. The deducted amount(s) are then applied against a child support debt that is due and payable under the child support legislation.

Items 107 to 109 amend subsections 228(3) and (4) to ensure that regular care children who are rent assistance children are also taken into account in applying these provisions.
**Child Support Registration and Collection Act**

The amendments made to section 72AB of the Child Support Registration and Collection Act by items 110 and 111 complement the amendments made to section 228 of the Family Assistance Administration Act (as described above). Paragraph 72AB(1)(b) is reworked and subsection 72AB(2) amended so that these provisions also apply where a regular care child who is a rent assistance child is also a designated child support child of the person.

**Items 112 and 113** insert new definitions of *regular care child* and *rent assistance child* into subsection 72AB(5) to support the amendments made to subsections 72AB(1) and (2). These terms are defined by reference to their meanings in the Family Assistance Act.

**Social Security Act**

**Health Care Cards**

Recommendation 1.15 of the Taskforce Report supports continued eligibility for a health care card (HCC) for an individual who has at least 14% but less than 35% care of a child (that is, a person with a regular care child). Amendments are made to the Social Security Act to give effect to this aspect of recommendation 1.15.

Division 3 of Part 2A.1 of the Social Security Act sets out the qualification conditions for a HCC. Of particular relevance are sections 6A, 1061ZK and 1061ZO of the Social Security Act.

Section 6A provides a number of definitions that support the HCC provisions in Division 3 of Part 2A.1. There are a number of definitions in section 6A that currently refer to an FTB child. Consequential amendments are made to these provisions so that they also refer to a regular care child. **Items 114, 115 and 116** make the relevant changes.

**Item 117** repeals subsection 6A(3), which is a superfluous provision.

Under subsection 1061ZK(4) of the Social Security Act, a person qualifies for a HCC on a day that the person is entitled to be paid FTB by instalment that includes a Part A rate under Part 2 of Schedule 1 to the Family Assistance Act where the person’s income excess for the purposes of calculating the Part A rate is nil. This basically covers individuals who are receiving certain social security or DVA income support payments or whose income does not exceed the income free area specified in clause 19 of Schedule 1.

**Item 125** amends paragraph 1061ZK(4)(b) to ensure that it also covers people who are entitled to be paid FTB by instalment that includes a Part A rate under new Part 3A of Schedule 1 to the Family Assistance Act (in respect of a regular care child who is also a rent assistance child).
**Item 126** makes a consequential amendment to paragraph 1061ZK(4)(c) to reflect the relocation of the FTB Part A income test provisions.

**Item 127** inserts a new subsection 1061ZK(4A) that extends qualification for a HCC to a person who has a regular care child but is not entitled to be paid FTB by instalment (because, for example, the regular care child is not a rent assistance child). Consistent with existing subsection 1061ZK(4), the person’s income excess for the purposes of Division 2C of Part 5 of Schedule 1 to the Family Assistance Act would also need to be nil.

Section 1061ZO sets out a number of categories of qualification for a ‘low income’ HCC. (by application). Several of the specified categories require the person to either be or not to be an FTB child of a particular description. For example, qualification for a HCC under subsection 1061ZO(4) requires that a person meet residence requirements, the health care card income test and be an FTB child who is 19 or more years of age.

Section 1061ZO does not, in its current form, cover a regular care child.

**Items 128 and 129** amend various provisions in section 1061ZO to add references to a regular care child where FTB child is currently mentioned.

**Double orphan pension**

A person’s rate of double orphan pension for a child is worked out under section 1010 of the Social Security Act. Subsection 1010(1) sets out the rate of double orphan pension. However, subsection 1010(2) and (3) provide for an additional DOP payment in prescribed circumstances.

There is no capacity in this provision to split double orphan pension where the care of a double orphan child is being shared between two or more individuals who each attract a percentage of FTB in respect of the child.

**Item 123** inserts a new subsection 1010(1A) into the Social Security Act. Under this new provision, if a person who qualifies for double orphan pension for a child has a shared care percentage for that child, then the person’s rate of double orphan pension is to reflect their shared care percentage.

If, for example, the young person’s maternal grandmother has 40% care, then her shared care percentage would be 35% (that is, 25% plus 2% for each percentage point over 35% in accordance with the methodology in section 59 of the Family Assistance Act (as amended)). The rate of double orphan pension for the grandmother would therefore be 35% of the rate that would otherwise be determined under subsection 1010(1) of the Social Security Act.

Similarly, any additional double orphan pension component payable to a person with a shared care percentage in respect of the double orphan child would be the difference between:
• the prior rate of family allowance (if the child became a double orphan before 1 July 2000) or FTB Part A that was payable for the child before the child became a double orphan, multiplied by the person's shared care percentage for the child; and

• the person’s current Part A rate for the child (which would reflect the person’s shared care percentage).

**Item 124** repeals existing subsections 1010(2) and (3) and substitutes new provisions that are consistent with the effect described above.

New subsections 1010(2) and (3) have the same effect as the repealed provisions except that they only apply where the person does not have a shared care percentage in respect of the double orphan child.

New subsections 1010(2A) and (3A) modify these rules where the person does have a shared care percentage in respect of the double orphan child so that the required calculations and comparisons appropriately reflect that shared care percentage.

**Item 122** makes a consequential amendment to subsection 1010(1) by making it subject to new subsections 1010(1A) to (3A).

In broad terms, a person can qualify for double orphan pension for a young person who is an FTB child of the person. This qualification rule is not changing. Furthermore, there will capacity, from 1 July 2008, to split payment of double orphan pension between people who have a shared care percentage in respect of a double orphan child to reflect the caring arrangements for the child.

These changes may have an adverse effect on a small number of people receiving double orphan pension on 30 June 2008. Saving provisions are therefore inserted by **item 147** to counteract this effect. A person’s rate of double orphan pension for a child would be preserved at the lower of the rate payable for the child immediately before 1 July 2008 or, if the child is an FTB child on or after 1 July 2008, the rate that would be payable under section 1010 as in force before the changes. The saved rate would continue to apply until such time as the person would cease to qualify for double orphan pension for the child otherwise than because of the changes to the concept of FTB child in the Family Assistance Act or where a higher rate of double orphan pension would be payable for the child under the new rules.

**Carer allowance**

Section 992J of the Social Security Act enables carer allowance to be continued for a bereavement period where a disabled child who is an FTB child dies. Section 992K enables the customer to receive the bereavement payment as a lump sum.
**Item 121** amends these provisions by inserting references to a regular care child where an FTB child is mentioned. The changes ensure that sections 992J and 992K will apply in the same way irrespective of whether the deceased child is an FTB child or a regular care child.

Other amendments

**Item 118** amends the definition of *maximum Part A rate of family tax benefit* in subsection 23(1) of the Social Security Act so that it also refers to new clause 28A of Schedule 1 to the Family Assistance Act. New clause 28A provides a new method of working out an individual’s Part A rate where the individual has no FTB children (but has one or more regular care children who are also rent assistance children). An individual’s *maximum rate* is worked out under step 1 of that method statement.

**Item 119** inserts a new definition of *regular care child* into subsection 23(1). This term has the same meaning as given by subsection 3(1) of the Family Assistance Act.

**Item 120** inserts a new definition of *rent assistance child* into subsection 23(1). This term also has the same meaning as given by subsection 3(1) of the Family Assistance Act.

Part 3.7 of the Social Security Act provides for the payment of rent assistance as part of a person’s social security payment where appropriate. Several provisions in Part 3.7 currently refer to clauses 4A and 4B of Schedule 1 to the Family Assistance Act (which deal with offsetting duplicate rent assistance).

Clauses 4A and 4B are being relocated into Part 5 of Schedule 1 to the Family Assistance Act and will be renumbered as clauses 38J and 38K respectively (**items 73 and 84** are relevant). **Items 130 to 142** make the required consequential amendments to reflect this numbering change.

**Veterans’ Entitlements Act 1986**

Points SCH6-C3A and C3B of the *Veterans’ Entitlements Act 1986* currently refer to clauses 4A and/or 4B of Schedule 1 to the Family Assistance Act (which deal with offsetting duplicate rent assistance).

Clauses 4A and 4B are being relocated into Part 5 of Schedule 1 to the Family Assistance Act and will be renumbered as clauses 38J and 38K respectively (**items 73 and 84** are relevant). **Items 143 and 144** make the required consequential amendments to reflect this numbering change.

**Division 2 – Application and saving provisions**

**Application**

**Item 145** sets out how the various amendments in this Schedule apply.
The amendments made to the Family Assistance Act and the Family Assistance Administration Act apply in relation to the 2008-09 income year and later income years (subitem 145(1) refers).

The rent assistance amounts referred to in new clauses 38C, 38D and 38E of Schedule 1 to the Family Assistance Act, which are current as at the date of introduction of the bill, are to be indexed in accordance with Schedule 4 to the Family Assistance Act on 20 September of 2006 and 2007 and on 20 March of 2007 and 2008. This provision ensures that the amounts are current when the amendments commence on 1 July 2008. Subitem 145(2) is the relevant application provision.

Similarly, the income free area amount in new clause 38N of Schedule 1 to the Family Assistance Act, which is current as at the date of introduction of the bill, is to be indexed in accordance with Schedule 4 to the Family Assistance Act on 1 July 2007 and 2008. This provision ensures that the amount is current when the amendment commences on 1 July 2008. Subitem 145(3) is the relevant application provision.

Saving Provisions

The saving provisions in items 146 and 147 have been described above in the context in which they arise.

PART 2 – MAINTENANCE INCOME TEST

Background

The MIT is relevant in working out an individual’s Part A rate using Method 1. The calculation process is set out in the method statement in clause 3 of Schedule 1 to the Family Assistance Act. The MIT is the second means test that potentially applies to reduce an individual’s maximum rate of FTB Part A. Importantly, an individual’s maximum rate of FTB Part A is the sum of the relevant amounts specified in step 1 of the method statement in clause 3 of Schedule 1 and includes an amount in respect of each FTB child of the individual, irrespective of whether or not that child is covered by a child support liability. In broad terms, any child support received in the relevant income year above the maintenance income free area (MIFA) reduces the customer’s FTB Part A by 50 cents in the dollar until the base rate for the individual is reached. The base rate is defined in clause 4 of Schedule 1 by reference to the individual’s maximum rate under clause 25 if the individual’s Part A rate were worked out under Part 3.

The MIT may also be relevant in working out an individual’s Part A rate using Method 2 (that is, where the individual’s adjusted taxable income exceeds the higher income free area). The relevant provision is clause 25 of Schedule 1 to the Family Assistance Act and more specifically, the comparison required under step 3 of the method statement in clause 25.
The rules relevant to the MIT are detailed in Division 5 of Part 2 of Schedule 1 to the Family Assistance Act. An individual’s reduction for maintenance income is worked out using the method statement in clause 20 of Schedule 1. The first step is to annualise the amount of maintenance income received by the individual in the relevant income year. The next step is to work out the individual’s MIFA using the table in clause 22 – the amount of the MIFA will depend on the individual’s family situation and number of FTB children. Again, it is irrelevant for the purposes of working out an individual’s MIFA whether or not the FTB child is covered by a child support liability. The difference between the individual’s annualised maintenance income and MIFA is the individual’s maintenance income excess. The individual’s income tested maximum rate is then (further) reduced by half of the maintenance income excess (the 50% taper).

There are definitions in subsection 3(1) and section 19 of the Family Assistance Act that support the MIT provisions. These include a definition of maintenance income, maintenance, child support and capitalised maintenance income.

Under recommendation 9.1, maintenance income received by a payee for one or more children of a payer would reduce the payee’s amount of FTB Part A above the base rate, including any rent assistance, for those children only. Any partner maintenance from a payer would affect FTB Part A for the payer’s children only. To this end, amendments are made to introduce a MIT ceiling that would represent the amount of maintenance income that limits the maximum reduction under the MIT to the children for whom maintenance income is paid. Any amounts paid in excess of that ceiling would be disregarded for the purposes of applying the MIT.

Also, the additional MIFA for each FTB child after the first would be limited to FTB children of an individual for whom the individual or the individual’s partner is entitled to apply for maintenance (whether under the Child Support Assessment Act or the Family Law Act). Amendments are made to clause 22 of Schedule 1 to achieve this. The additional MIFA would also continue to exclude an FTB child for whom maintenance income is disregarded under step 1 of the method statement in clause 20 of Schedule 1. For example, an FTB child for whom child support is payable but who has turned 16 would continue to be excluded, as the FTB child rate for such a child is restricted to the base FTB child rate.

For example, if a payee receives child support for a child from a previous relationship, and the payee also has care of a second child from the payee’s current relationship, the child support for the first child would only affect the amount of FTB Part A above the base rate for the first child. This would be achieved by disregarding any child support received for the child above the relevant MIT ceiling. Also, there would be no additional MIFA for the non-child support child.
Where a payee is entitled to maintenance income from two or more payers, the maintenance income from one payer would only reduce FTB for children of that payer, and would not affect FTB for children of the other payer(s) or any other children.

**Explanation of the changes**

**Division 1 – Amendments**

*Family Assistance Act*

**Items 148 and 149** insert notes at the end of the definitions of *capitalised maintenance income* and *maintenance income*, which refer the reader to section 19 of the Family Assistance Act. Section 19 affects the operation of these definitions. These changes are not substantive but are made to improve readability.

**Items 150 and 151** make some technical changes to the headings in the table in clause 7 of Schedule 1 to the Family Assistance Act. These changes make it clear that an individual’s standard rate under clause 7 is the sum of the FTB child rates applicable to each FTB child of the individual.

**Item 152** inserts new clause 19AA into Schedule 1 to the Family Assistance Act. This new provision makes it clear that any references in the MIT provisions to an individual being, or not being, entitled to apply for maintenance income include references to an individual who is, or is not, entitled to apply for maintenance income under the Child Support Assessment Act or the Family Law Act.

Clause 20 of Schedule 1 to the Family Assistance Act contains a method statement that sets out the MIT. The first step is to annualise the amount of the individual’s maintenance income (which can, by virtue of clause 21, include a partner’s maintenance income as relevant). **Item 153** ensures that in doing so, any maintenance income received by the individual or their partner from a maintenance payer that is over the maintenance income ceiling is disregarded. This new ‘disregard’ is set out in new paragraph (d) of step 1 of the method statement in clause 20.

The maintenance income ceiling is then worked by applying the new rules in Subdivisions C and D of Division 5 as relevant.

An individual’s MIFA is worked out under clause 22 of Schedule 1 to the Family Assistance Act. **Item 154** amends clause 22 so that children in respect of whom neither the individual nor the individual’s partner is entitled to apply for maintenance income are disregarded for the purposes of working out an individual’s MIFA.
**Item 155** inserts new Subdivisions C and D into Division 5 of Part 2 of Schedule 1 to the Family Assistance Act. These new Subdivisions set out the rules for working out the maintenance income ceiling for maintenance income received by an individual or their partner from a particular maintenance payer.

In broad terms, the maintenance income ceiling amount for maintenance income from a particular payer represents the maximum amount of maintenance income that an individual payee can receive from the payer before payment of the above base amount of FTB Part A, including rent assistance, in respect of the payer’s children is totally reduced. The maintenance income ceiling is therefore the maximum amount of maintenance income from the payer that can be taken into account under the MIT under recommendation 9.1 of the Taskforce Report. Any maintenance income received from the payer that exceeds the MIT ceiling would be disregarded for the purposes of the MIT. That way, these amounts will not have the effect of reducing the individual’s Part A rate in respect of other FTB children of the payee.

**Subdivision C – Maintenance income ceiling for Method 1**

Where an individual’s Part A rate is worked out using Part 2 of Schedule 1 (Method 1), the maintenance income ceiling for maintenance income received by the individual or their partner from a particular payer would be worked out under new Subdivision C.

The exception, where it is not necessary to work out a maintenance income ceiling and which is covered by new clause 24F, is where the individual and their partner between them are only entitled to apply for maintenance income from the one maintenance payer in respect of all of the FTB children of the individual and partner. In this situation, there are no non-maintenance FTB children that need to be excluded from the application of the MIT and therefore no need to apply the new maintenance income ceiling rules.

New clause 24G sets out the method of working out an individual’s maintenance income ceiling for maintenance income received by the individual or their partner from a particular maintenance payer where the individual’s Part A rate is worked out under Method 1. The method statement involves working out an individual’s **above base standard amount, RA amount** and **MIFA amount**. These various components then link into a formula in new clause 24L under which the individual’s maintenance income ceiling is determined.

The individual’s **above base standard amount** for the maintenance income is worked out using new clause 24H. Given that the MIT can only reduce the maximum FTB Part A rate to the base rate, an individual’s above base standard amount is the difference between:
• the individual’s standard rate (worked out under clauses 7 to 11) for the FTB children of the individual in respect of whom the individual or their partner is entitled to apply for maintenance income from the particular payer concerned; and

• the individual’s standard rate for those children under clauses 26 and 27, assuming the individual’s Part A rate were calculated under Part 3.

The individual’s RA amount for the maintenance income is worked out using the method statement in new clause 24J. In broad terms, the individual’s RA amount is the amount of rent assistance that is apportioned to the maintenance children of the particular payer.

The first step in the method statement in new clause 24J is to work out the individual’s rent assistance. This calculation will have regard to all of the FTB and regular care children in the family irrespective of whether or not the individual or their partner is entitled to apply for maintenance income in respect of one or more of those children.

The second step is to work out the amount that would be the individual’s rent assistance having regard only to those children in respect of whom neither the individual nor their partner is entitled to apply for maintenance income.

If there is only one maintenance payer from whom the individual and their partner between them are entitled to apply for maintenance income, then the individual’s RA amount is the difference between the step 1 and 2 amounts (step 3 of the method statement in new clause 24J refers).

If there is more than one maintenance payer, then the amount that is the difference between the step 1 and 2 amounts needs to be apportioned between the children in the family in respect of whom the individual or their partner is entitled to apply for maintenance income. This apportioning ensures that an individual’s RA amount reflects the number of children of a particular payer in respect of whom the individual or their partner is entitled to claim maintenance income. The application of step 4 of the method statement in new clause 24J achieves this outcome.

For example, a customer has four children under 16, two of whom are maintenance children of one payer, and two are not maintenance children. The rent assistance rate for four children is $3,485.75 pa, and the rent assistance rate for two children is $3,084.25 pa. Therefore, the individual’s RA amount for the two maintenance children would be $401.50 pa ($3,485.75 - $3,084.25).

The individual’s MIFA amount for the maintenance income is worked out using new clause 24K.
If there is only one maintenance payer from whom the individual and their partner between them are entitled to apply for maintenance income, then the individual’s MIFA amount is the amount of the MIFA worked out under clause 22 of Schedule 1 to the Family Assistance Act (new subclause 24K(1) refers).

If there is more than one maintenance payer, then the individual’s MIFA amount for a particular payer is worked out using the formula in new subclause 24K(2). The formula provides a method whereby the MIFA can be apportioned equally between the children in the family in respect of whom the individual or their partner is entitled to apply for maintenance income (this is necessary because the MIFA is not a per child amount but rather a basic amount plus an additional amount per child after the first) and attributed to the children of a particular payer. This would mean that the MIT reduction due to the maintenance income from each payer would receive an appropriate proportion of the total MIFA.

An example of how the formula in new subclause 24K(2) (which enables the MIFA to be apportioned) would work is as follows.

An FTB customer receives maintenance income from one payer for three children and the customer’s current partner also receives maintenance income from one payer for one child. Using 2006-07 rates and in accordance with clause 22 of Schedule 1 to the Family Assistance Act, the MIFA would be $2,430.90 + (3 x $405.15) = $3,646.35. The individual’s no child amount would equal the ‘one child’ amount ($2,430.90 in this example) less a notional amount for the first child of $405.15, which equals the additional amount for one child). This gives a no child amount of $2,025.75 in this example. The customer’s apportioned MIFA would be ($2,025.75 / 2) + (3 x $405.15) = $2,228.325, and the partner’s apportioned MIFA would be ($2,025.75 / 2) + (1 x $405.15) = $1,418.025.

New clause 24L sets out the formula for determining an individual’s maintenance income ceiling. Under the specified formula, the above base standard amount for the maintenance income is added to the RA amount for the maintenance income and the total is multiplied by 2. It is necessary to double the combined total of these amounts to reflect the 50% taper that applies under the MIT. This taper is provided for in step 6 of the method statement in clause 20 of Schedule 1 and ensures that an individual’s reduction for maintenance income is half the individual’s maintenance income excess (which is the amount by which the individual’s maintenance income exceeds the individual’s MIFA). The MIFA amount is then added to the result to arrive at the individual’s maintenance income ceiling for the maintenance income received by the individual or their partner from a particular maintenance payer.

The following is an example of how an individual’s maintenance income ceiling is worked out in a given scenario.
An individual has one child aged 10 in respect of whom the individual is entitled to apply for maintenance income (the maintenance child) and one child of a new relationship aged 2.

The individual’s above base standard rate for each child is $2,489.30 pa. This amount is the standard rate for an FTB child aged under 13 years set out in clause 7 of Schedule 1 (which is currently $3,671.90) minus the standard child rate for an FTB child aged under 18 years set out in subclause 26(2) of Schedule 1 (which is currently $1,182.60). The individual’s above base standard amount for the maintenance child is therefore $2,489.30.

If the individual is eligible for maximum rent assistance of $3,084.25 pa, the individual’s RA amount for the maintenance child is nil (because the rent assistance rates for two children and for one child are the same).

The individual’s MIFA from July 2008 would be based on one child (not two), as there is only one maintenance child. The individual’s MIFA would be $1,215.45 pa. As there is only one maintenance payer, the individual’s MIFA amount is all of the individual’s MIFA of $1,215.45 pa.

In this example, the maintenance income ceiling for maintenance income from the one maintenance payer for one maintenance child would be:

$$2 \times (\$2,489.30 + \$0) + \$1,215.45 = \$6,194.05 \text{ pa}$$

**Subdivision D – Maintenance income ceiling for the purposes of comparison for Method 2**

The MIT can be relevant in some circumstances where Part 3 of Schedule 1 to the Family Assistance Act applies to work out an individual’s Part A rate.

It is possible for an individual with a large family to be receiving more than the base rate of FTB Part A when the individual’s adjusted taxable income equals the higher income free area (that is, Method 1 applies). If the individual’s income exceeds the higher income free area and Method 2 applies, the individual’s rate of FTB Part A will be less than what would have been the individual’s income and maintenance tested Method 1 rate (see step 3 of the method statement in clause 3 of Schedule 1) if Method 1 had applied. Step 3 of clause 25 therefore ensures that the Part A rate calculated under clause 25 is subject to a comparison with what would be the individual's income and maintenance tested rate under Step 3 of clause 3 of Schedule 1 if the individual's Part A rate were worked out using Part 2 of Schedule 1. The higher of the two rates would apply. However, the resultant rate would remain a Method 2 rate. It is therefore possible for the MIT to be relevant in working out an individual’s Part A rate using Method 2.
In these circumstances, the maintenance income ceiling for maintenance income received by the individual or their partner from a particular payer would be worked out in accordance with the method statement in new clause 24N. The method statement involves working out an individual’s standard amount, LFS amount, multiple birth allowance, supplement amount, RA amount and MIFA amount. These various components then link into a formula in new clause 24S under which the individual’s maintenance income ceiling for a particular maintenance payer is determined.

Consistent with new clause 24F, new clause 24M does not apply where the individual and their partner between them are only entitled to apply for maintenance income from the one maintenance payer in respect of all of the FTB children of the individual and partner.

Where an individual’s adjusted taxable income exceeds the higher income free area, the MIT may apply due to step 3(b) in clause 25 of Schedule 1 to the Family Assistance Act. In these cases, the MIT can reduce the individual’s FTB Part A rate to nil, rather than being limited to the base rate (as is the case where the individual’s adjusted taxable income is equal to or less than the higher income free area). It is therefore necessary to apportion all components that make up an individual’s maximum rate of FTB Part A, rather than just the amount above the base rate. These components are the individual’s standard rate, large family supplement (LFS), multiple birth allowance, FTB Part A supplement and rent assistance.

Under new clause 24P, an individual’s standard amount is the individual’s standard rate for the relevant maintenance children of the particular payer. An individual’s standard rate is the total of the relevant FTB child rates, having regard to any shared care percentage applicable in respect of one or more of the relevant children (clauses 7 to 11 of Schedule 1 to the Family Assistance Act are relevant).

For example, for an individual with one maintenance child aged 10 and one child of a new relationship aged 2, the amount of standard rate for each child is $3,671.90. Therefore, the individual’s standard amount for the maintenance child is $3,671.90.

An individual’s LFS amount is worked out using the method statement in new clause 24Q. The method is not dissimilar to the method used to determine an individual’s RA amount and is necessary because large family supplement, like rent assistance, is not a per child amount.

The first step in the method statement in new clause 24Q is to work out the individual’s large family supplement in respect of all of the individual’s FTB children (both maintenance and non-maintenance children). The amount of large family supplement is worked out under Division 1 of Part 5 of Schedule 1 to the Family Assistance Act.
The second step is to work out the amount that would be the individual’s large family supplement having regard only to those children in respect of whom neither the individual nor their partner is entitled to apply for maintenance income.

If there is only one maintenance payer from whom the individual and their partner between them are entitled to apply for maintenance income, then the individual’s LFS amount is the difference between the step 1 and 2 amounts (step 3 of the method statement in new clause 24Q refers).

If there is more than one maintenance payer, then the amount that is the difference between the step 1 and 2 amounts needs to be apportioned between the children in the family in respect of whom the individual or their partner is entitled to apply for maintenance income. This apportioning ensures that an individual’s LFS amount reflects the number of children of a particular payer in respect of whom the individual or their partner is entitled to claim maintenance income. The application of the formula in step 4 of the method statement in new clause 24Q achieves this outcome.

For example, a customer has four children, two of whom are maintenance children of one payer, and two are not maintenance children. The amount of large family supplement for four children is $511 pa. The large family supplement for two children is nil. Therefore, the apportioned amount of LFS for the two maintenance children would be $511 pa.

If the children of a multiple birth are the maintenance children of a payer, the multiple birth allowance for those children is the amount worked out under existing clauses 36 to 38 of Schedule 1 to the Family Assistance Act (step 3 of the method statement in new clause 24N refers).

Under new clause 24R, the apportioning of the FTB Part A supplement would be the same as for the standard amount, that is, the amount for the relevant maintenance children.

The individual’s RA amount for the maintenance income is worked out in the same way for the purposes of new Subdivisions C and D. The method is set out in new clause 24J.

The individual’s MIFA amount for the maintenance income is also worked out in the same way for the purposes of new Subdivisions C and D. The method is set out in new clause 24K.

Under new clause 24S, an individual’s maintenance income ceiling for maintenance income received by the individual or their partner from a particular maintenance payer is determined by multiplying the total of the amounts worked out under steps 1 to 5 of the method statement in new clause 24N (the apportioned components of the individual’s maximum rate of FTB Part A under Method 1) by two (to reflect the 50% taper) and adding the individual’s MIFA amount for the maintenance income to the result.
**Item 156** makes a consequential amendment to paragraph (a) of step 3 of the method statement in clause 25 of Schedule 1 to the Family Assistance Act to ensure that in comparing the individual’s provisional Part A rate worked out using Method 2 and what would be the individual’s Part A rate using Method 1, that new clause 24G (the method for working out an individual’s maintenance income ceiling under Method 1) is disregarded. For the purposes of the comparison, the relevant method for working out an individual’s maintenance income ceiling would be that described in new clause 24N.

**Division 2 – Application Provision**

**Item 157** is an application provision that ensures that the amendments made by Part 2 relating to the maintenance income test apply to the 2008-09 income year and later income years. The amendments commence on 1 July 2008 (in accordance with the commencement table in clause 2 of this bill).