

This Digest was prepared for debate and should not be taken as a complete guide to the legislation which may reflect amendments.

Legislative Research Service
Department of the Parliamentary Library

Child Support (Assessment) Bill 1989

Date Introduced: 1 June 1989

House: House of Representatives

Presented by: Hon. Neal Blewett, M.P., Minister for Community Services and Health

Digest of Bill

Purpose

To provide for the administrative assessment of child maintenance payments in accordance with the formulas contained in the Bill. This Digest reflects the Government amendments introduced on 16 August 1989.

Background

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

Maintenance is currently assessed by two methods, agreement and through the courts. A number of difficulties have arisen when the latter approach must be taken, including the cost of initiating the proceedings and the lack of uniformity in the decisions. The introduction of an administrative assessment of the level of child maintenance payable aims to eliminate many of these problems. The development of a formula was referred to the Child Support Consultative Group, which released its report titled *Child Support - Formula for Australia*, in May 1988. The Group took the general approach that the formula 'should seek to approximate the situation where the parents live together by guaranteeing the child an appropriate share in his or her parents' income'.¹

In its simplest form, the formula will work by taking the non-custodial parents income, reducing that by a self support component and dividing the remainder by the relevant percentage (ranging from 18-36% depending on the number of children). There will also be provision for certain matters to be referred to a court, such as objections to the administrative decision, matters not covered by the formula (such as a child seeking maintenance), and cases

where departure from the formula is sought. There will also be a limit on the amount of income that may be taken into account. It was recommended that the self supporting component be related to the rate of pension, with adjustments for dependent children.

The Group also stated 'The Group considers that complete reform in this area will not be achieved until a guaranteed minimum maintenance payment is established, but consideration of this is outside its terms of reference.'²

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

When the Bill was tabled, the Minister noted that it would be open for comment before discussion in the Budget session and that a number of important areas had not been addressed in the Bill tabled. These included matters such as secrecy, the further recognition of consent agreements, and the modification of the definition of income to bring the concept more into line with Family Law considerations. The amendments to this Bill were introduced in the House of Representatives on 16 August 1989 and address a number of these matters. This Digest reflects those amendments.

Main Provisions

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

A definition of child support terminating event is contained in proposed section 11A. Basically, this will occur when the relevant child or parent dies, the child turns 18, marries or is adopted, or the child ceases to fall into one of the following categories: present in Australia, a citizen or normally resident in Australia. A terminating event will also occur where the custodian entitled to support elects to have support governed by an agreement.

Proposed section 15A will make it clear that the parent of an eligible child may use the counseling facilities of the Family Court.

Part 2 of the Bill deals with who is an eligible child, and the Bill will apply only to eligible children (clause 16). There will be three categories of eligible children. Firstly, those born after the commencement of the Bill (clause 17). The second category are the children of parents who separated after

the commencement of the Bill (clause 18). The third category is the brothers or sisters of eligible children (clause 20). The regulations may provide that children in care etc. under a child welfare law are not eligible children (clause 20).

Applications for the administrative assessment of child maintenance may be made only in respect of eligible children under 18 who are not married if the child is in Australia or is a citizen or ordinarily resident in Australia (clause 22). Child support will cease to be payable if a child support terminating event occurs (proposed section 29) or the application has been withdrawn (proposed section 29A).

Part 4 of the Bill deals with the assessment of child maintenance. The basic formula is contained in clause 33 and is the child support percentage multiplied by the adjusted income amount. The former are listed in clause 34 and depend on the number of children for whom the parent is liable. The percentages range from 18% for one child to 36% for five or more. The adjusted income amount is defined to be the child income support amount (the person's taxable income for the previous year adjusted for inflation – clause 52) less the exempted income amount. The exempted income amount will be the single rate of social security pension for those without dependent children and, for those with dependent children, twice the annual married rate plus an additional amount equal to that which would be paid under the social security system for that number of dependent children. If the child will be 16 or over during the year, the additional amount allowed will be 25% of twice the annual married pension rate for that year (clause 36). The basic formula will be subject to any court order issued under proposed Part 5 or any child support agreement (clause 32).

Proposed Division 2 of Part 4 deals with modifications to the basic formula. Where the child support income amount is less than or equal to the exempted income amount for a day, maintenance will not be payable in respect of that day (clause 38). Where the child income support amount exceeds 2.5 times the average weekly earnings (AWE), that amount will be taken to be 2.5 times AWE (clause 39).

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

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

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

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

Proposed sections 53 to 53Z deal with the determination of income for assessment purposes. Where an assessment is made for income tax purposes, this will generally be the income for assessment purposes, even if a subsequent assessment is made in respect of the year. The exception will be where the subsequent assessment is made on the grounds that the taxpayer failed to make a full and true disclosure (proposed section 53). Where the persons taxable income cannot be ascertained and the person has been requested to furnish information that would enable this to be determined and has failed to provide the information, the assessment may be made on the basis that the persons income during the year was 2.5 times AWE. If the persons income is subsequently ascertained, there must be an immediate adjustment of this assessment (proposed section 53B).

Under proposed 53M to 53S, a person may elect to have the assessment based on estimated income where their estimate of income is not more than 85% of the previous years income. The effect of such an election will be that the estimate will be taken to be their income for assessment purposes. There will be an adjustment at the end of the year where the estimated income is less than actual income.

Proposed section 59B will allow an administrative assessment to be adjusted to the correct amount at any time.

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

Proposed Part 4A deals with consent agreements and will apply whether an administrative assessment is in force or not (proposed section 63A). Agreements may be made in respect of children who may be subject to administrative assessment (proposed section 63C). Agreements are to provide for the payment of assistance either by periodic payments or other methods and may include other matters that a court could include in an order to depart from the administrative assessment (proposed section 63E). If the Registrar is satisfied that an agreement is a child support agreement, that agreement is to be registered and the liability to pay the agreed support will arise (proposed section 63P). Agreements may be varied by a subsequent agreement or, as they have the effect of a court order (proposed section 63R), by a court (proposed section 63T).

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

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

Clause 83 deals with the matters a Court must be satisfied of to issue an order for departure from administrative assessment. If the Court is satisfied that at least one of the matters listed below is present and that the proposed order would be just, equitable and proper it may make the order. The matters include: that the capacity of either parent to support the child is significantly reduced because of the duty to maintain another child or person; the special needs of another child or person that the person has a duty to

maintain; or the commitments necessary to support themselves. The matters also include: that there are high costs involved in maintaining the child due to access arrangements, or the special needs of the child; and that the administrative assessment would be inequitable having regard to the incomes, earning capacity and financial resources of the parents (clause 83). Such orders may, amongst other matters, vary the rate of child support, alter the various components of the formula or make any provision allowed under the regulations (clause 84).

Proposed Division 4A deals with orders for child support in forms other than periodic payments. The proposed Division will apply where a custodian, or the person liable, wants to provide support other than by periodic payments (proposed section 87B). If an administrative assessment is in force, either party may apply to a court for an order under the proposed Division. The court may make such an order if satisfied that it would be just and equitable for the child and the other parties involved and otherwise proper (proposed section 87D). When making such an order, the court is to state whether the non-periodic support is to offset liability under an administrative assessment. The court must be satisfied that it would be just and equitable for all parties and otherwise proper that the liability not be offset before this can occur. Aggrieved parties may appeal to an appropriate court against a decision to accept or refuse an agreement and the appeal court may make such orders as it considers appropriate when dealing with the matter (proposed section 87N).

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

Proposed section 90A will allow the Registrar to intervene in any proceeding under this Bill.

Proposed section 93A deals with secrecy. Basically, a person gaining information due to their employment or position is not to disclose that information except for the purposes allowed in this Bill, for the administration of pensions, benefits etc., or for the enforcement of support liabilities outside Australia.

References

1. *Child Support – Formula for Australia*, Child Support Consultative Group, May 1988, p. 79.
2. *Ibid.*, p. 7.

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

27 June 1989

Bills Digest Service
Legislative Research Service

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

© Commonwealth of Australia 1989

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means, including information storage and retrieval system, without the prior written consent of the Department of the Parliamentary Library. Reproduction is permitted by Members of the Parliament of the Commonwealth in the course of their official duties.

