

CHILD SUPPORT 1987
to CIVIL AVIATION AMENDMENT 1989

CHILD SUPPORT 1987

As read 1^o

Explanatory Memorandum

* → *Title changed to Child Support 1988*

CHILD SUPPORT AMENDMENT 1988

As read 1^o

Explanatory Memorandum

CHILD SUPPORT (ASSESSMENT) 1989

As read 1^o

As read 3^o

Proposed amendments and new clauses by Government

Memorandum showing bill as introduced and as proposed to be amended by Government

Additional amendment by Government

Proposed amendment by Member

Proposed amendments and new clauses by Member

Schedule of amendment by Senate

Explanatory Memorandum

Replacement Explanatory Memorandum

Correction to Replacement Explanatory Memorandum

Explanatory Memorandum incorporating amendments made by House of Representatives

Supplementary Explanatory Memorandum

Correction to Supplementary Explanatory Memorandum

CIRCUIT LAYOUTS 1988

As read 1^o

Schedule of amendment by Senate

Explanatory Memorandum

CIVIL AVIATION 1988

As read 1^o

Schedule of amendments by Senate

Explanatory Memorandum

CIVIL AVIATION AMENDMENT 1989

As read 1^o

Explanatory Memorandum

1987

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CHILD SUPPORT BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Social Security,
the Hon. Brian Howe, M.P.)

GENERAL OUTLINE

This Bill provides for the collection of certain periodic child and/or spousal maintenance payable under court orders and maintenance agreements.

Its provisions contain measures for :

- . the establishment of a Child Support Register to be administered by the Child Support Registrar (the Commissioner of Taxation);
- . the creation of a child support debt whereby periodic child and/or spousal maintenance, formerly payable by a payer to a payee under an order or agreement, becomes a debt due by the payer to the Commonwealth;
- . the termination of a liability of a payer to pay future periodic maintenance to a payee named in a court order or maintenance agreement and the removal of any entitlement of the payee to enforce that debt;
- . as far as practicable, the collection of periodic child and/or spousal maintenance by means of automatic withholding (deductions) from the salary or wages of employees - these provisions are based closely on the existing PAYE provisions of the Income Tax Assessment Act 1936;
- . the collection of periodic child and/or spousal maintenance by means of direct remittance on a monthly basis by the payer where automatic withholding does not or cannot apply;
- . payment of maintenance collected by the Child Support Registrar to payees - this will be done by the Secretary to the Department of Social Security;
- . recovery of maintenance that becomes unpaid only during the time the liability is payable to the Commonwealth;
- . penalties for employers and payers for various offences such as the late payment of maintenance, failing to provide information to the Registrar etc.; and
- . objection and appeal rights for parties affected by the liability to the Commonwealth.

FINANCIAL IMPACT

The effect on revenue of these measures when taken together with the proposed changes to the Social Security Act 1947 were estimated for 1987-88 Budget purposes to be net gains of \$7.6M in 1987-88, \$120.0M and \$192.8M in 1988-89 and 1989-90, respectively. These estimates may be subject to revision, if there is a variation in the proposed implementation timetable.

MAIN FEATURES

The Child Support Bill 1987 is part of a package of three Bills which, when taken together, will reform Australia's current system of child maintenance. One of those Bills, the Family Law Amendment Bill 1987, has been introduced into the Parliament. Related amendments to the Social Security Act 1947 are expected to be introduced in the first sittings of the Parliament in 1988.

The overall objectives of the reform are to ensure that :

- . non-custodial parents share the cost of supporting their children, according to their capacity to pay;
- . adequate support is available for children of separated parents;
- . Commonwealth expenditure is limited to what is necessary to ensure that those needs are met;
- . neither parent is discouraged from participating in the work force; and
- . the overall arrangements are simple, flexible and respect personal privacy.

Ex-nuptial and step children are subject to the different State maintenance laws - the Commonwealth's powers under the Constitution are unclear in relation to these children. However, the States of New South Wales, Victoria, South Australia and Tasmania have referred their powers on the matter to the Commonwealth. The Family Law Amendment Bill 1987 (referred to earlier) will amend the Family Law Act 1975 to implement these references of power and also deals with the criteria for assessment of maintenance in the Social Security system.

The main features of the Child Support Bill 1987 are as follows :

Registration of maintenance liabilities
(Clauses 17 to 42)

To enable the Commonwealth to collect periodic maintenance payable under the terms of a court order or maintenance agreement, the Bill proposes the establishment of a Child Support Register to be administered by the Child Support Registrar (who will be the Commissioner of Taxation).

The Registrar will be empowered to enter child and spousal support obligations, created by court orders or agreements, on to the Child Support Register. Entry of the obligation will have four effects :

- . it will create a liability to pay the amount to the Registrar as a debt due to the Commonwealth;
- . it will extinguish the liability of the payer to pay directly to the payee or through a State or Territory based collection system;
- . it will create an entitlement of the payee to receive the maintenance from the Registrar, which will be done, in practice, by the Department of Social Security; and
- . the payee will relinquish any rights or entitlements he or she had under the order or agreement to receive periodic maintenance from the payer.

This will be achieved by creating registrable maintenance liabilities in relation to children (child maintenance) and parties to a marriage (spousal maintenance).

The provisions of the Bill are drafted in such a way that all periodic maintenance orders and agreements, including ones in respect of ex-nuptial children in the States that have not referred their powers, may become registrable maintenance liabilities provided those non-referring States pass a law that corresponds closely to this Bill.

Under the Regulations, it is possible to exclude specified liabilities or liabilities of a specified class. It is intended that this exclusion power will be used to restrict the collection of child maintenance to the types announced by the Minister for Social Security in his statement of 24 March 1987.

Broadly speaking, the Registrar will be authorised to collect periodic amounts payable under all orders and maintenance agreements that relate to children of parents who separate after the commencement of this Bill, or - where the parents have not co-habited - to children born after that date. Where the payee is in receipt of an income tested pension, allowance or benefit, the Registrar will be able, upon application, to collect the maintenance whether the child was born before or after the commencement of this Act.

In his statement, the Minister for Social Security also proposed that, where a child maintenance order or agreement has been lodged for collection with a State or Territory collection agency (including a court), maintenance will be collected by the Registrar. This will now extend to spousal maintenance orders or agreements lodged for collection with such an agency. To enable all these cases to be transferred to the Register, the Bill provides for formal arrangements to be entered into between the Governor-General and the Governor of a State or the Administrator of the Northern Territory or Norfolk Island. In respect of other Territories (including the Australian Capital Territory), the Registrar may make arrangements for the transfer directly.

Other categories of orders and agreements may be excluded by regulation. For example, it is expected that certain classes of spousal maintenance will be excluded in accordance with the announcement of the rules for the extension of the scheme to spousal maintenance on introduction of this Bill in the Parliament. Spousal maintenance will also be collectable where there is a child maintenance liability, or the person is over the age of 45 and in receipt of an income tested pension, allowance or benefit.

The Bill also provides for the payee to "opt-out" of the Child Support collection system provided he or she is not in receipt of an income tested pension, benefit or allowance. However, in such a case the payee may apply to the Registrar for the liability to again become enforceable under the Act should the payee so wish.

The Bill also places responsibilities on payers and payees to notify the Registrar when a registrable maintenance liability arises. The payee must also notify the Registrar of any variations to orders or the happening of certain events that could affect the registrable maintenance liability. For example, the adoption or marriage of the child would generally terminate the

liability. In order to encourage compliance with these responsibilities, penalties are provided for by the Bill.

Collection by deduction from salary or wages
(Clauses 43 to 65)

Automatic withholding is based broadly on the legislative approach set out in the Income Tax Assessment Act 1936 for deductions of tax instalments from the salary or wages of employees. The Bill provides for automatic withholding from salary or wages to be the mechanism used for collection of periodic maintenance wherever this is practicable. An employer will be directed by the Registrar to deduct a fixed amount from each pay in respect of each specified employee. The employer will then be required to remit the total of amounts deducted from employees' pays to the Registrar no later than the seventh day of each month following the month in which deductions were made.

The Bill also provides for a payer to make application to a court for an order that automatic withholding apply on the grounds of personal privacy. If there are special circumstances in a particular case, a court may, by order, direct that automatic withholding is not to apply on the grounds of personal privacy, provided it is satisfied that the payer would be likely to make regular and timely payments to the Registrar.

Automatic withholding will also not apply in a particular case where the Registrar is satisfied that it would not be an efficient method of collecting maintenance. An example could be the case of an itinerant worker.

Where automatic withholding is not being applied and the payer fails to make regular and timely maintenance payments to the Registrar, automatic withholding will become mandatory provided the Registrar is satisfied that it is an efficient method of collecting maintenance in that particular payer's case.

A protected earnings component is built into the automatic withholding provisions in order to leave the payer and his immediate family (if any) with sufficient earnings for their self support before the employer commences to deduct the amount of the registrable maintenance liability. The protected earnings component does not absolve the payer from his or her liability and the amount owing that cannot be discharged by automatic withholding must be paid directly to the Registrar by the payer on a monthly basis.

The Bill imposes a number of obligations on employers such as forwarding with their monthly remittance, a remittance advice. The obligations are similar to those placed on group employers by the Income Tax Assessment Act 1936, and as with those provisions, penalties are provided for where an employer contravenes his or her responsibilities under the Bill.

A specific penalty of a fine not exceeding \$2000 is provided for by the Bill in the event that an employer prejudices any employee who is liable to pay maintenance to the Registrar - for example, by dismissing or threatening to dismiss an employee. In such a case, the employee's right to compensation is also provided for.

Reflecting one of the objects of the Bill - privacy - employers also have an obligation not to disclose to a second person, any information in relation to a third person except in connection with the carrying on of the employer's affairs.

Collection of maintenance other than by deduction from salary or wages
(Clauses 66 to 72)

Payers who are responsible to pay their maintenance direct to the Registrar e.g., self-employed persons, are required to remit the amount due in a calendar month so it is received by the Registrar by the seventh day of the following month. A penalty is provided to encourage regular and timely remittances from payers.

Payments to payees
(Clauses 76 to 79)

Provision is made in the Bill for payees to be paid the maintenance collected on their behalf on or before the first Wednesday following the end of each month.

Where the Registrar is satisfied that a maintenance deduction has been made by an employer from a payer's salary or wages and the employer has failed to remit the deduction, an amount equal to the amount deducted but not remitted is payable to the payee from consolidated revenue.

Where an unexplained shortfall in a remittance is received from an employer and the Registrar is unable to determine the amounts attributable to each of the employees who are payers, the Registrar will be required to apportion the total amount received between each of the various payees. However, the Bill provides for an amount to be

appropriated from consolidated revenue in order to make up the shortfall - provided the amount required does not exceed an amount to be prescribed by Regulation. It is expected, therefore, that in the majority of cases where shortfalls occur, there will be no need for the Registrar to apportion short remitted amounts among the various payees.

Trust Account
(Clauses 73 to 75)

The Bill requires a Child Support Trust Account to be established in order to ensure strict accounting control. To this end, the Trust Account will be a trust account for the purposes of section 62A of the Audit Act 1901. All payments received by the Registrar in the nature of maintenance and amounts appropriated from consolidated revenue will be paid into the Trust Account. Money standing to the credit of the Trust Account may be applied in making payments to payees and in repaying consolidated revenue after the conclusion of recovery action.

Review of decisions
(Clauses 80 to 103)

Other than decisions on remission of administrative penalties by the Registrar, any decision of the Registrar will be subject to appeal or review through the Family Court system. That system will ensure that parties have complete rights to challenge in the courts any findings of fact or any decision on the law by the Registrar. It also ensures that decisions on the effect of a court order will be decided in the court system which was responsible for making the order and will be subject to the protection for individuals privacy provided for by that court system. Review of administrative penalties will be the responsibility of the Administrative Appeals Tribunal. The principal reason for adopting this approach is essentially that maintenance is a family law matter and should be reviewed in that jurisdiction.

Jurisdiction of courts
(Clauses 104 to 110)

The Bill also confers on those courts which currently exercise jurisdiction under the Family Law Act

jurisdiction in relation to applications that automatic withholding not apply on the grounds of personal privacy and in relation to appeals against certain decisions of the Registrar, notably those relating to entries in the Child Support Register. Those courts are the Family Court of Australia, the Family Court of Western Australia, the Supreme Court of the Northern Territory and the courts of summary jurisdiction of the States and Territories.

A more detailed explanation of the provisions of the Bill is contained in the following notes.

CHILD SUPPORT BILL 1987

PART I - PRELIMINARY

Clause 1 : Short title

This clause provides for the Act to be cited as the Child Support Act 1987.

Clause 2 : Commencement

But for this clause, the Act would by reason of subsection 5(1A) of the Acts Interpretation Act 1901, come into operation on the twenty-eighth day after the day on which it receives the Royal Assent. The clause provides, however, for the Act to come into operation on a day to be fixed by Proclamation - proclamation means, of course, proclamation by the Governor-General published in the Gazette (paragraph 17(j) of the Acts Interpretation Act 1901). It is expected that a day will be proclaimed as soon as practicable after the Royal Assent to the Bill.

Clause 3 : Objects of Act

Section 15AA of the Acts Interpretation Act 1901 provides that where a provision of an Act is capable of more than one construction, the construction that would promote the purpose or object of the Act is to be preferred to one that would not promote that purpose or object.

This clause is a statutory declaration, although not exhaustive, of some of the objects of this Bill.

Subclause 3(1) describes two principal objects of the Bill both of which essentially concern the children of parents who are separated. The Bill seeks to ensure that where parents are liable to provide financial support for their children e.g., under a court order for payment of child maintenance, that the children actually receive that financial support - paragraph (a). Moreover, the Bill again seeks to ensure that the requisite payments are made on a "regular and timely" basis - paragraph (b).

Subclause (2) of this clause demonstrates the intention of the Parliament that recognition be given, in both the administration of the Bill by the Child Support Registrar and the interpretation of the provisions of the Bill by the courts or the Administrative Appeals Tribunal, to the need to protect individuals rights to privacy.

However, those rights are, by virtue of this subclause, subject to the overall need to ensure the attainment of the objects of the Bill.

Clause 4 : Interpretation

This clause is an interpretative provision which -

- . ascribes particular meanings, unless the contrary intention appears, to words and expressions used in the Bill (subclause (1)); and
- . contains a number of other measures to assist in its interpretation (subclauses (2), (3) and (4)).

Subclause 4(1) contains the following definitions, each of which is to have its given meaning, unless the contrary intention appears.

"affecting event" is defined in relation to an enforceable maintenance liability : see later notes in this subclause on that expression. As the name suggests, an affecting event is any event which, once it occurs, affects or varies an enforceable maintenance liability or the particulars concerning such a liability that are included in the entry in the Child Support Register in relation to that liability. The affecting event must, however, be provided for under the terms or conditions of the court order or maintenance agreement that gave rise to the enforceable maintenance liability or otherwise by force of law.

A Terminating event, which is also a defined term (see later notes in this subclause) is included within the meaning of the term "affecting event".

The definition of "affecting event" specifically excludes -

- . orders made in, or registered by, a court (paragraph (a) of the definition); or
- . maintenance agreements registered in, or approved by, a court (paragraph (b) of the definition).

Under the provisions of the Bill, a court order or registered maintenance agreement will operate more broadly than an affecting event in that either of the former can go to the heart of a registrable maintenance liability i.e., before registration or

enforcement of that liability. Separate provisions of the Bill provide for information in relation to such court orders or agreements to be provided directly to the Registrar : see notes on clause 112.

"appealable refusal decision" is an expression which covers certain decisions made by the Child Support Registrar which, following the usual consideration on objection by the Registrar, may be referred to a court having jurisdiction under this Bill. The kinds of decisions of the Registrar covered by this expression are -

- . a decision to refuse to register a registrable maintenance liability (paragraph (a) of the definition);
- . a decision to refuse to vary a particular or particulars in the Child Support Register (paragraph (b) of the definition);
- . a decision not to allow credit for an amount against a liability under the Bill to the Commonwealth e.g., ex-gratia payments (paragraph (c) of the definition);
- . a decision of the Registrar to disallow in whole or in part an objection under subclause 87(1) : see notes on that subclause (paragraph (d) of the definition); or
- . a decision of the Registrar that results in a Child Support debt remaining uncollected, broadly, for more than 6 months (paragraph (e) of the definition).

"Australia" is, by this definition, to be given a wider meaning when used in the Bill in a geographical sense than would otherwise be the case. When used in a geographical sense, 'Australia' does not include an external Territory - paragraph 17(a) of the Acts Interpretation Act 1901. This definition, however, overrides the meaning in that Act by specifically including the external Territories i.e., a Territory other than the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory, for the government of which as a Territory provision is made by an Act - paragraph 17(pd) of that Act.

"child of a marriage" is to have the same meaning as that expression has in Part VII of the Family Law Act 1975. Put broadly, the expression follows section 60A of that Act which defines certain children of a marriage for the purposes of Part VII of that Act. This definition includes as a child of a marriage, a child adopted since the marriage by the husband and wife or by either of them with the consent of the other. Correspondingly, a child of a marriage who is adopted by a person who is not a party to the marriage ceases to be a child of the marriage.

"child support debt" is, in relation to a registrable maintenance liability, essentially the debt due by a payer to the Commonwealth in accordance with the liability entered in the Child Support Register. It is important to note that under clause 30 of the Bill, from which this definition obtains its meaning, the payee under that liability is not entitled to, and may not enforce payment of, those amounts : see also notes on clause 30 of the Bill.

"child support enforcement period", which is defined in relation to a registrable maintenance liability (see notes on clauses 17 and 18) that is registered, means -

- . where the liability becomes enforceable for the first time - the period commencing on the day the liability becomes enforceable and ending on the day on which the liability ceases to be so enforceable (paragraph (a) of the definition); and
- . where the liability becomes enforceable for a second or subsequent time - each period commencing on a day the liability again becomes enforceable and ending on the day on which the liability next ceases to be so enforceable (paragraph (b) of the definition).

When read together, the effect of paragraphs (a) and (b) of the definition is to provide for one period in relation to a registered maintenance liability during which amounts payable under the liability are child support debts i.e., broadly a debt due to the Commonwealth. That one statutory period may, however, under this definition, consist of several actual periods.

"Child Support Register" is the official title to be given to the Register, that is established by clause 10 of the Bill, in which to record details of registrable maintenance liabilities : see also notes on clause 10 of the Bill.

"closing day" is a drafting device to ensure that, in relation to any one calendar month there is a particular day, rather than date, which can be determined by the Registrar for the purpose of determining which payments received in relation to enforceable maintenance liabilities can be paid to the relevant payees. Initially, that day, in relation to a calendar month, will be the day 9 days before the first Wednesday in the following month. For example for the month of March 1988, the closing day would be Monday, 22 February 1988. When read in conjunction with the provisions of Division 2 of Part VI of the Bill - Payments to Payees - the definition establishes a payment period in relation to each calendar month thereby guaranteeing payment to payees of amounts received by the Registrar during that period.

"collection agency maintenance liability" is defined in relation to a State or Territory. Put simply, this definition identifies a particular class of liabilities that the Registrar will be entitled to enforce under the Bill. They are certain liabilities that are presently -

- . being collected; or
- . lodged for collection but are not being enforced,

with various State or Territory collection agencies or systems. Negotiations will be entered into with the States or Territories to provide for the continued collection of these liabilities by the Registrar : see also notes on clauses 20, 21 and 22.

Paragraph (a) of the definition describes the particular liabilities covered as -

- . child maintenance payable by the child's parent (subparagraph (a)(i));
- . child maintenance payable by a step-parent of the child (subparagraph (a)(ii)); or

spousal maintenance, but only in relation to a party to a marriage (subparagraph (a)(iii)). In other words, de facto spouse maintenance, if currently being collected by a State or Territory collection agency or system, will not be able to be collected by the Registrar.

Paragraph (b) of the definition describes the status of the liability with the particular State or Territory agency or system, income that that liability may be collected by the Registrar. Naturally, a liability of a kind referred to in paragraph (a) will be able to be collected if it is presently being collected by such an agency or system. However, a number of these liabilities are lodged for collection with such agencies or systems but, for various reasons, have been unable to be enforced. These liabilities will not, however, be precluded from collection by the Registrar, but will be enforced on application by the payee.

"Commissioner" is a drafting device to shorten references in the Bill to the Commissioner of Taxation.

"company" is defined to include any corporate or incorporated body or association, but not a partnership.

"court order" must be read in conjunction with the definition of "order" : see later notes in this subclause. The term 'court order' is defined in very broad terms to mean an order -

- . made by, or registered in, a court under either the Family Law Act 1975, the Matrimonial Causes Act 1959 or the law of the State or Territory (paragraph (a) of the definition); and
- . that has not been set aside, discharged and has not expired or otherwise ceased to be in force (paragraph (b) of the definition).

These orders are one of the principal sources of registrable maintenance liabilities that are likely to be enforceable under the Bill.

"court registered maintenance agreement" relies in part for its meaning on the term maintenance agreement : see later notes on this subclause. Essentially this expression means a maintenance agreement that has been -

- . registered in, or approved by, a court under the Family Law Act 1975 (subparagraph (a)(i) of the definition);
- . sanctioned by a court under paragraph 87(1)(k) of the Matrimonial Causes Act 1959 (subparagraph (a)(ii) of the definition); or
- . registered in, or approved by, a court under the law of a State or Territory (subparagraph (a)(iii) of the definition).

To be accepted as a court registered maintenance agreement, the agreement must also not have been -

- . set aside, expired or otherwise ceased to be in force (paragraph (b) of the definition); or
- . in a case where the agreement was registered, approved or sanctioned - revoked or cancelled, or otherwise ceased to be in force (paragraph (c) of the definition).

These agreements are the other principal source of registrable maintenance liabilities that may be enforceable under the Bill.

"decree" is defined to have the same meaning as in the Family Law Act 1975. In that Act, a decree means decree, judgment or order, and includes a decree nisi and an order dismissing an application or refusing to make a decree or order.

"Deputy Commissioner" is defined to mean the Deputy Commissioner of Taxation and when used in the Bill avoids references (if possible) to the longer expression.

"Deputy Registrar" is to mean a Deputy Child Support Registrar. Again the expression is drafting device to avoid references throughout the Bill to the longer expression.

"employee" is defined to have the same meaning as that word has in Division 2 of Part VI of the Income Tax Assessment Act 1936. Essentially, an employee is someone who receives "salary or wages" (see also notes on that expression in this subclause). In this Bill, an employee will also include a member of the Parliament of a State and a person employed by a State or an authority of a State, whether or not the Governor-General has entered into an arrangement in accordance with section 221B of that Act.

"employer" is defined to have the same meaning as that word has in Division 2 of Part VI of the Income Tax Assessment Act 1936. Put simply, an employer is a person (including a company and a partnership) that pays "salary or wages" (see also notes on that expression in this subclause). In this Bill, an employer will also include a State and an authority of a State, whether or not the Governor-General has entered into an arrangement in accordance with section 221B of that Act.

"enforceable maintenance liability" is central to the overall operation of the Bill. It is defined as a registrable maintenance liability that is enforceable under the Bill. When read with clause 30 (see notes on that clause), this expression establishes the debt due to the Commonwealth under a registrable maintenance liability.

"Family Court" is a drafting device to shorten references in the Bill to the Family Court of Australia.

"Family Court of a State" is defined to mean a court to which section 41 of the Family Law Act 1975 applies. Briefly stated, that section provides for the establishment of State Family Courts, such as the Family Court of Western Australia.

"Family Law Act 1975", when used in provisions of this Bill will include, by definition, references to the regulations and Rules of Court made under that Act.

"Full Court" has the same meaning as that term has in the Family Law Act 1975. Broadly put, a Full Court means 3 or more Judges of the Family Court sitting together where a majority of those Judges are members of the Appeal Division.

"government body" is defined to mean the Commonwealth and its authorities as well as a State or Territory or an authority of a State or Territory.

"income tested pension, allowance or benefit" is defined to have the same meaning as proposed in the Family Law Amendment Bill 1987. In that Act, the expression is defined as a pension, allowance or benefit included in a class of pensions, allowances or benefits prescribed for the purposes of that definition in subsection 4(1) of that Act.

"Judge" is to mean a Judge of the Family Court and includes the Chief Judge or a Senior Judge. The term is defined in order to avoid the need in the Bill to refer to the extended expression.

"maintenance agreement" is a term used to describe a written agreement that provides for the maintenance of a child or a party to a marriage (also a defined term). The agreement may vary an existing agreement and may also make provisions in respect of other matters. It is immaterial whether it is made in Australia or overseas. The term is complementary to the definition of "court registered maintenance agreement" (see earlier notes on that expression).

"Matrimonial Causes Act 1959" is given an extended meaning to include the rules made under that Act. This Act immediately preceded the Family Law Act 1975.

"modifications" is defined to include additions, omissions and substitutions. The definition makes it clear that when the Regulations prescribe modifications of this Act in relation to external Territories and foreign countries, a wide interpretation is to be given to the word.

"order" is defined to include an order made under the law of a foreign country and an interim order (whether made in Australia or overseas). The term is complementary to the definition of "court order" (see earlier notes on that definition).

"party to a marriage" is given the same meaning as in Part VIII of the Family Law Act 1975. Part VIII of that Act deals with property, spousal maintenance and maintenance.

"payee" in relation to a "registrable maintenance liability" (a defined term) means the person who is to receive payments in relation to the registrable maintenance liability.

"payer" correspondingly means the person who is liable to make payments in relation to a registrable maintenance liability.

"periodic amount" is an amount to be paid weekly, monthly, annually or at other periodic intervals. The term is crucial to the administration of the Child Support Scheme as only periodic amounts of maintenance are capable of being collected by the Child Support Registrar.

"person", for the purposes of the Bill, includes any body or association, corporate or unincorporate.

"protected earnings rate" is to mean a weekly rate prescribed in the Regulations. The rate prescribed will represent an amount of salary or wages that is exempt from automatic withholding (see notes on Part IV of the Bill). The purpose of a protected earnings component is to ensure that a payer is left with sufficient earnings for himself or herself and the immediate family (if any).

"registered maintenance liability" is defined to mean a registrable maintenance liability (see notes on next definition) which may be registered under clause 22, 24 or 25 of this Bill.

"registrable maintenance liability" is defined to mean a liability that under clause 17 or 18 of this Bill is a registrable maintenance liability. To be registrable, the liability must arise under a court order or court registered maintenance agreement (defined terms) or be a collection agency maintenance liability (also a defined term) : see earlier notes on those definitions. The liability must also be of:

- . a parent or step-parent of a child to pay a periodic amount for the maintenance of the child - child maintenance; or
- . a party to a marriage to pay a periodic amount for maintenance of the other party to the marriage - spousal maintenance.

"Registrar", when used in this Bill, means the Child Support Registrar. Clause 10 of this Bill provides that the Commissioner of Taxation shall be the Registrar.

"Rules of Court" is given the same meaning as in section 123 of the Family Law Act 1975 (see also the notes on the definition of that Act).

"salary or wages" is defined to mean salary or wages for purposes of the PAYE provisions of the Income Tax Assessment Act 1936, other than payments of an income tested pension, allowance or benefit (a defined term) or payments prescribed under the Regulations. The Regulations may also prescribe additional payments that can be included in the definition such as income in the nature of salary or wages, but which is, for example, exempt from income tax. Essentially, the definition of salary or wages can cover all payments made by an employer to an employee (see earlier notes) and includes any commission, bonuses, allowances, superannuation and pension .

"Second Commissioner" will mean a Second Commissioner of Taxation.

"Secretary" will mean the Secretary to the Department of Social Security.

"step-parent" is defined to have the same meaning as in Part VII of the Family Law Act 1975. Step-parent is defined in that Part so that the liability for the payment of maintenance by step-parents only arises in respect of a step-parent who is or has been married to a parent of the child and who treats or has treated the child as a member of the family formed with that parent.

"terminating event" is defined in relation to a registered maintenance liability that is enforceable. As such, a terminating event can only have effect in relation to an enforceable maintenance liability. The definition describes a number of events which, as the name suggests, will statutorily operate to cease liability. They are -

- . the payer's death, unless, of course, there is a legal liability under the order, agreement or otherwise by force of law, that liability should continue (paragraph (a) of the definition);
- . the death of the person to whose maintenance the liability relates e.g., the child or the spouse (paragraph (b) of the definition);
- . in the case of child maintenance, the following events -
 - .. the eighteenth birthday of the child (subparagraph (c)(i) of the definition); or
 - .. the adoption or marriage of the child (subparagraph (c)(ii) of the definition).

Both of the above events described in respect of child maintenance are also expressed to be subject to the terms and conditions of the order or agreement or otherwise by the force of law;

- . in the case of spouse maintenance (excluding de facto spouses), the remarriage of the relevant person (paragraph (d) of the definition). Again this event may be overridden by the terms of the relevant order or agreement or otherwise by force of law; or
- . generally by the happening of any event, other than an event described in paragraphs (a) to (d) inclusive, which operates to end the liability, either under the terms of the order or agreement or otherwise by force of law (paragraph (e) of the definition).

As was the case with "affecting event", which includes a terminating event, a court order or agreement that is registered in, approved by, or sanctioned by a court as the case may be, is not taken to be a terminating event. This is because court orders or agreements apply more generally in relation to registrable maintenance liabilities.

"this Act" is a drafting device which when used in a provision of the Bill can, unless the contrary intention appears, include Regulations made under the Bill.

"transferred maintenance liability" is a liability which is the result, essentially, of arrangements made under clause 20 or 21 of the Bill (see notes on those clauses) for the transfer to the Child Support Register of a "collection agency maintenance liability" : see also notes on that definition.

"Tribunal" when used in any provision of the Bill refers, by definition, to the Administrative Appeals Tribunal.

"Trust Account" is the shortened reference used in various provisions of the Bill for the Child Support Trust Account, the establishment of which is provided for by clause 73 of the Bill (see also notes on that clause).

"trustee" is defined to include the following -

- . a person made a trustee by consent, court order, or operation of law (paragraph (a));
- . an executor, or administrator or other personal representative of a deceased person (paragraph (b));
- . a guardian or committee (paragraph (c));
- . a receiver or receiver and manager (paragraph (d));
- . an official manager or liquidator of a company (paragraph (e)); or

- . any person who -
 - .. has taken on the administration or control of property affected by any express or implied trust;
 - .. acts in a fiduciary capacity; or
 - .. has the possession, control or management of property of a person under a legal disability (paragraph (f)).

"vary" is given a more expansive meaning, when used in relation to particulars entered in the Child Support Register than might otherwise be the case. Vary includes -

- . the addition or omission of a particular; and
- . the substitution of another particular.

"weekly deduction rate" is defined in relation to an enforceable maintenance liability and is of particular relevance to persons whose obligation to pay an amount to the Registrar will be discharged by deductions from salary or wages those persons receive. As it will not be relevant for every payer under the Bill, the weekly deduction rate is an optional entry that may be made in the Child Support Register under subclause 26(2) of the Bill. Put simply, it is the rate to be applied by an employer to the salary or wages paid to an employee/payer in order to calculate the amount to be deducted by the employer in relation to the period covered by the salary or wages paid e.g., \$50 per week. If the employee is paid fortnightly, the amount to be deducted by the employer would be \$100 i.e., \$50 x 2.

Subclause 4(2) of the Bill ensures that whatever forms are required under the Bill may be provided for by the Registrar and published in the Gazette for the purposes of the particular provision in the Bill. This approach to forms is more appropriate to modern administration techniques and will allow some flexibility to change a form in the future, should the need arise, without the requirement to resort to legislative action.

Subclause (3) of this clause is a drafting device. It seeks to ensure that where a liability is entered in the Child Support Register, the reference to the person named in the entry as the payer or payee, as the case requires, is to be taken as a reference to that payer or payee notwithstanding the fact that the liability may

not be a registrable maintenance liability e.g., a liability wrongly entered in the Child Support Register. (see also notes on clause 40 of the Bill).

There are certain "appealable refusal decisions" of the Registrar which are required to be done within a specified period e.g., the Registrar is required to register a registrable maintenance liability within 28 days after receipt of a duly completed form from the payee (subclause 25(2) of the Bill) - paragraph 4(4)(a). By that subclause, if the Registrar does not either do that act (or any other act described in paragraph (a), (b) or (d) of the definition of "appealable refusal decision") - paragraph 4(4)(b), the Registrar will be deemed to have refused to do that act either -

- . 28 days after any additional information sought by the Registrar has been provided (paragraph (c)); or
- . at the expiry of the period within which the Registrar was required to act (paragraph (d)).

Clause 5 : Extension and application of Act in relation to maintenance of children

Clause 6 : Additional application of Act in relation to maintenance of children

The Commonwealth's constitutional power in marriage (placitum 51(xxi)) and matrimonial causes (placitum 51(xxiv)) in relation to children is confined to children of a marriage. Four States - New South Wales, Victoria, South Australia and Tasmania - have enacted legislation referring powers to the Commonwealth Parliament in respect of, inter alia, the maintenance of all children including ex-nuptial children. Placitum 51(xxvii) of the Constitution provides for the Commonwealth to make laws with respect to matters referred by the Parliaments of any State or States but so that the laws extend only to States by whose Parliament's the matter is referred, or which afterwards adopt the law.

The purpose of clauses 5 and 6 is to extend the operation of the Child Support Bill consequent upon the references of power.

Clause 5 extends the operation of the Bill to the referring States and, if Queensland or Western Australia also refer the relevant legislative powers to the Commonwealth or adopt the provisions of the Bill, to those States also. The Bill is also to apply in, and in relation

to the Territories where there are no constitutional limitations on the Commonwealth's power to legislate with respect to ex-nuptial children.

Clause 6 will have the effect that the provisions of the Bill relating to children of a marriage will continue to apply in Queensland and Western Australia as at present in reliance upon the constitutional power with respect to marriage and to matrimonial causes.

Clause 7 : Corresponding State laws

It is, of course, open to the States that have not referred powers to the Commonwealth Parliament (i.e. Queensland and Western Australia) to enact legislation in relation to those matters, such as ex-nuptial children and State wards, beyond the Commonwealth's constitutional power. Clause 7 provides a mechanism whereby such a State law may be enforced by the Commonwealth for the purposes of the Child Support Bill.

Subclause (1) of this clause allows the Minister to declare, by notice in the Gazette, such a State law to be a corresponding State law for the purposes of this clause i.e., that law would be enforceable by the Registrar in relation to ex-nuptial children, if the Minister so approves that law. It is necessary, however, for the Minister to be satisfied that the State law makes adequate and appropriate provision for the collection of periodic amounts, in relation to the maintenance of children, on a regular and timely basis. Should the Minister cease to be satisfied that this is the case in relation to a corresponding State law, the Minister may revoke the declaration of the State law also by notice in the Gazette : subclause 7(2).

Subclause 7(3) indicates the Parliament's intention that the Registrar and Tribunal should have and be subject to any additional powers, functions, rights liabilities and duties (if any) to those conferred by the Bill.

Clause 8 : Act to bind Crown

This clause is a technical provision which is required for constitutional reasons. In the absence of express words or necessary implication, Commonwealth statutes are not considered to bind the Crown. This clause, therefore, ensures that the Crown is bound not only in the Commonwealth (including Territories which do not have their own legislatures (subclause 8(2)), but in each of the States, the Northern Territory and Norfolk Island : subclause 8(1).

Clause 9 : External Territories

This clause ensures that the Child Support Bill applies in each of Australia's external Territories. As was mentioned earlier in these notes, an external Territory is generally a Territory for the government of which, as a Territory, provision is made by any Act (see notes on the definition of Australia in subclause 4(1)). While subclause 9(1) achieves this result (which is consistent with the scope of the present Family Law Act 1975), it is also necessary to ensure that this Bill can apply in Australian Territories such as Christmas Islands and the Cocos (Keeling) Islands.

Accordingly, subclause 9(2) provides for the application of the Child Support Bill to such Territories, not covered by the Family Law Act 1975, with whatever modifications that are necessary. These modifications (which are essentially definitions of words and expressions used in the Family Law Act 1975, upon which this Bill depends, which would not apply in these Territories e.g., child of a marriage etc.) will be provided for in Regulations made under the Bill.

PART II - ADMINISTRATION

This Part contains a number of provisions which are essential to the efficient administration of the Bill.

Clause 10 : Child Support Registrar

As was explained earlier in these notes, the essential feature of this Bill is a system of registration of certain child and/or spousal maintenance liabilities. Subclause (1) of this clause statutorily provides for a Child Support Registrar. By subclause 10(2), the Commissioner of Taxation is to be the Child Support Registrar.

Clause 11 : Registrar to have general administration of Act

Under this clause, the Registrar (Commissioner of Taxation) is to be responsible for the general administration of the laws relating to registrable maintenance liabilities.

Clause 12 : Deputy Child Support Registrars

Subclause 12(1) statutorily provides for Deputy Child Support Registrars. By subclause 12(2) each Deputy Commissioner of Taxation will be a Deputy Registrar for the purposes of subclause (1).

Clause 13 : Child Support Register

Clause 13 imposes the duty of keeping the Child Support Register on the Registrar (Commissioner of Taxation - subclause 13(1)).

By subclause (2) of this clause, it is open to the Registrar (Commissioner of Taxation) to keep the Child Support Register in such form as the Registrar considers appropriate. In ordinary parlance, a register suggests a book, in which is recorded an official list of names, events or transactions. In keeping with modern techniques of administration, this subclause ensures that the Registrar may keep the Register in a non-documentary form, such as a computer file or record.

Clause 14 : Annual report

As was mentioned in the notes on clause 11, the Commissioner of Taxation, as Registrar, will have the general administration of the Bill. This clause will, as is customary in Australian taxation laws, require the Registrar to furnish an annual report on the working of the Bill to the Minister for presentation to the Parliament (subclause 14(1)). The clause also sets out the rules to be followed in relation to the presentation of the report to the Parliament (subclause 14(2)) and a technical description of the report for the purposes of section 34C of the Acts Interpretation Act 1901.

Clause 15 : Delegation

Again as is customary with laws administered by the Commissioner of Taxation, this clause provides for the delegation, by the Registrar to a Deputy Registrar (Deputy Commissioner) or a person in the Australian Public Service under the direct control of the Registrar (whether as Registrar or Commissioner), of all or any powers or functions of the Registrar under the Bill. That delegation may be reviewed or altered by the Registrar.

Clause 16 : Secrecy

This clause contains secrecy provisions consistent with those in other Commonwealth Acts of which the Commissioner of Taxation has the general administration. It will impose an obligation of secrecy on officers or former officers who, in the course of their duties related to the administration of the Bill, have acquired information with respect to the affairs of another person. For that purpose, an "officer" includes a person who, although not actually appointed or employed by the Commonwealth, performs services for the Commonwealth.

Officers will be obliged not to make a record of, or divulge or communicate, such information to any other person except in the course of their duties and will, generally, not be compellable to give to any court or the Tribunal, information relating to the affairs of a person except when -

- . it is necessary to do so for the purpose of giving effect to the provisions of the Bill; or
- . the court orders the Registrar to furnish information in relation to the address of a child under subsection 64(11B) of the Family Law Act 1975 - that subsection relates to the powers of a court in custody proceedings.

An officer may also communicate information under this clause to -

- . a person performing duties as an officer under an Act administered by the Registrar, whether as Registrar or Commissioner; or
- . the Secretary to the Department of Social Security or the Secretary to the Department of Veterans' Affairs for the purpose of the administration of any law of the Commonwealth relating to pensions, allowances or benefits.

An officer may be required to take an oath or declaration to maintain secrecy in conformity with the secrecy provisions.

In recognition of the serious nature of any breach of this provision, the Bill provides for a fine not exceeding \$5,000 or jail for a period not exceeding 1 year, or both, on conviction of an offence.

PART III - REGISTRATION OF MAINTENANCE LIABILITIES

The central theme of the Bill is, as mentioned earlier, the registration of certain maintenance liabilities. That theme is provided for in this Part of the Bill, which is comprised of three Divisions -

- . Division 1 - Registrable maintenance liabilities;
- . Division 2 - Registration of maintenance liabilities; and
- . Division 3 - Variations to entries in Child Support Register.

Division 1 - Registrable maintenance liabilities

This Division establishes what maintenance liabilities are registrable i.e., capable of being registered under the Bill. The coverage in the Bill is technically broader, as was indicated by the Minister for Social Security at the time of introducing the Bill in the Parliament, then will actually be the case. It is proposed to make regulations under the Bill to identify the various population and other tests to be applied in order to precisely determine the actual scope of the Bill : see later notes on clause 19.

Clause 17 : Liabilities in relation to children that are registrable maintenance liabilities

Clause 17 describes the two basic kinds of child maintenance liabilities that are registrable under the Bill. They are -

- . a liability of a parent to pay a periodic amount for the child's maintenance (subparagraph (a)(i)); or
- . a liability to a step-parent to pay a periodic amount for the child's maintenance (subparagraph (a)(ii)).

Before either of the above liabilities may be treated as registrable maintenance liabilities, either of the following conditions must also apply -

- . the liability arises under a court order or court registered maintenance agreement (see earlier notes on these terms in subclause 4(1) of the Bill) - subparagraph (b)(i);

- . the liability is a collection agency maintenance liability (see earlier notes on that expression in subclause 4(1) of the Bill) - subparagraph (b)(ii).

This clause is, as was mentioned earlier in the notes on this Part, subject to Clause 19. Briefly stated, that clause provides for the exclusion of liabilities by regulation.

Clause 18 : Liabilities in relation to parties to marriages that are registrable maintenance liabilities

This clause, which is also subject to clause 19 (see notes on that clause and clause 17), describes what is essentially a spousal periodic maintenance liability of a party to a marriage - paragraph (a). Spousal maintenance will be a registrable maintenance liability if either of the following applies -

- . the liability arises under a court order or court registered agreement (see earlier notes on these terms in subclause 4(1)) - subparagraph (b)(i);
- . the liability is a collection agency maintenance liability (see earlier notes on this term in subclause 4(1)) - subparagraph (b)(ii).

Clause 19 : Exclusion of liabilities by regulation

As drafted, clauses 17 and 18 would apply to all child and/or spousal maintenance orders or agreements. By subclause 19(1), the Regulations may provide that specified liabilities, or liabilities in specified classes of liabilities are not registrable.

To that end and without limiting subclause 19(1), subclause 19(2) identifies the kind of tests or parameters that may be reflected in any regulation made under this clause to exclude certain registrable maintenance liabilities.

Specifically, paragraph (2)(a) allows for regulations to be made to cover both types of registrable maintenance liabilities i.e., child (clause 17) or spousal (clause 18).

Paragraph (2)(b) outlines the kinds of matters by reference to which particular liabilities or classes of liabilities may be excluded from the scope of the Bill. They are -

- . the date orders or agreements covering the liabilities were made, registered etc. (subparagraph (b)(i));
- . particular characteristics of the persons covered by the liabilities namely -
 - .. the dates of birth of the children and (if necessary), when their parents separated (sub-subparagraph (b)(ii)(A));
 - .. the age of adults and whether or not they are receiving an income tested pension (sub-subparagraph (b)(ii)(B));
- . whether or not the liabilities are covered by the definition "collection agency maintenance liability" (subparagraph (b)(iii)).

Under the Family Law Act 1975, the court may order the payment of maintenance, either child or spousal, where essentially the court considers there is an urgent or immediate need for financial assistance - section 66K or 77 of that Act, respectively. The period of these orders is, generally speaking, likely to be very short given the urgent nature of the orders. If such orders were made for periodic maintenance, they would ordinarily be collectable by the Registrar by virtue of the operation of clause 17 or 18 of the Bill.

The machinery provisions for collection of maintenance liabilities may be inappropriate in the case of section 66K or 77 orders. Any delay in collection may adversely affect the payee under the order and even defeat the purpose of the courts making of the order.

Accordingly, subparagraph (b)(iv) allows for a regulation or regulations to be made that will ensure that if a court, that makes a section 66K or 77 order, believes it would not be appropriate to involve the Registrar in collection of the order, then the liability that arises under that order will not be a registrable maintenance liability.

It is intended that the Registrar will collect maintenance amounts specified in maintenance orders issued to couples who separate after the date the Bill comes into effect and issued to cover children born after that date where the parents have not lived together. The Registrar can also collect orders issued to people in receipt of Social Security and Veterans' pensions, benefits and allowances no matter what date they separated. In addition the Registrar will collect maintenance liabilities which are lodged for collection by agencies in the States and Territories which have referred power to the Commonwealth, if the functions of those agencies have been taken over by the Commonwealth collection agency.

It is highly desirable to define the classes of orders to be collected in regulations because it is likely that these categories will require amendment. It is expected that there will be numerous applications for collection by the Registrar and initially a strain may be placed on the resources of the Commonwealth. It is possible that after a period of time the benefits of collection by the Registrar can be extended to other categories of the population who have maintenance collection orders. It is also possible that some classes will need narrower definition.

The reason it is impossible to predict these events is that there is no reliable information about the numbers of people currently eligible for maintenance collection who will actually seek to use the scheme.

Division 2 - Registration of maintenance liabilities

As the above heading indicates, this Division of Part III of the Bill sets out the rules to be followed by all the parties concerned in giving effect to the registration of a registrable maintenance liability.

Clause 20 : Arrangements with States, Northern Territory and Norfolk Island for transfer of liabilities

As soon as possible after the commencement of this Bill, it is proposed to transfer the responsibility for collection of maintenance orders and agreements from State or Territory collection agencies (including the courts) to the Child Support Registrar.

This clause allows for formal arrangements for the transfer of registrable maintenance liabilities to be entered into between the Governor-General and the Governor of a State or the Administrator of an Australian Territory which has its own legislature (i.e., the Northern Territory and Norfolk Island). The intention is to provide by this clause, the greatest degree of flexibility possible to assist in addressing any particular problems that may arise in negotiations with any State, the Northern Territory or Norfolk Island.

Clause 21 : Arrangements in relation to Territories (other than the Northern Territory or Norfolk Island) for transfer of liabilities

This clause is complementary to clause 20 : see notes on that clause. It provides for formal arrangements to be entered into between the Registrar and the relevant authorities of a Territory that does not have its own legislature (in particular, the Australian Capital Territory) to transfer responsibility for maintenance collection to the Registrar. The clause is in similar terms and to a similar effect as clause 20.

Clause 22 : Registrar to register transferred liabilities in Child Support Register

This clause provides for a duty on the Registrar to register a liability transferred to the Child Support Register under arrangements made under clause 20 or 21 : see earlier notes. The Registrar is, by this clause, to enter particulars of such liabilities in the Child Support Register within 28 days after the transfer of the liability. Should the Registrar either not do, or refuse to do, that, subclause 4(4) would apply in relation to the Registrar's failure or refusal to register the liability : see earlier notes on that subclause and the definition of "appealable refusal decision" in subclause 4(1).

Clause 23 : Payer and payee to notify Registrar when registrable maintenance liability arises etc.

In order for the Registrar to operate effectively, it is essential that the Registrar receives timely information in relation to orders or agreements that give rise to a potential registrable maintenance liability. Accordingly, this clause imposes certain obligations on payers and payees under such liabilities.

Subclause 23(1) describes the circumstances which, when they occur, will attract the operation of the other provisions of this clause. Put simply, this clause applies where -

- . under the Family Law Act 1975 or a law of a Territory, a court -
 - .. makes or registers an order (subparagraph (a)(i)); or
 - .. registers or approves a maintenance agreement (subparagraph (a)(ii)); and
- . either of the following apply -
 - .. the order or agreement establishes a registrable maintenance liability (subparagraph (b)(i));
 - .. the order or agreement varies or otherwise affects a registrable maintenance liability that is not registered (subparagraph (b)(ii)).

Broadly, this clause will apply to these orders or agreements that are made after commencement of the Bill.

A payee under a liability described in subclause (1) has 14 days within which to duly complete an approved form for the purpose of this subclause and furnish that form to the Registrar. The 14 day period commences, under subclause 23(2), the day after the day of the making or registering of the order, or the registering or approval of the agreement, as the case may be. While there is no specific provision for any extension of the 14 day period, it is relevant to consider, in this regard, the operation of proposed subclause (8) of this clause : see notes later in this clause.

It is possible, under this clause, for certain payees to effectively "opt-out" of collection of their registrable maintenance liabilities by the Registrar. Subclause 23(3) provides the technical mechanism by which a payee may "opt-out" of the scheme. Basically, a payee need not complete the form required by subclause (2) if the payee elects within the 14 day period mentioned in that subclause (see above notes) not to have the liability enforced under the Bill. There is, however, one proviso that attaches to this opting-out arrangement.

A payee is not permitted to "opt-out" of the scheme under subclause (3) if the payee is in receipt of an income tested pension, allowance or benefit (subclause 24(4)) : see earlier notes on that expression in subclause 4(1).

Subclause (5) of this clause puts a similar obligation on a payer to supply to the Registrar information in relation to a liability covered by this clause. The payer is also required to complete the approved form within the 14 day period mentioned in the notes on subclause (2). If a payee makes an election to "opt-out" of the scheme, the payer is not required to complete the form under this subclause - subclause 23(6).

Subclause (7) of this clause creates an offence where a payee or payer contravenes subclause (2) or (5), respectively. The offence is punishable, on conviction, by a fine not exceeding \$1,000.

As was mentioned earlier in the notes on this clause, the 14 day period within which a payee or payer (as the case may be) is required to act, is not subject to any extension or variation by the Registrar or any other person. However, subclause 23(8) provides a defence for such payers or payees if the person charged can establish that the particular form was furnished to the Registrar as soon as was reasonably practicable after their knowledge of the making or registration of the order or registration or approval of the agreement.

Clause 24 : Registrar to register liability in Child Support Register on receipt of notification

This clause provides a duty on the Registrar to register a liability covered by clause 23. Upon receipt of a duly completed form from the payee under subclause 23(2), the Registrar is required to register that liability by entering the particulars of that liability in the Child Support Register - subclause (1) of this clause. The Register is required to effect registration within 28 days of receipt of the payee's duly completed form.

Should the Registrar not register such a liability or refuse to register such a liability, within the 28 days, subclause 4(4) will operate in relation to that inaction or refusal of the Registrar : see earlier notes on that subclause and the definition of "appealable refusal decision".

Subclause (2) of this clause simply ensures that where a payee fails to comply with subclause 23(2) i.e., to act within the required 14 day period, the Registrar may still register the liability by entering the particulars of the liability in the Register. This subclause ensures the enforcement of a registrable maintenance liability notwithstanding any failure by the payee to comply with the provisions of the Bill.

Clause 25 : Application for registration of registrable maintenance liability

This clause provides for the registration of liabilities that are not registered. As a general rule, this clause will apply in relation to that part of the population that have registrable maintenance liabilities at the time this Bill is proclaimed to come into operation. When read with clause 19 and regulations to be made under that clause, this clause will allow certain of those "old population" individuals to apply to the Registrar for registration of their liabilities.

Subclause 25(1) provides that a payee whose registrable maintenance liability is unregistered may apply to the Registrar in the approved form for registration. There is, however, no compulsion under this clause for payees to apply. Provided they are not excluded by regulation, the Child Support Agency will, however, enforce a payee's registrable maintenance liability under this subclause on receipt of an application from the payee. This approach is contrasted with the approach under clause 23 and 24 for the "new population".

By subclause 25(2), the Registrar is compelled to register a liability upon receipt of a duly completed form from the payee under subclause 25(1). Under this subclause, the Registrar has 28 days after receipt of the form to register the liability by entering the details of that liability in the Child Support Register.

Should the Registrar not register, or refuse to register, that liability within the 28 days required, subclause 4(4) will apply in relation to the Registrar's inaction or refusal, as the case may be : see earlier notes on that subclause and the definition of "appealable refusal decision" in subclause 4(1).

As was mentioned earlier, this clause will apply basically in relation to persons with orders or agreements in existence at the time the Bill comes into effect. However, it would be possible, technically, for a payee to whom clause 23 of the Bill applies, to complete a form under this clause and furnish it to the Registrar. Subclause 25(3) ensures that, if a payee is required to, or has furnished, a duly completed form to the Registrar under subclause 23(2), the Registrar cannot register that liability under this clause.

Under this clause all collection agency maintenance liabilities could be registered if the payees applied to the Registrar on the day the Bill came into effect.

Subclause 25(4) will ensure, however, that in the transfer to the Registrar of collection agency maintenance liabilities, only those cases that have been agreed to be transferred direct to the Child Support Register may technically apply to the Registrar. This will simply ensure the smooth transfer of all cases, which is expected will take place over a 12 month period after commencement of the Bill. The Regulations will prohibit those cases not agreed to be transferred initially from coming into the scheme under this clause : see also notes on clauses 20, 21 and 22.

Clause 26 : Particulars of liability to be entered in Child Support Register

There is certain information that must be entered in the Child Support Register in relation to each registered maintenance liability. That information is described in subclause 26(1) in detail as follows -

- . payer's name (paragraph (a));
- . payee's name (paragraph (b));
- . particulars of the order or agreement and any subsequent order or agreement affecting the earlier order or agreement that identify the basis of the statutory liability to be provided for under the Bill (paragraph (c));
- . in relation to child maintenance, each child's name and date of birth (paragraph (d));
- . any person's name to whose maintenance the entry in the Register relates (paragraph (e));

- . the periodic amount (or the aggregate thereof if more than one amount) to be paid by the payer e.g., \$50 (paragraph (f));
- . if the entry covers more than 1 person, the periodic amounts payable in respect of each e.g., \$50 spousal and \$75 for the child (paragraph (g));
- . the period the amounts referred to earlier are payable e.g., weekly, fortnightly etc. (paragraph (h));
- . the day the liability becomes one which is enforceable under the Bill (paragraph (j));
- . if the liability ceases to be enforceable, either once or more often - each day the liability ceases (paragraph (k));
- . if the liability commences again to become enforceable - each day it so commences (paragraph (m));
- . where a liability is suspended, particulars of that suspension (paragraph (n)); and
- . any terms and conditions in the order of agreement that ought to be included in the Register to ensure the order or agreement is given full effect to under this Bill (paragraph (p)).

Subclause (2) of this clause identifies two pieces of information that the Registrar is not statutorily required to enter in the Child Support Register.

They are -

- . the daily, weekly or monthly rate of payment in relation to the periodic amount referred to in subclause 26(1) - paragraph (2)(a); and
- . whether or not automatic withholding is to apply in relation to the payer - paragraph (2)(b).

Other matters may also need to be included in the entry in the Child Support Register depending on the particular circumstances of any case. To accommodate the possibility of such a change, paragraph (2)(c) allows the Registrar to include such other matters as the Registrar considers necessary or desirable.

Clause 27 : Single entry in relation to all liabilities with same payer and payee

This clause will allow the Registrar to include particulars of liabilities in respect of the same payer and payee in the same entry in the Child Support Register. This will be the case whether or not the liabilities arise under the same court order or maintenance agreement and whether or not the liabilities are in relation to the maintenance of the same person. For example a liability to pay spousal maintenance under a maintenance agreement for the payer and a court order to pay maintenance by that payer to the same payee but in respect of a child of the marriage, could, under this clause, be included in the same entry in the Register.

Clause 28 : Day on which liability first becomes enforceable under Act

This clause establishes the various days on which a liability that is registered under this Division will come into effect. They are -

- . for a transferred maintenance liability - the day of transfer (paragraph (a));
- . for a liability registered under clause 24 (essentially under new population orders or agreements made after the commencement of the Bill) - the day on which the liability arose under the order or agreement (paragraph (b));
- . for a liability registered under subclause 25(2) (essentially under old population orders or agreements made before commencement of the Bill) - a day determined, in writing, by the Registrar but not later than 60 days after receipt of the form under that subclause (paragraph (c)).

Clause 29 : Conversion of amounts payable under registrable maintenance liability into daily rates etc.

When an order is made, for example, the particular amount provided for by the court for payment by the payer will usually take into account the circumstances of the payer. If the payer is an employee who gets paid on a fortnightly basis, the court would usually order payment of a fixed amount, say \$100, by the payer each fortnight.

The effluxion of time often sees the payer's circumstances change. For example, the payer could commence his or her own business. The payer might change employers and the new employer may have a different pay cycle e.g., calendar monthly.

In order to ensure that uniform amounts are payable by all payers, irrespective of their particular circumstances, this clause will allow provision to be made in the Regulations for the conversion, of periodic amounts payable under court orders or maintenance agreements that give rise to a registrable maintenance liability, into standard daily, weekly and monthly rates of payment. This facility will greatly assist in the overall administration of the scheme for the Registrar, employers and payers alike.

Clause 30 : Effect of registration

This clause is a pivotal feature of this Bill and is important in two respects.

First, it provides that amounts payable under a liability in relation to the child support enforcement period - that is the period during which a registered maintenance liability is enforceable under the Bill - are debts due by the payer to the Commonwealth, but only in accordance with the particulars entered in the Child Support Register in relation to that liability - paragraph (a).

Moreover, the clause makes it clear that once a registrable maintenance liability becomes enforceable under the Bill, the payee under the liability is no longer entitled to payment of the amounts due under that liability (the amounts are, as mentioned above, debts due to the Commonwealth) and may not enforce payment of those amounts against the payer - paragraph (b).

Clause 31 : Effect of registration on existing garnishment and attachment of earnings orders

Under the Family Law Act 1975, the Matrimonial Causes Act 1959 or the law of the State or Territory, a garnishment or attachment of earnings order may have been made in relation to the liability that is being registered and enforced under the provisions of this Bill. This clause will operate to ensure that such an order, in so far as it relates to a child support debt, ceases to have effect.

Clause 32 : Payer and payee to be given copy of entry in Child Support Register on request

Subclause 32(1) simply provides that either a payer or payee may request the Registrar to provide a copy of the entry in the Child Support Register that relates to the payer's or payee's (as the case may be) registered maintenance liability. By subclause 32(2), the Registrar is compelled to comply with such a request.

Division 3 - Variations to entries in Child Support Register

There are a number of circumstances, the occurrence of which will operate to vary or otherwise affect a registered maintenance liability. This Division sets out those circumstances and the rules to be followed by payers, payees and the Registrar.

Clause 33 : Payee to notify Registrar of court order varying registrable maintenance liability etc.

Under subclause 33(1), a payee of a registered maintenance liability is required to notify the Registrar where -

- . an order is made by, or registered in, (subparagraph (a)(i)); or
- . a maintenance agreement is registered in, or approved by, (subparagraph (a)(ii)),

a court under the Family Law Act 1975 or the law of a Territory, and

- . the order or agreement varies or otherwise affects a registered maintenance liability (paragraph (b)).

This subclause does not apply to an order or agreement that varies or otherwise affects a registered maintenance liability that is not enforceable because the payee has elected to "opt-out" of the scheme (see later notes on clause 38).

Under this subclause, the payee has 14 days from the day of making, registering or approving the order or agreement, as the case may be, within which to notify the Registrar.

Where a person fails or refuses to comply with subclause 33(1), subclause 33(2) provides for an offence which, on conviction, is punishable by a fine of no more than \$1,000.

In keeping with other provisions of the Bill, this clause does not allow for any extension or variation of the statutory 14 day period. However, it is a defence to a prosecution for an offence against subclause 33(2), if the person can establish that the relevant form was furnished to the Registrar as soon as was reasonably practicable - subclause 33(3).

Clause 34 : Payee to notify Registrar of happening of affecting event

An affecting event can, by definition, only apply in relation to an enforceable maintenance liability. These "events" are in addition to, and mutually exclusive of, court orders or agreements that may vary or otherwise affect an enforceable maintenance liability: see earlier notes on the definition of "affecting event" in subclause 4(1).

Subclause 34(1), therefore requires a payee of such a liability to notify the Registrar, once again in the approved form, of the happening of an affecting event. This notification is, like that required in clause 33, to be given within 14 days of the happening of the event.

A payee is not required to notify the Registrar of an affecting event if the event, in relation to a registrable child maintenance liability, is the child's eighteenth birthday. As the Registrar will have entered details of each child's birth on the Child Support Register (see earlier notes on paragraph 26(1)(d)), the Registrar will be able to act on the happening of such an event without notification by the payee: see also notes on clause 37.

Subclause (2) of this clause, like subclause 33(2), makes it an offence for a person to contravene subclause 34(1). On conviction, a person could be liable for a fine of up to \$1,000. Subclause 34(3) provides a defence to a prosecution under subclause 34(2) and is to the same effect and in the same terms as subclause 33(3) (see notes on that subclause).

Clause 35 : Payer may apply to Registrar for variation of Child Support Register

While the provisions of clauses 33 and 34 are mandatory for a payee to act upon, it is possible that a payer may also wish to notify the Registrar of -

- . a court order or court registered maintenance agreement (subclause 35(1)); or

- . the happening of an affecting event (subclause 35(2)),

that varies or otherwise affects an enforceable maintenance liability. This clause allows the payer to apply to the Registrar, if the payer desires, for variation of particulars entered in the Registrar as a result of such an order, agreement or event, as the case may be.

Clause 36 : Registrar to vary Child Support Register on receipt of notification or application

By clause 36, the Registrar is required to vary the particulars entered in the Child Support Register that the Registrar considers necessary or desirable to enable the order or agreement to be given full effect under the Bill or to take account of the happening of the affecting event. After receiving a duly completed form under subclause 33(1), 34(1) or 35(1) or (2) (see above notes on those subclauses) the Registrar is required to act within 28 days of receipt of that form. Should the Registrar fail or refuse to act within that time, subclause 4(4) will operate in relation to the Registrar's failure or refusal to act : see earlier notes on that subclause and the definition of "affecting event".

Clause 37 : Registrar may vary Child Support Register to give effect to a court order etc.

Information will come to the Registrar from the courts, as well as payers and payees of enforceable maintenance liabilities (see later notes on clause 112 in Part IX of the Bill). At the same time, certain facts will be known to the Registrar to have occurred because of information contained in the particulars entered in the Child Support Register in relation to such a liability (see also notes on clause 26).

Clause 37 provides a mechanism whereby the Registrar may act to vary the particulars entered in the Child Support Register in relation to such a liability to take account of -

- . an order or agreement (paragraph (a)); or
- . the happening of an affecting event (paragraph (b)).

The Registrar is entitled to act under this clause without having received a duly completed form from a payer or payee under subclauses 33(1), 34(1) or 35(1) or (2) as the case requires.

Clause 38 : Election to have enforceable maintenance liability no longer enforced under Act.

Provided a payee is not in receipt of an income tested pension, allowance or benefit, the payee is, under this clause, entitled to elect, in the approved form, to "opt-out" of enforcement of the registered maintenance liability under the Bill. This clause is complementary to subclauses 23(3) and (4) but provides for the case where the registrable maintenance liability has become enforceable.

Where a payee makes an election under this clause, the Registrar has 28 days after receipt of the approved form to vary the particulars entered in the Child Support Register by specifying a day that the liability ceases to be enforceable - paragraph 38(a). That day may not, under the terms of that paragraph, be any later than 60 days after the day the Registrar received the form.

Paragraph (b) of this clause recognises that an election made in these cases can only be made once and in relation to a liability has become enforceable. Accordingly, there may be amounts outstanding i.e., unpaid, in relation to the child enforcement period (see earlier notes on this term in subclause 4(1)). It is, under the terms of this paragraph, open to the payee to elect to have such unpaid amounts no longer enforced under the Bill. Should the payee not make an election under paragraph (b) of this clause in relation to such unpaid amounts, the Registrar will be obliged to seek payment of those amounts in due course from the payer under the liability

Clause 39 : Application for variation to enable liability to again become enforceable under Act

This clause is complementary to, and should be read in conjunction with, clause 38.

A necessary corollary to "opting-out" of the scheme is being entitled to come back into the scheme and to once again have the registered maintenance liability enforceable under the Bill. Accordingly, subclause 39(1) allows a payee who has elected to "opt-out" of the scheme under clause 38 to apply to the Registrar, in the approved form, for the liability to be reactivated.

Under subclause 39(2), following receipt of a duly completed form, the Registrar is required -

- . to recommence enforcement of liability under the Bill on a day, not being more than 60 days after receipt of the form under subclause (1) - paragraph (a); and
- . to make such variations to particulars in the Child Support Register to -
 - .. give full effect to a court order or court registered maintenance agreement that affects the liability (subparagraph (b)(i)); or
 - .. the happening of an affecting event (subparagraph (b)(ii)).

Under paragraph 38(2)(a), the Registrar is required to re-establish enforcement of the liability within 28 days after receipt of the duly completed form from the payee. Should the Registrar refuse or fail to do so, subclause 4(4) would operate in relation to the Registrar's failure or refusal: see earlier notes on that subclause and the definition of "appealable refusal decision".

Clause 40 : Entry wrongly existing in Child Support Register

This clause (like clauses 41 and 42) will assist the Registrar in the general administration of the Child Support Register. There may be circumstances where the Registrar becomes satisfied that, despite the precautions provided for in the Bill, an entry was wrongly made in the Child Support Register. This clause requires the Registrar to delete such entries from the Register.

Clause 41 : Obsolete entries in Child Support Register

Subclauses 23(3) and (4) and clause 38 together will mean that certain registered maintenance liabilities are no longer enforceable under the Bill. At the same time, a terminating event may happen in relation to such a liability.

In both these cases, the effluxion of time may mean that the entries in the Child Support Register become obsolete e.g. a payer of a child maintenance liability "opts-out" of the scheme and the child later turns 18. Clause 41 will allow the Registrar to delete such entries from the Register.

Clause 42 : Correction of clerical errors and other mistakes in Child Support Register

This clause will authorise the Registrar to correct any clerical error or other mistake that may, from time to time, be identified in the particulars entered in the Child Support Register in relation to a registered maintenance liability.

PART IV - COLLECTION BY DEDUCTION FROM SALARY OR WAGES

Division 1 - Automatic Withholding

Division 1 of this part contains a range of provisions that relate to the obligations placed on employers to deduct maintenance from the salary or wages of their employees who are payers of enforceable maintenance liabilities. As pointed out earlier in this memorandum, automatic withholding is based broadly on the PAYE provisions of the Income Tax Assessment Act 1936.

Although the Bill provides for other methods of collection, automatic withholding is to be the primary approach and will be used for liabilities that arise after the commencement of this Act in as many cases as practicable where the payer is an employee.

Clause 43 : General rule of collection by automatic withholding in case of employees

Clause 43 sets out the general rule that automatic withholding is to apply where the payer of an enforceable maintenance liability is an employee.

Subclause 43(1) is the operative provision that specifies that the Registrar shall, as far as practicable, collect amounts due to the Commonwealth under the liability by deduction from the salary or wages of the payer of an enforceable maintenance liability.

Subclause 43(2) qualifies the general rule under subclause (1) by providing that automatic withholding is to apply whether or not the particulars in the entry in the Child Support Register contain a statement that automatic withholding applies. However, where the particulars contain a statement that automatic withholding does not apply because of one of the reasons set out in clause 44 (see notes on that clause) automatic withholding will not apply in relation to the liability.

Clause 44 : Cases in which automatic withholding not applicable

By virtue of the operation of clause 44, automatic withholding will not apply in certain circumstances.

By subclause 44(1) the payer of the registrable maintenance liability that arose before the commencement of this Bill may elect that automatic withholding is not to apply.

The payer must furnish a duly completed approved form to the Registrar who shall:

- . include in the particulars of the entry in the Child Support Register a statement that automatic withholding does not apply - where the form is received by the Registrar before the liability is registered (paragraph (a));
- . vary the particulars of the entry within 28 days after receiving the form so they contain a statement that automatic withholding does not apply - in any other case (paragraph (b)).

Subclause 44(2) proposes that a court having jurisdiction under this Bill - see notes on Part VIII of this Bill - may, by order, direct that automatic withholding is not to apply in relation to the liability, if it is satisfied that:

- . the payer of a registrable maintenance liability would be likely to make regular and timely payments (see also notes on paragraph 3(b) of the Bill) if automatic withholding was not applied (paragraph (a)); and
- . it is undesirable on the grounds of personal privacy in the special circumstances of a particular case that automatic withholding should apply (paragraph (b)).

Where proceedings are instituted in a court under subclause (2), it is possible that it may be some time before a decision could be given that automatic withholding was not to apply on the grounds of personal privacy. Accordingly, subclause (3) provides a facility to the court to direct by order, if the circumstances so warrant, that automatic withholding not apply pending the disposal of the proceedings referred to earlier.

Subclause 44(4) requires the Registrar to ensure that a statement is included in the particulars of the entry in the Child Support Register that automatic withholding does not apply where:

- . a court makes an order under subclause (2) or (3) that automatic withholding is not to apply (paragraph (a)); and
- . the payer of the registrable maintenance liability furnishes a certified or sealed copy of the order to the Registrar (paragraph (b)).

Where the Registrar has to vary the entry under this subclause, it must be completed within 28 days after receipt of the copy of the order. Should the Registrar refuse to vary the entry within that time, subclause 4(4) will come into operation: see notes on that subclause and the definition of "appealable refusal decision" in subclause 4(1).

Subclause 44(5) stipulates that where:

- . the particulars in the entry on the Child Support Register contain a statement that automatic withholding does not apply because of the operation of subsections (1) or (4) (paragraph (a)); and
- . the payer fails to make regular and timely payments to the Registrar while automatic withholding is not being applied (subparagraph (b)(i)); or
- . the payer fails to provide a copy of an order of the court under subclause (3) to the effect that automatic withholding is not to apply, within 3 months of the making of that order (subparagraph (b)(iii));

the Registrar shall vary the particulars to show that automatic withholding applies, provided the Registrar is satisfied that automatic withholding would be an efficient method of collection in a case referred to in subparagraph (b)(i).

By subclause 44(6), the Registrar may include in, or vary, the particulars of the entry in the Child Support Register, a statement that automatic withholding does not apply where the Register is satisfied that due to the special circumstances of a particular case automatic

withholding would be an inefficient method of collection. One example where this might occur could be the case of an itinerant worker.

Subclause 44(7) requires the Registrar to vary the particulars so that automatic withholding applies unless the Registrar is satisfied that automatic withholding would still not be an efficient method of collection where:

- . the particulars contain a statement that automatic withholding does not apply because of subclause (6) (paragraph (a)); and
- . the payer fails to make regular and timely payments to the Registrar while automatic withholding is not being applied (paragraph (b)).

Subclause 44(8) directs the Registrar to vary the particulars in the entry in the Child Support Register so that automatic withholding applies where:

- . the particulars contain a statement that automatic withholding does not apply because of subclause (6) (paragraph (a)); and
- . the Registrar becomes satisfied that automatic withholding would be an efficient method of collection (paragraph (b)).

Subclause 44(9) provides that the Registrar shall have particular regard to the need to ensure that payments are received on a regular and timely basis when determining whether automatic withholding should apply for the purposes of subsections (5), (6), (7) and (8).

Subclause 44(10) stipulates that automatic withholding will not apply when the period at which amounts are payable under an enforceable maintenance liability exceed one calendar month.

Clause 45 : Notification to be given to employer and employee

Clause 45 provides for a written notice to be given to an employer requiring the employer to institute automatic withholding in respect of a particular payer.

Under subclause 45(1), the notice to the employer should specify the name of the payer and other particulars of the payer which will enable the payer to be identified by the employer (paragraph (a)). The notice should instruct the employer:

- . to make periodic deductions in accordance with the specified weekly deduction rate from a specified day (subparagraph (b)(i)); and
- . to pay the amounts deducted to the Registrar in accordance with subsection 47(1) (see later notes); (subparagraph (b)(ii)).

By subclause 45(2), the Registrar is required to give a written notice to the employer varying or revoking the earlier notice where:

- . particulars entered in the Child Support Register are varied (paragraph (a)); and
- . the Registrar considers that the notice issued in accordance with subclause (1) should be revoked or varied because of the variations made to the particulars (paragraph (b)).

Subclause 45(3) requires the Registrar to give forthwith a copy of a notice issued in accordance with subclause (1) or (2), to the payer.

Clause 46: Duty of employer to make deductions from salary or wages

This clause sets out the basic duties of employers in relation to automatic withholding.

By subclause 46(1) but subject to the protected earnings amount (see notes on subclause (3)), an employer is obliged to make a deduction from the salary or wages of an employee in relation to whom a notice has been given to the employer under subclause 45(1). A penalty of \$1,000 is provided for contravening this requirement. An amount not exceeding the amount of the deduction may also be payable (see later notes on subclause (5)).

Subclause 46(2) stipulates, subject to the protected earnings amount (see notes on sub-clause (4)), that the amount of the deduction is the amount ascertained by applying the weekly deduction rate (see earlier notes on that expression in subclause 4(1)) specified in the notice to the pay period.

Subclause 46(3) states that a deduction shall not be made from the salary or wages in respect of a particular period if the salary or wages are less than the protected earnings rate (see earlier notes on that expression in subclause 4(1)) for that period (in subclause (4) called the protected earnings amount).

Subclause 46(4) deals with the situation where the amount of salary or wages is greater than the protected earnings amount but is not enough to cover the required deduction. In this case the amount of the deduction is to be the amount by which the amount of salary or wages exceeds the protected earnings amount.

Where a person is convicted before a court of an offence against subclause (1), the court may order the person to pay to the Registrar an amount not exceeding the amount of the deduction: subclause 46(5).

Subclause 46(6) applies to payments of salary or wages which do not relate to any specific period of time. Paragraph (a) of that subclause provides that in the case of salary or wages paid for piece work or in respect of services rendered under a contract wholly or principally for the labour of the employee, the employee shall be deemed to be entitled to receive the salary or wages in respect of the period of time from the commencement of the performance of the work or services until the completion thereof.

Paragraph (b) states that in the case of salary or wages paid in respect of any other service performed or rendered but not in respect of a period of time, the recipient shall be deemed to be entitled to receive the amount in respect of the period of 52 weeks preceding the date of receipt. Where payments are received in respect of a period of time in excess of 1 week, their reduction to a weekly basis is provided for by paragraph (c).

Subclause 46(7) proposes the aggregation, for the purpose of automatic withholding, of 2 or more sums received from the one employer in a week or part of a week.

Subclause 46(8) specifies that in taking the protected earnings amount into consideration (see earlier notes on subclauses (3) and (4)), the amount of any salary or wages shall be taken to be the net amount after deduction of tax instalment deductions in accordance with the PAYE provisions of the Income Tax Assessment Act 1936. By virtue of sub-section 251R of that Act, tax instalment deductions include Medicare Levy.

Clause 47 : Additional duties of employers

Clause 47 is complementary to clause 46 and places some additional duties on employers.

By subclause 47(1), an employer who had made deductions of maintenance during any calendar month must pay to the Registrar the amounts so deducted and furnish, in the approved form, the particulars required by the form, not later than the seventh day of the following month. A penalty of \$5,000 or imprisonment for 12 months, or both, is provided for contravention of this subclause.

Subclause 47(2) provides that when a payment of salary or wages is made to an employee to whom a notice under subclause 45(1) is in force, the employer must give written notice to the employee:

- . of the amount of the deduction (paragraph (a)); or
- . that no deduction has been made (paragraph (b))

A penalty of \$1000 is provided for contravention of this subclause by an employer.

An employer is also required to notify the Registrar, in the approved form, if an employee to whom a notice under subclause 45(1) is in force, ceases to be an employee of the employer. The requirement, which is provided for by subclause 47(3), must be discharged by the seventh day of the month following the cessation of employment of the employee.

A penalty of \$500 is provided for contravention of this subclause.

Subclause 47(4) allows the Registrar to vary any of the requirements of the last three subclauses in such instances and to such extent as the Registrar thinks fit. In such a case, a written notice should be served on the employer.

Clause 48 : Two or more employers in relation to one employee

This clause will allow the Registrar to apply automatic withholding where the payer of an enforceable maintenance liability is in receipt of salary or wages from more than one employer. Under paragraph (a), the Registrar may treat any one employer as the only employer for the purposes of automatic withholding.

As an alternative, the Registrar may collect from more than one employer. In this case paragraph (b) allows the Registrar to apply such modifications as the Registrar considers appropriate in relation to any 2 or more employers of the one payer/employee. The modifications must be made in order to ensure that the amounts collected by automatic withholding are, in total, the same as those that would have been collected if the payer had only one employer.

Clause 49 : Discharge of payer's liability to Registrar and employer's liability to payer

This clause stipulates that where an employer applies automatic withholding and deducts an amount from the salary or wages of the payer of an enforceable maintenance liability:

- . the payer is discharged from his or her liability to make payments to the Registrar to the extent of the amount deducted (paragraph (a)) - see also notes on clause 66; and
- . the employer is discharged from all liability to pay the amount to any person other than the Registrar (paragraph (b)).

Clause 50 : Payment by trustees of deducted amounts

This clause applies where an amount of maintenance is payable to the Registrar by an employer who no longer has control over the employer's property.

Subclause 50(1) is a technical measure designed to ensure that where an amount is deducted by automatic withholding and is payable to the Registrar by an employer whose property subsequently vests in a trustee (eg in the case of a deceased estate or a bankruptcy), the trustee is liable to pay the amount to the Registrar.

Subclauses 50(2) and (3) are complementary provisions to subclause (1). Subclause (2) provides that an amount payable to the Registrar by a trustee under subclause (1) has priority over all other debts except a debt payable by a trustee to the Commissioner of Taxation under subsections 221P(1), 221YHJ(3), or 221YHZD(3) of the Income Tax Assessment Act 1936. The effect of subclause (2) is to ensure that the property will be apportioned to each or all of the debts, as the case may be.

The priority accorded the Registrar by subclause (2) is limited in certain instances where the property vests in a trustee of an estate of a bankrupt or a liquidator of a company. Subclause (3) ensures that a trustee or liquidator is entitled to recoup any costs, charges or expenses of the administrator of the trust estate or the winding up of the company, as the case requires, before any amount payable under this section.

This provision corresponds and is to the same effect as sections 221P, 221YHJ and 221YHZD of the Income Tax Assessment Act 1936 which operate in respect of unremitted PAYE, prescribed payments and natural resource and royalty payments, respectively.

Division 2 - Penalties

Clause 51 : Penalty for late remittance of deductions

This clause will impose a penalty in a case where an employer, other than the Commonwealth, deducts maintenance from a payment of salary or wages during a month but fails to remit the amount to the Registrar within the time required, i.e. by the seventh day of the next month (see earlier notes on clause 47). The employer will continue to be liable to pay the unremitted amount to the Registrar - (paragraph 51(a)) - and will also be liable to pay to the Registrar, by way of penalty -

- . if the employer is a government body (a defined term), an amount equal to 20% per annum calculated in respect of the unpaid amount for the period the amount remained unpaid - (subparagraph (b)(i)); and
- . if the employer is not a government body, an amount referred to as the "relevant penalty amount" equal to 20% flat of the unpaid amount (sub-subparagraph (b)(ii)(A)), plus an amount equal to 20% per annum of the amount remaining unpaid in respect of both the unpaid amount and the relevant penalty amount, also calculated for the period that the unpaid amount remained unpaid (sub-subparagraph (b)(ii)(B)).

Clause 52 : Penalty for failure etc. to make deductions from salary or wages

Clause 52 statutorily imposes a penalty on an employer who fails to meet the obligations created for the employer under Division I of Part IV. This clause applies where an employer fails to make the appropriate deduction of maintenance from a payment of salary or wages.

By paragraph (a) of this clause, where an employer, other than the Commonwealth, makes a payment of salary or wages and contravenes subclause 46(1) by failing to make a deduction of maintenance, the employer is liable to pay to the Registrar, by way of penalty, an amount equal to 20% per annum of so much of the undeducted amount as remains unpaid, calculated from the date when the deduction, if made, should have been paid to the Registrar. By virtue of subclause 46(1), this date will, in practice, be the seventh day after the end of the month in which the salary or wages were paid.

Paragraph (b) provides an additional penalty, in the case of an employer other than a government body, of an amount equal to the amount which the employer failed to deduct.

Clause 53 : Penalty in relation to certain unexplained remittances of employers

Where an unexplained shortfall in a remittance is received from an employer and the Registrar is unable to determine the amounts attributable to each of the employees who are payers, the Registrar may make up the shortfall from consolidated revenue provided the amount required does not exceed an amount to be prescribed by Regulation (see later notes on clause 78).

This clause specifies that an employer is liable to pay to the Registrar, by way of penalty, an amount equal to the appropriated amount where :

- an amount is received by the Registrar under paragraph 47(1)(a) from an employer other than the Commonwealth in relation to a month (paragraph (a));
- the employer contravenes paragraph 47(1)(b) - i.e. the employer does not furnish in the approved form, the particulars required by the form (paragraph (b)); and
- an amount is appropriated out of the Consolidated Revenue Fund under paragraph 78(3)(d) in relation to the employer in relation to the month (paragraph (c)).

Clause 54 : Remission of certain penalty amounts

By this sub-clause, the authority of the Registrar to remit penalties (referred to as "late payment penalty") is restricted to certain circumstances that parallel those in other Acts of which the Commissioner has the general

administration e.g., the Income Tax Assessment Act 1936, which authorises, inter alia, remission of certain amounts of late payment penalty in respect of the PAYE provisions of that Act.

Under paragraph (1)(a), the Registrar will be permitted to remit late payment penalty payable by an employer if the Registrar is satisfied that the circumstances that led to the delay in payment of the amount deducted were not caused by an act or omission of the employer and the employer has taken reasonable action to mitigate the effects of the circumstances that led to the delay.

Paragraph (1)(b) will authorise the Registrar to remit the late payment penalty, in appropriate cases, notwithstanding that the circumstances which led to the delay in payment of the principal amount were caused by the employer, e.g., a miscalculated business decision. Remission of the late payment penalty will be possible if the Registrar is satisfied that the employer has made a reasonable attempt to mitigate the effects of those circumstances and that it is fair and reasonable to remit the amount imposed in view of the nature of those circumstances.

By paragraph (1)(c) the Registrar will be able to remit late payment penalty where the Registrar considers that there are other special circumstances to justify that course.

The automatic imposition of late payment penalty would, in some cases, result in very small amounts of penalty being payable. Paragraph (1)(c) would permit the Registrar to remit those small amounts if collection would not be cost effective for example.

While subclause (1) will restrict the Registrar's authority to remit penalties other than the undeducted amount, relevant penalty amounts and appropriated amounts, subclause (2) will permit the Registrar, for such reasons as the Registrar thinks sufficient, to remit the whole or a part of the undeducted amount, relevant penalty amounts and appropriated amounts imposed by sub-subparagraph 51(b)(ii)(A), paragraph 52(b) or clause 53 : see notes on that sub-subparagraph, paragraph and clause.

Subclause (3) requires the Registrar to give a written notice to the employer where a decision is made to remit part only of an amount payable as mentioned in subclause (2) or not to remit in any part of such an amount.

Clause 55 : Reduction of late payment penalty where judgment debt carries interest

This clause will ensure that an amount of penalty for late payment under sub-subparagraph 51(b)(ii)(B) or paragraph 52(a) continues to accrue in respect of unpaid principal amounts notwithstanding that judgment for payment of the principal amount has been given or entered in a court. When in such a case, the judgment debt itself carries interest, the penalty otherwise payable is to be reduced by the amount of judgment interest that relates to the unpaid amount.

Clause 56 : Penalties to be alternative to prosecution for certain offences

By clause 56, an amount of penalty will not be payable under the automatic withholding provisions if a prosecution is instituted against the employer for the offence to which the penalty relates. Where an employer has paid an amount of penalty and a prosecution is instituted against that employer for the particular offence, the amount paid is to be refunded or applied by the Registrar in total or partial discharge to a debt due to the Commonwealth by the person under this Bill. If the prosecution is withdrawn, the employer would again become liable to pay penalty amount.

Division 3 - Provisions applicable to employers

Clause 57 : Employers not to prejudice employees because of registrable maintenance liabilities etc.

The purpose of this clause is to protect an employee who is a payer of a registrable maintenance liability from discrimination by his or her employer.

Subclause (1) proposes that an employer who :

- . refuses to employ, or to pay salary or wages to, another person (paragraph (a));
- . dismisses, or threatens to dismiss, another person from the other person's employment (paragraph (b));
- . terminates, or threatens to terminate the payment of salary or wages to another person (paragraph (c));
- . prejudices, or threatens to prejudice, another person in the other person's employment or otherwise in the receipt of salary or wages; (paragraph (d)); or
- . intimidates or coerces, imposes any pecuniary or other penalty on or takes any other disciplinary action in relation to, another person; (paragraph (e));

because the other person is the payer of a registered maintenance liability (paragraph (f)) or is an employee in relation to whom a notice has been given to the employer under subsection 45(i) (paragraph (g)) is guilty of an offence punishable on conviction by a fine not exceeding \$2000.

Subclause (2) states that in a prosecution for an offence under the previous subclause, it is a defence if the defendant proves, on the balance of probabilities that the action was not motivated (either wholly or in part) by a reason specified in that subclause. However, it is not necessary for the prosecutor to prove the reason for the defendant's action.

By subclause (3) the court may order the payment of compensation to the person for loss or damage suffered as a result of any such discrimination (paragraph (a)). The court may also order the taking of action to remedy or

reduce the loss or damage suffered by the person as a result of the act (e.g. reinstate the employee where he or she has been dismissed) (paragraph (b)). Both paragraphs 57(3)(a) and (b) only arise where the employer is convicted of an offence against subclause (1).

Clause 58 : Employers not to disclose information etc.

This clause places an obligation on employers not to disclose to a second person, any information in relation to an employee who is a payer. A penalty of \$1000 is provided for contravention of this obligation.

Any person who is or has been an employer (paragraph (a)) or a person employed by, or performing services for, an employer (paragraph (b)) shall not ordinarily divulge or communicate to a second person any information in relation to the affairs of a third person disclosed or obtained because of automatic withholding. Information may be disclosed, however, when it is in connection with the carrying on of the employer's affairs

Clause 59 : Records to be kept and preserved by employers

This clause requires an employer to keep records that record and explain all amounts deducted, or required to be deducted, from salary or wages under section 46 and other acts engaged in by the employer, or required to be engaged in by the employer, for the purposes of automatic withholding.

The records must be kept in the English language or, if not in written form (e.g. in computer's memory), be in a form which is readily accessible and convertible into English. The records are to be retained for a period of 7 years.

The Registrar may notify a person that retention of the records is not required. Also, retention of records is not required where the person is a company that has gone into liquidation and has been finally dissolved.

The maximum penalty on conviction for failure to comply with clause 59 is a fine of \$2000.

Clause 60 : Incorrectly keeping records etc.

Subclause 60(1) will make it an offence for an employer, who is required by clause 59 to keep records, to keep them in such a way that they do not correctly record or explain the matters to which they relate. The maximum penalty on conviction for an offence against this subclause is a fine of \$2000.

Subclause (2) of this clause states that it will be a defence if the employer proves on the balance of probabilities that the employer did not know and could not be reasonably expected to have known that the record to which the prosecution relates did not correctly record and explain the matter or act to which the record relates.

Clause 61 : Access to premises etc.

Subclause 61(1) will require that, for automatic withholding purposes, an officer duly authorised by the Registrar be given entry, at all reasonable times, to land or premises, free access at all reasonable times to all books, records and other documents held by any person, and the right to inspect, examine or make copies or extracts therefrom.

By subclause (2) of this clause, an officer is not entitled to remain on land or premises unless a written authority signed by the Registrar is produced on the request of the occupier.

Subclause (3) will require any occupier of land or premises, entered or proposed to be entered by a duly authorised person for the purpose of enabling the effective exercise of the officer's powers under this section, to provide that officer with all reasonable facilities and assistance that the occupier is reasonably capable of providing. The maximum penalty on conviction for failure to comply is a fine of \$1,000.

Clause 62 : Public officer of company

For the purposes of the Income Tax Assessment Act 1936, every company carrying on business or deriving property income in Australia must, unless specifically exempted, at all times have a public officer. The public officer of a company is answerable for the doing of all such things as are required to be done by the company under that Act and, if in default, is liable to the same penalties.

By virtue of the operation of subclause (1), the person who is the public officer of a company for the purposes of the Income Tax Assessment Act 1936 is the public officer of the company for the purposes of this Bill. The address for service of the public officer under that Act is also the address for service under this Bill.

Subclause (2) proposes that service of any document or requisition (e.g. under clause 120) at the address for service of the public officer or on the public officer is sufficient service on the company. If there is not a public officer at any time, service on any person acting or appearing to act in the company's business is sufficient.

The public officer is answerable for the doing of all things as are required to be done by the company under this Bill and, in case of default is liable to the same penalties: subclause (3).

Subclause (4) stipulates that everything required to be done by a public officer in that capacity shall be deemed to have been done by the company.

Subclause (5) provides that this Bill applies in relation to the company as if there were no requirement to appoint a public officer if at any time there is not a public officer.

The company is deemed to be liable jointly with the public officer for any penalty imposed on the public officer as a result of any proceedings taken under this Bill against the public officer: subclause (6).

Subclause (7) qualifies the operation of clause 62 by providing that if the Registrar thinks fit, any notice, process or proceeding under this Bill may, instead of being served on or taken against the public officer, be served on or taken against another officer of the company, any director or secretary, attorney or agent of the company. In such a case, that person has the same liability in relation to the notice, process or proceeding as the company or public officer would have had if it had been given to or taken against the company or public officer.

Clause 63 : Public officer of trust estate

The provisions of this clause, which is complementary to clause 62, are to the same effect and for the same purpose as that clause except they provide for the particular circumstance of a trust estate rather than a company (see earlier notes on clause 62).

Division 4 - Miscellaneous

Clause 64 : Amounts payable under past debts due to Commonwealth

By this clause, amounts payable to the Registrar under this Part are to be debts due to the Commonwealth. The effect of this clause is for amounts deducted by, or deductible by, an employer, under Division 1 as well as penalties payable under Division 2 are all debts due to Commonwealth.

Clause 65 : Application of amounts paid or credited where 2 or more debts due

This clause allows the Registrar to apply amounts received from an employer under this Part - by deduction from salary or wages of employees - against a debt or debts of the employer to the Commonwealth under this Part in whatever manner the Registrar chooses.

Paragraphs (a), (b) and (c) of this clause set out the circumstances in which the operation of this clause will be invoked. They are where -

- . an employer owes 2 or more debts to the Commonwealth - paragraph 65(a);
 - . some amount is paid to, or credited by, the Registrar in satisfaction of all or a part of those debts - paragraph 65(b); and
 - . the total debt of the employer exceeds the amount paid to, or credited by, the Registrar - paragraph 65(c).
- When these circumstances occur, the clause will operate in such a way that the Registrar may -
- . apply the amount paid, or credited in partial discharge of the total debt - paragraph 65(d); and
 - . recover the balance - paragraph 65(e).

The application of the payment or credit by the Registrar under this clause will not be affected by any direction given by or on the employer's behalf.

PART V - PAYMENT AND RECOVERY OF CHILD
SUPPORT DEBTS

Clause 66 : When child support debts due and payable

This clause has general application in relation to a child support debt. It provides the rule for payment, in relation to such a debt, so that where the debt arises in any calendar month, it is due and payable on the seventh day of the following month. By this clause all payers are required to remit their child support debts by the seventh day of each month. For payers who are not employees or who are employees but are not subject to automatic withholding a direct remittance to the Registrar will be required each month. For payers who are employees that are subject to automatic withholding, the deduction by the employer under Part IV of the Bill will discharge those payers liability under this clause : see notes on clause 49 in that Part.

Clause 67 : Penalty for late payment of child support debts

The amount of a child support debt may not always be substantial in terms of its quantum, but it is, of course, always significant to the payee who usually depends on receipt of the amount. While it is customary to provide a late payment penalty for debts to the Commonwealth that are overdue, an interest component may not, in itself, prove to be sufficient incentive for payers to make regular and timely remittances (see notes on paragraph 3(1)(b) of the Bill).

Accordingly, subclause 67(1) establishes a penalty on a person liable to pay a child support debt, where that debt, in relation to a month, is unpaid after the seventh day of the following month, of the greater of -

- . \$20 (paragraph (a)); or
- . a 20% per annum interest component (paragraph (b)).

Subclause (2) formally provides for any amount payable to the Registrar under subclause (1) to be a debt due to the Commonwealth.

Clause 68 : Remission of late payment penalty

This clause will empower the Registrar to remit penalties payable by a person under clause 67 (see notes on that clause).

The authority of the Registrar to remit those penalties (in this clause referred to as "late payment penalty") is restricted to certain circumstances.

Under paragraph (a) the Registrar will be permitted to remit late payment penalty payable by a person if the Registrar is satisfied that the circumstances that led to the delay in payment of the child support debt were not caused by an act or omission of the person and the person has taken reasonable action to mitigate the effects of the circumstances that led to the delay.

Paragraph (b) will authorise the Registrar to remit the late payment penalty, in appropriate cases, notwithstanding that the circumstances which led to the delay in payment of the child support debt were caused by the payer. Remission of the late payment penalty will be possible if the Registrar is satisfied that the payer has made a reasonable attempt to mitigate the effects of those circumstances and that it is fair and reasonable to remit the amount imposed in view of the nature of those circumstances.

By paragraph (c) the Registrar will be able to remit late payment penalty where the Registrar considers that there are other special circumstances to justify that course.

Clause 69 : Reduction of late payment penalty where judgment debt carries interest

Clause 69 will ensure that an amount of penalty for late payment under clause 67 continues to accrue in respect of an unpaid child support debt notwithstanding that judgment for payment of that debt has been given or entered in a court. Where, in such a case, the judgment debt itself carries interest, the penalty otherwise payable is to be reduced by the amount of judgment interest that relates to the unpaid child support debt.

Clause 70 : Apportionment of payment between payees

It is possible that a payer under the Bill will have more than one child support debt (paragraph 70(a)) and for those debts to relate to 2 or more registrable maintenance liabilities but with different payees (paragraph 70(b)). This clause provides a statutory rule to be applied in these cases where an amount is to be paid to, or credited by, the Registrar in respect of those debts (paragraph 70(c)) and the amount to be paid to, or credited by, the Registrar is less than the total debt. For example, a payer owes \$100 for payee A and \$200 for payee B, and only remits \$75 to the Registrar.

By this clause, payee A would receive \$25 and payee B, \$50. In other words, a strict apportionment according to the amount of each payee's debt is to apply in relation to the \$75 paid by the payer. This result is to apply irrespective of any direction given by the payer in relation to the amount of the payment.

Clause 71 : Direct payments to payee

Clause 30 specifically provides for debts payable in relation to an enforceable maintenance liability to be unenforceable by the payee as against the payer since the debt will be a debt due to the Commonwealth.

However, circumstances may arise whereby the payee is, for example, in urgent need of his or her maintenance, and the payer agrees to pay an amount of maintenance directly to the payee. This clause sets out the rules to be followed by the Registrar in such cases.

Under the clause, the Registrar may credit a direct payment to a payee by a payer against the payer's liability to the Commonwealth provided that -

- . the amount received by the payee is intended by both the payer and payee to be in complete or partial satisfaction of the payer's liability to the Registrar (paragraph 71(a)); and
- . the Registrar is satisfied, on receipt of an application by either the payer or payee that credit should be given for the amount, having due regard to the special circumstances of the case (paragraph 71(b)).

Clause 72 : Application of tax overpayments

This clause is an aid to efficient collection of child support debts by the Registrar. It provides, in broad terms, that where an amount is owing to a person under an Act of which the Commissioner of Taxation has the general administration (paragraph 72(a)) and a debt is due to the Commonwealth under this Bill by that person (paragraph 72(b)), the Registrar may apply the amount owing to the person against the amount of the debt. This clause operates notwithstanding anything contained in any Act administered by the Commissioner or any other law of the Commonwealth.

PART VI - PAYMENTS TO PAYEES

This Part contains two Divisions which set out the accounting treatment to be accorded child support debts collected by the Registrar and the rules to be applied to ensure that these moneys are distributed to payees in the most timely manner.

Division 1 of this Part - Establishment and Operation of Trust Account - establishes and governs the operation of the Child Support Trust Account, which will be used to account for amounts collected and distributed by the Registrar. It also recognises the trust nature of moneys to be collected from payers.

Division 2 - Payments to payees - sets out the rules to be applied in paying maintenance collections to payees. Payment will be made, in practice, by the Secretary of the Department of Social Security on the first Wednesday of each month. Generally speaking, all amounts deducted by employers and paid by payers during the payment period will be distributed by the Secretary unless the payment is received in respect of a liability not yet due. Appropriations will be made from the Consolidated Revenue Fund to cover certain shortfalls in remittances by employers and where the Registrar is satisfied that child support deductions have been made from the employees' salary or wages but the employer has failed to remit those deductions to the Registrar by the "closing day" : see earlier notes in subclause 4(1) on this term.

In this way persons dependent on the regular receipt of maintenance will generally not suffer hardship simply because of an employer's non-compliance with the provisions of the Bill.

Division 1 - Establishment and operation of Trust Account

Clause 73 : Establishment etc.

By subclause (1) of this clause, the Child Support Trust Account is created.

By subclause (2), the Child Support Trust Fund is to be a trust account for the purposes of section 62A of the Audit Act 1901. This means that moneys standing to the credit of the Child Support Trust Fund will be deemed to be moneys standing to the credit of the Trust Fund. The Trust Fund is one of the three separate funds that make up the Commonwealth Public Account. The other two funds are the Consolidated Revenue Fund and the Loan Fund.

Clause 74 : Payments into Trust Account

This clause identifies the amounts which, when received by the Registrar, may be paid into the Trust Fund.

Subclause 74(1) provides for payment of the following amounts into that Fund -

- . payments for child support debts from direct payers and employers - paragraph (a);
- . ex-gratia payments made voluntarily by payers for transmission to payees - paragraph (b);
- . amounts collected from overpayments made to persons out of the Trust Fund - paragraph (c); and
- . amounts appropriated from the Consolidated Revenue Fund in relation to unremitted deductions of employers (see later notes on clause 77) and unexplained remittances from employers (see also later notes on subclause 78(3)).

If a payer sends one amount to the Registrar and part only of that amount appears to be an amount covered by subclause (1), then subclause (2) authorises the Registrar to determine the proportion of the total amounts falling within subclause (1). Any determination of the Registrar under this subclause must be in writing.

Clause 75 : Payments out of Trust Account

This clause is complementary to clause 74 in that it specifies the purposes for which moneys standing to the credit of the Trust Account may be applied. They are as follows -

- . to make payments to payees of registered maintenance liabilities under subclause 76(1) - paragraph (a);
- . to pay to payees ex-gratia payments received by the Registrar from payers - paragraph (b);
- . to refund to persons amounts paid into the Trust Account that were not child support debts or other amounts the Registrar was entitled to receive - paragraph (c); and
- . to reimburse the Consolidated Revenue Fund in relation to amounts received from employers and payers in relation to appropriations required by clause 77 or subclause 78(3) (see later notes on that clause and subclause - paragraph (d))

Division 2 - Payments to payees

This Division covers all payments to payees that the Registrar has collected whether by deduction from salary or wages of employees or directly from the payer. It also provides for payments to be made from consolidated revenue in certain circumstances (see later notes in this Division).

Clause 76 : Entitlement of payees to be paid collected amounts

This clause sets out the entitlement of payees to receive maintenance which has been collected by the Registrar on their behalf and specifies a timing mechanism for such payments.

Subclause 76(1) delineates, subject to subclause (2) and subclause 79(2) (see later notes), the entitlement of a payee of a registered maintenance liability to be paid on or before the first Wednesday following the end of each calendar month (referred to as the "current month"), the total of the following amounts -

- . amounts deducted by an employer by means of automatic withholding during the month immediately preceding the current month (referred to as the previous month) (paragraph (a));

- amounts received by the Registrar (other than by means of automatic withholding) in payment of a child support debt during the payment period i.e. the period beginning on the day following the closing day (a defined term in subclause 4(1) : see notes on that subclause) of the previous month and ending on the closing day of the current month (paragraph (b)); and
- to the extent that they have not previously been paid to the payee, any arrears i.e., amounts collected by the Registrar that were deducted by an employer by means of automatic withholding (subparagraph (c)(i)) or received by the Registrar other than by means of automatic withholding (subparagraph (c)(ii)).

Subclause 76(1) also makes it clear that a payee is not entitled to receive any payments in advance, i.e. any amounts that were not due and payable by the payer on the seventh day of the current month.

Subject to the regulations made under the Bill, subclause 76(2) provides that where the regulations prescribe an amount for the purposes of this subclause, a person is not entitled to be paid the amount that that person would normally be entitled to receive because of subclause 76(1) at that time.

The purpose of this subclause is to defer payments of very small amounts of maintenance - e.g. the payer of a registered maintenance liability may only make a payment of 50 cents in a particular month. Although the Registrar would take recovery action for the balance of the child support debt the Registrar would not ordinarily pay over the 50 cents at that time. If the payer had a continuing liability to the Registrar the 50 cents would be included in any subsequent payments made to the payee. If the payer's liability had ceased, the register would pay the 50 cents to the payee.

Clause 77 : Unremitted deductions made by employers

Clause 77 operates to appropriate an amount out of the Consolidated Revenue Fund where the Registrar is satisfied that the employer has made the required child support deductions from salary and wages paid to employees but has failed to pay the deducted amount to the Registrar by the closing date : see notes on clause 76. The appropriated amount will be paid into the Trust Account.

This provision ensures that payees who are relying upon the regular and timely receipt of child support will not suffer hardship where employers do not fulfill their obligations to make payment by the due date. Such employers will be liable for administrative penalties unless the employer is prosecuted for an offence under subclause 47(1).

Clause 78 : Unexplained remittances from employers

This clause operates to reduce, as far as practicable, the inconvenience to payees when an employer does not provide the Registrar with full details of a payment and the Registrar is unable to obtain the required information by the closing date.

Subclause 78(1) provides that this clause applies when an employer has paid an amount to the Registrar but has failed to furnish the full particulars required by paragraph 47(1)(b) and the Registrar is unable to obtain the required details by the closing date.

Subclause 78(2) empowers the Registrar to treat the amount received as the total deductions made by the employer and then to apportion the amounts between the relevant employees on an appropriate basis.

Subclause 78(3) will apply when the total amount expected by the Registrar from an employer (that is the aggregate of the amount expected in respect of each employee) does not exceed the actual amount received from the employer by more than the product of the number of employees and a prescribed amount. In these circumstances an amount will be appropriated from Consolidated Revenue Fund and paid into the Trust Account under paragraph 78(3)(d). The effect of this appropriation will be to ensure payment of the proper amount to payees.

Where an amount is appropriated from Consolidated Revenue Account under paragraph 78(3)(d), the employer, whose failure to furnish information resulted in the appropriation, may be liable for a penalty under clause 53 equal to the amount of the appropriation.

Clause 79 : Overpayments of payees

By subclause 79(1), where the payee is paid an amount under subclause 76(1) and -

- . the payee was not entitled to be paid the amount (paragraph (a)); or
- . because of a variation to the particulars of the entry in the Child Support Register in relation to the liability, the amount is repayable by the Registrar to the payer of the liability (paragraph (b)),

that amount is repayable to the Secretary to the Department of Social Security and is a debt due by the payee to the Commonwealth.

By subclause 79(2) where there is a continuing liability and the payee is entitled to receive further payments under subclause 76(1), the amount of the overpayment may be recovered by reducing each payment by the amount (if any) determined in writing by the Secretary.

PART VII - REVIEW OF DECISIONS

This Part contains two Divisions -

- . Division 1 - Decisions reviewable by the courts; and
- . Division 2 - Decisions reviewable by the Tribunal.

The court to which appeals may be made under Division 1 by parties aggrieved by a decision of the Registrar on an objection to which that Division applies, will be a court exercising jurisdiction under Part VIII of this Bill. These courts will be the same as those exercising jurisdiction under the Family Law Act 1975. These proceedings will therefore afford the same secrecy protection to parties as if the proceedings were instituted under the Family Law Act. It will also allow the Family Court to continue to exercise control over orders made and maintenance agreements registered or approved under that Act.

Division 2 provides for the Administrative Appeals Tribunal to review decisions made by the Registrar in relation to the remission of administrative penalties.

Division 1 - Decisions reviewable by the courtsClause 80 : Notice to be given to payer and payee in relation to decisions reviewable by the courts

Subclause 80(1) requires the Registrar to notify, in writing, the payer and payee of a registrable maintenance liability of the particulars entered in the Child Support Register in respect of the liability as soon as practicable after the liability has been registered or, when a variation has been made to a registered maintenance liability, of the variations made.

By subclause 80(2), the Registrar is required to inform the payer and payee, by a notice in writing, of the decision to delete the entry in the Register. This notice is to be served as soon as practicable after the entry has been deleted.

When the Registrar makes an appealable refusible decision (see notes on that term in subclause 4(1)), except a decision to either disallow an objection or allow it in whole or in part or a decision relating to the recovery of debts owing for at least 6 months, subclause 80(3) operates to require the Registrar to notify both the payer and payee in writing of the decision as soon as practicable after the decision has been made.

Clause 81 : Statement to accompany notices

Subclause 81(1) provides that a notice that has been served on a person under clause 80 will include or be accompanied by a statement advising the person that -

- (a) an objection may be lodged with the Registrar against the decision in respect of which the notice was served; and
- (b) should the person be aggrieved by the Registrar's decision on the objection, the person may lodge an appeal against the decision to a court exercising jurisdiction under this Bill. Such an appeal right is subject to the Family Law Act 1975.

Subclause 81(2) ensures that the failure by the Registrar to furnish the statement required under subclause (1) does not affect the validity of the Registrar's decision on the objection.

Clause 82 : Objections relating to registration

Subclause 82(1) provides a right of objection where the Registrar registers a registrable maintenance liability. A payer or payee that is dissatisfied with the registration of a liability, or with any of the particulars entered in the Register in relation to the liability, may lodge an objection. This objection is required to be lodged within 28 days of the service on him or her of the notice of the particulars that were registered. It must be in writing and it must specify as to whether the objection is against registration or against any of the particulars.

The grounds of the objection are required by subclause 82(2) to be stated fully and in detail.

Subclause 82(3) enables an objection to be made under subclause (1) on the ground that the entry in the Child Support Register is not a registrable maintenance liability.

Subclause 82(4) operates to make it clear that subclause (3) does not imply any limitation of the grounds that may be relied on for objections lodged under subclause (1).

Clause 83 : Objections relating to variations to Child Support Register

Subclause 83(1) provides a right of objection where the Registrar varies particulars already entered in the Child Support Register in respect of a registrable maintenance liability. A payer or payee who is dissatisfied with the variation made by the Registrar to any particulars as they appear in the Register after variation may lodge an objection in writing against the variation made to those particulars. The objection should be lodged within 28 days of the service of the notice of variation to the particulars.

The grounds of the objection are required by subclause 83(2) to be stated fully and in detail.

Subclause 83(3) operates to limit the right of objection to the particulars actually varied and to those particulars that are affected by the variation.

Clause 84 : Objection against deletion of entries from the Child Support Register

Subclause 84(1) provides a right of objection where the Registrar deletes an entry in relation to a registrable maintenance liability from the Child Support Register. A payer or payee who is dissatisfied with the deletion of the entry may lodge an objection against the deletion. The objection must be in writing and should be lodged within 28 days of service of the notice of the deletion of the entry.

The grounds of the objection are required by subclause 84(2) to be stated fully and in detail.

Clause 85 : Objections relating to appealable refusal decisions

Subclause 85(1) provides a right of objection against a decision of the Registrar that is defined as an "appealable refusal decision" in subclause 4(1) : see notes on that definition in that subclause. Decisions in this category are those made by the Registrar relating to the refusal to register a registrable maintenance liability, to vary particulars, to allow credit for a direct payment by a payer to a payee, to determine an objection by either disallowing it or allowing it in whole or in part and to collect certain debts that are unpaid after at least 6 months. A payer or payee who is dissatisfied with the

decision of the Registrar may lodge an objection against these decisions. The objection must be in writing and must be lodged within 28 days of the service of the notice of the decision.

By subclause 85(2) an objection against a decision of the Registrar relating to the collection of child support debts that have been owing for at least 6 months (paragraph (e) of the definition of "appealable refusal decision") may only be lodged by the payee. The objection must be lodged within 28 days of the decision of the Registrar not to take action to recover the debt first comes to the notice of the payee.

The grounds of the objection are required by subclause 85(3) to be stated fully and in detail.

Clause 86 : Registrar to serve copy of grounds of objection on other party

Subclause 86(1) imposes an obligation on the Registrar to serve a copy of the grounds of an objection lodged by a payer on the payee. The Registrar is required to carry out this action forthwith.

Subclause 86(2) mirrors subclause 86(1) in that it requires the Registrar to serve a copy of the grounds of an objection lodged by a payee on the payer forthwith.

Subclause 86(3) allows a person on whom a copy of the grounds of an objection have been served to lodge a notice in writing in opposition or support of the objection. This notice must be lodged with the Registrar within 28 days of the service of the copy of the grounds of the objection.

The grounds of the notice in opposition to or support of the objection are required, by subclause 86(4), to be stated fully and in detail.

Clause 87 : Consideration of objections by Registrar

Subclause 87(1) requires the Registrar to consider both the objection lodged and any notice lodged in opposition or support of the objection. The Registrar is further required to determine the objection by disallowing it or allowing it in whole or in part within 60 days of lodgment.

The Registrar is required, by subclause 87(2), to serve written notice of the decision on the person who lodged the objection and, if a notice of opposition or support was lodged, on the person who lodged the notice.

By subclause 87(3) a statement is to be included with the objection decision informing the recipient that an appeal may be made to a court having jurisdiction under this Bill. This right of appeal is subject to the Family Law Act 1975.

Subclause 87(4) ensures that the validity of the objection decision is not affected by the failure of the Registrar to provide the statement required by subclause (3).

Clause 88 : Appeal against decisions on objections

Subclause 88(1) allows a person who is aggrieved by the Registrar's decision on an objection to appeal against the decision to a court having jurisdiction under this Bill.

Subclause 88(2) operates to limit the right to appeal against a decision of the Registrar concerning the collection of child support debts owing for at least 6 months (see paragraph (e) of the definition of "appealable refusal decision") to the payee under the liability.

Subclause 88(3) recognises that a court hearing an appeal pursuant to subclause 88(1) is subject to constitutional limitations, in that it is not open to the court to consider the merits of an objection decision in the same manner as would the Tribunal under the Administrative Appeals Tribunal Act 1975. Subject to that limitation, however, it is intended that the courts exercising jurisdiction under the Bill should deal with appeals on the widest possible grounds, including, but not limited to, the question whether the decision appealed against was, in all the circumstances, correct, in fact, in law : paragraph (a).

Paragraph (b) of the subclause ensures that a State court exercising jurisdiction under the Bill is not prevented from granting relief by way of an injunction, the grant of a prerogative or statutory writ or the making of a declaratory order.

Clause 89 : Applications for extensions of time

Clause 89 enables an application to be made for an extension of time to be granted for lodging an objection.

Subclause 89(1) allows a person where the time limit for lodging objections has expired to lodge an application for an extension of time with the Registrar. This application must be in writing and must be accompanied by the objection.

By subclause 89(2) it is necessary for the person, in the application for the extension of time, to provide full details of the reasons the objection was not lodged within the 28 day time limit.

Clause 90 : Copy of application for extension of time to be lodged on other party

Clause 90 requires the Registrar to send a copy of the grounds of the application for an extension of time to lodge the objection and the grounds of the accompanying objection to the other party. Both parties will receive notice of the decision where the second party has lodged a notice of opposition or support.

Subclause 90(1) provides for a copy of the grounds of both an application for an extension of time and accompanying objection lodged by a payer to be served on the payee by the Registrar, forthwith. Subclause 90(2) mirrors this provision in that it provides for the immediate service of a copy of the grounds to the payer when the application for an extension of time and objection have been lodged by a payee.

Subclause 90(3) allows the party upon whom a copy of the grounds of each of the application and objection were served to lodge, within 28 days, a notice in opposition or support of the application, the objection or both. By subclause 90(4) the person lodging a notice in opposition or support must provide full details.

Clause 91 : Consideration of applications for extension of time for lodging objections

Clause 91 enables the Registrar to make a decision on the application for an extension of time in which to lodge an objection and confers on the Tribunal power to review the Registrar's decision.

Subclause 91(1) requires the Registrar to consider the application for an extension of time in which to lodge an objection and to either grant or refuse the application within 60 days of its receipt by the Registrar. If the application is granted the Registrar is required to deal with the objection within 60 days from the day the application is refused.

Where the Registrar has not granted or refused an application for an extension of time within 60 days, subclause 91(2) deems the application to be refused.

By subclause 91(3) the Registrar is required to notify the person making the application and any person who lodged a notice in relation to the application of the decision. Where an application is granted subclause 91(4) operates to treat the objection as valid.

Subclause 91(5) confers power on the Administrative Appeals Tribunal to review decisions made by the Registrar on applications for extensions of time to lodge objections. Subclause 91(6) is a standard provision ensuring consistency on the conferral of jurisdiction on the Tribunal.

Clause 92 : Powers of court on appeal

Clause 92 confers on a court hearing an appeal arising from an objection lodged under this Division, the power to make any order it considers appropriate.

Clause 93 : Implementation of decisions

This clause applies when the court has made a decision on a matter referred to it under this Division.

Subclause 93(1) requires the Registrar to take any necessary action to give effect to a decision handed down by a court as soon as the decision is final. Subclause 93(2) sets out the time at which such a decision becomes final. In the case of a decision not made by the Full Court of the Family Court, the decision becomes final when the period during which leave for an appeal against the decision could be made expires. If the decision is one made by the Full Court of the Family Court which is not appealed, the decision becomes final after 30 days if an application for special leave to appeal to the High Court is not made within that 30 day period.

Clause 94 : Pending appeal not to affect registration, etc.

This clause operates to allow the particulars entered in the Child Support Register that relate to a registrable maintenance liability to stand, even though an appeal to a court or a review by the Tribunal relating to the registration of the liability or any of the particulars is in course.

Subclause 94(1) makes it clear that amounts payable under the liability, including penalties, continue to be payable even though the registration or any of the particulars are the subject of an appeal to a court or review by the Tribunal. By subclause 94(2) the entry in the Register is taken to relate to a registrable maintenance liability until a court finds otherwise.

Division 2 - Decisions reviewable by the TribunalClause 95 : Reviewable decisions defined

This clause specifies the decisions of the Registrar that are reviewable by the Tribunal. They are -

- . refusing to remit all or any part of late payment or other penalties imposed on employers for failing to pay amounts deducted by the due date, failing to make the required deductions or failing to furnish full details of payments made to the Registrar - paragraph 95(a); and
- . refusing to remit all or any part of a late payment penalty imposed on a payer - paragraph 95(b).

Clause 96 : Statement to accompany notices

When the Registrar makes a reviewable decision subclause 96(1) requires that the person whose interests are affected be served with written notice. It also requires the Registrar to include with the notice a statement that -

- . the person may lodge an objection against the decision - paragraph (a); and
- . if the person is dissatisfied with the decision on the objection, an application may be made to the Tribunal for a review of the decision - paragraph (b).

This statement is also required to include advice that the person may request a statement of the reasons for the decision under the provisions of section 28 of the Administrative Appeals Tribunal Act 1975, unless subsection 28(4) of that Act precludes such a request being made. Subsection 28(4) operates to deny a person the right to request a statement under section 28 if the person has been informed in writing of the findings on questions of material fact, referring to the evidence or other material on which those findings were based, and the reasons for the decision.

When the Registrar makes a decision on an application of time for lodging any objection (whether the objection decision is reviewable by the courts or the Tribunal), subclause 96(2) requires the Registrar to furnish the person whose interests are affected by the

decision with a statement that, if dissatisfied by the decision, the person may apply to the Tribunal for review. If applicable, the statement is also required to inform the person of the right to request a statement under section 28 of the Administrative Appeals Tribunal Act 1975.

By subclause 96(3) the failure of the Registrar to advise affected persons of their objection and review rights does not invalidate the decision.

Clause 97 : Objections relating to reviewable decisions

This clause provides for a person whose interests are affected by a reviewable decision to lodge an objection against the decision if the person is dissatisfied with the decision. Subclause 97(1) sets out the right to object against the decision and requires lodgment of the objection within 28 days of the service on him or her of notice of the decision. Subclause 97(2) requires the person to provide full details of the grounds of the objection.

Clause 98 : Consideration of objection by Registrar

Subclause 98(1) requires the Registrar to consider the objection and to either disallow it or allow it in full or in part within 28 days of lodgment. In the event that the Registrar does not determine the objection within the 28 days subclause 98(2) deems the objection to have been disallowed by the Registrar at the end of the 28 day period.

By subclause 98(3) the Registrar is required to serve written notice of the decision on the person who lodged the objection. Subclause 98(4) requires the Registrar to furnish a statement with the notice informing the person of the right to apply to the Tribunal for review of the decision. However, subclause 98(5) operates to ensure that failure by the Registrar to provide this statement does not invalidate the decision on the objection.

Clause 99 : Review of decisions on objections

Subclause 99(1) enables applications to be made to the Tribunal for review of decisions made by the Registrar on objections lodged under subclause 98(1). Subclause 99(2) serves the same purpose and is to the same effect as subclause 91(6) : see notes on that subclause.

Clause 100 : Applications for extensions of time

Clause 100 enables an application to be made for an extension of time to be granted for lodging an objection.

Subclause 100(1) allows a person where the time limit for lodging objections has expired to lodge an application for an extension of time with the Registrar. This application must be in writing and must be accompanied by the objection.

By subclause 100(2), it is necessary for the person, in the application for the extension of time, to provide full details of the reasons the objection was not lodged within the 28 day time limit.

Clause 101 : Consideration of applications for extension of time

Subclause 101(1) obliges the Registrar to consider the application for an extension of time to lodge an objection against a reviewable decision and to either grant or refuse the application within 28 days of its receipt. If the application is granted the objection will be treated the same as one lodged within the time limit. If the Registrar neither grants nor refuses to grant the application within the 28 day period, subclause 101(2) deems the application to have been denied as the end of the 28 days. By subclause 101(3) the Registrar is required to serve notice in writing of the decision on the application.

By subclause 101(4) the effect of granting an application is that the objection is treated as a valid objection. An application may be made to the Tribunal under subclause 101(5) for a review of a decision made by the Registrar in relation to the application for an extension of time in which to lodge the objection. Subclause 101(6) serves the same purpose and is to the same effect as subclause 91(6) : see notes on that subclause.

Clause 102 : Implementation of decisions

This clause empowers the Registrar to give effect to the decision of the Tribunal as soon as it becomes final. In the absence of an appeal, these decisions become final when the time for lodging an appeal against the decision expires.

Clause 103 : Pending review not to affect decision

This clause will enable the Registrar collection amount owing in respect of the liability as though no review under this Division was in course.

PART VIII - JURISDICTION OF COURTS

Clause 104 : Jurisdiction of courts under Act

This clause confers jurisdiction on those courts which are to exercise jurisdiction in relation to applications under subclause 44(2) that automatic withholding not apply and in relation to appeals under subclause 88(1) against certain decisions of the Registrar. Those courts are to be the same courts as those which exercise jurisdiction under the Family Law Act 1975.

Subclause 104(1) confers jurisdiction on the Family Court, the Supreme Court of the Northern Territory, and each Family Court of a State in matters arising under sub-sections 44(2) and 88(1). The only existing Family Court of a State is the Family Court of Western Australia.

Subclause 104(2) invests courts of summary jurisdiction in each State with federal jurisdiction and confers jurisdiction on each court of summary jurisdiction in each Territory in relation to matters arising under subclause 44(2) and 88(1).

Subclause 104(3) provides that the Governor-General may, by Proclamation, fix a day on and after which proceedings, in relation to matters arising under subclause 44(2) and 88(1) may not be instituted in, or transferred to, a court of summary jurisdiction of a State or Territory.

Subclause 104(4) provides that any Proclamation made under subclause 104(3) may be expressed to apply in relation or proceedings of a specified class or classes or in respect of the institution of proceedings in or the transfer of proceedings to a court of summary jurisdiction in a specified Part of a State or Territory.

Subclause 104(5) provides that a court of summary jurisdiction which is invested with jurisdiction in matters arising under subclause 44(2) and 88(1) shall not exercise that jurisdiction except in accordance with any Proclamation made under subclause 104(3).

Subclause 104(6) provides that a Proclamation made by the Governor-General may be revoked on and from a specified day. It also provides that on or from the date specified the Child Support Act has effect as if the revoked Proclamation had not been made but this is without prejudice to the jurisdiction of courts before the revocation.

Subclause 104(7) provides that in respect of the conferral of jurisdiction on a court of a Territory that jurisdiction cannot be exercised unless at least one of the parties to proceedings is ordinarily resident in that Territory.

Subclause 104(8) provides that the jurisdiction conferred on, or invested in, a court by section 104 includes jurisdiction in relation to any matter arising under the Child Support Bill in relation to which proceedings are transferred to that court under another law of the Commonwealth (e.g. under section 45 of the Family Law Act 1975).

Subclause 104(9) provides that the jurisdiction conferred on, or invested in, a court by clause 104 is additional to any other jurisdiction conferred on, or invested in that court.

Clause 105 : Application of Family Law Act

Subclause 105(1) provides that the Family Law Act 1975 (other than Part X of that Act which deals with appeals) and the Regulations and Rules made under that Act apply to proceedings under the Child Support Act as if those proceedings were proceedings under the Family Law Act. The Family Law Act and the Regulations and Rules made under it may be modified by those Rules in relation to proceedings under the Child Support Act.

Subclause 105(2) empowers a court to give directions and make orders where any difficulties arise in proceedings under the Child Support Act because of the application to those proceedings of the Family Law Act, Rules and Regulations.

Clause 106 : Appellate jurisdiction of Family Court under Act

Subclause 106(1) provides that the Family Court has jurisdiction with respect to matters arising under subclauses 44(2) and 88(1) in relation to which appeals from the Family Law Court or from courts of summary jurisdiction are instituted under clauses 107 and 110 respectively. The Family Court will also have jurisdiction in relation to applications for leave to appeal from the Family Court or from a court of summary jurisdiction.

Subclause 106(2) provides that in an appeal under clauses 107 and 110, the Family Court shall have regard to the evidence given in the proceedings out of which the appeal arose. The Family Court also has power to draw inferences of fact, and a discretion to receive further evidence on questions of fact. Such further evidence may, under subclause 106(3), be given by affidavit, by oral evidence or in such manner as the Family Court directs.

Clause 107 : Appeals to Family Court under Act

Subclause 107(1) provides that an appeal lies to the Full Court of the Family Court but only with the leave of the Full Court, from a decree of :

- . the Family Court (constituted other than as a Full Court);
- . a Family Court of a State; or
- . the Supreme court of the Northern Territory, (constituted by a single judge).

where those courts are exercising original or appellate jurisdiction under the Bill.

Subclause 107(2) provides for an application for leave to appeal under subclause 107(1) to be made within the time prescribed, or the further time allowed, by the Family Law Rules.

Subclause 107(3) sets out the powers of the Full Court of the Family Court in an appeal to it under the Bill. On such an appeal the Full Court may affirm, reverse or vary the decree that is the subject of the appeal and it may make such decree as it considers ought to have been made in the first instance or it can order a re-hearing of the matter.

Clause 108 : Cases stated

Subclause 108(1) enables the Family Court (other than when constituted as the Full Court), a State Family Court or the Supreme Court of the Northern Territory (when constituted by a single judge) to state a case for the determination of the Full Court of the Family Court where in proceedings under the Child Support Act a question of law arises that the Judge and at least one of the parties wish to have determined by the Full Court.

Subclause 108(2) permits the Full Court in determining cases stated to draw from the facts and documents in the proceedings, any influence whether of fact or law, which could have been drawn from them by the judge at first instance.

Clause 109 : Appeals to High Court

This clause provides that an appeal does not lie to the High Court from a court exercising original or appellate jurisdiction under the Bill except either by special leave of the High Court or on a certificate of a Full Court of the Family Court that an important question of law or of public interest is involved.

Clause 110 : Appeals from courts of summary jurisdiction

This clause provides for appeals from courts of summary jurisdiction exercising jurisdiction under the Bill.

Generally an appeal lies from a court of summary jurisdiction of a State or Territory exercising jurisdiction under the Bill to the Family Court. However in the case of a court of summary jurisdiction of a State that has a State Family Court (that is in Western Australia) the appeal will lie to the Family Court of that State. In the case of a court of summary jurisdiction of the Northern Territory the appeal will lie to the Supreme Court of the Northern Territory : subclause 110(1).

All such appeals from courts of summary jurisdiction can be brought only with the leave of the appellate court : subclause 110(2).

By subclause 110(3), an application for leave to appeal from a court of summary jurisdiction is to be made within the time prescribed, or the further time allowed by the Family Law Rules.

Subclause 110(4) invests a Family Court of a State with jurisdiction with respect to appeals and applications for leave to appeal under the Child Support Act. It also confers this jurisdiction on the Supreme Court of the Northern Territory.

Subclause 110(5) provides that the Governor-General may, by proclamation fix a day on and after which, application may not be made to a Family Court of a State or the Supreme Court of the Northern Territory for leave to appeal from a court of summary jurisdiction exercising jurisdiction under the Child Support Act.

Subclause 110(6) provides that a court hearing an appeal from a court of summary jurisdiction shall proceed by way, of a de novo hearing although it may receive as evidence any record of evidence given in the court of summary jurisdiction. The appellate court is able to make such decrees as it considers appropriate.

When a court grants leave to appeal from a court of summary jurisdiction, the court may refer the appeal to the Full Court of the Family Court : subclause 110(7).

When an appeal is so referred to the Full Court of the Family Court, the Full Court's powers are as follows. It may proceed by way of de nova hearing although it may receive as evidence any record of evidence given in the court of summary jurisdiction. It may order that questions of fact arising in the proceedings be tried by a judge. It may determine questions of law arising in the proceedings and remit the appeal to a judge for a hearing. It may make such decrees as it considers appropriate.

PART IX - MISCELLANEOUS

Clause 111 : Duties of payers

This clause provides certain obligations on payers of an enforceable maintenance liability which are necessary in order that the Registrar be able to effectively administer the Child Support Scheme

By subclause (1) of this clause, a payer who commences work with an employer as an employee is required to notify the Registrar, in the form notified in the Gazette for the purposes of this subclause, of the commencement of his or her employment. This will allow the Registrar to apply the provisions of Part IV of the Bill - COLLECTION BY DEDUCTIONS FROM SALARY OR WAGES - to be considered in relation to the particular payer. The payer has 14 days after commencement of his or her employment to notify the Registrar under this subclause.

All payers are, under subclause (2), required to notify the Registrar, in the approved form, of any change in the payer's name or address. Again, this requirement is to be complied with within 14 days of the change of the payer's name or address.

Subclause (3) of the clause provides an offence for any person who contravenes subclause (1) or (2). A conviction under this subclause carries a fine not exceeding \$1,000. However, it is a defence to a prosecution for an offence against that subclause, if the charged person establishes that notification was made to the Registrar as soon as was reasonably practicable in the circumstances.

Clause 112 : Copies of maintenance orders and agreements to be forwarded to Registrar

This clause provides an important source of information to the Registrar in relation to potential registrable maintenance liabilities.

Subclause 112(1) requires the registrar or other responsible officer of a court that makes, registers or approves certain orders or agreements (as the case requires) to send to the Registrar certified or sealed copies of those orders or agreements. The orders or agreements covered by the subclause are -

- . an order made by, or registered in, a court under the Family Law Act 1975 or a law of a Territory (subparagraph (a)(i)); or
- . a maintenance agreement registered in, or approved by, a court under that Act or law (subparagraph (a)(ii)),

provided that in each case, the order or agreement makes provision in relation to -

- . child maintenance (subparagraph (b)(i)); or
- . spousal maintenance (subparagraph (b)(ii)).

The registrar or other responsible officer is required to send the copies etc. to the Registrar within 28 days after the event referred to in subparagraph (a)(i) or (ii) i.e., the making, registering or approving of the order or agreement, as the case requires.

Subclause 112(2) allows for some flexibility in relation to satisfying the information requirements of this clause. The Registrar may give notice in writing to the registrar or other responsible officer of any court that varies the requirements of subclause (1) in such instances and to the extent the Registrar thinks fit.

Clause 113 : Recovery of debts

This clause will enable the recovery of debts due to the Commonwealth as established by this Bill with the exception of overpayments made to payees (subclause 79(1) : see notes on that subclause).

Firstly, by paragraph 113(a) payments of these debts to the Registrar will be required to be made in the manner and at the place prescribed by regulation. Secondly, the authority to sue for the recovery of these debts in a court of competent jurisdiction is accorded to the Registrar or a Deputy Registrar by the operation of paragraph 113(b).

Clause 114 : Application of payments

This clause will provide for the making of regulations which will enable the Registrar to determine the application of payments, where such payments are not readily applicable to a particular liability under this Bill. However, these regulations will not override or be inconsistent with clause 70 which deals with the apportionment of payment between payees.

Clause 115 : Substituted service

This clause will enable the Registrar, when taking recovery action to serve a document in a case where the Registrar is satisfied that a person is absent from Australia or cannot be found. Service in such a case will be effected by posting the document or a sealed copy thereof to the person's last known private or business address in Australia.

Clause 116 : Evidence

Subclause 116(1) will establish the evidentiary value to be given to a purported copy of an entry in the Child Support Register, being a document produced and signed by the Registrar or a Deputy Registrar.

Such a document will be conclusive evidence of the following :

- . the liability is a registrable maintenance liability (paragraph 116(1)(a));
- . the liability has been registered in the Child Support Register (paragraph 116(1)(b));

the particulars of the liability contained in the document reflect the entry in the Child Support Register (paragraph 116(1)(c)); and

by subparagraph 116(1)(d), the particulars are correct except in cases where the proceedings relate to the liability contained in the Register under Division 1 of Part VII of this Bill.

By subclause 116(2) a produced certificate, signed and dated by the Registrar or a Deputy Registrar, for the purposes of specifying an amount due and payable (on the date of the certificate) being a liability under a specific provision of Part IV of this Bill and the name of the liable person will be prima facie evidence of the matters stated in that certificate.

Clause 117 : Appearance by Registrar etc.

This clause is concerned with appearances by the Registrar or a Deputy Registrar in an action, prosecution or other proceeding under, or arising out of, this Bill. By subclause 117(1), the Registrar or Deputy Registrar may appear personally or be represented by an appropriately enrolled barrister or solicitor or by another person, such as a legally qualified officer, authorised in writing by the Registrar or Deputy Registrar, as the case may be, to appear.

By subclause 117(2), the appearance of a person and that person's statement that he or she appears by authority of the Registrar or a Deputy Registrar will be 'prima facie' evidence of the right to appear.

Clause 118 : Judicial notice of signature

This clause requires judicial notice to be taken of the signature of a person who holds or has held the office of Registrar or Deputy Registrar. This provision will apply to official documents required for the purposes of this Bill.

Clause 119 : False or misleading statements

This clause will make it an offence, punishable by a fine not exceeding \$2,000 upon conviction, for a person to make a statement to an officer or another person for a purpose in connection with the operation of this Bill that is false or misleading in a material particular or which by the omission of some matter, is rendered misleading - subclause 119(1).

By subclause 119(2) it will be a defence if the person proves on the balance of probabilities that he or she did not know and could not reasonably be expected to have known that the statement to which prosecution relates was false or misleading.

Subclause 119(3) gives meaning to the reference to the expression "a statement made to an officer" in subclause 119(1). An officer is a person who exercises power for the purposes of this Bill. Generally, a statement, which is required by or for the purposes of this Bill, can be oral, written, or in any other form.

Clause 120 : Obtaining of information and evidence

Subclause 120(1) will enable the Registrar to require, by notice of writing, any person to furnish specified information in a reasonable time and manner, to attend before the Registrar at a specified time and place which is considered reasonable and answer questions or to produce documents, that the person has the custody or control of at a reasonable time and place as specified by the Registrar.

Those persons who are required to attend before the Registrar may receive reimbursement of expenses incurred in accordance with the levels prescribed in the regulations : subclause 120(2).

Where a person is capable of complying with the requirements of subclause 120(1) and refuses or fails to do so, subclause 120(3) makes that act an offence and if found guilty, the person is punishable by a fine not exceeding \$2,000.

Clause 121 : Order to comply with requirement

Clause 121 will authorise a court, in respect of a person convicted of an offence against paragraph 47(1)(b) or subclause 47(3) or 120(1), including a case when an order under section 19B of the Crimes Act 1914 is made in relation to such person, to order the person, in addition to imposing a penalty or making the order under section 19B of the Crimes Act 1914 on the person, to comply with the requirement that has not been complied with and to do so within a specified time or at a specified place and time - subclause 121(1).

Subclause 121(2) will require an officer to serve on the person, a copy of the order made under subclause 121(1) where the person fails to attend court and the order is not given orally by the court to the person to whom it is addressed.

By subclause 121(3), an order under subclause 121(1) which is contravened, constitutes an offence, which upon conviction, is punishable by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 12 months, or possibly both.

Clause 122 : Right of contribution

Clause 122 will apply in cases where 2 or more persons are liable to pay a debt due to the Commonwealth under this Bill, either jointly or severally, and only one of these persons has either fully or partially paid the liability.

Under this clause the person who contributed towards the debt will be able to recover from the other liable person or persons an amount considered just and equitable by a court of competent jurisdiction.

Clause 123 : Act not taxation law

Under the definition of "taxation law" in section 2 of the Taxation Administration Act 1953, that Act and any other Act of which the Commissioner has the general administration is taken to be a taxation law. One effect of that is the application of various offences and penalties applicable to individuals with obligations and duties under those Acts.

While the Commissioner, as Registrar, has the responsibility for the general administration of the Bill, it is not intended to apply the same level of penalties and offences to individuals under this Bill as apply generally under taxation laws. This clause makes it clear that this Bill is not a "taxation law" (even if it could be so construed) for the purposes of the Taxation Administration Act.

Clause 124 : Application of Act to overseas orders and agreements

This clause is a technical provision which will ensure that the Bill may be applied (subject to such modifications as are prescribed by regulation) in relation to -

- . orders (including interim orders) - subclause 124(1); and
- . maintenance agreements - subclause 124(2)

made under a law of a foreign country that are registered in, or approved by, a court under the Family Law Act 1975 or a law of a Territory.

Clause 125 : Regulations

This clause will authorise the Governor-General to make regulations prescribing matters required or permitted to be prescribed or necessary or convenient to be prescribed for administering the Bill. The clause also provides for the prescription by regulation of penalties not exceeding \$500 for offences against the regulations.