



Child Support (Registration and Collection) Amendment Bill 2011

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Child Support (Registration and Collection) Amendment Bill 2011

Date introduced: 23 March 2011

House: House of Representatives

Portfolio: Human Services

Commencement: The day after Royal Assent.

Links: The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bill's home page, or through <http://www.aph.gov.au/bills/>. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at <http://www.comlaw.gov.au/>.

Purpose

The primary purpose of the Child Support (Registration and Collection) Amendment Bill 2011 (the Bill) is to allow the Child Support Registrar to delegate powers to allow for the outsourcing of functions to specialist services, such as debt collection services.

In addition, the Bill amends a number of criminal penalty provisions to enable offences to be more successfully prosecuted.

Background

Debt collection

The Child Support Agency (CSA) is required to collect outstanding child support debts. This can be pursued in a number of ways. Where a parent refuses to pay child support, the CSA can:

- arrange for an employer to make deductions from wages and salaries
- arrange for Centrelink or the Department of Veterans' Affairs to make deductions from income support payments
- arrange for the Australian Taxation Office to enforce income tax return lodgement to allow accurate assessment of liabilities
- arrange for tax refunds to be redirected to the CSA
- issue Departure Prohibition Orders to prevent departure from Australia until debts are paid, or an arrangement for repayment has been made, and

- engage in litigation for the payment of debts from the assets or income of a debtor.¹

Item 1 of this Bill amends the *Child Support (Registration and Collection) Act 1988* (the Registration and Collection Act) to allow the Child Support Registrar (the Registrar) to delegate his or her powers so as to enhance the ability of the CSA to use specialist debt collection services where necessary.

Deductions by employers

Employers can be issued with a notice by the CSA that requires them to deduct amounts from a contractor an employee's wage or salary where he or she is a child support payer. The employer must send the deducted amount to the CSA so it can be passed on to the payee.

Employers who do not comply with such notices commit an offence and are liable for financial penalties.

The second measure in this Bill is intended to clarify the provisions of the Registration and Collection Act that set out certain offences and penalties, by removing ambiguities, and updating the amounts of penalties in accordance with the *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*.²

Committee consideration

On 12 May 2011 the Bill was referred to the Senate Legal and Constitutional Affairs Committee (the Committee) for report by 7 July 2011. However on 19 May 2011, the Committee reported that 'by unanimous decision, [it had] determined that there are no substantive matters that require examination'.³

Main issues

Delegation of power

The Bill provides the Registrar with a wide power to delegate all, or any, of his or her powers under the Registration and Collection Act to persons both inside, and outside, of the CSA.

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1. Child Support Agency, 2010-12 Compliance Program, p. 18, viewed 6 May 2011, http://www.csa.gov.au/_documents/publications/4525.pdf
 2. Attorney-General, Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers, Canberra, December 2007, viewed 26 May 2011, http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications_GuidetoFramingCommonwealthOffences,CivilPenaltiesandEnforcementPowers
 3. Legal and Constitutional Affairs Committee, *Inquiry into the provisions of the Child Support (Registration and Collection) Amendment Bill 2011*, Senate, Canberra, 19 May 2011, viewed 26 May 2011, http://www.aph.gov.au/Senate/committee/legcon_ctte/child_support/report/index.htm

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Importantly, the *Child Support (Assessment) Act 1989* contains a broad power for the Registrar to delegate his or her power to:

- an officer or employee of the Department
- in accordance with service arrangements, to the CEO or an employee of the Services Delivery Agency, and
- a person engaged by the Registrar for the purposes of Part 6A of the *Child Support (Assessment) Act 1989* which deals with departure determinations.⁴

In addition, a delegation may be made subject to a power of review and alteration by the Registrar, within a period specified in the delegation, of acts done under the delegation.⁵

Under the proposed amendment in item 1 of this Bill, the Registrar will be able to delegate his or her power even more broadly—to an organisation that performs services for the Commonwealth. While the stated intention is to use this power to engage specialist debt collection services, there is the potential for all other functions to be outsourced. Although this new power will be subject to existing subsection 15(2) of the Registration and Collection Act which provides (in similar terms to the *Child Support (Assessment) Act 1989*) that a delegation **may** be made subject to a power of review and alteration by the Registrar, within a period specified in the delegation, of acts done under the delegation—there is **no requirement** for the Registrar to do so.

Offences of strict liability

The Registration and Collection Act contains a number of ‘strict liability’ offences. The Bill maintains the classification of the amended offence provisions as offences of strict liability. A strict liability offence is one where a person is liable without the need to provide negligence or fault. If ‘strictly liable’, a person is liable irrespective of an absence of negligence, or intention, on his or her part.

According to the *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* strict liability offences are appropriate where:

- the offence is not punishable by imprisonment and is punishable by a fine of up to 60 penalty units for an individual
- the punishment of offences not involving fault is likely to significantly enhance the effectiveness of the enforcement regime in deterring offences, and
- there are legitimate grounds for penalising persons lacking ‘fault’, for example because they will be placed on notice to guard against the possibility of any contravention.⁶

Consistent with this position, the Explanatory Memorandum states:

4. Subsections 149(1)–(1A) *Child Support (Assessment) Act 1989*.

5. Subsection 149(2) *Child Support (Assessment) Act 1989*.

6. Attorney-General, op. cit., p. 25.

Strict liability remains appropriate as compliance by a person is not an onerous or difficult obligation and is an action in the control of the employer, and not subject to reliance on actions of third parties. The intention of the provision is to require deduction of child support amounts from employees pay to be paid to the Registrar as child support. Failure to deduct may result in child support not being paid.⁷

Key provisions

Item 1 inserts **new subsection 15(1B)** into the Registration and Collection Act. The new section allows the Registrar to delegate all, or any, of his or her powers under the Registration and Collection Act to a person engaged by:

- the Registrar
- an Agency under the *Public Service Act 1999*
- another Commonwealth authority, or
- an organisation that performs services for the Commonwealth.

The effect of this provision is to allow for all functions usually executed by the Registrar to be open to outsourcing to specialist service providers. The second reading speech and the Explanatory Memorandum both refer to the use of this power to engage specialist debt collection services in order to improve collection of outstanding child support debts. The new section is modelled on similar sections in the social security law and the paid parental leave law. Centrelink already uses this debt collection approach.

Item 5 inserts **new subsection 46(4A)**. The new subsection makes it clear that an employer who does not deduct child support from an employee's pay when required to do so, has committed an offence. This corrects an ambiguity in the legislation which did not make it clear that an employer could commit an offence by failing to take the required course of action. The new subsection maintains the offence as one of strict liability. This is consistent with the existing provisions of subsection 46(1).

Items 2, 8 and 12 repeal penalties which are expressed in dollar amounts to allow for penalties to be expressed as penalty units. At present a penalty unit is equivalent to \$110.⁸

Items 9, 11 and 13 similarly amend sections 47, 59 and 72W to clarify that an offence can be committed by failing to take the required course of action—for example, section 72W deals with failure, by a payer, to produce a Departure Authorisation Certificate issued by the Registrar when attempting to leave Australia.

7. Explanatory Memorandum, Child Support (Registration and Collection) Amendment Bill 2011, paragraph 14.

8. Section 4AA *Crimes Act 1914*.

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