





# **Child Support and Family Assistance Legislation Amendment (Budget and Other Measures) Act 2010**

**No. 65, 2010**

**An Act to amend the law relating to child support  
and family assistance, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Child Support and Family Assistance Legislation Amendment (Budget and Other Measures) Act 2010**

**No. 65, 2010**

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## **An Act to amend the law relating to child support and family assistance, and for other purposes**

*[Assented to 28 June 2010]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Child Support and Family Assistance  
Legislation Amendment (Budget and Other Measures) Act 2010*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| <b>Commencement information</b>   |  |                     |
|---|--|---------------------|
| <b>Column 1</b>   | <b>Column 2</b>  | <b>Column 3</b>     |
| <b>Provision(s)</b>   | <b>Commencement</b>  | <b>Date/Details</b> |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent.  | 28 June 2010        |
| 2. Schedules 1 and 2  | 1 July 2010.   | 1 July 2010         |
| 3. Schedule 3, items 1 to 12  | 1 July 2010.   | 1 July 2010         |
| 4. Schedule 3, items 13 to 15   | Immediately after the commencement of item 6 of Schedule 2 to the <i>Family Assistance Amendment (Further 2008 Budget Measures) Act 2009</i> . | 1 July 2010         |
| 5. Schedule 4, item 1   | 1 July 2010.   | 1 July 2010         |
| 6. Schedule 4, items 2 and 3  | Immediately after the commencement of the provisions covered by table item 2.  | 1 July 2010         |

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Child support income estimates**

### **Part 1—Amendments**

#### *Child Support (Assessment) Act 1989*

##### **1 Subsection 5(1) (at the end of the definition of *adjusted taxable income*)**

Add “and subsections 61(1) and 63(1)”.

##### **2 Subsection 5(1)**

Insert:

*applicable YTD income amount* has the meaning given by subsections 63AF(1) and (2).

##### **3 Subsection 5(1)**

Insert:

*application period* has the meaning given by:

- (a) for an election made under subsection 60(1)—subsection 61(1A); and
- (b) for an election made under subsection 62A(1)—subsection 63(2).

##### **4 Subsection 5(1)**

Insert:

*determined ATI* has the meaning given by paragraph 64AB(2)(a).

##### **5 Subsection 5(1)**

Insert:

*estimated ATI amount* has the meaning given by subsections 64A(3) and 64AD(3).

##### **6 Subsection 5(1)**

Insert:

*income component amounts* has the meaning given by subsection 60(2).

## 7 Subsection 5(1)

Insert:

*income election* means an election made under subsection 60(1) or 62A(1).

## 8 Subsection 5(1)

Insert:

*partial year income amount* has the meaning given by:

- (a) for an election made under subsection 60(1) to which subsection 60(3) applies—step 2 of the method statement in subsection 60(4); and
- (b) for an election made under subsection 62A(1)—step 2 of the method statement in that subsection.

## 9 Subsection 5(1) (definition of *remaining period*)

Repeal the definition, substitute:

*remaining period* has the meaning given by:

- (a) for an election made under subsection 60(1) to which subsection 60(3) applies—step 1 of the method statement in subsection 60(4); and
- (b) for an election made under subsection 62A(1)—step 1 of the method statement in that subsection.

## 10 Subsection 5(1)

Insert:

*start day* for an income election means the day specified in the notice of the income election under subsection 60(8) or 62A(5) as the start day for the income election.

## 11 Subsection 5(1)

Insert:

*underestimated an income amount* has the meaning given by subsections 64AF(2) and (3).

**12 Subsection 43(1)**

Omit “subsection (2)”, substitute “this Part”.

**13 Paragraph 44(1)(d)**

Omit “remaining period (if the parent has made an election under section 60)”, substitute “application period for an income election (if such an election has been made by the parent)”.

**14 Section 55J**

Omit:

- A parent can estimate the amount of his or her adjusted taxable income for days in a child support period.

Substitute:

- A parent can estimate the amount of his or her adjusted taxable income for a year of income.

**15 Paragraphs 56(2)(d) and 57(7)(b)**

Omit “subsection 60(3)”, substitute “paragraph 60(1)(b)”.

**16 Subdivision C of Division 7 of Part 5 (heading)**

Repeal the heading, substitute:

**Subdivision C—Child support income determined by reference to parent’s estimate of adjusted taxable income**

**17 Sections 60 to 60B**

Repeal the sections, substitute:

**60 Parent may elect to estimate his or her adjusted taxable income for a year of income**

- (1) A parent may, before a year of income starts or during a year of income, elect that the parent’s adjusted taxable income for the year of income is to be the amount that applies under subsection (2) or (3) if:

- (a) the parent is to be assessed in respect of the costs of a child of the parent for a day in a child support period; and
- (b) the amount that would apply under that subsection is not more than 85% of:
  - (i) the total of the parent's adjusted taxable income determined in accordance with section 43 for the last relevant year of income for the child support period; or
  - (ii) an amount that the parent declares is the total of the parent's adjusted taxable income for the last relevant year of income for the child support period, and the Registrar is satisfied that the declared amount is correct.

*Estimate for a whole year of income*

- (2) If the parent makes the election under subsection (1) before the year of income starts or on the first day of the year of income, the amount is the total of the following amounts (the **income component amounts**) as estimated by the parent:
  - (a) the parent's taxable income for the year;
  - (b) the parent's reportable fringe benefits total for the year;
  - (c) the parent's target foreign income for the year;
  - (d) the parent's total net investment loss (within the meaning of the *Income Tax Assessment Act 1997*) for the year;
  - (e) the total of the tax free pensions or benefits received by the parent in the year;
  - (f) the parent's reportable superannuation contributions (within the meaning of the *Income Tax Assessment Act 1997*) for the year.

*Estimate for a part of a year of income etc.*

- (3) If the parent makes the election under subsection (1) during the year of income but not on the first day of the year of income:
  - (a) the parent is to use the method in subsection (4) to work out the amount; and
  - (b) the parent is to estimate each income component amount for the parent for the period that:
    - (i) started on the first day of the year of income; and
    - (ii) ended at the end of the day before the start day for the election.

- (4) For the purposes of paragraph (3)(a), the method is as follows:

*Method statement*

- Step 1. Estimate each income component amount for the parent for the period (the *remaining period*):
- (a) starting on the start day for the election; and
  - (b) ending at the end of the last day of the year of income.
- Step 2. Add up those amounts. The result is the *partial year income amount*.
- Step 3. Divide the partial year income amount by the number of days in the remaining period.
- Step 4. Multiply the quotient by 365.

- (5) The start day for the election must be:
- (a) the day on which the parent makes the election; or
  - (b) the first day of a child support period, so long as that day is not before the day referred to in paragraph (a).

*No election if an income amount order is in force*

- (6) Despite subsection (1), a parent may not make an election if an income amount order is in force in relation to:
- (a) the parent; and
  - (b) if the parent were to make such an election—any part of the period that would be the application period for the election.

*How election is made*

- (7) The parent makes the election under subsection (1) by giving notice of it to the Registrar in the manner specified by the Registrar.
- (8) The notice must specify:
- (a) the amount that applies under subsection (2) or (3); and

- (b) if subsection (2) applies—each of the income component amounts estimated by the parent under that subsection; or
- (c) if subsection (3) applies:
  - (i) the day that is the start day for the election; and
  - (ii) each of the income component amounts estimated by the parent under paragraph (3)(b) and under step 1 of the method statement in subsection (4).

## 18 Subsection 61(1)

Repeal the subsection, substitute:

(1) If:

- (a) a parent makes an election under subsection 60(1) relating to a year of income; and
  - (b) the parent is to be assessed in respect of the costs of a child of the parent for a day in a child support period; and
  - (c) the day occurs in the application period for the election;
- then, for the purposes of so assessing the parent, the parent's **adjusted taxable income** is the amount that applies under subsection 60(2) or 60(3).

(1A) The **application period** for an election under subsection 60(1) relating to a year of income is the period that:

(a) starts:

- (i) if the parent made the election before the year of income started or on the first day of the year of income—on the first day of that year of income; or
- (ii) otherwise—on the start day for the election; unless the election is revoked before that day; and

(b) ends:

- (i) at the end of the last day of that year of income; or
- (ii) if the parent revokes the election before that day and makes another election (the **later election**) under subsection 62A(1) relating to the year of income—at the end of the day before the start day for the later election.

## 19 Subsection 61(2)

Omit “child support period”, substitute “application period for the election”.

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## 20 Subsections 61(3) and (4)

Omit “and the child support period”.

## 21 Subsection 62(1)

Repeal the subsection, substitute:

- (1) A parent who has made an income election relating to a year of income may, by notice given to the Registrar, revoke the income election.

Note: If the application period for the income election has started, the parent must make a new election under subsection 62A(1).

Note: The heading to section 62 is altered by inserting “**income**” before “**election**”.

## 22 Subsection 62(3)

Repeal the subsection.

## 23 After section 62

Insert:

### 62A Parent must elect a new estimate of his or her adjusted taxable income for a year of income

- (1) If:
  - (a) under subsection 62(1), a parent revokes an income election (the *earlier election*) relating to a year of income; and
  - (b) at the time of the revocation, the application period for the earlier election has started;

the parent must elect that the parent’s adjusted taxable income for the year of income is to be the amount the parent works out as follows:

*Method statement*

Step 1. Estimate each income component amount for the parent for the period (the *remaining period*):

- (a) starting on the start day for the election made under this subsection; and

**Schedule 1** Child support income estimates  
**Part 1** Amendments

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- (b) ending at the end of the last day of the year of income.
- Step 2. Add up those amounts. The result is the *partial year income amount*.
- Step 3. Divide the partial year income amount by the number of days in the remaining period.
- Step 4. Multiply the quotient by 365.

*Start day*

- (2) Subject to subsection (3), the start day for the election under subsection (1) must be the day on which the parent makes that election.
- (3) If:
- (a) an event affecting the accuracy of an estimate on which the earlier election is based has occurred; and
  - (b) the amount that would be worked out under subsection (1) for an election under that subsection if the start day for that election was the day on which the event occurred is more than:
    - (i) if subsection 60(2) or (3) applied to the earlier election—the amount that applied under that subsection; or
    - (ii) if the earlier election was made under subsection (1) of this section—the amount worked out under that subsection;
- the start day for the election under subsection (1) of this section must be the day on which the event occurred.

*How election is made*

- (4) The parent makes the election under subsection (1) by giving notice of it to the Registrar in the manner specified by the Registrar.
- (5) The notice must specify:
- (a) the amount worked out under subsection (1); and

- (b) the day that is the start day for the election under that subsection; and
- (c) each of the income component amounts estimated by the parent under step 1 of the method statement in that subsection.

## **24 Subsections 63(1) and (2)**

Repeal the subsections, substitute:

(1) If:

- (a) a parent makes an election under subsection 62A(1) relating to the year of income; and
  - (b) the parent is to be assessed in respect of the costs of a child of the parent for a day in a child support period; and
  - (c) the day occurs in the application period for the election;
- then, for the purposes of so assessing the parent, the parent's ***adjusted taxable income*** is the amount worked out under that subsection.

(2) The ***application period*** for an election under subsection 62A(1) relating to a year of income is the period that:

- (a) starts on the start day for the election unless the election is revoked before that day; and
- (b) ends:
  - (i) at the end of the last day of the year of income; or
  - (ii) if the parent revokes the election before that day and makes another election (the ***later election***) under subsection 62A(1) relating to the year of income—at the end of the day before the start day for the later election.

(2A) Subsection (1) has effect subject to an income amount order that applies in relation to the parent and any part of the application period for the later election.

Note: The heading to section 63 is altered by omitting “**revocation**” and substituting “**later election**”.

## **25 Subsection 63(3)**

Omit “and any part of the child support period”.

## **26 Subsection 63(4)**

Omit “section 60”, substitute “subsection 62A(1)”.

**27 Subsection 63(4)**

Omit “and the child support period”.

**28 After section 63**

Insert:

**63AA Registrar may refuse to accept an income election**

(1) If:

- (a) a parent makes an income election to which subsection 60(2) applies; and
- (b) the Registrar is satisfied that the amount worked out under that subsection is less than the amount that the Registrar considers is likely to be the parent’s actual adjusted taxable income for the year of income to which the income election relates;

the Registrar may refuse to accept the income election.

(2) The Registrar may refuse to accept a parent’s income election to which subsection 60(3) applies if the Registrar is satisfied that:

- (a) the partial year income amount for the income election is less than the amount that the Registrar considers is likely to be the parent’s actual adjusted taxable income for the remaining period in relation to the income election; or
- (b) the total of the income component amounts estimated by the parent under paragraph 60(3)(b) for the period referred to in that paragraph is more than the amount that the Registrar considers is likely to be the total of the actual income component amounts for the parent for that period.

(3) If:

- (a) a parent makes an election under subsection 62A(1); and
- (b) the Registrar is satisfied that the partial year income amount for the income election is less than the amount that the Registrar considers is likely to be the parent’s actual adjusted taxable income for the remaining period in relation to the income election;

the Registrar may refuse to accept the income election.

- (4) In making the decision as to whether to refuse to accept the income election, the Registrar:
  - (a) may act on the basis of information that the Registrar has received or obtained as to the financial circumstances of the parent; and
  - (b) may, but is not required to, conduct an inquiry into the matter.
- (5) Except for the purposes of Parts VII, VIIA and VIII of the Registration and Collection Act (dealing with objections and appeals), if the Registrar refuses to accept the income election, the election is taken never to have been made.

### **63AB Notice to be given if Registrar refuses to accept an income election**

- (1) If the Registrar refuses under section 63AA to accept an income election, the Registrar must give written notice of the decision to the parent who sought to make the income election.
- (2) The notice must include, or be accompanied by, a statement to the effect:
  - (a) that the parent may, subject to the Registration and Collection Act, object to the particulars of the assessment in relation to which the parent sought to make the income election; and
  - (b) that if the parent is aggrieved by the decision on the objection, he or she may, subject to that Act, apply to the SSAT for review of the decision.
- (3) A contravention of subsection (2) in relation to a decision does not affect the validity of the decision.

### **Subdivision D—Year to date income amounts**

#### **63AC Parent may elect a new year to date income amount**

- (1) If:
  - (a) either of the following apply:
    - (i) a parent has made an election relating to a year of income under subsection 60(1) to which subsection 60(3) applies;

- (ii) a parent has made an election in relation to a year of income under this subsection; and
  - (b) the parent becomes satisfied that the following amount (the *year to date income amount*) is incorrect:
    - (i) if subparagraph (a)(i) applies—the total of the income component amounts estimated by the parent under paragraph 60(3)(b);
    - (ii) if subparagraph (a)(ii) applies—the amount specified under paragraph (3)(a) of this section in the notice of the election; and
  - (c) sections 64, 64A, 64AC and 64AD do not apply in relation to the parent;  
the parent may elect another amount (the *new amount*) to replace the year to date income amount for the year of income.
- (2) The parent makes the election under subsection (1) by giving notice of it to the Registrar in the manner specified by the Registrar.
- (3) The notice must specify:
- (a) the new amount; and
  - (b) the parent's estimate of each income component amount for the period referred to in paragraph 60(3)(b).

**63AD Registrar may refuse to accept an election of a new year to date income amount**

*Refusal to accept election*

- (1) The Registrar may refuse to accept an election made by a parent under subsection 63AC(1) if the Registrar is satisfied that the amount specified under paragraph 63AC(3)(a) in the notice of the election is more than the amount that the Registrar considers is likely to be the total of the actual income component amounts for the parent for the period referred to in paragraph 60(3)(b).
- (2) In making the decision as to whether to refuse to accept the election, the Registrar:
- (a) may act on the basis of information that the Registrar has received or obtained as to the financial circumstances of the parent; and

- (b) may, but is not required to, conduct an inquiry into the matter.
- (3) Except for the purposes of Parts VII, VIIA and VIII of the Registration and Collection Act (dealing with objections and appeals), if the Registrar refuses to accept the election, the election is taken never to have been made.

*Notice of refusal*

- (4) If the Registrar refuses under subsection (1) to accept a parent's election made under subsection 63AC(1), the Registrar must give written notice of the decision to the parent.
- (5) The notice must include, or be accompanied by, a statement to the effect:
  - (a) that the parent may, subject to the Registration and Collection Act, object to the decision (the *original decision*); and
  - (b) that if the parent is aggrieved by a later decision on the objection to the original decision, he or she may, subject to that Act, apply to the SSAT for review of the later decision.
- (6) A contravention of subsection (5) in relation to a decision does not affect the validity of the decision.

**63AE Registrar may determine a new year to date income amount**

- (1) If:
  - (a) any of the following apply:
    - (i) a parent has made an election relating to a year of income under subsection 60(1) to which subsection 60(3) applies;
    - (ii) a parent has made an election in relation to a year of income under subsection 63AC(1);
    - (iii) the Registrar has made a determination under this subsection in relation to a parent and a year of income; and
  - (b) the Registrar becomes satisfied that the following amount (the *year to date income amount*) is incorrect:

- (i) if subparagraph (a)(i) applies—the total of the income component amounts estimated by the parent under paragraph 60(3)(b);
  - (ii) if subparagraph (a)(ii) applies—the amount specified under paragraph 63AC(3)(a) in the notice of the election;
  - (iii) if subparagraph (a)(iii) applies—the amount specified in the determination;
- the Registrar may determine another amount to replace the year to date income amount for the year of income.
- (2) If the Registrar makes a determination in relation to a parent under subsection (1), the Registrar must give written notice of the determination to the parent.
  - (3) The notice must include, or be accompanied by, a statement to the effect:
    - (a) that the parent may, subject to the Registration and Collection Act, object to the determination; and
    - (b) that if the parent is aggrieved by the decision on the objection, he or she may, subject to that Act, apply to the SSAT for review of the decision.
  - (4) A contravention of subsection (3) in relation to a determination does not affect the validity of the determination.

**63AF Parent's *applicable YTD income amount***

- (1) If:
  - (a) a parent has made an election relating to a year of income under subsection 60(1) to which subsection 60(3) applies; and
  - (b) subsection (2) of this section does not apply in relation to the parent;the total of the income component amounts estimated by the parent under paragraph 60(3)(b) is the parent's ***applicable YTD income amount*** for that year.
- (2) If either or both of the following have occurred:
  - (a) a parent has made one or more elections in relation to a year of income under subsection 63AC(1);

- (b) the Registrar has made one or more determinations under subsection 63AE(1) in relation to a parent and a year of income;  
the parent's *applicable YTD income amount* for the year of income is:
- (c) the amount specified under paragraph 63AC(3)(a) in the notice of such an election, if that election was the last of those elections or determinations to be made; or
- (d) the amount determined in such a determination, if that determination was the last of those elections or determinations to be made.

## **Subdivision E—Amendment of assessments**

### **29 Paragraph 63A(1)(a)**

Repeal the paragraph, substitute:

- (a) those days occur in the application period for an income election that the parent has made; and

Note: The heading to section 63A is altered by inserting “**income**” before “**election**”.

### **30 Subsection 63A(2)**

Omit “the days”, substitute “those days”.

### **31 Subsection 63A(2)**

After “period”, insert “that occur”.

### **32 Subsection 63A(3)**

Omit “the days”, substitute “those days”.

### **33 Subsection 63A(3)**

After “period”, insert “that occur”.

### **34 Paragraph 63B(1)(a)**

Repeal the paragraph, substitute:

- (a) those days occur in the application period for an income election that the parent has made; and

Note: The heading to section 63B is altered by inserting “**income**” before “**election**”.

### **35 Subsection 63B(2)**

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Omit “the days”, substitute “those days”.

**36 Subsection 63B(2)**

After “period”, insert “that occur”.

**37 Subsection 63B(3)**

Omit “the days”, substitute “those days”.

**38 Subsection 63B(3)**

After “period”, insert “that occur”.

**39 Paragraph 63B(3)(a)**

Before “election”, insert “income”.

**40 Subparagraph 63B(3)(b)(i)**

Before “election”, insert “income”.

**41 Paragraph 63C(1)(a)**

Repeal the paragraph, substitute:

- (a) those days occur in the application period for an income election that the parent has made; and

**42 Paragraph 63C(1)(b)**

Before “period”, insert “application”.

**43 Paragraph 63C(1)(c)**

Omit “the days in the period”, substitute “those days”.

**44 Subsection 63C(2)**

Omit “the days in the child support period”, substitute “those days”.

**45 Sections 64 and 64A**

Repeal the sections, substitute:

**Division 7A—Reconciliation of estimates of adjusted taxable income**

**Subdivision A—Reconciliation using a parent’s actual adjusted taxable income**

**64 Reconciliation using a parent’s actual adjusted taxable income—single income election**

- (1) This section applies for the purposes of assessing a parent in relation to the costs of a child of the parent for a day in a child support period if:
  - (a) the day occurs in the application period for an income election relating to a year of income that was made by the parent; and
  - (b) the parent did not make more than one income election relating to the year of income; and
  - (c) the parent’s actual adjusted taxable income for the year of income has been ascertained by the Registrar; and
  - (d) if the Registrar has made a determination under subsection 64AB(1) in relation to the parent—the parent’s actual adjusted taxable income for the year of income is more than the parent’s determined ATI for that year; and
  - (e) if, under section 63A, 63B or 63C, the Registrar has amended an assessment of child support payable by or to the parent—the Registrar determines that this section should apply in relation to the parent.

*Reconciliation—election for a whole year of income*

- (2) Subject to this section, if:
  - (a) subsection 60(2) applied to the income election; and
  - (b) the parent’s actual adjusted taxable income for the year of income is more than the amount that applied under that subsection;the parent’s adjusted taxable income for that year is taken to be, and to have always been, the parent’s actual adjusted taxable income for that year.

*Reconciliation—election for a part of a year of income*

- (3) Subject to this section, if:
- (a) subsection 60(3) applied to the income election; and
  - (b) the difference between:
    - (i) the parent's actual adjusted taxable income for the year of income; and
    - (ii) the parent's applicable year to date income amount for the year of income;is more than the partial year income amount worked out by the parent under subsection 60(4);  
the parent's adjusted taxable income for a day that occurs in the application period for the income election is taken to be, and to have always been, the amount worked out under subsection (4).
- (4) For the purposes of subsection (3), the amount is worked out by:
- (a) dividing the amount worked out under paragraph (3)(b) by the number of days in the remaining period to which the income election related; and
  - (b) multiplying the quotient by 365.

*Income amount orders*

- (5) This section does not apply if an income amount order applies in relation to the parent and any part of the application period for the income election.

**64A Reconciliation using a parent's actual adjusted taxable income—more than one income election**

- (1) This section applies for the purposes of assessing a parent in relation to the costs of a child of the parent for a day in a child support period if:
- (a) the day occurs in the application period for an income election relating to a year of income that was made by the parent; and
  - (b) the parent made more than one income election relating to the year of income; and
  - (c) the parent's actual adjusted taxable income for the year of income has been ascertained by the Registrar; and

- (d) if the Registrar has made a determination under subsection 64AB(1) in relation to the parent—the parent’s actual adjusted taxable income for the year of income is more than the parent’s determined ATI for that year; and
- (e) if, under section 63A, 63B or 63C, the Registrar has amended an assessment of child support payable by or to the parent—the Registrar determines that this section should apply in relation to the parent.

*Reconciliation*

- (2) Subject to this section, if the difference (the **actual ATI amount**) between:
  - (a) the parent’s actual adjusted taxable income for the year of income; and
  - (b) the parent’s applicable year to date income amount (if any) for the year of income;

is more than the parent’s estimated ATI amount for the year of income, then the parent’s adjusted taxable income for a day that occurs in the application period of each income election made by the parent is taken to be, and to have always been, the amount worked out for that income election using the method in subsection (4).

*Estimated ATI amount*

- (3) The parent’s **estimated ATI amount** for the year of income is worked out using the following method:

*Method statement*

- Step 1. For each income election relating to the year of income that had an application period that ended before the last day of the year of income:
  - (a) if subsection 60(2) applied to the income election—divide the amount that applied under that subsection by 365; or
  - (b) otherwise—divide the partial year income amount worked out under subsection 60(4) or 62A(1) by

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the number of days in the remaining period to which the income election related.

- Step 2. For each of those income elections, multiply the result of step 1 by the number of days in the application period for the income election.
- Step 3. Add up each of the amounts worked out under step 2.
- Step 4. Add the result of step 3 and the partial year income amount worked out under subsection 62A(1) for the last income election relating to the year of income that was made by the parent.

*Amount for the purposes of subsection (2)*

- (4) For the purposes of subsection (2), the amount for each income election is worked out using the following method:

*Method statement*

- Step 1. Subtract the parent's estimated ATI amount from the parent's actual ATI amount.
- Step 2. Divide the result by the total number of days in the application periods for each income election relating to the year of income that was made by the parent. The result is the **additional daily rate**.
- Step 3. For each of those income elections, multiply the additional daily rate by the number of days in the application period for the income election. The result is the **underestimated amount** for the income election.
- Step 4. For each of those income elections, add the underestimated amount for the income election and:
- (a) if the income election had an application period that ended before the last day of the year of income—the amount worked out for the income election under step 2 of the method statement in subsection (3); or

- (b) otherwise—the partial year income amount worked out under subsection 62A(1) for the income election.

Step 5. For each of those income elections:

- (a) divide the result of step 4 by the number of days in the application period for the income election; and
- (b) multiply the quotient by 365.

*Income amount orders*

- (5) This section does not apply if an income amount order applies in relation to the parent and any part of an application period for any of the income elections.

**64AA Action by Registrar following reconciliation**

The Registrar is to take such action as is necessary to give effect to section 64 or 64A in relation to a parent (whether by amending any administrative assessment that has been made in relation to the parent or otherwise).

**Subdivision B—Reconciliation using a parent’s determined ATI**

**64AB Registrar to determine a parent’s adjusted taxable income for the purposes of reconciliation**

- (1) If:
- (a) a parent made an income election relating to a year of income; and
- (b) at the end of the period ending 12 months after the end of the year of income, the Registrar has not ascertained the parent’s actual adjusted taxable income for that year;
- the Registrar may determine that an amount that the Registrar considers appropriate is the parent’s adjusted taxable income for that year for the purposes of this Subdivision.

- (2) If the Registrar makes a determination under subsection (1) in relation to a parent:
  - (a) the amount determined is the parent's *determined ATI* for the year of income; and
  - (b) the Registrar must give notice of the determination to the parent.
- (3) The notice must include, or be accompanied by, a statement to the effect:
  - (a) that the parent may, subject to the Registration and Collection Act, object to the particulars of the assessment to which the determination relates; and
  - (b) that if the parent is aggrieved by the decision on the objection, he or she may, subject to that Act, apply to the SSAT for review of the decision.
- (4) A contravention of subsection (3) in relation to a determination does not affect the validity of the determination.

**64AC Reconciliation using a parent's determined ATI—single income election**

- (1) This section applies for the purposes of assessing a parent in relation to the costs of a child of the parent for a day in the child support period if:
  - (a) the day occurs in the application period for an income election relating to a year of income that was made by the parent; and
  - (b) the parent did not make more than one income election relating to the year of income; and
  - (c) the Registrar makes a determination under subsection 64AB(1) in relation to the parent; and
  - (d) if, under section 63A, 63B or 63C, the Registrar has amended an assessment of child support payable by or to the parent—the Registrar determines that this section should apply in relation to the parent.

*Reconciliation—election for a whole year of income*

- (2) Subject to this section, if:
  - (a) subsection 60(2) applied to the income election; and

(b) the parent's determined ATI for the year of income is more than the amount that applied under that subsection;  
the parent's adjusted taxable income for that year is taken to be, and to have always been, the parent's determined ATI for that year.

*Reconciliation—election for a part of a year of income*

- (3) Subject to this section, if:
- (a) subsection 60(3) applied to the income election; and
  - (b) the difference between:
    - (i) the parent's determined ATI for the year of income; and
    - (ii) the parent's applicable year to date income amount for the year of income;is more than the partial year income amount worked out by the parent under subsection 60(4);  
the parent's adjusted taxable income for a day that occurs in the application period for the income election is taken to be, and to have always been, the amount worked out under subsection (4).
- (4) For the purposes of subsection (3), the amount is worked out by:
- (a) dividing the amount worked out under paragraph (3)(b) by the number of days in the remaining period to which the income election related; and
  - (b) multiplying the quotient by 365.

*Income amount orders*

- (5) This section does not apply if an income amount order applies in relation to the parent and any part of the application period for the income election.

**64AD Reconciliation using a parent's determined ATI—more than one income election**

- (1) This section applies for the purposes of assessing a parent in relation to the costs of a child of the parent for a day in a child support period if:
- (a) the day occurs in the application period for an income election relating to a year of income that was made by the parent; and

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- (b) the parent made more than one income election relating to the year of income; and
- (c) the Registrar makes a determination under subsection 64AB(1) in relation to the parent; and
- (d) if, under section 63A, 63B or 63C, the Registrar has amended an assessment of child support payable by or to the parent—the Registrar determines that this section should apply in relation to the parent.

*Reconciliation*

- (2) Subject to this section, if the difference (the **actual ATI amount**) between:
  - (a) the parent’s determined ATI for the year of income; and
  - (b) the parent’s applicable year to date income amount (if any) for the year of income;

is more than the parent’s estimated ATI amount for the year of income, then the parent’s adjusted taxable income for a day that occurs in the application period of each income election made by the parent is taken to be, and to have always been, the amount worked out for that income election using the method in subsection (4).

*Estimated ATI amount*

- (3) The parent’s **estimated ATI amount** for the year of income is worked out using the following method:

*Method statement*

- Step 1. For each income election relating to the year of income that had an application period that ended before the last day of the year of income:
  - (a) if subsection 60(2) applied to the income election—divide the amount that applied under that subsection by 365; or
  - (b) otherwise—divide the partial year income amount worked out under subsection 60(4) or 62A(1) by

the number of days in the remaining period to which the income election related.

- Step 2. For each of those income elections, multiply the result of step 1 by the number of days in the application period for the income election.
- Step 3. Add up each of the amounts worked out under step 2.
- Step 4. Add the result of step 3 and the partial year income amount worked out under subsection 62A(1) for the last income election relating to the year of income that was made by the parent.

*Amount for the purposes of subsection (2)*

- (4) For the purposes of subsection (2), the amount for each income election is worked out using the following method:

*Method statement*

- Step 1. Subtract the parent's estimated ATI amount from the parent's determined ATI.
- Step 2. Divide the result by the total number of days in the application periods for each income election relating to the year of income that was made by the parent. The result is the **additional daily rate**.
- Step 3. For each of those income elections, multiply the additional daily rate by the number of days in the application period for the income election. The result is the **underestimated amount** for the income election.
- Step 4. For each of those income elections, add the underestimated amount for the income election and:
- (a) if the income election had an application period that ended before the last day of the year of income—the amount worked out for the income election under step 2 of the method statement in subsection (3); or

- (b) otherwise—the partial year income amount worked out under subsection 62A(1) for the income election.

Step 5. For each of those income elections:

- (a) divide the result of step 4 by the number of days in the application period for the income election; and
- (b) multiply the quotient by 365.

*Income amount orders*

- (5) This section does not apply if an income amount order applies in relation to the parent and any part of an application period for any of the income elections.

**64AE Action by Registrar following reconciliation**

The Registrar is to take such action as is necessary to give effect to sections 64AC and 64AD in relation to a parent (whether by amending any administrative assessment that has been made in relation to the parent or otherwise).

**Subdivision C—Penalty**

**64AF Penalty if a parent underestimates an income amount**

- (1) A parent is liable to pay the Registrar a penalty if:
- (a) the parent made an income election relating to a year of income; and
  - (b) the parent's actual adjusted taxable income for the year of income has been ascertained by the Registrar; and
  - (c) the parent has underestimated an income amount in making the income election.
- (2) If the parent did not make more than one income election relating to the year of income, the parent has ***underestimated an income amount*** in making the income election if:
- (a) in a case where subsection 60(2) applied to the income election—the parent's actual adjusted taxable income for the

year of income is at least 110% of the amount that applied under that subsection; or

- (b) in a case where subsection 60(3) applied to the income election—the amount worked out by subtracting:
  - (i) the parent’s applicable year to date income amount for the year of income; from
  - (ii) the parent’s actual adjusted taxable income for the year of income;is at least 110% of the partial year income amount worked out by the parent under subsection 60(4).

- (3) If the parent made more than one income election relating to the year of income, the parent has ***underestimated an income amount*** in making the income elections if the amount worked out by subtracting:
  - (a) the parent’s applicable year to date income amount (if any) for the year of income; from
  - (b) the parent’s actual adjusted taxable income for the year of income;is at least 110% of the parent’s estimated ATI amount for the year of income worked out under subsection 64A(3).

#### **64AG Amount of penalty**

- (1) If a parent is liable under subsection 64AF(1) to pay a penalty, the amount of the penalty for each income election made by the parent relating to the year of income is 10% of the difference between:
  - (a) the administrative assessment of child support made under section 64AA in relation to the parent; and
  - (b) the administrative assessment of child support that would have been made if it were based entirely on the amount that applied under subsection 60(2) or (3), or that was worked out under subsection 62A(1).
- (2) The penalty is a debt due to the Commonwealth by the parent and is due and payable on the issue of the administrative assessment of child support made under section 64AA in relation to the parent.

### **64AH Remission of penalty**

- (1) The Registrar may remit the whole or a part of a penalty that a parent who made an income election is liable to pay under subsection 64AF(1) if:
  - (a) the parent underestimated an income amount in making the income election because of an amendment of an Income Tax Assessment Act, or because of a ruling or determination under that Act; or
  - (b) the parent underestimated an income amount in making the income election for some other reason, and the Registrar is satisfied that it would be fair and reasonable in the circumstances to remit the whole or that part of the penalty.
- (2) If the Registrar makes a decision to remit only part of the penalty, or not to remit any part of the penalty, the Registrar must give written notice of the decision to the parent by whom the penalty is, or but for the remission would be, payable.
- (3) The notice must include, or be accompanied by, a statement to the effect:
  - (a) that the parent may, subject to the Registration and Collection Act, object to the decision (the *original decision*); and
  - (b) that if the parent is aggrieved by a later decision on an objection to the original decision, he or she may, subject to that Act, apply to the SSAT for review of the later decision.
- (4) A contravention of subsection (3) in relation to a decision does not affect the validity of the decision.

### **46 Subparagraphs 65A(1)(b)(i) and (ii)**

Repeal the subparagraphs, substitute:

- (i) if subparagraph (ii) does not apply—the parent's adjusted taxable income determined in accordance with section 43 for the last relevant year of income for the child support period;
- (ii) if the day occurs in the application period for an income election made by the parent—the amount that applied under subsection 60(2) or (3), or that was worked out under subsection 62A(1); and

**47 Paragraph 146BA(1)(d)**

Repeal the paragraph, substitute:

(d) subparagraph 65A(1)(b)(ii) were omitted and substituted with the following:

“(ii) if the parent made an election under subsection 146G(1) relating to the child—the amount estimated by the parent under that subsection.”.

***Child Support (Registration and Collection) Act 1988***

**48 Subsection 80(1) (after table item 11)**

Insert:

11A to refuse under subsection 63AD(1) of the parent  
the Assessment Act to accept an  
election made by a parent under  
subsection 63AC(1) of that Act

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11B to make a determination in relation to the parent  
a parent under subsection 63AE(1) of  
the Assessment Act

**49 Subsection 80(1) (table item 12, column headed  
“Decision”)**

Omit “section 64A”, substitute “section 64AH”.

**50 Subsection 110U(1)**

Omit “section 64A”, substitute “section 64AH”.

Note: The heading to section 110U is altered by omitting “**section 64A**” and substituting “**section 64AH**”.

## Part 2—Transitional provisions

### 51 Transitional provision

- (1) This item applies to an election made by a parent if:
  - (a) the election was made under section 60 of the *Child Support (Assessment) Act 1989* (the *CSA Act*) before the commencement of this item; and
  - (b) the first day in a child support period to which the election applies occurs during the period starting on 1 April 2008 and ending on 30 June 2010; and
  - (c) the election has not been revoked before that commencement.
- (2) Despite the repeal of section 60 of the *CSA Act* by this Schedule, the election continues to have effect after that commencement as if that section had not been repealed.
- (3) Despite the amendments made by this Schedule to the *CSA Act*, that Act, as in force immediately before that commencement, continues to apply in relation to the election as if those amendments had not been made.
- (4) Despite subitem (3), section 64 of the *CSA Act*, as in force immediately before that commencement, does not apply in relation to the election unless the Registrar determines, on his or her own initiative or under subitem (6), that it should so apply.
- (5) The parent, or the other parent to whom child support is payable, may request the Registrar to determine that section 64 of the *CSA Act*, as in force immediately before that commencement, applies in relation to the election.
- (6) If a request is made under subitem (5), the Registrar may determine that section 64 of the *CSA Act*, as in force immediately before that commencement, applies in relation to the election.

### 52 Application in relation to Western Australian exnuptial children

- (1) This item applies if, immediately after the commencement of this item, the *Child Support (Assessment) Act 1989* and the *Child Support*
-

*(Registration and Collection) Act 1988*, as amended by this Act, do not extend to Western Australia in relation to the maintenance of exnuptial children because:

- (a) the Parliament of Western Australia has not referred to the Parliament of the Commonwealth the matter of the maintenance of exnuptial children or matters that include that matter; and
  - (b) Western Australia has not adopted those Acts as amended by this Act.
- (2) Item 51 of this Schedule applies in Western Australia, after Western Australia adopts those Acts as amended by this Act, in relation to the maintenance of exnuptial children:
- (a) as if references in that item to the commencement of that item were references to the adoption of those Acts by Western Australia as amended by this Act; and
  - (b) as if the reference in paragraph (1)(b) of that item to 30 June 2010 were a reference to the day before the adoption of those Acts by Western Australia as amended by this Act.

## Schedule 2—Percentage of care

### Part 1—Amendments

#### *A New Tax System (Family Assistance) Act 1999*

##### 1 Subsection 3(1)

Insert:

*application day* has the meaning given by subsections 35K(2) and (3).

##### 2 Subsection 3(1)

Insert:

*care arrangement* in relation to a child means:

- (a) a written agreement between the parents of the child, or between a parent of the child and another person who cares for the child, that relates to the care of the child; or
- (b) a parenting plan for the child; or
- (c) any of the following orders relating to the child:
  - (i) a family violence order within the meaning of section 4 of the *Family Law Act 1975*;
  - (ii) a parenting order within the meaning of section 64B of that Act;
  - (iii) a State child order registered in accordance with section 70D of that Act;
  - (iv) an overseas child order registered in accordance with section 70G of that Act.

##### 3 Subsection 3(1)

Insert:

*care period* has the meaning given by subparagraph 35A(1)(a)(ii) or (2)(b)(ii) or paragraph 35B(1)(a) or (2)(b).

##### 4 Subsection 3(1)

Insert:

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*change of care day* for an individual who cares for a child means:

- (a) if a determination of the individual's percentage of care for the child has been revoked under Subdivision E of Division 1 of Part 3—the first day on which the care of the child that was actually taking place ceased to correspond with the individual's percentage of care for the child under the determination; or
- (b) otherwise—the first day on which the care of the child that was actually taking place ceased to correspond with the individual's extent of care under a care arrangement that applies in relation to the child.

#### **5 Subsection 3(1)**

Insert:

*child support care determination* has the meaning given by paragraph 35T(1)(b).

#### **6 Subsection 3(1) (subparagraph (b)(i) of the definition of *FTB child*)**

Omit “in applying paragraph 22(6A)(b) to child care benefit, the reference in that paragraph”, substitute “in applying Subdivision D of that Division to child care benefit, a reference in that Subdivision”.

#### **7 Subsection 3(1)**

Insert:

*interim period* has the meaning given by subsection 35L(2).

#### **8 Subsection 3(1)**

Insert:

*percentage of care*, in relation to an individual who cares for a child, means the individual's percentage of care for the child that is determined by the Secretary under Subdivision D of Division 1 of Part 3.

#### **9 Subsection 3(1)**

Insert:

*percentage range* has the meaning given by subsection 35P(2).

## 10 Subsection 3(1)

Insert:

*reduced care of a child* has the meaning given by section 35H.

## 11 Subsection 3(1) (paragraph (a) of the definition of *regular care child*)

Repeal the paragraph, substitute:

(a) means an individual:

- (i) who would be an FTB child of the adult but for the operation of section 25 (adult's percentage of care for the child during a care period is less than 35%); and
- (ii) for whom the adult has a percentage of care during a care period that is at least 14%; and

## 12 Subsections 22(6A) to (6D)

Repeal the subsections.

## 13 Subsection 22(7)

Omit "If, under subsection (6A), the Secretary determines that a child was, or will be, in the care of an individual for at least 35% of a period", substitute "If an individual's percentage of care for a child during a care period is at least 35%".

## 14 Subsection 22(7) (note)

Omit "If the Secretary determines that a child was, or will be, in the care of an individual for less than 35% of a period", substitute "If an individual's percentage of care for a child during a care period is less than 35%".

## 15 Section 25

Omit all the words before "the child is taken", substitute "If an individual's percentage of care for a child during a care period is less than 35%,".

Note: The heading to section 25 is replaced by the heading "**Effect of an individual's percentage of care for a child being less than 35%**".

## 16 Section 25A

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Omit all the words before “the child is taken”, substitute “If an individual’s percentage of care for a child during a care period is at least 14% but less than 35%,”.

Note: The heading to section 25A is altered by omitting “**period of care**” and substituting “**care period**”.

### **17 Paragraph 27(2)(b)**

Repeal the paragraph, substitute:

- (b) if the Secretary has determined, under section 35A or 35B, one individual’s percentage of care for the qualifying child during a care period (whether before or after the 2 individuals became members of that couple)—the Secretary is taken to have determined the same percentage to be the other individual’s percentage of care for the child during that period.

### **18 At the end of Division 1 of Part 3**

Add:

#### **Subdivision D—Determination of percentage of care**

##### **35A Determination of percentage of care—child is not in the adult’s care**

###### *Initial determination*

- (1) If:
  - (a) the Secretary is satisfied that an individual (the **adult**) has no care of a child but that:
    - (i) the child is an FTB child of the adult under section 23; or
    - (ii) the child would, under subsection 22(2), (3), (4) or (6), be an FTB child of the adult if there had been, or were to be, a pattern of care for the child over a period (the **care period**) under a care arrangement relating to the child; and
  - (b) the adult, or the partner of the adult, makes or has made a claim under Part 3 of the *A New Tax System (Family Assistance) (Administration) Act 1999* for payment of family

tax benefit in respect of the child for some or all of the days in the care period; and

- (c) the adult is not a partner of at least one other individual who has a pattern of care for the child such that the child was or will be, under subsection 22(2), (3), (4) or (6), an FTB child of the other individual or individuals; and
  - (d) section 35C, 35D or 35G applies in relation to the adult;
- the Secretary must determine the adult's percentage of care for the child during the care period in accordance with that section.

*Determination after revocation*

(2) If:

- (a) the Secretary revokes, under Subdivision E of this Division, a determination of an individual's (the **adult**) percentage of care for a child that was made under this section or section 35B; and
  - (b) the Secretary is satisfied that the adult has no care of the child but that:
    - (i) the child is an FTB child of the adult under section 23; or
    - (ii) the child would, under subsection 22(2), (3), (4) or (6), be an FTB child of the adult if there had been, or were to be, a pattern of care for the child over a period (the **care period**) under a care arrangement relating to the child; and
  - (c) the adult is not a partner of at least one other individual who has a pattern of care for the child such that the child was or will be, under subsection 22(2), (3), (4) or (6), an FTB child of the other individual or individuals; and
  - (d) section 35C, 35D or 35G applies in relation to the adult;
- the Secretary must determine the adult's percentage of care for the child during the care period in accordance with that section.

**35B Determination of percentage of care—child is in the adult's care**

*Initial determination*

(1) If:

- (a) the Secretary is satisfied that there has been, or will be, a pattern of care for a child over a period (the **care period**)
-

such that, for the whole, or for parts (including different parts), of the care period, the child was or will be, under subsection 22(2), (3), (4) or (6), an FTB child of more than one individual; and

- (b) one of those individuals (the **adult**), or the partner of the adult, makes or has made a claim under Part 3 of the *A New Tax System (Family Assistance) (Administration) Act 1999* for payment of family tax benefit in respect of the child for some or all of the days in the care period; and
- (c) the adult is not a partner of at least one of the other individuals referred to in paragraph (a);

the Secretary must determine the adult's percentage of care for the child during the care period.

*Determination after revocation*

(2) If:

- (a) the Secretary revokes, under Subdivision E of this Division, a determination of an individual's (the **adult**) percentage of care for a child that was made under section 35A or this section; and
- (b) the Secretary is satisfied that there has been, or will be, a pattern of care for the child over a period (the **care period**) such that, for the whole, or for parts (including different parts), of the care period, the child was or will be, under subsection 22(2), (3), (4) or (6), an FTB child of the adult and at least one other individual; and
- (c) the adult is not a partner of at least one of those other individuals;

the Secretary must determine the adult's percentage of care for the child during the care period.

*Percentage of care*

- (3) The percentage determined under subsection (1) or (2) must be a percentage that corresponds with the actual care of the child that the Secretary is satisfied that the adult has had, or will have, during the care period.
- (4) Despite subsection (3), if section 35C, 35D or 35G applies in relation to the adult, the Secretary must determine the adult's

percentage of care under subsection (1) or (2) in accordance with that section.

**35C Percentage of care if action taken to ensure that a care arrangement in relation to a child is complied with**

- (1) This section applies in relation to an individual (the *adult*) if:
  - (a) a care arrangement applies in relation to a child; and
  - (b) the Secretary is satisfied that the actual care of the child that the adult has had, or will have, during a care period does not comply with the extent of care of the child that the adult should have had, or is to have, under the care arrangement during the care period (which may be nil); and
  - (c) an individual who has reduced care of the child has taken reasonable action to ensure that the care arrangement is complied with.

Note: This section does not apply in certain circumstances, see section 35F.

- (2) The Secretary must determine, under section 35A or 35B, 2 percentages of care in relation to the adult.
- (3) The first percentage of care is to be a percentage that corresponds with the extent of care of the child that the adult should have had, or is to have, under the care arrangement during the care period (which may be nil).
- (4) The second percentage of care is to be:
  - (a) if section 35A applies in relation to the adult—0%; or
  - (b) if section 35B applies in relation to the adult—a percentage that corresponds with the actual care of the child that the Secretary is satisfied that the adult would have during the care period if the action referred to in paragraph (1)(c) were not to succeed.

**35D Percentage of care if action taken to make a new care arrangement in relation to a child**

- (1) This section applies in relation to an individual (the *adult*) if:
  - (a) a care arrangement (the *current care arrangement*) applies in relation to a child; and

- (b) the Secretary is satisfied that the actual care of the child that the adult has had, or will have, during the care period does not comply with the extent of care of the child that the adult should have had, or is to have, under the care arrangement during the care period (which may be nil); and
- (c) an individual who has reduced care of the child:
  - (i) has not taken reasonable action to ensure that the current care arrangement is complied with; but
  - (ii) has taken reasonable action to make another care arrangement (the *new care arrangement*) in relation to the child; and
- (d) the Secretary is satisfied that, if the new care arrangement were to be made, the extent of care that the individual who has reduced care of the child would have under that arrangement during the care period would be:
  - (i) more than the actual care of the child that the Secretary is satisfied that the individual has had, or will have, during that period; but
  - (ii) less than the extent of care of the child that the individual should have had, or is to have, under the current care arrangement during that period; and
- (e) the Secretary is satisfied that special circumstances exist in relation to the individual who has reduced care of the child.

Note: This section does not apply in certain circumstances, see section 35F.

- (2) The Secretary must determine, under section 35A or 35B, 2 percentages of care in relation to the adult.
- (3) The first percentage of care is to be a percentage that corresponds with the extent of care of the child that the adult would have under the new care arrangement during the care period if it were to be made.
- (4) The second percentage of care is to be:
  - (a) if section 35A applies in relation to the adult—0%; or
  - (b) if section 35B applies in relation to the adult—a percentage that corresponds with the actual care of the child that the Secretary is satisfied that the adult would have during the care period if the new care arrangement were not to be made.

**35E Application of sections 35C and 35D in relation to claims for family tax benefit for a past period**

*Initial determination*

- (1) If:
- (a) the Secretary is required by section 35A or 35B to determine an individual's percentage of care for a child; and
  - (b) subsection 35A(1) or 35B(1) applies; and
  - (c) the claim referred to in paragraph 35A(1)(b) or 35B(1)(b) is a claim for payment of family tax benefit for a past period;
- sections 35C and 35D apply in relation to the individual as if the determination were being made on the first relevant day of the past period.

*Determination after revocation*

- (2) If:
- (a) the Secretary is required by section 35A or 35B to determine (the *new determination*) an individual's percentage of care for a child; and
  - (b) subsection 35A(2) or 35B(2) applies; and
  - (c) the determination (the *earlier determination*) referred to in paragraph 35A(2)(a) or 35B(2)(a) relates to a claim for payment of family tax benefit for a past period;
- sections 35C and 35D apply in relation to the individual as if the new determination were being made on the relevant day after the revocation of the earlier determination.

**35F Sections 35C and 35D do not apply in certain circumstances**

- (1) Sections 35C and 35D do not apply in relation to an individual if:
- (a) subsection 35A(1) or 35B(1) applies; and
  - (b) either:
    - (i) if the claim referred to in paragraph 35A(1)(b) or 35B(1)(b) is a claim for payment of family tax benefit for a past period—the first day of the past period is 14 weeks or more after the change of care day for the individual; or

- (ii) otherwise—the day on which the claim referred to in that paragraph is or was made is 14 weeks or more after the change of care day for the individual.
- (2) If the Secretary is satisfied that special circumstances exist in relation to an individual who has reduced care of the child, the Secretary may determine that subsection (1) applies as if the reference to 14 weeks in subparagraph (1)(b)(i) or (ii) were a reference to such longer period as the Secretary determines to be appropriate.
- (3) The period determined under subsection (2) must not be more than 26 weeks.

### **35G Percentage of care if claim is made for payment of family tax benefit because of the death of a child**

- (1) This section applies in relation to an individual (the *adult*) if:
  - (a) the adult, or the partner of the adult, has made a claim for payment of family tax benefit by single payment/in substitution because of the death of another individual; and
  - (b) the claim relates to a child who has died; and
  - (c) a determination (the *earlier determination*) of the adult's percentage of care for the child applied, immediately before the child's death, in relation to a claim by the adult or the partner for payment of family tax benefit by instalment.
- (2) The Secretary must determine, under section 35A or 35B, the adult's percentage of care for the child to be the percentage of care that applied under the earlier determination immediately before the child's death.

### **35H When an individual has *reduced care of a child***

An individual has *reduced care of a child* if:

- (a) a care arrangement applies in relation to the child; and
- (b) the individual should have had, or is to have, an extent of care of the child under the care arrangement during a care period; and
- (c) the Secretary is satisfied that the actual care of the child that the individual has had, or will have, during the care period is less than that extent of care.

### **35J Working out actual care, and extent of care, of a child**

- (1) The actual care of a child that an individual has had, or will have, during a care period may be worked out based on the number of nights that the Secretary is satisfied that the child was, or will be, in the care of the individual during the care period.
- (2) The extent of care of a child that an individual should have had, or is to have, under a care arrangement during a care period may be worked out based on the number of nights that the child should have been, or is to be, in the care of the individual during the care period under the care arrangement.
- (3) For the purposes of this section, a child cannot be in the care of more than one individual at the same time.
- (4) This section does not limit section 35B, 35C, 35D or 35H.

### **35K Days to which the percentage of care applies if sections 35C and 35D did not apply in relation to an individual etc.**

- (1) If:
  - (a) a determination of an individual's percentage of care for a child during a care period is made under section 35A or 35B; and
  - (b) either of the following apply:
    - (i) sections 35C and 35D did not apply in relation to the individual;
    - (ii) section 35G applied in relation to the individual;the percentage of care applies on and from the application day unless a revocation of the determination under Subdivision E of this Division takes effect.
- (2) If subsection 35A(1) or 35B(1) applies in relation to the determination, the *application day* is:
  - (a) if:
    - (i) the claim referred to in paragraph 35A(1)(b) or 35B(1)(b) is a claim for payment of family tax benefit by single payment/in substitution because of the death of another individual; and
    - (ii) the claim relates to a child who has died;

the day on which the claim referred to in that paragraph is or was made; or

- (b) otherwise—the first day of the care period.
- (3) If subsection 35A(2) or 35B(2) applies in relation to the determination, the ***application day*** is the first day of the care period that begins after the revocation of the determination referred to in paragraph 35A(2)(a) or 35B(2)(a) takes effect.

**35L Days to which the percentage of care applies if section 35C or 35D applied in relation to an individual**

- (1) If:
  - (a) a determination of an individual's percentage of care for a child is made under section 35A or 35B; and
  - (b) section 35C or 35D applied in relation to the individual;then:
  - (c) the percentage of care referred to in subsection 35C(3) or 35D(3) applies during the interim period for the determination unless a revocation of the determination under Subdivision E of this Division takes effect; and
  - (d) the percentage of care referred to in subsection 35C(4) or 35D(4) applies after the end of the interim period for the determination unless a revocation of the determination under Subdivision E of this Division takes effect.
- (2) The ***interim period*** for the determination:
  - (a) starts on the application day for the determination; and
  - (b) ends at the end of the earliest of the following days:
    - (i) the day specified by the Secretary;
    - (ii) if section 35C applied in relation to the individual—the day before the day on which the action referred to in paragraph 35C(1)(c) ends;
    - (iii) if section 35D applied in relation to the individual—the day before the day on which the action referred to in subparagraph 35D(1)(c)(ii) ends;
    - (iv) if a care arrangement in relation to the child begins to apply on a day after the application day for the determination—the day before the day on which the care arrangement begins to apply.

- (3) The day specified by the Secretary under subparagraph (2)(b)(i) must be the last day in the 14 week period, or such other longer period as is specified under subsection (4), that starts on the change of care day for the individual.
- (4) If the Secretary is satisfied that special circumstances exist in relation to the individual who has reduced care of the child, the Secretary may specify a period of up to 26 weeks for the purposes of subsection (3).

### **35M Rounding of a percentage of care**

If an individual's percentage of care determined under this Subdivision is not a whole percentage:

- (a) if the percentage is greater than 50%—the percentage is rounded up to the nearest whole percentage; and
- (b) if the percentage is less than 50%—the percentage is rounded down to the nearest whole percentage.

### **35N Guidelines about the making of determinations**

- (1) The Secretary may, by legislative instrument, make guidelines relating to the making of determinations under this Subdivision.
- (2) In making a determination under this Subdivision, the Secretary must have regard to any guidelines in force under subsection (1).

### **Subdivision E—Revocation of determination of percentage of care**

#### **35P Determination must be revoked if there is a change to the individual's shared care percentage etc.**

- (1) If:
  - (a) a determination of an individual's percentage of care (the *existing percentage of care*) for a child has been made under section 35A or 35B; and
  - (b) if section 35C or 35D applied in relation to the individual—the interim period for the determination has ended; and
  - (c) the Secretary or the Child Support Registrar is notified, or otherwise becomes aware, that the care of the child that is

actually taking place does not correspond with the individual's existing percentage of care for the child; and

- (d) the Secretary is satisfied:
- (i) that the individual's shared care percentage for the child would change if the Secretary were to determine, under section 35A or 35B, another percentage to be the individual's percentage of care for the child; or
  - (ii) that, if the Secretary were to determine under that section another percentage to be the individual's percentage of care for the child, the other percentage would not be in the same percentage range as the individual's existing percentage of care;

the Secretary must revoke the determination.

Note: The Secretary must make a new determination under section 35A or 35B to replace the revoked determination: see subsection 35A(2) or 35B(2).

- (2) Each of the following is a **percentage range**:
- (a) 0% to less than 14%;
  - (b) 14% to less than 35%;
  - (c) 48% to 52%;
  - (d) more than 65% to 86%;
  - (e) more than 86% to 100%.
- (3) The revocation of the determination takes effect at the end of:
- (a) if the change of care day for the individual occurs during the interim period for the determination—the day on which the interim period ends; or
  - (b) otherwise—the day before the change of care day for the individual.

### **35Q Secretary may revoke a determination of an individual's percentage of care**

- (1) If:
- (a) a determination of an individual's percentage of care (the **existing percentage of care**) for a child has been made under section 35A or 35B; and
  - (b) if section 35C or 35D applied in relation to the individual—the interim period for the determination has ended; and

- (c) the Secretary or the Child Support Registrar is notified, or otherwise becomes aware, that the care of the child that is actually taking place does not correspond with the individual's existing percentage of care for the child; and
  - (d) the Secretary is satisfied that, if the Secretary were to determine, under section 35A or 35B, another percentage to be the individual's percentage of care for the child, the other percentage would not be the same as the individual's existing percentage of care for the child; and
  - (e) section 35P does not apply;
- the Secretary may revoke the determination.

Note: If the Secretary revokes the determination, the Secretary must make a new determination under section 35A or 35B to replace the revoked determination: see subsection 35A(2) or 35B(2).

- (2) If the Secretary revokes the determination, the revocation takes effect at the end of:
  - (a) if the change of care day for the individual occurs during the interim period for the determination—the day on which the interim period ends; or
  - (b) otherwise—the day before the change of care day for the individual.

**35R Secretary may revoke a determination relating to a claim for payment of family tax benefit for a past period**

- (1) If:
  - (a) a determination of an individual's percentage of care for a child has been made under section 35A or 35B; and
  - (b) the determination relates to a claim for payment of family tax benefit for a past period; and
  - (c) if section 35C or 35D applied in relation to the individual—the interim period for the determination has ended;the Secretary may revoke the determination.

Note: If the Secretary revokes the determination, the Secretary must make a new determination under section 35A or 35B to replace the revoked determination: see subsection 35A(2) or 35B(2).

- (2) If the Secretary revokes the determination, the revocation takes effect at the end of:

- (a) if the change of care day for the individual occurs during the interim period for the determination—the day on which the interim period ends; or
- (b) otherwise—the day before the change of care day for the individual.

### **35S Guidelines about the revocation of determinations**

- (1) The Secretary may, by legislative instrument, make guidelines relating to the revocation of determinations under this Subdivision.
- (2) In revoking a determination under this Subdivision, the Secretary must have regard to any guidelines in force under subsection (1).

### **Subdivision F—Percentages of care determined under the child support law**

#### **35T Percentages of care determined under the child support law that apply for family assistance purposes**

- (1) If:
  - (a) the Secretary is required by a provision of Subdivision D of this Division to determine an individual's percentage of care for a child in relation to a claim for payment of family tax benefit; and
  - (b) the Child Support Registrar has determined the individual's percentage of care for the child (the *child support care determination*) under a provision of Subdivision B of Division 4 of Part 5 of the *Child Support (Assessment) Act 1989*; and
  - (c) the child support care determination has not ceased to apply or been revoked;then:
  - (d) the child support care determination has effect, for the purposes of this Act as it applies to such a claim, as if it were a determination of the individual's percentage of care for the child that has been made by the Secretary under a corresponding provision of Subdivision D of this Division; and
  - (e) the individual's percentage of care for the child applies, for the purposes of this Act as it applies to such a claim, in the

same way, and in the same circumstances, in which it would apply if it had been determined by the Secretary under such a provision; and

- (f) the child support care determination may cease to apply, or be revoked, under Subdivision D or E of this Division in the same way, and in the same circumstances, in which a determination made under Subdivision D of this Division may cease to apply, or be revoked.
- (2) This section ceases to apply to the child support care determination if the determination ceases to apply, or is revoked, under Subdivision B or C of Division 4 of Part 5 of the *Child Support (Assessment) Act 1989*.

**35U Reviews of percentages of care under child support law apply for family assistance purposes**

- (1) Subject to subsections (2) and (3), if:
- (a) the Child Support Registrar considers an objection to a decision under Part VII of the *Child Support (Registration and Collection) Act 1988*; and
  - (b) considering the objection involves (wholly or partly) a consideration of a determination that:
    - (i) was made under a provision of Subdivision B of Division 4 of Part 5 of the *Child Support (Assessment) Act 1989*; or
    - (ii) has effect, under section 54K of that Act, as if it were a determination made under such a provision; and
  - (c) the Child Support Registrar's decision on the objection has the effect of varying the determination or substituting a new determination;
- section 35T of this Act applies as if the determination as varied or substituted were the child support care determination referred to in that section.
- (2) Subject to subsection (3), if:
- (a) the SSAT reviews a decision under Part VIIA of the *Child Support (Registration and Collection) Act 1988*; and
  - (b) reviewing the decision involves (wholly or partly) a review of a determination that:

- (i) was made under a provision of Subdivision B of Division 4 of Part 5 of the *Child Support (Assessment) Act 1989*; or
  - (ii) has effect, under section 54K of that Act, as if it were a determination made under such a provision; and
  - (c) the SSAT's decision on the review has the effect of varying the determination or substituting a new determination;
- section 35T of this Act applies as if the determination as varied or substituted were the child support care determination referred to in that section.

(3) If:

- (a) the AAT reviews a decision under the AAT Act; and
  - (b) reviewing the decision involves (wholly or partly) a review of a determination that:
    - (i) was made under a provision of Subdivision B of Division 4 of Part 5 of the *Child Support (Assessment) Act 1989*; or
    - (ii) has effect, under section 54K of that Act, as if it were a determination made under such a provision; and
    - (c) the AAT's decision on the review has the effect of varying the determination or substituting a new determination;
- section 35T of this Act applies as if the determination as varied or substituted were the child support care determination referred to in that section.

### **19 Paragraph 59(1)(a)**

Repeal the paragraph, substitute:

- (a) the Secretary has determined the individual's percentage of care for the child during a care period; and

### **20 Subsection 59(1) (note)**

Repeal the note, substitute:

Note: Paragraph 27(2)(b) deals with the percentage of care in a blended family case.

### **21 Subsection 59(2) (table, heading to Column 1)**

Omit "**determined under subsection 22(6A)**", substitute "**of care**".

***A New Tax System (Family Assistance) (Administration) Act  
1999***

**22 Subsection 3(1)**

Insert:

***care percentage decision*** means a decision to the extent that the decision involves (wholly or partly):

- (a) a determination of an individual's percentage of care for a child that was made, under a provision of Subdivision D of Division 1 of Part 3 of the Family Assistance Act, in relation to a claim for payment of family tax benefit; or
- (b) a determination relating to an individual that has effect, under section 35T of that Act, as if it were a determination made under such a provision.

**23 After subsection 105(4)**

Insert:

(4A) If:

- (a) the review involves (wholly or partly) a review of an original decision that is a care percentage decision; and
- (b) a consideration of an objection to a decision carried out under Part VII of the *Child Support (Registration and Collection) Act 1988* has involved (wholly or partly) the consideration of the determination to which the care percentage decision relates;

the Secretary must not vary the original decision, or set the original decision aside and substitute a new decision, in a way that has the effect of varying the determination or substituting a new determination.

**24 Subsection 109A(1)**

Repeal the subsection, substitute:

- (1) A person affected by a decision (the ***original decision***):
  - (a) that is not a care percentage decision; and
  - (b) that, under section 108, must be reviewed under this section; may apply to the Secretary for review of the original decision.

Note: If an application is made under this section for review of a decision about a person's entitlement to child care benefit, and a decision has also been made about the person's entitlement to child care rebate, that decision about rebate may be automatically reviewed: see Division 5.

- (1A) A person affected by a decision (the *original decision*):
- (a) that is a care percentage decision; and
  - (b) that, under section 108, must be reviewed under this section; may apply to the Secretary, or the Child Support Registrar, for review of the original decision.

## **25 Subsection 109A(2)**

Omit "does so", substitute "makes an application under subsection (1) or (1A)".

## **26 After subsection 109A(2)**

Insert:

- (2A) If:
- (a) the review involves (wholly or partly) a review of an original decision that is a care percentage decision; and
  - (b) a consideration of an objection to a decision carried out under Part VII of the *Child Support (Registration and Collection) Act 1988* has involved (wholly or partly) the consideration of the determination to which the care percentage decision relates;
- the Secretary must not vary the original decision, or set the original decision aside and substitute a new decision, in a way that has the effect of varying the determination or substituting a new determination.

## **27 Paragraph 109A(4)(a)**

Omit "Secretary for review of a decision under subsection (1)", substitute "Secretary or Child Support Registrar for review of a decision under subsection (1) or (1A)".

## **28 Subsection 109A(4)**

Omit "Secretary for review of the decision under subsection (1)", substitute "Secretary or Child Support Registrar for review of the decision under that subsection".

**29 Subsections 109D(1), (2), (3) and (4)**

Omit “subsection 109A(1)”, substitute “section 109A”.

**30 Paragraph 109E(1)(a)**

Omit “to the Secretary, under subsection 109A(1),”, substitute “under section 109A”.

**31 Subsections 109E(2) and (3)**

Omit “subsection 109A(1)”, substitute “section 109A”.

**32 Paragraphs 109G(1)(c) and (2)(c)**

Omit “to the Secretary”.

**33 Paragraph 111(2)(d)**

Omit “or 157 (Secretary requiring”, substitute “, 157 or 159A (Secretary requiring or requesting”.

**34 Subsection 111(3) (definition of *decision reviewer*)**

Omit “subsection 109A(1)”, substitute “section 109A”.

**35 After subsection 113(1)**

Insert:

(1A) If:

- (a) the review involves (wholly or partly) a review of a decision (the *original decision*) that is a care percentage decision; and
- (b) a review of a decision carried out under Part VIIA of the *Child Support (Registration and Collection) Act 1988* has involved (wholly or partly) a review of the determination to which the care percentage decision relates;

the SSAT must not vary the original decision, or set the original decision aside and substitute a new decision, in a way that has the effect of varying the determination or substituting a new determination.

**36 At the end of section 142**

Add:

(5) If:

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- (a) the decision reviewed by the SSAT is a care percentage decision; and
- (b) a review of a decision carried out by the AAT under the *Administrative Appeals Tribunal Act 1975* has involved (wholly or partly) a review of the determination to which the care percentage decision relates;

then, despite section 43 of that Act, the AAT must not vary the decision made by the SSAT, or set that decision aside and substitute a new decision, in a way that has the effect of varying the determination or substituting a new determination.

### **37 At the end of Part 5**

Add:

## **Division 6—Date of effect of reviews under the child support law**

### **152C Date of effect of decisions on objections under the child support law that apply for family assistance purposes**

- (1) This section applies if:
  - (a) a person lodges, under section 80A of the *Child Support (Registration and Collection) Act 1988*, an objection to a care percentage decision (within the meaning of that Act); and
  - (b) the consideration of the objection under that Act involves (wholly or partly) a consideration of a determination that:
    - (i) was made under a provision of Subdivision B of Division 4 of Part 5 of the *Child Support (Assessment) Act 1989*; or
    - (ii) has effect, under section 54K of the *Child Support (Assessment) Act 1989*, as if it were a determination made under such a provision; and
  - (c) the objection was lodged more than 52 weeks after notice of the care percentage decision referred to in paragraph (a) of this subsection was given; and
  - (d) the decision (the *review decision*) on the objection has the effect of varying the determination or substituting a new determination; and
  - (e) the determination as varied or substituted has effect, under sections 35T and 35U of the Family Assistance Act, as if it

were a determination made under Subdivision D of Division 1 of Part 3 of that Act.

- (2) The date of effect of the review decision, to the extent that it has the effect referred to in paragraph (1)(d), is:
  - (a) unless paragraph (b) of this subsection applies—the date that would give full effect to the review decision; or
  - (b) if the date referred to in paragraph (a) of this subsection is earlier than the first day of the income year before the income year in which the objection was lodged—that first day.
- (3) If the Secretary is satisfied that there are special circumstances that prevented the objection from being lodged within the period referred to in paragraph (1)(c), the Secretary may determine that subsection (1) applies as if the reference to 52 weeks in that paragraph were a reference to such longer period as the Secretary determines to be appropriate.

**152D Date of effect of SSAT reviews under the child support law that apply for family assistance purposes**

- (1) This section applies if:
  - (a) a person applies to the SSAT, under section 89 of the *Child Support (Registration and Collection) Act 1988*, for review of a decision (the **original decision**); and
  - (b) the review of the original decision involves (wholly or partly) a review of a determination that:
    - (i) was made under a provision of Subdivision B of Division 4 of Part 5 of the *Child Support (Assessment) Act 1989*; or
    - (ii) has effect, under section 54K of the *Child Support (Assessment) Act 1989*, as if it were a determination made under such a provision; and
  - (c) the application for review of the original decision was made more than 13 weeks after notice of the original decision was given; and
  - (d) the decision (the **review decision**) on the review has the effect of varying the determination or substituting a new determination; and
  - (e) the determination as varied or substituted has effect, under sections 35T and 35U of the Family Assistance Act, as if it

were a determination made under Subdivision D of Division 1 of Part 3 of that Act.

- (2) The date of effect of the review decision, to the extent that it has the effect referred to in paragraph (1)(d), is:
  - (a) unless paragraph (b) of this subsection applies—the date that would give full effect to the review decision; or
  - (b) if the date referred to in paragraph (a) of this subsection is earlier than the first day of the income year before the income year in which the application for review was made—that first day.
- (3) If the Secretary is satisfied that there are special circumstances that prevented the application for review from being made within the period referred to in paragraph (1)(c), the Secretary may determine that subsection (1) applies as if the reference to 13 weeks in that paragraph were a reference to such longer period as the Secretary determines to be appropriate.

### **38 After section 159**

Insert:

#### **159A Requesting information for the purposes of a care percentage determination under the child support law**

The Secretary may request a person:

- (a) to give information; or
- (b) to produce a document that is in the person's custody or under the person's control;

to a specified agency if the Secretary considers that the information or document may be relevant to the making or revoking of a determination under Subdivision B or C of Division 4 of Part 5 of the *Child Support (Assessment) Act 1989*.

### ***Child Support (Assessment) Act 1989***

#### **39 Subsection 5(1)**

Insert:

***application day*** has the meaning given by subsection 54B(2).

**40 Subsection 5(1)**

Insert:

*care arrangement* has the same meaning as in the Family Assistance Act.

**41 Subsection 5(1) (definition of *care period*)**

Omit “section 48”, substitute “paragraph 49(1)(a), subparagraph 49(1)(b)(ii), paragraph 50(1)(a) or subparagraph 50(1)(b)(ii)”.

**42 Subsection 5(1)**

Insert:

*change of care day* for a responsible person for a child means:

- (a) if a determination of the responsible person’s percentage of care for the child has been revoked under Subdivision C of Division 4 of Part 5—the first day on which the care of the child that was actually taking place ceased to correspond with the responsible person’s percentage of care for the child under the determination; or
- (b) otherwise—the first day on which the care of the child that was actually taking place ceased to correspond with the responsible person’s extent of care under a care arrangement that applies in relation to the child.

**43 Subsection 5(1) (definition of *court order*)**

Repeal the definition.

**44 Subsection 5(1)**

Insert:

*Family Assistance Administration Act* means the *A New Tax System (Family Assistance) (Administration) Act 1999*.

**45 Subsection 5(1)**

Insert:

*family assistance care determination* has the meaning given by paragraph 54K(1)(b).

**46 Subsection 5(1)**

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Insert:

*Family Assistance Secretary* means the Secretary of the Department administered by the Minister who administers Division 1 of Part 3 of the Family Assistance Act.

#### **47 Subsection 5(1)**

Insert:

*interim period* has the meaning given by subsection 54C(2).

#### **48 Subsection 5(1) (definition of *percentage of care*)**

Repeal the definition, substitute:

*percentage of care*, in relation to a responsible person for a child, means the responsible person's percentage of care for the child that is determined by the Registrar under Subdivision B of Division 4 of Part 5.

#### **49 Subsection 5(1)**

Insert:

*reduced care of a child* has the meaning given by section 54.

#### **50 Subsection 5(1)**

Insert:

*responsible person* for a child means a parent or non-parent carer of the child.

#### **51 Subsections 5(2) and (3)**

Repeal the subsections, substitute:

*Definitions of regular care and shared care*

- (2) A person has *regular care* of a child if the person's percentage of care for the child during a care period is at least 14% but less than 35%.
- (3) A person has *shared care* of a child if the person's percentage of care for the child during a care period is at least 35% but not more than 65%.

**52 Section 35 (method statement, step 4)**

Omit “section 48”, substitute “Subdivision B of Division 4 of Part 5”.

**53 Subsections 39(1) and 40(1) (method statements, step 2)**

Omit “section 48”, substitute “Subdivision B of Division 4 of Part 5”.

**54 Section 46 (method statement, step 2)**

Omit “section 48”, substitute “Subdivision B of Division 4 of Part 5”.

**55 Division 4 of Part 5**

Repeal the Division, substitute:

**Division 4—Percentage of care**

**Subdivision A—Preliminary**

**48 Simplified outline**

The following is a simplified outline of this Division:

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| <ul style="list-style-type: none"><li>• A responsible person’s percentage of care for a child during a care period is the percentage of care determined by the Registrar under Subdivision B of this Division.</li><li>• A responsible person’s percentage of care for a child is used in section 55C to work out the responsible person’s cost percentage for the child.</li></ul> |
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**Subdivision B—Determination of percentage of care**

**49 Determination of percentage of care—responsible person has had etc. no pattern of care for a child**

- (1) This section applies if:
- (a) either of the following applies:
- (i) an application is made under section 25 or 25A for a parent to be assessed in respect of the costs of the child;

- (ii) a parent is taken under section 73A to have had a relevant dependent child from a day specified in that section;  
and the Registrar is satisfied that a responsible person for the child has had, or is likely to have, no pattern of care for the child during such period (the *care period*) as the Registrar considers to be appropriate having regard to all the circumstances; or
  - (b) the Registrar:
    - (i) revokes, under Subdivision C of this Division, a determination of a responsible person's percentage of care for a child that was made under this section or section 50; and
    - (ii) is satisfied that the responsible person has had, or is likely to have, no pattern of care for the child during such period (the *care period*) as the Registrar considers to be appropriate having regard to all the circumstances.
- (2) The Registrar must determine the responsible person's percentage of care for the child during the care period.
  - (3) The percentage of care determined under subsection (2) must be 0%, unless section 51 or 52 applies in relation to the responsible person.

**50 Determination of percentage of care—responsible person has had etc. a pattern of care for a child**

- (1) This section applies if:
  - (a) either of the following applies:
    - (i) an application is made under section 25 or 25A for a parent to be assessed in respect of the costs of the child;
    - (ii) a parent is taken under section 73A to have had a relevant dependent child from a day specified in that section;  
and the Registrar is satisfied that a responsible person for the child has had, or is likely to have, a pattern of care for the child during such period (the *care period*) as the Registrar considers to be appropriate having regard to all the circumstances; or
  - (b) the Registrar:

- (i) revokes, under Subdivision C of this Division, a determination of a responsible person's percentage of a care for a child that was made under section 49 or this section; and
  - (ii) is satisfied that the responsible person has had, or is likely to have, a pattern of care for the child during such period (the *care period*) as the Registrar considers to be appropriate having regard to all the circumstances.
- (2) The Registrar must determine the responsible person's percentage of care for the child during the care period.
- (3) The percentage determined under subsection (2) must be a percentage that corresponds with the actual care of the child that the Registrar is satisfied that the responsible person has had, or is likely to have, during the care period.
- (4) Subsection (3) does not apply if section 51 or 52 applies in relation to the responsible person.

**51 Percentage of care if action taken to ensure that a care arrangement in relation to a child is complied with**

- (1) This section applies if:
  - (a) the Registrar is required by section 49 or 50 to determine a responsible person's percentage of care for a child during a care period; and
  - (b) a care arrangement applies in relation to the child; and
  - (c) the Registrar is satisfied that the actual care of the child that the responsible person has had, or is likely to have, during the care period does not comply with the extent of care of the child that the person should have had, or is to have, under the care arrangement during that period (which may be nil); and
  - (d) a person who has reduced care of the child has taken reasonable action to ensure that the care arrangement is complied with.

Note: This section does not apply in certain circumstances: see section 53.

- (2) The Registrar must determine, under section 49 or 50, 2 percentages of care in relation to the responsible person.

- (3) The first percentage of care is to be a percentage that corresponds with the extent of care of the child that the responsible person should have had, or is to have, under the care arrangement during the care period (which may be nil).
- (4) The second percentage of care is to be:
  - (a) for a determination under section 49—0%; or
  - (b) for a determination under section 50—a percentage that corresponds with the actual care of the child that the Registrar is satisfied that the responsible person would be likely to have during the care period if the action referred to in paragraph (1)(d) were not to succeed.

## **52 Percentage of care if action taken to make a new care arrangement in relation to a child**

- (1) This section applies if:
  - (a) the Registrar is required by section 49 or 50 to determine a responsible person's percentage of care for a child during a care period; and
  - (b) a care arrangement (the *current care arrangement*) applies in relation to the child; and
  - (c) the Registrar is satisfied that the actual care of the child that the responsible person has had, or is likely to have, during the care period does not comply with the extent of care of the child that the person should have had, or is to have, under the current care arrangement during that period (which may be nil); and
  - (d) a person who has reduced care of the child:
    - (i) has not taken reasonable action to ensure that the current care arrangement is complied with; but
    - (ii) has taken reasonable action to make another care arrangement (the *new care arrangement*) in relation to the child; and
  - (e) the Registrar is satisfied that, if the new care arrangement were to be made, the extent of care that the person who has reduced care of the child would have under that arrangement during the care period would be:
    - (i) more than the actual care of the child that the Registrar is satisfied that that person has had, or is likely to have, during that period; but

- (ii) less than the extent of care of the child that that person should have had, or is to have, under the current care arrangement during that period; and
- (f) the Registrar is satisfied that special circumstances exist in relation to the person who has reduced care of the child.

Note: This section does not apply in certain circumstances: see section 53.

- (2) The Registrar must determine, under section 49 or 50, 2 percentages of care in relation to the responsible person.
- (3) The first percentage of care is to be a percentage that corresponds with the extent of care of the child that the responsible person would have under the new care arrangement during the care period if it were to be made.
- (4) The second percentage of care is to be:
  - (a) for a determination under section 49—0%; or
  - (b) for a determination under section 50—a percentage that corresponds with the actual care of the child that the Registrar is satisfied that the responsible person would be likely to have during the care period if the new care arrangement were not to be made.

### **53 Sections 51 and 52 do not apply in certain circumstances**

#### *Initial determination*

- (1) Sections 51 and 52 do not apply in relation to a responsible person for a child if:
  - (a) in a case where subparagraph 49(1)(a)(i) or 50(1)(a)(i) applies—the day on which the application referred to in that subparagraph is made is 14 weeks or more after the change of care day for the responsible person; or
  - (b) in a case where subparagraph 49(1)(a)(ii) or 50(1)(a)(ii) applies—the day referred to in that subparagraph is 14 weeks or more after the change of care day for the responsible person.

#### *Later determination*

- (2) Sections 51 and 52 do not apply in relation to a responsible person for a child if:
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- (a) the Registrar has revoked, under section 54F or 54H, a determination of the responsible person's percentage of care for the child; and
- (b) the revocation of the determination takes effect at the end of the day referred to in paragraph 54F(2)(c) or 54H(2)(c); and
- (c) the day after that day is 14 weeks or more after the change of care day for the responsible person.

*Extension of 14 week period*

- (3) If the Registrar is satisfied that special circumstances exist in relation to the person who has reduced care of the child, the Registrar may determine that subsection (1) or (2) applies as if the reference to 14 weeks in paragraph (1)(a) or (b) or (2)(c) were a reference to such longer period as the Registrar determines to be appropriate.
- (4) The period determined under subsection (3) must not be more than 26 weeks.

**54 When a person has *reduced care of a child***

A person has *reduced care of a child* if:

- (a) a care arrangement applies in relation to the child; and
- (b) the person should have had, or is to have, an extent of care of the child under the care arrangement during a care period; and
- (c) the Registrar is satisfied that the actual care of the child that the person has had, or is likely to have, during the care period is less than that extent of care.

**54A Working out actual care, and extent of care, of a child**

- (1) The actual care of a child that a person has had, or is likely to have, during a care period may be worked out based on the number of nights that the Registrar is satisfied that the child was, or is likely to be, in the care of the person during the care period.
- (2) The extent of care of a child that a person should have had, or is to have, under a care arrangement during a care period may be worked out based on the number of nights that the child should

have been, or is to be, in the care of the person during the care period under the care arrangement.

- (3) For the purposes of this section, a child cannot be in the care of more than one person at the same time.
- (4) This section does not limit section 50, 51, 52 or 54.

**54B Days to which the percentage of care applies if sections 51 and 52 did not apply in relation to a responsible person**

- (1) If:
  - (a) a determination of a responsible person's percentage of care for a child is made under section 49 or 50; and
  - (b) sections 51 and 52 did not apply in relation to the responsible person;

the percentage of care applies to each day in a child support period on and from the application day unless a revocation of the determination under Subdivision C of this Division takes effect.

- (2) The *application day* is:
  - (a) if subparagraph 49(1)(a)(i) or 50(1)(a)(i) applies in relation to the determination—the day on which the application referred to in that subparagraph is made; or
  - (b) if subparagraph 49(1)(a)(ii) or 50(1)(a)(ii) applies in relation to the determination—the day referred to in that subparagraph; or
  - (c) if paragraph 49(1)(b) or 50(1)(b) applies in relation to the determination:
    - (i) in a case where the revocation of the determination referred to in subparagraph 49(1)(b)(i) or 50(1)(b)(i) takes effect at the beginning of the day referred to in paragraph 54G(2)(a)—that day; or
    - (ii) otherwise—the day that begins immediately after the revocation of the determination referred to in that subparagraph takes effect.

**54C Days to which the percentage of care applies if section 51 or 52 applied in relation to a responsible person**

- (1) If:
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- (a) a determination of a responsible person's percentage of care for a child is made under section 49 or 50; and
  - (b) section 51 or 52 applied in relation to the responsible person;
- then:
- (c) the percentage of care referred to in subsection 51(3) or 52(3) applies to each day in a child support period that occurs in the interim period for the determination unless a revocation of the determination under Subdivision C of this Division takes effect; and
  - (d) the percentage of care referred to in subsection 51(4) or 52(4) applies to each day in a child support period that occurs after the interim period for the determination unless a revocation of the determination under Subdivision C of this Division takes effect.
- (2) The *interim period* for the determination:
- (a) starts on the application day for the determination; and
  - (b) ends at the end of the earliest of the following days:
    - (i) the day specified by the Registrar;
    - (ii) if section 51 applied in relation to the responsible person—the day before the day on which the action referred to in paragraph 51(1)(d) ends;
    - (iii) if section 52 applied in relation to the responsible person—the day before the day on which the action referred to in subparagraph 52(1)(d)(ii) ends;
    - (iv) if a care arrangement in relation to the child begins to apply on a day after the application day for the determination—the day before the day on which the care arrangement begins to apply.
- (3) The day specified by the Registrar under subparagraph (2)(b)(i) must be the last day in the 14 week period, or such other longer period as is specified under subsection (4), that starts on the change of care day for the responsible person.
- (4) If the Registrar is satisfied that special circumstances exist in relation to the person who has reduced care of the child, the Registrar may specify a period of up to 26 weeks for the purposes of subsection (3).

**54D Rounding of a percentage of care**

If a responsible person's percentage of care determined under this Subdivision is not a whole percentage:

- (a) if the percentage is greater than 50%—the percentage is rounded up to the nearest whole percentage; and
- (b) if the percentage is less than 50%—the percentage is rounded down to the nearest whole percentage.

**54E Registrar must have regard to guidelines about the making of determinations**

In making a determination under this Subdivision, the Registrar must have regard to any guidelines in force under subsection 35N(1) of the Family Assistance Act.

**Subdivision C—Revocation of determination of percentage of care**

**54F Determination must be revoked if there is a change to the responsible person's cost percentage**

- (1) If:
    - (a) a determination of a responsible person's percentage of care (the *existing percentage of care*) for a child has been made under section 49 or 50; and
    - (b) if section 51 or 52 applied in relation to the responsible person—the interim period for the determination has ended; and
    - (c) the Registrar or the Family Assistance Secretary is notified, or otherwise becomes aware, that the care of the child that is actually taking place does not correspond with the responsible person's existing percentage of care for the child; and
    - (d) the Registrar is satisfied that the responsible person's cost percentage for the child would change if the Registrar were to determine, under section 49 or 50, another percentage to be the person's percentage of care for the child; and
    - (e) section 54G does not apply;
- the Registrar must revoke the determination.

Note: The Registrar must make a new determination under section 49 or 50 to replace the revoked determination: see paragraph 49(1)(b) or 50(1)(b).

- (2) The revocation of the determination takes effect at the end of:
- (a) if the Registrar or the Family Assistance Secretary is notified, or otherwise becomes aware, of the matter referred to in paragraph (1)(c) within 28 days after the change of care day for the responsible person:
    - (i) in a case where that change of care day occurs during the interim period for the determination—the day on which the interim period ends; or
    - (ii) otherwise—the day before that change of care day; or
  - (b) if the Registrar or the Family Assistance Secretary is notified, or otherwise becomes aware, of that matter more than 28 days after the change of care day for the responsible person but before the interim period for the determination has ended—the day on which the interim period ends; or
  - (c) otherwise—the day before the day on which the Registrar or the Family Assistance Secretary is notified, or otherwise becomes aware, of that matter.

**54G Determination must be revoked if there is less than regular care etc.**

- (1) If:
- (a) a responsible person (the *first responsible person*) for a child was to have at least regular care of the child during a care period under a determination (the *first care determination*) made under section 50; and
  - (b) the first responsible person has had no care of the child, or has had a pattern of care that is less than regular care of the child, despite another responsible person for the child making the child available to the first responsible person; and
  - (c) a determination of the other responsible person's percentage of care for the child has been made under section 50; and
  - (d) the other responsible person notifies the Registrar or the Family Assistance Secretary of the matter referred to in paragraph (b) of this subsection within a period that the Registrar considers is reasonable in the circumstances;
- the Registrar must revoke both determinations.

**Schedule 2** Percentage of care  
**Part 1** Amendments

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Note: The Registrar must make new determinations under section 49 or 50 to replace the revoked determinations: see paragraph 49(1)(b) or 50(1)(b).

- (2) The revocation of each determination takes effect:
  - (a) if the first responsible person never established a pattern of care in accordance with the first care determination—at the beginning of the application day for that determination; or
  - (b) if the first responsible person established a pattern of care in accordance with the first care determination but later ceased the established pattern of care—at the end of the day before the day on which the person ceased the previously established pattern of care.
- (3) To avoid doubt, a responsible person never establishes a pattern of care if:
  - (a) the responsible person could not have established the pattern of care until a particular period that occurs later in a child support period; and
  - (b) the responsible person does not establish that pattern during that particular period.

**54H Registrar may revoke a determination of a responsible person's percentage of care**

- (1) If:
    - (a) a determination of a responsible person's percentage of care (the *existing percentage of care*) for a child has been made under section 49 or 50; and
    - (b) if section 51 or 52 applied in relation to the responsible person—the interim period for the determination has ended; and
    - (c) the Registrar or the Family Assistance Secretary is notified, or otherwise becomes aware, that the care of the child that is actually taking place does not correspond with the responsible person's existing percentage of care for the child; and
    - (d) the Registrar is satisfied that, if the Registrar were to determine, under section 49 or 50, another percentage to be the responsible person's percentage of care for the child, the other percentage would not be the same as the person's existing percentage of care for the child; and
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(e) sections 54F and 54G do not apply;  
the Registrar may revoke the determination.

Note: If the Registrar revokes the determination, the Registrar must make a new determination under section 49 or 50 to replace the revoked determination: see paragraph 49(1)(b) or 50(1)(b).

- (2) If the Registrar revokes the determination, the revocation takes effect at the end of:
- (a) if the Registrar or the Family Assistance Secretary is notified, or otherwise becomes aware, of the matter referred to in paragraph (1)(c) within 28 days after the change of care day for the responsible person:
    - (i) in a case where that change of care day occurs during the interim period for the determination—the day on which the interim period ends; or
    - (ii) otherwise—the day before that change of care day; or
  - (b) if the Registrar or the Family Assistance Secretary is notified, or otherwise becomes aware, of that matter more than 28 days after the change of care day for the responsible person but before the interim period for the determination has ended—the day on which the interim period ends; or
  - (c) otherwise—the day before the day on which the Registrar or the Family Assistance Secretary is notified, or otherwise becomes aware, of that matter.

#### **54J Registrar must have regard to guidelines about the revocation of determinations**

In revoking a determination under this Subdivision, the Registrar must have regard to any guidelines in force under subsection 35S(1) of the Family Assistance Act.

#### **Subdivision D—Percentages of care determined under the Family Assistance Act**

#### **54K Percentages of care determined under the Family Assistance Act that apply for child support purposes**

- (1) If:

- (a) the Registrar is required by a provision of Subdivision B of this Division to determine a responsible person's percentage of care for a child; and
  - (b) the Family Assistance Secretary has determined the responsible person's percentage of care for the child (the *family assistance care determination*) under a provision of Subdivision D of Division 1 of Part 3 of the Family Assistance Act; and
  - (c) the family assistance care determination was made in relation to a claim for payment of family tax benefit; and
  - (d) the family assistance care determination has not ceased to apply or been revoked;
- then:
- (e) the family assistance care determination has effect, for the purposes of this Act, as if it were a determination of the responsible person's percentage of care for the child that has been made by the Registrar under a corresponding provision of Subdivision B of this Division; and
  - (f) the responsible person's percentage of care for the child applies, for the purposes of this Act, in the same way, and in the same circumstances, in which it would apply if it had been determined by the Registrar under such a provision; and
  - (g) the family assistance care determination may cease to apply, or be revoked, under Subdivision B or C of this Division in the same way, and in the same circumstances, in which a determination made under Subdivision B of this Division may cease to apply, or be revoked.
- (2) This section ceases to apply to the family assistance care determination if the determination ceases to apply, or is revoked, under Subdivision D or E of Division 1 of Part 3 of the Family Assistance Act.

**54L Reviews of percentages of care under the Family Assistance Administration Act apply for child support purposes**

- (1) Subject to subsections (2) and (3), if:
- (a) the Family Assistance Secretary reviews a decision under section 105 or 109A of the Family Assistance Administration Act; and

- (b) reviewing the decision involves (wholly or partly) a review of a determination that:
  - (i) was made under a provision of Subdivision D of Division 1 of Part 3 of the Family Assistance Act; or
  - (ii) has effect, under section 35T of that Act, as if it were a determination made under such a provision; and
- (c) the Family Assistance Secretary's decision on the review has the effect of varying the determination or substituting a new determination;

section 54K of this Act applies as if the determination as varied or substituted were the family assistance care determination referred to in that section.

- (2) Subject to subsection (3), if:
  - (a) the SSAT reviews a decision under section 113 of the Family Assistance Administration Act; and
  - (b) reviewing the decision involves (wholly or partly) a review of a determination that:
    - (i) was made under a provision of Subdivision D of Division 1 of Part 3 of the Family Assistance Act; or
    - (ii) has effect, under section 35T of that Act, as if it were a determination made under such a provision; and
  - (c) the SSAT's decision on the review has the effect of varying the determination or substituting a new determination;

section 54K of this Act applies as if the determination as varied or substituted were the family assistance care determination referred to in that section.

- (3) If:
  - (a) the AAT reviews a decision under the *Administrative Appeals Tribunal Act 1975*; and
  - (b) reviewing the decision involves (wholly or partly) a review of a determination that:
    - (i) was made under a provision of Subdivision D of Division 1 of Part 3 of the Family Assistance Act; or
    - (ii) has effect, under section 35T of that Act, as if it were a determination made under such a provision; and
  - (c) the AAT's decision on the review has the effect of varying the determination or substituting a new determination;

section 54K of this Act applies as if the determination as varied or substituted were the family assistance care determination referred to in that section.

**56 Paragraph 74A(b)**

Repeal the paragraph, substitute:

- (b) a determination of a responsible person's percentage of care for the child is revoked; and
- (ba) another such determination (the *later determination*) is made in relation to the responsible person; and

**57 Paragraph 74A(c)**

Omit "child; and", substitute "child;".

**58 Paragraph 74A(d)**

Repeal the paragraph.

**59 Section 74A**

Omit "whichever of the following days is applicable:", substitute "the first day in a child support period to which the responsible person's percentage of care under the later determination applies.".

**60 Paragraphs 74A(e) and (f)**

Repeal the paragraphs.

**61 Section 74A (note 1)**

Repeal the note.

**62 Section 74A (note 2)**

Omit "Note 2", substitute "Note".

**63 Subsection 75(2)**

Omit "a person's", substitute "a responsible person's".

**64 Paragraphs 75(2)(aa) to (cb)**

Repeal the paragraphs, substitute:

- (a) the amendment relating to the responsible person's percentage of care for the child would cause the person's cost percentage for the child to change; or

**65 Subsection 75(2) (note)**

Repeal the note.

**66 Paragraph 146BA(1)(c)**

Omit “paragraph 48(1)(a)”, substitute “paragraph 54B(2)(a)”.

**67 Paragraph 146BA(1)(c)**

Omit “is made under section 25 or 25A”, substitute “referred to in subparagraph 49(1)(a)(i) or 50(1)(a)(i) is made”.

**68 Paragraph 146C(4)(a)**

Omit “section 80”, substitute “section 89”.

**69 Subsection 146C(4) (note)**

After “section 80”, insert “or 80A”.

**70 After section 162B**

Insert:

**162C Requesting information for the purposes of a care percentage determination under the family assistance law**

The Registrar may request a person:

- (a) to give information; or
- (b) to produce a document that is in the person’s custody or under the person’s control;

to the Registrar if the Registrar considers that the information or document may be relevant to the making or revoking of a determination under Subdivision D or E of Division 1 of Part 3 of the Family Assistance Act.

***Child Support (Registration and Collection) Act 1988***

**71 Subsection 4(1)**

Insert:

***care percentage decision*** means a decision as to the particulars of an administrative assessment, or as to the particulars of a notional

assessment, to the extent that the decision involves (wholly or partly):

- (a) a determination of a person's percentage of care for a child that was made under a provision of Subdivision B of Division 4 of Part 5 of the Assessment Act; or
- (b) a determination relating to a person that has effect, under section 54K of that Act, as if it were a determination made under such a provision.

## **72 At the end of section 80**

Add:

*Section does not apply to care percentage decisions*

- (6) This section does not apply to a decision that is a care percentage decision.

Note: The heading to section 80 is altered by adding at the end "**—general**".

## **73 At the end of Division 2 of Part VII**

Add:

### **80A Objections against care percentage decisions may be lodged**

The following persons may lodge with the Registrar, or the Family Assistance Secretary, an objection to a care percentage decision:

- (a) the carer entitled to child support;
- (b) the liable parent.

## **74 Subsection 81(1)**

After "refusal decision", insert "or a care percentage decision".

## **75 Section 84**

After "must state", insert "or give".

## **76 At the end of section 85**

Add:

- (3) Subsection (1) does not apply to an objection to a care percentage decision.

## **77 After section 85**

Insert:

### **85A Notification of objections to care percentage decisions**

If:

- (a) a person objects to a care percentage decision under section 80A; and
- (b) more than one person could have objected to the decision under that section;

the Registrar must, as soon as practicable, notify each other person who could have objected to the decision of the objection referred to in paragraph (a).

Note: The heading to section 86 is altered by inserting “**served with copy of objection etc.**” after “**party**”.

## **78 At the end of Division 4 of Part VII**

Add:

### **86A Notified person may oppose or support an objection to a care percentage decision**

- (1) A person notified of an objection under section 85A may, within 28 days of being so notified:
  - (a) lodge with the Registrar a written notice in opposition to, or in support of, the objection; or
  - (b) otherwise inform the Registrar whether the person opposes or supports the objection.
- (2) If a notice is lodged under paragraph (1)(a), the notice must state fully and in detail the grounds relied on.
- (3) If paragraph (1)(b) applies, the person must give fully and in detail the grounds relied on.
- (4) If the person is a resident of a reciprocating jurisdiction, subsection (1) applies as if the reference in that subsection to 28 days were a reference to 90 days.

## **79 Subsection 87(1)**

Omit “with the Registrar under this”, substitute “under this”.

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**80 Paragraph 87(1)(a)**

Repeal the paragraph, substitute:

- (a) consider the objection and:
  - (i) if paragraph 86A(1)(b) applies in relation to the objection—any grounds relied on to oppose or support the objection; or
  - (ii) otherwise—any notice lodged with the Registrar under section 86 or paragraph 86A(1)(a) in relation to the objection; and

**81 Paragraph 87(1)(b)**

Omit “with the Registrar”.

**82 Subsection 87(1A)**

Repeal the subsection, substitute:

- (1A) However, if any of the following is a resident of a reciprocating jurisdiction:
  - (a) the person objecting;
  - (b) in a case where a person has been served with a copy of the objection and any accompanying documents under section 85—that person;
  - (c) in a case where a person has been notified of the objection under section 85A—that person;the Registrar has 120 days, instead of 60 days, to act under paragraph (1)(b).

**83 After subsection 87(1A)**

Insert:

- (1B) If:
    - (a) the objection is an objection to a care percentage decision; and
    - (b) a review of a decision carried out under Division 1 of Part 5 of the Family Assistance Administration Act has involved (wholly or partly) a review of the determination to which the care percentage decision relates;the Registrar must not allow the objection in a way that has the effect of varying the determination or substituting a new determination.
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#### **84 Paragraph 87(2)(b)**

Repeal the paragraph, substitute:

- (b) each other person:
  - (i) if the objection is an objection to a care percentage decision—who was entitled to be notified of the objection under section 85A; or
  - (ii) otherwise—who was entitled to be served a copy of the objection and the accompanying documents under section 85.

#### **85 At the end of Part VII**

Add:

### **Division 6—Date of effect of objections**

#### **87AA Date of effect of objections relating to care percentage decisions that are allowed**

- (1) If:
  - (a) a person lodges, under section 80A, an objection to a care percentage decision; and
  - (b) the objection is lodged more than 28 days or, if the person is a resident of a reciprocating jurisdiction, 90 days after notice of the care percentage decision was served; and
  - (c) the Registrar decides (the *review decision*), under section 87, to allow the objection in a way that has the effect of varying the determination to which the care percentage decision relates, or substituting a new determination;the date of effect of the review decision is the day on which the person lodged the objection.
- (2) If the Registrar is satisfied that there are special circumstances that prevented the person from lodging the objection within the period referred to in paragraph (1)(b), the Registrar may determine that subsection (1) applies as if:
  - (a) in a case where the person is a resident of a reciprocating jurisdiction—the reference to 90 days in that paragraph were a reference to such longer period as the Registrar determines to be appropriate; or

- (b) otherwise—the reference to 28 days in that paragraph were a reference to such longer period as the Registrar determines to be appropriate.
- (3) If:
- (a) the Registrar decides to make a determination under subsection (2) in relation to a person; or
  - (b) the Registrar decides not to make such a determination in relation to a person;
- the Registrar must give written notice of the decision to each person affected by the decision.
- (4) The notice must:
- (a) set out the reasons for the decision; and
  - (b) include a statement to the effect that, if the person is aggrieved by the decision, application may be made, subject to this Act, to the SSAT for review of the decision.
- (5) A contravention of subsection (4) in relation to a decision does not affect the validity of the decision.

**86 Subsection 89(1) (paragraph (a) of table item 2, column headed “Who may apply for review”)**

After “section 80”, insert “or 80A”.

**87 Subsection 89(1) (at the end of the table)**

Add:

|   |   |                                   |
|---|---|-----------------------------------|
| 3 | a decision to make a determination under subsection 87AA(2) or a decision not to make such a determination            | a person affected by the decision |
| 4 | a decision to make a determination under subsection 110Y(3) or 110Z(3) or a decision not to make such a determination | a person affected by the decision |

**88 Subsection 90(1)**

Repeal the subsection, substitute:

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- (1) An application for review under this Part (other than an application for review of a decision on an objection to a care percentage decision) must be made by a person within the period of 28 days starting on:
- (a) if the decision is set out in item 1 or 2 of the table in subsection 89(1)—the day on which the relevant notice under subsection 83(3) or 87(2) is served on the person; or
  - (b) otherwise—the day on which the relevant notice under subsection 87AA(3), 110Y(4) or 110Z(4) is given to the person.

### **89 Subsection 90(2)**

Omit “subsection (1)”, substitute “paragraph (1)(a) or (b)”.

### **90 Section 103S**

Before “If”, insert “(1)”.

### **91 At the end of section 103S**

Add:

- (2) If:
- (a) the review is a review of a decision (the *original decision*) under subsection 87(1) on an objection to a care percentage decision; and
  - (b) a review of a decision carried out under Division 2 of Part 5 of the Family Assistance Administration Act has involved (wholly or partly) a review of the determination to which the care percentage decision relates;
- the SSAT must not vary the original decision, or set the original decision aside and substitute a new decision, in a way that has the effect of varying the determination or substituting a new determination.

### **92 Subsection 103V(2)**

Omit “The decision”, substitute “Subject to subsection (3), the decision”.

### **93 At the end of section 103V**

Add:

---

- (3) If:
- (a) the decision (the *original decision*) under review is a decision on an objection to a care percentage decision; and
  - (b) the application for review of the original decision was made more than 28 days or, if the person is a resident of a reciprocating jurisdiction, 90 days after notice of the original decision was served;
- the original decision as varied or the new decision (as the case may be) has effect, or is to be taken to have had effect, on and from the day on which the application was made.
- (4) If the SSAT is satisfied that there are special circumstances that prevented the application from being made within the period referred to in paragraph (3)(b), the SSAT may determine that subsection (3) applies as if:
- (a) in a case where the person is a resident of a reciprocating jurisdiction—the reference to 90 days in that paragraph were a reference to such longer period as the SSAT determines to be appropriate; or
  - (b) otherwise—the reference to 28 days in that paragraph were a reference to such longer period as the SSAT determines to be appropriate.
- (5) If:
- (a) the SSAT decides to make a determination under subsection (4) in relation to a person; or
  - (b) the SSAT decides not to make such a determination in relation to a person;
- the SSAT must give written notice of the decision to each person affected by the decision.
- (6) The notice must include a statement to the effect:
- (a) that the person may, subject to the *Administrative Appeals Tribunal Act 1975*, apply to the AAT for review of the decision; and
  - (b) except where subsection 28(4) of that Act applies—that the person may request a statement under section 28 of that Act.
- (7) A contravention of subsection (6) in relation to a decision does not affect the validity of the decision.

#### **94 After subsection 103VA(1)**

Insert:

(1A) If:

- (a) the decision (the *original decision*) reviewed by the SSAT is a decision on an objection to a care percentage decision; and
- (b) a review of a decision carried out by the AAT under the *Administrative Appeals Tribunal Act 1975* has involved (wholly or partly) a review of the determination to which the care percentage decision relates;

then, despite section 43 of that Act, the AAT must not vary the original decision, or set the original decision aside and substitute a new decision, in a way that has the effect of varying the determination or substituting a new determination.

(1B) An application may be made to the AAT for review of:

- (a) a decision of the SSAT under subsection 103V(4) to make a determination under that subsection in relation to a person; or
- (b) a decision of the SSAT under subsection 103V(4) not to make a determination under that subsection in relation to a person.

Note: The heading to section 103VA is altered by adding at the end “etc.”.

#### **95 Subsection 103VA(2)**

Omit “subsection (1)”, substitute “this section”.

#### **96 Section 110N**

After:

- |   |
|---|
| <ul style="list-style-type: none"><li>• A person might commit an offence if the person publishes an account of a proceeding, or a list of proceedings, under Part VIIA or Division 3 of Part VIII that identifies a witness or party.</li></ul> |
|---|

Insert:

- |  |
|--|
| <ul style="list-style-type: none"><li>• The date of effect of reviews of decisions under the Family Assistance Administration Act that apply for child support purposes is dealt with in Division 6.</li></ul> |
|--|

**97 At the end of Part VIII A**

Add:

**Division 6—Date of effect of reviews under the Family Assistance Administration Act**

**110Y Date of effect of internal reviews under the Family Assistance Administration Act that apply for child support purposes**

- (1) This section applies if:
- (a) the Family Assistance Secretary reviews, under section 105 or 109A of the Family Assistance Administration Act, a decision (the *original decision*) relating to a person; and
  - (b) the review of the original decision involves (wholly or partly) a review of a determination that:
    - (i) was made under a provision of Subdivision D of Division 1 of Part 3 of the Family Assistance Act; or
    - (ii) has effect, under section 35T of that Act, as if it were a determination made under such a provision; and
  - (c) either:
    - (i) the decision on the review under section 105 of the Family Assistance Administration Act is made more than 28 days or, if the person is a resident of a reciprocating jurisdiction, 90 days after notice of the original decision was given; or
    - (ii) the application for review of the original decision under section 109A of the Family Assistance Administration Act was made more than 28 days or, if the person is a resident of a reciprocating jurisdiction, 90 days after notice of the original decision was given; and
  - (d) the decision (the *review decision*) on the review has the effect of varying the determination or substituting a new determination; and
  - (e) the determination as varied or substituted has effect, under sections 54K and 54L of the Assessment Act, as if it were a determination made under Subdivision B of Division 4 of Part 5 of that Act.
- (2) The date of effect of the review decision, to the extent that it has the effect referred to in paragraph (1)(d), is:
-

- (a) for a review under section 105 of the Family Assistance Administration Act—the day on which the review decision is made; or
  - (b) for a review under section 109A of the Family Assistance Administration Act—the day on which the application for review was made.
- (3) If the Registrar is satisfied that there are special circumstances that prevented the application for review from being made within the period referred to in subparagraph (1)(c)(ii), the Registrar may determine that subsection (1) applies as if:
- (a) in a case where the person is a resident of a reciprocating jurisdiction—the reference to 90 days in that subparagraph were a reference to such longer period as the Registrar determines to be appropriate; or
  - (b) otherwise—the reference to 28 days in that subparagraph were a reference to such longer period as the Registrar determines to be appropriate.
- (4) If:
- (a) the Registrar decides to make a determination under subsection (3) in relation to a person; or
  - (b) the Registrar decides not to make such a determination in relation to a person;
- the Registrar must give written notice of the decision to each person affected by the decision.
- (5) The notice must:
- (a) set out the reasons for the decision; and
  - (b) include a statement to the effect that, if the person is aggrieved by the decision, application may be made, subject to this Act, to the SSAT for review of the decision.
- (6) A contravention of subsection (5) in relation to a decision does not affect the validity of the decision.

**110Z Date of effect of SSAT reviews under the Family Assistance Administration Act that apply for child support purposes**

- (1) This section applies if:
-

- (a) a person applies to the SSAT, under section 111 of the Family Assistance Administration Act, for review of a decision (the *original decision*); and
  - (b) the review of the original decision involves (wholly or partly) a review of a determination that:
    - (i) was made under a provision of Subdivision D of Division 1 of Part 3 of the Family Assistance Act; or
    - (ii) has effect, under section 35T of that Act, as if it were a determination made under such a provision; and
  - (c) the application for review of the original decision was made more than 28 days or, if the person is a resident of a reciprocating jurisdiction, 90 days after notice of the original decision was given; and
  - (d) the decision (the *review decision*) on the review has the effect of varying the determination or substituting a new determination; and
  - (e) the determination as varied or substituted has effect, under sections 54K and 54L of the Assessment Act, as if it were a determination made under Subdivision B of Division 4 of Part 5 of that Act.
- (2) The date of effect of the review decision, to the extent that it has the effect referred to in paragraph (1)(d), is the day on which the application for review was made.
- (3) If the Registrar is satisfied that there are special circumstances that prevented the application for review from being made within the period referred to in paragraph (1)(c), the Registrar may determine that subsection (1) applies as if:
- (a) in a case where the person is a resident of a reciprocating jurisdiction—the reference to 90 days in that paragraph were a reference to such longer period as the Registrar determines to be appropriate; or
  - (b) otherwise—the reference to 28 days in that paragraph were a reference to such longer period as the Registrar determines to be appropriate.
- (4) If:
- (a) the Registrar decides to make a determination under subsection (3) in relation to a person; or

- (b) the Registrar decides not to make such a determination in relation to a person;  
the Registrar must give written notice of the decision to each person affected by the decision.
- (5) The notice must:
- (a) set out the reasons for the decision; and
  - (b) include a statement to the effect that, if the person is aggrieved by the decision, application may be made, subject to this Act, to the SSAT for review of the decision.
- (6) A contravention of subsection (5) in relation to a decision does not affect the validity of the decision.

### ***Income Tax Assessment Act 1936***

#### **98 Paragraph 251R(5)(d)**

Repeal the paragraph, substitute:

- (d) the Families Secretary has determined, under Subdivision D of Division 1 of Part 3 of that Act, each parent's or spouse's percentage of care for the child during a care period (within the meaning of that Act);

#### **99 Subsection 251R(5)**

Omit "represents that percentage of the period", substitute "corresponds with that percentage of care".

## Part 2—Application and transitional provisions

### Division 1—Definitions

#### 100 Definitions

In this Part:

*Assessment Act* means the *Child Support (Assessment) Act 1989*.

*commencement day* means the day on which this Schedule commences.

*Family Assistance Act* means the *A New Tax System (Family Assistance) Act 1999*.

*Family Assistance Administration Act* means the *A New Tax System (Family Assistance) (Administration) Act 1999*.

*Registration and Collection Act* means the *Child Support (Registration and Collection) Act 1988*.

### Division 2—Amendments of the child support law

#### 101 Transitional—existing percentage of care under the Assessment Act

- (1) This item applies if:
  - (a) before the commencement day, a person's percentage of care for a child during a care period has been determined (the *existing care determination*) under Division 4 of Part 5 of the Assessment Act; and
  - (b) the person's percentage of care under the existing care determination applies immediately before the commencement day.
- (2) The existing care determination is taken to have been revoked immediately before the commencement day.
- (3) The Registrar is taken, on the commencement day, to have determined (the *new care determination*) under section 49 or 50 of the Assessment Act, as inserted by this Act, a percentage that is equal to the person's percentage of care under the existing care determination to be the person's percentage of care for the child during the care period.

- (4) Sections 51 and 52 of the Assessment Act, as inserted by this Act, are taken not to have applied in relation to the person.
- (5) The person's percentage of care for the child under the new care determination applies, for the purposes of the Assessment Act as amended by this Act, on and from the commencement day unless a revocation of the determination under Subdivision C of Division 4 of Part 5 of the Assessment Act, as inserted by this Act, takes effect.
- (6) The new care determination may be revoked under Subdivision C of Division 4 of Part 5 of the Assessment Act, as inserted by this Act, in the same way, and in the same circumstances, in which a determination made under Subdivision B of that Division, as inserted by this Act, may be revoked.
- (7) If:
- (a) the new care determination is revoked under Subdivision C of Division 4 of Part 5 of the Assessment Act, as inserted by this Act; and
  - (b) the date of effect of the revocation under that Subdivision would, apart from this subitem, be a day before the commencement day;
- then, despite that Subdivision, the revocation of the determination takes effect at the beginning of the commencement day.
- (8) If:
- (a) the new care determination is revoked under Subdivision C of Division 4 of Part 5 of the Assessment Act, as inserted by this Act; and
  - (b) on the revocation of the new care determination, another determination of the person's percentage of care for the child during the care period is made under section 49 or 50 of the Assessment Act, as inserted by this Act; and
  - (c) the application day for the other determination would, apart from this subitem, be a day before the commencement day;
- then, despite subsection 54B(2) of the Assessment Act as inserted by this Act, the application day for the other determination is the commencement day.
- (9) Sections 35T and 35U of the Family Assistance Act do not apply in relation to the new care determination.
-

- (10) The Registrar is taken, on the commencement day, to have notified the person of the effect of this item.

### **102 Transitional—pending child support applications**

- (1) This item applies if:
- (a) an application under section 25 or 25A of the Assessment Act was made before the commencement day; and
  - (b) the application has not been determined before the commencement day.
- (2) Despite the amendments made by this Schedule to the Assessment Act and the Registration and Collection Act, those Acts, as in force immediately before the commencement day, continue to apply in relation to the application as if those amendments had not been made.
- (3) If a person's percentage of care is determined under Division 4 of Part 5 of the Assessment Act, as it continues to apply under subitem (2) in relation to the application, the determination is taken, for the purposes of item 101 of this Schedule, to have been made before the commencement day.

### **103 Transitional—change of care event**

- (1) This item applies if:
- (a) an event referred to in paragraph 48(1)(b) of the Assessment Act, as in force immediately before the commencement day, occurs in relation to a person before that day; and
  - (b) the Registrar is notified, or otherwise becomes aware of the event within 28 days after the day on which the event occurred; and
  - (c) the day on which the Registrar is so notified, or becomes so aware, is a day on or after the commencement day.
- (2) Despite the amendments made by this Schedule to the Assessment Act and the Registration and Collection Act, those Acts, as in force immediately before the commencement day, continue to apply in relation to the person as if those amendments had not been made.
- (3) If the person's percentage of care is determined under Division 4 of Part 5 of the Assessment Act, as it continues to apply under subitem (2) in relation to the person, the determination is taken, for the purposes of

item 101 of this Schedule, to have been made before the commencement day.

#### **104 Transitional—relevant dependent child**

- (1) This item applies if:
  - (a) a person is taken under section 73A of the Assessment Act to have had a relevant dependent child from a day specified in that section; and
  - (b) that day is a day before the commencement day; and
  - (c) the person's percentage of care for the child has not been determined under Division 4 of Part 5 of that Act before the commencement day.
- (2) Despite the amendments made by this Schedule to the Assessment Act and the Registration and Collection Act, those Acts, as in force immediately before the commencement day, continue to apply in relation to the person as if those amendments had not been made.
- (3) If the person's percentage of care is determined under Division 4 of Part 5 of the Assessment Act, as it continues to apply under subitem (2) in relation to the person, the determination is taken, for the purposes of item 101 of this Schedule, to have been made before the commencement day.

#### **105 Application—sections 49 and 50 of the Assessment Act**

- (1) Subparagraph 49(1)(a)(i) or 50(1)(a)(i) of the Assessment Act, as inserted by this Act, applies in relation to an application that is made under section 25 or 25A of the Assessment Act on or after the commencement day.
- (2) Subparagraph 49(1)(a)(ii) or 50(1)(a)(ii) of the Assessment Act, as inserted by this Act, applies in relation to a parent who is taken under section 73A of the Assessment Act to have a relevant dependent child from a day that is on or after the commencement day.

#### **106 Application—section 54K of the Assessment Act**

Section 54K of the Assessment Act, as inserted by this Act, applies in relation to a determination that is made under Subdivision D of Division 1 of Part 3 of the Family Assistance Act, as inserted by this Act, on or after the commencement day.

### Division 3—Amendments of the family assistance law

#### 107 Transitional—existing percentage of care under the Family Assistance Act

- (1) This item applies if:
  - (a) before the commencement day, the Secretary has determined (the *existing care determination*), under subsection 22(6A) of the Family Assistance Act, a percentage of a period during which a child was, or will be, in the care of an individual; and
  - (b) the individual's percentage of care under the existing care determination applies immediately before the commencement day.
- (2) The existing care determination is taken to have been revoked immediately before the commencement day.
- (3) The Secretary is taken, on the commencement day, to have determined (the *new care determination*) under section 35B of the Family Assistance Act, as inserted by this Act, a percentage that is equal to the individual's percentage of care under the existing care determination to be the individual's percentage of care for the child during the period.
- (4) Sections 35C and 35D of the Family Assistance Act, as inserted by this Act, are taken not to have applied in relation to the individual.
- (5) The individual's percentage of care for the child under the new care determination applies, for the purposes of the Family Assistance Act as amended by this Act, on and from the commencement day unless a revocation of the determination under Subdivision E of Division 1 of Part 3 of the Family Assistance Act, as inserted by this Act, takes effect.
- (6) The new care determination may be revoked under Subdivision E of Division 1 of Part 3 of the Family Assistance Act, as inserted by this Act, in the same way, and in the same circumstances, in which a determination made under Subdivision D of that Division, as inserted by this Act, may be revoked.
- (7) If:
  - (a) the new care determination is revoked under Subdivision E of Division 1 of Part 3 of the Family Assistance Act, as inserted by this Act; and

- (b) the date of effect of the revocation under that Subdivision would, apart from this subitem, be a day before the commencement day;

then, despite that Subdivision, the revocation of the determination takes effect at the beginning of the commencement day.

- (8) If:

- (a) the new care determination is revoked under Subdivision E of Division 1 of Part 3 of the Family Assistance Act, as inserted by this Act; and

- (b) on the revocation of the new care determination, another determination of the individual's percentage of care for the child during the care period is made under section 35A or 35B of the Family Assistance Act, as inserted by this Act; and

- (c) the application day for the other determination would, apart from this subitem, be a day before the commencement day;

then, despite subsections 35K(2) and (3) of the Family Assistance Act as inserted by this Act, the application day for the other determination is the commencement day.

- (9) Sections 54K and 54L of the Assessment Act do not apply in relation to the new care determination.
- (10) The Secretary is taken, on the commencement day, to have notified the individual of the effect of this item.

### **108 Transitional—family tax benefit for a past period**

- (1) This item applies if:

- (a) a claim under Part 3 of the Family Assistance Administration Act for payment of family tax benefit for a past period is made before, on or after the commencement day; and

- (b) the past period occurs before the commencement day.

- (2) Despite the amendments made by this Schedule to the Family Assistance Act and the Family Assistance Administration Act, those Acts, as in force immediately before the commencement day, continue to apply in relation to the claim as if those amendments had not been made.

### **109 Transitional—pending family tax benefit claims**

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**Schedule 2** Percentage of care

**Part 2** Application and transitional provisions

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- (1) This item applies if:
  - (a) a claim under Part 3 of the Family Assistance Administration Act for payment of family tax benefit was made before the commencement day; and
  - (b) the claim is not a claim for payment of family tax benefit for a past period; and
  - (c) the claim has not been determined before the commencement day.
- (2) Despite the amendments made by this Schedule to the Family Assistance Act and the Family Assistance Administration Act, those Acts, as in force immediately before the commencement day, continue to apply in relation to the claim as if those amendments had not been made.
- (3) If the Secretary makes a determination under subsection 22(6A) of the Family Assistance Act, as it continues to apply under subitem (2) in relation to the claim, the Secretary is taken, for the purposes of item 107 of this Schedule, to have made the determination before the commencement day.

**110 Application—sections 35A and 35B of the Family Assistance Act**

- (1) Sections 35A and 35B of the Family Assistance Act, as inserted by this Act, apply in relation to a claim under Part 3 of the Family Assistance Administration Act that is made on or after the commencement day.
- (2) Subitem (1) does not apply to a claim under that Part if:
  - (a) the claim is a claim for payment of family tax benefit for a past period; and
  - (b) the past period occurs before the commencement day.

**111 Application—section 35T of the Family Assistance Act**

Section 35T of the Family Assistance Act, as inserted by this Act, applies in relation to a determination that is made under Subdivision B of Division 4 of Part 5 of the Assessment Act, as inserted by this Act, on or after the commencement day.

**Division 4—Application of amendments in relation to  
Western Australian exnuptial children**

**112 Application of amendments in relation to Western  
Australian exnuptial children**

- (1) This item applies if, immediately after the commencement day, the Assessment Act and the Registration and Collection Act, as amended by this Act, do not extend to Western Australia in relation to the maintenance of exnuptial children because:
  - (a) the Parliament of Western Australia has not referred to the Parliament of the Commonwealth the matter of the maintenance of exnuptial children or matters that include that matter; and
  - (b) Western Australia has not adopted those Acts as amended by this Act.
- (2) Items 101 to 111 of this Schedule apply in Western Australia, after Western Australia adopts those Acts as amended by this Act, in relation to the maintenance of exnuptial children as if references in those items to the commencement day were references to the adoption of those Acts by Western Australia as amended by this Act.

## **Schedule 3—Non-payment of family tax benefit for non-lodgment of tax returns**

### ***A New Tax System (Family Assistance) (Administration) Act 1999***

#### **1 After subsection 32AB(1)**

Insert:

- (1A) However, there is not a prohibited period for the claimant under subsection (1) because of a variation mentioned in section 32AA if:
- (a) no debt arose under section 71 as a result of that variation; or
  - (b) a debt arose under section 71 as a result of that variation, but no amount of that debt is outstanding at the end of the grace period.

#### **2 Paragraph 32AB(2)(b)**

After “(4)”, insert “, (4A)”.

#### **3 After subsection 32AB(4)**

Insert:

- (4A) This subsection applies if:
- (a) a debt arose under section 71 as a result of the variation mentioned in section 32AA; and
  - (b) an amount of that debt was outstanding at the end of the grace period; and
  - (c) at a time after the end of the grace period, no amount of that debt is outstanding.

#### **4 After subsection 32AB(5)**

Insert:

- (5A) However, there is not a prohibited period for the claimant under subsection (5) because of a variation mentioned in section 32AA if:
- (a) no debt arose under section 71 as a result of that variation; or

- (b) a debt arose under section 71 as a result of that variation, but no amount of that debt is outstanding immediately before the day that would, apart from this subsection, be determined under paragraph (6)(a).

### **5 Subparagraph 32AB(6)(b)(iii)**

After “subsection”, insert “(6A) or”.

### **6 After subsection 32AB(6)**

Insert:

- (6A) This subsection applies if:
  - (a) a debt arose under section 71 as a result of the variation mentioned in section 32AA; and
  - (b) an amount of that debt was outstanding immediately before the day determined under paragraph (6)(a); and
  - (c) at a time on or after that day, no amount of that debt is outstanding.

### **7 After subsection 32AC(1)**

Insert:

- (1A) However, there is not a prohibited period for the relevant partner under subsection (1) because of a variation mentioned in section 32AA if:
  - (a) no debt arose under section 71 as a result of that variation; or
  - (b) a debt arose under section 71 as a result of that variation, but no amount of that debt is outstanding at the end of the grace period.

### **8 Paragraph 32AC(2)(b)**

After “(4)”, insert “, (4A)”.

### **9 After subsection 32AC(4)**

Insert:

- (4A) This subsection applies if:
  - (a) a debt arose under section 71 as a result of the variation mentioned in section 32AA; and

- (b) an amount of that debt was outstanding at the end of the grace period; and
- (c) at a time after the end of the grace period, no amount of that debt is outstanding.

**10 After subsection 32AC(5)**

Insert:

- (5A) However, there is not a prohibited period for the relevant partner under subsection (5) because of a variation mentioned in section 32AA if:
  - (a) no debt arose under section 71 as a result of that variation; or
  - (b) a debt arose under section 71 as a result of that variation, but no amount of that debt is outstanding immediately before the day that would, apart from this subsection, be determined under paragraph (6)(a).

**11 Paragraph 32AC(6)(b)**

After “(8)”, insert “, (8A)”.

**12 After subsection 32AC(8)**

Insert:

- (8A) This subsection applies if:
  - (a) a debt arose under section 71 as a result of the variation mentioned in section 32AA; and
  - (b) an amount of that debt was outstanding immediately before the day determined under paragraph (6)(a); and
  - (c) at a time on or after that day, no amount of that debt is outstanding.

**13 Subsection 32AE(1)**

After “3”, insert “or more”.

Note: The heading to section 32AE is altered by inserting “**or more**” after “3”.

**14 Subsections 32AE(2) and (3)**

Repeal the subsections, substitute:

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*Claimant*

- (2) The claimant is not entitled to be paid family tax benefit (worked out on the basis referred to in subsection 20(1), (2A) or (3)) for a period if, throughout that period, both subsections (3) and (4) of this section apply in relation to one or more of the cancellation income years concerned.

Note 1: For *cancellation income year* see subsection 28(1).

Note 2: Subsection (8) creates an exception to subsection (2).

- (3) This subsection applies in relation to a cancellation income year if either or both of the following apply:
- (a) if the claimant was required to lodge an income tax return for that year—the claimant has not lodged that return;
  - (b) if the claimant is a member of a couple and the claimant's partner is a relevant partner in relation to that year and that partner was required to lodge an income tax return for that year—that partner has not lodged that return.

Note: For *relevant partner* see section 32AA.

- (4) This subsection applies in relation to a cancellation income year if a debt arose under section 71 as a result of the variation concerned and an amount of that debt is outstanding.

*Partner*

- (5) If the claimant is a member of a couple, the claimant's partner is not entitled to be paid family tax benefit (worked out on the basis referred to in subsection 20(1), (2A) or (3)) for a period if, throughout that period, both subsections (6) and (7) of this section apply in relation to one or more of the cancellation income years concerned.

Note 1: For *cancellation income year* see subsection 28(1).

Note 2: Subsection (9) creates an exception to subsection (5).

- (6) This subsection applies in relation to a cancellation income year if either or both of the following apply:
- (a) if the claimant was required to lodge an income tax return for that year—the claimant has not lodged that return;

- (b) if the claimant's partner is a relevant partner in relation to that year and that partner was required to lodge an income tax return for that year—that partner has not lodged that return.

Note: For *relevant partner* see section 32AA.

- (7) This subsection applies in relation to a cancellation income year if a debt arose under section 71 as a result of the variation concerned and an amount of that debt is outstanding.

*Exceptions*

- (8) The Secretary may, by writing, determine that subsection (2) does not apply in relation to a specified person and to a specified period if the Secretary is satisfied that there are special circumstances that justify the Secretary doing so.
- (9) The Secretary may, by writing, determine that subsection (5) does not apply in relation to a specified person and to a specified period if the Secretary is satisfied that there are special circumstances that justify the Secretary doing so.
- (10) A period specified in a determination under subsection (8) or (9) may be a period beginning before, on or after the day the determination is made.
- (11) A determination made under subsection (8) or (9) is not a legislative instrument.

## **15 Application and transitional**

- (1) The amendments made by items 1 to 12 apply in relation to variations made before, on or after the commencement of those items.
- (2) Subsection 32AE(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999*, as amended by this Act, does not apply in relation to a variation made before the commencement of this item if:
  - (a) no debt arose under section 71 of that Act as a result of that variation; or
  - (b) a debt arose under section 71 of that Act as a result of that variation, but no amount of that debt is outstanding immediately before that commencement.

## **Schedule 4—Other amendments**

### ***A New Tax System (Family Assistance) Act 1999***

#### **1 Subsection 3(1) (at the end of the definition of *FTB child*)**

Add:

- ; and (c) in relation to baby bonus—has the meaning given in Subdivision A of Division 1 of Part 3 but, in applying Subdivision D of that Division to baby bonus, a reference in that Subdivision to a claim for payment of family tax benefit is to be read as a reference to a claim for payment of baby bonus; and
- (d) in relation to maternity immunisation allowance—has the meaning given in Subdivision A of Division 1 of Part 3 but, in applying Subdivision D of that Division to maternity immunisation allowance, a reference in that Subdivision to a claim for payment of family tax benefit is to be read as a reference to a claim for payment of maternity immunisation allowance.

### ***Child Support (Registration and Collection) Act 1988***

#### **2 Section 110N**

After:

- |   |
|---|
| <ul style="list-style-type: none"><li>• A person might commit an offence if the person publishes an account of a proceeding, or a list of proceedings, under Part VIIA or Division 3 of Part VIII that identifies a witness or party.</li></ul> |
|---|

Insert:

- |  |
|--|
| <ul style="list-style-type: none"><li>• Division 5 modifies the application of the <i>Administrative Appeals Tribunal Act 1975</i> to applications for review under subsection 103VA(1) of this Act.</li></ul> |
|--|

#### **3 After Division 4 of Part VIIIA**

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Insert:

## **Division 5—Modification of Administrative Appeals Tribunal Act in relation to AAT review**

### **110XA Notice of application for AAT review**

The *Administrative Appeals Tribunal Act 1975* (the *AAT Act*) applies to an application under subsection 103VA(1) of this Act for review of a decision as if the reference in subsection 29(11) of the *AAT Act* to the person who made the decision were a reference to each person who was a party to the review of the decision by the SSAT (other than the applicant).

### **110XB Parties to AAT review**

The *Administrative Appeals Tribunal Act 1975* (the *AAT Act*) applies to an application under subsection 103VA(1) of this Act for review as if the reference in paragraph 30(1)(b) of the *AAT Act* to the person who made the decision were a reference to each party to the review of the decision by the SSAT.

### **110XC Lodgment of documents with the AAT**

- (1) The *Administrative Appeals Tribunal Act 1975* (the *AAT Act*) applies to an application under subsection 103VA(1) of this Act for review as if references in section 37 of the *AAT Act* to the person who made the decision the subject of the application were references to the Registrar.
- (2) If a person applies to the AAT under subsection 103VA(1) of this Act for review of a decision, the Registrar is taken to have complied with the Registrar's obligations under paragraph 37(1)(a) of the *AAT Act* in relation to the decision if the Registrar gives the AAT the prescribed number of copies of the statement prepared by the SSAT under paragraph 103X(3)(b) of this Act.
- (3) Subsection (2) does not limit the powers of the AAT under section 38 of the *AAT Act*.

**110XD Power of AAT to obtain additional information**

The *Administrative Appeals Tribunal Act 1975* (the *AAT Act*) applies to an application under subsection 103VA(1) of this Act for review as if references in section 38 of the *AAT Act* to the person who lodges with the AAT a statement referred to in paragraph 37(1)(a) of the *AAT Act* were references to the SSAT Principal Member.

**110XE Operation and implementation of the decision under review**

- (1) The *Administrative Appeals Tribunal Act 1975* (the *AAT Act*) applies to an application under subsection 103VA(1) of this Act for review of a decision as if references in subsection 41(4) of the *AAT Act* to the person who made the decision were references to each party to the review by the SSAT.
- (2) The *AAT Act* applies to an application under subsection 103VA(1) of this Act for review of a decision as if references in section 41 of the *AAT Act* to the decision to which the relevant proceeding relates were references to:
  - (a) if the SSAT affirmed the decision (the *original decision*) that was reviewed by the SSAT—the original decision; or
  - (b) if the SSAT varied the original decision:
    - (i) the original decision as varied by the SSAT; and
    - (ii) the original decision; or
  - (c) if the SSAT set aside the original decision and substituted a new decision:
    - (i) the new decision; and
    - (ii) the original decision; or
  - (d) if the SSAT set aside the original decision and sent the matter back to the Registrar for reconsideration in accordance with any directions or recommendations of the SSAT:
    - (i) any decision made as a result of that reconsideration; and
    - (ii) the original decision.

**110XF Failure of party to appear**

The *Administrative Appeals Tribunal Act 1975* (the *AAT Act*) applies to the review of a decision on an application under

**Schedule 4** Other amendments

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subsection 103VA(1) of this Act as if the reference in subsection 42A(2) of the AAT Act to the person who made the decision were a reference to the Registrar.

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*[Minister's second reading speech made in—  
House of Representatives on 26 May 2010  
Senate on 15 June 2010]*

(111/10)

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*Child Support and Family Assistance Legislation Amendment (Budget and Other Measures) Act  
2010 No. 65, 2010 105*