



Family Assistance and Child Support Legislation Amendment (Protecting Children) Act 2018

No. 36, 2018

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

Note: An electronic version of this Act is available on the Federal Register of Legislation
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Contents

1	Short title.....	2
2	Commencement.....	2
3	Schedules.....	4
Schedule 1—Child support amendments		5
Part 1—Interim periods		5
<i>A New Tax System (Family Assistance) Act 1999</i>		5
<i>Child Support (Assessment) Act 1989</i>		20
Part 2—Amended tax assessments		36
<i>Child Support (Assessment) Act 1989</i>		36
Part 3—Child support agreements		41
Division 1—Amendments commencing day after Royal Assent		41
<i>Child Support (Assessment) Act 1989</i>		41
Division 2—Other amendments		43
<i>Child Support (Assessment) Act 1989</i>		43
Part 4—Overpayments		51
Division 1—Amendments		51
<i>A New Tax System (Family Assistance) (Administration) Act 1999</i>		51
<i>Child Support (Assessment) Act 1989</i>		51
<i>Child Support (Registration and Collection) Act 1988</i>		52
Division 2—Application provisions		68
Division 3—Date of effect rules		69
<i>Child Support (Assessment) Act 1989</i>		69
Schedule 2—Family tax benefit amendments		73
Part 1—Amendments commencing day after Royal Assent		73
<i>A New Tax System (Family Assistance) Act 1999</i>		73
Part 2—Amendments commencing on Proclamation		74
<i>A New Tax System (Family Assistance) Act 1999</i>		74
<i>A New Tax System (Family Assistance) (Administration) Act 1999</i>		81

Part 3—Contingent amendments	82
Division 1—Amendments contingent on the commencement of the Budget Savings (Omnibus) Act 2016	82
<i>A New Tax System (Family Assistance) Act 1999</i>	82
Division 2—Amendments commencing 1 July 2018	82
<i>A New Tax System (Family Assistance) Act 1999</i>	82
Division 3—Amendments commencing later	83
<i>A New Tax System (Family Assistance) Act 1999</i>	83



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**An Act to amend the law relating to family
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[Assented to 22 May 2018]

The Parliament of Australia enacts:

No. 36, 2018

*Family Assistance and Child Support Legislation Amendment
(Protecting Children) Act 2018*

1

1 Short title

This Act is the *Family Assistance and Child Support Legislation Amendment (Protecting Children) Act 2018*.

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.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	22 May 2018
2. Schedule 1, Parts 1 and 2	The later of: (a) 1 January 2018; and (b) the day after this Act receives the Royal Assent.	23 May 2018 (paragraph (b) applies)
3. Schedule 1, Part 3, Division 1	The day after this Act receives the Royal Assent.	23 May 2018
4. Schedule 1, Part 3, Division 2	The later of: (a) 1 July 2018; and (b) the day after this Act receives the Royal Assent.	1 July 2018 (paragraph (a) applies)
5. Schedule 1, Part 4, Divisions 1 and 2	The later of: (a) 1 July 2018; and (b) the day after this Act receives the Royal Assent.	1 July 2018 (paragraph (a) applies)
6. Schedule 1, Part 4, Division 3	The later of: (a) the start of 1 July 2018; and (b) immediately after the commencement of the provisions covered by table item 2.	1 July 2018 (paragraph (a) applies)

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
7. Schedule 2, Part 1	The day after this Act receives the Royal Assent.	23 May 2018
8. Schedule 2, Part 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
9. Schedule 2, Part 3, Division 1	Immediately after the commencement of item 1 of Schedule 19 to the <i>Budget Savings (Omnibus) Act 2016</i> .	1 July 2018
10. Schedule 2, Part 3, Division 2	At the same time as the provisions covered by table item 8. However, the provisions do not commence at all if item 30 of Schedule 1 to the <i>Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017</i> commences before that time.	
11. Schedule 2, Part 3, Division 3	The later of: (a) immediately after the commencement of the provisions covered by table item 8; and (b) immediately after the commencement of item 30 of Schedule 1 to the <i>Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017</i> .	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation 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 amendments

Part 1—Interim periods

A New Tax System (Family Assistance) Act 1999

1 Subsection 3(1) (paragraph (b) of the definition of *change of care day*)

Repeal the paragraph, substitute:

- (b) if a determination of the individual's percentage of care for the child has been suspended 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 determined for the purposes of subsection 35C(4) under the determination; or
- (c) otherwise—the first day on which the care of the child that was actually taking place did not correspond with the individual's extent of care under a care arrangement that applies in relation to the child (which might be the first day the care arrangement begins to apply in relation to the child).

2 Subsection 3(1)

Insert:

family dispute resolution has the meaning given by section 10F of the *Family Law Act 1975*.

increased care of a child has the meaning given by section 35GA.

3 Subsection 3(1) (definition of *interim period*)

Omit “subsection 35L(2)”, substitute “section 35FA”.

4 Subsection 3(1)

Insert:

maximum interim period for a determination under section 35A or 35B of an individual's percentage of care for a child is the period

beginning on the change of care day for the individual and ending at:

- (a) for a determination relating to a court order—the later of:
 - (i) the end of the period of 52 weeks starting on the day the court order first takes effect; or
 - (ii) the end of the period of 26 weeks starting on the change of care day; or
- (b) for a determination relating to a written agreement or parenting plan—the end of the period of 14 weeks starting on the change of care day.

percentage range: 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%.

takes reasonable action to participate in family dispute resolution has the meaning given by subsection 35FA(3).

5 Paragraph 35A(1)(d)

Omit “, 35D”.

6 Paragraph 35A(2)(a)

Omit “revokes, under Subdivision E of this Division,”, substitute “revokes or suspends, under Subdivision E of this Division (except under paragraph 35PA(3)(b) or 35QA(3)(b)),”.

7 Paragraph 35A(2)(d)

Omit “, 35D”.

8 Paragraph 35B(2)(a)

Omit “revokes, under Subdivision E of this Division,”, substitute “revokes or suspends, under Subdivision E of this Division (except under paragraph 35PA(3)(b) or 35QA(3)(b)),”.

9 Subsection 35B(4)

Omit “, 35D”.

10 Paragraph 35C(1)(c)

Omit “has taken”, substitute “is taking”.

11 Section 35D

Repeal the section.

12 Section 35E (heading)

Repeal the heading, substitute:

35E Application of section 35C in relation to claims for family tax benefit for a past period

13 Subsections 35E(1) and (2)

Omit “sections 35C and 35D apply”, substitute “section 35C applies”.

14 Section 35F

Repeal the section, substitute:

35F Section 35C does not apply in certain circumstances

- (1) Section 35C does not apply in relation to an individual in relation to whom a determination is to be or has been made under section 35A or 35B if:
 - (a) for a claim referred to in paragraph 35A(1)(b) or 35B(1)(b) that is a claim for payment of family tax benefit for a past period—the first day of the past period is after the end of the maximum interim period for the determination; or
 - (b) the day the claim referred to in paragraph 35A(1)(b) or 35B(1)(b) is made is after the end of the maximum interim period for the determination; or
 - (c) the Secretary has revoked the determination under section 35P or 35Q.

- (2) Section 35C also does not apply in relation to an individual in relation to whom a determination (a *later determination*) has been made under section 35A or 35B if:
- (a) an earlier determination determined the individual’s percentage of care for a child under that section for the purposes of subsections 35C(3) and (4); and
 - (b) the later determination is made after the end of the maximum interim period for the earlier determination; and
 - (c) the later determination relates to the same care arrangement as the earlier determination.

35FA Meaning of *interim period*

- (1) An *interim period* for a determination under section 35A or 35B of an individual’s percentage of care for a child is (subject to subsection (4)) the period:
- (a) beginning on:
 - (i) the individual’s change of care day, unless subsection (2) applies; or
 - (ii) if subsection (2) applies—the day specified in that subsection; and
 - (b) ending:
 - (i) as set out in the applicable item of the following table, unless subparagraph (ii), (iii) or (iv) applies; or
 - (ii) if the individual referred to in paragraph 35C(1)(c) who has reduced care of the child ceases to take reasonable action to ensure that the care arrangement is complied with—on the day the individual so ceases; or
 - (iii) if a care arrangement in relation to the child ceases to apply on a day—on that day; or
 - (iv) if a care arrangement in relation to the child begins to apply on a day—on the day before that day.

Interim period		
Item	If the following conditions are met ...	the interim period ends ...
1	(a) the care arrangement for the child is a court	at the end of that 52 week period.

Interim period		
Item	If the following conditions are met ...	the interim period ends ...
	<p>order;</p> <p>(b) the Secretary is not satisfied that special circumstances exist in relation to the child;</p> <p>(c) assuming table item 2 applied, the period that would apply under that item ends before the end of the period of 52 weeks starting on the day the court order first takes effect</p>	
2	<p>(a) the care arrangement for the child is a court order;</p> <p>(b) the Secretary is not satisfied that special circumstances exist in relation to the child;</p> <p>(c) table item 1 does not apply</p>	<p>at the end of:</p> <p>(a) the period of 26 weeks starting on the change of care day, unless paragraph (b) applies; or</p> <p>(b) the period of 14 weeks starting on the day the individual who has increased care of the child began continuously taking reasonable action to participate in family dispute resolution if:</p> <p>(i) that 14 week period ends before the end of the 26 week period referred to in paragraph (a); and</p> <p>(ii) the individual takes that reasonable action throughout that 14 week period.</p>
3	<p>(a) the care arrangement for the child is a written agreement or a parenting plan;</p> <p>(b) the Secretary is not satisfied that special circumstances exist in relation to the child;</p> <p>(c) the change of care day occurs before the end</p>	<p>at the end of the period of 14 weeks starting on the change of care day.</p>

Schedule 1 Child support amendments
Part 1 Interim periods

Interim period		
Item	If the following conditions are met ...	the interim period ends ...
	of the period of 38 weeks after the day the agreement or plan first takes effect	
4	<ul style="list-style-type: none"> (a) the care arrangement for the child is a written agreement or a parenting plan; (b) the Secretary is not satisfied that special circumstances exist in relation to the child; (c) the change of care day occurs after the end of the period of 38 weeks, but before the end of the period of 48 weeks, starting on the day the agreement or plan first takes effect 	<p>at the end of:</p> <ul style="list-style-type: none"> (a) the period of 14 weeks starting on the change of care day, unless paragraph (b) applies; or (b) the period of 4 weeks starting on the day the individual who has increased care of the child began continuously taking reasonable action to participate in family dispute resolution if: <ul style="list-style-type: none"> (i) that 4 week period began at or after the end of the period of 48 weeks starting on the day the agreement or plan first takes effect; and (ii) that 4 week period ends before the end of the 14 week period referred to in paragraph (a); and (iii) the individual takes that reasonable action throughout that 4 week period.
5	<ul style="list-style-type: none"> (a) the care arrangement for the child is a written agreement or a parenting plan; (b) the Secretary is not satisfied that special circumstances exist in relation to the child; (c) the change of care day occurs after the end of 48 weeks after the agreement or plan first takes effect 	<p>at the end of:</p> <ul style="list-style-type: none"> (a) the period of 14 weeks starting on the change of care day, unless paragraph (b) applies; or (b) the period of 4 weeks starting on the day the individual who has increased care of the child began continuously taking reasonable action to participate in family dispute resolution if: <ul style="list-style-type: none"> (i) that 4 week period ends before the end of the 14 week period referred to in paragraph (a); and (ii) the individual takes that reasonable action throughout that 4 week period.

Interim period		
Item	If the following conditions are met ...	the interim period ends ...
6	the Secretary is satisfied that special circumstances exist in relation to the child	on the day determined by the Secretary, being a day before the day the period would otherwise end if the special circumstances did not exist in relation to the child.

Beginning of later interim periods

- (2) If:
- (a) an interim period for the determination ends under item 2, 4 or 5 of the table in subsection (1) before the end of the maximum interim period for the determination; and
 - (b) the individual referred to in paragraph 35C(1)(c) who has reduced care of the child is taking reasonable action to ensure that the care arrangement is complied with; and
 - (c) the individual (the *second carer*) who has increased care of the child ceases to take reasonable action to participate in family dispute resolution before the end of the maximum interim period;
- then a further interim period for the determination begins on the day the second carer ceases to take such reasonable action.

When an individual takes reasonable action to participate in family dispute resolution

- (3) An individual who has increased care of a child **takes reasonable action to participate in family dispute resolution** if:
- (a) the individual:
 - (i) initiates and participates in family dispute resolution; or
 - (ii) participates in family dispute resolution that was initiated by the individual referred to in paragraph 35C(1)(c) who has reduced care of the child; and
 - (b) in relation to determining whether an interim period begins on the change of care day for the individual—the individual takes an action referred to in paragraph (a) within a reasonable period of that day.

Determinations made before the end of a maximum interim period

- (4) A determination under section 35A or 35B of an individual's percentage of care for a child does not have an interim period if the determination is made under that section before the end of the maximum interim period for another determination under either of those sections of the individual's percentage of care for the child (see sections 35PA and 35QA).

15 After section 35G

Insert:

35GA When an individual has increased care of a child

An individual has *increased 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 is likely to have, during the care period is more than that extent of care.

16 Subsection 35J(4)

Omit “, 35D”, substitute “, 35GA”.

17 Section 35K (heading)

Repeal the heading, substitute:

35K Days to which the percentage of care applies if section 35C did not apply in relation to an individual etc.

18 Subsection 35K(1)

Repeal the subsection, substitute:

- (1) This section applies if a determination of an individual's percentage of care for a child during a care period is made under section 35A or 35B and:
- (a) section 35C did not apply in relation to the individual; or

- (b) all of the following apply:
 - (i) section 35C did apply in relation to the individual;
 - (ii) the determination (the *later determination*) was made while an earlier determination of the individual's percentage of care for the child was suspended under subsection 35PA(2) or 35QA(2);
 - (iii) the earlier determination is still suspended under that subsection or the earlier determination was revoked under subsection 35PA(4) or 35QA(4);
 - (iv) the later determination has not been revoked; or
- (c) section 35C did apply in relation to the individual but the determination made under section 35A or 35B determined a single percentage of care for the child for the purposes of subsection 35C(5); or
- (d) section 35G applied in relation to the individual.

Note: For when section 35C does not apply, see section 35F.

- (1A) The percentage of care applies on and from the application day until the day a revocation of the determination takes effect, or the suspension of the earlier determination ceases to have effect (except because the suspension is revoked), under Subdivision E of this Division.

19 Section 35L

Repeal the section, substitute:

35L Days to which the percentage of care applies if 2 percentages of care apply under section 35C in relation to an individual

- (1) This section applies if:
 - (a) a determination of an individual's percentage of care for a child is made under section 35A or 35B; and
 - (b) 2 percentages of care were determined for the purposes of subsection 35C(2) in relation to the individual; and
 - (c) the determination is not suspended under subsection 35PA(2) or 35QA(2).

- (2) Until a revocation of the determination takes effect, or a suspension of the determination takes effect, under Subdivision E of this Division:
- (a) the percentage of care referred to in subsection 35C(3) applies to each day in a care period that occurs in the interim period for the determination; and
 - (b) the percentage of care referred to in subsection 35C(4) applies to each day in a care period that does not occur in the interim period for the determination.

20 Subdivision E of Division 1 of Part 3 (heading)

Repeal the heading, substitute:

Subdivision E—Revocation and suspension of determination of percentage of care

21 Sections 35P to 35R

Repeal the sections, substitute:

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

- (1) The Secretary must revoke a determination of an individual's percentage of care (the *existing percentage of care*) for a child made under section 35A or 35B if:
- (a) the Secretary or 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
 - (b) 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; and

(c) subsection (2) applies in relation to the individual.

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

(2) This subsection applies in relation to an individual if:

- (a) disregarding paragraph 35F(1)(c), section 35C did not apply in relation to the individual; or
- (b) section 35C did apply in relation to the individual but the maximum interim period for the determination has ended; or
- (c) all of the following apply:
 - (i) section 35C did apply in relation to the individual;
 - (ii) the maximum interim period for an earlier determination of the individual's percentage of care for the child has not ended;
 - (iii) an interim period for the earlier determination does not currently apply;
 - (iv) the determination referred to in subsection (1) was made while the earlier determination was suspended under this Subdivision.

Note: For when section 35C does not apply, see section 35F.

(3) The revocation of the determination takes effect at the end of:

- (a) if the change of care day for the individual occurs during an 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.

35PA Suspension of determination before the end of the maximum interim period if there is a change to the individual's shared care percentage

(1) This section applies if:

- (a) a determination (the *earlier determination*) of an individual's percentage of care (the *actual percentage*) for a child has been made under section 35A or 35B for the purposes of subsection 35C(4); and

- (b) the Secretary or 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 actual percentage for the child; and
- (c) 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; and
- (d) section 35P does not apply; and
- (e) an interim period for the earlier determination does not currently apply; and
- (f) the maximum interim period for the earlier determination has not ended.

Suspending the determination

- (2) The Secretary must suspend the earlier determination. The suspension takes effect at the end of the day before the Secretary or Child Support Registrar is so notified or otherwise becomes aware.

Note: The Secretary must make another determination under section 35A or 35B when the earlier determination is suspended: see subsection 35A(2) or 35B(2).

Lifting of suspension of determination

- (3) If a further interim period for the earlier determination begins before the end of the maximum interim period for the determination because the individual who has increased care of the child ceases to take reasonable action to participate in family dispute resolution, the Secretary must revoke:
 - (a) the suspension of the earlier determination; and
 - (b) any determination (the **later determination**) of the individual's percentage of care for the child that was made under section 35A or 35B during the suspension.

A revocation under this subsection takes effect at the end of the day before the individual ceases to take that reasonable action.

Ending of maximum interim period

- (4) When the maximum interim period for the earlier determination ends, the Secretary must revoke:
- (a) the earlier determination (and any suspension of the earlier determination); and
 - (b) any later determination that meets the following conditions:
 - (i) the later determination was made during the suspension of the earlier determination;
 - (ii) the Secretary is satisfied that the care of the child that is actually taking place does not correspond with the individual's percentage of care for the child determined under the later determination.

Note: The Secretary must make another determination under section 35A or 35b after revoking a determination under this subsection: see subsection 35A(2) or 35B(2).

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

- (1) The Secretary may revoke a determination of an individual's percentage of care (the *existing percentage of care*) for a child made under section 35A or 35B if:
- (a) the Secretary or 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
 - (b) 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
 - (c) sections 35P and 35PA do not apply; and
 - (d) subsection (2) applies in relation to the individual.

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) This subsection applies in relation to an individual if:
- (a) disregarding paragraph 35F(1)(b), section 35C did not apply in relation to the individual; or
 - (b) section 35C did apply in relation to the individual but the maximum interim period for the determination has ended; or
 - (c) all of the following apply:
 - (i) section 35C did apply in relation to the individual;
 - (ii) the maximum interim period for an earlier determination of the individual's percentage of care for the child has not ended;
 - (iii) an interim period for the earlier determination does not currently apply;
 - (iv) the determination referred to in subsection (1) was made while the earlier determination was suspended under this Subdivision.

Note: For when section 35C does not apply, see section 35F.

- (3) The revocation of the determination takes effect at the end of:
- (a) if the change of care day for the individual occurs during an 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.

35QA Suspension of determination of an individual's percentage of care before the end of the maximum interim period

- (1) This section applies if:
- (a) a determination (the *earlier determination*) of an individual's percentage of care (the *actual percentage*) for a child has been made under section 35A or 35B for the purposes of subsection 35C(4); and
 - (b) the Secretary or 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 actual percentage for the child; and
 - (c) 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 actual percentage for the child; and

- (d) sections 35P, 35PA and 35Q do not apply; and
- (e) an interim period for the earlier determination does not currently apply; and
- (f) the maximum interim period for the earlier determination has not ended.

Suspending the determination

- (2) The Secretary may suspend the earlier determination. The suspension takes effect at the end of the day before the Secretary or Child Support Registrar is so notified or otherwise becomes aware.

Note: The Secretary must make another determination under section 35A or 35B if the earlier determination is suspended: see subsection 35A(2) or 35B(2).

Lifting of suspension of determination

- (3) If a further interim period for the earlier determination begins before the end of the maximum interim period for the determination because the individual who has increased care of the child ceases to take reasonable action to participate in family dispute resolution, the Secretary must revoke:
 - (a) the suspension of the earlier determination; and
 - (b) any determination (the **later determination**) of the individual's percentage of care for the child that was made under section 35A or 35B during the suspension.

A revocation under this subsection takes effect at the end of the day before the individual ceases to take that reasonable action.

Ending of maximum interim period

- (4) When the maximum interim period for the earlier determination ends, the Secretary must revoke:
 - (a) the earlier determination (and any suspension of the earlier determination); and
 - (b) any later determination that meets the following conditions:
 - (i) the later determination was made during the suspension of the earlier determination;

Schedule 1 Child support amendments

Part 1 Interim periods

- (ii) the Secretary is satisfied that the care of the child that is actually taking place does not correspond with the individual's percentage of care for the child determined under the later determination.

Note: The Secretary must make another determination under section 35A or 35B after revoking a determination under this subsection: see subsection 35A(2) or 35B(2).

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

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

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 an 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.

Child Support (Assessment) Act 1989

22 Subsection 5(1) (paragraph (b) of the definition of *change of care day*)

Repeal the paragraph, substitute:

- (b) if a determination of the responsible person's percentage of care for the child has been suspended 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

determined for the purposes of subsection 51(4) under the determination; or

- (c) otherwise—the first day on which the care of the child that was actually taking place did not correspond with the responsible person’s extent of care under a care arrangement that applies in relation to the child (which might be the first day the care arrangement begins to apply in relation to the child).

23 Subsection 5(1)

Insert:

family dispute resolution has the meaning given by section 10F of the *Family Law Act 1975*.

increased care of a child has the meaning given by section 53B.

24 Subsection 5(1) (definition of *interim period*)

Omit “subsection 54C(2)”, substitute “section 53A”.

25 Subsection 5(1)

Insert:

maximum interim period for a determination under section 49 or 50 of a responsible person’s percentage of care for a child is the period beginning on the change of care day for the responsible person and ending at:

- (a) for a determination relating to a court order—the later of:
- (i) the end of the period of 52 weeks starting on the day the court order first takes effect; or
 - (ii) the end of the period of 26 weeks starting on the change of care day; or
- (b) for a determination relating to a written agreement or parenting plan—the end of the period of 14 weeks starting on the change of care day.

takes reasonable action to participate in family dispute resolution has the meaning given by subsection 53A(3).

26 Paragraph 49(1)(b)

Repeal the paragraph, substitute:

- (b) both of the following apply:
 - (i) the determination of a responsible person's percentage of care for a child that was made under this section or section 50 is revoked or suspended under Subdivision C of this Division, except under paragraph 54FA(3)(b) or 54HA(3)(b);
 - (ii) the Registrar 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.

27 Subsection 49(3)

Omit "or 52".

28 Paragraph 50(1)(b)

Repeal the paragraph, substitute:

- (b) both of the following apply:
 - (i) the determination of a responsible person's percentage of care for a child that was made under section 49 or this section is revoked or suspended under Subdivision C of this Division, except under paragraph 54FA(3)(b) or 54HA(3)(b);
 - (ii) the Registrar 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.

29 Subsection 50(4)

Omit "or 52".

30 Paragraph 51(1)(d)

Omit "has taken", substitute "is taking".

31 Sections 52 and 53

Repeal the sections, substitute:

53 Section 51 does not apply in certain circumstances

- (1) Section 51 does not apply in relation to a responsible person in relation to whom a determination is to be or has been made under section 49 or 50 if:
 - (a) in a case where subparagraph 49(1)(a)(i) or 50(1)(a)(i) applies in relation to the determination—the day the application referred to in that subparagraph is made is after the end of the maximum interim period for the determination; or
 - (b) in a case where subparagraph 49(1)(a)(ii) or 50(1)(a)(ii) applies in relation to the determination—the day referred to in that subparagraph is after the end of the maximum interim period for the determination; or
 - (c) the Registrar has revoked the determination under section 54F or 54H.
- (2) Section 51 also does not apply in relation to a responsible person in relation to whom a determination (a **later determination**) has been made under section 49 or 50 if:
 - (a) an earlier determination determined the responsible person's percentage of care for a child under that section for the purposes of subsections 51(3) and (4); and
 - (b) the later determination is made after the end of the maximum interim period for the earlier determination; and
 - (c) the later determination relates to the same care arrangement as the earlier determination.

53A Meaning of *interim period*

- (1) An **interim period** for a determination under section 49 or 50 of a responsible person's percentage of care for a child is (subject to subsection (4)) the period:
 - (a) beginning on:
 - (i) the responsible person's change of care day, unless subsection (2) applies; or

Schedule 1 Child support amendments
Part 1 Interim periods

- (ii) if subsection (2) applies—the day specified in that subsection; and
- (b) ending:
 - (i) as set out in the applicable item of the following table, unless subparagraph (ii), (iii) or (iv) applies; or
 - (ii) if the person referred to in paragraph 51(1)(d) who has reduced care of the child ceases to take reasonable action to ensure that the care arrangement is complied with—on the day the person so ceases; or
 - (iii) if a care arrangement in relation to the child ceases to apply on a day—on that day; or
 - (iv) if a care arrangement in relation to the child begins to apply on a day—on the day before that day.

Interim period		
Item	If the following conditions are met ...	the interim period ends ...
1	(a) the care arrangement for the child is a court order; (b) the Registrar is not satisfied that special circumstances exist in relation to the child; (c) assuming table item 2 applied, the period that would apply under that item ends before the end of the period of 52 weeks starting on the day the court order first takes effect	at the end of that 52 week period.
2	(a) the care arrangement for the child is a court order; (b) the Registrar is not satisfied that special circumstances exist in relation to the child; (c) table item 1 does not	at the end of: <ul style="list-style-type: none"> (a) the period of 26 weeks starting on the change of care day, unless paragraph (b) applies; or (b) the period of 14 weeks starting on the day the person who has increased care of the child began continuously taking reasonable

Interim period		
Item	If the following conditions are met ...	the interim period ends ...
	apply	action to participate in family dispute resolution if: (i) that 14 week period ends before the end of the 26 week period referred to in paragraph (a); and (ii) the person takes that reasonable action throughout that 14 week period.
3	(a) the care arrangement for the child is a written agreement or a parenting plan; (b) the Registrar is not satisfied that special circumstances exist in relation to the child; (c) the change of care day occurs before the end of the period of 38 weeks after the day the agreement or plan first takes effect	at the end of the period of 14 weeks starting on the change of care day.
4	(a) the care arrangement for the child is a written agreement or a parenting plan; (b) the Registrar is not satisfied that special circumstances exist in relation to the child; (c) the change of care day occurs after the end of the period of 38 weeks, but before the end of the period of 48 weeks, starting on the day the agreement or plan first takes effect	at the end of: (a) the period of 14 weeks starting on the change of care day, unless paragraph (b) applies; or (b) the period of 4 weeks starting on the day the person who has increased care of the child began continuously taking reasonable action to participate in family dispute resolution if: (i) that 4 week period began at or after the end of the period of 48 weeks starting on the day the agreement or plan first takes effect; and (ii) that 4 week period ends before the end of the 14 week period referred to in paragraph (a); and

Schedule 1 Child support amendments
Part 1 Interim periods

Interim period		
Item	If the following conditions are met ...	the interim period ends ...
		(iii) the person takes that reasonable action throughout that 4 week period.
5	(a) the care arrangement for the child is a written agreement or a parenting plan; (b) the Registrar is not satisfied that special circumstances exist in relation to the child; (c) the change of care day occurs after the end of 48 weeks after the agreement or plan first takes effect	at the end of: (a) the period of 14 weeks starting on the change of care day, unless paragraph (b) applies; or (b) the period of 4 weeks starting on the day the person who has increased care of the child began continuously taking reasonable action to participate in family dispute resolution if: (i) that 4 week period ends before the end of the 14 week period referred to in paragraph (a); and (ii) the person takes that reasonable action throughout that 4 week period.
6	the Registrar is satisfied that special circumstances exist in relation to the child	on the day determined by the Registrar, being a day before the day the period would otherwise end if the special circumstances did not exist in relation to the child.

Beginning of later interim periods

- (2) If:
- (a) an interim period for the determination ends under item 2, 4 or 5 of the table in subsection (1) before the end of the maximum interim period for the determination; and
 - (b) the person referred to in paragraph 51(1)(d) who has reduced care of the child is taking reasonable action to ensure that the care arrangement is complied with; and
 - (c) the person (the **second carer**) who has increased care of the child ceases to take reasonable action to participate in family dispute resolution before the end of the maximum interim period;

then a further interim period for the determination begins on the day the second carer ceases to take such reasonable action.

When a person takes reasonable action to participate in family dispute resolution

- (3) A person who has increased care of a child **takes reasonable action to participate in family dispute resolution** if:
- (a) the person:
 - (i) initiates and participates in family dispute resolution; or
 - (ii) participates in family dispute resolution that was initiated by the person referred to in paragraph 51(1)(d) who has reduced care of the child; and
 - (b) in relation to determining whether an interim period begins on the change of care day for the person—the person takes an action referred to in paragraph (a) within a reasonable period of that day.

Determinations made before the end of a maximum interim period

- (4) A determination under section 49 or 50 of a responsible person's percentage of care for a child does not have an interim period if the determination is made under that section before the end of the maximum interim period for another determination under either of those sections of the responsible person's percentage of care for the child (see sections 54FA and 54HA).

53B When a person has increased care of a child

A person has **increased 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 more than that extent of care.

32 Subsection 54A(4)

Omit "52", substitute "53B".

33 Section 54B (heading)

Repeal the heading, substitute:

54B Days to which the percentage of care applies if section 51 did not apply etc. in relation to a responsible person

34 Subsection 54B(1)

Repeal the subsection, substitute:

- (1) This section applies if a determination of a responsible person's percentage of care for a child is made under section 49 or 50 and:
- (a) section 51 did not apply in relation to the responsible person; or
 - (b) all of the following apply:
 - (i) section 51 did apply in relation to the responsible person;
 - (ii) the determination (the *later determination*) was made while an earlier determination of the responsible person's percentage of care for the child was suspended under subsection 54FA(2) or 54HA(2);
 - (iii) the earlier determination is still suspended under that subsection or the earlier determination was revoked under subsection 54FA(4) or 54HA(4);
 - (iv) the later determination has not been revoked; or
 - (c) section 51 did apply in relation to the responsible person but the determination made under section 49 or 50 determined a single percentage of care for the child for the purposes of subsection 51(5).

Note: For when section 51 does not apply, see section 53.

- (1A) The percentage of care applies to each day in a child support period on and from the application day until the determination is revoked, or the earlier determination ceases to be suspended, under Subdivision C of this Division.

35 Section 54C

Repeal the section, substitute:

54C Days to which the percentage of care applies if 2 percentages of care apply under section 51 in relation to a responsible person

- (1) This section applies if:
 - (a) a determination of a responsible person's percentage of care for a child is made under section 49 or 50; and
 - (b) 2 percentages of care were determined for the purposes of subsection 51(2) in relation to the responsible person; and
 - (c) the determination is not suspended under subsection 54FA(2) or 54HA(2).
- (2) Until the determination is revoked or suspended under Subdivision C of this Division:
 - (a) the percentage of care referred to in subsection 51(3) applies to each day in a child support period that occurs in the interim period for the determination; and
 - (b) the percentage of care referred to in subsection 51(4) applies to each day in a child support period that does not occur in the interim period for the determination.

36 Subdivision C of Division 4 of Part 5 (heading)

Repeal the heading, substitute:

Subdivision C—Revocation and suspension of determination of percentage of care

37 Section 54F

Repeal the section, substitute:

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

- (1) The Registrar must revoke a determination of a responsible person's percentage of care (the *existing percentage of care*) for a child made under section 49 or 50 if:
 - (a) the Registrar or 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

- (b) 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
- (c) section 54G does not apply; and
- (d) subsection (2) applies in relation to the individual.

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

- (2) This subsection applies in relation to a responsible person if:
 - (a) disregarding paragraph 53(1)(c), section 51 did not apply in relation to the responsible person; or
 - (b) section 51 did apply in relation to the responsible person but the maximum interim period for the determination has ended; or
 - (c) all of the following apply:
 - (i) section 51 did apply in relation to the responsible person;
 - (ii) the maximum interim period for an earlier determination of the responsible person's percentage of care for the child has not ended;
 - (iii) an interim period does not currently apply in relation to the earlier determination;
 - (iv) the determination referred to in subsection (1) was made while the earlier determination was suspended under this Subdivision.

Note: For when section 51 does not apply, see section 53.

- (3) The revocation of the determination takes effect at the end of:
 - (a) if the Registrar or Secretary is notified, or otherwise becomes aware, of the matter referred to in paragraph (1)(a) within 28 days after the change of care day for the responsible person—the day before the change of care day; or
 - (b) otherwise—the day before the Registrar or Secretary is notified, or otherwise becomes aware, of that matter.

54FA Suspension of determination before the end of the maximum interim period if there is a change to the responsible person's cost percentage

- (1) This section applies if:
- (a) a determination (the *earlier determination*) of a responsible person's percentage of care (the *actual percentage*) for a child has been made under section 49 or 50 for the purposes of subsection 51(4); and
 - (b) the Registrar or 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 actual percentage for the child; and
 - (c) 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
 - (d) sections 54F and 54G do not apply; and
 - (e) an interim period for the earlier determination does not currently apply; and
 - (f) the maximum interim period for the earlier determination has not ended.

Suspending the determination

- (2) The Registrar must suspend the earlier determination. The suspension takes effect at the end of the day before the Registrar or Secretary is so notified or otherwise becomes aware.

Note: The Registrar must make another determination under section 49 or 50 when the earlier determination is suspended: see paragraph 49(1)(b) or 50(1)(b).

Lifting of suspension of determination

- (3) If a further interim period for the earlier determination begins before the end of the maximum interim period for the determination because the person who has increased care of the child ceases to take reasonable action to participate in family dispute resolution, the Registrar must revoke:
- (a) the suspension of the earlier determination; and

- (b) any determination (the *later determination*) of the person's percentage of care for the child that was made under section 49 or 50 during the suspension.

A revocation under this subsection takes effect at the end of the day before the person ceases to take that reasonable action.

Ending of maximum interim period

- (4) When the maximum interim period for the earlier determination ends, the Registrar must revoke:
 - (a) the earlier determination (and any suspension of the earlier determination); and
 - (b) any later determination that meets the following conditions:
 - (i) the later determination was made during the suspension of the earlier determination;
 - (ii) the Registrar is satisfied that the care of the child that is actually taking place does not correspond with the responsible person's percentage of care for the child determined under the later determination.

Note: The Registrar must make another determination under section 49 or 50 after revoking a determination under this subsection: see paragraph 49(1)(b) or 50(1)(b).

38 Section 54H

Repeal the section, substitute:

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

- (1) The Registrar may revoke a determination of a responsible person's percentage of care (the *existing percentage of care*) for a child made under section 49 or 50 if:
 - (a) the Registrar or 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
 - (b) 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

- (c) sections 54F, 54FA and 54G do not apply; and
- (d) subsection (2) applies in relation to the individual.

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

- (2) This subsection applies in relation to a responsible person if:
 - (a) disregarding paragraph 53(1)(c), section 51 did not apply in relation to the responsible person; or
 - (b) section 51 did apply in relation to the responsible person but the maximum interim period for the determination has ended; or
 - (c) all of the following apply:
 - (i) section 51 did apply in relation to the responsible person;
 - (ii) the maximum interim period for an earlier determination of the responsible person's percentage of care for the child has not ended;
 - (iii) an interim period for the earlier determination does not currently apply;
 - (iv) the determination referred to in subsection (1) was made while the earlier determination was suspended under this Subdivision.

Note: For when section 51 does not apply, see section 53.

- (3) The revocation of the determination takes effect at the end of:
 - (a) if the Registrar or Secretary is notified, or otherwise becomes aware, of the matter referred to in paragraph (1)(a) within 28 days after the change of care day for the responsible person—the day before the change of care day; or
 - (b) otherwise—the day before the Registrar or Secretary is notified, or otherwise becomes aware, of that matter.

54HA Suspension of determination of a responsible person's percentage of care before the end of the maximum interim period

- (1) This section applies if:
- (a) a determination (the *earlier determination*) of a responsible person's percentage of care (the *actual percentage*) for a child has been made under section 49 or 50 for the purposes of subsection 51(4); and
 - (b) the Registrar or 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 actual percentage for the child; and
 - (c) 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 actual percentage for the child; and
 - (d) sections 54F, 54FA, 54G and 54H do not apply; and
 - (e) an interim period for the earlier determination does not currently apply; and
 - (f) the maximum interim period for the earlier determination has not ended.

Suspending the determination

- (2) The Registrar may suspend the earlier determination. The suspension takes effect at the end of the day before the Registrar or Secretary is so notified or otherwise becomes aware.

Note: The Registrar must make another determination under section 49 or 50 if the earlier determination is suspended: see paragraph 49(1)(b) or 50(1)(b).

Lifting of suspension of determination

- (3) If a further interim period for the earlier determination begins before the end of the maximum interim period for the determination because the person who has increased care of the child ceases to take reasonable action to participate in family dispute resolution, the Registrar must revoke:

- (a) the suspension of the earlier determination; and
- (b) any determination (the *later determination*) of the person's percentage of care for the child that was made under section 49 or 50 during the suspension.

A revocation under this subsection takes effect at the end of the day before the person ceases to take that reasonable action.

Ending of maximum interim period

- (4) When the maximum interim period for the earlier determination ends, the Registrar must revoke:
 - (a) the earlier determination (and any suspension of the earlier determination); and
 - (b) any later determination that meets the following conditions:
 - (i) the later determination was made during the suspension of the earlier determination;
 - (ii) the Registrar is satisfied that the care of the child that is actually taking place does not correspond with the responsible person's percentage of care for the child determined under the later determination.

Note: The Registrar must make another determination under section 49 or 50 after revoking a determination under this subsection: see paragraph 49(1)(b) or 50(1)(b).

39 Application of amendments

The amendments of the *A New Tax System (Family Assistance) Act 1999* and the *Child Support (Assessment) Act 1989* made by this Part apply in relation to any change of care day that occurs on or after the day this item commences.

Part 2—Amended tax assessments

Child Support (Assessment) Act 1989

40 Subsection 56(2)

Repeal the subsection, substitute:

When amended tax assessment may be taken into account

- (2) If, after an administrative assessment of child support is made, the assessment (the *tax assessment*) of a parent's taxable income is amended (whether or not because of an objection, appeal or review), the Registrar may amend the administrative assessment to take account of the amendment to the tax assessment.

Retrospective determinations

- (2A) An amendment of the administrative assessment under subsection (2) must be on the basis that the parent's adjusted taxable income for that year of income is, and has always been, the amount worked out as a result of the amended tax assessment if:
- (a) the parent's adjusted taxable income worked out as a result of the amended tax assessment is higher than the parent's previous adjusted taxable income; or
 - (b) the parent applied for the amendment of the tax assessment on or before:
 - (i) the day by which the parent was required to lodge his or her income tax return for that year of income with the Commissioner of Taxation (taking into account any deferral under section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*); or
 - (ii) the end of 28 days after the parent was given the tax assessment (including an amended tax assessment) by the Commissioner of Taxation; or
 - (iii) the end of 28 days after the parent becomes aware that the tax assessment is not correct if the parent did not apply for the amendment on or before a day referred to

- in subparagraph (i) or (ii) because of circumstances beyond the knowledge or control of the parent; or
- (c) the parent did not apply for the amendment of the tax assessment on or before any of the days referred to in paragraph (b), but the Registrar is satisfied that special circumstances exist.

Prospective determinations

- (2B) If subsection (2A) does not apply, an amendment of the administrative assessment under subsection (2) for a child support period must be on the basis that for each later day in the period the parent's adjusted taxable income for that year of income is the amount worked out as a result of the amended tax assessment.

41 Subsection 57(1)

Omit "to (e)", substitute "to (f)".

42 Subsection 57(7)

Repeal the subsection, substitute:

Higher taxable income to be taken into account

- (7) If, after an administrative assessment of child support is made, the assessment (the *tax assessment*) of a parent's taxable income is amended (whether or not because of an objection, appeal or review) to determine a taxable income that is higher than nil, the Registrar must amend the administrative assessment on the basis that the parent's adjusted taxable income for that year of income is, and has always been, the amount worked out as a result of the amended tax assessment.

43 After subsection 58A(3)

Insert:

- (3A) If, after an administrative assessment of child support is amended under subsection (2) or (3) because of subparagraph (1)(b)(i), the assessment (the *tax assessment*) of a parent's taxable income is amended (whether or not because of an objection, appeal or review), the Registrar may further amend the administrative

assessment to take account of the amendment to the tax assessment.

Amended tax assessments—retrospective determinations

- (3B) An amendment of the administrative assessment under subsection (3A) must be on the basis that the parent's adjusted taxable income for that year of income is, and has always been, the amount worked out as a result of the amended tax assessment if:
- (a) the parent's adjusted taxable income worked out as a result of the amended tax assessment is higher than the amount determined under section 58; or
 - (b) the parent lodged his or her income tax return for that year of income with the Commissioner of Taxation on or before the day by which the parent was required to lodge the income tax return for that year (taking into account any deferral under section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*) and:
 - (i) the parent applied for the amendment of the tax assessment on or before the day by which the parent was required to lodge his or her income tax return for that year; or
 - (ii) the parent applied for the amendment of the tax assessment before the end of 28 days after the parent was given the tax assessment (including an amended tax assessment) by the Commissioner of Taxation; or
 - (iii) the parent applied for the amendment of the tax assessment before the end of 28 days after the parent becomes aware that the tax assessment is not correct if the parent did not apply for the amendment on or before a day referred to in subparagraph (i) or (ii) because of circumstances beyond the knowledge or control of the parent; or
 - (iv) the parent did not apply for the amendment of the tax assessment on or before any of the days referred to in subparagraph (i), (ii) or (iii), but the Registrar is satisfied that special circumstances exist.
- (3C) An amendment of the administrative assessment under subsection (3A) must be in accordance with subsection (3E) if:
-

- (a) subsection (3B) does not apply; and
 - (b) the parent's adjusted taxable income (the *later income*) worked out as a result of the amended tax assessment is:
 - (i) higher than the earlier ascertainment of the parent's taxable income; but
 - (ii) lower than the amount determined under section 58.
- (3D) An amendment of the administrative assessment under subsection (3A) must be in accordance with subsection (3E) if:
- (a) subsection (3B) does not apply; and
 - (b) the parent's adjusted taxable income (the *later income*) worked out as a result of the amended tax assessment is lower than both the earlier ascertainment of the parent's taxable income and the amount determined under section 58; and
 - (c) any of the following applies:
 - (i) the parent applied for the amendment of the tax assessment before the end of 28 days after the parent was given the tax assessment (including an amended tax assessment) by the Commissioner of Taxation;
 - (ii) the parent applied for the amendment of the tax assessment before the end of 28 days after the parent becomes aware that the tax assessment is not correct if the parent did not apply for the amendment on or before a day referred to in subparagraph (i) because of circumstances beyond the knowledge or control of the parent;
 - (iii) the parent did not apply for the amendment of the tax assessment on or before either of the days referred to in subparagraph (i) or (ii), but the Registrar is satisfied that special circumstances exist.
- (3E) If subsection (3C) or (3D) applies, the amendment of the administrative assessment under subsection (3A) must be on the basis of the later income from the day the earlier ascertainment of the parent's adjusted taxable income took effect.

Schedule 1 Child support amendments

Part 2 Amended tax assessments

Amended tax assessments—prospective determinations

- (3F) If none of subsections (3B), (3C) nor (3D) applies, an amendment of the administrative assessment under subsection (3A) for a child support period must be on the basis that for each later day in the period the parent's adjusted taxable income for that year of income is the amount worked out as a result of the amended tax assessment.

44 Application of amendments

The amendments of the *Child Support (Assessment) Act 1989* made by this Part apply in relation to any amended tax assessment given to a person on or after the day this item commences (whether in relation to an income year before or after that day).

Part 3—Child support agreements

Division 1—Amendments commencing day after Royal Assent

Child Support (Assessment) Act 1989

45 At the end of section 12

Add:

References to child support terminating events in child support agreements

- (6) A reference in a child support agreement to a child support terminating event under this Act (however described) is taken not to include a reference to a child support terminating event under subparagraph 12(4)(a)(i).

46 Paragraph 35C(c)

After “this Part”, insert “and section 142”.

47 Subsection 95(2)

After “Part 5”, insert “and section 142”.

48 At the end of section 131

Add:

- (5) Without limiting any other powers conferred on a court by any other law, a court may vary or revoke an order made under this section if:
- (a) the order was made because another order ceased to be in force under section 142; and
 - (b) the other order revives under subsections 142(1B) and (1C).

49 After subsection 142(1A)

Insert:

- (1B) Subsection (1) ceases to apply if:

- (a) a child support terminating event happens under subparagraph 12(4)(a)(i), in relation to a child and persons who are respectively a carer entitled to child support and a liable parent in relation to a child, because a person makes an election under section 151; and
 - (b) the liability to pay or provide child support is under a child support agreement whose provisions are covered by subsection 95(2) or (3); and
 - (c) the person who makes the election applies for an administrative assessment of child support under Part 4 before the liability to pay or provide child support under the agreement ends.
- (1C) To avoid doubt, the order is taken to revive at the start of the day the person makes the application for administrative assessment of child support.

50 Application—child support terminating events

The amendments of section 12 of the *Child Support (Assessment) Act 1989* made by this Division apply in relation to child support agreements made after the commencement of this item.

51 Application—agreements whose provisions are treated as consent orders

The amendments of sections 35C and 95 of the *Child Support (Assessment) Act 1989* made by this Division apply in relation to days in a child support period that occur on or after the day this item commences (whether or not the relevant child support agreement referred to in that section is made before or after that commencement).

52 Application—cessation of orders

The amendments of section 142 of the *Child Support (Assessment) Act 1989* made by this Division apply in relation to elections made under section 151 of that Act after the commencement of this item.

Division 2—Other amendments

Child Support (Assessment) Act 1989

53 Subparagraph 12(4)(a)(i)

Omit “elects by a notice that complies with section 151 (Election by carer entitled to child support to end administrative assessment)”, substitute “or the liable parent elects by a notice that complies with section 151 (election to end administrative assessment)”.

54 At the end of subsection 80D(1)

Add:

; or (d) the agreement being terminated by subsection (2A).

55 Before subsection 80D(2)

Insert:

When an agreement is binding on parties

56 After subsection 80D(2)

Insert:

Termination when former eligible carer continues to be entitled to child support

- (2A) A binding child support agreement is terminated in relation to a child by force of this subsection if:
- (a) a party (the *former carer*) to the agreement who is entitled to be paid or provided child support for the child (disregarding section 67A) under the agreement ceases to be an eligible carer of the child; and
 - (b) the period of 28 days after the former carer ceases to be an eligible carer of the child ends without the former carer again becoming an eligible carer of the child; and
 - (c) the agreement is not suspended under section 86 on the day after the period ends as a result of that cessation; and
 - (d) a child support terminating event does not occur under subsection 12(2AA); and

- (e) the former carer continues to be entitled to be paid or provided child support for the child under the agreement despite ceasing to be an eligible carer.

Note: The agreement may continue in relation to other children to whom the agreement relates if the person does not cease to be an eligible carer of those children (see section 87).

When child support agreement is terminated

57 At the end of subsection 80D(3)

Add:

- ; and (d) if paragraph (1)(d) applies—on the day the former carer ceases to be an eligible carer of the child.

58 At the end of subsection 80G(1)

Add:

- ; or (f) the agreement being terminated by subsection (1B).

59 Before subsection 80G(1A)

Insert:

Residents of reciprocating jurisdictions

60 After subsection 80G(1A)

Insert:

Termination when former eligible carer continues to be entitled to child support

- (1B) A limited child support agreement is terminated in relation to a child by force of this subsection if:
 - (a) a party (the *former carer*) to the agreement who is entitled to be paid or provided child support for the child (disregarding section 67A) under the agreement ceases to be an eligible carer of the child; and
 - (b) the period of 28 days after the former carer ceases to be an eligible carer of the child ends without the former carer again becoming an eligible carer of the child; and

- (c) the agreement is not suspended under section 86 on the day after the period ends as a result of that cessation; and
- (d) a child support terminating event does not occur under subsection 12(2AA); and
- (e) the former carer continues to be entitled to be paid or provided child support for the child under the agreement despite ceasing to be an eligible carer.

Note: The agreement may continue in relation to other children to whom the agreement relates if the person does not cease to be an eligible carer of those children (see section 87).

When child support agreement is terminated

61 At the end of subsection 80G(2)

Add:

- ; and (e) if paragraph (1)(f) applies—on the day the former carer ceases to be an eligible carer of the child.

62 Before subsection 80G(3)

Insert:

Notification of termination in certain cases

63 At the end of subsection 81(2)

Add:

- ; (d) section 85 (child support agreement must not provide for person who is not eligible carer to be paid child support).

64 After section 84

Insert:

85 Child support agreement must not provide for person who is not eligible carer to be paid child support

- (1) An agreement is not a child support agreement in relation to a child if (disregarding section 67A) the agreement provides that a party to the agreement is to pay or provide child support for the child to another party for a period during which the party is not an eligible carer of the child.

- (2) Subsection (1) does not affect the operation of the agreement for any other purpose.

Division 2A—Other rules relating to child support agreements

86 Suspension of child support agreements when person is not eligible carer

- (1) A child support agreement is suspended in relation to a child by force of this section on a day if:
- (a) a party (the *former carer*) to the agreement who is entitled to be paid or provided child support for the child (disregarding section 67A) under the agreement is not an eligible carer of the child on that day; and
 - (b) the period (including that day) during which the former carer has not been an eligible carer of the child is:
 - (i) 28 days or less; or
 - (ii) if subsection (2) applies—26 weeks or less; and
 - (c) a child support terminating event does not occur under subsection 12(2AA); and
 - (d) the former carer would (apart from this section) continue to be entitled to be paid or provided child support for the child under the agreement in respect of the day despite ceasing to be an eligible carer.

Note: The agreement may continue without suspension in relation to other children to whom the agreement relates if the person does not cease to be an eligible carer of those children (see section 87).

- (2) The former carer may cease to be an eligible carer of the child for up to 26 weeks under subparagraph (1)(b)(ii) if:
- (a) the child support agreement provides that the agreement is to be suspended if a party to the agreement ceases to be an eligible carer of the child for a period of more than 28 days; or
 - (b) after the former carer ceases to be an eligible carer, each of the parties to the agreement notifies the Registrar, before the end of the 26 week period, that the parties to the agreement want the agreement suspended for more than 28 days; or

- (c) the Registrar is satisfied that there are special circumstances in relation to the change in the care of the child.

86A Apportioning amounts payable under child support agreements

- (1) This section applies if:
- (a) an agreement is made in the same document in relation to 2 or more children; and
 - (b) the agreement does not explicitly provide, and it is not possible to work out, the amount payable under the agreement in relation to each of the children to whom the agreement relates.
- (2) The agreement is taken to provide that the total amount payable under the agreement in relation to each of the children to whom the agreement relates is worked out using the following formula:

$$\frac{\text{Total amount payable under the agreement}}{\text{The number of children to whom the agreement relates}}$$

- (3) To avoid doubt, if the agreement ceases to relate to a child, the amount worked out under subsection (2) continues to apply in relation to each of the remaining children to whom the agreement relates.

65 Subsection 93(1)

After “then”, insert “, subject to subsection (1A)”.

66 Subparagraph 93(1)(h)(ii)

Before “the day on which”, insert “the day immediately before”.

67 After subsection 93(1)

Insert:

- (1A) Despite paragraphs (1)(g) and (h), child support is not payable for a child under the agreement for a day if the agreement is suspended in relation to the child under section 86 on that day.

68 After subsection 136(2)

Insert:

- (2A) If a party has applied under subsection (1), the court may also set aside the agreement in accordance with the application if the court is satisfied that:
- (a) the agreement was made before 1 July 2008; and
 - (b) the agreement was made without at least one of the parties to the agreement receiving independent legal advice, before entering the agreement, from a legal practitioner as to the matters referred to in paragraph 80C(2)(c); and
 - (c) it would be unjust and inequitable if the court does not set the agreement aside.

69 Section 151 (heading)

Repeal the heading, substitute:

151 Election to end administrative assessment

70 After subsection 151(1)

Insert:

- (1A) If child support is not payable to a person for a child under a child support agreement for a day under subsection 93(1A), any party to the agreement may, by notice given to the Registrar on that day, elect that the liability of a liable parent who is a party to the agreement to pay or provide child support for the child to the person is to end from a specified day.

71 Subsection 151(2)

Omit “The notice”, substitute “A notice under subsection (1) or (1A)”.

72 Subsections 151(4) and (5)

Repeal the subsections.

73 Section 151A

Repeal the section.

74 Application—termination and suspension of child support agreements

- (1) This item applies in relation to the following amendments:
-

- (a) the amendments of sections 12, 80D, 80G, 93, 151 and 151A of the *Child Support (Assessment) Act 1989* made by this Division;
- (b) section 86 of that Act, as inserted by this Division.

Termination of agreements

- (2) Sections 80D and 80G apply in relation to any period of 28 days that ends on or after the day this item commences (whether or not the child support agreement that is terminated under those provisions was made, and whether or not the period begins, before, on or after that day).
- (3) For the purposes of the *Child Support (Assessment) Act 1989*, a child support agreement is taken to be terminated under section 80D or 80G at the time this item commences if:
 - (a) a person ceases to be an eligible carer of a child before that time; and
 - (b) immediately before that time, the person continues not to be an eligible carer of the child; and
 - (c) the agreement would have been terminated under that section before that time if that section had been in force.
- (4) This item does not affect the operation of a child support agreement for any other purpose.

Suspension of agreements

- (5) Section 86, and the amendments of sections 12, 93 (except subparagraph 93(1)(h)(ii)) and subsections 151(1A) and (2), apply in relation to days in a child support period that occur on or after the day this item commences (whether or not the child support agreement that is suspended was made before, on or after that day).
- (6) However, in determining the length of time that a person has ceased to be an eligible carer, take into account any days that occur before this item commences.

Terminations under section 80D or 80G

- (7) The amendments of subparagraph 93(1)(h)(ii) apply in relation to terminations under section 80D or 80G of the *Child Support*

(Assessment) Act 1989 (as amended by this Division) after this item commences.

Repeals

- (8) The repeal of subsections 151(4) and (5) and section 151A of the *Child Support (Assessment) Act 1989* apply in relation to an election referred to in subsection 151(1) of that Act that is made after this item commences.

75 Application—child support agreements that provide for child support for non-eligible carers

The following amendments apply in relation to child support agreements made after the commencement of this item:

- (a) the amendments of section 81 of the *Child Support (Assessment) Act 1989* made by this Division;
- (b) section 85, as inserted by this Division.

76 Application—apportioning amounts payable under child support agreements

- (1) Section 86A of the *Child Support (Assessment) Act 1989*, as inserted by this Division, applies in relation to any event that causes an agreement to cease to relate to a child that occurs after the commencement of this item.
- (2) In applying subitem (1) to an agreement made before that commencement:
- (a) the total amount payable under the agreement is the total amount that is payable under the agreement immediately before that commencement; and
 - (b) the total number of children to whom the agreement relates is the total number of children to whom the agreement relates immediately before that commencement.

Part 4—Overpayments

Division 1—Amendments

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

77 Subsection 227(3)

After “child support debts”, insert “or carer debts”.

Child Support (Assessment) Act 1989

78 Subsection 143(1)

Repeal the subsection, substitute:

- (1) An amount may be recovered from a person (the *payee*) in a court having jurisdiction under this Act if:
 - (a) both of the following apply in relation to the amount:
 - (i) the amount was an amount of child support paid by another person (the *payer*) to the payee;
 - (ii) the payer is not liable, or subsequently becomes not liable, to pay the amount to the payee, except because the payer ceases to be a resident of Australia or a reciprocating jurisdiction; or
 - (b) both of the following apply in relation to the amount:
 - (i) the amount was paid by another person (the *payer*) under a registered maintenance liability to the payee;
 - (ii) the payee was not entitled to be paid the amount because of a decision that the registered maintenance liability should never have existed.

79 Paragraph 143(3A)(b)

Repeal the paragraph, substitute:

- (b) a court makes a finding that the payer is not a parent of the child (including by overturning on appeal a declaration made

under section 106A or making a declaration under section 107); and

80 After paragraph 143(3B)(b)

Insert:

- (ba) whether there was any delay by the payer in applying for a finding by a court that the payer is not a parent of the child;

81 Paragraph 150(4G)(a)

After “registered maintenance liability”, insert “or carer liability”.

Child Support (Registration and Collection) Act 1988

82 Subsection 4(1) (definition of *appealable collection refusal decision*)

After “maintenance liability”, insert “or carer liability”.

83 Subsection 4(1)

Insert:

carer debt means an amount that is a debt due to the Commonwealth under section 69B.

carer liability means a liability to pay a debt that is due to the Commonwealth under section 69B.

child support related debt means:

- (a) the amount of penalty (if any) imposed under section 67 in respect of a child support debt; or
- (b) the amount of penalty (if any) imposed under section 64AF of the Assessment Act; or
- (c) any costs ordered by a court to be paid to the Commonwealth in respect of an offence committed by a person against this Act or the Assessment Act; or
- (d) any amount ordered by a court, upon the conviction of a person for an offence against this Act or the Assessment Act, to be paid by the person to the Registrar.

deductible liability has the meaning given by section 43.

84 Subsection 4(1) (at the end of paragraph (a) of the definition of *payee*)

Add:

- (iii) in relation to a carer liability—the person who is entitled to receive payment under the liability (see subsection 69B(3)); and

85 Subsection 4(1) (definition of *payer*)

Repeal the definition, substitute:

payer means:

- (a) in relation to a registrable maintenance liability—the person who is liable to make payments under the liability; or
- (b) in relation to a deductible liability—the person who is liable to pay the liability.

86 Subsection 4(1)

Insert:

relevant debt means:

- (a) a child support debt or a child support related debt; or
- (b) a carer debt.

relevant debtor means a person who is liable to pay a relevant debt.

87 Subsection 4(1) (definition of *weekly deduction rate*)

Repeal the definition, substitute:

weekly deduction rate means:

- (a) for an enforceable maintenance liability—the weekly rate of payment specified in the particulars of the entry in the Child Support Register in relation to the liability; or
- (b) for any other deductible liability—the weekly rate of payment specified in the notice given in relation to the liability under section 45.

88 Subsection 4(4)

Omit “that definition”, substitute “the definition of *appealable refusal decision* in subsection (1)”.

89 Paragraph 16(4G)(a)

After “registered maintenance liability”, insert “or carer liability”.

90 Paragraph 17A(1)(c)

Repeal the paragraph, substitute:

- (c) the court made the order:
 - (i) under paragraph 143(1)(a) of that Act in overturning on appeal a declaration under section 106A of that Act, or in response to a declaration under section 107 of that Act that the payee should not be assessed in respect of the costs of the child, because the payee is not a parent of the child; or
 - (ii) under paragraph 143(1)(b).

91 Subsection 42C(3)

After “maintenance liability”, insert “or carer liability”.

92 Section 43

Repeal the section, substitute:

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

- (1) This section applies (subject to subsection (3)) if:
 - (a) the payer of an enforceable maintenance liability is an employee; and
 - (b) any of the following liabilities (the *deductible liability*) are due by the payer to the Commonwealth:
 - (i) the enforceable maintenance liability;
 - (ii) a liability to pay a child support related debt;
 - (iii) a carer liability.

- (2) The Registrar must, as far as practicable, collect amounts due to the Commonwealth under or in relation to the deductible liability by deduction from the salary or wages of the payer under this Part.
- (3) Subsection (1) does not apply in relation to an enforceable maintenance liability, or any other deductible liability, of a payer if, under section 44, the particulars of the entry in the Child Support Register in relation to the enforceable maintenance liability of the payer contain a statement that employer withholding does not apply in relation to the enforceable maintenance liability.

93 Subsection 44(5)

Repeal the subsection, substitute:

- (5) If:
 - (a) because of subsection (1) or (2), the particulars of the entry in the Child Support Register in relation to the enforceable maintenance liability of the payer contain a statement that employer withholding does not apply in relation to that liability; and
 - (b) the payer does not make timely payments to the Registrar under that liability or any other deductible liability of the payer;the Registrar must vary those particulars so that they contain a statement that employer withholding applies in relation to the enforceable maintenance liability.

94 Paragraphs 44(5A)(a) and (b)

Omit “the liability”, substitute “the enforceable maintenance liability or the deductible liability”.

95 Subsection 44(7)

Repeal the subsection, substitute:

- (7) If:
 - (a) because of subsection (6), the particulars of the entry in the Child Support Register in relation to the enforceable maintenance liability of the payer contain a statement that employer withholding does not apply in relation to that liability; and

(b) the payer does not make timely payments to the Registrar under that liability or any other deductible liability of the payer;

the Registrar must vary those particulars so that they contain a statement that employer withholding applies in relation to the enforceable maintenance liability.

96 Paragraphs 44(7A)(a) and (b)

Omit “the liability”, substitute “the enforceable maintenance liability or the deductible liability”.

97 Subsections 45(1), (2A) and (3)

Omit “an enforceable maintenance liability”, substitute “a deductible liability”.

98 Sections 48 and 49

Omit “an enforceable maintenance liability”, substitute “a deductible liability”.

99 Paragraph 57(1)(f)

After “registrable maintenance liability”, insert “or any other deductible liability”.

100 Part V (heading)

Repeal the heading, substitute:

Part V—Payment and recovery of child support debts and carer debts

Division 1—Payment and late payment of child support debts

101 After section 69A

Insert:

Division 2—Child support debts and carer debts

69B Overpayments of payees

- (1) If:
- (a) the payee of a registered maintenance liability is:
 - (i) paid an amount under section 76; or
 - (ii) because of section 71AA or 71AB, taken to have been paid an amount under section 76; and
 - (b) the payee was not entitled to be paid the amount (including because of a subsequent variation to particulars of the entry in the Child Support Register in relation to the registered maintenance liability);
- the amount is, subject to subsection (2), repayable by the payee to the Registrar and is a debt due by the payee to the Commonwealth.
- (2) An amount is not repayable by the payee, or a debt due, under subsection (1) if:
- (a) the payee was not entitled to be paid the amount because of a subsequent variation to particulars of the entry in the Child Support Register in relation to the registered maintenance liability; and
 - (b) the variation was the result of:
 - (i) a decision that the registered maintenance liability should never have existed; or
 - (ii) the payer of the registered maintenance liability ceasing to be a resident of Australia or a reciprocating jurisdiction.
- Note: An amount covered by subparagraph (2)(b)(i) may be recovered under section 143 of the Assessment Act.
- (3) The Registrar must pay any amount that is paid to the Registrar under subsection (1) to the payer of the registered maintenance liability.
- Note: The payee referred to in this section becomes a payer of a carer debt (see the definitions of *carer debt* and *payer* in subsection 4(1)).
- (4) The payee of a liability under subsection (1) is not entitled to, and may not enforce payment of, amounts payable under the liability

other than by instituting a proceeding under section 113A to recover a debt due in relation to the liability.

Note: A liability under subsection (1) is a *carer liability* (see the definition of *carer liability* in subsection 4(1)).

102 Paragraphs 70(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) a person owes:
 - (i) 2 or more child support debts that relate to 2 or more enforceable maintenance liabilities with different payees; or
 - (ii) 2 or more carer debts that relate to 2 or more carer liabilities with different payees; and

103 Subsection 70(2)

After “registered maintenance liability”, insert “or carer liability”.

104 Subsection 71(1)

Repeal the subsection, substitute:

- (1) Subject to section 71D, if:
 - (a) either:
 - (i) the payee of an enforceable maintenance liability receives from the payer an amount intended by both the payer and the payee to be paid in complete or partial satisfaction of an amount payable under the liability in relation to the child support enforcement period; or
 - (ii) the payee of a carer liability receives from the payer an amount intended by both the payer and the payee to be paid in complete or partial satisfaction of an amount payable under the liability; and
 - (b) the payer or the payee applies to the Registrar to have the amount received by the payee treated as having been paid to the Registrar;

the Registrar must, despite sections 30 and 69B, credit the amount received by the payee against the amount payable under the liability.

105 Section 71AA (heading)

Repeal the heading, substitute:

71AA Registrar may offset debts between payer and payee

106 Paragraphs 71AA(1)(a) to (c)

Repeal the paragraphs, substitute:

- (a) 2 persons each have a debt that is either:
 - (i) a child support debt arising from a liability referred to in section 17 or 17A; or
 - (ii) a carer debt; and
- (b) the Commonwealth would (apart from this section) be required for each debt, under subsection 69B(3) or section 76, to pay the amount paid by one of the persons to the other person; and
- (c) for a debt that arose from a liability referred to in section 17 or for a carer debt—the liability provided for, or related to, child support for a child of the 2 persons;

107 Paragraph 71AA(4)(a)

After “registered maintenance liability”, insert “or carer liability”.

108 After section 71AA

Insert:

71AB Reduction of child support debts or carer debts when other debts are paid back

- (1) This section applies if:
 - (a) a person (the *first person*) owes either of the following debts (the *first debt*):
 - (i) a child support debt;
 - (ii) a carer debt; and
 - (b) the Registrar receives an amount (the *repayment amount*) from another person that is intended by the other person to be in partial or complete satisfaction of a child support debt or carer debt that is owed by the other person; and

- (c) the Registrar would (apart from this section) be required under subsection 69B(3) or section 76 to pay the repayment amount to the first person.
- (2) The Registrar may, despite those provisions:
 - (a) credit the repayment amount against the amount payable under the first debt; and
 - (b) if, after the amount has been credited, the first debt has been paid in full, pay any excess to the first person.

109 Subsection 71A(1)

Repeal the subsection, substitute:

- (1) Subject to section 71D, if:
 - (a) the payer of an enforceable maintenance liability or carer liability pays a third party an amount that partially or completely satisfies a debt owed by:
 - (i) the payee of the enforceable maintenance liability or carer liability; or
 - (ii) the payer; or
 - (iii) both the payee and payer; and
 - (b) the payer or the payee applies to the Registrar, in the manner specified by the Registrar, to have the amount, or part of the amount, received by the third party treated as having been paid to the Registrar; and
 - (c) the amount paid, or a part of the amount paid, was intended by both the payer and the payee to be paid in complete or partial satisfaction of an amount payable under:
 - (i) the enforceable maintenance liability in relation to the child support enforcement period; or
 - (ii) the carer liability;

the Registrar must, despite sections 30 and 69B, and in accordance with subsections (2) and (3), credit the amount, or part of the amount, received by the third party against the amount payable under the enforceable maintenance liability or carer liability.

Note: Section 16A provides for the Registrar to specify the manner in which an application may be made.

110 Subsection 71B(1)

After “the payee of an enforceable maintenance liability”, insert “or carer liability”.

111 Subsection 71B(1)

Omit “under an enforceable maintenance liability”, substitute “under the liability”.

112 Section 71E (heading)

Repeal the heading, substitute:

71E Notices must be given to payers and payees

113 Subsection 71E(1)

After “an enforceable maintenance liability”, insert “or carer liability”.

114 Subsection 71E(1)

Omit “that enforceable maintenance liability”, substitute “that liability”.

115 Paragraph 72(1)(b)

Omit “a debt to the Commonwealth under this Act”, substitute “a relevant debt to the Commonwealth”.

116 Subparagraphs 72(2)(c)(i) and (ii)

Omit “child support debt”, substitute “relevant debt”.

117 Section 72A (heading)

Repeal the heading, substitute:

72A Registrar may collect debts from a third person

118 Paragraphs 72A(1)(a) to (d)

Omit “child support debtor”, substitute “relevant debtor”.

119 Subsection 72A(1B)

Omit “support debt of the child support debtor”, substitute “relevant debt of the relevant debtor”.

120 Subsection 72A(5)

Omit “child support debtor”, substitute “relevant debtor”.

121 Subsection 72A(13)

Repeal the following definitions:

- (a) definition of *child support debtor*;
- (b) definition of *child support related debt*;
- (c) definition of *support debt*.

122 Paragraph 72AA(2)(a)

After “child support debt”, insert “or carer debt”.

123 Paragraph 72AA(2)(d)

Before “instructing”, insert “for a child support debt—”.

124 At the end of subsection 72AA(2)

Add:

- ; and (e) for a carer debt—instructing the Secretary to deduct an amount, determined by the Registrar, from the payer’s social security pension or social security benefit from a specified day until the debt is paid.

125 After subsection 72AA(2)

Insert:

- (2A) In making a determination for the purposes of paragraph (2)(e), the Registrar may determine an amount that reduces a person’s pension or benefit to nil if the person has consented to the amount of the deduction being an amount that would reduce the payment to nil.

126 Subsection 72AB(2)

Repeal the subsection, substitute:

- (2) A child of a person is a *designated child support child* of the person if:
 - (a) all of the following apply:

- (i) the person has a registrable maintenance liability of a kind mentioned in section 17 in respect of the child;
 - (ii) an amount payable under the liability is a child support debt;
 - (iii) the day on which the debt became due and payable under section 66 has passed, and the debt remains unpaid in whole or in part; or
- (b) all of the following apply:
- (i) the person owes a carer debt as a result of a payment to the person under a registered maintenance liability;
 - (ii) the registered maintenance liability is of a kind mentioned in section 17 in respect of the child;
 - (iii) the debt remains unpaid in whole or in part.

127 Paragraph 72AC(1)(a)

Omit “either of”, substitute “any of”.

128 Subparagraph 72AC(1)(a)(ii)

Omit “this Act; and”, substitute “this Act;”.

129 At the end of paragraph 72AC(1)(a)

Add:

- (iii) a person is a payer of a carer liability; and

130 At the end of subsection 72AC(2)

Add:

- ; and (e) if subparagraph (1)(a)(iii) applies—instruct the Repatriation Commission to make a deduction, determined by the Registrar, from the person’s pension or allowance from a specified day until the liability to pay the debt is discharged.

131 At the end of section 72AC

Add:

- (3) In making a determination for the purposes of paragraph (2)(e), the Registrar may determine an amount that reduces a person’s pension or allowance to nil if the person has consented to the

amount of the deduction being an amount that would reduce the payment to nil.

132 Paragraph 72AD(1)(b)

Omit “either of”, substitute “any of”.

133 At the end of paragraph 72AD(1)(b)

Add:

; (iii) the person is a payer of a carer liability.

134 Paragraph 72AD(2)(c)

Omit “, or both subparagraphs (1)(b)(i) and (ii) apply”, substitute “(whether or not subparagraph (1)(b)(ii) or (iii) also applies)”.

135 Paragraph 72AD(2)(d)

Omit “subparagraph (1)(b)(ii) applies and”.

136 Paragraph 72B(1)(a)

Omit “child support debtor”, substitute “relevant debtor”.

137 Paragraph 72B(1)(d)

Omit “support debt”, substitute “relevant debt”.

138 Paragraph 72B(1)(e)

Repeal the paragraph, substitute:

(e) the person is authorised and required, when notified by the Registrar under subsection (2), to retain from time to time, out of any money that comes to him or her on behalf of the debtor, enough to pay the debtor’s relevant debt or any amount that may become payable by the debtor as a child support debt;

139 Paragraph 72B(1)(f)

Omit “support debt”, substitute “relevant debt”.

140 Paragraph 72B(2)(b)

Omit “support debt”, substitute “relevant debt”.

141 Subsection 72B(5)

Repeal the subsection, substitute:

- (5) Words and expressions used in this section that are defined in the *Income Tax Assessment Act 1936* have, in this section, the meaning given by that Act.

142 Section 72C (heading)

Repeal the heading, substitute:

72C Transaction to defeat liability

143 Subsection 72C(1)

After “enforceable maintenance liability”, insert “or carer liability”.

144 Subsection 72C(2)

Repeal the subsection, substitute:

- (2) The court may set aside the instrument or disposition, or restrain the making of the proposed instrument or disposition, if the court is satisfied that the instrument or disposition has been made, or is proposed to be made, to reduce or defeat the payer’s ability:
- (a) to pay child support; or
 - (b) to pay any debt under, or to meet, the enforceable maintenance liability or carer liability.

145 Paragraph 72C(5)(c)

Omit “enforceable maintenance”.

146 Paragraph 72D(1)(a)

After “child support liability”, insert “or carer liability”.

147 Paragraph 72D(1)(b)

Omit “child support”.

148 Subparagraph 72D(1)(c)(iii)

Omit “paragraph 18A(3)(a)); and”, substitute “paragraph 18A(3)(a)); or”.

149 At the end of paragraph 72D(1)(c)

Add:

(iv) a carer liability; and

150 Subparagraphs 72D(1)(d)(i) and (ii)

After “child support liability”, insert “or carer liability”.

151 Paragraph 72D(2)(d)

After “(1)(c)(ii)”, insert “or (iv)”.

152 Section 72F (heading)

Repeal the heading, substitute:

72F Departure from Australia of certain debtors prohibited

153 Paragraphs 72I(1)(a), (b) and (c)

After “child support liability”, insert “or carer liability”.

154 Subsection 72I(2)

After “child support liability”, insert “or carer liability”.

155 Paragraph 74(1)(a)

After “child support debts”, insert “or carer debts”.

156 Before paragraph 75(1)(a)

Insert:

(aa) to make payments under subsection 69B(3) to payees of carer liabilities; and

157 Section 76 (heading)

Repeal the heading, substitute:

76 Entitlement of payees of registered maintenance liabilities to be paid collected amounts

158 Subsection 76(1)

Omit “subsection 79(2) and sections”, substitute “sections 71AA, 71AB,”.

159 At the end of subsection 76(1)

Add:

Note: A debt may arise if the payee is overpaid (see section 69B).

160 Section 79

Repeal the section.

161 Division 3 of Part VI (heading)

Repeal the heading, substitute:

Division 3—Suspension determinations for registered maintenance liabilities

162 Subsection 80(1) (table items 5, 6 and 7)

After “registrable maintenance liability” (wherever occurring), insert “or carer liability”.

163 Subsection 85(1) (table items 2 and 3)

After “registrable maintenance liability” (wherever occurring), insert “or carer liability”.

164 Section 111A

After “registered maintenance liability”, insert “or carer liability”.

165 Subsection 111F(1)

After “registered maintenance liability”, insert “or carer liability”.

166 Paragraph 111G(a)

After “registered maintenance liability”, insert “or carer liability”.

167 Subsections 113(1) and (2)

After “registered maintenance liability”, insert “or carer liability”.

168 Subsections 113A(1) and (2)

After “registered maintenance liability”, insert “or carer liability”.

169 Paragraph 115(a)

Omit “(other than under section 79)”.

170 Subsection 116(2)

After “maintenance liability”, insert “or specified carer liability”.

171 Subsection 120(1A)

After “registered maintenance liability”, insert “or carer liability”.

Division 2—Application provisions

172 Application—overpayment amendments

- (1) This item applies in relation to the following amendments made by this Part:
 - (a) the amendments of the *A New Tax System (Family Assistance) (Administration) Act 1999*;
 - (b) the amendments of the *Child Support (Registration and Collection) Act 1988*.
 - (2) The amendments (except section 69B of the *Child Support (Registration and Collection) 1988*) apply in relation to any liability to pay a debt that is payable after the commencement of this item, whether the debt arises before or after that commencement.
 - (3) Section 69B of the *Child Support (Registration and Collection) 1988* applies in relation to debts that arise after the commencement of this item.
 - (4) A debt that arose before the commencement of this item under section 79 of the *Child Support (Registration and Collection) Act 1988* that is due and payable immediately before that commencement is taken, after that commencement, to have arisen under section 69B of that Act (as inserted by this Part).
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- (5) The amendments of sections 74 and 75 of that Act apply in relation to any amounts received, and payments made, after the commencement of this item.

173 Application—amendments of the Child Support Assessment Act

- (1) The amendment of subsection 143(1) of the *Child Support (Assessment) Act 1989* made by this Part applies in relation to decisions, made after the commencement of this item, that:
- (a) a payer is not liable to pay an amount; or
 - (b) a registered maintenance liability should never have existed.
- (2) The amendments of subsections 143(3A) and (3B) of the *Child Support (Assessment) Act 1989* made by this Part apply in relation to findings by a court made after the commencement of this item.

174 Application—subsequently ascertaining or determining components of certain income for periods before 1 July 2008

Despite item 115 of Schedule 2 to the *Child Support Legislation Amendment (Reform of the Child Support Scheme—New Formula and Other Measures) Act 2006*, subsection 58A(2) (as in force from time to time) of the *Child Support (Assessment) Act 1989* applies in relation to any day in a child support period (whether before, on or after 1 July 2008) in relation to which the Registrar ascertains or determines the amount of a person’s adjusted taxable income or child support income amount (within the meaning of the *Child Support (Assessment) Act 1989* immediately before 1 July 2008) after the commencement of this item.

Division 3—Date of effect rules

Child Support (Assessment) Act 1989

175 At the end of subsection 12(2AA)

Add:
; and (c) if paragraphs (a) and (b) are met because:

- (i) all persons who were eligible carers of the child ceased to be eligible carers of the child; and
 - (ii) a parent who was not an eligible carer of the child would have become an eligible carer of the child but for subparagraph 54F(3)(b)(i);
- the Registrar or Secretary is notified, or otherwise becomes aware, of the matter in subparagraph (c)(ii) more than 26 weeks after the relevant change of care day.

176 Subsection 54F(3)

Repeal the subsection, substitute:

- (3) The revocation of the determination takes effect at the end of:
 - (a) if the Registrar or Secretary is notified, or otherwise becomes aware, of the matter referred to in paragraph (1)(a) within 28 days after the change of care day for the responsible person—the day before the change of care day; or
 - (b) if the Registrar or Secretary is notified, or otherwise becomes aware, of that matter more than 28 days after the change of care day for the responsible person and:
 - (i) the responsible person’s care of the child has increased—the day before the Registrar or Secretary is notified, or otherwise becomes aware, of that matter; or
 - (ii) the responsible person’s care of the child has reduced—the day before the change of care day.

177 Subsection 54H(3)

Repeal the subsection, substitute:

- (3) The revocation of the determination takes effect at the end of:
 - (a) if the Registrar or Secretary is notified, or otherwise becomes aware, of the matter referred to in paragraph (1)(a) within 28 days after the change of care day for the responsible person—the day before the change of care day; or
 - (b) if the Registrar or Secretary is notified, or otherwise becomes aware, of that matter more than 28 days after the change of care day for the responsible person and:

- (i) the responsible person's care of the child has increased—the day before the Registrar or Secretary is notified, or otherwise becomes aware, of that matter; or
- (ii) the responsible person's care of the child has reduced—the day before the change of care day.

178 After section 150E

Insert:

150F Suspension of liability to pay child support if notification delayed when persons have swapped eligible carer roles

- (1) The Registrar must make a determination (a *suspension determination*) that child support is not payable for a child by a liable parent to another person if:
 - (a) the Registrar or Secretary is notified, or otherwise becomes aware, that:
 - (i) all persons who were eligible carers of the child have ceased to be eligible carers of the child; and
 - (ii) a parent who was not an eligible carer of the child would have become an eligible carer of the child but for subparagraph 54F(3)(b)(i); and
 - (b) the Registrar or Secretary is notified, or otherwise becomes aware, of the matter in subparagraph (a)(ii) more than 28 days after the relevant change of care day but before the end of 26 weeks after that day.
- (2) If the Registrar makes a suspension determination, child support for the child is not payable by the liable parent to the other person:
 - (a) from that change of care day; and
 - (b) until the day before the Registrar or Secretary is notified, or otherwise becomes aware, of the matter in subparagraph (1)(a)(ii).

179 Paragraph 151C(2)(b)

Omit “either”, substitute “any of the following applies”.

180 Subparagraph 151C(2)(b)(i)

Omit “birthday; or”, substitute “birthday;”.

181 After subparagraph 151C(2)(b)(i)

Insert:

- (ia) a suspension determination under section 150F provides that child support is not payable in respect of the day before the child's 18th birthday;

182 Subparagraph 151C(2)(b)(ii)

Omit "otherwise—".

183 Application—date of effect rules

The amendments of the *Child Support (Assessment) Act 1989* made by this Division apply in relation to:

- (a) changes of care days that occur on or after the day this item commences; and
- (b) changes of care days that occur before the day this item commences if the Registrar or Secretary is notified, or otherwise becomes aware, of the change of care more than 26 weeks after the day this item commences.

Schedule 2—Family tax benefit amendments

Part 1—Amendments commencing day after Royal Assent

A New Tax System (Family Assistance) Act 1999

1 At the end of section 6

Add:

Requirements for certifications and applications for determinations

- (8) The following must be made in the form and manner, contain any information, and be accompanied by any documents, required by the Secretary:
- (a) a certification under paragraph (3)(a) or (b), (4)(b) or (5)(b);
 - (b) an application for a determination under subsection (6).

2 Application of amendments

The amendments of section 6 of the *A New Tax System (Family Assistance) Act 1999* made by this Part apply in relation to certifications, and applications for determinations, made after this item commences.

Part 2—Amendments commencing on Proclamation

A New Tax System (Family Assistance) Act 1999

3 Subsection 3(1)

Insert:

FTB child rate reduction period has the meaning given by subsection 61A(2) or 61B(2).

Note: The FTB child rate reduction period relates to a child who does not meet the health check or immunisation requirements under section 61A or 61B.

5 Sections 61A and 61B

Repeal the sections, substitute:

61A Reduction in FTB child rate unless health check requirement satisfied

- (1) An individual's FTB child rate in relation to an FTB child is reduced under subclause 7(2) or 26(3) of Schedule 1 if:
 - (a) in the income year in which the child turned 4:
 - (i) the individual was entitled to be paid family tax benefit in respect of the child; and
 - (ii) the individual, or the individual's partner, was receiving a social security pension, a social security benefit, a service pension or income support supplement; and
 - (b) before the day the child turned 5, the individual was sent a notice by the Secretary informing the individual of the following:
 - (i) the requirement for the child to undertake a health check before the day the child turns 5, or before any later day determined by the Secretary under subsection (5);
 - (ii) the fact that the individual's FTB child rate in relation to the child will be reduced if the child does not meet the requirement; and

- (c) the child was an FTB child of the individual on the day the child turned 5; and
- (d) none of the following applies:
 - (i) the FTB child meets the health check requirement before the applicable day (see subsections (4) and (8));
 - (ii) the FTB child is in a class exempted from the health check requirement by a determination under paragraph (9)(b);
 - (iii) the FTB child is in a class that is taken to meet the health check requirement by a determination under paragraph (9)(c);
 - (iv) the Secretary is satisfied that special circumstances exist in relation to the individual or the individual's partner (or both) that make it inappropriate for the individual, and the individual's partner, to arrange for the FTB child to meet the health check requirement.

Note: See also sections 61C (persons still entitled to FTB despite reductions to nil) and 61D (death of an FTB child).

*Meaning of **FTB child rate reduction period***

- (2) The individual's FTB child rate in relation to the child is reduced for each day in the period (the **FTB child rate reduction period**):
 - (a) beginning on the applicable day (see subsection (4)); and
 - (b) ending after the relevant number of days (see subsection (3));(whether or not the individual continues to be entitled to be paid family tax benefit in respect of the child for the whole period).

*Meaning of **relevant number of days***

- (3) The **relevant number of days** is the number of days, in the income year in which the child turned 4, on which:
 - (a) the individual was entitled to be paid family tax benefit in respect of the child; and
 - (b) the individual, or the individual's partner, received a social security pension, a social security benefit, a service pension or income support supplement.

*Meaning of **applicable day***

- (4) For the purposes of this section, the **applicable day** is:
- (a) the day the child turns 5; or
 - (b) the day after any later day determined by the Secretary under subsection (5).

Determining later days

- (5) The Secretary may, in writing, determine a later day for the purposes of this section.
- (6) For the purposes of subsection (5):
- (a) an application for a later day may be made after the child turns 5, but must be made before the child turns 6; and
 - (b) the Secretary must not determine a later day unless the Secretary is satisfied that there are special circumstances which prevented the individual, or the individual's partner (or both), from arranging for the child to undertake the health check before the day the child turned 5; and
 - (c) any later day determined by the Secretary must not be after the day the child turns 6.

Exemption on the grounds the health check requirement inappropriate

- (7) An application under subparagraph (1)(d)(iv) must be:
- (a) made before the child turns 5; and
 - (b) must be made in the form and manner, contain any information, and be accompanied by any documents, required by the Secretary.

Health check requirement

- (8) For the purposes of this section, the **health check requirement** for a child is that the child must meet the requirements specified in an instrument under paragraph (9)(a).

Legislative instrument

- (9) The Minister may, by legislative instrument:
-

- (a) specify requirements relating to the health of children for the purposes of subsection (8); or
- (b) determine that children included in a specified class are exempt from the health check requirement; or
- (c) determine that children included in a specified class are taken to meet the health check requirement.

61B Reduction in FTB child rate unless immunisation requirements satisfied

- (1) An individual's FTB child rate in relation to an FTB child is reduced under subclause 7(2) or (3) or 26(3) or (4) of Schedule 1 if:
 - (a) the child is an FTB child of the individual or the individual's partner; and
 - (b) the child does not meet the immunisation requirements set out in section 6:
 - (i) for a claim made under the Family Assistance Administration Act for payment of family tax benefit for a past period—on the day the claim is determined; or
 - (ii) for family tax benefit paid to the individual in instalments—before the end of the grace period (see subsection (4)).

Note: See also sections 61C (persons still entitled to FTB despite reductions to nil) and 61D (death of an FTB child).

Meaning of FTB child rate reduction period

- (2) If family tax benefit is paid to the individual in instalments, the individual's FTB child rate in relation to the child is reduced for each day in the period (the **FTB child rate reduction period**):
 - (a) beginning on the day specified as the date of the notice given in relation to the child under subsection (3); and
 - (b) ending on the day the child meets the immunisation requirements;(whether or not the individual continues to be entitled to be paid family tax benefit in respect of the child for the whole period).

Schedule 2 Family tax benefit amendments
Part 2 Amendments commencing on Proclamation

Note: For an individual who claims family tax benefit for a past period, the FTB child rate is reduced as a lump sum (instead of for a day): see subclauses 7(3) and 26(4) of Schedule 1.

Grace period

- (3) For the purposes of subparagraph (1)(b)(ii), if, at any time, the Secretary becomes aware that an FTB child of an individual does not meet the immunisation requirements set out in section 6, the Secretary must give a notice to the individual informing the individual of the following:
- (a) the fact that the child does not meet the immunisation requirements;
 - (b) the requirement for the child to meet the immunisation requirements before the end of the grace period;
 - (c) the fact that the individual's FTB child rate in relation to the child will be reduced if the child does not meet the requirements before the end of that period.
- (4) The ***grace period***:
- (a) begins on the day specified as the date of the notice given to the individual in relation to the child; and
 - (b) ends 63 days after that day.

61C Persons still entitled to FTB despite reductions to nil

Despite section 31 of the Family Assistance Administration Act, the Secretary must not vary a determination so that the individual is not entitled to be paid family tax benefit merely because the individual's rate of family tax benefit is nil as a result of section 61A or 61B of this Act.

61D Death of an FTB child

- (1) Section 61A or 61B does not apply in relation to an FTB child of an individual if the child dies:
- (a) for section 61A—before the child turns 5, or any later day determined by the Secretary under subsection 61A(5); or
 - (b) for section 61B—during the grace period in subsection 61B(4); or

(c) in any case—during the FTB child rate reduction period in relation to the child.

- (2) Section 61A or 61B does not apply on and from the day the child dies.

6 Clause 7 of Schedule 1

Omit “Subject to”, substitute “(1) Subject to subclauses (2) and (3) and”.

7 At the end of clause 7 of Schedule 1

Add:

Reduction during reduction period for failing to have health check or meet immunisation requirements

- (2) If either or both section 61A and subparagraph 61B(1)(b)(ii) apply in relation to an individual and an FTB child of the individual, the annual FTB child rate in relation to the child is reduced by \$737.30 for each day in the FTB child rate reduction period (except any day in a past period to which subclause (3) applies).

Reduction of past period claims for failing to meet immunisation requirements

- (3) The annual FTB child rate in relation to an FTB child of an individual is reduced by \$737.30 if subparagraph 61B(1)(b)(i) applies in relation to the individual and the child.

8 Subclause 26(1) of Schedule 1

After “Subject to”, insert “subclauses (3) and (4) and”.

9 At the end of clause 26 of Schedule 1

Add:

Reduction during reduction period for failing to have health check or meet immunisation requirements

- (3) If either or both section 61A and subparagraph 61B(1)(b)(ii) apply in relation to an individual and an FTB child of the individual, the annual FTB child rate in relation to the child is reduced by \$737.30

for each day in the FTB child rate reduction period (except any day in a past period to which subclause (4) applies).

Reduction of past period claims for failing to meet immunisation requirements

- (4) The annual FTB child rate in relation to an FTB child of an individual is reduced by \$737.30 if subparagraph 61B(1)(b)(i) applies in relation to the individual and the child.

10 Clause 2 of Schedule 4 (table item 1)

Omit “clause 7”, substitute “subclause 7(1)”.

11 Clause 2 of Schedule 4 (after table item 1)

Insert:

2	Reduction in FTB child rate (Part A—Method 1)	Reduction in FTB child rate (A1)	[Schedule 1— subclauses 7(2) and (3)— all amounts]
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12 Clause 2 of Schedule 4 (after table item 6)

Insert:

7	Reduction in FTB child rate (Part A—Method 2)	Reduction in FTB child rate (A2)	[Schedule 1— subclauses 26(3) and (4)—all amounts]
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13 Subclause 3(1) of Schedule 4 (table item 1)

After “FTB child rate (A1)”, insert “and reduction in FTB child rate (A1)”.

14 Subclause 3(1) of Schedule 4 (table item 6)

After “FTB child rate (A2)”, insert “and reduction in FTB child rate (A2)”.

15 Subclause 3(3) of Schedule 4 (heading)

Repeal the heading, substitute:

*No indexation of certain FTB rates and reductions on 1 July 2017
and 1 July 2018*

16 Subclause 3(3) of Schedule 4

After “(A2),”, insert “the reduction to those rates,”.

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

17 Subsections 107(3A) to (3D)

Repeal the subsections.

18 Subparagraph 109D(4)(c)(ii)

Omit “review; or”, substitute “review.”.

19 Paragraphs 109D(4)(d) to (g)

Repeal the paragraphs.

20 Subparagraph 109E(3)(c)(ii)

Omit “review; or”, substitute “review.”.

21 Paragraphs 109E(3)(d) to (g)

Repeal the paragraphs.

22 Application of amendments

- (1) The amendments of the *A New Tax System (Family Assistance) Act 1999* and the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Part apply in relation to the day (the **commencement day**) this item commences and later days.
- (2) However, despite the amendments of those Acts made by this Part, those Acts, as in force before that day, continue to apply in relation to any days that occur before the commencement day.

Part 3—Contingent amendments

Division 1—Amendments contingent on the commencement of the Budget Savings (Omnibus) Act 2016

A New Tax System (Family Assistance) Act 1999

23 Subsection 3(1) (subparagraph (b)(i) of the definition of *receiving*)

Omit “clause 38L”, substitute “clauses 1 and 38L”.

24 Application of amendments

The amendments of the definition of *receiving* in subsection 3(1) of the *A New Tax System (Family Assistance) Act 1999* made by this Division apply in relation to working out the rate of family tax benefit for days on or after the commencement of this item.

Division 2—Amendments commencing 1 July 2018

A New Tax System (Family Assistance) Act 1999

25 Paragraph 6(1)(b)

Repeal the paragraph, substitute:

- (b) the adult’s FTB child rate in relation to the child is reduced under subclause 7(2) or (3) or 26(3) or (4) of Schedule 1 (see sections 61A and 61B).

26 Application of amendments

- (1) The amendments of the *A New Tax System (Family Assistance) Act 1999* made by this Division apply in relation to the day (the *commencement day*) this item commences and later days.
- (2) However, despite the amendments of that Act made by this Division, that Act, as in force before that day, continues to apply in relation to any days that occur before the commencement day.

Division 3—Amendments commencing later

A New Tax System (Family Assistance) Act 1999

27 At the end of subsection 6(1)

Add:

- ; or (c) whether the adult's FTB child rate in relation to the child is reduced under subclause 7(2) or (3) or 26(3) or (4) of Schedule 1 (see sections 61A and 61B).

28 Application of amendments

- (1) The amendments of the *A New Tax System (Family Assistance) Act 1999* made by this Division apply in relation to the day (the ***commencement day***) this item commences and later days.
- (2) However, despite the amendments of that Act made by this Division, that Act, as in force before that day, continues to apply in relation to any days that occur before the commencement day.

*[Minister's second reading speech made in—
House of Representatives on 14 September 2017
Senate on 13 February 2018]*

(212/17)
