



## **Appendix F – Legislative references: Child Support Scheme**

### **Legislative references: *Child Support (Registration and Collection) Act 1988* and *Child Support (Assessment) Act 1989***

The following are key sections of the *Child Support (Registration and Collection) Act 1988* and the *Child Support (Assessment) Act 1989* which are specifically referred to in the recommendations in this report.

#### **CHILD SUPPORT (REGISTRATION AND COLLECTION) ACT 1988**

##### **SECTION 71C**

##### **Other payments of up to 25% of child support liability**

- (1) Subject to subsections (3) and (5) and section 71D, in relation to any payment period entered in the Register under paragraph 26(2)(b) or initial period entered in the Register under paragraph 26(2)(a) for which the payer of an enforceable maintenance liability has an uncredited amount, the Registrar must, in spite of section 30, credit:
  - (a) if the uncredited amount does not exceed 25% of the payer's enforceable maintenance liability for the period—that uncredited amount; or
  - (b) if it exceeds 25% of that liability—so much of that uncredited amount as does not exceed 25% of that liability;

against the liability of the payer to the Commonwealth in relation to the amount payable under the liability in relation to that period.

- (2) If:
- (a) the payer has made a payment, to the payee of the enforceable maintenance liability or to another person, that is a payment of the kind specified in the regulations; and
  - (b) the amount of all such payments made by the payer in respect of the liability exceeds the sum of all the amounts credited under this section against the liability in relation to all the payment periods, and any initial period, preceding the period in question;
- the payer has an *uncredited amount* equal to the amount of that excess.
- (3) Subject to subsection (4), the Registrar must not credit an amount under this section in relation to a period for which the payer has not paid to the Commonwealth an amount equal to the difference between:
- (a) the amount payable by the payer to the Commonwealth under the enforceable maintenance liability in relation to that period; and
  - (b) the amount that is to be credited under subsection (1), or that would be so credited but for this subsection, in relation to that period.
- (4) If the payer:
- (a) did not pay that difference to the Commonwealth within the time required under section 66; and
  - (b) subsequently pays the amount of that difference to the Commonwealth;
- the Registrar may credit against the liability of the payer in relation to the amount payable under the enforcement maintenance liability in relation to that period the amount that, but for subsection (3), would have been credited under subsection (1).
- (5) This section does not apply in relation to a liability covered by section 18.

## **CHILD SUPPORT (ASSESSMENT) ACT 1989**

### **SECTION 42**

#### **Cap on child support if child support income amount exceeds 2.5 times yearly equivalent of relevant AWE amount**

If a liable parent's child support income amount in relation to the days in a child support period exceeds 2.5 times the yearly equivalent of the relevant AWE amount

for the child support period, the liable parent's adjusted income amount in relation to any day in the child support period is the amount calculated using the formula:

$$2.5 \text{ times yearly equivalent of the relevant AWE amount} \quad - \quad \text{Exempted income amount}$$

## **SUBDIVISION E — CHILDREN SHARED OR DIVIDED BETWEEN PARENTS**

### **SECTION 47**

#### **Cases in relation to which Subdivision applies**

- (1) This Subdivision applies in relation to the parents (in this Subdivision called the *relevant parents*) of a child or children in respect of whom an assessment has been made if either or both of the following paragraphs applies or apply:
  - (a) both of the parents are eligible carers of the child or of one or more of the children;
  - (b) one of the parents is an eligible carer of one or more of the children and the other parent is an eligible carer of another or other of the children.
- (2) This Subdivision applies in relation to the relevant parents whether or not both relevant parents have applied for administrative assessment of child support against each other.

### **SECTION 48**

#### **Application of the basic formula etc.**

- (1) In working out the annual rate of child support that would, apart from section 49, be payable, in relation to a day in a child support period, by either of the relevant parents to the other (or would, apart from that section, be payable, in relation to that day, by either of the relevant parents to the other if each of the relevant parents were a liable parent in relation to the other):
  - (a) Division 1 (The basic formula) and, to the extent that it is applicable, Subdivision C of this Division (which deals with Liable parents with high child support income) are to be applied to each of the relevant parents in turn, but with the modifications made by paragraphs (c), (d), (da) and (e); and
  - (b) Subdivision D (Carer parents with child support income of more than disregarded income amount) is not to be applied in relation to the relevant parents; and

- (c) each of the relevant parents is to be taken to be a liable parent in relation to each of their children who is a child eligible for administrative assessment and for whom the other parent is an eligible carer, and the other parent is to be taken to be a carer entitled to child support in relation to each such child; and
- (d) if the relevant parents are both liable parents of a shared care child or children, the exempted income amount of each parent is to include an additional amount, worked out under subsection 39(2), for the child, or for each of the children; and
- (da) in determining the exempted income amount of a parent, a child with whom the parent has substantial contact is to be disregarded; and
- (e) the child support percentage of either of the relevant parents is the percentage ascertained using the following table (with the number attributed to each child with whom a parent has major contact taken to be 0.65, the number attributed to each child with whom a parent has substantial contact taken to be 0.35 and the number attributed to each shared care child taken to be 0.5):

Table 1f Modified table of child support percentages

Number of children for whom either of the relevant parents is a liable parent in relation to the other	Child support percentage
<i>Less than 0.35</i>	<i>Not Applicable*</i>
0.35	8
0.50	12
0.65–0.70	14
0.85	16
1.00	18
1.05	19
1.15–1.20	20
1.25–1.35	22
1.40–1.45	23
1.50–1.55	24
1.60–1.70	25
1.75–1.90	26
1.95–2.05	27
2.10–2.20	28
2.25–2.40	29
2.45–2.60	30
2.65–2.85	31
2.90–3.20	32
3.25–3.70	33
3.75–4.20	34
4.25–4.70	35
4.75–5.0 or more	36

\*If a child is in the care of a parent for less than 30% of the nights, no allowance is made in the formula.

- (2) In working out an additional amount under subsection 39(2) for the purposes of paragraph (1)(d) of this section, the reference to a relevant dependent child of the liable parent is to be read as a reference to a shared care child of a relevant parent.

## SECTION 49

### Offsetting of child support liabilities

The annual rate of child support that would, apart from this section, be payable, in relation to a day in a child support period, by either of the relevant parents to the other is to be reduced (but not below 0) by the annual rate of child support that would, apart from this section, be payable in relation to that day by the other (or would, apart from this section, be payable in relation to that day by the other if each of the relevant parents were a liable parent in relation to the other).

## SECTION 66

### Minimum rate of child support

- (1) Subject to section 66B, if, in relation to a day in a child support period, the total annual rate of child support payable for a child or children by a liable parent to one or more carers entitled to child support would, apart from this section, be assessed as an amount per annum less than \$260, the total annual rate of child support in relation to the day is to be assessed as \$260.
- (2) In working out for the purposes of subsection (1) whether or not the total annual rate of child support in relation to a day in a child support period is less than \$260, account must not be taken of an annual rate of child support:
  - (a) payable by a person in his or her capacity as a parent of the kind referred to in subsection 66B(1); or
  - (b) arising out of an order made under Division 4 of Part 7 (Orders for departure from administrative assessment in special circumstances); or
  - (c) arising out of provisions of a child support agreement that have effect, for the purposes of this Part, as if they were such an order made by consent.
- (3) If:
  - (a) child support is payable by a liable parent to 2 or more carers entitled to child support; and
  - (b) an assessment is to be made under subsection (1) in relation to any one or more of those carers;

the annual rate, or each annual rate, is to be assessed by apportioning a notional total annual rate of \$260 per annum between the carers, in accordance with the regulations, and taking into account the total number of children of the liable parent who are in the care of each of the carers mentioned in paragraph (a).