



Child Support (Assessment) Regulations 1989

Statutory Rules 1989 No. 259 as amended

made under the

Child Support (Assessment) Act 1989

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taking into account amendments up to SR 2004 No. 177

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1 Commencement

These Regulations commence on 1 October 1989.

2 Name of regulations [see Note 1]

These regulations are the *Child Support (Assessment) Regulations 1989*.

3 Interpretation

In these Regulations, unless the contrary intention appears:

Assessment Act means the *Income Tax Assessment Act 1936*.

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

3A Excuse for contravening court order or registered parenting plan (Act s 8A (1))

- (1) For paragraph 8A (1) (c) of the Act, the Registrar is to be satisfied that a person (the **contravening person**) does not have a reasonable excuse for contravening a court order or a registered parenting plan unless:
 - (a) at the time of the contravention, the contravening person did not understand the obligations imposed by the order or plan on the person who was bound by it; or
 - (b) the person or persons having care of a child under the order or plan agreed to the contravention; or
 - (c) if the contravention resulted in a child being deprived of rightful contact (within the meaning of subregulation (2)):
 - (i) the contravention happened because the contravening person believed, on reasonable grounds, that the actions constituting the contravention were necessary to protect the health or safety of a person (the **person at risk**); and
 - (ii) the child was deprived of rightful contact for no longer than was necessary to protect the health or safety of the person at risk.

(2) For paragraph (1) (c):

- (a) a child is ***deprived of rightful contact*** during the time that, contrary to an order or plan, the child does not live with or have contact with a person; and
- (b) the person at risk may be the child, the contravening person or anyone else.

4 Exclusion of certain children — section 22 of the Act

A child is not an eligible child if he or she is in the custody of, or under the guardianship, care and control or supervision of, a person under a child welfare law:

- (a) of the State of:
 - (iii) Queensland; or
 - (iv) South Australia; or
 - (v) Western Australia; or
- (b) in force in:
 - (i) Norfolk Island; or
 - (ii) Christmas Island; or
 - (iii) Cocos (Keeling) Islands.

6 Inflation factor

For the purposes of section 55 of the Act, the inflation factor in relation to a child support year specified in the following table is the factor specified in that table in relation to that year:

Child support year	Inflation factor
Year ending on 30 June 1991	1.065
Year ending on 30 June 1992	1.07
Year ending on 30 June 1993	1.045
Year ending on 30 June 1994	1.035
Year ending on 30 June 1995	1.020
Year ending on 30 June 1996	1.035
Year ending on 30 June 1997	1.04

Child support year	Inflation factor
Year ending on 30 June 1998	1.045
Year ending on 30 June 1999	1.04

7 Taxable income: prescribed provisions and circumstances

Generally

- (1) For the purposes of subsection 56 (3) of the Act, the following provisions and circumstances are prescribed:
 - (a) section 31C, subsection 36A (8), sections 78A, 82KJ, 82KK, 82KL, 136AF and 177F of the Assessment Act;
 - (b) the circumstances in which subsection 170 (9B) of that Act applies;
 - (c) a provision that is a prescribed provision within the meaning of subsection 170 (14) of that Act.

Taxpayers investing in mass marketed schemes

- (1A) The following circumstance is prescribed for the purposes of subsection 56 (3) of the Act:
 - (a) the Commissioner has written to a person (the *taxpayer*):
 - (i) concerning an announcement by the Commissioner, on 14 February 2002, allowing taxpayers who were investors in schemes identified by the Commissioner as mass marketed tax effective schemes a deduction for certain actual cash outlays; and
 - (ii) proposing to amend the assessment of the taxpayer to the effect that the taxable income of the taxpayer for a particular year of income is reduced, taking into account such a cash outlay; and
 - (b) the taxpayer has responded, accepting the Commissioner's proposal; and
 - (c) the Commissioner has subsequently amended the assessment of the taxpayer, effecting a reduction in the taxable income of the taxpayer for the year of income in accordance with the Commissioner's proposal.

- (2) For the purposes of subsection 57 (7) of the Act, the following circumstances are prescribed, that is to say, where an assessment under the Assessment Act could be amended to give effect to the provisions of the Assessment Act, or in the circumstances, prescribed in subregulation (1) or (1A).

7A Effect of election — child support year ending before 1 July 1999

- (1) This regulation applies in relation to an election made by a person for a child support year ending before 1 July 1999.

Note Schedule 16 to the *Child Support Legislation Amendment Act 1998* made extensive changes to arrangements for making elections about child support income amounts. The amendments made by Sch 16 commenced on 15 December 1998.

However, subs 4 (3) of that Act states that the amendments made by Sch 16 do not apply in relation to the 1998-99 child support year or any earlier child support year.

- (2) A reference in this regulation to a provision of the Act is a reference to the provision as in force immediately before 15 December 1998.
- (3) For paragraphs 61 (1) (b) and 63 (1) (b) of the Act, the day on and after which the person's child support income amount applies for the child support year, as a result of the election, is:
- (a) if, when the election was made, the first amount was not more than the second amount — the day when the election was made; or
 - (b) if the second amount is nil — the first day of the child support year; or
 - (c) in any other case — the first day after the day in the child support year on which the amount of child support payable to that day was first greater than the second amount.
- (4) For subregulation (3):
- (a) the **first amount** is the amount payable for the part of the child support year before the date of the most recent election; and
 - (b) the **second amount** is the amount that would be payable for the child support year if the person's child support

income amount estimated under section 60 of the Act applied to all that year.

7B Apportioning amount between carers (Act s 66 (3))

- (1) For subsection 66 (3) of the Act, the notional total annual rate of \$260 of child support is to be apportioned between the carers as set out in this regulation.
- (2) The annual rate for each carer is:

$$\frac{NC}{TC} \times \$260;$$

rounded to the nearest dollar as set out in subregulation (3), where:

NC is the number of children of the liable parent who are in the sole care of the carer.

TC is the total number of children of the liable parent who are in the care, whether sole or joint, of all carers, calculated as follows:

- (a) count as:
- (i) 0.35 each child of the liable parent to whom the liable parent has substantial contact; and
 - (ii) 0.5 each shared custody child of the liable parent; and
 - (iii) 0.65 each child of the liable parent to whom the liable parent has major contact; and
- (b) count as 1 each other child.
- (3) If an amount calculated under subregulation (2) includes a number of cents, 50 cents or more is to be rounded up to the nearest dollar, and less than 50 cents is to be rounded down.

7C Application to have liability reduced to nil (Act s 66A (1))

An application under subsection 66A (1) of the Act to reduce an assessment to nil must be made within the child support period to which it relates, and in the manner required by the Registrar.

Note Section 150A of the Act provides that the Registrar may specify how an application must be made.

7CA Prescribed payments

- (1) For paragraph (b) of the definition of **income** in subsection 66A (4) of the Act, the following payments are prescribed:
 - (a) payments, in the nature of an amenity allowance or gratuity, authorised by the Governor of a prison, to a person serving a term of imprisonment in the prison, to the extent that the payment is not for:
 - (i) work done by the person inside or outside the prison; or
 - (ii) approved study undertaken by the person inside or outside the prison; or
 - (iii) participation by the person in any other approved program;
 - (b) support pension payments of the following kind:
 - (i) disability support pension paid to a person under the social security law;
 - (ii) pension paid to a veteran who is totally and permanently incapacitated as mentioned in paragraph 24 (1) (b) of the *Veterans' Entitlements Act 1986*;
 - (iii) Special Rate Disability Pension paid to a person under Part 6 of Chapter 4 of the *Military Rehabilitation and Compensation Act 2004*.
- (2) In this regulation:

amenity allowance or gratuity means periodical payments of an incidental nature to a person for one, or both, of the following:

 - (a) the purchase of personal items such as toiletries;
 - (b) other minor expenses.

Governor means the person in charge of a prison, however otherwise described.

social security law has the meaning given by subsection 3 (3) of the *Social Security (Administration) Act 1999*.

support pension means a pension that, in the opinion of the Registrar, is substantially used for the support of the pension recipient.

7D Conversion of annual rates into daily rates of payment — child support year ending before 1 July 1999 (Act s 69)

- (1) This regulation applies in relation to a child support year ending before 1 July 1999.

Note Schedule 16 to the *Child Support Legislation Amendment Act 1998* made extensive changes to arrangements for making elections about child support income amounts. The amendments made by Sch 16 commenced on 15 December 1998.

However, subs 4 (3) of that Act states that the amendments made by Sch 16 do not apply in relation to the 1998-99 child support year or any earlier child support year.

- (2) A reference in this regulation to a provision of the Act is a reference to the provision as in force immediately before 15 December 1998.
- (3) Subject to subregulation (4), an annual rate of child support is to be converted into a daily rate by using the formula:

$$DR = \frac{AR}{365.25}$$

where:

DR is the daily rate of payment.

AR is the annual rate of payment.

- (4) If an election has been made under section 60 of the Act, the annual rate of child support applying as a result of the election is to be converted into a daily rate for each day on and after which the annual rate applies by using the formula:

$$DR = \frac{\left(\frac{AR \times \text{days remaining}}{365.25} \right) - (B - C)}{\text{days remaining}}$$

where:

AR is the annual rate of payment.

B is:

- (a) if, when the election was made, the first amount under paragraph 7A (4) (a) was not more than the second amount under paragraph 7A (4) (b) — the first amount under paragraph 7A (4) (a); or
- (b) in any other case — the amount payable for the part of the child support year before the day on and after which the child support income amount applies in accordance with subregulation 7A (3).

C is the part of the second amount under paragraph 7A (4) (b) that applies to the part of the child support year to which the estimate does not apply.

DR is the daily rate of payment.

days remaining is the number of days remaining in the child support year starting on the day on and after which the annual rate applies.

- (5) If section 64 of the Act applies in relation to an election, the annual rates of child support applying before the application of section 64 are to be converted into a daily rate for each day in the child support year by using the formula:

$$DR = EDR = ADR$$

where:

DR is the daily rate of payment for a day in the child support year.

EDR is the existing daily rate of payment for the day before the application of section 64 (in accordance with subregulation (3) or (4)).

ADR is the additional daily rate calculated using the formula:

$$\frac{X-Y}{365.25}$$

where:

X is the annual rate of child support applying after the application of section 64.

Y is the annual rate of child support applying as a result of the election (before the application of section 64).

Note Section 64 applies in relation to an election if, at the end of the child support year, the person's taxable income exceeds the estimated income specified in the election.

- (6) In calculating a conversion, the calculation must be made to 6 decimal places, and:
 - (a) if the final figure is greater than 4 — the second-last figure must be increased by 1 and the final figure then disregarded; and
 - (b) if the final figure is 4 or less, it must be disregarded.

8 Conversion of annual rates into daily rates of payment — child support period starting on or after 1 July 1999

- (1) For section 69 of the Act, an annual rate of child support is to be converted into a daily rate by using the formula:

$$DR = \frac{AR}{365.25};$$

where:

DR is the daily rate of payment; and

AR is the annual rate of payment.

- (2) In calculating a conversion, the calculation must be made to 6 decimal places and:
 - (a) if the final figure is greater than 4 — the second-last figure must be increased by 1 and the final figure then disregarded; and
 - (b) if the final figure is 4 or less, it must be disregarded.

8A Conversion of periodic amounts into annual rates

If a child support agreement refers to a periodic amount of payment (in this regulation referred to as *the periodic amount*) the annual rate of payment (in this regulation referred to as *the annual rate*) in respect of the periodic amount is to be assessed as follows:

- (a) in the case of a daily amount — in accordance with the following formula: $PA \times 365.25 = AR$; and

- (b) in the case of a weekly amount — in accordance with the following formula: $\frac{PA}{7} \times 365.25 = AR$; and
- (c) in the case of a periodic amount that is in respect of a period that is a multiple of one week — in accordance with the following formula: $\frac{PA \times 365.25}{7 \times NW} = AR$; and
- (d) in the case of a monthly amount — in accordance with the following formula: $\frac{PA \times 365.25}{30.4375} = AR$; and
- (e) in the case of a periodic amount that is in respect of a period that is a multiple of one month — in accordance with the following formula: $\frac{PA \times 365.25}{30.4375 \times NM} = AR$; and
- (f) in the case of a yearly amount — in accordance with the following formula: $PA = AR$;

where:

AR is the annual rate; and

NM is the number of months in respect of which the periodic amount is specified; and

NW is the number of weeks in respect of which the periodic amount is specified; and

PA is the periodic amount.

9 Orders that may be made by a court

The Registrar or a court may make determinations or orders containing provisions of the following kind with respect to the calculation of the amount of an annual rate of child support, an adjusted income amount, child support income amount, exempted income amount or disregarded income amount in relation to a liable parent or in relation to the carer entitled to child support:

- (a) that a specified amount be substituted for one of those amounts;

- (b) the period for which the specified amount is to be substituted;
- (c) that the specified amount is to be indexed by the inflation factor;
- (d) that one of those amounts be varied;
- (e) the period for which the variation is to remain in force;
- (f) where the variation is by a specified amount—that the amount is to be indexed by the inflation factor.

10 Scale of expenses under subsection 161 (2) of the Act

- (1) For the purposes of subsection 161 (2) of the Act, the scale of expenses set out in the Schedule is prescribed.
- (2) A reference in the Schedule to the High Court Rules is a reference to the High Court Rules as in force from time to time.

11 Service of orders

A copy of an order under subsection 162 (1) of the Act must be served on the person to whom the order is addressed:

- (a) where the person is a natural person:
 - (i) by delivering the copy to the person personally; or
 - (ii) by leaving the copy at, or sending the copy by pre-paid post to, the address of the person last known to the proper officer of the court; or
- (b) where the person is a body corporate — by leaving the copy at, or sending the copy by pre-paid post to, the head office, a registered office or a principal office of the body corporate.

11A Service of notices etc

- (1) Any notice or other communication by or on behalf of the Registrar may be served on a person:
 - (a) if the person is a natural person:
 - (i) by causing it to be personally served on the person; or

- (ii) by leaving it at the person's address for service; or
 - (iii) by sending it by pre-paid post to the person's address for service; or
- (b) if the person is a body corporate:
 - (i) by leaving it at the person's address for service; or
 - (ii) by leaving it at, or sending it by pre-paid post to, the head office, a registered office or a principal office of the body corporate;

and in any case in which service has been attempted by use of the pre-paid post, unless the contrary is proved, service will be taken to have been effected at the time when the notice or other communication would, in the ordinary course of the post, have arrived at the place to which it was addressed.

- (2) For subregulation (1), if the person has consented to receiving the notice or other communication, or notices or communications of that kind, by way of electronic communication:

leaving it at the person's address for service includes delivering the notice or other communication by means of electronic communication.

- (3) In this regulation:

consent has the meaning given by section 5 of the *Electronic Transactions Act 1999*.

electronic communication has the meaning given by section 5 of the *Electronic Transactions Act 1999*.

11B Address for service

- (1) The address last notified by a person to the Registrar as the address for service of the person is, for all purposes under the Act and Regulations, that person's address for service.
- (2) If no address for service has been notified to the Registrar but the Registrar's records nevertheless contain an address attributed to the person, the last such address in any record held by the Registrar is the person's address for service under the Act and Regulations.

- (3) For this regulation:

address for service includes both:

- (a) the person's address for the physical delivery of notices;
and
- (b) the person's address for the electronic delivery of notices.

12 Date of making of application etc

- (1) An application for administrative assessment or for the acceptance of a child support agreement is to be taken to have been made on the day on which the application is received in an office of:
 - (a) Commonwealth Services Delivery Agency (Centrelink);
or
 - (b) the Child Support Agency; or
 - (c) the Australian Taxation Office.
- (2) An election under section 60 of the Act, or a revocation under section 62, is to be taken to have been made on the day on which the form of election or revocation is received in any of the offices referred to in subregulation (1).
- (3) Where any other matter is required by the Act to be done in an approved form, the form is to be taken to have been received on the day on which the form is received in any of the offices referred to in subregulation (1).

13 Documents taken to be duly signed

- (1) A certificate, notice or other document bearing the written, printed or stamped name (including a facsimile of the signature) of a person who is, or was at any time, the Registrar or a delegate of the Registrar in place of that person's signature must, unless it is proved that the document was issued without authority, be taken to have been duly signed by that person.
- (2) Judicial notice must be taken of the names and signatures of the persons who are, or were at any time, the Registrar or a delegate of the Registrar.

**Schedule Expenses to be allowed to
person required to attend
under section 161 of the Act**
(regulation 10)

1. Any person required to attend:
 - (a) in the case of a person remunerated by wages, salary or fees — such amount as is provided for in the High Court Rules in relation to expenses of witnesses so remunerated; or
 - (b) in any other case — such amount as is provided for in the High Court Rules in relation to expenses of witnesses generally.
2. Any person required to attend — such amount as is reasonable:
 - (a) in respect of that person's conveyance to and from the place at which that person so attends; and
 - (b) if that person is required to be absent overnight from his or her usual place of residence — in respect of meals and accommodation.
- (3) Any person required to attend who is a payer, payee or a personal representative of either — nil.

Table of Statutory Rules**Notes to the *Child Support (Assessment) Regulations 1989*****Note 1**

The *Child Support (Assessment) Regulations 1989* (in force under the *Child Support (Assessment) Act 1989*) as shown in this compilation comprise Statutory Rules 1989 No. 259 amended as indicated in the Tables below.

Table of Statutory Rules

Year and number	Date of notification in Gazette	Date of commencement	Application, saving or transitional provisions
1989 No. 259	29 Sept 1989	1 Oct 1989	
1991 No. 81	30 Apr 1991	30 Apr 1991	—
1992 No. 63	5 Mar 1992	5 Mar 1992	—
1993 No. 131	17 June 1993	17 June 1993	—
1994 No. 129	3 May 1994	3 May 1994	—
1995 No. 179	30 June 1995	30 June 1995	—
1995 No. 292	10 Oct 1995	1 Nov 1995	—
1996 No. 142	1 July 1996	1 July 1996	—
1996 No. 273	11 Dec 1996	1 Jan 1997	—
1997 No. 170	30 June 1997	1 July 1997	—
1997 No. 374	23 Dec 1997	23 Dec 1997	—
1998 No. 164	25 June 1998	1 July 1998	—
1999 No. 5	8 Feb 1999	8 Feb 1999	—
1999 No. 103	17 June 1999	1 July 1999	—
1999 No. 286	2 Dec 1999	15 Dec 1998	—
1999 No. 313	15 Dec 1999	15 Dec 1999	—
2001 No. 204	2 Aug 2001	2 Aug 2001	—
2002 No. 340	20 Dec 2002	14 Feb 2002	—
2004 No. 122	18 June 2004	18 June 2004	—
2004 No. 177	1 July 2004	1 July 2004	—

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 2	rs. 1999 No. 5
R. 3A.....	ad. 1999 No. 103
R. 4	rs. 1993 No. 131 am. 1995 No. 292; 1996 No. 273; 1999 No. 5
R. 5	rep. 1993 No. 131
R. 6	rs. 1991 No. 81 am. 1992 No. 63; 1993 No. 131; 1994 No. 129; 1995 No. 179; 1996 No. 142; 1997 No. 170; 1998 No. 164
R. 7	am. 2002 No. 340
R. 7A.....	ad. 1993 No. 131 rs. 1997 No. 374; 1999 No. 286
R. 7B.....	ad. 1993 No. 131 rep. 1997 No. 374 ad. 1999 No. 103
R. 7C.....	ad. 1993 No. 131 rep. 1997 No. 374 ad. 1999 No. 103 rs. 1999 No. 313
R. 7CA	ad. 2001 No. 204 am. 2004 No. 177
R. 7D.....	ad. 1999 No. 286
Heading to r. 8	rs. 1999 No. 286
R. 8	am. 1991 No. 81; 1997 No. 374; 1999 No. 286
R. 8A.....	ad. 1991 No. 81
R. 9	am. 1994 No. 129; 1997 No. 170
R. 11A.....	ad. 1994 No. 129 am. 2004 No. 122
R. 11B.....	ad. 1994 No. 129 am. 2001 No. 204 rs. 2004 No. 122
R. 12	am. 1999 No. 103
R. 13	ad. 1991 No. 81 am. 1994 No. 129
Schedule.....	am. 1994 No. 129