

EXPLANATORY STATEMENT

STATUTORY RULES 1989 NO. 259

ISSUED BY THE AUTHORITY OF THE TREASURER

CHILD SUPPORT (ASSESSMENT) REGULATIONS

The purpose of these regulations is to prescribe matters that are required or permitted to be prescribed for carrying out or giving effect to the Child Support (Assessment) Act 1989, provided those matters are not inconsistent with that Act.

The Child Support (Assessment) Act 1989 is part of the Government's Child Support Scheme, which aims to reform child support in Australia by reducing the number of children in poverty and making sure that parents with a capacity to pay do not abandon the financial responsibility of supporting their children to the social security system. Stage 1 of the Scheme - the Child Support (Registration and Collection) Act 1988 - provides for the collection by the Child Support Registrar of periodic child and/or spousal maintenance payable under court orders or court registered or approved maintenance agreements. The Child Support (Assessment) Act 1989 - Stage 2 of the scheme - provides for the administrative assessment of child support by the Child Support Registrar, according to formulae set out in the Act, as well as for acceptance by the Registrar of consent agreements between the parties as to the amount and form of child support.

2.

Notes on each of the regulations are set out below.

Commencement

Regulation 1 specifies that the Child Support (Assessment) Regulations commence on 1 October 1989; the date that has been proclaimed as the date of the commencement of the Child Support (Assessment) Act 1989.

Citation

Regulation 2 provides for the Regulations to be cited as the Child Support (Assessment) Regulations.

Interpretation

Regulation 3 facilitates reference to the Income Tax Assessment Act 1936 and Child Support (Assessment) Act 1989 which, in the Regulations and this statement, are referred to as "Assessment Act" and "the Act" respectively.

Exclusion of certain children

Regulation 4 provides that certain children are to be excluded from being covered by the Act. Section 18 of the Act provides that the Act is to apply only in relation to children who are eligible children, i.e. broadly, children whose parents separate or separated on or after the commencing day (1 October 1989) or a child who was born on or after that date or who is the brother or sister of a child born on or after that date.

Subsection 22(1) of the Act authorises the making of regulations providing that children who are in the custody of, or under the guardianship, care and control or supervision of, a person under a child welfare law are not eligible children. Regulation 4 provides to this effect. This is consistent with the Family Law Act 1975, subsection 60H(1) of which precludes the making of an order under that Act in relation to a child in those circumstances unless the order is expressed to come into effect when the circumstances cease to apply.

Prescribed matters for approved forms

Regulation 5 sets out matters to be dealt with in particular approved forms and specifies the manner in which those matters and each document accompanying a form are to be verified.

A number of provisions of the Act, dealing, for example, with applications and elections that may be made under the Act, require that the application or election be made in the appropriate approved form. Section 11 of the Act defines the term "approved form" to mean broadly, a form made available by the Child Support Registrar for the purposes of the provision concerned dealing with such matters as are prescribed in relation to the provision.

Subregulation 5(1) sets out matters to be dealt with in the various approved forms. The matters being prescribed are set against the background that :

4.

- . the scheme relies, to a certain extent, on Taxation Office records, including taxable income shown in tax assessment notices;**
- . it is necessary to ensure that assessments will not issue to the wrong person, e.g. to a person instead of to the person's adult son who resides at the same address;**
- . it is essential that the Child Support Agency be able to communicate as quickly as possible with participants so that child support is obtained for a child as quickly as possible;**
- . an applicant may apply for an administrative assessment only; or for an administrative assessment and collection by the Child Support Registrar of the child support payable under the assessment; or, in circumstances where a custodian has a private arrangement with the liable parent and the custodian is applying for social security benefits, the custodian may apply for advice as to how much child support would be payable under an administrative assessment - this information would be used by the Department of Social Security to check whether, for social security benefits purposes, payments under the private arrangement are adequate;**

5.

- . a custodian may withdraw an application for child support provided that the Registrar has not at that time accepted or refused to accept the application;**
- . a custodian may give notice to the Registrar electing that the liability of the liable parent to pay or provide child support is to end from a specified day;**
- . a parent who estimates that his/her taxable income in the child support year will be significantly less than the income on which his/her child support liability or entitlement is based, may elect to have that liability or entitlement based on the estimated taxable income that he/she will derive in the child support year;**
- . the election referred to in the previous sub-paragraph may not be made if there is an income amount order - broadly an order of a court varying, or that has the effect of varying, the amount of child support payable under the administrative assessment - in force in relation to the person and any part of the child support year;**
- . a parent may revoke an election to have child support based on estimated taxable income unless an income amount order made by a court after the making by the parent of the election is in force in relation to the person and the child support year;**

6.

- . where an election is made to have child support based on estimated taxable income and it is not revoked before the end of the child support year, an end of year reconciliation based on the person's actual taxable income for the child support year may be made;
- . an application for administrative assessment of child support can only be accepted by the Registrar, and an agreement between the parties as regards the provision of child support is a child support agreement for the purposes of the Act, only if the application or agreement is in respect of children of parents who separated on or after 1 October 1989 - it is thus necessary for the Registrar to know the relationship of the parents - or in respect of a child who was born on or after that date or who is the brother or sister of a child born on or after that date;
- . the custodian's (applicant's) child support income is only relevant in the assessment if the custodian is a parent of the child for whom child support is sought;
- . in circumstances where custody of a child is shared between the parents, or where there is split custody (i.e. where each of the parents has custody of one or more of their children) the formula on which the assessment is based takes those circumstances into account;

- . the date from which an administrative assessment is to come into effect turns on whether any maintenance has been paid by the liable parent for the children since the couple separated or, where the applicant is eligible for child support because a child was born on or after 1 October 1989, since the date of birth of the child;
- . maintenance paid under court orders (e.g. urgent maintenance orders) may be credited against child support payable under an administrative assessment;
- . the scheme provides for a court to order, or for the parents to agree, that child support be provided by the liable parent in a form other than periodic amounts of money (e.g. the direct payment of school fees by the liable parent), and for it to be stated in the order or agreement that the child support to be so provided has an annual value of a specified amount and that the annual rate of the liable parent's liability under an administrative assessment (including an administrative assessment based on an agreement) is to be reduced by that amount;
- . where a custodian who is receiving all or part of his/her child support in a form other than periodic cash payable under an administrative assessment receives an income tested social security benefit, the custodian may apply to the Registrar to have the

administrative assessment not reduced by more than 25% on account of support provided by the liable parent in a form other than periodic cash;

- . generally payments of child support are deducted by employers from the pay of their employees and remitted to the Registrar in the same way as PAYE taxation is deducted and remitted to the Commissioner of Taxation;
- . applications for administrative assessment may be made, and other forms may be lodged, at any office of the Department of Social Security, the Australian Taxation Office or the Child Support Agency;
- . a low-income parent who was not required to lodge an income tax return for the relevant year because his/her taxable income was below the threshold at which tax is payable will need to show his/her taxable income in the application for administrative assessment of child support;
- . information supplied by a parent to the Registrar concerning the parent's address, telephone number or taxation file number will not be notified to the other parent.

Against that background, matters to be dealt with in particular approved forms are :

- . Application for administrative assessment of child support, as provided for in subsection 27(1) of the Act - those specified in paragraph 5(1)(a) of the regulations.
- . Notice by custodian to Registrar as provided for in subsection 32(2) of the Act - that he/she wishes to withdraw an application for administrative assessment - those specified in paragraph 5(1)(b) of the regulations.
- . Notice by a parent - as provided for in subsection 60(2) of the Act - that he/she estimates that the amount of his/her taxable income in the child support year will be not more than 85% of his/her child support income on which an administrative assessment has been based and that the parent elects to have the assessment recalculated on the basis of his/her estimated taxable income - those specified in paragraph 5(1)(c) of the regulations.
- . Notice by a parent - as provided for in subsection 62(2) of the Act - revoking an election made by the parent under section 60 of the Act - those specified in paragraph 5(1)(d) of the regulations.

- . Application for acceptance by the Registrar of a child support agreement as provided for in subsection 89(1) of the Act - those specified in paragraph 5(1)(e) of the regulations.
- . Application by custodian to have assessed child support not reduced by more than 25% as provided for in subsection 128(2) of the Act - those specified in paragraph 5(1)(f) of the regulations.
- . Notification by custodian - as provided for in paragraph 128(4)(a) of the Act - in effect terminating an application under sub-section 128(2) of the Act - those specified in paragraph 5(1)(q) of the regulations.
- . Election by custodian entitled to child support to end administrative assessment as provided for in subsection 151(2) of the Act - those specified in paragraph 5(1)(h) of the regulations.

Subregulation 5(2) provides in effect that the person completing an approved form that is submitted to the Registrar must declare, and sign the declaration, that each matter set out in the form and each document accompanying the form is correct in every material particular.

Inflation Factor

Regulation 6 prescribes, for the purposes of section 55 of the Act, the inflation factor for the child support year ending on 30 June 1990 and that for the child support year ending 30 June 1991.

The starting point in the administrative assessment of child support is the child support income amount in relation to the child support year. This may be the child support income amount of the liable parent or that of the custodial parent.

Section 55 of the Act provides, in broad terms, that a person's child support income amount in relation to a child support year is the person's taxable income under the Assessment Act for the person's last relevant year of income - broadly the year of income two years before the child support year - multiplied by the inflation factor applicable to the child support year under the regulations. By regulation 6, the inflation factor applicable to the child support year ending on 30 June 1990 is prescribed as 1.0575, reflecting the estimated increase at that time of 5.75% in average weekly earnings, (national accounts basis, excluding superannuation) between 1987-88 (the last relevant year of income in relation to the 1989/90 child support year) and 1988-89 (the most recently ended year of income in relation to that child support year) as published in Statement no 4 of 1988-89 Budget Paper no 1, and that for the child support year ending on 30 June 1991 is correspondingly prescribed as 1.065.

This means that, for example, the child support income amount of a parent for the 1989-90 child support year will be equal to the parent's taxable income of the 1987-88 year of income (the last year of income before the 1989-90 child support year for which most, if not all, income tax assessments will have been completed) multiplied by 1.0575, that is, the parent's theoretical taxable income level in the year of income that ended immediately before the commencement of the child support year equivalent to the parent's taxable income of the last relevant year of income.

Taxable income : prescribed provisions and circumstances

Regulation 7 prescribes certain provision of the Assessment Act and certain circumstances for the purposes of subsection 56(3) of the Act and certain circumstances for the purposes of subsection 57(7) of the Act.

Sections 56 and 57 of the Act provide, in broad terms, that a person's child support income amount is to be based on the person's taxable income as assessed or last assessed - section 56 - (or determined, or last determined, in non-taxable cases - section 57) before the administrative assessment is made, i.e. the administrative assessment will not be affected by an amendment to the assessment of taxable income (or the making of an assessment in previously non-taxable cases) made after the making of the administrative assessment. An exception to this rule is made where, after the making of the administrative

assessment, an amended assessment is made under subsection 170(2) of the Assessment Act (no full and true disclosure) or an assessment is made in a previously non-taxable case in circumstances where there has not been a full and true disclosure. In these cases subsection 56(3) or 57(7) of the Act provide for the administrative assessment to be amended, back dated to the start of the assessment period, to base the child support income amount on the amended taxable income.

In addition to providing for the amendment of assessments in the circumstances described in the previous paragraph subsections 56(3) and 57(7) of the Act provide for the prescribing of other provisions of the Assessment Act or circumstances (subsection 56(3)), or circumstances (subsection 57(7)) the amendment of the income tax assessment of taxable income under or in which, or the making of an income tax assessment in which, will also result in amendment of the administrative assessment.

Subregulation 7(1) prescribes, for the purposes of subsection 56(3) of the Act, a number of provisions of the Assessment Act, and circumstances, under which, broadly, taxable income may be amended at any time under the Assessment Act to counter tax avoidance schemes. Subregulation 7(2) prescribes, for purposes of subsection 57(7) of the Act, the same circumstances as those prescribed in subregulation 7(1), or under which an assessment under the Assessment Act could be amended to give effect to the provisions of the Assessment Act prescribed in subregulation 7(1). That is, where taxable income (and, consequently, child support liability) had been reduced under one of the tax avoidance schemes concerned and the taxable

income is subsequently increased under one of the prescribed provisions or in one of the prescribed circumstances, the child support liability will also be reassessed, even if this occurs after the end of the child support year.

Conversion of annual rates into daily rates of payment

Regulation 8 sets out the formula that is to be used to convert the annual rate of child support into a daily rate (subregulation 8(1)) and the procedure to be followed in rounding the daily rate as so calculated to five decimal places (subregulation 8(2)).

Section 69 of the Act provides that the annual rate of child support payable by a liable parent, as assessed by the Registrar, must be converted, in accordance with the regulations, into a daily rate, and that both the annual and daily rates must be specified in notices of assessment of child support payable. The formula prescribed by Regulation 8 for converting an annual rate (AR) into a daily rate (DR), that is, $DR = \frac{AR}{365.25}$, and the procedure for rounding the daily rate as so

calculated to five decimal places, follow the corresponding provisions in the Child Support Regulations. The denominator in the formula takes into account that a leap year occurs each 4 years.

Orders that may be made by a court

Regulation 9 prescribes the kind of provisions with respect to the calculation of specified amounts that may be included in court orders for departure from administrative assessment in special circumstances.

Division 4 of Part 7 of the Act makes provisions for court orders for departure from administrative assessment where a court is satisfied that, in the special circumstances of a case, one or more grounds for departure from formula assessment exist, and that it would be just and equitable and otherwise proper to make such an order. Subsection 118(1) of the Act specifies the orders that a court may make under Division 4. Paragraphs (a) and (b) of the subsection specify amounts in relation to the liable parent - amount of annual rate of child support, adjusted income amount, child support income amount and exempted income amount - that may be varied by court order. Paragraph (d) of the subsection specifies amount in relation to the custodian entitled to child support - child support income amount and disregarded income amount - that may be varied by court order. Paragraphs (c) and (e) of the subsection permit the prescribing of the kinds of provisions with respect to the calculation of any such amounts in relation to the liable parent (paragraph (c)) and the custodian entitled to child support (paragraph (e)) that a court order may make.

Paragraph (a) of regulation 9 provides that a court may order that an amount specified in the order is to be substituted for any of the amounts concerned, and under paragraph (b) of the regulation, the order may specify the period for which an amount so specified is to be substituted. Paragraph (c) of the regulation provides that the court may order that an amount specified in the order is to be indexed by the inflation factor (see notes on regulation 6). Under paragraph (d) of the regulation the court may order that any of the amounts concerned is to be varied - up or down and by a specified amount or percentage while, under paragraph (e) of the regulation, the order may specify the period for which the variation is to remain in force. Paragraph (f) of the regulation provides that, if the variation ordered under paragraph (d) is by a specified amount, the order may provide for that amount to be indexed by the inflation factor.

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

Regulation 10 provides for the scale of expenses payable to a person who is required under section 161 of the Act to attend before the Registrar to answer questions or produce documents. Subsection 161(2) of the Act provides that the regulations must prescribe scales of expenses to be allowed to persons required to so attend.

Subregulation 10(1) prescribes that the scale of expenses are to be those set out in the Schedule to the Regulations. The scale of expenses set out in the Schedule as regards remuneration are, when read with subregulation 10(2), the varying amounts provided for in the High Court Rules as in force from time to time and, in respect of expenses of travel, accommodation and meals, such amount as is reasonable.

Service of Orders

Regulation 11 prescribes the manner in which a copy of an order made by a court under subsection 162(1) of the Act is to be served on a person or a body corporate (as applicable).

Sub-section 162(2) of the Act provides that where an order to comply with a requirement made by or under the Act is made by a Court under subsection 162(1) of the Act and the order is not given orally by the court to the person to whom the order is addressed, the proper officer of the court must cause a copy of the order to be served on the person in the prescribed manner.

Date of making of application etc.

Regulation 12 specifies the day on which applications for administrative assessment or other applications, elections etc. are, in the varying circumstances, to be taken to have been made.

A number of provisions of the Act operate by reference to the date on which an application or election is made to, or an approved form is received by the Registrar. Regulation 12

provides, broadly, that an application or election is to be taken to have been made on the day on which the application or election is received in an office of the Department of Social Security, the Child Support Agency or the Australian Taxation Office, and that any other approved form is to be taken to have been received on the day on which it is received in any of those offices.

This regulation reflects the fact that it will mostly be more convenient for a custodian who is entitled to a social security pension to lodge an application for child support at the same time as he or she applies for the pension. Moreover offices of the Department of Social Security are located throughout the country and it will often be more convenient for other parents to lodge their forms at those offices than at offices of the Child Support Agency or the Taxation Office.