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Child Support (Assessment) (Overseas-related Maintenance Obligations) Regulations 2000

Statutory Rules 2000 No. 79

I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Child Support (Assessment) Act 1989*.

Dated 25 MAY 2000 2000

WILLIAM DEANE
Governor-General

By His Excellency's Command

LARRY ANTHONY
Minister for Community Services



Child Support (Assessment) (Overseas-related Maintenance Obligations) Regulations 2000

Statutory Rules 2000 No. 21

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made under the

Child Support (Assessment) Act 1989

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Part 1 Introductory

1 **Name of Regulations**

These Regulations are the *Child Support (Assessment) (Overseas-related Maintenance Obligations) Regulations 2000*.

2 **Commencement**

These Regulations commence on 1 July 2000.

3 **Purpose**

- (1) The purpose of these Regulations is to give effect to Australia's obligations under international agreements or arrangements relating to maintenance obligations arising from family relationship, parentage or marriage.
- (2) The Act and these Regulations are intended to be construed and administered consistently with the purpose of these Regulations but, to the extent of any inconsistency, these Regulations prevail.

Note Paragraphs 163B (3) (a) and (b) of the Act state that these Regulations:

- (a) may be inconsistent with the Act; and
- (b) prevail over the Act (including any other regulations or other instruments made under the Act), to the extent of any inconsistency.

4 **Application**

The operation of the Act and these Regulations is not affected by sections 13 and 14 of the Act.

5 **Definitions**

In these Regulations:

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

Regulation 6

Australia–New Zealand Agreement means the Agreement between the Government of Australia and the Government of New Zealand on Child and Spousal Maintenance signed in Canberra on 12 April 2000, a copy of the text of which is set out in Schedule 1 to the *Child Support (Registration and Collection) (Overseas-related Maintenance Obligations) Regulations 2000*.

overseas authority means a judicial or administrative authority of a reciprocating jurisdiction that is responsible for implementing an agreement or arrangement with Australia relating to maintenance obligations arising from family relationship, parentage or marriage.

6 Events that are not child support terminating events

In relation to Australia's international maintenance obligations with a reciprocating jurisdiction, paragraphs 12 (1) (f) and (3) (b) of the Act do not apply.

Note 1 Paragraph 12 (1) (f) of the Act states that a child support terminating event happens in relation to a child if none of the following paragraphs applies any longer in relation to the child:

- (a) the child is present in Australia;
- (b) the child is an Australian citizen;
- (c) the child is ordinarily resident in Australia.

Note 2 Paragraph 12 (3) (b) of the Act states that a child support terminating event happens in relation to a person who is a liable parent in relation to a child if the person ceases to be a resident of Australia.

7 When orders do not cease

In relation to Australia's international maintenance obligations with a reciprocating jurisdiction, subsection 142 (1) has effect as if sub-subparagraph (c) (ii) (B) were omitted.

Note Paragraph 142 (1) (c) of the Act states:

Where an order made under this Act is in force in relation to a child and:

...

Regulation 9

- (c) if there is not a carer entitled to child support and a liable parent in relation to the child, one of the following events happens:
 - (i) the person on whose application the order was made:
 - (A) dies; or
 - (B) ceases to be an eligible carer of the child;
 - (ii) the person against whom the order was made:
 - (A) dies; or
 - (B) ceases to be a resident of Australia;
- the order ceases to be in force.

8 Reciprocating jurisdictions

Each jurisdiction (except Israel) specified in Schedule 2 to the *Child Support (Registration and Collection) (Overseas-related Maintenance Obligations) Regulations 2000* is a reciprocating jurisdiction for section 163B of the Act.

9 Prescribed overseas jurisdiction

For section 29 of the Act each reciprocating jurisdiction (except Israel) is a prescribed overseas jurisdiction.

Regulation 10

Part 2 Applications and other communications

10 Application requirements

In addition to the applicable provisions mentioned in section 23 of the Act, an application for administrative assessment of child support may be properly made if it complies with regulation 11 or 12.

11 Children for whom applications may be made

An application may be made to the Registrar, by a liable parent or an eligible carer in a reciprocating jurisdiction, for administrative assessment of child support for a child who does not meet the requirements of subparagraphs 24 (b) (i) and (ii) of the Act.

12 Persons who may apply

An overseas authority may apply to the Registrar, on behalf of a liable parent or an eligible carer in a reciprocating jurisdiction, for administrative assessment of child support.

13 Elections, objections and appeals by overseas authority

If an overseas authority makes an application under regulation 12, the overseas authority may take the following actions under the Act for the person on whose behalf the overseas authority made the application:

- (a) make an election;
- (b) lodge an objection;
- (c) file an application for leave to appeal;
- (d) appeal against a decision.

Regulation 16**14 Persons from whom payment may be sought**

For section 25 of the Act, a person may seek payment of child support from a person who is:

- (a) a parent of the child; and
- (b) a resident of a reciprocating jurisdiction on the day when the application is made.

15 When liability to pay child support arises

Despite section 31 of the Act, the liability of a liable parent who is in a reciprocating jurisdiction to pay child support does not arise until all prior requirements (if any) under the applicable international agreement or arrangement with the reciprocating jurisdiction, or the laws of that reciprocating jurisdiction, are complied with.

Example

Some reciprocating jurisdictions require that the person from whom payment is sought must be given notice about:

- the making, and substance, of the application for administrative assessment of child support; and
- how the person may object to the application.

16 When liable parent taken to have relevant dependent child

- (1) For paragraph 39 (3) (c) of the Act, the number of days within which the Registrar must have been notified, or otherwise become aware, of the fact that the child is a relevant dependent child of the liable parent is 90 days after the day on which the child became such a child.
- (2) For paragraph 39 (3) (d) of the Act, the number of days within which the Registrar must have been notified, or otherwise become aware, of the fact that the child is a relevant dependent child of the liable parent is 90 days after the notice of the assessment (referred to in subsection 39 (3)) was given.

Note Section 39 of the Act deals with the calculation of a liable parent's exempted income amount.

Regulation 17

17 Annual rate of child support payable — payees in Australia and reciprocating jurisdiction

- (1) This regulation applies if:
- (a) a liable parent has a duty to pay child support to persons in Australia and in a reciprocating jurisdiction; and
 - (b) an administrative assessment under Part 5 of the Act and an administrative assessment under a law of the reciprocating jurisdiction may be made in relation to the liable parent.
- (2) In working out the annual rate of child support payable under section 54 of the Act:

total number of children means the number of children in relation to whom the liable parent is a liable parent in relation to all of the carers entitled to child support under the Act or under a law of the reciprocating jurisdiction (with the number attributed to each shared care child of the liable parent taken to be 0.5).

18 Time limits on lodging objection

- (1) For subsection 98Z (1) of the Act, the time within which a person must lodge an objection to a decision is 90 days after service of notice of the decision on the person, unless:
- (a) the decision is a refusal decision within the meaning of subsection 98Z (2) of the Act; or
 - (b) one of the grounds of objection to the decision is based on a refusal decision.
- (2) For subsection 98Z (3) of the Act, the time within which a person must lodge an objection to a refusal decision, or to a decision on the ground that a refusal decision was wrongly made in relation to the decision, is 90 days after service of notice of the refusal decision on the person.

Regulation 22

19 Time within which notice must be given to Registrar

For subsection 160 (1) of the Act, the time within which a person to or by whom child support is payable may be required to notify the Registrar is 60 days from the day when:

- (a) an event or change of circumstances specified in the notice happens; or
- (b) the person becomes aware that an event or change of circumstances specified in the notice is likely to happen.

20 Time within which information must be given to Registrar

For paragraph 161 (1) (a) of the Act, the Registrar may, by written notice, require a person to give to the Registrar, within a reasonable period (being a period of not less than 28 days), and in a reasonable manner specified in the notice, such information as the Registrar requires.

21 Service of documents

A document that is required to be served by an overseas authority on a person who is in Australia may be served by, or on behalf of, the Registrar if it is necessary or convenient to do so for the purposes of an international agreement or arrangement with a reciprocating jurisdiction.

22 Giving notices and other communications

A notice or other communication that is required to be given to an entitled carer or a liable parent may be given to an overseas authority if the Registrar is of the opinion that it is desirable or appropriate to do so for these Regulations.

Regulation 23

Part 3 Income

23 Meaning of *taxable income* in Act

For Australia's international maintenance obligations, a reference in Division 3 of Part 5 of the Act to a person's taxable income may include other overseas income of the person as determined by the Registrar under these Regulations.

24 Obtaining information

The Registrar may, by written notice, request a person or an overseas authority to give to the Registrar such information, or to produce documents, as may be relevant for calculating the child support income amount of a person.

25 Determination of income if information not provided

- (1) This regulation applies if:
 - (a) the Registrar is unable to ascertain a person's income on the basis of the documents and information in the Registrar's possession; and
 - (b) the Registrar has requested the person or an overseas authority to provide information or produce documents relevant to ascertaining that income; and
 - (c) the information or documents have not been obtained from the person or the overseas authority.
- (2) For this regulation, the Registrar may, in making an administrative assessment of the child support payable by or to the person in relation to a child support period, act on the basis that the person's income for the year of income is such amount as the Registrar considers appropriate, not exceeding 2.5 times the yearly equivalent of the relevant AWE amount for the child support period.

Regulation 27**26 Determination of income if information provided**

- (1) This regulation applies if:
 - (a) the Registrar is unable to ascertain a person's income on the basis of the documents and information in the Registrar's possession; and
 - (b) the Registrar has been supplied with information or documents for the purpose of ascertaining the person's income.
- (2) The Registrar may, in making an administrative assessment of the child support payable by or to the person in relation to a child support period, act on the basis that the amount ascertained from the information or documents is the person's income for that year of income for the purposes of calculating the person's child support income amount.

27 Conversion of currency

- (1) The Registrar must convert any overseas income that is taken into account under this Part into the equivalent amount in Australian currency, on the basis of the average exchange rate for the relevant financial year of the country from which the income was derived.
- (2) The average exchange rate mentioned in subregulation (1) is the rate provided by the Australian Statistician or, if unavailable from the Australian Statistician, the rate provided by a relevant overseas body.
- (3) In making an administrative assessment of child support of a liable parent who is in a reciprocating jurisdiction, the Registrar must convert the amount payable by the liable parent into the equivalent amount in the currency of that reciprocating jurisdiction, on the basis of the telegraphic transfer rate of exchange prevailing on the day when the assessment is transmitted.

Regulation 27

- (4) If there are arrears in payment of child support assessment transmitted to a reciprocating jurisdiction, the amount in arrears must be converted into the equivalent amount of the currency of that reciprocating jurisdiction, on the basis of the telegraphic transfer rate of exchange prevailing on the day when the assessment is transmitted.

Part 4 Matters in respect of the Australia–New Zealand Agreement

28 Jurisdiction of courts

As mentioned in Article 4 of the Australia–New Zealand Agreement, if an eligible carer is habitually resident in Australia, a court having jurisdiction under the Act may make a decision within the meaning of Article 1 of that Agreement, so far as it applies.

Note Part 7 of the Act sets out the jurisdiction of courts in relation to matters arising under the Act.

29 Conflicts of jurisdiction of administrative authorities of Australia and New Zealand

If the Registrar receives notice in accordance with Article 5.2 of the Australia–New Zealand Agreement that an eligible carer is habitually resident in New Zealand, the jurisdiction of the Registrar ceases in accordance with Article 5.2.

Note The full text of the Australia–New Zealand Agreement is set out in Schedule 1 to the *Child Support (Registration and Collection) (Overseas-related Maintenance Obligations) Regulations 2000*.

Note

1. Made by the Governor-General on 2000, and notified in
the *Commonwealth of Australia Gazette* on 2000.

25 May
26 May