

Child Support (Assessment) (Overseas-related Maintenance Obligations) Amendment Regulations 2001 (No. 1) 2001 No. 308

EXPLANATORY STATEMENT

Statutory Rules 2001 No. 308

Issued by the authority of the Minister for Community Services

Child Support (Assessment) Act 1989

Child Support (Assessment) (Overseas-related Maintenance Obligations) Amendment Regulations 2001 (No. 1)

The purpose of the regulations (which are made under section 164 of the *Child Support (Assessment) Act 1989* (the Act)) is to amend the *Child Support (Assessment) (Overseas-related Maintenance Obligations) Regulations 2000* (the Overseas Regulations) to remove certain unintended consequences, to confirm that child support assessments may not be issued against payers in Israel and to extend the same treatment to payers in certain other jurisdictions.

The purpose of the Overseas 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.

The Overseas Regulations have prevented child support assessments from being issued against payers in Israel. The reason for this has been that, under Israeli law, Israeli courts may enforce foreign court orders, but not foreign child support assessments. Not only may Australian child support assessments not be enforced, but it is important to prevent their being issued at all because section 66E of the *Family Law Act 1975* allows a person to have a court make an order in relation to the child only if an assessment may *not* be made under the Act. Thus, the exclusion of Israel in this way has given the person access to court.

However, the exclusion of Israel has had some unintended effects. Although it has correctly prevented child support assessments from being issued against payers in Israel, it has also prevented assessments from being issued against payers in Australia for the benefit of some children in Israel, prevented authorities in Israel from applying for assessments against payers in Australia and prevented reliance on parentage presumptions. The regulations amend the Overseas Regulations to remove these unintended consequences.

Furthermore, it has become apparent that the law of Brunei, the Cook Islands, Niue, Papua New Guinea, Western Samoa and the Yukon Territory of Canada operates in a similar way to that of Israel. Therefore, the regulations extend the same treatment to those jurisdictions as would apply to Israel.

The Regulations commenced on gazettal.