

EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 346

**Issued by the Authority of the Minister for Families, Community Services and
Indigenous Affairs**

Child Support (Assessment) Act 1988

*Child Support (Assessment) (Overseas-Related Maintenance Obligations) Amendment
Regulations 2006 (No. 2)*

The *Child Support (Assessment) Act 1989* (the Act) provides for the assessment of the level of parents' child support liabilities for their children.

Section 164 of the Act provides that the Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

In addition, section 163B of the Act provides, in part, that the Governor-General may make regulations, which may be inconsistent with the Act, which provide for, and in relation to:

- (a) giving effect to an international agreement that relates to maintenance obligations arising from family relationship, parentage or marriage;
- (b) maintenance obligations arising from family relationship, parentage or marriage, where:
 - (i) maintenance is claimed by or on behalf of a person who is in a reciprocating jurisdiction; or
 - (ii) person from whom the maintenance is claimed is in a reciprocating jurisdiction.

The Act has been extensively amended by the *Child Support Legislation (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006* (the Amending Act), which was passed by the Senate on 9 November 2006.

The *Child Support (Assessment) (Overseas-related Maintenance Obligations) Regulations 2000* (the Principal Regulations) extend the operation of the Act. They allow certain people who would not otherwise be able to apply for an administrative assessment under the Act, to apply for an administrative assessment. An application may be made in relation to a child or a parent who does not meet the residence requirements that normally apply under the Act. An overseas authority may also apply to the Registrar, on behalf of a liable parent or eligible carer, for administrative assessment of child support.

The purpose of the Regulations is to amend the Principal Regulations to reflect changes flowing from the Amending Act. In particular, the Regulations deal with technical changes arising from sections in the Act being repealed or amended.

These Regulations generally adjust the extension of time provisions to reflect the fact that many of the review provisions have, under changes made by the Amending Act, moved from the Assessment Act to the Act. They also continue, under the new provisions, the established role of administrative authorities of overseas jurisdictions in being able to seek review and do associated things on behalf of the party to the child support assessment living in that jurisdiction.

These Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

These Regulations commence on 1 January 2007, to coincide with the commencement of the amendments to the Act made by the Amending Act.

Consultation

No consultation in relation to these Regulations was undertaken because they do not have a direct or significant indirect impact on business and do not restrict competition. Furthermore, the amendments are of a minor or machinery nature, not substantially affecting existing arrangements.

Details of the Regulations

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Child Support (Assessment) (Overseas-related Maintenance Obligations) Amendment Regulations 2006 (No. 2)*.

Regulation 2 – Commencement

This regulation provides that the Regulations commence on 1 January 2007, to coincide with the commencement of Schedules 3 and 4 to the Amendment Act.

Regulation 3 – Amendment of *Child Support (Assessment) (Overseas-related Maintenance Obligations) Regulations 2000*

This regulation provides that the Principal Regulations are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] would substitute regulation 13. It would continue to provide that, if an overseas authority makes an application under regulation 12, the overseas authority may elect:

- a child support income for the person on whose behalf the application was made;
- to discontinue proceedings; or
- to end an administrative assessment.

Paragraph (a) lists the sections under which an overseas authority may make an election. An overseas authority also has objection and appeal rights under regulation 37A of the *Child Support (Registration and Collection) (Overseas-related Maintenance Obligations) Regulations 2000* (the Registration and Collection Overseas Regulations).

Paragraph (b) provides that an overseas authority may revoke an election under section 60 of the Act. This ensures that an overseas authority has the same rights in relation to an election as does a person who is covered by the Act.

Many of the objection and review provisions are moved from the Act to the *Child Support (Registration and Collection) Act 1988* by the Amending Act. However, some rights to appeal to a court are still included in the Act. Accordingly, these appeal rights should still be covered by the Principal Regulations in relation to overseas-related maintenance obligations. Paragraph (c), therefore, provides that an overseas authority may apply to a court under section 106A, 107 or 116 of the Act.

Item [2] omits regulation 18, because section 98Z of the Act, under which regulation 18 was made, is repealed by the Amending Act. The matter dealt with by regulation 18, that is, time limits on lodging objections, is now covered by regulation 38A of the Registration and Collection Overseas Regulations.