

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 221

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

Child Support (Registration and Collection) Act 1988

Child Support (Registration and Collection) Amendment Regulations 2007 (No. 1)

The *Child Support (Registration and Collection) Act 1988* (the Act) provides for the enforcement of parents' child support liabilities for their children.

Section 125 of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

The Act is being amended by the *Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Act 2007* (the Amending Act) from the 28th day after the Amending Act received Royal Assent.

The *Child Support (Registration and Collection) Regulations 1988* (the Principal Regulations) prescribe matters relevant to the enforcement of parents' child support liabilities for their children.

The Regulations amend the Principal Regulations to reflect changes being made to the Act by the Amending Act.

Section 124A of the Act has provided that regulations, which may be inconsistent with the Act, may make provision for, and in relation to, giving effect to certain maintenance obligations, either under an international agreement or arising where one of the parties is in a reciprocating jurisdiction. The *Child Support (Registration and Collection) (Overseas-related Maintenance Obligations) Regulations 2000* (the Overseas Registration and Collection Regulations) have been in force to this effect.

The Amending Act is relocating into the Act most of the provisions in the Overseas Registration and Collection Regulations. The remaining provisions in the Overseas Registration and Collection Regulations are too few to retain. Accordingly, the Regulations amend the Principal Regulations to incorporate the provisions in the Overseas Registration and Collection Regulations that are not being relocated into the Act. Separately, the Overseas Registration and Collection Regulations are being repealed.

The Regulations also make certain minor amendments to the Principal Regulations as a result of the relocation into the Act of provisions in the Overseas Registration and Collection Regulations.

Details of the Regulations are set out in the Attachment.

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

The Regulations commence on the commencement of Part 1 of Schedule 2 to the Amending Act, which is 28 days after the Amending Act received Royal Assent, to coincide with the commencement of the amendments made by the Amending Act. Because Royal Assent was given on 21 June 2007, the amendments made by the Amending Act commence on 19 July 2007.

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 altering existing arrangements.

ATTACHMENT

Details of the *Child Support (Registration and Collection) Amendment Regulations 2007 (No. 1)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Child Support (Registration and Collection) Amendment Regulations 2007 (No. 1)*.

Regulation 2 – Commencement

This regulation provides for regulations 1 to 3 and Schedule 1 to the Regulations to commence on the commencement of Part 1 of Schedule 2 to the *Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Act 2007* (the Amending Act). Part 1 of Schedule 2 to the Amending Act commences 28 days after Royal Assent to the Amending Act. Because Royal Assent was given on 21 June 2007, the Part commences on 20 July 2007. This regulation also provides for Schedule 2 to the Regulations to commence immediately after the commencement of Schedule 1, to ensure the amendments are incorporated properly.

Regulation 3 – Amendment of *Child Support (Registration and Collection) Regulations 1988*

This regulation provides that the *Child Support (Registration and Collection) Regulations 1988* (the Principal Regulations) are amended as set out in Schedules 1 and 2.

Schedule 1 – Amendments

Item [1] inserts into regulation 2, after the definition of ‘Act’, a definition of ‘Australia-New Zealand Agreement’, and provides that it means the agreement made between the governments of Australia and New Zealand in Canberra on 12 April 2000, a copy of which appears at Schedule 1 to the Principal Regulations, as inserted by **item [1]** of Schedule 2 to the Regulations.

Item [2] inserts new regulation 3A into the Principal Regulations, providing a definition of ‘reciprocating jurisdiction’ as meaning each foreign country, or part thereof, mentioned in Schedule 2 to the Principal Regulations, as inserted by **item [1]** of Schedule 2 to the Regulations.

Item [3] inserts new regulations 4A and 4B into the Principal Regulations. New regulation 4A prescribes Article 15 of the Australia-New Zealand Agreement for the purposes of paragraph 18A(3)(b) of the *Child Support (Registration and Collection) Act 1988* (the Act). This ensures that a penalty under that Article is a registrable overseas maintenance liability and therefore capable of registration and enforcement under the Principal Act. New regulation 4B prescribes New Zealand for the purposes of subsection 25A(5) of the Act. This allows the Registrar to refuse an application by a child support payee to register a maintenance assessment, order or agreement issued, made or registered in New Zealand if the payee lives there. In such a case, the Australia-New Zealand Agreement provides for New Zealand law to apply instead.

Item [4] inserts new regulation 5AA into the Principal Regulations, prescribing seven reciprocating jurisdictions as excepted reciprocating jurisdictions for the purposes of subsection 30A(4) of the Act. This ensures that a maintenance order or agreement, or a child support assessment, cannot be enforced in any of those jurisdictions because that would not be permitted by the law of those jurisdictions.

Items [5] and [6] amend paragraphs 8A(a) and (b) and subregulations 9(1) and (2) of the Principal Regulations, by amending current references to Schedules 1 and 2. These are simple amendments to reflect numbering changes, because **item [1]** of Schedule 2 to the Regulations inserts two schedules to the Principal Regulations known as Schedules 1 and 2. **Items [9] and [10]** of Schedule 1 to the Regulations provide for the existing Schedules 1 and 2 to become known as Schedules 3 and 4.

Item [7] inserts new regulations 14A and 14B into the Principal Regulations. New regulation 14A allows the Registrar, or another authorised person, to serve, on behalf of an overseas authority of a reciprocating jurisdiction, a document on a person in Australia if considered necessary or convenient for an international maintenance arrangement with the jurisdiction. New regulation 14B provides, for the purposes of section 121C of the Act, for any notice or other communication required to be given to a payer or payee resident in a reciprocating jurisdiction to be given to an overseas authority of the jurisdiction if considered desirable or appropriate.

Item [8] omits from regulation 16 of the Principal Regulations the words, ‘in Australia’. Regulation 16 provides that a person who changes address and fails to notify the Registrar cannot plead the change of address as a defence in proceedings against the person. The amendment ensures the provision applies equally in relation to a person in a reciprocating jurisdiction.

Item [9] inserts new regulations 17, 18, 19 and 20 into the Principal Regulations. New regulations 17 and 18 deal with how certain formal communications operate between Australia and a reciprocating jurisdiction. New regulation 17 allows a person in Australia to apply for the Registrar’s assistance in communicating with an overseas authority of a reciprocating jurisdiction if payment of child support is sought from the person, either by a payee living in the reciprocating jurisdiction or by the overseas authority on behalf of such a payee. New regulation 18 allows a person, who claims (under a law of a reciprocating jurisdiction) to be entitled to a variation of an overseas liability, to ask the Registrar to transmit the claim to an overseas authority of the jurisdiction. The Registrar has to pursue such an application, in keeping with the terms of the international maintenance arrangement concerned.

New regulations 19 and 20 relate to currency conversion and provide for the situations in which, how, and on which dates, foreign currency may be converted into Australian currency (regulation 19) and Australian currency may be converted into New Zealand currency (regulation 20).

Items [10] and [11] rename existing Schedules 1 and 2 to the Principal Regulations as Schedules 3 and 4. This allows the insertion of two new Schedules 1 and 2 by **item [1]** of Schedule 2 to the Regulations.

Schedule 2 – Amendment commencing immediately after the commencement of Schedule 1

Item [1] inserts two new schedules into the Principal Regulations, known as Schedules 1 and 2. Schedule 1 effectively relocates, from the *Child Support (Registration and Collection) (Overseas-related Maintenance Obligations) Regulations 2000* (the Overseas Registration and Collection Regulations), the text of the agreement made between the governments of Australia and New Zealand in Canberra on 12 April 2000, as referred to in the new definition of ‘Australia-New Zealand Agreement’, which is inserted into the Principal Regulations by **item [1]** of Schedule 1 to the Regulations.

Schedule 2 effectively relocates, from the Overseas Registration and Collection Regulations, the list of foreign countries, or parts thereof, that are ‘reciprocating jurisdictions’, as referred to in the new definition of that term, which is inserted by **item [2]** of Schedule 1 to the Regulations. The relocated list reflects some name changes in recent years to the countries and provinces concerned, and includes some new ones that are recent signatories to the United Nations Convention on the Recovery Abroad of Maintenance.