

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 219

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

Child Support (Assessment) Act 1989

Child Support (Assessment) Amendment Regulations 2007 (No. 1)

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, 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 (Assessment) Regulations 1989* (the Principal Regulations) prescribe matters relevant to the assessment of the level 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 163B of the Act provides 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 (Assessment) (Overseas-related Maintenance Obligations) Regulations 2000* (the Overseas Assessment Regulations) are in force to this effect.

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 Separately, the Overseas Assessment Regulations are being repealed.

The Regulations also omit a redundant regulation from the Principal 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 28 days after Royal Assent to the Amending Act, 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 (Assessment) Amendment Regulations 2007 (No. 1)*

Regulation 1 – Name of Regulations

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

Regulation 2 – Commencement

This regulation provides for 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 19 July 2007.

Regulation 3 – Amendment of *Child Support (Assessment) Regulations 1989*

This regulation provides that the *Child Support (Assessment) Regulations 1989* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] inserts a note at the foot of regulation 3 of the Principal Regulations, pointing out that several terms used in the Principal Regulations derive their meaning from subsection 4(1) of the *Child Support (Registration and Collection) Act 1988* (the Registration and Collection Act). This is so because section 6 of the *Child Support (Assessment) Act 1989* (the Act) provides for definitions in the Registration and Collection Act to apply generally in the Act. Therefore, those definitions, including some that are relevant to the amended Principal Regulations, also apply generally in the Principal Regulations.

Item [2] inserts new regulations 4A, 4B and 5 into the Principal Regulations. New regulation 4A prescribes, for the purposes of subsection 25(5) of the Act, certain administrative actions an overseas authority of a reciprocating jurisdiction may take for a person on whose behalf the authority has applied for administrative assessment of child support. It also prescribes, for the purposes of subsections 25(6) and 25A(5) of the Act, that the same actions may be taken by such an authority for a person who has applied directly to the Registrar (but with the authority passing on the application to the Registrar), if it has the person's consent.

New regulation 4B prescribes, for the purposes of subsection 29(2) of the Act, that each reciprocating jurisdiction is a prescribed overseas jurisdiction. This ensures that any instrument made under the law of such a jurisdiction in relation to parentage of the child concerned may be taken into account in a decision on an application for administrative assessment of child support.

New regulation 5 excludes seven reciprocating jurisdictions from the operation of section 30A of the Act. This ensures that an application for administrative assessment of child support, or an application for acceptance of a child support agreement, cannot be accepted in relation to a liable parent resident in any of those jurisdictions because that would not be permitted by the law of those jurisdictions.

Item [3] omits regulation 6 of the Principal Regulations because the indexation factors it prescribes are out of date and the regulation is redundant.

Item [4] inserts new regulation 7AA into the Principal Regulations. This relates to currency conversion and provides, for the purposes of determining, under Subdivision AA of Division 3 of Part 5 of the Act, an amount of income expressed in foreign currency to be a person's overseas income, how, and on which dates, foreign currency is to be converted into Australian currency.

Item [5] inserts new regulation 9A into the Principal Regulations. This prescribes Article 5.2 of the Australia-New Zealand Agreement for the purposes of section 150DA of the Act. This ensures that the jurisdiction of the Registrar ceases if notice is given under that Article that an eligible carer is habitually resident in New Zealand. In such a case, the Australia-New Zealand Agreement provides for New Zealand law to apply instead.

Items [6] and [7] insert new regulations 11AA and 11C into the Principal Regulations. New regulation 11AA 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 11C provides, for the purposes of section 162B of the Act, for any notice or other communication required to be given to a person resident in a reciprocating jurisdiction to be given to an overseas authority of the jurisdiction if considered desirable or appropriate.