

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 363

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

*Child Support Legislation Amendment (Reform of the Child Support Scheme – New
Formula and Other Measures) Act 2006*

*Child Support Reform (New Formula and Other Measures)
Regulations 2007*

The *Child Support Legislation Amendment (Reform of the Child Support Scheme - New Formula and Other Measures) Act 2006* (the Act) will, in part, amend the *Child Support (Assessment) Act 1989* (the Assessment Act) to provide, from 1 July 2008, a new formula for assessing the level of parents' child support liabilities for their children.

Section 6 of the Act provides that the Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Act.

From 1 July 2008, all existing administrative assessments of child support will be amended to conform with the new formula for the administrative assessment of child support under the Assessment Act. Notice of the amended assessments will be given to parents by the Child Support Agency from early 2008.

The Regulations introduce transitional arrangements to ensure that parents have all appropriate rights of, and processes for, review and appeal in relation to their amended administrative assessments, in the same way that they have in relation to their existing administrative assessments.

In particular, the Regulations clarify the way in which an administrative assessment is made after 1 July 2008 where a determination or court order varying the existing formula-based assessment, and which will continue in force after 30 June 2008, is in force.

Item 1 Schedule 9 to the Act provides that the regulations may specify how rights and obligations arising under an order made, before 1 July 2008, by a court under Division 4 of Part 7 of the Assessment Act correspond to rights and obligations under that Act as amended by this Act; and by the *Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Act 2007*.

The Regulations also mirror relevant provisions of the *Child Support (Assessment) Regulations 1989* and *Child Support (Registration and Collection) Regulations 1988* in order to support the making, prior to 1 July 2008, of new administrative assessments.

Subsection 4(2) of the Act provides that the regulations must prescribe scales of expenses to be allowed to persons required to attend, under section 4, before the Registrar or an authorised officer to answer questions for the purposes of the Act. The Regulations prescribe such scales of expenses.

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 1 January 2008.

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 Regulations implement changes made in substantive legislation, and do not have any direct impact beyond those already inherent in the legislation.

ATTACHMENT

Details of the proposed *Child Support Reform (New Formula and Other Measures) Regulations 2007*

Part 1 – Preliminary

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Child Support Reform (New Formula and Other Measures) Regulations 2007*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on 1 January 2008, to allow the Child Support Agency (the CSA) to give parents adequate notice of their changed child support arrangements under the new formula provided by the *Child Support Legislation Amendment (Reform of the Child Support Scheme—New Formula and Other Measures) Act 2006* (the Act), which commences from 1 July 2008.

Regulation 3 – Purpose

This regulation provides that the Regulations are made for section 6 of the Act (defined below).

Regulation 4 – Definitions

Regulation 4 provides definitions for the purposes of Parts 3, 4, 5, 6, 7 and 8 of the Regulations:

Act means the *Child Support Legislation Amendment (Reform of the Child Support Scheme—New Formula and Other Measures) Act 2006*.

administrative assessment means an administrative assessment of child support made or amended prior to 1 July 2008 under the new child support formula (as applied by subregulation 7(1)), or an existing assessment amended under the new child support formula.

amended Assessment Act means the Assessment Act as amended by the Act and the Consolidation Act (see definition below) on, or immediately after, 1 July 2008, which will provide the legislative framework for new administrative assessments.

amended Registration and Collection Act means the Registration and Collection Act (see definition below) as amended by the Act and the Consolidation Act (see definition below) on, or immediately after, 1 July 2008, which will provide the legislative framework for registration and collection of liabilities under new administrative assessments of child support, and particularly internal and external review of such assessments.

applicable formula, for a child, means the formula that would be applicable to working out the annual rate of child support payable for the child under Part 5 of the Assessment Act, as amended by the Act and the Consolidation Act (see definition below), as if the amendments provided by those Acts to come into operation on 1 July 2008, or immediately after that day, had come into operation on, or immediately after, the commencement of these Regulations.

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

carer means a carer entitled to child support (defined below) under an administrative assessment of child support made under Part 5 of the Assessment Act.

carer entitled to child support has the same meaning as in the amended Assessment Act, being a parent or non-parent carer of a child entitled to be paid child support under an administrative assessment or agreement in relation to the child.

child support has the same meaning as in the Assessment Act, namely, financial support under the Assessment Act, given either periodically, or by way of lump sum payment or transfer or settlement of property.

child support agreement has the same meaning as in the Assessment Act, ie as applying prior to the amendments effected by the Act and the Consolidation Act.

Consolidation Act means the *Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Act 2007*.

departure determination means a determination to depart from a new administrative assessment of child support, made under subregulation 9 (1).

existing assessment means an administrative assessment in force under the Assessment Act before 1 July 2008.

liable parent has the same meaning as in the amended Assessment Act, namely, a parent by whom child support is payable for a child under an administrative assessment or child support agreement.

payee has the same meaning as in the amended Registration and Collection Act.

payer has the same meaning as in the amended Registration and Collection Act.

Registrar has the same meaning as in the amended Assessment Act.

Registration and Collection Act means the *Child Support (Registration and Collection) Act 1988*.

SSAT means the Social Security Appeals Tribunal.

transition period means the period beginning on the commencement of these Regulations and ending at the end of 30 June 2008.

Part 2 – Scale of expenses

Regulation 5 – Scale of expenses

This regulation prescribes a scale of expenses for persons required, under subsection 4(1) of the Act, to attend before the Registrar and provide information for the purposes of the Act. This regulation consists of two subregulations. Subregulation (1) provides that the scale of expenses set out in Schedule 1 to the Regulations is prescribed for the purposes of subsection 4(2) of the Act.

Subregulation (2) clarifies that a reference in Schedule 1 to the High Court Rules is a reference to the High Court Rules as in force from time to time.

Regulation 6 – Scale of expenses for attendance before SSAT

This regulation prescribes a scale of expenses for persons required, under section 103K of the amended Registration and Collection Act, as applied by these regulations, to attend before the SSAT and provide information for the purposes of a review. This regulation provides that the person is allowed such expenses as are prescribed under regulation 5.

Part 3 – Administrative assessments and departure determinations made before 1 July 2008

Regulation 7 – Making of administrative assessments

Regulation 7 provides for the Registrar to undertake the issuing and amendment of administrative assessments of child support which reflect the new child support formula applying from 1 July 2008. This regulation would also provide for the Registrar to amend an existing administrative assessment, in the same way the Registrar may make or amend administrative assessments under the existing formula in Part 5 of the Assessment Act. This enables the CSA to give parents appropriate advance notice of their new administrative assessments, such that a parent who is dissatisfied with their new administrative assessment may seek a departure from the formula assessment, or seek review of their administrative assessment.

Subregulation (1) empowers the Child Support Registrar to make or amend an administrative assessment of child support for a child during the transition period (from 1 January 2008 until 1 July 2008).

Subregulation (2) provides that Part 5 of the amended Assessment Act applies to the making or amendment of an administrative assessment under subregulation (1). Part 5 of the amended Assessment Act sets out the new formula from 1 July 2008 for calculation of an administrative assessment.

Subregulation (3) provides for the continuity from 1 July 2008 of decisions made during the transition period, by providing that an administrative assessment made in accordance with the requirements of the relevant provisions has effect after 30 June 2008 as if it had been made under the amended Assessment Act.

Subregulation (4) provides that, as soon as practicable after making or amending an administrative assessment for a child, the Registrar must give written notice of the assessment, or the amended assessment, as the case may be, to the liable parent and to the carer. Part 5 of the amended Assessment Act includes provisions setting out how notice of assessments is to be given.

Regulation 8 – Response by liable parent or carer

This regulation provides for a liable parent or carer who has been given notice of their new administrative assessment to seek, prior to 1 July 2008, a departure from the new formula assessment, and for the Registrar to consider such an application. Parents and carers may currently seek a departure, or variation of the way in which their administrative assessment is calculated, where their circumstances are special, under Part 6A of the Assessment Act. This process is commonly referred to as change of assessment. Regulation 8 would create a corresponding right for parents to apply for a departure from the new formula in special circumstances in relation to their new administrative assessment during the transition period.

Subregulation (1) provides for a liable parent, or a carer, to whom an administrative assessment applies, to apply to the Registrar for a departure determination for the administrative assessment.

Subregulation (2) provides for Part 6A of the amended Assessment Act (the **relevant provisions**) to apply to an application for a departure determination as if an administrative assessment under the applicable formula were in force for the child under Part 5 of the amended Assessment Act.

Subregulation (3) provides for an application in accordance with the requirements of the relevant provisions, and anything done in accordance with those requirements as a result of that application, to have effect after 30 June 2008 as if it had been made, entered into or done under the amended Assessment Act.

A note to this regulation would make readers aware that Part 6A of the Assessment Act deals with: the process for dealing with departures initiated by a liable parent, a carer or the Registrar; the determinations that may be made.

Regulation 9 – Making of departure determinations

This regulation provides for the Registrar to make a decision on an application by a liable parent or carer for a departure from the formula for assessment of child support during the transition period from 1 January 2008 to 1 July 2008. The regulation would also provide for the Registrar to make his or her own departure from the formula for assessment of child support during the transition period. The Registrar may currently initiate a departure from a formula assessment under the Assessment Act or consider an application for a departure. This regulation would create a corresponding power to make a departure for the purposes of the amended Assessment Act during the transition period, applying the departure provisions in the amended Assessment Act as they will appear on or after 1 July 2008.

Subregulation (1) provides that the Registrar, on an application under subregulation 8(1) or on the Registrar's own initiative, may make a determination that the applicable formula should be departed from for a child.

Subregulation (2) provides that Part 6A of the amended Assessment Act (the relevant provisions) would apply to the making of a departure determination as if an administrative assessment under the applicable formula were in force for the child under Part 5 of the amended Assessment Act.

Subregulation (3) provides that a departure determination made in accordance with the requirements of the relevant provisions would have effect after 30 June 2008 as if it had been made under the amended Assessment Act.

Regulation 10 – Internal review of administrative assessments and departure determinations

This regulation provides for the Registrar to receive and consider written applications for internal review of decisions made during the transition period, about making or amending a new administrative assessment, or the making or refusal to make a departure determination, in the same manner that internal review of decisions made under the Assessment Act may occur currently. Such internal review applications are called 'objections' for child support purposes.

Subregulation (1) provides for a carer or liable parent, by writing to the Registrar, to object to either of the following decisions:

- (a) the particulars of an administrative assessment; or
- (b) the making of, or the refusal to make, a departure determination.

Subregulation (2) provides for the Registrar to consider and make a decision on any objection received.

Subregulation (3) provides for Divisions 3, 4 and 5 of Part VII of the amended Registration and Collection Act (the **relevant provisions**) to apply to the making and consideration of the objection, as if the decision were a decision set out in an item in the table in section 80 of the amended Registration and Collection Act.

Subregulation (4) provides for an objection made and considered in accordance with the requirements of the relevant provisions of the amended Registration and Collection Act, and anything done in accordance with those requirements as a result of that consideration, to have effect after 30 June 2008 as if it had been made, considered or done under the amended Registration and Collection Act.

A note to this regulation would make readers aware that Division 3 of Part VII of the amended Registration and Collection Act deals with time limits on lodging objections, Division 4 with requirements relating to objections and Division 5 with consideration of objections.

Regulation 11 – Review by SSAT of Registrar’s decision

This regulation provides for an application to be made to the SSAT, and for the SSAT to review an internal review decision (objection decision) of the Registrar under the amended Assessment Act, during the transition period. Currently, a parent or carer dissatisfied with the Registrar’s decision on an objection may apply to the SSAT for review of the decision under Part VIIA of the Registration and Collection Act, and this regulation would create corresponding rights in relation to decisions under the new formula.

Subregulation (1) provides that, if a carer or a liable parent were dissatisfied with the Registrar’s decision on an objection to an administrative assessment decision made during the transition period, the carer or liable parent may apply to the SSAT for review of the decision.

Subregulation (2) provides that Part VIIA of the amended Registration and Collection Act (the relevant provisions) would apply to the application for SSAT review, and the consideration of the application, as if the decision of the Registrar were a decision set out in an item in the table in section 89 of the amended Registration and Collection Act.

Subregulation (3) provides that an application made and considered in accordance with the requirements of the relevant provisions, and anything done in accordance with those requirements as a result of that consideration, would have effect after 30 June 2008 as if it had been made, considered or done under the amended Registration and Collection Act.

A note to the regulation would make readers aware that Part VIIA of the amended Registration and Collection Act deals with various aspects of SSAT review of certain decisions. Section 89 of the amended Registration and Collection Act limits SSAT review in some circumstances where the Registrar has refused to make a determination because the issues are too complex. The note would direct the reader to regulation 14 for application to a court in those circumstances.

Regulation 12 – Review by AAT in particular cases

This regulation provides for review by the Administrative Appeals Tribunal (the AAT) of certain decisions of the Registrar made, during the transition period, in relation to the new child support formula where review by the AAT of such decisions will be available under the amended Assessment Act from 1 July 2008. Of these decisions, review of the SSAT’s refusal to extend time is available to parents and carers under the Registration and Collection Act currently, but review by the AAT of the SSAT’s decision about a parent’s percentage of care of a child will not be provided until 1 July 2008 under the amended Registration and Collection Act.

Subregulation (1) provides for a carer or liable parent to apply to the AAT for review of a decision of the SSAT made under specified provisions of the amended Registration and Collection Act because of regulation 10, namely:

- (a) section 92 (refusing an extension application); and

(b) section 103VA (relating to a percentage of care for a child).

Subregulation (2) provides for a decision of the AAT under section 92 or 103VA of the amended Registration and Collection Act to have effect after 30 June 2008 as if it had been made under the amended Registration and Collection Act.

Regulation 13 – Appeal against SSAT decision

This regulation provides for appeal to a court about an error of law affecting a decision of the SSAT made, during the transition period, in relation to the amended Assessment Act. A parent or carer may currently appeal, under Part VIII of the Registration and Collection Act, to a court about an error of law in a decision of the SSAT. This regulation would create corresponding rights under the Registration and Collection Act for SSAT decisions made, during the transition period, in relation to the amended Assessment Act.

Subregulation (1) provides for a carer or a liable parent to appeal to a court about an error of law affecting a decision by the SSAT under Part VIIA of the Registration and Collection Act as applied by regulation 11.

Subregulation (2) would make it clear that Part VIII of the amended Registration and Collection Act (the relevant provisions) would apply to an appeal as if the appeal were an appeal that may be brought under that Part.

Subregulation (3) provides that an appeal made and considered in accordance with the requirements of the relevant provisions, and anything done in accordance with those requirements as a result of that consideration, would have effect after 30 June 2008 as if it had been made, considered or done under the amended Registration and Collection Act.

A note to this regulation would make readers aware that Part VIII of the amended Registration and Collection Act deals with jurisdiction of courts and appeals and references of questions of law from the SSAT.

Regulation 14 – Reference by SSAT to court on questions of law

Regulation 14 provides for the SSAT to refer a question of law arising from the provisions of the amended Assessment Act to a court during the transition period. The SSAT may currently refer a question of law to a court, under Part VIII of the Registration and Collection Act, and this regulation would create corresponding rights for the SSAT in relation to amended Assessment Act decisions made, during the transition period, under the Registration and Collection Act.

Subregulation (1) provides for the SSAT to refer to a court a question of law arising in a proceeding under regulation 11.

Subregulation (2) provides for Part VIII of the amended Registration and Collection Act (the **relevant provisions**) to apply to a reference as if it were a reference made under that Part.

Subregulation (3) provides for a reference made and considered in accordance with the requirements of the relevant provisions, and anything done in accordance with those requirements as a result of that consideration, to have effect after 30 June 2008 as if it had been made, considered or done under the amended Registration and Collection Act.

Regulation 15 – Application to court for order

Regulation 15 provides for a parent or carer to apply to a court for a departure from an assessment made or amended pursuant to the amended Assessment Act during the transition period. Parents or carers may currently, in some circumstances, seek a court ordered departure from their administrative assessment of child support, and this regulation would create corresponding rights of application to a court for new formula assessments made during the transition period.

Subregulation (1) provides for the carer, or the liable parent, to apply to a court having jurisdiction under the Assessment Act for an order that the applicable formula should be departed from in the special circumstances of the case.

Subregulation (2) provides for Division 4 of Part 7 of the amended Assessment Act (the **relevant provisions**) to apply as if the application were an application under section 116 of the amended Assessment Act.

Subregulation (3) provides that an application made and considered in accordance with the requirements of the relevant provisions, and anything done in accordance with those requirements as a result of that consideration, would have effect after 30 June 2008 as if it had been made, considered or done under the amended Assessment Act.

Part 4 – Corresponding rights and obligations under departure determinations made before 1 July 2008

This Part guides the Registrar in amending an existing administrative assessment for the purposes of the new formula under the amended Assessment Act, where a parent's assessment under the provisions applying prior to 1 July 2008 is affected by a determination departing from the formula. Because the elements of the child support formula from 1 July 2008 will change from those applying prior to 1 July 2008, this Part identifies the most nearly corresponding part of the formula, where one is available, or directs the Registrar to continue the annual rate payable under the formula assessment as affected by the departure on 30 June 2008 as the annual rate of child support payable from 1 July 2008.

Regulation 16 – application

This regulation provides that Part 4 applies if the Registrar, using the applicable formula (the new formula from 1 July 2008), makes or amends an administrative assessment of child support for a child where an existing departure determination was in force immediately before 1 July 2008.

Regulation 17 – Definition for Part 4

This regulation provides a definition of ‘*existing determination*’ for the purposes of the Part, as meaning a departure determination in force under the Assessment Act immediately before 1 July 2008.

Regulation 18 – Corresponding rights and obligations for departure determinations

This regulation provides the way in which an existing departure determination in force prior to 1 July 2008, affects the Registrar’s amendment of the administrative assessment, with effect from 1 July 2008. The regulation clarifies, for each type of determination, the particular aspect of the formula after 1 July 2008 which should be taken to be referred to by a determination naming a particular aspect of the current formula.

Subregulation (1) provides that a liable parent, or a carer, to whom a relevant determination mentioned in an item applies has the same rights and obligations as if the determination were an amended Assessment Act determination mentioned in the item. The table in the subregulation sets out equivalent current determinations, and corresponding amended Assessment Act determinations.

For completeness, subregulation (2) gives definitions for the purposes of the regulation, as follows:

amended Assessment Act determination, for an item, means a departure determination made under the provision of the amended Assessment Act, and having the effect, mentioned in column 3 of the item.

relevant determination, for an item, means a departure determination made under the provision of the Assessment Act, and having the effect, mentioned in column 2 of the item.

item means an item in the table.

Regulation 19 – Departure determinations with no corresponding rights and obligations

Regulation 19 supplements regulation 18 by dealing with determinations varying an aspect of the formula which have no equivalent after 1 July 2008. The regulation sets, for the duration of the determination, the annual rate of child support payable under the determination from 1 July 2008 as the rate of child support payable on 30 June 2008, with provision to index the resulting annual rate from the commencement of each subsequent child support period.

Subregulation (1) identifies the determinations which would be covered by the regulation.

Subregulation (2) sets out the changed effect of the determination after 1 July 2008.

Subregulation (3) provides for the indexation of the rate of child support, in accordance with section 153A of the amended Assessment Act.

A note to the regulation explains the purpose of section 153A, which relates to indexation of child support payments.

Part 5 – Transitional matters for child support agreements made before 1 July 2008

Regulation 20 – Registrar’s review of child support agreements made before 1 July 2008

This regulation provides that this Part applies where, under item 74 of Schedule 5 to the Act, the Registrar reviews a child support agreement in force during the transition period and determines that the agreement is to be taken to be a binding child support agreement. Item 74 of Schedule 5 to the Act provides for the Registrar to make a decision to continue or end child support agreements in force on 1 July 2008. However, for those agreements which continue (‘transitional agreements’), regulation 21 sets out the way in which the Registrar should amend the assessment to reflect the terms of the transitional agreement after 1 July 2008.

Regulation 21 – Corresponding rights and obligations for transitional agreements

Subregulation (1) provides that a liable parent, or a carer, who is a party to a transitional agreement mentioned in an item has the same rights and obligations as if the agreement were an amended Assessment Act agreement mentioned in the item. The subregulation then sets out current Assessment Act agreement terms, and corresponding amended Assessment Act agreement terms.

For completeness, subregulation (2) gives definitions for the purposes of the regulation, as follows:

amended Assessment Act agreement, for an item, means an agreement under the amended Assessment Act having the effect mentioned in column 3 of the item.

item means an item in the table.

transitional agreement, for an item, means a binding child support agreement having the effect mentioned in column 2 of the item.

Part 6 – Transitional arrangements for a single child support period

In a range of circumstances, the existing formula assessment provides for a number of assessments to be made between the same or related individuals, whereas the amended Assessment Act applying from 1 July 2008 will require a single child support assessment be made. For cases affected by this change, the regulations provide for the existing child support assessments to be reassessed as a single child support assessment, for a single case. The Regulations make it clear that the assessment for the single case should be based upon the 2006-2007 financial year. Administrative assessments of child support are generally based upon a parent's most recent income tax assessment for the last financial year ending prior to the start of the child support period. However, at 1 July 2008, most parents are unlikely to have lodged their tax return for the 2007-2008 financial year. The approach of basing the assessment from 1 July 2008 on the previous financial year would minimise disruption to parents flowing from the transition. Once a parent's 2007-2008 tax assessment is available, a new child support period would start, and the child support payable would be reassessed based upon this income.

Regulation 22 – Multiple assessments in respect of a child

Subregulation (1) provides that this regulation applies if, before 1 July 2008, there is more than one administrative assessment of child support for a child.

Subregulation (2) provides that the existing assessments have effect after 30 June 2008 under Part 5 of the amended Assessment Act, as if made in a single child support case calculated on the 2006-07 year of income.

Subregulation (3) provides that, for a case mentioned in subregulation (2), a single child support period starts on 1 July 2008 and ends as provided for in subsection 7A(3) of the amended Assessment Act, which provides for circumstances in which a child support period ends.

Part 7 – Transitional matters for court orders made before 1 July 2008

This Part provides the way in which an existing court order in force prior to 1 July 2008, affects the Registrar's amendment of the administrative assessment, with effect from 1 July 2008. The Regulations clarify that as far as is practicable, the Registrar must ensure that the administrative assessment confers on a liable parent or a carer bound by an order the same rights and obligations under the administrative assessment which they would have if there were a corresponding amended Assessment Act order.

Regulation 23 – Purpose

Regulation 23 provides that the regulations in this Part would be made for item 1 of Schedule 9 to the Act.

Regulation 24 – Assessments for court orders

This regulation provides that this Part applies if the Registrar, using the applicable formula, makes or amends an administrative assessment of child support for a child where a court order is in force during the transition period.

A note to this regulation points out that a liable parent or carer may apply to a court under section 116 of the Assessment Act in relation to the Registrar's notice of an administrative assessment of child support under the applicable formula: see subitem 1(6) of Schedule 9 to the Act.

Regulation 25 – Corresponding rights and obligations for court orders

Subregulation (1) provides that the regulation applies to an administrative assessment made or amended under this Part where an Assessment Act order mentioned in an item is in force.

Subregulation (2) provides that the Registrar must ensure, as far as practicable, that the administrative assessment confers on the liable parent or carer bound by the order the same rights and obligations as if there were a corresponding amended Assessment Act order mentioned in the item.

Subregulation (3) sets out definitions for the purposes of the table in proposed subregulation (2):

amended Assessment Act order, for an item, means an order made under the provision of the amended Assessment Act, and having the effect, mentioned in column 3 of the item.

Assessment Act order, for an item, means an order made under the provision of the Assessment Act, and having the effect, mentioned in column 2 of the item.

item means an item in the table.

Regulation 26 – Court order with no corresponding rights and obligations

Subregulation (1) provides that the regulation applies to an administrative assessment made or amended under this Part where a relevant court order is in force.

Subregulation (2) provides that the Registrar must ensure, as far as practicable, that the administrative assessment confers on the liable parent or carer to whom an order to which this regulation applies, the same rights and obligations under the administrative assessment, as made or amended, as if there were an order under paragraph 118(1)(a) of the amended Assessment Act, varying the annual rate of child support to the rate payable on 30 June 2008. This results in the annual rate of child support payable under the assessment as amended in accordance with the court order on 30 June 2008 continuing to be the annual rate of child support after 1 July 2008.

Subregulation (3) provides that section 153A of the amended Assessment Act (indexation of amounts) would apply to the administrative assessment as if the review of the assessment by the Registrar were an assessment to which that section applies.

Subregulation (4) provides that **relevant order** in this regulation, means a court order under specified provisions of the Assessment Act, having the effect of varying the child support percentage (paragraph 118(1)(b)), varying the disregarded income amount of the carer (paragraph 118(1)(d)) or varying a factor ascertaining under paragraph 54(1)(b) of the Assessment Act (paragraph 118(1)(g)).

Part 8 – Miscellaneous

Division 1 - Preliminary

Regulation 27 – Definitions for Part 8

This regulation provides definitions for the purposes of this Part, providing that:-

applied Assessment Act means the amended Assessment Act as applied by these regulations, under which advance notice of new formula assessments is being given, as though the amended Assessment Act were already in force.

applied Registration and Collection Act means the amended Registration and Collection Act as applied by these regulations, under which opportunity is being given to review and appeal against new formula assessments as notified under the Regulations.

Division 2 – Prescriptions for applied Acts

Substantive regulations are currently in force under the Assessment Act and the Registration and Collection Act, supporting administration of the Acts: the *Child Support (Assessment) Regulations 1989* (Assessment Regulations) and the *Child Support (Registration and Collection) Regulations 1988* (Registration and Collection Regulations). This Division puts in place those regulations necessary for prescriptive and administrative purposes during transition to the new formula, generally duplicating those currently in place for the purposes of administration of the current Assessment and Registration and Collection Acts.

Regulation 28 – Taxable income – prescribed provisions and circumstances

This regulation mirrors the terms of current regulation 7 of the Assessment Regulations, with some minor alterations. The minor alterations reflect the changed structure of section 56 under the amended Assessment Act, and the fact that sections 31C and 36A(8) of the *Income Tax Assessment Act 1936* have been repealed.

Regulation 29 – Adjusted taxable income – prescribed circumstances

This new regulation, with no current equivalent in the Assessment Regulations, prescribes circumstances for the purposes of new section 58A of the applied Assessment Act. The applied Assessment Act will limit the circumstances in which the Registrar may replace an income that he has determined with a more accurate income, where the income is lower than that used in the assessment. However, this may operate harshly where parents are genuinely unable to provide the Registrar with timely information. The applied Assessment Act provides for regulations to prescribe the circumstances in which an exception to the general limitation on using income retrospectively applies.

This regulation prescribes circumstances in which it is unreasonable to expect the parent to provide information about their taxable income to the Registrar, including because of ill-health, natural disaster, remote location detention or imprisonment, or other exceptional circumstance, or because the parent was unaware that the assessment was being made (generally because the assessment is the first child support assessment made for the particular child). The regulation requires the Registrar to be satisfied that the parent was unable to provide information as a consequence of the existence of one of the prescribed circumstances. The regulation also requires that the parent subsequently provide the information to the Registrar as soon as is practicable in the circumstances.

Regulation 30 – Factor for making a determination

This new regulation, with no current equivalent in the Assessment Regulations, prescribes an inflation factor for the purposes of new subsection 58(3A) of the applied Assessment Act. The inflation factor will be applied to a parent's taxable income for the financial year ending before the last relevant financial year for the child support period, in order to form a basis for a current assessment of child support. The regulation prescribes the **EAVE amount** – which is the change in the all employees average weekly total earnings amount for persons in Australia (trend estimate) for the relevant September quarter, from the corresponding quarter of the previous year, as published by the Australian Statistician before the calendar year in which the child support period started.

relevant September quarter has the same meaning as in subsection 5A(2) of the amended Assessment Act.

Regulation 31 – Overseas income – conversion of currency

This regulation mirrors the terms of current regulation 7AA of the Assessment Regulations, although for the purposes of Subdivision BA or Division 7 of Part 5, which is the equivalent in the amended Assessment Act of Subdivision AA of Division 3 of part 5 of the Assessment Act.

Regulation 32 – Date of making of application etc

This regulation mirrors the terms of current regulation 12 of the Assessment Regulations.

Regulation 33 – Application to have liability reduced to nil

The regulation mirrors the terms of current regulation 7C of the Assessment Regulations.

Regulation 34 – Prescribed payments

This regulation mirrors the terms of current regulation 7CA of the Assessment Regulations, in slightly modified terms clarifying the role and definition of the Governor of a prison.

Governor means the person in charge of a prison, however described.

Regulation 35 – Conversion of annual rates into daily rates

This regulation mirrors the terms of current regulation 8 of the Assessment Regulations.

Regulation 36 – Limitation on powers of SSAT

This regulation mirrors the terms of current regulation 8A of the Registration and Collection Regulations.

Division 3 - Administration

This Division provides for administrative matters for the purposes of both the applied Assessment Act and the applied Regulation and Collection Act during transition.

Regulation 37 - Application of Division 3

This Regulation provides that this Division applies for the Regulations, and for the applied Assessment Act and the applied Registration and Collection Act.

Regulation 38 – Service of notices etc

This regulation mirrors regulation 14 of the Registration and Collection Regulations and regulation 11A of the Assessment Regulations which are in the same terms.

Regulation 39 – Address for service

This regulation mirrors regulation 15 of the Registration and Collection Regulations and regulation 11B of the Assessment Regulations, with the proposed minor addition of a definition of '**notice**' as including any kind of communication.

Regulation 40 – Documents taken to be duly signed

This regulation has the same effect as regulation 13 of the Registration and Collection Regulations and regulation 13 of the Assessment Regulations, in updated wording to reflect current drafting practices and improve readability.

Schedule 1 – Expenses to be allowed to person required to attend under section 4 of the Act

This Schedule sets out the expenses to be allowed to persons required to attend under section 4 of the Act. Section 4 empowers the Registrar to issue notices seeking information for the purposes of the transition to the new formula. The schedule is to the same effect, subject to minor wording refinements, as current *Child Support Registration and Collection Regulation* Schedule 4, for the purposes of *Child Support Registration and Collection Regulation* 9.

Schedule 2 – Provisions to which subsection 103T(1) of amended Registration and Collection Act does not apply

This Schedule duplicates the terms of Schedule 1 to the current Registration and Collection Regulations, for the purposes of regulation 36. Part 1 sets out provisions of the amended Assessment Act and Part 2 sets out provisions of the amended Registration and Collection Act which are not to be available to the SSAT.