

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2008 No. 97**

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

*Child Support (Assessment) Act 1989*

*Child Support (Assessment) Amendment Regulations 2008 (No. 1)*

The *Child Support (Assessment) Act 1989* (the Act) will be amended by the *Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006* (the Amending Act) to provide, from 1 July 2008, a new formula for assessing the level of parent's 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 *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, principally to reflect the new formula for calculating administrative assessments of child support that will commence on 1 July 2008.

The Regulations also omit various redundant provisions from the Principal Regulations.

Details of the Regulations are set out in the Attachment.

The Regulations commence on 1 July 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 beyond the extent of the changes made in substantive legislation. These changes include the making and amending of child support assessments mandating the level of transfer of support for children between parents. Furthermore, the amendments are of a minor or machinery nature, not substantially altering existing arrangements.

### **Regulatory Impact Analysis**

The amendments to the Principal Regulations are of a minor or machinery nature and do not substantially alter the existing arrangements.

**Details of the Child Support (Assessment) Amendment Regulations 2008 (No. 1)**

**Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is the *Child Support (Assessment) Amendment Regulations 2008 (No. 1)*.

**Regulation 2 – Commencement**

This regulation provides for the Regulations to commence on 1 July 2008, to coincide with the start of the new child support formula effected by the *Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006* (the Amending Act) from 1 July 2008.

**Regulation 3 – Amendment of the 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] provides that the defined term ‘Tax Act’ is substituted for the term ‘Assessment Act’, to avoid confusion with existing terms used in the Principal Regulations.

Item [2] omits regulation 3A. That provision prescribes factors for section 8A of the Act, which is to be repealed from 1 July 2008, and the regulation will therefore be redundant.

Item [3] omits the subparagraph prescribing children from the State of Queensland under the guardianship, care and control or supervision of, a person under a child welfare law. Such children are currently not ‘eligible children’ for the purposes of the Act, and their carers cannot apply for child support under the Act. Queensland has recently referred to the Commonwealth its powers regarding the maintenance of children in the care of a person under child welfare law. Omitting this subparagraph would allow carers of children under a child welfare law in Queensland to apply for child support under the Act.

Item [4] omits regulation 4A, which is replaced with new regulation 4C by item [5]. The location of the substituted regulation after regulation 4B reflects the order of the enabling provisions for the two regulations in the Act, as amended by the Amending Act from 1 July 2008.

Item [5] inserts new regulation 4C into the Principal Regulations. New regulation 4C prescribes, for the purposes of new subsections 29B(2) and (3) of the Act, the actions that may be taken by an overseas authority of a reciprocating jurisdiction for a person who is a resident of that jurisdiction.

Under subsection 29B(2), these actions may be taken by the authority for a person on whose behalf the authority makes an application for administrative assessment of child support for a child. In that situation, the authority has the right to initiate a child support assessment and receive payments on behalf of the person. Under subsection 29B(3), the actions may be taken for a person who applies to the Child Support Registrar in his or her own right but who asks the authority to give the application to the Registrar. In the latter case, the person must consent to the authority taking the actions.

In either of these cases, the actions that could, under new regulation 7C as inserted by item [7], be taken by the authority are those that would enable the authority to manage the person's child support case in the same way that the person could do himself or herself.

Specifically, the authority could make an election of any kind, apply for a departure determination, file an application for leave to appeal and appeal against a decision, apply for a departure order, lodge an objection to a decision, apply to the Social Security Appeals Tribunal for review of a decision, or apply to the Social Security Appeals Tribunal on an error of law.

Item [6] substitutes regulation 7 of the Principal Regulations, which closely mirrors the terms of current regulation 7 with some minor alterations. The minor alterations reflect the changed structure of section 56 under the Act, as amended by the Amending Act from 1 July 2008, and the fact that section 31C and subsection 36A(8) of the *Income Tax Assessment Act 1936* have been repealed.

Item [7] substitutes new regulations 7A, 7B, 7C and 7D for current regulations 7A, 7AA, 7B, 7C, 7CA and 7D of the Principal Regulations.

Current regulation 7A is redundant because it relates to child support years ending before 1 July 1999.

Regulation 7AA is replaced by new regulation 7C.

Current regulation 7B is redundant because it relates to subsection 66(3) of the Act which will be repealed from 1 July 2008.

Current regulation 7C is redundant because applications to reduce to nil an assessment for the minimum annual rate of child support are no longer to be restricted to being made within the relevant child support period, to allow greater flexibility for parents. Regulation 7C currently provides for the Registrar to specify the manner in which such an application may be made. However, section 150A of the Act already provides for the Registrar to specify the manner in which the application is made, so regulation 7C is redundant.

Current regulation 7CA is substituted by new regulation 7D.

Current regulation 7D is redundant because it relates to child support years before 1999.

New regulation 7A prescribes the factor for making a determination for the purposes of subsection 58(3A) of the Act by reference to the change in the all employees average weekly total earnings amount for persons in Australia (trend estimate) for the relevant September quarter of the previous year, as published by the Australian Statistician before the calendar year in which the child support period started.

New regulation 7B prescribes circumstances for the purposes of new section 58A of the Act. The Act will limit the circumstances in which the Registrar may replace an income that he or she 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 Act provides, from 1 July 2008, 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 where the parent was unaware that the assessment was being made because the assessment is the first child support assessment 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.

Additionally, subregulation 7B(2) prescribes a solution to overcome an unintended consequence of the Act for persons who reside overseas for tax purposes, and are not required to lodge an Australian tax return. For such persons, it is inappropriate for the timeframe based upon the Australian taxation system to apply. Provided the person provides information to the Registrar within a reasonable time, this subregulation permits the Registrar to replace an income determined at a previous time with a more accurate income.

New regulation 7C mirrors the terms of current regulation 7AA of the Principal Regulations, although for the purposes of Subdivision BA of Division 7 of Part 5 of the Act from 1 July 2008, which is the equivalent of Subdivision AA of Division 3 of current Part 5 of the Act.

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

Item [8] omits redundant regulation 9 which prescribes matters for the purposes of section 118 of the Act, because section 118 of the Act will from 1 July 2008 no longer provide for prescription of orders a court may make.