



# **Child Support (Assessment) Amendment Regulations 2008 (No. 1)<sup>1</sup>**

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

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I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Child Support (Assessment) Act 1989*.

Dated 30 May 2008

P. M. JEFFERY  
Governor-General

By His Excellency's Command

JENNY MACKLIN  
Minister for Families, Housing, Community Services and  
Indigenous Affairs

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**1 Name of Regulations**

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

**2 Commencement**

These Regulations commence on 1 July 2008.

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

Schedule 1 amends the *Child Support (Assessment) Regulations 1989*.

**Schedule 1 Amendments**

(regulation 3)

**[1] Regulation 3, definition of *Assessment Act***

*substitute*

*Tax Act* means the *Income Tax Assessment Act 1936*.

**[2] Regulation 3A**

*omit*

**[3] Subparagraph 4 (a) (iii)**

*omit*

**[4] Regulation 4A**

*omit*

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**[5] After regulation 4B**

*insert*

**4C Actions that may be taken by an overseas authority of a reciprocating jurisdiction**

For subsections 29B (2) and (3) of the Act, the following actions are prescribed:

- (a) making an election of any kind under a provision of the Act;
- (b) under Part 6A of the Act, applying for a departure determination;
- (c) under Part 7 of the Act, filing an application for leave to appeal and appealing against a decision;
- (d) under Part 7 of the Act, applying for a departure order;
- (e) subject to Part VII of the Registration and Collection Act, lodging an objection to a decision;
- (f) subject to Part VIIA of the Registration and Collection Act, applying to the SSAT for review of a decision;
- (g) subject to Part VIII of the Registration and Collection Act, appealing a decision of the SSAT on an error of law.

**[6] Regulation 7**

*substitute*

**7 Taxable income — prescribed provisions and circumstances**

- (1) For paragraphs 56 (2) (b) and (c) of the Act, the following provisions and circumstances are prescribed:
  - (a) sections 78A, 82KJ, 82KK, 82KL, 136AF and 177F of the Tax Act;
  - (b) a provision that is a prescribed provision within the meaning of subsection 170 (14) of the Tax Act;
  - (c) the circumstances in which subsection 170 (9B) of the Tax Act applies.

- (2) The following circumstance is also prescribed for paragraph 56 (2) (c) of the Act:
- (a) the Commissioner has written to a person (the *taxpayer*):
    - (i) about an announcement by the Commissioner, on 14 February 2002, allowing taxpayers who were investors in schemes identified by the Commissioner as mass marketed tax effective schemes a deduction for certain actual cash outlays; and
    - (ii) proposing to amend the tax assessment of the taxpayer to the effect that the taxable income of the taxpayer for a particular year of income is reduced, taking into account that kind of cash outlay; and
  - (b) the taxpayer has responded, accepting the Commissioner's proposal; and
  - (c) the Commissioner has later amended the tax assessment of the taxpayer, making a reduction in the taxable income of the taxpayer for the year of income in accordance with the Commissioner's proposal.
- (3) For paragraph 57 (7) (a) of the Act, the following circumstances are prescribed:
- (a) the circumstance in which a tax assessment under the Tax Act could be amended to give effect to the provisions of the Tax Act; or
  - (b) the circumstances mentioned in paragraph (1) (c) or subregulation (2).

**[7] Regulations 7A, 7AA, 7B, 7C, 7CA and 7D**

*substitute*

**7A Factor for making a determination**

For subsection 58 (3A) of the Act, the factor for determining a parent's adjusted taxable income for a year of income in relation to a child support period 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

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published by the Australian Statistician before the calendar year in which the child support period started.

**7B Adjusted taxable income — prescribed circumstances**

- (1) For paragraph 58A (2) (c) of the Act, the following circumstances are prescribed:
  - (a) the parent was unable to provide information about adjusted taxable income to the Registrar at the time the administrative assessment was made because at that time:
    - (i) the parent did not know that an application for the assessment had been made and accepted; or
    - (ii) the parent had a serious illness or injury; or
    - (iii) the parent was under detention or imprisonment; or
    - (iv) the parent resided in a remote location which made it difficult to contact the Registrar; or
    - (v) a natural disaster prevented the parent from being able to contact the Registrar; or
    - (vi) there was some other exceptional circumstance that prevented the parent from providing the information;
  - (b) the Registrar confirms that the parent was unable to provide the information because of a circumstance mentioned in paragraph (a);
  - (c) the parent later provides the information to the Registrar as soon as is practicable in the circumstances.
- (2) For paragraph 58A (2) (c) of the Act, the following circumstance is also prescribed:
  - (a) during the last relevant year of income for the child support period for which the Registrar made the administrative assessment, the parent resided overseas and was not, under the Tax Act, required to lodge a tax return;
  - (b) the parent provides the information about adjusted taxable income to the Registrar within a reasonable time in the circumstances.

**7C Overseas income — conversion of currency**

- (1) For the purpose of determining, under Subdivision BA of Division 7 of Part 5 of the Act, an amount of income expressed in foreign currency to be a person's overseas income, the Registrar must convert the amount into an equivalent amount in Australian currency.
- (2) The amount must be worked out in accordance with:
  - (a) the average exchange rate for the foreign currency for the financial year in which the income was derived, being the average of the telegraphic transfer rates published by the Commonwealth Bank of Australia for that currency for that financial year; or
  - (b) if no such rate is available for the foreign currency for that financial year — an exchange rate for the foreign currency that the Registrar considers appropriate.

**7D Prescribed payments**

- (1) For paragraph (b) of the definition of *income* in subsection 66A (4) of the Act, the following payments are prescribed:
  - (a) payments, in the nature of an amenity allowance or gratuity, authorised by the Governor of a prison, to a person serving a term of imprisonment in the prison, to the extent that the payment is not for:
    - (i) work done by the person inside or outside the prison; or
    - (ii) approved study undertaken by the person inside or outside the prison; or
    - (iii) participation by the person in any other program approved by the Governor;
  - (b) support pension payments of the following kinds:
    - (i) disability support pension paid to a person under the social security law;
    - (ii) pension paid to a veteran who is totally and permanently incapacitated as mentioned in paragraph 24 (1) (b) of the *Veterans' Entitlements Act 1986*;

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- (iii) Special Rate Disability Pension paid to a person under Part 6 of Chapter 4 of the *Military Rehabilitation and Compensation Act 2004*.
  - (2) For paragraph (1) (b), a pension is a support pension only if the Registrar is satisfied that:
    - (a) at least 85% of the pension is paid by, or on behalf of, the pension recipient to another person; and
    - (b) the other person provides ongoing care to the pension recipient in return for the payment.
  - (3) In this regulation:
    - amenity allowance or gratuity*** means periodical payments of an incidental nature to a person for any of the following:
      - (a) the purchase of personal items such as toiletries;
      - (b) other minor expenses.
    - Governor*** means the person in charge of a prison, however described.
    - social security law*** has the same meaning as in subsection 3 (3) of the *Social Security (Administration) Act 1999*.

## [8] Regulation 9

*omit*

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### Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.