

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 130

Issued by the Authority of the Minister for Families, Housing, Community Services and Indigenous Affairs for and on behalf of the Attorney-General

Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Act 2008

Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) (Child Support) Regulations 2009

The *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Act 2008* (the Act) amends the *Child Support (Assessment) Act 1989* (the Assessment Act) to provide, from 1 July 2009, for recognition of same-sex relationships and the parentage of children arising out of those relationships.

Item 86 of Schedule 2 to 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 amendments and repeals made by Schedule 2 or any other Schedule to the Act.

While Schedule 2 to the Act is the responsibility of the Attorney-General, the Minister for Families, Housing, Community Services and Indigenous Affairs has been authorised under subsection 18C(1) of the *Acts Interpretation Act 1901* to act for and on behalf of the Attorney-General in proposing these regulations.

The Regulations clarify the actions the Registrar may take to implement the amendments made by the Act after 1 July 2009, and implement transitional arrangements to apply to Court declarations regarding child support consequences of change to parentage resulting from the amendments made by the Act.

Details of the Regulations are set out in the [Attachment](#).

The Regulations commence on 1 July 2009.

Consultation

No consultation in relation to the 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 amendment of child support assessments mandating the level of transfer of support for children between parents.

Regulatory Impact Analysis

The Principal Regulations are of a minor or machinery nature.

ATTACHMENT

Details of the Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) (Child Support) Regulations 2009

Regulation 1 – Name of Regulations

This regulation provides that the name of the Regulations is the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) (Child Support) Regulations 2009*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on 1 July 2009, to coincide with the commencement of the amendments of the Assessment Act made by the Act.

Regulation 3 – Definition

This regulation provides definitions of the terms ‘Act’ and ‘Assessment Act’ for the purposes of the Regulations.

Regulation 4 – Application

This regulation provides for the application of the amendments to the Assessment Act made by the Act regarding the administrative actions which may be taken by the Child Support Registrar, and the approach to be taken by a court when considering a declaration under the Assessment Act.

The Registrar may amend an administrative assessment of child support to reflect changes in circumstances of the parties at particular times, and with effect from particular dates set out in the Assessment Act. Subregulation 4(1) confirms that the Registrar may make amendments to existing assessments from 1 July 2009 to reflect the changed recognition of circumstances for child support purposes resulting from the amendments to the Assessment Act by the Act. In general, these amendments will take effect from the date of the change (although not earlier than 1 July 2009), with the exception of a change resulting in a non-parent carer becoming a parent of the child the subject of administrative assessment.

Paragraph 4(2)(a) enables the Registrar to amend an administrative assessment in force after 30 June 2009 to give effect to the amendments of the Assessment Act made by the Act. Such amendments would be made with effect from the day set out in the Assessment Act.

Paragraph 4(2)(b) requires the Registrar to amend an administrative assessment with effect from the day the Registrar was notified of a non-parent carer of a child for whom an administrative assessment is in force becoming a parent of the child because of an amendment of the Assessment Act made by the Act.

Subregulation 4(3) provides for the application of the amendments to the Assessment Act made by the Act after 30 June 2009 in relation to court declarations as to whether or not a child support assessment should be made, flowing from findings of parentage.

Paragraph 4(3)(a) provides that the definition of parent as amended by the Act applies to applications for declarations and determinations for the purpose of a declaration whether a person is a parent.

Paragraph 4(3)(b) provides for parentage for the purposes of the court determining whether to make a declaration to be determined at the time the determination is made.

Paragraph 4(3)(c) provides scope for a court, while considering making a determination under regulations 5, 6 and 7, to grant a declaration that recognises a change in parentage at an earlier date.

Regulation 5 – Transitional provision (Assessment Act, s 106A)

Where a person is aggrieved by the Registrar's refusal to accept an application for administrative assessment of child support, and the Registrar's refusal was either wholly or in part because the Registrar was not satisfied that a person was a parent of the child, the aggrieved person may apply to a court under section 106A of the Assessment Act for a declaration. The court may declare that a person who was to be assessed in respect of the costs of a child is a parent of the child. If parentage was the only reason the Registrar refused to accept the application, then the court will declare that the application is taken to have been accepted. If parentage was not the only reason, then the court will declare that the Registrar should reconsider the application on the basis of the court's finding of parentage. This provision does not include capacity to reflect a change in parentage at a particular date.

This regulation enables a court to declare that where a person has become a parent of a child as a result of the amendments to the Assessment Act made by the Act, an assessment of child support may be made in respect of that person on the basis of an application previously made, with effect from the date the person became a parent of the child.

Subregulation 5(1) provides that the regulation applies where a person applied for an assessment of child support to the Child Support Registrar prior to 1 July 2009, and the Registrar refused to accept the application, either wholly or in part because the Registrar was not satisfied that the person named in the application was a parent of the child such that they should be assessed in respect of the costs of the child. The aggrieved applicant could then apply to a court under section 106A of the Assessment Act for a declaration, and after 30 June 2009 the court would be required to grant the declaration because the person is a parent of the child because of an amendment of the Assessment Act made by the Act.

The remaining subregulations of regulation 5 set out the changes for transitional purposes to the time at which the child support period starts as the result of the court making the declaration under section 106A of the Assessment Act.

Subregulation 5(2) applies where the parent responsible to pay child support is resident in a reciprocating jurisdiction, and provides for the child support period to start on the later of the day the person became a parent of the child, and the day when all prior requirements (if any) under the applicable international maintenance arrangement and under the laws of the reciprocating jurisdiction have been complied with.

Subregulation 5(3) applies where the parent responsible to pay child support is not resident in a reciprocating jurisdiction, providing for the child support period to start on the day when the person became a parent of the child because of an amendment of the Assessment Act made by the Act. This date would be 1 July 2009 in most instances, but may be a later date when a court in a jurisdiction prescribed for the purposes of section 60HB of the *Family Law Act 1975* makes a declaration formalising a surrogacy arrangement.

Subregulation 5(4) applies where the Registrar's only reason for refusing the application was that the Registrar was not satisfied that a person who was to be assessed in respect of the costs of the child was a parent of the child, and provides that the declaration results in the Registrar being taken to accept the application on the day worked out under subregulations 5(2) or (3).

Subregulation 5(5) applies where one of the Registrar's reasons for refusing the application was that the Registrar was not satisfied that a person who was to be assessed in respect of the costs of the child was a parent of the child, and provides that the declaration results in the Registrar being required to reconsider the application for days in the child support period that are on or after the day worked out under subregulations 5(2) or (3).

Regulation 6 – Transitional provision (Assessment Act, ss 106A and 107)

Where a person is aggrieved by the Registrar's acceptance of an application for administrative assessment of child support, upon the basis the person is not a parent of the child, the aggrieved person may apply to a court under section 107 of the Assessment Act for a declaration. The court may declare that a person should not be assessed in respect of the costs of a child because the person is not a parent of the child. If the declaration is made, the application for administrative assessment of child support is taken never to have been accepted by the Registrar. This provision does not include capacity to reflect a change in parentage at a particular date.

This regulation enables a court to declare that where a person has ceased to be a parent of a child as a result of the amendments to the Act made by the amending Act, an assessment of child support may be made in respect of that person on the basis of an application previously made, with effect up to the date the person ceased to be a parent of the child.

Subregulation 6(1) provides that the regulation applies where a person applied for an assessment of child support to the Child Support Registrar prior to 1 July 2009, and the Registrar refused to accept the application, either wholly or in part because the Registrar was not satisfied that the person named in the application was a parent of the child such that they should be assessed in respect of the costs of the child. The aggrieved applicant must then apply to a court under section 106A of the Assessment Act for a declaration, and after 30 June 2009 the court finds that the person is not a parent of the child because of an amendment of the Assessment Act made by the Act.

Subregulation 6(2) empowers a court to make a declaration under section 106A of the Assessment Act for the period in which the person was a parent of the child, and at the same time, a declaration under section 107 of the Assessment Act to take effect when the person ceased being a parent of the child because of an amendment of the Assessment Act made by the Act. This would, if the court made both declarations, result in an administrative assessment of child support for the period when the person was a parent of the child, which would end when the person ceases to be a parent of the child.

Regulation 7 – Transitional provision (Assessment Act, s 107)

This regulation provides for a court to make appropriate declarations such that an administrative assessment of child support made by the Registrar would cease to be in force for any period when the person is not a parent of the child because of an amendment of the Assessment Act made by the Act.

Subregulation 7(1) provides that the regulation applies where a person applied for an assessment of child support to the Child Support Registrar prior to 1 July 2009, and the Registrar accepted the application. The aggrieved applicant must then apply to a court under section 107 of the Assessment Act for a declaration, and after 30 June 2009 the court finds that the person's parentage of the child has changed because of an amendment of the Assessment Act made by the Act. The change could be either that the person ceased to be a parent of the child, (in which case the court will have granted the declaration), or has become a parent of the child.

Subregulation 7(2) applies where the person is no longer the parent of the child, and empowers the court to make declarations that an administrative assessment of child support should be in force for the period when the person liable under the administrative assessment is a parent of the child, but should end when the person ceased to be a parent of the child. The court would be empowered to make a simultaneous section 107 declaration that the person should not be assessed in respect of the costs of the child with effect only from the day the person ceased to be a parent of the child.

Subregulation 7(3) applies where the person has become a parent of the child, providing for the application for child support to be accepted only for the days in the child support period when the person was a parent. The court would be empowered to grant a declaration under section 107 for the period when the person was not a parent, and, at the same time, a declaration under section 106A to take effect when the person became a parent as a result of an amendment of the Assessment Act by the Act.