



Same-Sex Relationships (Equal Treatment in Commonwealth Laws — General Law Reform) (Child Support) Regulations 2009¹

Select Legislative Instrument 2009 No. 130

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws — General Law Reform) Act 2008*.

Dated 24 June 2009

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

JENNY MACKLIN
Minister for Families, Housing, Community Services and
Indigenous Affairs for the Attorney-General

1 Name of Regulations

These Regulations are the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws — General Law Reform) (Child Support) Regulations 2009*.

2 Commencement

These Regulations commence on 1 July 2009.

3 Definitions

In these Regulations:

Act means the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws — General Law Reform) Act 2008*.

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

4 Application

- (1) For item 86 of Schedule 2 to the Act, the amendments to the Assessment Act made by the Act apply to each day in a child support period after 30 June 2009.
- (2) The Registrar, under section 75 of the Assessment Act:
 - (a) may amend an administrative assessment in force after 30 June 2009 to give effect to amendments of the Assessment Act made under the Act; and
 - (b) must amend an administrative assessment with effect on and from the notification day if:
 - (i) before and on 1 July 2009, the administrative assessment is in force for a non-parent carer of a child; and
 - (ii) on a day (the *notification day*) after 30 June 2009, the Registrar is notified, or becomes aware, that the non-parent carer is a parent of the child; and

- (iii) the person became a parent of the child because of an amendment of the Assessment Act made by the Act.
- (3) After 30 June 2009:
 - (a) the definition of **parent** as amended by the Act applies to:
 - (i) an application for a declaration under section 106A or 107 of the Assessment Act; and
 - (ii) a determination whether a person is a parent for the purpose of a declaration under subsection 106A (5) or 107 (4) of the Assessment Act; and
 - (b) the parentage of a person is to be determined at the time the determination is made; and
 - (c) for regulations 5, 6 and 7, the court may grant a declaration that recognises a change in parentage at an earlier date.

5 Transitional provision (Assessment Act, s 106A)

- (1) This regulation applies if:
 - (a) before 1 July 2009, an application is made to the Registrar for administrative assessment of child support for a child under the Assessment Act; and
 - (b) the Registrar refuses to accept the application under subsection 30 (2) of the Assessment Act; and
 - (c) an application is made to a court under section 106A of the Assessment Act for a declaration in accordance with:
 - (i) paragraph 106A (2) (a) of the Assessment Act that a person should be assessed in relation to the costs of the child because the person is a parent of the child; or
 - (ii) paragraph 106A (2) (b) of the Assessment Act that the Registrar should reconsider the application under Division 2 of Part 4 of the Assessment Act because a person who was to be assessed in relation to the costs of the child is a parent of the child; and

- (d) after 30 June 2009, the court grants the declaration because the person is a parent of the child because of an amendment of the Assessment Act made by the Act.
- (2) For subparagraph 31 (1) (b) (i) of the Assessment Act, the child support period is taken to have started on the later of the following days:
 - (a) the day when the person became a parent of the child because of an amendment of the Assessment Act made by the Act;
 - (b) the first 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.
- (3) For subparagraph 31 (1) (b) (ii) of the Assessment Act, the child support period is taken to have started on the day when the person became a parent of the child because of an amendment of the Assessment Act made by the Act.
- (4) If paragraph 106A (2) (a) of the Assessment Act applies, then for paragraph 106A (6) (a) of the Assessment Act, the Registrar is taken to have accepted the application for administrative assessment on the day worked out under subregulation (2) or mentioned in subregulation (3).
- (5) If paragraph 106A (2) (b) of the Assessment Act applies, then for paragraph 106A (6) (b) of the Assessment Act, the Registrar must reconsider the application for administrative assessment under Division 2 of Part 4 of the Assessment Act only for the days in the child support period that are on or after the day worked out under subregulation (2) or mentioned in subregulation (3).

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

- (1) This regulation applies if:
 - (a) before 1 July 2009, an application is made to the Registrar for administrative assessment of child support for a child under the Assessment Act; and

- (b) the Registrar refuses to accept the application under subsection 30 (2) of the Assessment Act; and
 - (c) an application is made to a court under section 106A of the Assessment Act for a declaration in accordance with:
 - (i) paragraph 106A (2) (a) of the Assessment Act that a person should be assessed in relation to the costs of the child because the person is a parent of the child; or
 - (ii) paragraph 106A (2) (b) of the Assessment Act that the Registrar should reconsider the application under Division 2 of Part 4 of the Assessment Act because a person who was to be assessed in relation to the costs of the child is a parent of the child; and
 - (d) after 30 June 2009, the person is not a parent of the child because of an amendment of the Assessment Act made by the Act.
- (2) The court may, at the same time:
- (a) grant a declaration under section 106A of the Assessment Act for the period in which the person was a parent of the child; and
 - (b) grant 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.

7 Transitional provision (Assessment Act, s 107)

- (1) This regulation applies if:
- (a) before 1 July 2009, an application is made to the Registrar for administrative assessment of child support for a child under the Assessment Act; and
 - (b) the Registrar accepts the application; and
 - (c) an application under section 107 of the Assessment Act is made to a court for a declaration that a person should not be assessed for the costs of the child because the person is not a parent of the child; and

- (d) after 30 June 2009, the court:
 - (i) grants the declaration because the person is not a parent of the child because of an amendment of the Assessment Act made by the Act; or
 - (ii) finds that a person is a parent of the child because of an amendment of the Assessment Act made by the Act.
- (2) For subparagraph (1) (d) (i), the court may, at the same time:
 - (a) grant a declaration under section 106A of the Assessment Act to have effect for the period ending when the person ceased to be a parent of the child because of an amendment of the Assessment Act made by the Act; and
 - (b) grant a declaration under section 107 of the Assessment Act, to take effect when the person ceased to be a parent of the child because of an amendment of the Assessment Act made by the Act.
- (3) For subparagraph (1) (d) (ii):
 - (a) the application for administrative assessment is taken to have been accepted by the Registrar only for the days in the child support period concerned when the person was a parent of the child because of an amendment to the Assessment Act made by the Act; and
 - (b) the court may, at the same time:
 - (i) grant a declaration under section 107 of the Assessment Act to have effect for the period in which the person was not a parent of the child; and
 - (ii) grant a declaration under section 106A of the Assessment Act to take effect when the person became a parent of the child because of an amendment of the Assessment Act made by the Act.

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>.