



Child Support (Assessment) Regulations 1989

Statutory Rules No. 259, 1989

made under the

Child Support (Assessment) Act 1989

Compilation No. 18

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About this compilation

This compilation

This is a compilation of the *Child Support (Assessment) Regulations 1989* that shows the text of the law as amended and in force on 1 July 2015 (the *compilation date*).

This compilation was prepared on 20 July 2015.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on ComLaw (www.comlaw.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on ComLaw for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on ComLaw for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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1 Commencement

These Regulations commence on 1 October 1989.

2 Name of regulations

These Regulations are the *Child Support (Assessment) Regulations 1989*.

3 Interpretation

In these Regulations, unless the contrary intention appears:

Human Services Department means the Department administered by the Minister administering the *Human Services (Centrelink) Act 1997*.

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

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

Note: Several other terms used in these Regulations have the meanings given by subsection 4(1) of the *Child Support (Registration and Collection) Act 1988*. For example:

- international maintenance arrangement
- overseas authority
- reciprocating jurisdiction.

4 Exclusion of certain children—section 22 of the Act

A child is not an eligible child if he or she is in the custody of, or under the guardianship, care and control or supervision of, a person under a child welfare law:

- (a) of the State of:
 - (iv) South Australia; or
 - (v) Western Australia; or
- (b) in force in:
 - (i) Norfolk Island; or
 - (ii) Christmas Island; or

- (iii) Cocos (Keeling) Islands.

4B Prescribed overseas jurisdictions (Act s 29)

For subsection 29(2) of the Act, each reciprocating jurisdiction is a prescribed overseas jurisdiction.

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 AAT for review of a decision;
- (g) subject to Part IVA of the *Administrative Appeals Tribunal Act 1975*, appealing on a question of law from a decision of the AAT.

5 Excluded reciprocating jurisdictions (Act s 30A)

For section 30A of the Act, the following reciprocating jurisdictions are specified:

- (a) Brunei Darussalam;
- (b) Cook Islands;
- (c) Israel;
- (d) Niue;
- (e) Papua New Guinea;
- (f) Samoa;

(g) the Yukon Territory of Canada.

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).

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 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

- (1A) For paragraphs (a) and (b) of the definition of *income* in subsection 66A(4) of the Act, an NDIS amount (within the meaning of the *National Disability Insurance Scheme Act 2013*) is prescribed.
- (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*;
 - (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 Conversion of annual rates into daily rates of payment—child support period starting on or after 1 July 1999

- (1) For section 69 of the Act, an annual rate of child support is to be converted into a daily rate by using the formula:

$$DR = \frac{AR}{365.25};$$

where:

DR is the daily rate of payment; and

AR is the annual rate of payment.

- (2) In calculating a conversion, the calculation must be made to 6 decimal places and:
- if the final figure is greater than 4—the second-last figure must be increased by 1 and the final figure then disregarded; and
 - if the final figure is 4 or less, it must be disregarded.

8A Conversion of periodic amounts into annual rates

If a child support agreement refers to a periodic amount of payment (in this regulation referred to as *the periodic amount*) the annual rate of payment (in this regulation referred to as *the annual rate*) in respect of the periodic amount is to be assessed as follows:

- in the case of a daily amount—in accordance with the following formula: $PA \times 365.25 = AR$; and
- in the case of a weekly amount—in accordance with the following formula: $\frac{PA}{7} \times 365.25 = AR$; and
- in the case of a periodic amount that is in respect of a period that is a multiple of one week—in accordance with the following formula: $\frac{PA \times 365.25}{7 \times NW} = AR$; and

- (d) in the case of a monthly amount—in accordance with the following formula: $\frac{PA \times 365.25}{30.4375} = AR$; and
- (e) in the case of a periodic amount that is in respect of a period that is a multiple of one month—in accordance with the following formula: $\frac{PA \times 365.25}{30.4375 \times NM} = AR$; and
- (f) in the case of a yearly amount—in accordance with the following formula: $PA = AR$;

where:

AR is the annual rate; and

NM is the number of months in respect of which the periodic amount is specified; and

NW is the number of weeks in respect of which the periodic amount is specified; and

PA is the periodic amount.

9A Circumstances in which Registrar’s jurisdiction ceases (Act s 150DA)

- (1) For section 150DA of the Act, Article 5.2 of the Australia-New Zealand Agreement is prescribed.
- (2) In this regulation:

Australia-New Zealand Agreement means the Agreement between the Government of Australia and the Government of New Zealand on Child and Spousal Maintenance done at Canberra on 12 April 2000, a copy of the text of which is set out in Schedule 1 to the *Child Support (Registration and Collection) Regulations 1988*.

10 Scale of expenses under subsection 161(2) of the Act

- (1) For the purposes of subsection 161(2) of the Act, the scale of expenses set out in the Schedule is prescribed.
- (2) A reference in the Schedule to the High Court Rules is a reference to the High Court Rules as in force from time to time.

11 Service of orders

A copy of an order under subsection 162(1) of the Act must be served on the person to whom the order is addressed:

- (a) where the person is a natural person:
 - (i) by delivering the copy to the person personally; or
 - (ii) by leaving the copy at, or sending the copy by pre-paid post to, the address of the person last known to the proper officer of the court; or
- (b) where the person is a body corporate—by leaving the copy at, or sending the copy by pre-paid post to, the head office, a registered office or a principal office of the body corporate.

11A Service of notices etc

- (1) Any notice or other communication by or on behalf of the Registrar may be served on a person:
 - (a) if the person is a natural person:
 - (i) by causing it to be personally served on the person; or
 - (ii) by leaving it at the person's address for service; or
 - (iii) by sending it by pre-paid post to the person's address for service; or
 - (b) if the person is a body corporate:
 - (i) by leaving it at the person's address for service; or
 - (ii) by leaving it at, or sending it by pre-paid post to, the head office, a registered office or a principal office of the body corporate;
- and in any case in which service has been attempted by use of the pre-paid post, unless the contrary is proved, service will be taken to

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have been effected at the time when the notice or other communication would, in the ordinary course of the post, have arrived at the place to which it was addressed.

- (2) For subregulation (1), if the person has consented to receiving the notice or other communication, or notices or communications of that kind, by way of electronic communication:

leaving it at the person's address for service includes delivering the notice or other communication by means of electronic communication.

- (3) In this regulation:

consent has the meaning given by section 5 of the *Electronic Transactions Act 1999*.

electronic communication has the meaning given by section 5 of the *Electronic Transactions Act 1999*.

11AA Service of documents in Australia for overseas authority

If a document is required to be served by an overseas authority of a reciprocating jurisdiction on a person who is in Australia, the Registrar (or a person authorised to do so on the Registrar's behalf) may serve the document on behalf of the overseas authority if it is necessary or convenient to do so for the purposes of an international maintenance arrangement with the reciprocating jurisdiction.

11B Address for service

- (1) The address last notified by a person to the Registrar as the address for service of the person is, for all purposes under the Act and Regulations, that person's address for service.
- (2) If no address for service has been notified to the Registrar but the Registrar's records nevertheless contain an address attributed to the person, the last such address in any record held by the Registrar is the person's address for service under the Act and Regulations.

- (3) For this regulation:

address for service includes both:

- (a) the person's address for the physical delivery of notices; and
- (b) the person's address for the electronic delivery of notices.

11C Giving notices or other communications in reciprocating jurisdictions (Act s162B)

For section 162B of the Act, a notice or other communication that is required to be given to a person who is a resident of a reciprocating jurisdiction may be given to an overseas authority of the reciprocating jurisdiction, if the Registrar considers that it is desirable or appropriate to do so.

12 Date of making of application etc

- (1) An application for administrative assessment or for the acceptance of a child support agreement is to be taken to have been made on the day on which the application is received in an office of:
 - (a) the Human Services Department; or
 - (c) the Australian Taxation Office.
- (2) An election under section 60 of the Act, or a revocation under section 62, is to be taken to have been made on the day on which the form of election or revocation is received in any of the offices referred to in subregulation (1).
- (3) Where any other matter is required by the Act to be done in an approved form, the form is to be taken to have been received on the day on which the form is received in any of the offices referred to in subregulation (1).

13 Documents taken to be duly signed

- (1) A certificate, notice or other document bearing the written, printed or stamped name (including a facsimile of the signature) of a person who is, or was at any time, the Registrar or a delegate of the

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Registrar in place of that person's signature must, unless it is proved that the document was issued without authority, be taken to have been duly signed by that person.

- (2) Judicial notice must be taken of the names and signatures of the persons who are, or were at any time, the Registrar or a delegate of the Registrar.

Schedule—Expenses to be allowed to person required to attend under section 161 of the Act

(regulation 10)

1. Any person required to attend:
 - (a) in the case of a person remunerated by wages, salary or fees—such amount as is provided for in the High Court Rules in relation to expenses of witnesses so remunerated; or
 - (b) in any other case—such amount as is provided for in the High Court Rules in relation to expenses of witnesses generally.
2. Any person required to attend—such amount as is reasonable:
 - (a) in respect of that person's conveyance to and from the place at which that person so attends; and
 - (b) if that person is required to be absent overnight from his or her usual place of residence—in respect of meals and accommodation.
- (3) Any person required to attend who is a payer, payee or a personal representative of either—nil.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Endnotes about misdescribed amendments and other matters are included in a compilation only as necessary.

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

A = Act	o = order(s)
ad = added or inserted	Ord = Ordinance
am = amended	orig = original
amdt = amendment	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
c = clause(s)	pres = present
C[x] = Compilation No. x	prev = previous
Ch = Chapter(s)	(prev...) = previously
def = definition(s)	Pt = Part(s)
Dict = Dictionary	r = regulation(s)/rule(s)
disallowed = disallowed by Parliament	Reg = Regulation/Regulations
Div = Division(s)	reloc = relocated
exp = expires/expired or ceases/ceased to have effect	renum = renumbered
F = Federal Register of Legislative Instruments	rep = repealed
gaz = gazette	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)/subsection(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
(md) = misdescribed amendment can be given effect	Sdiv = Subdivision(s)
(md not incorp) = misdescribed amendment cannot be given effect	SLI = Select Legislative Instrument
mod = modified/modification	SR = Statutory Rules
No. = Number(s)	Sub-Ch = Sub-Chapter(s)
	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Number and year	FRLI registration or gazettal	Commencement	Application, saving and transitional provisions
1989 No 259	29 Sept 1989	1 Oct 1989	
1991 No 81	30 Apr 1991	30 Apr 1991	—
1992 No 63	5 Mar 1992	5 Mar 1992	—
1993 No 131	17 June 1993	17 June 1993	—
1994 No 129	3 May 1994	3 May 1994	—
1995 No 179	30 June 1995	30 June 1995	—
1995 No 292	10 Oct 1995	1 Nov 1995	—
1996 No 142	1 July 1996	1 July 1996	—
1996 No 273	11 Dec 1996	1 Jan 1997	—
1997 No 170	30 June 1997	1 July 1997	—
1997 No 374	23 Dec 1997	23 Dec 1997	—
1998 No 164	25 June 1998	1 July 1998	—
1999 No 5	8 Feb 1999	8 Feb 1999	—
1999 No 103	17 June 1999	1 July 1999	—
1999 No 286	2 Dec 1999	15 Dec 1998	—
1999 No 313	15 Dec 1999	15 Dec 1999	—
2001 No 204	2 Aug 2001	2 Aug 2001	—
2002 No 340	20 Dec 2002	14 Feb 2002	—
2004 No 122	18 June 2004	18 June 2004	—
2004 No 177	1 July 2004	1 July 2004	—
2006 No 146	27 June 2006 (F2006L01936)	1 July 2006 (r 2)	—
2007 No 219	19 July 2007 (F2007L02265)	19 July 2007 (r 2)	—
2008 No 97	2 June 2008 (F2008L01898)	1 July 2008	—

Endnote 3—Legislation history

Number and year	FRLI registration or gazettal	Commencement	Application, saving and transitional provisions
120, 2011	30 June 2011 (F2011L01364)	1 July 2011 (s 2)	—
126, 2014	26 Aug 2014 (F2014L01132)	27 Aug 2014 (s 2)	—
95, 2015	26 June 2015 (F2015L00953)	1 July 2015 (s 2(1) item 1)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
r 2	rs No 5, 1999
r 3	am No 219, 2007; No 97, 2008; No 120, 2011
r 3A.....	ad No 103, 1999
	am No 146, 2006
	rep No 97, 2008
r 4	rs No 131, 1993
	am No 292, 1995; No 273, 1996; No 5, 1999; No 97, 2008
r 4A.....	ad No 219, 2007
	rep No 97, 2008
r 4B.....	ad No 219, 2007
r 4C.....	ad No 97, 2008
	am No 95, 2015
r 5	rep No 131, 1993
	ad No 219, 2007
r 6	rs No 81, 1991
	am No 63, 1992; No 131, 1993; No 129, 1994; No 179, 1995; No 142, 1996; No 170, 1997; No 164, 1998
	rep No 219, 2007
r 7	am No 340, 2002
	rs No 374, 1997; No 286, 1999; No 97, 2008
r 7A.....	ad No 131, 1993
	rs No 97, 2008
r 7AA.....	ad No 219, 2007
	rep No 97, 2008
r 7B.....	ad No 131, 1993
	rep No 374, 1997
	ad No 103, 1999
	am No 146, 2006
	rs No 97, 2008

Endnote 4—Amendment history

Provision affected	How affected
r 7C.....	ad No 103, 1999 rs No 313, 1999; No 97, 2008
r 7CA.....	ad No 204, 2001 am No 177, 2004 rep No 97, 2008
r 7D.....	ad No 286, 1999 rs No 97, 2008 am No 126, 2014
r 8.....	am No 81, 1991; No 374, 1997; No 286, 1999
r 8A.....	ad No 81, 1991
r 9.....	am No 129, 1994; No 170, 1997 rep No 97, 2008
r 9A.....	ad No 219, 2007
r 11A.....	ad No 129, 1994 am No 122, 2004
r 11AA.....	ad No 219, 2007
r 11B.....	ad No 129, 1994 am No 204, 2001 rs No 122, 2004
r 11C.....	ad No 219, 2007
r 12.....	am No 103, 1999; No 120, 2011
r 13.....	ad No 81, 1991 am No 129, 1994
Schedule	
Schedule.....	am No 129, 1994