

EXPLANATORY STATEMENT

STATUTORY RULES 1988 NO.87

ISSUED BY THE AUTHORITY OF THE TREASURER

CHILD SUPPORT REGULATIONS

The purpose of these regulations is to prescribe matters that are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to the Child Support Act 1988, provided they are not inconsistent with that Act.

The Child Support Act 1988 is part of a legislative package which aims to reform child support so as to reduce the number of children in poverty and to make sure that parents with a capacity to pay do not abandon the financial responsibility of supporting their children to the social security system. The Act provides for the collection by the Child Support Registrar (the Registrar) of periodic child and/or spousal maintenance payable under court orders or court registered or approved maintenance agreements.

Notes on each of the regulations are set out below :

Citation

Regulation 1 provides for the Regulations to be cited as the Child Support Regulations.

Interpretation

Regulation 2 facilitates reference to the Child Support Act 1988 which, in the Regulations, is referred to as "the Act".

Prescribed weekly rate - protected earnings rate

Regulation 3 prescribes that the protected earnings rate is one and one half times the benefit payable under paragraph 118(1)(f) of the Social Security Act 1947 as in force on the 13 December immediately preceding the period in respect of which the protected earnings rate is to be ascertained. The rate is equivalent to 75% of the married person's rate, without dependants, for unemployment benefits. Applying this formula, the protected earnings rate currently stands at \$145.13 per week.

The protected earnings rate represents the weekly amount of salary or wages that is exempt from deduction by employers for the collection of registered maintenance liabilities under Part IV of the Act.

Exclusion of liabilities

By regulation 4 certain classes of maintenance liabilities are not registrable under the Act. Maintenance liabilities which are not registrable maintenance liabilities cannot be registered under Part III of the Act and will not be able to be collected by the Registrar.

Subregulation 4(1) provides that the following classes of liabilities in respect of maintenance orders or agreements that are not collection agency maintenance liabilities, are not registrable maintenance liabilities:

- . liabilities in respect of child maintenance:
 - .. where the parents of a child separated before the commencement of the Act and the person entitled to receive payments under the liability (by subregulation 4(3), the "payee") is not in receipt of an income-tested pension, allowance or benefit (other than the Family Allowance or Family Allowance Supplement) (paragraph (a));
 - .. where the parents of the child did not cohabit, the child was born before the commencement of the Act and the payee is not in receipt of an income-tested pension, allowance or benefit (other than Family Allowance or Family Allowance Supplement) (paragraph (b));

. liabilities in respect of maintenance of a party to a marriage:

.. where the payee is less than 45 years of age and

- the payee is not a payee in respect of separate maintenance orders or agreements payable by the same person that make provision for the payee and for a child respectively, being orders or agreements in respect of which the liability in respect of a child is registrable (sub-subparagraph (c)(ii)(A)); or

- the payee is not a payee in respect of a maintenance order or agreement that makes provision both for the payee and for a child, being an order or agreement in respect of which the liability in respect of a child is registrable (sub-subparagraph (c)(ii)(B));

.. where the payee is 45 years of age or more and is not in receipt of an income-tested pension, allowance or benefit (other than Family Allowance or Family Allowance Supplement) (paragraph (d)).

Subregulation 4(2) provides that a liability arising from an order made under section 66K or 77 of the Family Law Act 1975 is not a registrable maintenance liability where the liability is excluded as a registrable maintenance liability by virtue of

subregulation 4(1) and in respect of which the payee does not furnish to the Registrar a duly completed approved form requesting that the liability be enforced under the Act.

Subregulation 4(3) provides that for the purposes of regulation 4, "payee", in relation to a liability, means the person who is entitled to receive payments under the liability.

Conversion of amounts payable under registrable maintenance liabilities

Regulation 5 provides for the conversion of amounts payable under registrable maintenance liabilities into daily, weekly and monthly rates of payment.

The Registrar is authorised by sections 22 and 24 and subsection 25(2) of the Act, to register maintenance liabilities by entering particulars of the liability in the Child Support Register. The particulars of the liability that are to be included in the entry in the Register are contained in section 26 of the Act. Paragraph 26(1)(f) requires the periodic amount, or the aggregate of the periodic amounts, payable by the payer to be shown on the Register, and paragraph 26(2)(a) provides that the daily, weekly or monthly rate of payment in relation to the periodic amounts, may also be included in the Register.

Section 29 of the Act provides that regulations may make provision with respect to the conversion of amounts payable under registrable maintenance liabilities into daily, weekly and monthly rates of payment.

When a maintenance liability is registered in the Child Support Register, the payer and payee will be notified in writing and the notice will show the daily, weekly and monthly rate of payment due under the liability.

The effect of calculating the daily, weekly and monthly rates of payment of the periodic amount at the time of registration is that the particulars in the Register will not require variation should a payer change employers or transfer between employment and self-employment. This automatic adjustment to accommodate changed circumstances is designed to avoid interruption to payments due under the liability.

The conversion formula for each period is set out in subregulation 5(1) as follows:

Column 1	Column 2	Column 3	Column 4
Item No.	Kind of periodic amount	Period	Formula for rate of payment
1	daily	(a) week	(a) $PA \times 7 = WR$
		(b) month	(b) $DR \times 30.4375 = MR$
2	weekly	(a) day	(a) $\frac{PA}{7} = DR$
		(b) month	(b) $DR \times 30.4375 = MR$
3	monthly	(a) day	(a) $\frac{PA}{30.4375} = DR$
		(b) week	(b) $DR \times 7 = WR$
4	yearly	(a) day	(a) $\frac{PA}{365.25} = DR$
		(b) week	(b) $DR \times 7 = WR$
		(c) month	(c) $DR \times 30.4375 = MR$

where Column 2 is a periodic amount, and the rate of payment applicable in respect of a period specified in Column 3 of that item or a subitem of that item is calculated in accordance with the formula set out in that item or subitem in Column 4.

Subregulations 5(2) and (3) provide for the conversion of periodic amounts that have been specified in multiples of one week and one month respectively, to a weekly and monthly rate respectively.

Subregulation 5(4) provides rules for rounding off a daily rate under subregulation 5(1).

Subregulation 5(5) states that for the purposes of a formula appearing in regulation 5:

DR is the daily rate of payment;

MR is the monthly rate of payment;

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

PA is the periodic amount; and

WR is the weekly rate of payment.

Prescribed amount - subsection 76(2) of the Act

Regulation 6 prescribes the amount of payment to a payee which can be deferred.

Subregulation 6(1) prescribes that where a person is entitled to be paid at any time under subsection 76(1) in relation to a registered maintenance liability an amount of less than \$1, the person is not entitled to be paid at that time.

Subregulation 6(2) provides, however, that amounts less than \$1 must be paid where the payer's liability to pay has ceased and no further amounts are payable to the payee.

Prescribed amount - subsection 78(3) of the Act

Regulation 7 prescribes that an amount of \$50 per employee may be appropriated from the Consolidated Revenue Fund when the

total amount expected by the Registrar from an employer (that is the aggregate of the amount expected in respect of each employée) does not exceed the actual amount received from the employer by more than the product of the number of employees and the amount of \$50. This appropriation may only proceed if the employer has not explained the difference as required by paragraph 47(1)(b) of the Act and the Registrar has been unable to obtain a satisfactory explanation by the closing day (paragraph 78(1)(c) of the Act).

The amount appropriated will be paid into the Child Support Trust Account under paragraph 78(3)(d) of the Act. The effect of this appropriation is to enable, to the greatest extent possible, regular and timely payments to be made to payees.

Recovery of debt

Regulation 8 prescribes the manner and the place at which debts due to the Commonwealth under the Act (other than the recovery of overpayments from payees under section 79 of the Act) are payable to the Registrar.

Subregulation 8(1) provides that a debt that is payable to the Registrar shall be paid in person by cash, bank notes or cheque at any office of a Deputy Registrar (paragraph (a)) or by forwarding by post to a Deputy Registrar at the prescribed office a bank draft, cheque, postal money order or postal order, payable in the State or Territory in which the prescribed office is situated, for the amount of the debt (paragraph (b)).

For the purposes of subregulation 8(1), subregulation 8(2) sets out the prescribed office in Column 3, to which a person by whom a debt is payable and whose address for service is within a State or Territory specified in Column 2 of an item in the table, is required to forward their payment by post.

Column 1 Item No.	Column 2 State/Territory	Column 3 Prescribed office
1	New South Wales	Chatswood, N.S.W.
2	Victoria	Dandenong, Vic.
3	Queensland	Brisbane, Qld
4	Western Australia	Perth, W.A.
5	South Australia	Adelaide, S.A.
6	Tasmania	Hobart, Tas.
7	Australian Capital Territory	Chatswood, N.S.W.
8	Northern Territory	Adelaide, S.A.
9	Territory of Norfolk Island	Chatswood, N.S.W.

Subregulation 8(3) provides that where a person referred to in subregulation 8(2) is an employer who is required to pay amounts to the Registrar under section 47 of the Act and maintains a pay centre in more than one State or Territory, for example, a

company that operates with several major Divisions around Australia, then for the purposes of subregulation 8(2), the address of each pay centre shall be taken to be an address for service in relation to that person. Payments relating to a pay centre situated in a State or Territory shall be made at the prescribed office specified in the table in subregulation 8(2) in relation to that State or Territory.

Scale of expenses under subsection 120(2) of the Act

Regulation 9 provides for the scale of expenses payable to a person who is required to attend before the Registrar to answer questions or produce documents.

Subregulation 9(1) prescribes that the scale of expenses are set out in the Schedule to the Regulations. The scale of expenses set out in the Schedule is the amount provided for in the High Court Rules as in force from time to time (subregulation 9(2)).

Payment taken to be received

Regulation 10 sets out the circumstances in which amounts payable under the Act or which are paid for the purposes of the Act are taken to have been received by the Registrar or a Deputy Registrar.

Subregulation 10(1) provides that where an amount that is payable under the Act (debts due to the Commonwealth) or is paid for the purposes of the Act (this would include voluntary payments which may be made at any time by a payer to the Registrar to be paid to the respective payee) is paid by post or otherwise to the Registrar or a Deputy Registrar, the payment shall not be taken to have been made until the amount has been received at the office of the Registrar or Deputy Registrar accordingly.

Subregulation 10(2) provides that where an amount that is payable or paid as referred to in subregulation 10(1) is paid by cheque, the amount of the payment shall not be taken to have been received (whether or not a receipt is given) if the cheque is not honoured on presentation.

Receipts

Regulation 11 provides that where a person pays an amount that is payable under the Act, a receipt shall be issued to the person and may be issued by any person authorised by the Registrar or a Deputy Registrar for that purpose.

Evidence by affidavit

Regulation 12 provides that in an action for the recovery of a debt due to the Commonwealth under the Act, evidence may be given by affidavit but the court may, if it thinks fit, require any person who gives evidence by affidavit to attend before the court for the purpose of being cross-examined on that evidence.