

Child Support (Assessment) (Overseas-related Maintenance Obligations) Regulations 2000 2000 No. 79

EXPLANATORY STATEMENT

Statutory Rules 2000 No. 79

Issued by the authority of the Minister for Community Services

Child Support (Assessment) Act 1989

Child Support (Assessment) (Overseas-related Maintenance Obligations) Regulations 2000

Section 164 of the *Child Support (Assessment) Act 1989* (the Act) provides that the GovernorGeneral may make Regulations for the purposes of the Act. Section 163B of the Act provides for regulations to be made for, or in relation to, the following matters:

(a) giving effect to an international agreement that relates to maintenance obligations arising from family relationship, parentage or marriage;

(b) maintenance obligations arising from family relationship, parentage or marriage, where:

(i) the maintenance is claimed by or on behalf of a person who is in a reciprocating jurisdiction; or

(ii) the person from whom the maintenance is claimed is in a reciprocating jurisdiction.

Subsection 163B(3) provides that, for the purposes of section 163B, the Regulations may be inconsistent with the Act and prevail over that Act to the extent of any inconsistency.

The purpose of these Regulations is to prescribe, in relation to countries with which Australia has maintenance enforcement arrangements, matters relevant to the recognition and enforcement of child support and spousal maintenance liabilities.

In 1994, the Commonwealth Parliamentary Joint Select Committee on Certain Family Law Issues recommended that Australia increase the scope and effectiveness of existing arrangements in the international arena for the reciprocal enforcement of child support responsibilities. These regulations facilitate Australia becoming a party to the following three international agreements, thereby extending the range of countries with which Australia has arrangements for the enforcement of maintenance liabilities:

(i) the agreement with New Zealand on child support and spousal maintenance;

(ii) the Hague Convention on the Recognition and Enforcement of Maintenance Liabilities;
and

(iii) a new agreement with the USA on the enforcement of family, maintenance (support) obligations.

The regulations affect the operation of the Act by prescribing, in relation to countries with which Australia has maintenance enforcement arrangements, matters relevant to the recognition and enforcement of child support and spousal maintenance liabilities.

The regulations:

- * replace the court order system for countries with administrative assessment processes;
- * provide for a liability to be created and varied where one party is in Australia and the other party is in a reciprocating jurisdiction;
- * oblige each reciprocating jurisdiction to assist in locating payers, serving notices and providing advice;
- * provide both parties with access to the review procedures of the country where the assessment is made;
- * provide for the protection of privacy and for. information sharing;
- * allow assessments to continue in force where a payer leaves the country;
- * resolve jurisdictional conflicts so that there can only be one assessment in place in regard to the same parties and child.

Details of the Regulations are set out in the Attachment.

The Regulations commence on 1 July 2000.

ATTACHMENT

CHILD SUPPORT (ASSESSMENT) (OVERSEAS-RELATED MAINTENANCE OBLIGATIONS) REGULATIONS 2000

Part 1 - Introductory

Regulation 1

Regulation 1 provides that these Regulations are the *Child Support (Assessment) (Overseas-related Maintenance Obligations) Regulations 2000*.

Regulation 2

Regulation 2 provides that these Regulations commence on 1 July 2000.

Regulation 3

Subregulation 3(1) states that the purpose of the Regulations is to give effect to Australia's obligations under international agreements or arrangements relating to maintenance obligations arising from family relationship, parentage or marriage. In broad terms, this means the Regulations provide for matters relevant to Australia's international spousal and child maintenance arrangements.

Subregulation 3(2) provides that the Regulations and the *Child Support (Assessment) Act 1988* (the Act) are intended to be construed and administered consistently with the purpose of these regulations. To the extent of any inconsistency, the Regulations prevail. The Note at the end of subregulation 3(2) advises that paragraphs 163B(3)(a) and (b) of the Act are authority for this approach.

Regulation 4

Regulation 4 provides that these Regulations and the Act (as it applies for the purposes of these Regulations) are not subject to the limitations provided for by sections 13 and 14 of the Act.

The effect of sections 13 and 14 is that the Act extends to the Australian States only in so far as the marriage power, the powers referred by the States and the adoption of the Act by the Parliament of Western Australia enable the Act to so extend. As Australia's overseas maintenance arrangements are implemented pursuant to the Commonwealth's external affairs power, Regulation 4 makes it clear that, for the purposes of Australia's international maintenance obligations, these Regulations and the provisions of the Act are not subject to the limitations created by sections 13 and 14 of that Act.

Regulation 5

Regulation 5 provides that the term 'Act', when used in these Regulations, means the *Child Support (Assessment) Act 1989*.

Regulation 5 provides that the term 'Australia-New Zealand Agreement', when used in these Regulations, means the Agreement between the Government of Australia and the Government of New Zealand on Child and Spousal Maintenance signed in Canberra on 12 April 2000.

Regulation 5 provides that the term 'overseas authority', when used in these Regulations, means a judicial or administrative authority of a reciprocating jurisdiction that is responsible for implementing an agreement or arrangement with Australia relating to maintenance obligations arising from family relationship, parentage or marriage.

Regulation 6

Section 12 of the Act is concerned with what events constitute child support terminating events. The effect of paragraph 12(1)(f) is that a child support terminating event occurs where none of the following applies in relation to the child:

- (i) the child is present in Australia;
- (ii) the child is an Australian citizen;
- (iii) the child is ordinarily resident in Australia.

The effect of paragraph 12(3)(b) is that a child support terminating event occurs in relation to the liable parent if that parent ceases to be resident in Australia.

Under Australia's international maintenance obligations, it will be necessary for the Australian Child Support Agency to be able to issue assessments for children who do not satisfy any of the conditions contained in paragraph 12(1)(f). It will also be necessary for assessments to be able to be issued for enforcement against liable parents who are not resident in Australia.

The effect of subregulation 6(2) is that the happening of an event mentioned in paragraph 12(1)(f) or (3)(b) of the Act is not a child support terminating event. Subregulation 6(1) provides that regulation 6 applies only to reciprocating jurisdictions.

Regulation 7

Sub-subparagraph 142(1)(c)(ii)(B) of the Act provides that, where an order made under the Act is in force in relation to a child and, if there is not a carer entitled to child support and a liable parent in relation to the child and the person against whom the order was made ceases to be a resident of Australia, the order ceases to be in force.

For the purposes of Australia's international maintenance arrangements, orders will need to be able to be enforced against persons who are in reciprocating jurisdictions. The effect of subregulation 7(1) is that an order made under the Act does not cease to be in force due to the happening of an event mentioned in sub-subparagraph 142(1)(c)(ii)(B). Subregulation 7(1) provides that regulation 7 applies only to reciprocating jurisdictions.

Regulation 8

Regulation 8 provides that, except in relation to Israel, the jurisdictions specified in Schedule 2 to the *Child Support (Registration and Collection) (Overseas-related Maintenance Obligations) Regulations 2000* are reciprocating jurisdictions for the purposes of section 163B of the Act.

Regulation 9

Regulation 9 provides that, for the purposes of subsection 29(2) of the Act, each reciprocating jurisdiction (except Israel) is a prescribed overseas jurisdiction. The effect of this regulation is to apply subsection 29(2) of the Act (which relates to presumptions of parentage based on

overseas court parentage orders, overseas birth registrations and overseas statutory acknowledgments) to parentage orders, registration and acknowledgments in the reciprocating jurisdictions to which the regulations apply. As Israel does not currently make administrative assessments of child support, that country is excluded from the application of this regulation.

Part 2 - Applications and other communications

Regulation 10

Section 23 of the Act provides that an application for an assessment of child support is properly made if it complies with the relevant requirements of sections 24, 25, 25A and 27 of the Act. The effect of regulation 9 is that an application is also properly made if it complies with the requirements of regulations 11 or 12.

Regulation 11

Section 24 of the Act is concerned with the children in relation to whom applications for administrative assessment of child support may be made. Paragraph 24(b) states that applications can only be made in respect of a child if either or both of the following subparagraphs applies in relation to the child:

- (i) the child is present in Australia on the day on which the application is made;
- (ii) the child is an Australian citizen, or ordinarily resident in Australia, on that day.

Under Australia's international maintenance obligations, it will be necessary for the Australian Child Support Agency to be able to issue assessments based on applications relating to children who do not satisfy any of the conditions contained in paragraph 24(b). The effect of regulation 11 is that a liable parent or an eligible carer in a reciprocating jurisdiction may make applications in relation to children who do not satisfy the conditions of paragraph 24(b).

Regulation 12

Sections 25 and 25A deal with the persons who may apply for an administrative assessment of child support. The effect of regulation 12 is that an overseas authority may also apply for an assessment on behalf of a liable parent or an eligible carer in a reciprocating jurisdiction.

Regulation 13

Regulation 13 provides that, where an overseas authority makes an application under regulation 12, the overseas authority may do any of the matters provided for under the Act for the person on whose behalf the overseas authority made the application:

- (a) make an election;
- (b) lodge an objection;
- (c) file an application for leave to appeal;
- (d) appeal against a decision.

Regulation 14

In part, subsection 25(2) of the Act provides that a person may apply for an administrative assessment of child support for a child if the person is seeking payment from a person who is a parent of the child and is a resident of Australia on the day on which the application is made. Under Australia's international maintenance arrangements, it is intended that applications for assessment of child support should be able to be made where the parent from whom payment is sought is a resident of a reciprocating jurisdiction on the day the application is made. Regulation 14 provides for that outcome.

Regulation 15

Section 31 of the Act deals with the question of when liability to pay child support arises. Regulation 15 provides that, despite section 31, the liability of a liable parent who is in a reciprocating jurisdiction to pay child support does not arise until all prior requirements (if any) under the applicable international agreement or arrangement with the reciprocating jurisdiction, or laws of that reciprocating jurisdiction, are complied with.

Regulation 16

Section 39 of the Act is concerned with the amount of a liable parent's exempted income. Subsection 39(3) is concerned with situations where an assessment is in force and the Registrar subsequently is notified, or becomes aware, that the parent has a relevant dependent child who was not taken into account when working out the assessment. The issue of when the parent is to be taken to have had the relevant dependent child is worked out according to paragraphs (3)(c) to (e) and is affected by whether the Registrar was notified that the child was a relevant dependent child within 28 days of becoming such a child.

For the purposes of Australia's international maintenance obligations, regulation 16 provides for the reference to 28 days in paragraphs 3(c) and (d) to be amended to 90 days.

Regulation 17

Section 54 of the Act provides a formula for working out the annual rate of child support payable by a liable parent where there are two or more carers entitled to child support. One element of that formula is the total number of children.

Regulation 17 applies if:

(a) a liable parent has a duty to pay child support to persons in Australia and in a reciprocating jurisdiction; and

(b) an administrative assessment may be made in relation to the liable parent under Part 5 of the Act and under a law of the reciprocating jurisdiction.

Subregulation 17(2) provides that, in working out the annual rate of child support payable under section 54, the total number of children means the number of children in relation to whom the liable parent is a liable parent in relation to all of the carers entitled to child support under the Act or under a law of the reciprocating jurisdiction.

Regulation 18

Section 98Z of the Act deals with time limits for lodging objections to decisions and refusal decisions. Subsections (1) and (3) provide that those objections must be lodged within 28 days

after service of notice of the decision. The effect of subregulations 18(1) and (2) is to allow 90 days for the lodgement of objections.

Regulation 19

In part, section 160 of the Act provides that the Registrar may, by written notice, require a person to notify the Registrar within 14 days of the occurrence of certain matters. The effect of regulation 19 is to allow 60 days within which a person must notify the Registrar.

Regulation 20

Paragraph 161 (1)(a) of the Act provides that the Registrar may require a person to give to the Registrar, within a reasonable period (not less than 7 days), such information as the Registrar requires. The effect of regulation 20 is that the period referred to in paragraph 161 (1) (a) cannot be less than 14 days.

Regulation 21

Regulation 21 deals with the service of documents. It provides that, if it is necessary or convenient to do so for the purposes of an international agreement or arrangement with a reciprocating jurisdiction for a document be served by an overseas authority on a person in Australia, service of the document may be effected by, or on behalf of, the Registrar.

Regulation 22

Regulation 22 states that a notice or other communication that is required to be given to an entitled carer or a liable parent may be given to an overseas authority in the relevant reciprocating jurisdiction if the Registrar is of the opinion that it is desirable or appropriate to do so for these regulations.

Part 3 - Income

Regulation 23

In broad terms, the Act provides that if an assessment has been made of a person's taxable income under Australia's taxation legislation for a year of income then, in the making of any administrative assessment, that income is taken to be the person's taxable income. In relation to Australia's international maintenance obligations, it is necessary that income earned, derived or received from overseas sources also be considered in making an assessment.

Regulation 23 provides that, for the purposes of Australia's international maintenance obligations, a reference in Division 3 of Part 5 of the Act to a person's taxable income may include other overseas income of the person as determined by the Registrar under these regulations.

Regulation 24

Regulation 24 provides that the Registrar may, by written notice, request a person or an overseas authority to give to the Registrar such information, or produce documents, that may be relevant for calculating the child support income amount of a person.

Regulation 25

Currently, subsection 58(1) of the Act allows the Registrar to set a default income where:

- * the Registrar is unable to ascertain a person's taxable income pursuant to Australian taxation legislation; and
- * the Registrar has requested the person to furnish information or documents for the purpose of working out the person's taxable income; and
- * the person has refused or failed to comply with the request.

The default amount is such an amount as the Registrar considers appropriate, not exceeding 2.5 times the yearly equivalent of the relevant AWE amount for the child support period.

The effect of regulation 25 is to extend that approach in relation to establishing a person's taxable income for the purposes of Australia's international maintenance arrangements. Accordingly, where:

the Registrar is unable to ascertain a person's income on the basis of information and documents in the Registrar's possession; and

- * the Registrar has requested the person or an overseas authority to provide information or documents relevant to working out that income; and
- * the information or documents have not been obtained from the person or the overseas authority;
- * the Registrar may act on the basis that the person's income is such amount as the Registrar considers appropriate, not exceeding 2.5 times the yearly equivalent of the relevant AWE amount for the child support period.

Regulation 26

Currently, subsection 58(1A) of the Act provides that where the Registrar:

- * is unable to ascertain a person's taxable income pursuant to Australian taxation legislation; and
- * has been provided with information or documents for the purpose of working out the person's taxable income;

the Registrar make act on the basis that an amount specified in the information or document is the amount of the person's taxable income.

The effect of regulation 26 is to extend that approach in relation to establishing a person's taxable income for the purposes of Australia's international maintenance arrangements.

Regulation 27

Subregulation 27(1) provides that the Registrar must convert any overseas income that is taken into account for the purposes of Part 3 of these Regulations into the equivalent amount in Australian currency, on the basis of the average exchange rate for the relevant financial year of the country from which the income was derived.

Subregulation (2) provides that the average exchange rate referred to in subregulation 27(1) will be based on information obtained from the Australian Statistician. If that information is not available or is inadequate, the average exchange rate will be based on information provided by the relevant overseas authority.

Subregulation 27(3) provides that, in making an administrative assessment of child support of a liable parent who is in a reciprocating jurisdiction, the Registrar must convert the amount payable by the liable parent into the equivalent amount in Australian currency, on the basis of the telegraphic transfer rate of exchange prevailing on the day the assessment is transmitted.

Subregulation 27(4) provides that, in cases where there are arrears, the amount in arrears must be converted into the equivalent amount of the currency of that reciprocating jurisdiction, on the basis of the telegraphic transfer rate of exchange prevailing on the date that the assessment is transmitted.

Part 4 - Matters in respect of the Australia-New Zealand Agreement

Regulation 28

Regulation 28 provides that, for the purposes of Article 4 of the Australia-New Zealand Agreement, a court having jurisdiction under the Act may make a decision (within the meaning of Article 1 of the Agreement) if, at the date of the decision, the eligible carer is habitually resident in Australia.

Regulation 29

Subregulation 29(1) provides that regulation 29 applies for the purposes of Article 5 of the Australia-New Zealand Agreement in its application to decisions of the Registrar mentioned in Article 1.2(a), (b) and (c) of the Agreement.

Subregulation 29(2) provides that, if the Registrar receives a notice, in accordance with Article 5.2, that an eligible carer is habitually resident in New Zealand:

- (a) the authority of the Registrar to make or modify a decision to which regulation 29 applies ceases on the date of the notice if the eligible carer is habitually resident in New Zealand; and
- (b) the decision of the Registrar only has effect during the period before receipt of the notice.