

Child Support (Registration and Collection) (Overseas-related Maintenance Obligations) Regulations 2000 2000 No. 80

EXPLANATORY STATEMENT

Statutory Rules 2000 No. 80

Issued by the authority of the Minister for Community Services

Child Support (Registration and Collection) Act 1988

Child Support (Registration and Collection) (Overseas-related Maintenance Obligations) Regulations 2000

Section 125 of the *Child Support (Registration and Collection) Act 1988* (the Act) provides that the Governor-General may make Regulations for the purposes of the Act. Section 124A 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 124A(3) provides that, for the purposes of section 124A, 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:

- * provide for the enforcement, in reciprocating jurisdictions, of overseas maintenance orders and agreements and administrative assessments;
- * oblige each reciprocating jurisdiction to assist in locating payers, serving notices and providing advice;
- * provide review and appeal rights in respect of overseas liabilities;
- * provide for the protection of privacy and for information sharing;
- * provide for the collection of arrears accrued prior to registration;
- * simplify the existing arrangements between Australia and New Zealand.

Details of the Regulations are set out in the Attachment.

The Regulations commence on 1 July 2000.

ATTACHMENT

CHILD SUPPORT (REGISTRATION AND COLLECTION) (OVERSEAS-RELATED MAINTENANCE OBLIGATIONS) REGULATIONS 2000

Part 1 - Introductory

Regulation 1

Regulation 1 provides that these Regulations are the *Child Support (Registration and Collection) (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 these 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 (Registration and Collection) 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 124A(3)(a) and (b) of the Act are authority for this approach.

Regulation 4

Sections 5 and 6 state that the Act extends to the States only in so far as the marriage power, the powers referred by the States and the adoption of the Act by the Parliaments of Queensland or 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 No 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 5 and 6 of that Act.

Regulation 5

Regulation 5 provides that the term 'Act', when used in these Regulations, means the *Child Support (Registration and Collection) Act 1988*.

Regulation 5 provides that the term 'agency reimbursement liability' means a liability that is a liability of a parent (or step-parent) of a child to pay a periodic amount of maintenance in respect of the child and

- (i) that liability has been paid by an overseas authority to the person who has care of the child; and
- (ii) the overseas authority seeks reimbursement of the liability from the liable parent or step-parent.

The term 'appealable refusal decision' is defined in section 4 of the Act. Regulation 5 extends the definition of that term to include:

- (a) a decision under regulation 12 refusing to register a registrable maintenance liability; or
- (b) a decision under regulation 20 refusing to enter the particulars of a liability.

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. A copy of the text of the Agreement is set out in Schedule 1.

Regulation 5 provides that the term 'court of competent jurisdiction', when used in these Regulations, means:

- (a) a court having jurisdiction for the recovery of debts up to the amount of the debt; or
- (b) a court having jurisdiction under the Act.

Regulation 5 provides that the term 'overseas authority' 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 5 provides that the term 'overseas maintenance liability' means a liability that arises under:

- (a) a maintenance order made by a judicial authority of a reciprocating jurisdiction; or
- (b) a maintenance agreement registered by a judicial or administrative authority of a reciprocating jurisdiction; or
- (c) a maintenance assessment issued by an administrative authority of a reciprocating jurisdiction.

Subject to section 19, sections 17 and 18 of the Act define the term 'registrable maintenance liability'. Regulation 5 provides that a registrable maintenance liability includes a liability that is, under Regulation 11, a registrable maintenance liability.

Regulation 6

The term 'agency reimbursement liability' is defined in Regulation 5. Subregulation 6(1) provides that, in relation to such a liability, the term 'payee' in the Act is extended to include an overseas authority (which is also defined in Regulation 5). The effect of this is that, where an 'agency reimbursement liability' is registered under the Act, the relevant overseas authority has the same rights and obligations as other payees under that Act (except as varied by the Regulations).

Regulation 7

Subsection 124A(4) of the Act states that 'reciprocating jurisdiction' means:

- (a) a foreign country; or
- (b) a part of a foreign country;

that is prescribed by the regulations to be a reciprocating jurisdiction for the purposes of section 124A. Regulation 7 provides that the jurisdictions specified in Schedule 2 are reciprocating jurisdictions for the purposes of section 124A.

Regulations 8 and 9

In broad terms, and subject to subsection 16(3), the effect of subsection 16(2) of the Act is that a person cannot record or communicate protected information about another person unless it is for the purposes of the Act. For the purposes of Australia's international maintenance obligations, the Registrar will need to be able to request information from overseas authorities as well as be able to respond to requests for information from authorities in reciprocating jurisdictions. Examples of the type of information that might be involved includes information on the whereabouts of a payer as well as information about income, earning capacity, property, financial resources or commitments of a child, payer or payee. At present, this would not be authorised as it would not be for the purposes of the Act.

Regulation 8 provides that the Registrar may, for the purposes of the Regulations, request an overseas authority to give to the Registrar such information about a person as the Registrar may require.

Regulation 9 is concerned with the power of the Registrar to give information. Subregulation 9(2) provides that, where the Registrar receives a request from an overseas authority for information about a person, the Registrar must give the information requested if it is necessary or convenient for the purposes of the international agreement or arrangement on which the overseas authority relies. Subregulation 9(1) provides that the Registrar may refuse to give information if the Registrar is satisfied that it is not appropriate to do so. An example of where the Registrar might refuse to give information would be if the information requested is not relevant to the assessment of child support.

Regulation 10

Various provisions of the Act require the Registrar to undertake or complete certain actions, decisions etc within specified time periods. For example, where a person lodges an objection in relation to one of the allowable matters in Division 1 of Part VII, the Registrar has 60 days within which to either allow or disallow the objection. Other provisions allow only 28 days for relevant action to be completed. As the relevant action or decision may require documents and other correspondence to be exchanged with persons or authorities overseas, these time frames are not appropriate for the purposes of Australia's overseas maintenance arrangements. Accordingly, regulation 10 provides for different time periods in respect of various provisions of the Act.

Subregulation 10(2) provides that, in relation to registrable maintenance liabilities under regulation 11, the period in which the Registrar is required to do an act under any of the provisions listed in subregulation 10(1) is 90 days after the obligation to do the act arose.

Subregulations 12(1) and 22(4) as well as the provisions listed in subregulation 10(1) require the Registrar to do, or refuse to do, certain acts. Subregulation 10(3) provides that, if the Registrar does not either do the act or refuse to do the act within the required period, the Registrar is taken to have refused to do that act:

(a) if the Registrar, within the required period, by notice in writing served on the person, asks the person to give information in order for the Registrar to make a decision to do, or refuse to do, that act - at the end of the period of 90 days after the receipt of the information by the Registrar; or

(b) in any other case - at the end of the required period.

Subsection 24A(1) of the Act provides that, where the Registrar makes a child support assessment under which a registrable maintenance liability arises, the Registrar must immediately register the liability under the Act by entering particulars of the liability in the Register. Section 37A provides that, where the Registrar varies a child support assessment, the Registrar must immediately vary the Register. As the obligations referred to in subsection 24A(1) and section 37A may not be able to be undertaken immediately when dealing with overseas arrangements, subregulation 10(4) provides that the Registrar is to undertake those obligations as soon as practicable after the obligation arose.

Part 2 - Registration and enforcement

Regulation 11

Subject to section 19, sections 17 and 18 of the Act define the term 'registrable maintenance liability'. Regulation 11 expands the definition of that term for the purposes of Australia's overseas maintenance obligations.

Subregulation 11 (1) is concerned with child support liabilities. It provides that a liability is a registrable maintenance liability if it is a liability of a parent or step-parent of a child to pay a periodic amount of maintenance in respect of the child and the liability is an overseas maintenance liability.

Subregulation 11(2) is concerned with spousal maintenance liabilities. It provides that a liability is a registrable maintenance liability if it is a liability of a party to a marriage to pay a periodic amount for the maintenance of the other party to the marriage and the liability is an overseas maintenance liability.

Subregulation 11 (3) provides that a liability is a registrable maintenance liability if it is an agency reimbursement liability (see definition in Regulation 5). Article 15 of the Australia-New Zealand Agreement provides for penalties to be incurred in respect of :

- (a) an incorrect estimate of income given by a payer; and
- (b) late payment to an administrative authority by the payer.

Subregulation 11(3) provides that penalty amounts payable under the law of New Zealand are registrable maintenance liabilities.

Subregulation 11(4) is concerned with situations where an amount of arrears forms part (or all) of the liability. It provides that where there is an amount that is in arrears under a liability mentioned in:

- (a) subregulation 11 (1); or
- (b) subregulation 11(2); or
- (c) paragraph 11(3)(a)

that amount is a registrable maintenance liability.

Regulation 12

Subregulation 12(1) states that, where the Registrar receives an application for registration of a liability that is a registrable maintenance liability under regulation 11, the Registrar must, within 90 days after the receipt of the application, register the liability.

Subregulation 12(2) provides that the Registrar may refuse to register a liability that is a registrable maintenance liability under regulation 11 if the Registrar is satisfied that the liability arose in a manner that is inconsistent with an international maintenance agreement or arrangement with a reciprocating jurisdiction. This provision recognises that agreements and arrangements may have certain limitations on their operation. An example of this is contained in Articles 4 and 5 of the agreement between Australia and New Zealand. The effect of those Articles is that it is only the country where the person entitled to payments of maintenance is habitually resident that has jurisdiction to make, modify or revoke a decision relevant to maintenance. Subregulation 12(2) authorises the Registrar to refuse to register a liability that is a registrable maintenance liability if that liability arose in a manner contrary to Articles 4 or 5.

Regulation 13

The Act provides for applications for registration of liabilities to be made 'in a manner specified' by the Registrar. However, the manner in which applications may be made by overseas authorities may vary between jurisdictions. Regulation 13 provides that a document or documents may be taken to be an application for registration of a registrable maintenance liability if the Registrar is satisfied that it is appropriate to do so.

Regulation 14

Section 26 of the Act describes the details which must be entered in the Register in relation to a registrable maintenance liability. Some of these details will not be relevant for all overseas maintenance liabilities. For example, it would not be appropriate to specify the periodic amount payable by the payer in a case where the liability related to arrears only. Regulation 14 provides that, where the registrable maintenance liability is a liability mentioned in regulation 11, the entry in the Register is to include those particulars mentioned in section 26 as are relevant to the liability.

Regulation 15

Regulation 15 is concerned with when a liability first becomes enforceable. Subregulation 15(1) states that a liability mentioned in subregulation 11 (1), (2) or (3) first becomes enforceable on the day on which the liability is registered.

Subregulation 15(2) provides that, in relation to amounts of arrears, the Act has effect as if those amounts were payable under the liability that began on the registration of the liability mentioned in subregulation 11(1) or (2) or paragraph 11(3)(a) to which the arrears relate. The effect of that provision is to allow amounts of arrears that remain unpaid to be enforced.

Regulation 16

Section 30 of the Act provides that, once a registrable maintenance liability is registered under the Act, amounts payable under the liability become debts due to the Commonwealth. Regulation 16 provides for that same approach to apply in respect of registrable maintenance liabilities mentioned in regulation 11.

Regulation 17

Subregulation 17(1) provides that a registered maintenance liability (of a kind mentioned in subregulation 11 (1), (2) or 4 or paragraph 11 (3)(a)) in respect of a child (or a party to a marriage) ceases to have effect if.

(i) an amount becomes payable under a maintenance assessment issued by an administrative authority of a reciprocating jurisdiction or a maintenance order made by a judicial authority of a reciprocating jurisdiction in relation to the child (or the party to the marriage); and

- (ii) the liability referred to in (i) is registered under the Act; and
- (iii) in respect of the liabilities, the payer and the payee are the same people.

Subregulation 17(2) provides that the first liability remains in effect for the purposes of collecting any amounts that remain unpaid under that liability.

This approach is consistent with the current approach provided by section 152 of the *Child Support (Assessment) Act 1989*. The effect of that provision is that, where an amount of child support becomes payable under an assessment and a court order or court registered agreement is already in force under which child support is payable, the court order or agreement ceases to have effect.

Regulation 18

Subregulation 18(1) provides that a registered maintenance liability in relation to a child that is an agency reimbursement liability or that is a liability mentioned in subregulation 11 (1) ceases to have effect if:

- (i) the Registrar makes a child support assessment in relation to the child; and
- (ii) the liability referred to in (i) is registered under the Act; and
- (iii) in respect of the liabilities, the payer and the payee are the same people.

Subregulation 18(2) provides that the first liability remains in effect for the purposes of collecting any amounts that remain unpaid under that liability.

This approach is consistent with the current approach provided by section 152 of the *Child Support (Assessment) Act 1989*. The effect of that provision is that, where an amount of child support becomes payable under an assessment and a court order or court registered agreement is already in force under which child support is payable, the court order or agreement ceases to have effect.

Regulation 19

Section 23 creates certain obligations on payers and payees in relation to notifying the Registrar of certain matters. Similarly, section 34 requires payees to notify the Registrar of the happening of an affecting event. The effect of regulation 19 is that the obligations imposed by these sections do not apply to a registrable maintenance liability that is a liability mentioned in regulation 11.

Regulation 20

The Act allows the payee of a registrable maintenance liability to elect not to have that liability enforced under the Act. Where a payee makes such an election, section 79 of the *Child Support (Assessment) Act 1989* (the CSA Act) provides that the amount due and payable by a liable parent to a carer entitled to child support is a debt and may be recovered in a court having jurisdiction for recovery of debts under the CSA Act.

The effect of regulation 20 is to provide this same approach in respect of registrable maintenance liabilities that are liabilities mentioned in subregulations 11 (1) or (2).

Regulation 21

Section 38A provides that a payee (or a payee and payer jointly) of an enforceable maintenance liability may elect to have the liability no longer enforced under the Act. Where such an election is made, section 79 of the *Child Support (Assessment) Act 1989* (the CSA Act) provides that the amount due and payable by a liable parent to a carer entitled to child support is a debt and may be recovered in a court having jurisdiction for recovery of debts under the CSA Act.

The effect of regulation 21 is to provide this same approach in respect of registrable maintenance liabilities that are liabilities mentioned in subregulations 11 (1) or (2).

Regulation 22

Certain maintenance liabilities cannot be enforced under the Act. For example, orders or assessments which involve lump sum payments are not covered by the Act. Under Australia's international maintenance obligations, the Registrar will need to be able to enter these liabilities in the Register. The purpose of providing for this is to empower the person entitled to payment under the liability to take action in Australian courts to privately enforce the liability.

Subregulation 22(1) provides that a payee may apply to the Registrar for entry in the Register of the particulars of an overseas maintenance liability that is not a registrable maintenance liability under regulation 11. Subregulation 22(2) states the application must be in the manner specified by the Registrar. As it is anticipated that the manner in which applications may be made by overseas authorities will vary between jurisdictions, subregulation (3) provides that, where the application is not in accordance with subregulation (2), a document or documents given by the payee may be taken to be an application if the Registrar is satisfied that it is appropriate to do so.

Subregulation (4) provides that, within 90 days after receiving an application, the Registrar must enter the particulars of the liability in the Register if the Registrar is satisfied that to do so would be consistent with the international agreement or arrangement on which the payee relies.

Subregulation (5) provides that the Registrar may refuse to register a maintenance assessment, order or agreement issued, made or registered in New Zealand if the payee has his or her habitual residence in New Zealand.

Subregulation (6) provides that, for the purposes of Part 3 of these regulations, a decision under regulation 22 is taken to be a decision in relation to a registrable maintenance liability. The effect of subregulation (6) is that the person from whom payment is sought would be able to apply for a review of the decision to register the liability.

Regulation 23

Regulation 23 deals with the effect of the inclusion of particulars of a maintenance liability in the Register in response to an application under regulation 22. Subregulation 23(1) provides that, where particulars are entered in the Register, an amount payable under the maintenance assessment, order or agreement is a debt due to the person who applied for entry of those particulars. Subregulation 23(2) provides that those debts are recoverable by applicants, from persons liable to make payments under the liability, in a court of competent jurisdiction.

Regulation 24

Section 67 of the Act provides for a penalty amount to be payable where a person who is liable to make a payment under a child support debt does not make that payment by the time it becomes due and payable. Article 12 of the Australia-New Zealand Agreement deals with the arrangements between the two countries for the recovery of monies payable in respect of child and spousal maintenance.

The effect of regulation 24 is that, where a request for the recovery of monies in relation to a registrable maintenance liability has been made in accordance with Article 12 of the Agreement, no liability to pay a penalty can arise under section 67 of the Act.

Regulation 25

Certain provisions of the Act allow payments made directly to a payee (section 71) or to a third party (section 71A) to be treated as payments made to the Registrar. The payer or payee must apply to the Registrar to have the payments treated in that manner. Section 71B provides that sections 71 and 71A can apply where the payment is made in a form other than money. The effect of regulation 25 is that, where the liability is an agency reimbursement liability, sections 71 and 71A do not apply. The rationale behind this approach is that, in relation to agency reimbursement liabilities, the relevant overseas authority will have made payments to the payee in satisfaction of the maintenance liability. In these circumstances, it is appropriate that payments made by the payer should be paid directly to the overseas authority in order to reimburse the authority.

Regulation 26

Section 71C of the Act allows a payer to claim credit against their child support liability for certain prescribed payments (eg school fees and medical expenses). These prescribed payments are listed in regulation 5D of the Child Support (Registration and Collection) Regulations 1988. This credit can be up to 25% of the payer's monthly liability and is allowed only where the remaining 75% of the liability has been paid. The effect of regulation 22 is that section 71C does not apply in respect of liabilities mentioned in regulation 11.

In respect of agency reimbursement liabilities, it would be inappropriate for a payer to seek to claim credits under section 71C as the overseas authority will have already made payments to the payee and would be seeking reimbursement directly from the payer. In respect of other overseas maintenance liabilities, the administration of a system similar to that provided for by section 71C would be impractical as the Child Support Agency would not have the power to require overseas bodies such as schools and hospitals to provide the Agency with information about whether claimed payments have in fact been made.

Regulation 27

Regulation 27 deals with the service of documents. It provides that, if it necessary or convenient for the purposes of an international agreement or arrangement with a reciprocating jurisdiction that 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 28

Regulation 28 states that a notice or other communication that is required to be given to a payer or a payee (other than an overseas authority) 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 the purposes of these regulations. This regulation may be relevant in various situations. For example, where the liability is an agency reimbursement liability, it would be appropriate for the Registrar to communicate directly with the overseas authority rather than with the payee. Another example would be where a person's education (or similar considerations) would mean it was more appropriate for correspondence to be forwarded to the overseas authority.

Regulation 29

Section 124 of the Act provides for the Act to apply in respect of orders and agreements made under laws of foreign countries. As these regulations are intended to provide for matters relevant to registrable maintenance liabilities of the kind referred to in regulation 11, regulation 29 states that section 124 does not apply to those liabilities.

Regulation 30

Various provisions of the Act allow a person to object to certain actions or decisions. For example, section 82 allows a payer or a payee to object to the registration of a registrable maintenance liability as well as to object to the entry of particulars in the register. Regulation 30 provides that a person in Australia from whom payment of child support is sought may apply to the Registrar for assistance in transmitting the person's objections to a judicial or administrative authority in a reciprocating jurisdiction.

Regulation 31

Subregulation 31 (1) states that a payee may apply to the Registrar to have a maintenance order or agreement or a child support assessment enforced in a reciprocating jurisdiction.

Subregulation 31(3) provides that, as soon as practicable after the receipt of the application, the Registrar must:

(a) request the judicial or administrative authority of the reciprocating jurisdiction to enforce the liability in accordance with the application; and

(b) transmit the application with such documentation and information required by the authority for enforcement proceedings in that jurisdiction.

As an example of what documentation the Registrar must provide under paragraph (b), subregulation (3) provides that the Registrar must give to the judicial or administrative authority a certificate signed by the Registrar stating the amounts that are due or payable under the liability.

Regulation 32

Division 3 of Part III of the Act provides for variations to be made to entries in the Child Support Register. For example, section 35 provides for the payer of a registrable maintenance liability to be able to apply to the Registrar for the variation of the particulars contained in the Register in order to take account of the happening of an affecting event in relation to the liability.

Subregulation 32(1) provides that, if a person claims to be entitled under a law of a reciprocating jurisdiction to variation of a registrable maintenance liability of a kind mentioned in regulation 11, the person may apply to the Registrar to have a claim for variation transmitted to the judicial or administrative authority of the reciprocating jurisdiction.

Subregulation (2) provides that, where the application relates to a maintenance order and the reciprocating jurisdiction is a party to the Convention on the Recovery Abroad of Maintenance, the Registrar must take, on behalf of the applicant, any action required to be taken by the Transmitting Agency under that Convention.

Subregulation (3) states that the Registrar must not take any action under subregulation (2) unless the Registrar is satisfied that the claim is in accordance with the Convention.

Regulation 33

Regulation 33 is concerned with how amounts expressed other than in Australian dollars are to be treated for the purposes of overseas maintenance orders and agreements other than those made in New Zealand.

Subregulation 33(1) provides that a maintenance order made by a judicial authority of a reciprocating jurisdiction (other than New Zealand) or a maintenance agreement registered by a judicial or administrative authority of a reciprocating jurisdiction (other than New Zealand) that refers to an amount of money expressed in the currency of the reciprocating jurisdiction is taken to refer to the equivalent amount in Australian currency on the date the liability arising under the maintenance order or agreement is registered. Subregulation (2) provides that, in calculating the equivalent amount of Australian currency, the telegraphic transfer rate of exchange prevailing on the date the liability is registered is to be used.

Regulation 34

Regulation 34 is concerned with how amounts expressed other than in Australian dollars are to be treated for the purposes of overseas maintenance assessments and New Zealand maintenance orders and agreements.

Subregulation 34(2) provides that a maintenance assessment, order or agreement that refers to an amount of money expressed in the currency of the reciprocating jurisdiction is taken to refer to the equivalent amount in Australian currency on the date on which the assessment is transmitted to the Registrar. Subregulation (3) provides that, in calculating the equivalent amount of Australian currency, the telegraphic transfer rate of exchange prevailing on the date on which the assessment is transmitted to the Registrar is to be used.

Regulation 35

Subregulation 35(1) provides that, where an application for the entry of particulars under regulation 22 refers to an amount of money expressed in the currency of a reciprocating jurisdiction, that amount is taken to refer to the equivalent amount in Australian currency on the day on which the particulars of the liability are entered in the Register. Subregulation (2) provides that the Australian currency must be determined on the basis of the telegraphic transfer rate of exchange prevailing on the day on which the particulars are entered.

Regulation 36

Regulation 36 is concerned with decisions made or registered by a judicial or administrative authority of Australia. Where such decisions are to be transmitted to New Zealand and, in the decision, an amount of money is expressed in Australian currency, that amount must be converted into the equivalent amount in New Zealand currency on the basis of the telegraphic transfer rate of exchange prevailing on the day on which the decision is transmitted by the Registrar.

Part 3 - Review of decisions

Regulation 37

Part VII of the Act provides for the review of decisions made under the Act. The effect of subregulation 37(1) is that the provisions of Part VII also apply to decisions made in respect of registrable maintenance liabilities under regulation 11.

Sections 82, 83, 84, 84A and 85 of the Act provide for payers and payees of registrable maintenance liabilities to lodge objections in relation to the matters referred to in those

provisions. Section 88 provides that a person aggrieved by a decision of the Registrar in relation to an objection may appeal against that decision to a Court. Subregulation 37(2) makes it clear that those rights of objection and appeal are also available to payers and payees of registrable maintenance liabilities under regulation 11.

Regulation 38

Sections 82, 83, 84, 84A and 85 of the Act provide for payers and payees of registrable maintenance liabilities to lodge objections in relation to the matters referred to in those provisions. Where a person lodges an objection, section 86 requires the Registrar to serve a notice of that objection on the other party. Subsection 86(3) provides that a person may oppose that objection.

For the purposes of Australia's international maintenance obligations, the time allowed in these provisions for the making of the objection, or the opposition to the objection, is inadequate. Accordingly, regulation 38 provides for a period of 90 days to be applicable.

Regulation 39

Regulation 39 states that a reference in Part VII of the Act to a payee includes an overseas authority. The effect of this provision is that judicial or administrative authorities of reciprocating jurisdictions will also be able to lodge objections and appeals where that is appropriate.

Regulation 40

Section 80 of the Act requires notices to be given, as soon as practicable, to payers and payees where certain reviewable decisions are made under the Act. Section 81 provides that, where a notice has been given to a person under section 80, that notice is to be accompanied by a statement advising the person in relation to appeal rights and objection rights under the Act.

Regulation 40 provides that, in respect of a registrable maintenance liability under regulation 11, the notice given under section 80 must be accompanied by a statement which, apart from the requirements already provided for by the Act, advises that the person may seek review of the overseas maintenance liability by a judicial or administrative authority of the reciprocating jurisdiction in which the overseas maintenance liability arose.

Regulation 41

Section 80 of the Act requires notices to be given, as soon as practicable, to payers and payees where certain reviewable decisions are made under the Act. Section 81 provides that, where a notice has been given to a person under section 80, that notice is to be accompanied by a statement advising the person in relation to appeal rights and objection rights under the Act.

Regulation 36 of the *Family Law Regulations* 1984 (the Family Law Regulations) applies to overseas maintenance orders or agreements registered in a court before 1 July 2000 and overseas maintenance entry liabilities and registered maintenance liabilities. It provides that:

- (i) the person for whose benefit the order or agreement was made or for whose benefit the liability was created; or
- (ii) the person against whom the order was made or the person who is liable to make payments under the agreement or the liability; or
- (iii) the Secretary, on behalf of a person mentioned in paragraph (i) or (ii);

may apply to a court having jurisdiction under the *Family Law Act 1975* for an order discharging, suspending, reviving or varying an order, agreement or liability. Regulation 38 of the Family Law Regulations provides for the effect of an order made as a result of an application under regulation 36.

Subregulation 41(1) provides that regulation 41 applies to:

- * a registrable maintenance liability arising under a maintenance order made by a judicial authority of a reciprocating jurisdiction (other than New Zealand); and
- * a registrable maintenance liability arising under a maintenance assessment issued by an administrative authority of a reciprocating jurisdiction (other than New Zealand).

Under the arrangements between Australia and New Zealand, it is only judicial and administrative authorities in the country where the payee is habitually resident that are to have jurisdiction in relation to maintenance orders and assessments. Accordingly, regulation 41 does not apply to maintenance orders and assessments made by judicial or administrative authorities of New Zealand.

Paragraph 41(2)(a) provides that, if the person against whom the order or assessment was made:

- (i) did not have notice of the proceedings giving rise to the maintenance order or assessment; and
- (ii) did not appear in those proceedings; and
- (iii) did not consent to the making of the order;

the notice given under section 80 must be accompanied by a statement which, apart from the requirements already provided for by the Act, advises that, if the person makes an application under regulation 36 of the *Family Law Regulations 1984*, the person may raise any matter that the person could have raised under **Part VII and VIII** of the *Family Law Act 1975* if the proceedings giving rise to the maintenance order or assessment had been heard in Australia.

Paragraph 41(2)(b) provides that, in any other case, the notice must be accompanied by a statement to the effect that the person may make an application under regulation 36 of the *Family Law Regulations 1984*.

Subregulation 41(3) provides that, the notice that must be given under section 80 to the person for whose benefit the order or assessment was made must also include a statement to the effect that the person may make an application under subregulation 36 of the *Family Law Regulations 1984*.

Regulation 42

Section 80 of the Act requires notices to be given, as soon as practicable, to payers and payees where certain reviewable decisions are made under the Act. Section 81 provides that, where a notice has been given to a person under section 80, that notice is to be accompanied by a statement advising the person in relation to appeal rights and objection rights under the Act.

Regulation 36 of the *Family Law Regulations 1984* (the Family Law Regulations) applies to overseas maintenance orders or agreements registered in a court before 1 July 2000 and overseas maintenance entry liabilities and registered maintenance liabilities. It provides that:

- (i) the person for whose benefit the order or agreement was made or for whose benefit the liability was created; or
- (ii) the person against whom the order was made or the person who is liable to make payments under the agreement or the liability; or
- (iii) the Secretary, on behalf of a person mentioned in paragraph (i) or (ii);

may apply to a court having jurisdiction under the *Family Law Act 1975* for an order discharging, suspending, reviving or varying an order, agreement or liability. Regulation 38 of the Family Law Regulations provides for the effect of an order made as a result of an application under regulation 36.

Subregulation 42(1) of these regulations states that regulation 42 applies in respect of maintenance agreements that have been registered by judicial or administrative authorities of reciprocating jurisdictions (other than New Zealand).

Subregulation 42(2) provides that the notice that must be given under section 80 to a person must also include a statement to the effect that the person may make an application under regulation 36 of the Family Law Regulations.

Schedule 1

Schedule 1 is a copy of the text of 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.

Schedule 2

Schedule 2 sets out the jurisdictions that are reciprocating jurisdictions for the purposes of section 124A of the Act.