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

Statutory Rules 2000 No.

80

I, WILLIAM PATRICK DEANE, Governor-General of the
Commonwealth of Australia, acting with the advice of the
Federal Executive Council, make the following Regulations
under the *Child Support (Registration and Collection) Act 1988*.

Dated **25 MAY 2000** 2000

WILLIAM DEANE

Governor-General

By His Excellency's Command

LARRY ANTHONY
Minister for Community Services



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

Statutory Rules 2000 No. 41

80

made under the

Child Support (Registration and Collection) Act 1988

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Regulation 1

Part 1 Introductory

1 Name of Regulations

These Regulations are the *Child Support (Registration and Collection) (Overseas-related Maintenance Obligations) Regulations 2000*.

2 Commencement

These Regulations commence on 1 July 2000.

3 Purpose

- (1) 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.
- (2) The Act and these Regulations are intended to be construed and administered consistently with the purpose of these Regulations but, to the extent of any inconsistency, these Regulations prevail.

Note Paragraphs 124A (3) (a) and (b) of the Act state that these Regulations:

- (a) may be inconsistent with the Act; and
- (b) prevail over the Act (including any other regulations or other instruments made under the Act), to the extent of any inconsistency.

4 Application

The operation of the Act and these Regulations is not affected by sections 5 and 6 of the Act.

5 Definitions

In these Regulations:

Act means the *Child Support (Registration and Collection) Act 1988*.

Regulation 5

agency reimbursement liability means a liability:

- (a) that is a liability of a parent or step-parent of a child to pay a periodic amount for the maintenance of the child; and
- (b) for an amount that has been paid by an overseas authority to the person who has the care of the child; and
- (c) for which the overseas authority seeks reimbursement from the parent or step-parent.

appealable refusal decision includes:

- (a) a decision under regulation 12 refusing to register a registrable maintenance liability; and
- (b) a decision under regulation 22 refusing to enter the particulars of a liability.

Australia–New Zealand Agreement 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 which is set out in Schedule 1.

court of competent jurisdiction, 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.

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.

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.

registrable maintenance liability includes a liability that is a registrable maintenance liability under regulation 11.

Regulation 6

6 Payee in agency reimbursement liability

In relation to an agency reimbursement liability, *payee* includes an overseas authority.

7 Reciprocating jurisdictions

Each jurisdiction specified in Schedule 2 is a reciprocating jurisdiction for section 124A of the Act.

8 Obtaining information

The Registrar may, by written notice, request an overseas authority to give to the Registrar such information about a person as the Registrar may require for the purposes of these Regulations.

Example

Article 23.1 of Australia–New Zealand Agreement states:

1 At the request of the Central Authority of a Contracting State, the Central Authority of the other Contracting State, either directly or through other administrative or judicial authorities, shall take all appropriate steps to obtain and provide to the requesting Central Authority any information necessary or convenient for the operation of this Agreement or for the laws of the Contracting States relating to maintenance, including:

- (a) information on the whereabouts of a payer; or
- (b) information about the income, earning capacity, property, financial resources or commitments of a child, a payer or payee.

9 Giving information

- (1) The Registrar may refuse to give information obtained under or for these Regulations if the Registrar is satisfied that it is not appropriate to give the information.
- (2) If the Registrar receives a request from an overseas authority for information about a person, the Registrar must give the information requested to the overseas authority if it is necessary or convenient for the purposes of the international agreement or arrangement on which the overseas authority relies.

Regulation 10

10 Periods within which Registrar must act

(1) In this regulation:

relevant provision means each of the following provisions of the Act:

- (a) subsection 24 (1);
- (b) subsection 25 (2);
- (c) section 36;
- (d) section 38A;
- (e) section 39;
- (f) section 44;
- (g) subsection 87 (1);
- (h) section 91;
- (i) section 101.

(2) For a registrable maintenance liability under regulation 11, the period within which the Registrar is required to do an act (the *required period*) under a relevant provision is 90 days after the obligation arose.

(3) If the Registrar does not, within the required period, either do the act or refuse to do the act that is required to be done under a relevant provision or under subregulation 12 (1) or 22 (4), 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 a person, asks the person to give information to enable 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 by the Registrar of the information; or
- (b) in any other case — at the end of the required period.

(4) In relation to a child support assessment made by the Registrar for these Regulations, the obligation of the Registrar under subsection 24A (1) or section 37A of the Act must be done as soon as practicable after the obligation arises.

Regulation 11

Part 2 Registration and enforcement**11 Additional registrable maintenance liabilities**

- (1) A liability is a registrable maintenance liability if:
 - (a) it is a liability of a parent or step-parent of a child to pay a periodic amount for the maintenance of the child; and
 - (b) it is an overseas maintenance liability.
- (2) A liability is a registrable maintenance liability if:
 - (a) 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
 - (b) it is an overseas maintenance liability.
- (3) A liability is a registrable maintenance liability if it is:
 - (a) an agency reimbursement liability; or
 - (b) a penalty (within the meaning of Article 15 of the Australia–New Zealand Agreement) that is payable under the law of New Zealand.
- (4) A liability is a registrable maintenance liability if it is an amount that is in arrears under a liability mentioned in subregulation (1) or (2) or paragraph (3) (a).

12 Registration of liability

- (1) If 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 receipt of the application, register the liability by entering particulars of the liability in the Child Support Register.
- (2) 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 arises in a manner that is inconsistent with an international agreement or arrangement with a reciprocating jurisdiction, relating to maintenance obligations arising from family relationship, parentage or marriage.

Regulation 16**13 Form of application**

In the absence of an application made in accordance with section 25 of the Act, a document or documents received from a reciprocating jurisdiction 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.

14 Entry in Register

The entry in the Child Support Register in relation to a registered maintenance liability that is a liability mentioned in regulation 11 must include such particulars mentioned in section 26 of the Act as are relevant to the liability.

15 When liability first becomes enforceable

- (1) A registered maintenance liability that is a liability mentioned in subregulation 11 (1), (2) or (3) first becomes enforceable under the Act on the day on which the liability is registered.
- (2) If the Registrar registers a liability mentioned in subregulation 11 (4):
 - (a) the Registrar must enforce it; and
 - (b) the Act has effect as if the amounts that are in arrears were payable under the liability in relation to the child support enforcement period that began on registration of the liability mentioned in subregulation 11 (1) or (2) or paragraph 11 (3) (a) to which the arrears relate.

16 Effect of registration

If a registrable maintenance liability mentioned in regulation 11 is registered by the Registrar, an amount payable under the maintenance assessment, order or agreement, or the agency reimbursement liability, is a debt due to the Commonwealth by the payer in accordance with the particulars of the liability entered in the Child Support Register.

Regulation 17

17 Effect of overseas maintenance assessment

- (1) A registered maintenance liability that is a liability mentioned in subregulation 11 (1), (2) or (4) or paragraph 11 (3) (a) (*liability first registered*) ceases to have effect if:
- (a) 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) to whom the liability first registered relates; and
 - (b) the liability arising under the maintenance assessment or order is registered under the Act (*liability subsequently registered*); and
 - (c) the payer and the person who has the care of the child under the liability first registered (or the party to the marriage to whom the liability first registered relates) are the same as the payer and the payee, respectively, under the liability subsequently registered.
- (2) However, the liability first registered continues to have effect for the purpose of collecting any amount that is in arrears under it.

18 Effect of child support assessment

- (1) A registered maintenance liability that is an agency reimbursement liability or a liability mentioned in subregulation 11 (1) (*liability first registered*) ceases to have effect if:
- (a) the Registrar makes a child support assessment in relation to the child to whom the liability first registered relates; and
 - (b) the liability arising under the child support assessment is registered under the Act (*liability subsequently registered*); and
 - (c) the payer and the person who has the care of the child under the liability first registered are the same as the payer and the payee, respectively, under the liability subsequently registered.

Regulation 21

- (2) However, the liability first registered continues to have effect for the purpose of collecting any amount that is in arrears under it.

19 Sections 23 and 34 of Act not to apply

- (1) Section 23 of the Act does not apply to a registered maintenance liability that is a liability mentioned in regulation 11.
- (2) Section 34 of the Act does not apply to an enforceable maintenance liability that is a liability mentioned in regulation 11.

20 Election not to enforce — registrable maintenance liability

- (1) If, in an application for assessment of child support or an application for acceptance of a child support agreement, a payee elects not to have a registrable maintenance liability that is a liability mentioned in subregulation 11 (1) or (2) enforced under the Act, an amount due and payable to the payee under the maintenance assessment or agreement is a debt due and payable by the payer to the payee.
- (2) A debt due under this regulation is recoverable by the payee from the payer in a court of competent jurisdiction.

21 Election not to enforce — registered maintenance liability

- (1) If a registered maintenance liability that is a liability mentioned in subregulation 11 (1) or (2) is not enforceable because of an election under section 38A of the Act, an amount unpaid under the maintenance assessment, order or agreement is a debt due and payable by the payer to the payee.
- (2) A debt due under this regulation is recoverable by the payee from the payer in a court of competent jurisdiction.

Regulation 22

22 Inclusion of certain liabilities in Register

- (1) A payee may apply to the Registrar for entry, in the Child Support Register, of the particulars of an overseas maintenance liability that is not a registrable maintenance liability under regulation 11.
- (2) An application must be made in the manner specified by the Registrar.
- (3) In the absence of an application made in accordance with subregulation (2), a document or documents given by the payee may be taken to be an application for entry of the particulars of an overseas maintenance liability if the Registrar is satisfied that it is appropriate to do.
- (4) The Registrar must, within 90 days after receiving an application, enter the particulars of the liability in the Child Support Register if the Registrar is satisfied that to do so would be consistent with the international agreement or arrangement on which the payee relies.
- (5) 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.
- (6) For Part 3, a decision under this regulation is taken to be a decision in relation to a registrable maintenance liability.

23 Effect of inclusion

- (1) If the particulars of an overseas maintenance liability are entered in the Child Support Register under regulation 22, an amount payable under the maintenance assessment, order or agreement that gives rise to the liability is a debt due to the applicant.
- (2) A debt due under this regulation is recoverable by the applicant from the person who is liable to make payments under the liability in a court of competent jurisdiction.

Regulation 29

24 Suspension of operation of s 67 of Act

No liability to pay a penalty can arise under section 67 of the Act at any time while a registered maintenance liability that is a liability mentioned in regulation 11 is subject to a request for recovery in accordance with Article 12 of the Australia–New Zealand Agreement.

25 Payments not to be treated as paid to Registrar

Sections 71 and 71A of the Act do not apply to an enforceable maintenance liability that is an agency reimbursement liability.

26 Uncredited amounts

Section 71C of the Act does not apply to an enforceable maintenance liability that is a liability mentioned in regulation 11.

27 Service of documents

A document that is required to be served by an overseas authority on a person who is in Australia may be served by, or on behalf of, the Registrar if it necessary or convenient to do so for the purposes of an international agreement or arrangement with a reciprocating jurisdiction.

28 Giving notices

A notice or other communication that is required to be given to a payer or payee (other than an overseas authority) may be given to an overseas authority if the Registrar is of the opinion that it is desirable or appropriate to do so for these Regulations.

29 Section 124 of Act not to apply

Section 124 of the Act does not apply to a registered maintenance liability that is a liability mentioned in regulation 11.

Regulation 30

30 Assistance on objections

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 an administrative or judicial authority in the reciprocating jurisdiction.

31 Enforcement overseas of Australian liabilities

- (1) A payee may apply to the Registrar, in writing, to have a maintenance order or agreement, or a child support assessment, enforced in a reciprocating jurisdiction.
- (2) As soon as practicable after receiving the application, the Registrar must:
 - (a) request, in writing, a judicial or administrative authority in the reciprocating jurisdiction to enforce the liability in accordance with the application of the payee; and
 - (b) transmit the application with such documentation and information as is required by the authority for enforcement proceedings in that jurisdiction.
- (3) Without limiting the generality of paragraph (2)(b), 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.

32 Transmittal of claims for variation

- (1) If a person claims to be entitled under a law of a reciprocating jurisdiction to variation of a registered maintenance liability that is a liability mentioned in regulation 11, the person may apply to the Registrar to have a claim for variation transmitted to the appropriate administrative or judicial authority of the reciprocating jurisdiction.
- (2) If 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 person making the application, any action required to be taken by a Transmitting Agency under that Convention to seek the variation.

Regulation 34

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

Note A copy of the English text of the Convention on the Recovery Abroad of Maintenance is set out in Schedule 3 to the *Family Law Regulations 1984*.

33 Conversion of currency — overseas orders and agreements

- (1) 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 (or the country in which that jurisdiction is located) is taken to refer to the equivalent amount in Australian currency on the day on which the liability arising under the maintenance order or agreement is registered.
- (2) The equivalent amount in Australian currency must be determined on the basis of the telegraphic transfer rate of exchange prevailing on the day on which the liability arising under the maintenance order or agreement is registered.

34 Conversion of currency — overseas assessments and New Zealand maintenance orders and agreements

- (1) This regulation applies to:
- (a) a maintenance assessment issued by an administrative authority of a reciprocating jurisdiction (including New Zealand); and
 - (b) a maintenance order made by a judicial authority of New Zealand; and
 - (c) a maintenance agreement registered by a judicial or administrative authority of New Zealand.

Regulation 35

- (2) A maintenance assessment, order or agreement that refers to an amount of money expressed in the currency of the reciprocating jurisdiction (or the country in which that jurisdiction is located) is taken to refer to the equivalent amount in Australian currency on the day on which the assessment, order or agreement is transmitted to the Registrar.
- (3) The equivalent amount in Australian currency must be determined on the basis of the telegraphic transfer rate of exchange prevailing on the day on which the assessment, order or agreement is transmitted to the Registrar.

35 Conversion of currency — applications under regulation 22

- (1) An application for entry of particulars under regulation 22 that refers to an amount of money expressed in the currency of a reciprocating jurisdiction (or the country in which the jurisdiction is located) 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 Child Support Register.
- (2) The equivalent amount in Australian currency must be determined on the basis of the telegraphic transfer rate of exchange prevailing on the day on which the particulars of the liability are entered.

36 Conversion of currency — Australian assessments, orders or agreements

An amount of money expressed in Australian currency in a decision (within the meaning of Article 1 of the Australia–New Zealand Agreement) issued, made or registered by a judicial or administrative authority of Australia 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

37 Application of Part VII of Act

- (1) Part VII of the Act (Review of decisions) applies to a registrable maintenance liability under regulation 11.
- (2) In particular, a payer or payee of a registrable maintenance liability under regulation 11 may:
 - (a) lodge with the Registrar an objection under section 82, 83, 84, 84A or 85 of the Act; and
 - (b) appeal under section 88 of the Act.

38 Periods within which person must act

For a registrable maintenance liability under regulation 11, the period within which a person is required to do an act under section 82, 83, 84, 84A, 85 or 86 of the Act is 90 days after service of the document under the section.

39 References to payee

A reference in Part VII of the Act to a payee includes an overseas authority.

40 Statement to accompany notices — maintenance assessments, orders or agreements

For a registrable maintenance liability under regulation 11, the notice that must be given to a person under section 80 of the Act must also include, or be accompanied by, a statement to the effect 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

41 Statement to accompany notices — maintenance orders and assessments

- (1) This regulation applies to:
- (a) a registrable maintenance liability arising under a maintenance order made by a judicial authority of a reciprocating jurisdiction (other than New Zealand); and
 - (b) a registrable maintenance liability arising under a maintenance assessment issued by an administrative authority of a reciprocating jurisdiction (other than New Zealand).
- (2) The notice that must be given under section 80 of the Act to a person against whom a maintenance order or assessment was made must also include, or be accompanied by:
- (a) if the person did not have notice of the proceedings giving rise to the order or assessment, did not appear in those proceedings and did not consent to the making of the order or assessment — a statement to the effect that, if the person makes an application under subregulation 36 (2) of the *Family Law Regulations 1984*, the person may raise any matter that the person could have raised under Part VII or VIII of the *Family Law Act 1975* if the proceedings giving rise to the order or assessment had been heard in Australia; or
 - (b) in any other case — a statement to the effect that the person may make an application under subregulation 36 (2) of the *Family Law Regulations 1984*.
- (3) The notice that must be given under section 80 of the Act to a person for whose benefit the order or assessment was made must also include, or be accompanied by, a statement to the effect that the person may make an application under subregulation 36 (2) of the *Family Law Regulations 1984*.

Note Regulation 38 of the *Family Law Regulations 1984* affects the order that may be made under regulation 36 of those Regulations.

Regulation 42

42 Statement to accompany notices — maintenance agreements

- (1) This regulation applies to a maintenance agreement that has been registered by a judicial or administrative authority of a reciprocating jurisdiction (other than New Zealand).
- (2) The notice that must be given to a person under section 80 of the Act must also include, or be accompanied by, a statement to the effect that the person may make an application under subregulation 36 (2) of the *Family Law Regulations 1984*.

Note Regulation 38 of the *Family Law Regulations 1984* affects the order that may be made under regulation 36 of those Regulations.

Schedule 1 **Australia–New Zealand Agreement**

(regulation 5)

AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF NEW ZEALAND ON CHILD AND SPOUSAL MAINTENANCE

(Canberra, 12 April 2000)

PREAMBLE

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF NEW ZEALAND (hereinafter referred to as “the Contracting States”),

CONSIDERING the principle that parents have an obligation, according to their capacity to pay, to provide their children with a proper level of financial support,

CONSIDERING the enforcement abroad of maintenance decisions gives rise to serious practical and legal difficulties,

DESIRING to conclude an Agreement on the jurisdiction of their administrative and judicial authorities, to facilitate recognition and enforcement of decisions, to exchange information and to provide for mutual co-operation in the collection and payment of monies in relation to child and spousal maintenance,

HAVE AGREED AS FOLLOWS:

PART 1
SCOPE OF THE AGREEMENT

Article 1
Meaning of decision

1 This Agreement applies to a decision made by an administrative or judicial authority of a Contracting State under which money is payable in respect of a maintenance obligation, arising from parentage or marriage, between a payer and payee.

2 For the purposes of this Agreement a decision shall include:

- (a) a child support assessment issued by an administrative authority;
- (b) an agreement to make payments for the maintenance of a child or spouse which has been registered with an administrative authority;
- (c) an assessment, order or agreement suspending, modifying or revoking a decision of the kind referred to in (a) or (b);
- (d) an order for child maintenance made by a judicial authority;
- (e) an order for spousal maintenance made by a judicial authority;
- (f) an agreement to make payments for the maintenance of a child or spouse which has been registered with a judicial authority;
- (g) an order or agreement suspending, modifying or revoking a decision of the kind referred to in (d), (e) or (f); and
- (h) a liability to pay an amount to an administrative authority for the maintenance of a child or as contribution to the cost of government benefits paid to a payee for the maintenance of a child.

3 For the purposes of this Agreement a decision shall not include:

- (a) an agreement to make payments for the maintenance of a child or spouse which has not been registered with an administrative or judicial authority;
- (b) a decision requiring the provision of maintenance by way of the transfer or settlement of property; or
- (c) a decision under which money is payable in respect of taxes, fines, penalties or other charges of a similar nature.

4 If a decision does not relate solely to the payment of an amount of money for maintenance, the effect of this Agreement is limited to the parts of the decision which concern maintenance obligations.

5 In relation to agreements referred to in Article 1.2(b), (c), (f) and (g), a reference in this Agreement to the making, suspension, modification or revocation of a decision means a decision by a judicial or administrative authority to register an agreement, to register a variation of an agreement, or to suspend or revoke the registration of an agreement.

Article 2

Limitation to Australia/New Zealand cases

The provisions of this Agreement apply to a judicial or administrative authority of a Contracting State making, suspending, modifying or revoking a decision referred to in Article 1, if:

- (a) the payer is habitually resident in a Contracting State; and
- (b) the payee is habitually resident in the other Contracting State.

Article 3
Date of decisions

1 This Agreement applies irrespective of the date on which a decision was made.

2 Where a decision has been made prior to the date on which this Agreement enters into force between the Contracting States, this Agreement applies for payments falling due under the decision before and after that date.

PART II
JURISDICTION

Article 4
Jurisdiction of judicial authorities

Subject to Article 11, a judicial authority of a Contracting State has jurisdiction to make a decision if at the date of the decision the payee has his or her habitual residence in that State.

Article 5
Jurisdiction of administrative authorities

1 Subject to Article 5.2 and 5.3, an administrative authority of a Contracting State has jurisdiction to make, suspend, modify or revoke a decision if, according to the national law of that Contracting State, the authority has that jurisdiction.

2 Subject to Article 5.3, where an administrative authority of a Contracting State has made or modified a decision referred to in Article 1.2(a), (b) or (c) in accordance with the law of that Contracting State, and a payer, a payee or a Central Authority gives a notice in writing to that administrative authority indicating that the payee has his or her habitual residence in the other Contracting State:

- (a) the jurisdiction of that administrative authority to make or modify a decision referred to in Article 1.2(a), (b) or (c)

ceases as from the date of the notice if the payee has his or her habitual residence in the other Contracting State; and

- (b) the decision of the administrative authority has force and effect for the period prior to the date of receipt by the administrative authority of the notice.

3 Where a payee has his or her habitual residence in a Contracting State, and there is in force a decision by a judicial or administrative authority of that Contracting State:

- (a) an administrative authority of the other Contracting State has no jurisdiction to make or modify a decision referred to in Article 1.2(a), (b) or (c); and
- (b) a decision of an administrative authority of the other Contracting State to make or modify a decision referred to in Article 1.2(a), (b) or (c) has no force and effect.

PART III APPLICABLE LAW

Article 6 Applicable law

1 Subject to Article 6.2, the administrative and judicial authorities of a Contracting State shall apply the national law of that State in exercising jurisdiction to make a decision.

2 Where a payer has a duty to pay child support to payees in both Contracting States, and administrative assessments may be issued in relation to that payer under the national laws of both Contracting States, the amount payable by the payer under any administrative assessment issued by an authority of a Contracting State shall be calculated according to the proportion which the number of eligible children in the Contracting State bears to the total number of eligible children in both Contracting States.

PART IV
RECOGNITION AND ENFORCEMENT

Article 7
Recognition and enforcement

1 A decision made by an administrative or judicial authority of a Contracting State (the State of origin) is entitled to recognition and enforcement by operation of law in the territory of the other Contracting State (the State addressed).

2 Recognition or enforcement of a decision may be refused by an administrative or judicial authority of the State addressed:

- (a) if the administrative or judicial authority of the State of origin did not have jurisdiction under Article 4, 5 or 11; or
- (b) if recognition or enforcement is incompatible with the public policy of the State addressed; or
- (c) if the decision was obtained by fraud.

3 Subject to Article 7.2(a), where a decision is incompatible with a previous decision made by an authority in a Contracting State between the same parties and having the same purpose:

- (a) the earlier decision shall be recognised and enforced with effect up to but excluding the day on which the later decision was made; and
- (b) the later decision shall be recognised and enforced with effect from and including the day on which the later decision was made.

4 If a decision provides for the periodical payment of maintenance, the decision shall be enforceable in respect of unpaid amounts already due and in respect of future payments.

5 There shall be no review by the administrative or judicial authorities of the State addressed of the merits of a decision, unless this Agreement otherwise provides.

Article 8

Procedure for recognition and enforcement

The procedure for recognition and enforcement of a decision shall be governed by the law of the Contracting State in which recognition or enforcement is sought.

Article 9

Partial recognition and enforcement

An application may be made at any time for partial recognition or enforcement.

Article 10

Default decisions

A decision made by default by a judicial authority of a Contracting State shall be entitled to recognition and enforcement only if notice of the institution of the proceedings, including notice of the substance of the claim, has been served on the defaulting party in accordance with the law of the other Contracting State and if, having regard to the circumstances, that party has had sufficient time to enable him or her to defend the proceedings.

Article 11

Provisional orders

1 Where under the law in force in a Contracting State a judicial authority makes, suspends, modifies or revokes a decision which has no effect unless and until confirmed by a judicial authority of the other Contracting State (a provisional order), the following provisions shall apply.

2 A payee or payer under a provisional order who is habitually resident in a Contracting State (hereinafter referred to as the State of origin) may apply to the authorities of that State to have the provisional order transmitted to the authorities of the other Contracting State (hereinafter referred to as the State addressed).

3 The Central Authority of the State of origin shall transmit the provisional order to the authorities of the State addressed.

4 The authorities of the State addressed shall take all appropriate steps to have a judicial authority make a decision whether to confirm, confirm with modification or refuse to confirm the provisional order.

5 The judicial authority of the State addressed may remit the provisional order to the judicial authority in the State of origin to take further evidence or further consider the provisional order.

6 Where a judicial authority in the State addressed confirms a provisional order (with or without modification) the order by operation of law shall be enforceable as a court order in the State addressed and in the State of origin.

PART V RECOVERY OF MONIES BY GOVERNMENT AUTHORITIES

Article 12 Recovery of monies by government authorities

1 A Central Authority of a Contracting State may, in its discretion, transmit to the Central Authority of the other Contracting State a request for authorities of the State addressed to recover, on behalf of the payee, monies payable under a decision.

2 A Central Authority may only transmit a request under Article 12.1 in respect of a decision which is entitled to recognition and enforcement in the State addressed under Part IV of this Agreement.

3 The Contracting States agree that, upon receipt of a request under Article 12.1, authorities of the State addressed shall take action to recover the monies payable under the decision.

Article 13

Procedure for recovery of monies

The procedure for the recovery of monies in accordance with Article 12 shall be governed by the laws of the State addressed.

Article 14

Disbursement of monies recovered

1 Monies recovered by the authorities of the State addressed shall be paid to the Central Authority of the State of origin.

2 The Central Authority of the State of origin shall disburse monies paid to it under Article 14.1 in accordance with the laws of the State addressed.

PART VI PENALTIES

Article 15

Penalties incurred prior to transfer of a decision

1 In this Article “penalty” means a penalty payable to an administrative authority by a payer under the law of a Contracting State:

- (a) in respect of an incorrect estimate of income given by the payer for the purpose of the making of a decision; or
- (b) in respect of the late payment to the administrative authority by the payer of monies payable under a decision of the kind referred to in Article 1.2(a) to (h).

2 Where a decision by an administrative or judicial authority is transmitted in accordance with Article 12 of this Agreement, any penalty payable under the law of the State of origin in relation to that decision:

- (a) shall be recognised and enforced in the State addressed in so far as the penalty relates to a period prior to the date of transmission of the decision;
- (b) shall be recovered by authorities of the State addressed if the Central Authority of the State of origin makes a request for its recovery to the Central Authority of the State addressed.

3 Where monies are recovered by the authorities of the State addressed in accordance with a request under Article 15.2(b):

- (a) the monies shall be paid to the Central Authority of the State of origin;
- (b) the Central Authority of the State of origin shall disburse monies in accordance with the laws of the State of origin.

Article 16

Penalties incurred after transfer of a decision

1 Where a request in relation to a decision by an administrative or judicial authority is transmitted in accordance with Article 12 of this Agreement:

- (a) the imposition of a penalty in respect of the late payment to an administrative authority by the payer of monies payable under the decision shall be governed by the law of the State addressed; and
- (b) the penalty shall be disbursed in accordance with the laws of the State addressed.

2 Where a request in relation to a decision by an administrative or judicial authority is transmitted in accordance with Article 12 of this Agreement, any penalty payable under the law of the State of origin in respect of an incorrect estimate of income given by the payer for the purpose of the making of the decision:

- (a) shall be recognised and enforced in the State addressed;
- (b) shall be recovered by authorities of the State addressed if the Central Authority of the State of origin makes a request for its recovery to the Central Authority of the State addressed.

3 Where monies are recovered by the authorities of the State addressed in accordance with a request under Article 16.2(b):

- (a) the monies shall be paid to the Central Authority of the State of origin;
- (b) the Central Authority of the State of origin shall disburse monies in accordance with the laws of the State of origin.

PART VII PARENTAGE PRESUMPTIONS

Article 17

Reciprocal recognition of court parentage findings

Where a judicial authority of one Contracting State finds that a person is a parent of a child, and the finding has not been altered, set aside or reversed by the judicial authorities of that State, the person shall be presumed to be a parent of the child by operation of law in the territory of the other Contracting State.

Article 18
Reciprocal recognition of birth registrations

Where a person's name is registered as a parent of a child in a register of births or parentage information by an administrative authority of a Contracting State, the person shall be presumed to be a parent of the child by operation of law in the territory of the other Contracting State.

Article 19
Reciprocal recognition of instruments of acknowledgment

Where under a law of a Contracting State a person has executed an instrument acknowledging that he is the father of a child, and that instrument has not been annulled or otherwise set aside, the person shall be presumed to be a parent of the child by operation of law in the territory of the other Contracting State.

PART VIII
LEGAL AID

Article 20
No discrimination in provision of legal aid

Nationals of either Contracting State, and persons habitually resident in either Contracting State, shall enjoy legal aid for court proceedings relating to child and spousal maintenance in each Contracting State on the same conditions as if they themselves were nationals or habitually resident in that State.

PART IX
CENTRAL AUTHORITIES

Article 21
Central Authorities

1 The Central Authority for New Zealand shall be the Commissioner of Inland Revenue. The Central Authority for Australia shall be the Child Support Registrar.

2 Each Contracting State shall be free to designate additional Authorities and to determine the extent of their competence. However communications may in all cases be sent directly to the Central Authority.

3 Each Contracting State shall notify the other Contracting State of the Authorities designated from time to time and the extent of their competence.

Article 22 Duties of Central Authorities

The Central Authority of each Contracting State shall:

- (a) co-operate with each other and promote co-operation amongst administrative and judicial authorities in their States to achieve the purposes of this Agreement;
- (b) on request by the Central Authority of the other Contracting State, obtain and provide reports on the progress made by administrative and judicial authorities in recovering monies payable under a decision;
- (c) co-operate in the provision of information to children, payees and payers within its territory on their rights and duties under the law relating to maintenance of the other Contracting State.

Article 23 Exchange of information

1 At the request of the Central Authority of a Contracting State, the Central Authority of the other Contracting State, either directly or through other administrative or judicial authorities, shall take all appropriate steps to obtain and provide to the requesting Central Authority any information necessary or convenient for the operation of this Agreement or for the laws of the Contracting States relating to maintenance, including:

- (a) information on the whereabouts of a payer; or

- (b) information about the income, earning capacity, property, financial resources or commitments of a child, a payer or payee.

2 Any information about an individual which is transmitted in accordance with this Agreement to an administrative or judicial authority of a Contracting State:

- (a) is confidential; and
- (b) shall be used only for the purposes of implementing this Agreement and the laws of the Contracting States relating to maintenance; and
- (c) shall be disclosed only if disclosure is required or permitted under the laws of the Contracting State.

3 In no case shall the provisions of this Article be construed so as to impose on the administrative or judicial authorities of a Contracting State the obligation to obtain information which is not obtainable under the laws or in the normal course of administration of those authorities.

4 At any time the Contracting Parties may determine that communication between the Contracting States, including exchange of information, may be conducted by electronic data transfer.

PART X SERVICE ARRANGEMENT

Article 24 Service Arrangement

1 The Child Support Registrar for Australia and the Commissioner of Inland Revenue for New Zealand may enter an arrangement (hereinafter referred to as the Service Arrangement) to facilitate the implementation of this Agreement.

2 The matters which may be dealt with in the Service Arrangement include but are not limited to:

- (a) the procedures to be adopted by administrative authorities in the Contracting States in identifying and resolving cases of conflict in jurisdiction between the administrative or judicial authorities of one State and the administrative or judicial authorities of the other State;
- (b) the exchange of information between authorities of the Contracting States and the protection of the privacy of the subjects of such information;
- (c) the location of payers and the service of documents on payers;
- (d) the making of determinations as to the income, earning capacity, property, financial resources or commitments of a child, a payer or payee;
- (e) the making of child support assessments and other decisions;
- (f) procedures for the recognition and enforcement of decisions to which this Agreement applies;
- (g) procedures for the collection and disbursement of monies payable under decisions and penalties to which this Agreement applies;
- (h) procedures for determining applications by payers and payees for the suspension, modification or revocation of decisions to which this Agreement applies;
- (i) parentage testing;
- (j) evaluation of the operation of this Agreement and the Service Arrangement;
- (k) the provision of information and advice to payers and payees;

- (l) the reimbursement by a Child Support Agency of one Contracting State of the costs incurred by the Child Support Agency of the other Contracting State in the provision of services under this Agreement or the Service Arrangement.

PART XI TERRITORIAL APPLICATION

Article 25 Australian Territories

This Agreement extends to the following Australian Territories:

Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands.

Article 26 Territories associated with New Zealand

This Agreement shall not apply to Tokelau, unless the Contracting States exchange notes agreeing to the terms on which it will so apply.

PART XII GENERAL PROVISIONS

Article 27 Other treaty obligations

As long as this Agreement is in force, it shall replace, as between the Contracting States, the Convention on the Recovery Abroad of Maintenance signed at New York on 20 June 1956.

Article 28 Resolution of disputes

1 The administrative and judicial authorities of the Contracting States shall resolve, to the extent possible, any difficulties which arise in

interpreting or applying this Agreement or the Service Arrangement according to the spirit and fundamental principles of this Agreement.

2 Where the administrative and judicial authorities have not resolved difficulties which arise in interpreting or applying this Agreement or the Service Arrangement, a Contracting State may request consultation. Such consultation shall take place promptly.

Article 29 Review of Agreement

1 The Contracting States may agree at any time to review the whole or any part of this Agreement or the Service Arrangement.

2 At any time a Contracting State may request that the Contracting States meet to review this Agreement or the Service Arrangement. Representatives of the Contracting States shall meet for that purpose no later than six months after the date of that request and, unless the Contracting States otherwise agree, the meeting shall be held in the territory of the Contracting State to which the request was made.

3 The Contracting States shall exchange information as to changes in their laws or administrative practices relating to maintenance which are relevant to the operation of this Agreement or the Service Arrangement.

PART XIII FINAL PROVISIONS

Article 30 Entry into force

1 The Contracting States shall notify each other through diplomatic channels when their respective requirements for the entry into force of this Agreement have been complied with.

2 This Agreement shall enter into force 30 days after the date on which the Contracting States have notified each other in accordance with Article 30.1.

3 The Contracting States shall notify each other through diplomatic channels when their respective requirements for the entry into force of the Service Arrangement have been complied with.

4 The Service Arrangement shall enter into force 30 days after the date on which the Contracting States have notified each other in accordance with Article 30.3.

Article 31 Termination

1 This Agreement may be terminated by either Contracting State giving notice in writing through the diplomatic channel and the Agreement shall terminate six months after the date of the notice.

2 The Service Arrangement may be terminated by either Contracting State giving notice in writing through the diplomatic channel and the Service Arrangement shall terminate six months after the date of the notice.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Canberra this twelfth day of April, 2000.

FOR THE GOVERNMENT OF
AUSTRALIA:

[Signed:]
L ANTHONY

FOR THE GOVERNMENT OF
NEW ZEALAND:

[Signed:]
SIMON MURDOCH

Schedule 2 Reciprocating jurisdictions

(regulation 7)

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|---|--|
| Algeria | Czech Republic |
| Argentina | Denmark |
| Austria | Ecuador |
| Barbados | Estonia |
| Belarus | Fiji |
| Belgium | Finland |
| Bosnia and Herzegovina | France |
| Brazil | Germany |
| Brunei | Greece |
| Burkina Faso | Guatemala |
| Canada, the following Provinces and Territories: | Haiti |
| Alberta | Holy See |
| British Columbia | Hong Kong |
| Manitoba | Hungary |
| New Brunswick | India |
| Newfoundland | Republic of Ireland |
| Northwest Territories | Israel |
| Nova Scotia | Italy |
| Nunavut | Kazakhstan |
| Ontario | Kenya |
| Prince Edward Island | Luxembourg |
| Saskatchewan | Former Yugoslav Republic of Macedonia |
| Yukon | Malawi |
| Cape Verde | Malaysia |
| Central African Republic | Malta |
| Chile | Mexico |
| Territory of Christmas Island | Monaco |
| Territory of Cocos (Keeling) Islands | Morocco |
| Columbia | Nauru |
| Cook Islands | Netherlands |
| Croatia | New Zealand |
| Cyprus | Niger |
| | Niue |

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|------------------|--------------------------------|
| Norway | Switzerland |
| Pakistan | Tanzania (excluding Zanzibar) |
| Papua New Guinea | Trinidad and Tobago |
| Philippines | Tunisia |
| Poland | Turkey |
| Portugal | United Kingdom (including |
| Romania | Alderney, Gibraltar, |
| Sierra Leone | Guernsey, Isle of Man, Jersey |
| Singapore | and Sark) |
| Slovak Republic | United States of America |
| Slovenia | Uruguay |
| South Africa | Western Samoa |
| Spain | Federal Republic of Yugoslavia |
| Sri Lanka | (Serbia and Montenegro) |
| Suriname | Zambia |
| Sweden | Zimbabwe |

Note

1. Made by the Governor-General on *the Commonwealth of Australia Gazette* on *2000*, and notified in *2000*.

25 May
26 May