

Child Support (Assessment) Amendment Regulations 2002 (No. 1) 2002 No. 340

EXPLANATORY STATEMENT

Statutory Rules 2002 No. 340

Issued by the Authority of the Minister for Children and Youth Affairs

Child Support (Assessment) Act 1989

Child Support (Assessment) Amendment Regulations 2002 (No. 1)

Section 164 of the *Child Support (Assessment) Act 1989* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Australian Taxation Office (ATO) has reassessed the taxable incomes of about 60,000 taxpayers involved in more than 260 variations of tax effective schemes. Child support assessments based on taxable incomes amended by the ATO were reassessed retrospectively under subsection 56(3) of the Act using the amended taxable incomes.

On 14 February 2002 the Commissioner of Taxation announced a final settlement offer to investors in these tax effective schemes. These investors may have large taxation liabilities to meet, even after accepting the Commissioner's offer and some of these investors are also child support payers with large child support debts. The ATO's approach to tax deductions claimed by investors in some tax effective schemes has been affirmed by the Federal Court. Other decisions of that court are imminent.

The purpose of the proposed Regulations is to amend the *Child Support (Assessment) Regulations 1989* by prescribing particular circumstances in Regulation 7 requiring the Child Support Registrar ('the Registrar' who is the General Manager of the Child Support Agency) to use an amended taxable income of taxpayers involved in a mass marketed tax effective scheme to calculate both the amount of child support payable by a liable parent and the amount which an eligible carer maybe entitled to receive.

The Registrar cannot, under current legislative arrangements, reassess the child support assessment of investors who settle with the ATO when the ATO makes an amendment reducing the investor's taxable income (although the Registrar is obliged to reassess child support following an ATO amendment increasing the taxable income due to avoidance of tax). The proposed Regulations rectify this situation, and allow the child support assessment to be correspondingly reduced.

The proposed Regulations are retrospective in effect in order to apply equally to all investors who have settled with the ATO regardless of the date since 14 February 2002 that the consequential amendment to their taxable income has been or will be effected by the ATO. Retrospective operation of the proposed Regulations satisfies the requirements of subsection 48(2) of the *Acts Interpretation Act 1901* in that no disadvantage to the rights of the investors results and reduced child support liability applies to the investors.

The proposed Regulations are taken to have commenced on 14 February 2002.