

Child Support (Assessment) Amendment Regulations 2004 (No. 1) 2004 No. 122

EXPLANATORY STATEMENT

Statutory Rules 2004 No. 122

Issued by the Authority of the Parliamentary Secretary to the Minister for Family and Community Services

Child Support (Registration and Collection) Act 1988
Child Support (Assessment) Act 1989

Child Support (Registration and Collection) Amendment Regulations 2004 (No. 2)
Child Support (Assessment) Amendment Regulations 2004 (No. 1)

Section 125 of the *Child Support (Registration and Collection) Act 1988* (the Registration and Collection Act) and section 164 of the *Child Support (Assessment) Act 1989* (the Assessment Act) provide that the Governor-General may make regulations, not inconsistent with those Acts, prescribing matters required or permitted by those Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to those Acts.

The purpose of the Regulations is to:

- allow for electronic service of notices under the Registration and Collection Act and the Assessment Act; and
- reduce the incidence of small amounts paid to persons being negated by high transaction costs by increasing the prescribed minimum amounts that may be disbursed to persons under the Registration and Collection Act.

Electronic communications

Section 9 of the *Electronic Transactions Act 1999* (the ET Act) allows the Australian Government to provide information to a person by means of electronic communication where the information is required or permitted to be provided in writing and the person consents to receiving information in this way (with some exceptions). However, the *Child Support (Registration and Collection) Regulations 1988* (the Registration and Collection Regulations) and the *Child Support (Assessment) Regulations 1989* (the Assessment Regulations) do not provide for electronic communication. Regulation 14 of the Registration and Collection Regulations and regulation 11A of the Assessment Regulations currently allow for a notice or other communication by the Registrar to be served on a person in the following ways:

- by personal service; or
- by leaving it at the person's address; or
- by sending it by pre-paid post to the person's address.

Although it may be argued that the ET Act, in particular section 9, applies to the provision of information under regulation 14 of the Registration and Collection Regulations and regulation 11A of the Assessment Regulations without the need to specifically amend these Regulations,

the Child Support Agency (CSA) sought amendments to remove any doubt about its ability to use electronic communications.

The purpose of the Regulations is to amend regulations 14 and 15 of the Registration and Collection Regulations and regulations 11A and 11B of the Assessment Regulations so that both allow for service of notices by electronic communication in accordance with the ET Act. The Regulations also make consequential amendments to accommodate new subsections.

The *Electronic Transactions Regulations 2000* prescribe a range of provisions of Commonwealth legislation which are exempt from specified provisions of the ET Act. In particular, Part 6A of the Assessment Act, which covers departures by the Child Support Registrar from the administrative assessment of child support, is exempt from sections 9, 10 and 11 of the ET Act (in effect, where the Registrar departs from administrative assessment of child support, the service of documents, including documents requiring the Registrar's signature and the production of documents may not be validly achieved by electronic means.) The Regulations do not impact on this arrangement.

Although the CSA does not intend to significantly change its methods of service delivery, there are some circumstances, particularly where a parent resides overseas, where electronic communication would provide the best client service.

Disbursement of collected amounts

Section 76 of the Registration and Collection Act provides for the entitlement of a payee of a registered maintenance liability to be paid collected amounts. Subsection 76(2) of the Act provides, subject to the regulations, where the amount that a person is entitled to be paid in relation to a registered maintenance liability is less than the amount prescribed, that the person is not entitled to be paid that amount at that time (such small amounts are aggregated and disbursed when the accrued balance passes the minimum prescribed amount).

Subregulation 6(1) of the Registration and Collection Regulations provides that the prescribed amount for the purposes of subsection 76(2) of the Registration and Collection Act is \$1.00. The effect is that the CSA must disburse all amounts of \$1 or more held for payees, whether the payee is in Australia or overseas.

Disbursements are made by direct credit into the payee's bank account or by cheque. While the cost per disbursement by direct credit is \$0.10 (whether the payee is within Australia or overseas), the cost of disbursement by cheque to a payee within Australia is \$2.06 and disbursements overseas by cheque cost \$10.10 per disbursement. The cost of disbursement is, in some cases, more than the actual amount of the disbursement. In addition, the transaction costs for the payees may also constitute, in some cases, a significant portion of the amount of the disbursement. This is not cost effective. To address this, the Regulations adjust the prescribed amount for the purposes of subsection 76(2) of the Registration and Collection Act.

The Regulations amend regulation 6 of the Registration and Collection Regulations by:

- replacing the prescribed amount of \$1 with an amount of \$5 in the case of a payment made in Australia, whether that payment is made by direct credit or cheque;
- allowing for a prescribed amount of \$5 in the case of an electronic payment made by arrangement to an overseas payee; and

- allowing for a prescribed amount of \$50 in any other case (eg payments that are required to be paid by cheque to an overseas payee).

Paragraph 6(2)(b) of the Registration and Collection Regulations provides that the prescribed minimum amount does not apply in cases where no further amounts are payable to the person in relation to a registered maintenance liability. While this arrangement will continue, the opportunity has been taken to amend paragraph 6(2)(b) to refer to cases where no further payments are expected to be payable.

Both sets of Regulations commenced on the date of their notification in the *Gazette*.