

EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 348

Issued by the Authority of the Minister for Families, Community Services and
Indigenous Affairs

Child Support (Registration and Collection) Act 1988

*Child Support (Registration and Collection) (Overseas-Related Maintenance
Obligations) Amendment Regulations 2006 (No. 1)*

Section 125 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

In addition, section 124A provides, in part, that the Governor-General may make regulations, which may be inconsistent with the Act, which provide for, and in relation to:

- (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.

The Act has been extensively amended by the *Child Support Legislation (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006* (the Amending Act), which was passed by the Senate on 9 November 2006. In particular, the Amending Act removes many of the provisions dealing with objections to, and review of, child support decisions from the *Child Support (Assessment) Act 1989* (the Assessment Act). In addition, the Social Security Appeals Tribunal (the SSAT) is given jurisdiction to review child support decisions. The Act, as a result of the Amending Act, also now sets out the process for seeking review by the courts of an SSAT decision.

The purpose of the Regulations is to amend the *Child Support (Registration and Collection) (Overseas-related Maintenance Obligations) Regulations 2000* (the Principal Regulations) to reflect the changes made to the Act by the Amending Act.

The Principal Regulations extend the operation of the Act to certain additional registrable maintenance liabilities that are overseas-related maintenance liabilities. That is, they extend the Act's operation to 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.

The Principal Regulations also recognise that, if a person who is a party to an overseas-related maintenance obligation to which the Principal Regulations relate is overseas, communication between that person and the Registrar will take more time than for normal child support assessments. Accordingly, the Principal Regulations extend, for some matters, the periods of time in which the Registrar or a person must do something.

These Regulations generally continue the established extensions of these periods of time to cover the new provisions inserted by the Amending Act and make sure the new review provisions apply to these overseas cases, as did the old review provisions.

These Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

These Regulations commence on 1 January 2007, to coincide with the commencement of the amendments to the Act made by the Amending Act.

Consultation

No consultation in relation to these Regulations was undertaken because they do not have a direct or significant indirect impact on business and do not restrict competition. Furthermore, the amendments are of a minor or machinery nature, not substantially affecting existing arrangements.

Details of the Regulations

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Child Support (Registration and Collection) (Overseas-related Maintenance Obligations) Amendment Regulations 2006 (No. 1)*.

Regulation 2 – Commencement

This regulation provides that the Regulations commence on 1 January 2007, to coincide with the commencement of Schedules 3 and 4 of the Amending Act.

Regulation 3 – Amendment of *Child Support (Registration and Collection) (Overseas-related Maintenance Obligations) Regulations 2000*

This regulation provides that the Principal Regulations are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] amends regulation 5 by inserting several new definitions.

‘Assessment Overseas Regulations’ means the *Child Support (Assessment) (Overseas-related Maintenance Obligations) Regulations 2000*.

‘Assessment-related decision’ means a decision set out in any of items 9 to 15 of the table in subsection 80(1) of the Act that relates to an application for administrative assessment of child support made under:

- regulation 11 or 12 of the Assessment Overseas Regulations; or
- made under section 25 of the Assessment Act by a person seeking payment of child support from a person from whom payment may be sought under regulation 14 of the Assessment Overseas Regulations.

Most of the objection and review provisions will be moved from the Assessment Act to the Act. It is appropriate, therefore, that the Principal Regulations deal with the overseas-related maintenance obligations aspects of matters, whether the obligation arises under the Act or the Assessment Act. This definition is necessary in order to explain whether a particular regulation within the Principal Regulations is referring to a matter arising under the Act or the Assessment Act.

Item [2] would amend regulation 5, by inserting a definition of ‘registrable maintenance liability-related decision’. A registrable maintenance liability-related decision means a decision against which various people may object, as set out in any of items 1 to 8 of the table in subsection 80(1) of the Act, that relates to a registrable maintenance liability under the Act. This definition is necessary in order to explain whether a particular regulation within the Principal Regulations is referring to a matter arising under the Act or the Assessment Act.

Item [3] substitutes the heading of regulation 10 with ‘Periods within which the Registrar must act – registrable maintenance liabilities’. This is a technical amendment to reflect the matters that regulation 10 now covers.

Item [4] is a technical amendment that amends regulation 10 by substituting paragraphs 10(1)(g), (h) and (i). These changes are made to reflect changes made to the Act by the Amending Act. The substance and intention of regulation 10 is not changed by **item [4]**. That is, regulation 10 continues to extend, for the sections listed in regulation 10, the period during which the Child Support Registrar must act in relation to registrable maintenance liabilities, to 90 days. Paragraph 10(1)(i) is removed. This is because section 101, which deals with consideration of extensions of time by the Child Support Registrar and appeals to the Administrative Appeals Tribunal, is being repealed, but not replaced, by the Amending Act.

Item [5] inserts after regulation 10 a new regulation 10A. Regulation 10A deals with the period within which the Registrar must act for assessment-related decisions.

Subregulation 10A(1) provides that regulation 10A applies to consideration of applications for extensions of time for lodging objections, and considerations of objections by the Registrar in relation to assessment-related decisions.

Subregulation 10A(2) provides that the time period within which the Registrar is required to act is 90 days, rather than 60 days.

Subregulation 10A(3) is a deeming provision, which provides that if the Registrar does not make a decision within 90 days after the extension application was made, the Registrar is taken to have refused it either at the end of 90 days after receiving further requested information, or at the end of the required period. Subregulation 10A(3) is consistent with the time period after which the Registrar is deemed to have made a decision in subregulation 10(3).

Regulation 10A mirrors regulation 10, and ensures that the extension of time for objections for overseas-related maintenance obligations extends to assessment-related decisions, as well as to registrable maintenance liabilities.

Item [6] substitutes regulations 37 and 38, and inserts new regulations 37A, 38A and 38B.

The amendments to regulation 37 ensure that Parts VII and VIIA of the Act apply in relation to a registrable maintenance liability under regulation 11 (that is, an overseas-related maintenance liability). Subregulation 37(2) provides that a payer or payee covered by regulation 11 of the Principal Regulations may lodge an objection to a registrable maintenance liability-related decision (the original registrable maintenance liability decision). Subregulation 37(2) also provides that, if a person is aggrieved by a later decision on an objection, the person may apply to the SSAT for review of the decision, or appeal to a court, on a question of law from a decision of the SSAT in relation to the original registrable maintenance liability decision.

New regulation 37A ensures that Parts VII and VIIA of the Act apply to objections and appeals by an overseas authority, that is, applications made under regulation 12 of the Assessment Overseas Regulations. Subregulation 37A(2) provides that a payer or payee covered by regulation 12 may lodge an objection under subsection 80(1) of the Act to a decision set out in items 9 to 15 of the table in subsection 80(1). Items 9 to 15 of the table deal with applications for administrative assessment, which are covered by the Assessment Act. Subregulation 37A(2) also provides that, if a person is aggrieved by a later decision on an objection, the person may apply to the SSAT for review of the decision, and appeal to a court, on a question of law, under section 110B of the Act.

Regulations 37 and 37A cover the same matters, but are divided into two separate regulations to reflect the different subject matter that is dealt with by the Act and the Assessment Act. Before the commencement of Schedule 3 to the Amending Act, objections and appeals matters dealt with in regulation 37A were included in regulation 13 of the Assessment Overseas Regulations. However, because most of the objections and appeals matters have been moved from the Assessment Act to the Act, it is more appropriate for those matters to be dealt with in the Principal Regulations.

Regulation 13 of the Assessment Overseas Regulations is amended to reflect this change.

Regulation 38 deals with periods within which a person must act in relation to registrable maintenance liability-related decisions. Subregulation 38(1) provides that the time period within which a person is required to do an act under certain sections of the Act is extended to 90 days after the relevant document is served on the person. The acts for which the time period is extended to 90 days under subregulation 38(1) are:

- to make an objection to a decision other than an appealable collection refusal decision (subsection 81(1));
- for the other party may lodge written notice in opposition to, or support of, an objection (section 86); and
- to apply for review within a time limit (section 90).

Subregulation 38(2) provides that the time period within which a person is required to lodge an objection to an appealable collection refusal decision (subsection 81(2)) is extended from 28 days to 90 days after the decision first comes to the person's notice.

New regulation 38A covers the matters previously covered by regulation 18 of the Assessment Overseas Regulations. Accordingly, regulation 38A only applies to assessment-related decisions. Before the commencement of the Amending Act, the matters covered by regulation 18 of the Assessment Overseas Regulations (that is, extending to 90 days the time limits on lodging objections to a decision) were dealt with by the Assessment Act. However, because most of the objection and appeal matters have been moved from the Assessment Act to the Act, it is more appropriate for those matters to be dealt with in the Principal Regulations. Regulation 18 of the Assessment Overseas Regulations is repealed by the *Child Support (Assessment) (Overseas-related Maintenance Obligations) Amendment Regulations 2006 (No. 1)*.

Regulation 38A includes a reference to section 86, which provides that the other party may oppose or support an objection, and section 90, which sets out the time limit on applications for review. References to the equivalent sections in the Act, before it was amended by the Amending Act, were not previously included in regulation 18. This change, therefore, extends the operation of regulation 38A from what was previously covered by regulation 18 of the Assessment Overseas Regulations. This change ensures that regulation 38A is consistent with regulation 38. However, regulation 38A does not refer to objections relating to appealable collection refusal decisions under subsection 81(2), to which regulation 38 does refer. This is because appealable collection refusal decisions only relate to the Act, and are thus not relevant for assessment-related decisions.

Regulations 38 and 38A cover the same matters, but are divided into two separate regulations to reflect the different subject matter that is dealt with by the Act and the Assessment Act.

New regulation 38B extends the period within which the SSAT Executive Director must make a decision on an extension application under section 91 of the Act.

Subregulation 38B(1) provides that regulation 38B applies to both registrable maintenance liability-related decisions and assessment-related decisions.

Subregulation 38B(2) extends the SSAT Executive Director's time period for responding to 90 days. Under subsection 92(1) of the Act, this time period, for matters that are not covered by the Principal Regulations, is 60 days after the SSAT receives the application.

Subregulation 38B(3) is a deeming provision, which provides that if the SSAT Executive Director does not make a decision within 90 days after the extension application was made, the SSAT Executive Director is taken to have refused it either at the end of 90 days after receiving further requested information, or at the end of the required period. Subregulation 38B(3) is consistent with the time period after which the Registrar is deemed to have made a decision in subregulation 10(3).

The insertion of regulation 38B ensures that the intention of the Principal Regulations to extend the time period for overseas-related maintenance obligations also applies to acts by the SSAT.

Item [7] omits from regulation 40 the words 'given to a person under section 80' and substitutes 'served on a person under section 42C'. **Items [8], [9]** and **[10]** make the same change in subregulations 41(2), 41(3) and 42(2) respectively. This is a technical amendment to reflect the change made in the Act by the Amending Act that the Registrar must now serve notices under section 42C, rather than under section 80.