

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 99

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

Child Support (Registration and Collection) Act 1988

Child Support (Registration and Collection) Amendment Regulations 2008 (No. 1)

The arrangements for collection of child support set out in the *Child Support (Registration and Collection) Act 1988* (the Act) will be amended by the *Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006* (the Amending Act) from 1 July 2008.

Section 125 of the Act provides, in part, 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.

The *Child Support (Registration and Collection) Regulations 1988* (the Principal Regulations) prescribe matters relevant to the registration and collection of child support liabilities.

The Regulations amend the Principal Regulations to reflect changes being made to the Act by the Amending Act, including changed powers for collection of child support by deduction from social security payments, and new powers for collection by deduction from Department of Veterans' Affairs payments.

The Regulations also omit various redundant regulations from the Principal Regulations.

Details of the Regulations are set out in the [Attachment](#).

The Regulations commence on 1 July 2008.

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 altering existing arrangements.

Regulatory Impact Analysis

The amendments to the Principal Regulations are of a minor or machinery nature and do not substantially alter the existing arrangements.

Details of the *Child Support (Registration and Collection) Amendment Regulations 2008 (No. 1)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Child Support (Registration and Collection) Amendment Regulations 2008 (No. 1)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on 1 July 2008, to coincide with the changes to collection effected by the *Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006* (the Amending Act) from 1 July 2008.

Regulation 3 – Amendment of the *Child Support (Registration and Collection) Regulations 1988*

This regulation provides that the *Child Support (Registration and Collection) Regulations 1988* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] omits regulation 5C. That provision relates to section 39 of the Act as amended by the Amending Act from 1 July 2008 so that it no longer provides for regulations. The regulation is therefore redundant.

Item [2] substitutes a new heading for regulation 5D. This reflects the changed structure of section 71C of the Act, as amended by the Amending Act from 1 July 2008.

Item [3] makes amendments to regulation 5D to reflect the fact that from 1 July 2008 regulations are required for paragraph 71C(1)(b) of the Act under the new structure of section 71C rather than for paragraph 71C(2)(a).

Item [4] substitutes regulation 5E, with changes to reflect the changed approach to the minimum rate of child support under section 66 of the *Child Support (Assessment) Act 1989* (the Assessment Act) from 1 July 2008. For the purposes of paragraph 72AA(1)(b) of the Act, the regulations may prescribe the rate of deduction the Registrar may set out in a notice given to the Secretary, requiring the Secretary to deduct from social security pensions or benefits amounts in respect of a parent's enforceable maintenance liabilities. The amount which subregulation 5E(1) prescribes for this purpose is the lesser of the parent's enforceable maintenance liability, and 3 times the 'minimum rate' (defined as discussed below). This increase reflects the fact that, under the Assessment Act from 1 July 2008, a parent's annual rate of child support may be 3 times the minimum annual rate of child support where the parent has 3 child support cases.

Additionally, the amount of the deduction is calculated by reference to an ‘instalment period’ (defined as discussed below), (rather than by reference to a week as provided by current regulation 5E). This change allows the calculation of the rate of deduction to match the period of payment of the social security pension or benefit determined by the Secretary. It would also minimise rounding discrepancies. Indexation of the minimum annual rate of child support occurs annually under subsection 66(5) and section 153A of the Assessment Act, resulting in the rate not being a round amount in whole dollars.

Similarly, subregulation 5E(2) prescribes the periodic deduction for the purposes of paragraph 72AA(2)(d) of the Act, in relation to all of a parent’s child support debts. The rate which is prescribed is the lesser of 3 times the minimum rate less any amount to be deducted under paragraph 72AA(1)(b) of the Act in respect of ongoing liability, and the amount of the debt that has not been paid.

Subregulation 5E(3) sets out definitions for the purposes of regulation 5E.

Instalment period means the period for a social security periodic payment determined under paragraph 43(1)(b) of the *Social Security (Administration) Act 1999*. In general, this will be a fortnightly period.

Minimum annual rate of child support means the amount set out in subsection 66(5) of the Assessment Act as if that amount applied in a calendar year in which a periodic deduction is made, rather than by reference to the year in which the child support period started.

Minimum rate defines an amount by reference to an instalment period, by undertaking 4 steps to break the annual rate down into a rate by reference to the instalment period, and then rounding the amount to the nearest cent.

New regulation 5EA is inserted by item [4], for the purposes of new section 72AC of the Act applying from 1 July 2008. Section 72AC permits the Registrar to give a notice to the Repatriation Commission, requiring the Commission to make deductions from a parent’s Department of Veterans’ Affairs payment. Regulation 5EA is in very similar terms to regulation 5E, (providing for deduction of the lesser of the amount of the enforceable maintenance liability and 3 times the ‘minimum rate’, defined as discussed below), because payments made by the Department of Veterans’ Affairs have very similar characteristics to those made under the social security law.

Subregulation 5EA(1) prescribes, for the purposes of paragraph 72AC(2)(c) of the Act, the rate of deduction the Registrar may set out in a notice given to the Repatriation Commission, requiring the Commission to deduct from Department of Veterans’ Affairs payments amounts in respect of a parent’s enforceable maintenance liabilities. The amount prescribed for this purpose is the lesser of the parent’s enforceable maintenance liability, and 3 times the minimum rate.

Additionally, the amount is calculated by reference to a ‘pension period’ (defined as discussed below). This allows the calculation of the rate of deduction to match the

period of payment of the pension or allowance determined by the Repatriation Commission.

Similarly, subregulation 5EA(2) prescribes the periodic deduction for the purposes of paragraph 72AC(2)(d) of the Act, in relation to all of a parent's child support debts. The rate prescribed is the lesser of 3 times the minimum rate, less any amount to be deducted under paragraph 72AC(2)(c) of the Act in respect of ongoing liability, and the amount of the debt that has not been paid.

Subregulation 5EA(3) sets out the following definitions for the purposes of regulation 5EA.

Minimum annual rate of child support means the amount set out in subsection 66(5) of the Assessment Act as if that amount applied in a calendar year in which a periodic deduction is made, rather than by reference to a child support period.

Minimum rate defines an amount by reference to an instalment period, by undertaking 4 steps to break the annual rate down into a rate by reference to the instalment period, and then rounding the amount to the nearest cent.

Pension period has the same meaning as in section 5Q of the *Veterans' Entitlements Act 1986*. In general, this will be a fortnightly period.

Item [5] relocates regulation 8A as regulation 7A to maintain the order of regulations by reference to the Act provisions to which they relate.

Item [6] substitutes Schedule 3, setting out provisions to which subsection 103T(1) of the Act does not apply. The Schedule duplicates the terms of current Schedule 1 to the Principal Regulations, with some additions as the result of the amendments to the Act and the Assessment Act from 1 July 2008, for the purposes of regulation 7A. Part 1 sets out provisions of the Act and Part 2 sets out provisions of the Assessment Act which are not to be available to the SSAT.