

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Social Services

Child Support (Assessment) Act 1989

Child Support (Assessment) Amendment (Territories) Regulation 2016

The *Child Support (Assessment) Act 1989* (the Act) provides for the assessment of child support to ensure that children receive a proper level of financial support from their parents.

The *Child Support (Assessment) Regulations 1989* (the Principal Regulations) prescribe matters relevant to the assessment of the level of parents' child support liabilities for their children.

Section 164 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, or necessary or convenient to be prescribed for carrying out or giving effect to the Act, and in particular may make regulations prescribing penalties not exceeding a fine of \$1000 for offences against the regulations.

Section 24 of the Act sets out the children in relation to whom an application may be made under Part 4. Relevantly subsection 24(1) provides that an application may only be made if the child is an *eligible child*, is under 18 years of age, not a member of a couple and the child is present in Australia on the day on which the application is made or the child is an Australian citizen, or ordinarily resident in Australia on that day.

At section 5 of the Act, *eligible child* is defined as having the meaning given by Part 3. This Part sets out children who may be covered by the Act, with section 18 stating that the Act only applies to children who are *eligible children*. Sections 19, 20 and 21 outline circumstances where a child is considered to be an eligible child. Section 22 of the Act sets out that the regulations may provide that children who are under the care (however described) of a person under a child welfare law are not *eligible children*.

The purpose of the Regulation is to repeal and substitute Regulation 4 of the Principal Regulations which set out the exclusion of certain children as *eligible children* under the Act.

Amendments to extend the operation of the child support legislation to Norfolk Island, Christmas Island and Cocos (Keeling) Islands from 1 July 2016, as made by the *Norfolk Island Legislation Amendment Act 2015* and the *Territories Legislation Amendment Act 2016*, have prompted the removal of these territories from the Principal Regulations to ensure consistency between the child support legislation and the child support regulations.

The *Child Support (Assessment) Amendment (Territories) Regulation 2016* (the Regulation) would repeal existing Regulation 4 of the Principal Regulations and substitute a new Regulation 4 to remove references to Norfolk Island, Christmas Island and Cocos (Keeling) Islands to reflect the inclusion of a resident of these external territories in the meaning of *resident of Australia* in the Act from 1 July 2016.

This would ensure that a person who is caring for a child in these territories under a child welfare law would be able to make an application for child support under the Act because the child would fall within the meaning of an eligible child. An application by a non-parent carer of a child would be subject to the limitation in section 26A of the Act. This limitation provides that the non-parent carer may apply for child support for the child only if the non-parent carer is a relative of the child.

The Regulation is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

Commencement

The Regulation would commence on 1 July 2016.

Consultation

The Department of Social Services has consulted with the Department of Human Services on this proposed amendment.

Regulatory Impact Analysis

A Regulatory Impact Statement is not required as the Regulation does not impose any new obligations on an individual or business.

Explanation of the provisions

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Child Support (Assessment) Amendment (Territories) Regulation 2016*.

Section 2 – Commencement

This section provides for the whole of the Regulation to commence on 1 July 2016.

Section 3 – Authority

This section provides that the *Child Support (Assessment) Amendment (Territories) Regulation 2016* is made under the *Child Support (Assessment) Act 1989*.

Section 4 – Schedule(s)

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Item [1] – new Regulation 4 to the *Child Support (Assessment) Regulations 1989*

Item 1 repeals Regulation 4 to the *Child Support (Assessment) Regulations 1989* and substitutes a new Regulation 4 – Exclusion of certain children, which states that for subsection 22(1) of the Act, a child is not an eligible child if he or she is in the custody of, or under the guardianship, care and control or supervision of, a person under a child welfare law of: (a) Western Australia; or (b) South Australia.

This new Regulation 4 removes references to a child welfare law in force in Norfolk Island or Christmas Island or Cocos (Keeling) Islands to reflect the changes made to extend the operation of the child support legislation to these territories from 1 July 2016.

Statement of Compatibility with Human Rights

Child Support (Assessment) Amendment (Territories) Regulation 2016

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

A resident of Norfolk Island, Christmas Island, and Cocos (Keeling) Islands will be a *resident of Australia* for child support purposes from 1 July 2016, due to amendments made to the *Child Support (Assessment) Act 1989* (the CSA Act) and the *Child Support (Registration and Collection) Act 1988*. The amendments to the child support legislation were made by the *Norfolk Island Legislation Amendment Act 2015* and the *Territories Legislation Amendment Act 2016*. The extension of the operation of the child support legislation to these external territories will align their residents with residents on mainland Australia.

Due to the extension of the operation of the child support legislation to Norfolk Island, Christmas Island, and Cocos (Keeling) Islands from 1 July 2016, these external territories will be removed from Regulation 4 of the *Child Support (Assessment) Regulations 1989* (the Regulations).

Regulation 4 of the Regulations prescribes that certain children who are under the care of a person under a child welfare law who are resident in the prescribed State/Territories are not eligible children for the purposes of section 22 of the CSA Act.

This Legislative Instrument makes an amendment to regulation 4 to remove the references to Norfolk Island, Christmas Island, and Cocos (Keeling) Islands, and will make children in these territories who are under the care of a person under a child welfare law an eligible child for the purposes of section 22 of the CSA Act.

Human rights implications

This Legislative Instrument engages the following rights:

- Article 27 of the *Convention on the Rights of the Child*

The amendment engages the right of a child to a standard of living adequate for the child's development.

Article 27 of the *Convention on the Rights of the Child* recognises the right of a child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development. Countries are required to take appropriate measures to assist parents and others responsible for the child to implement this right. Countries are also required to take all appropriate measures to secure the recovery of maintenance for the child from the parents or other people having financial responsibility for the child.

The amendment is consistent with the right of the child to a standard of living adequate for the child's development as it enables a child who is resident on Norfolk Island, Christmas Island, or Cocos (Keeling) Islands who is under the care of a person under a child welfare law to be an eligible child for the purposes of section 22 of the CSA Act. This will enable a carer of an eligible child in these external territories to apply for an administrative assessment if all criteria (such as section 26A of the CSA Act) are met.

Conclusion

The Legislative Instrument is compatible with human rights because it advances the protection of human rights and, to the extent that this change limits access to child support, these limitations are reasonable and proportionate.

Minister for Social Services, the Hon Christian Porter MP