

EXPLANATORY STATEMENT

Issued by the authority of the Attorney-General

Maintenance Orders (Commonwealth Officers) Act 1966

Maintenance Orders (Commonwealth Officers) Regulations 2018

The *Maintenance Orders (Commonwealth Officers) Act 1966* (Cth) (the Act) applies state and territory laws relating to enforcement of attachment of earnings orders to the Commonwealth or a Commonwealth authority. An attachment of earnings order is an order for an employer to deduct instalments from an employee's wages for the purpose of maintenance of children, de factos, spouses or other persons.

Section 8 of the Act provides the Governor-General with authority to 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 this Act. In particular, Regulations may exclude or modify the application of state and territory laws under the Act, including exempting certain prescribed classes of moneys. Regulations may also provide for the service of orders or copies of orders on the Commonwealth or a Commonwealth authority.

Maintenance orders are primarily dealt with through the administrative child support regime or by orders under the *Family Law Act 1975* (Cth). The application of the Act, and therefore the *Maintenance Orders (Commonwealth Officers) Regulations 2018* (the Regulations), is limited to instances where maintenance orders are made under state and territory laws. This applies to two groups of individuals:

- persons who were in de facto relationships in a state or territory (other than Western Australia) and who separated prior to the commencement of the *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008* (Cth) on 1 March 2009 (or 1 July 2010 in South Australia), and
- persons in de facto relationships in Western Australia, in limited circumstances, such as de facto maintenance, maintenance of adult children of de facto couples, and in circumstances where the administrative child support scheme is not available.

The purpose of these Regulations is to provide for service of attachment of earnings and related orders under the Act, and to exempt certain classes of money from a person's earnings for the purpose of these orders.

Section 6 of the Regulations provides that, while not an exhaustive list, service may be effected in person, by post or by electronic service. The Regulations ensure consistency and clarity of service, as service of attachment of earnings and related orders under the Act is not comprehensively covered under other legislation for all Commonwealth entities. A definition of 'electronic communication' has also been inserted into section 5 of the Regulations.

Section 7 of the Regulations exempts certain classes of money from a person's 'earnings' for the purpose of attachment of earnings orders directed to the Commonwealth or Commonwealth authorities by state and territory courts. The relevant classes of money are:

- moneys payable under the *Veterans' Entitlements Act 1986* (Cth), and
- moneys payable under the *Military Rehabilitation and Compensation Act 2004* (Cth).

This regulation maintains the exemptions for veterans' payments that were provided for in the *Maintenance Orders (Commonwealth Officers) Regulations 1969*. This exemption ensures that deductions cannot be made from these classes of moneys under attachment of earnings orders, as they are not classified as earnings.

The Attorney-General's Department has consulted with the Department of Veterans' Affairs on these exemptions, as the agency responsible for veterans' policy. The Department of Veterans' Affairs has advised that the Military Rehabilitation and Compensation Commission and the Repatriation Commission are reviewing veterans' payment exemptions that apply to maintenance orders across a range of Commonwealth legislation, with a view to ensuring consistency. The review is ongoing and these Regulations will form part of that consideration.

The Office of Best Practice Regulation (OBPR) was consulted and advised that a Regulation Impact Statement is not required. The OBPR reference is ID: 21515.

Details of the Regulations are set out in Attachment A.

The Regulations are 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*. A Statement of Compatibility with Human Rights is set out in Attachment B.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* (Cth).

The Regulations commence on the day after registration on the Federal Register of Legislation.

Details of the Maintenance Orders (Commonwealth Officers) Regulations 2018

Section 1 – Name

This section provides that the title of the Regulations is the *Maintenance Orders (Commonwealth Officers) Regulations 2018*.

Section 2 – Commencement

This section provides for the Regulations to commence the day after the instrument is registered.

Section 3 – Authority

This section provides that the *Maintenance Orders (Commonwealth Officers) Regulations 2018* are made under the *Maintenance Orders (Commonwealth Officers) Act 1966*.

Section 4 – Schedules

This section specifies 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.

Section 5 - Definitions

This section defines terms used in the Regulations. In the Regulations:

1. references to *Act* are to be interpreted as being references to the *Maintenance Orders (Commonwealth Officers) Act 1966*.
2. references to *applied law* are to be interpreted as being references to the provisions of a law of a State or Territory applying under the *Maintenance Orders (Commonwealth Officers) Act 1966*.
3. references to *electronic communication* are to be interpreted as having the same meaning as in the *Electronic Transactions Act 1999*.

Section 6 – Service of orders on the Commonwealth or a Commonwealth authority

This section provides for the process for service of attachment of earnings and related orders, made under the provisions of a law of a state or territory applying under the *Maintenance Orders (Commonwealth Officers) Act 1966*, on the Commonwealth and Commonwealth authorities. This outlines that service may be effected in person, by post or by electronic service. This is intended to be a facilitative, but not exhaustive, means of service.

Section 7 – Classes of moneys exempt from application of applied laws

This section exempts certain classes of moneys from the application of the provisions of state and territory law to the Commonwealth or Commonwealth authorities relating to earnings.

These classes of money include:

- moneys payable under the *Veterans' Entitlements Act 1986*, and
- moneys payable under the *Military Rehabilitation and Compensations Act 2004*.

Schedule 1 – Repeals

This section repeals the *Maintenance Orders (Commonwealth Officers) Regulations 1969*.

Statement of Compatibility with Human Rights

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

Maintenance Orders (Commonwealth Officers) Regulations 2018

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

The *Maintenance Orders (Commonwealth Officers) Regulations 2018* (the Regulations) are made pursuant to section 8 of the *Maintenance Orders (Commonwealth Officers) Act 1966* (the Act). The Act applies state and territory laws relating to enforcement of attachment of earnings orders to the Commonwealth or a Commonwealth authority. An attachment of earnings order is an order for an employer to deduct instalments from an employee's wages for the purpose of maintenance orders.

Maintenance orders are primarily dealt with through the administrative child support regime or by orders under the *Family Law Act 1975* (Cth). The application of the Act, and therefore the Regulations, is limited to instances where maintenance orders are still made under state and territory laws. This applies to two groups of individuals:

- persons who were in de facto relationships in a state or territory (other than Western Australia) and who separated prior to the commencement of the *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008* (Cth) on 1 March 2009 (or 1 July 2010 in South Australia), and
- persons in de facto relationships in Western Australia, in limited circumstances, such as de facto maintenance, maintenance of adult children of de facto couples, and in circumstances where the administrative child support scheme is not available.

The purpose of the Regulations is to support the application of the Act. The Regulations outline the process for service of attachment of earnings and related orders on the Commonwealth and Commonwealth authorities. This provides that service may be effected in person, by post or by electronic service. The Regulations also exempt certain classes of moneys from a person's 'earnings', for the purpose of attachment of earnings orders directed to the Commonwealth or Commonwealth authorities by state and territory courts. The relevant classes of money are:

- moneys payable under the *Veterans' Entitlements Act 1986*, and
- moneys payable under the *Military Rehabilitation and Compensation Act 2004*.

Human rights implications

This legislative instrument engages the following rights:

- the right to social security (Article 9, International Covenant on Economic, Social and Cultural Rights (ICESCR)), and
- the rights of parents and children (Article 3, Convention on the Rights of the Child (CRC)).

The right to social security

Article 9 of the ICESCR recognises the rights of everyone to social security, including social insurance. The right to social security requires a social security system be established and that a country must, within its maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

The right to social security is engaged to the extent that, under the Regulations, moneys payable as veterans' entitlements under the *Veterans' Entitlements Act 1986* are exempt from a person's 'earnings' for the purpose of the Act.

The *Veterans' Entitlements Act 1986* provides for the payment of disability pension, war widow/ers pension, service pension, income support supplement and other benefits to eligible veterans, their dependants or both. The Regulations provide that these entitlements are not considered to be earnings for the purposes of the Act. This ensures that deductions cannot be made from veterans' entitlements. In protecting veterans' entitlements from such deductions, the Regulations are consistent with the right to social security.

While moneys payable as veterans' entitlements under the *Veterans' Entitlements Act 1986* are exempt, there may be other circumstances where the Act and Regulations apply, and deductions from a person's wages may include other forms of social security, such as pensions. This may limit the right to social security.

However, in this situation the Regulations simply provide for service of attachment of earnings orders made by state and territory courts. In effect, the Regulations facilitate the deduction of payments, as ordered by a state and territory court for the purpose of maintenance, from certain wages paid by the Commonwealth or a Commonwealth authority. The Regulations, and the Act, itself does not create additional obligations or orders.

Further, the Act and the Regulations in effect close a loophole where attachment of earnings orders would otherwise not be able to be applied to the Commonwealth by a state or territory court. This ensures equitable enforcement of attachment of earnings orders, regardless of whether a person's wage is paid by the Commonwealth or Commonwealth authority, or other individual or body. Therefore, to the extent that the Regulations may limit the right to social security, those limitations are reasonable, necessary and proportionate.

The rights of parents and children

Article 3 of the CRC requires that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. Further,

States are to ensure children such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

In relation to the rights of parents and children, it is necessary to consider the best interests of children and take into account parents' responsibilities and duties to children. Therefore, to the extent that the Regulations deal with child and spousal maintenance through attachment of earnings orders, the rights of parents and children is engaged.

Through the application of attachment of earnings orders on the Commonwealth or Commonwealth authorities, the Regulations facilitate appropriate financial support from parents being made available to children. Given that where an order for child maintenance has been made it is likely that it is in the best interests of the child for that order to be fulfilled, the Regulations protect the best interests of the child. Further, in circumstances where deductions are made from a person's wages for the purpose of child maintenance, the Regulations take into account the responsibilities and duties of parents to their children.

Without the Regulations in place, in circumstances where state and territory courts are making maintenance orders with application to the Commonwealth or Commonwealth authorities, there would be no provision for the service of attachment of earnings orders. This may impact upon the ability of courts to serve these orders and subsequently disadvantage recipients of maintenance. The Regulations are therefore consistent with the rights of parents and children, to the limited extent that it is engaged.

Conclusion

This legislative instrument is compatible with human rights because it promotes the protection of human rights, to the limited extent they are engaged.