

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Social Services

Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006

Child Support Reform (New Formula and Other Measures) Regulations 2018

Background

The *Child Support Legislation Amendment (Reform of the Child Support Scheme - New Formula and Other Measures) Act 2006* (the Act) in part, amended the *Child Support (Assessment) Act 1989* (the Assessment Act) to provide, from 1 July 2008, a new formula for assessing the level of parents' child support liabilities for their children.

Section 6 of the Act provides that the Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by the Act.

From 1 July 2008, all existing administrative assessments of child support were amended to conform with a new formula for the administrative assessment of child support under the Assessment Act.

The Regulations will repeal and replace the *Child Support Reform (New Formula and Other Measures) Regulations 2007* (the 2007 Regulations) which are due to sunset on 1 April 2018. They are remade in substantially the same form as the 2007 Regulations and continue transitional arrangements to support child support administrative assessments in place prior to 1 July 2008.

In particular, the Regulations clarify the way in which an administrative assessment is made (after 1 July 2008) where a determination or court order varying the existing formula-based assessment, and which will continue in force after 30 June 2008, is in force. The proposed Regulations also remove spent provisions to reduce the length and complexity of the Regulations.

Item 1 of Schedule 9 to the Act provides that the regulations may specify how rights and obligations arising under an order made, before 1 July 2008, by a court under Division 4 of Part 7 of the Assessment Act correspond to rights and obligations under that Act as amended by the Act and by the *Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Act 2007*.

Subsection 4(2) of the Act provides that the regulations must prescribe scales of expenses to be allowed to persons required to attend, under section 4, before the Registrar or an authorised officer to answer questions for the purposes of the Act. The Regulations prescribe such scales of expenses.

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

Commencement

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

Consultation

The Department of Human Services has been consulted and has agreed to the making of the Regulations. The Australian Bureau of Statistics (ABS) was consulted in relation to section 9 of the Regulations insofar as it relates to index numbers published by the ABS, and has agreed to the making of the Regulations. 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 Regulations implement changes made in substantive legislation, and do not have any direct impact beyond those already inherent in the legislation. The Regulations are substantially in the same form as the 2007 Regulations with spent provisions having been removed to reduce the length and complexity of the Regulations.

Regulation Impact Statement (RIS)

The Regulations do not require a Regulatory Impact Statement (RIS) and/or a Business Cost Calculator Figure. The Regulations are not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact. It is not expected that any compliance costs will be incurred by business.

Explanation of the provisions

Part 1 - Preliminary

Section 1 provides that the title of the Regulations is the *Child Support Reform (New Formula and Other Measures) Regulations 2018*.

Section 2 provides for the Regulations to commence on the day after the Regulations are registered on the Federal Register of Legislation.

Section 3 states that the authority for making the Regulations is the *Child Support Legislation Amendment (Reform of the Child Support Scheme—New Formula and Other Measures) Act 2006*.

Section 4 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 of the Regulations repeals the *Child Support Reform (New Formula and Other Measures) Regulations 2007* (the 2007 Regulations) which were due to sunset on 1 April 2018.

Section 5 defines the terms used in the Regulations as follows:

Act means the *Child Support Legislation Amendment (Reform of the Child Support Scheme—New Formula and Other Measures) Act 2006*.

amended Assessment Act means the *Child Support (Assessment) Act 1989* as amended by the Act and the Consolidation Act on, or immediately after, 1 July 2008.

amended Registration and Collection Act means the Registration and Collection Act as amended by the Act and the Consolidation Act on, or immediately after, 1 July 2008.

applicable formula, for a child, means the formula that would be applicable to working out the annual rate of child support payable for the child under Part 5 of the unamended Assessment Act, as amended by the Act and the Consolidation Act, as if the amendments provided by those Acts to come into operation on 1 July 2008, or immediately after that day, had come into operation on, or immediately after, the commencement of the old regulations.

carer means a carer entitled to child support.

carer entitled to child support has the same meaning as in the amended Assessment Act.

child support has the same meaning as in the amended Assessment Act.

child support agreement has the same meaning as in the unamended Assessment Act.

Consolidation Act means the *Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Act 2007*.

liable parent has the same meaning as in the amended Assessment Act.

old regulations means the *Child Support Reform (New Formula and Other Measures) Regulations 2007*.

payee has the same meaning as in the amended Registration and Collection Act.

payer has the same meaning as in the amended Registration and Collection Act.

Registrar has the same meaning as in the amended Assessment Act.

Registration and Collection Act means the *Child Support (Registration and Collection) Act 1988*.

transitional administrative assessment means an administrative assessment made, or amended, by the Registrar under subregulation 7(1) of the old regulations that was in force during the transition period.

Note: Subregulation 7(1) of the old regulations was repealed by the *Tribunal Legislation Amendment (Amalgamation) Regulations 2015*.

transitional agreement: see section 10.

transitional departure determination means a departure determination made by the Registrar under subregulation 9(1) of the old regulations that was in force during the transition period.

Note: Subregulation 9(1) of the old regulations was repealed by the *Tribunal Legislation Amendment (Amalgamation) Regulations 2015*.

transition period means the period beginning on the commencement of the old regulations and ending at the end of 30 June 2008.

Note: The old regulations commenced on 1 January 2008.

unamended Assessment Act means the *Child Support (Assessment) Act 1989* as in force during the transition period.

Part 2 – Scale of expenses

Section 6 prescribes a scale of expenses for persons required, under subsection 4(1) of the Act, to attend before the Registrar and provide information for the purposes of the Act.

This section prescribes amounts provided for in the *High Court Rules 2004* (High Court Rules) as in force at the commencement of this section for the purposes of subsection 4(2) of the Act.

The High Court Rules are made under section 86 of the *Judiciary Act 1903*. These rules prescribe the rules of procedure in proceedings in the High Court of Australia,

and are available on the Federal Register of Legislation. Schedule 2 to the High Court Rules contains the relevant scales of expenses for the purposes of this section. Therefore, the amount prescribed by this section for witnesses' expenses would be \$266.90 per hour or part thereof for each witness.

This section also allows, if a person is required to be absent overnight from his or her place of residence, an amount as is reasonable for meals and accommodation.

Part 3 – Corresponding rights and obligations under determinations made before 1 July 2008

This Part guides the Registrar in amending an administrative assessment for the purposes of the new formula under the amended Assessment Act, where a parent's assessment under the provisions applying prior to 1 July 2008 is affected by a determination departing from the formula.

The elements of the child support formula from 1 July 2008 changed from those that applied prior to 1 July 2008. This Part identifies the most nearly corresponding part of the formula, where one is available, or directs the Registrar to continue the annual rate payable under the formula assessment as affected by the departure on 30 June 2008 as the annual rate of child support payable from 1 July 2008.

Section 7 provides that Part 3 applies if the Registrar, using the applicable formula (the new formula from 1 July 2008), makes or amends a transitional administrative assessment of child support that is subject to a transitional departure determination.

Section 8 provides the way in which a departure determination affects the Registrar's amendment of the administrative assessment, with effect from 1 July 2008. If the transitional departure determination was made under the provisions of the unamended Assessment Act in column 1, after the transition period the determination is taken to be a determination made under the provisions of the amended Assessment Act in column 2.

Section 8 provides that a liable parent, or a carer, to whom a transitional departure determination mentioned in column 1 of an item applies, has the same rights and obligations as if the transitional departure determination were a departure determination made under a provision of the amended Assessment Act mentioned in the column 2 of the item. The table in the section sets out determinations made under the unamended Assessment Act and corresponding amended Assessment Act determinations.

Section 9 supplements section 8 by dealing with determinations varying an aspect of the formula which have no equivalent after 1 July 2008. The section sets, for the duration of the determination, the annual rate of child support payable under the determination from 1 July 2008 as the rate of child support payable on 30 June 2008, with provision to index the resulting annual rate from the commencement of each subsequent child support period.

Subsection (1) identifies the transitional departure determinations that are covered by the section.

Subsection (2) sets out the changed effect of the determination after 1 July 2008.

Subsection (3) provides for the indexation of determinations resulting from the application of subsection 9(2), in accordance with section 153A of the amended Assessment Act from 1 July 2008. Subsection (3) generally duplicates the effect of subsection 153A(2) of the amended Assessment Act, except that the base indexation quarter is the index number for the March quarter of 2008, rather than the 2005 September quarter, and indexation will commence on 1 July 2009.

Subsection (4) defines the terms used in section 9 as follows:

base March quarter index number means the index number for the March quarter of 2008.

highest March quarter index number means the highest index number for a March quarter since the base March quarter index number (and including the base March quarter index number).

index number means, for a quarter, the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities and is published by the Australian Statistician for that quarter.

Subsection (5) states that, subject to subsection (6), if at any time before or after the commencement of this section the Australian Statistician has published or publishes an index number in respect of a quarter, and that index number is a substitute for a previously published index number in respect of the same quarter, then the later index number is to be disregarded for the purposes of section 9.

Subsection (6) states that if, at any time before or after the commencement of this section, the Australian Statistician has changed or changes the index reference period for the Consumer Price Index, then, for the purposes of applying this section after the change took place or takes place, the Registrar should have regard only to index numbers published in terms of the new index reference period.

Part 4 –Transitional matters for child support agreements made before 1 July 2008

Section 10 provides that this Part applies to a child support agreement that has been reviewed and determined to be binding by the Registrar under subitems 74(1) and (2) of Schedule 5 to the Act during the transition period.

Subitems 74(1) and (2) of Schedule 5 to the Act provide for the Registrar to make a decision to continue or end child support agreements in force before or after 1 July 2008. The child support agreements that continue are defined as a 'transitional agreement.'

Section 11 provides that a liable parent, or a carer, who is a party to a transitional agreement mentioned in column 1 of an item has the same rights and obligations as if the child support agreement were made under the amended Assessment Act as described in column 2 of the item. The table in this section sets out how a transitional

agreement will translate into a child support agreement made under the amended Assessment Act, based on the effect of that particular transitional agreement.

Part 5 – Transitional matters for court orders made before 1 July 2008

This Part provides the way in which a court order in force prior to 1 July 2008 affects the Registrar's amendment of the administrative assessment, with effect from 1 July 2008. The Regulations clarify that as far as is practicable, the Registrar must ensure that the administrative assessment confers on a liable parent or a carer bound by an order the same rights and obligations under the administrative assessment which they would have if there were a corresponding amended Assessment Act order.

Section 12 provides that this Part is made for the purposes of item 1 of Schedule 9 to the Act. This section applies to a transitional administrative assessment if an order has been made by a court in relation to the assessment under section 118 of the unamended Assessment Act during the transition period and the Registrar, using the applicable formula, makes or amends the assessment to give effect to the order.

A note to section 12 states that a liable parent or carer may apply to a court under section 116 of the unamended Assessment Act in relation to the Registrar's notice of an administrative assessment of child support under the applicable formula: see item 1(6) of Schedule 9 to the Act.

Section 13 applies if an administrative assessment is to be made or amended as a result of an order by a court under a provision of the unamended Assessment Act mentioned in an item in column 1 of the table to the section. The Registrar must ensure, as far as practicable, that the made or amended assessment confers on the liable parent or carer the same rights and obligations that would be conferred as if the order had been made under a provision of the amended Assessment Act mentioned in column 2 of the item.

Section 14 supplements section 13 by dealing with court orders with no corresponding rights and obligations in the amended Assessment Act after 1 July 2008.

Subsection (1) provides that the section applies to a transitional administrative assessment that is to be made or amended as a result of an order by a court made under the unamended Assessment Act that:

- (a) varies the child support percentage (paragraph 118(1)(b) of the unamended Assessment Act); or
- (b) varies the disregarded income amount of the carer (paragraph 118(1)(d) of the unamended Assessment Act); or
- (c) varies a factor ascertained under paragraph 54(1)(b) of that Act (paragraph 118(1)(g) of the unamended Assessment Act).

Subsection (2) provides that the Registrar must ensure, as far as practicable, that the assessment confers on the liable parent or carer bound by the order the same rights and obligations that would have been conferred if there were an order under paragraph 118(1)(a) of the amended Assessment Act varying the annual rate of child

support to the rate payable on 30 June 2008. This results in the annual rate of child support payable under the assessment as amended in accordance with the court order on 30 June 2008 continuing to be the annual rate of child support after 1 July 2008.

Subsection (3) provides that subsections 9(3) to 9(6) of the Regulations apply to the assessment as if the review of the assessment by the Registrar were a transitional departure determination to which those subsections apply.

Schedule 1 repeals the 2007 Regulations that were due to sunset on 1 April 2018. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Statement of Compatibility with Human Rights

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

Child Support Reform (New Formula and Other Measures) Regulations 2018

These 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*.

Overview of the Legislative Instrument

The *Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006* (the Act) amended the *Child Support (Assessment) Act 1989* (the Assessment Act) to provide, from 1 July 2008, a new formula for assessing the level of parents' child support liabilities for their children.

Section 6 of the Act provides that the Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by the Act.

The purpose of the *Child Support Reform (New Formula and Other Measures) Regulations 2018* (the Regulations) is to repeal and replace the *Child Support Reform (New Formula and Other Measures) Regulations 2007* (the 2007 Regulations) which cease operation on 1 April 2018 due to the sunset provisions in the *Legislation Act 2003*.

The 2007 Regulations included transitional arrangements to support administrative child support assessments in place prior to 1 July 2008. In particular, the 2007 Regulations clarified the way an administrative assessment was to be made after 1 July 2008 where a determination or court order varying the existing formula-based assessment was in force and would continue in force after 30 June 2008.

The Regulations are remade in substantially the same form as the 2007 Regulations, apart from the removal of certain spent provisions to reduce the length and complexity of the Regulations. The Regulations continue the transitional arrangements provided for in the 2007 Regulations to ensure determinations or court orders varying formula-based assessments prior to 30 June 2008 that are still in force continue to be supported by these transitional arrangements.

Human rights implications

These Regulations engage the following rights:

- Article 27 of the *Convention on the Rights of the Child* (CRC)

The Regulations engage the right of a child to a standard of living adequate for the child's development.

Article 27 of the CRC recognises the right of a child to a standard of living adequate for the child's 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 Regulations are consistent with the right of the child to a standard of living adequate for the child's development as they continue the transitional arrangements provided for in the 2007 Regulations to ensure determinations or court orders varying formula-based assessments prior to 30 June 2008 that are still in force continue to be supported by these transitional arrangements.

This reflects the responsibility of the parent(s) or others responsible for the child, to secure the conditions of living necessary for the child's development, in line with their financial capacity to do so.

Conclusion

These Regulations are compatible with human rights because they advance the protection of human rights, and to the extent that they may limit access to child support, these limitations are reasonable and proportionate.

Minister for Social Services, the Hon Dan Tehan MP