

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Social Services

*Child Support (Registration and Collection) Act 1988*

*Child Support (Registration and Collection) Regulations 2018*

### **Background**

The *Child Support (Registration and Collection) Act 1988* (the Act) provides for the registration and collection of registrable maintenance liabilities, including court orders, court registered agreements and administrative assessments of child support.

The *Child Support (Registration and Collection) Regulations 2018* (the Regulations) prescribe matters relevant to the registration and collection of child and spousal maintenance liabilities.

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, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

### **Commencement**

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

The *Child Support (Registration and Collection) Regulations 1988* (the 1988 Regulations) were due to cease operation on 1 April 2018 due to the sunset provisions in the *Legislation Act 2003*. These Regulations are made in substantially the same form as the 1988 Regulations.

### **Consultation**

The Department of Human Services, Australian Taxation Office and relevant state governments were consulted prior to and during the preparation of these Regulations. The consultation was in relation to the remaking of the 1988 Regulations and whether certain provisions should be repealed or amended to reflect changes to certain terms and procedures.

These changes are not inconsistent with the relevant legislation. They provide guidance as to certain procedural provisions of the legislation. Public consultation was therefore not considered unnecessary.

## Regulation Impact Statement (RIS)

The Regulations do not require a Regulatory Impact Statement (RIS). These 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 name of the Regulations is the *Child Support (Registration and Collection) Regulations 2018*.

**Section 2** provides that the Regulations 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 (Registration and Collection) Act 1988*.

**Section 4** provides that Schedule 1 to this instrument sets out the Australia-New Zealand Agreement.

**Section 5** provides that Schedule 2 to this instrument prescribes each foreign country, or a part of a foreign country, that is a reciprocating jurisdiction for the purposes of the definition of **reciprocating jurisdiction** in subsection 4(1) of the Act.

**Section 6** provides that Schedule 3 to this instrument prescribes the provisions of the Act that confer powers or discretions on the Registrar that the Administrative Appeals Tribunal (AAT) must not exercise for the purposes of an AAT first review.

**Section 7** provides that each instrument that is specified in Schedule 4 to this instrument is amended or repealed as set out in the applicable items in that Schedule concerned, and any other item in that Schedule to this instrument has effect according to its terms. Schedule 4 of the Regulation repeals the 1988 Regulations, which were due to sunset on 1 April 2018. The Regulations are made in substantially the same terms as the 1988 Regulations.

**Section 8** defines the terms used in the Regulations as follows:

- Note: A number of expressions used in this instrument are defined in the Act, including the following:
- (a) Assessment Act;
  - (b) child support assessment;
  - (c) Child Support Register;
  - (d) enforceable maintenance liability;
  - (e) Human Services Department.

**account** means an account, maintained by a person, to which money received on deposit by a bank, or a foreign corporation, from that person is credited.

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

**address for service**, in relation to a person, includes both:

- (a) the person's address for the physical delivery of notices; and
- (b) the person's address for the electronic delivery of notices.

**Australia-New Zealand Agreement** means the Agreement between the Government of Australia and the Government of New Zealand on Child and Spousal Maintenance done at Canberra on 12 April 2000, a copy of the text of which is set out in Schedule 1.

**bank** includes a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

**consent** has the meaning given by section 5 of the *Electronic Transactions Act 1999*.

**electronic communication** has the meaning given by section 5 of the *Electronic Transactions Act 1999*.

**Foreign Affairs Department** means the Department administered by the Minister responsible for administering the *Diplomatic Privileges and Immunities Act 1967*.

**instalment period** means the period for a social security periodic payment determined under paragraph 43(1)(b) of the *Social Security (Administration) Act 1999*.

**minimum annual rate of child support** means the amount set out in subsection 66(5) of the Assessment Act as if that amount applied to a calendar year in which a periodic deduction is made.

**minimum social security rate** has the meaning given by subsection 20(3) of this instrument.

**minimum veterans rate** has the meaning given by subsection 21(3) of this instrument.

**ordinary income** has the same meaning as in subsection 8(1) the *Social Security Act 1991*.

**partnered** has the same meaning as in paragraph 4(11)(a) of the *Social Security Act 1991*.

**pension period** has the same meaning as in section 5Q of the *Veterans' Entitlements Act 1986*.

**week day** means a day other than a Saturday or a Sunday.

**Section 9** prescribes a weekly rate for the purposes of the definition of ‘protected earnings rate’ in subsection 4(1) of the Act. The weekly rate for a year commencing on 1 January is the rate that is 75% of the maximum fortnightly basic rate of newstart allowance, as determined under the *Social Security Act 1991*, and is payable, on 1 January in that year, to a person who is partnered, has turned 21 years of age and who is without dependent children.

**Section 10** prescribes that each foreign country, or a part of a foreign country, mentioned in Schedule 2 of the Regulations is a ‘reciprocating jurisdiction’ for the purposes of subsection 4(1) of the Act.

## Part 2 – Registration of maintenance liabilities

**Section 11** prescribes that any penalty incurred under Article 15 of the Australia-New Zealand Agreement is a registrable overseas maintenance liability for the purposes of paragraph 18A(3)(b) of the Act.

**Section 12** sets out that a person may apply to the Registrar to have a claim for a variation of a registered maintenance liability, of a kind mentioned in section 18A of the Act, transmitted to an overseas authority of the reciprocating jurisdiction. The Registrar must take, on behalf of the applicant, any action required to be taken to seek the variation for the purposes of an international maintenance arrangement with the reciprocating jurisdiction. The Registrar must not take any action unless satisfied that the claim is in accordance with the relevant international maintenance agreement.

This Section is made using the necessary or convenient power as set out in paragraph 125(b) of the Act. The ‘necessary and convenient’ power is relied upon to support the effective operation of the Act and Regulations.

Section 26 of the Act requires a registrable overseas maintenance liability to be registered on the Child Support Register. Division 3 of Part III of the Act allows for a variation of the particulars in the Child Support Register. It is necessary and convenient for the Registrar to transmit claims for variation of registered overseas maintenance liabilities to overseas authorities of reciprocating jurisdictions.

This Section is procedural and assists with the administration of the child support scheme. It is not inconsistent with any provisions of the Act.

**Section 13** prescribes that a liability is not a registrable maintenance liability for the purposes of subsection 19(1) of the Act if it is a liability arising under an order made under section 66Q or 77 of the *Family Law Act 1975* or under section 139 of the *Child Support (Assessment) Act 1989* (the Assessment Act), and the person who is entitled to receive payments under the liability does not give to the Registrar a duly completed approved form requesting that the liability be enforced under the Act.

**Section 14** prescribes that the Registrar may refuse to register a maintenance assessment, order or agreement issued, made or registered in New Zealand for the purposes of subsection 25A(5) of the Act.

**Section 15** sets out a table for the conversion of amounts payable under registrable maintenance liabilities for the purposes of section 29 of the Act. Section 29 of the Act provides that the Regulations may make provision with respect to the conversion of amounts payable under registrable maintenance liabilities into daily, weekly, fortnightly, 4 weekly and monthly rates of payment.

**Section 16** sets out the following excepted reciprocating jurisdictions for the purposes of subsection 30A(4) of the Act:

- (a) Brunei Darussalam;
- (b) Cook Islands;
- (c) Israel;
- (d) Niue;
- (e) Papua New Guinea;
- (f) Samoa;
- (g) Yukon Territory of Canada.

In effect, this section outlines the jurisdictions where the enforcement of a child support assessment would not be permitted by the law of the jurisdiction.

**Section 17** sets out a prescribed income test for the purposes of paragraphs 37B(4)(b) and 37B(5)(b) of the Act. Subsection 17(1) sets out the formula for when a payer is taken to satisfy the income test for the purposes of paragraph 37B(4)(b) of the Act if an application is made under subsection 37B(2) of the Act.

Subparagraph 17(1)(a)(i) states that any non-taxable additional amount of an instalment of a social security pension or social security benefit will be subtracted from a payer's instalment amount for the purposes of subsection 17(1). For completeness, a non-taxable additional amount means any non-taxable payment such as rent assistance, child care benefit, or telephone allowance, as well as any non-taxable components such as the additional assistance supplement of ABSTUDY and ABSTUDY schooling A. For a comprehensive list of non-taxable additional amounts, see section 5.3.1.10 of the Guide to Social Security Law as available on the Department of Social Services website.

Subsection 17(2) sets out the formula for when a payer is taken not to satisfy the income test under paragraph 37B(5)(b) of the Act if an application is made under subsection 37B(2) of the Act.

Subsection 37B(2) of the Act states that if a payer of an enforceable maintenance liability covered by subsection 17(1) of the Act or arising under a maintenance order made by, or a maintenance agreement registered by, a judicial authority of a reciprocating jurisdiction:

- (a) is in receipt of a social security pension or a social security benefit; or
- (b) has made a claim for a social security pension or a social security benefit;

the payer may apply to the Registrar, in the manner specified by the Registrar, to have the liability no longer enforced under this Act.

Subsection 37B(4) of the Act provides for the regulations to prescribe an income test for the purpose of determining whether the liability will be enforced once an application has been made under subsection 37B(2). If the person satisfies the income test then the liability cannot be enforced during a **low-income non-enforcement period** (see section 37B of the Act).

**Section 18** prescribes the circumstances in which a payer is taken to have a satisfactory payment record for the previous 6 months period in relation to an enforceable maintenance liability for the purposes of paragraph 38B(1)(a) of the Act.

In effect, this section would prescribe circumstances in which the Registrar may decide that an enforceable maintenance liability should no longer be enforced under the Act, as long as the Registrar is satisfied that the payer is likely to continue to have a satisfactory payment record and that such a decision is appropriate in relation to the liability.

This section would provide that for the purposes of paragraph 38B(1)(a) of the Act, a payer is taken to have a satisfactory payment record in relation to the previous 6 months period in relation to an enforceable maintenance liability if:

- (a) the enforceable maintenance liability has been enforceable for at least 6 months; and
- (b) all enforceable maintenance liabilities arising during those 6 months:
  - (i) were paid when they were due; or
  - (ii) if they were not paid when they were due, there are circumstances that satisfactorily explain the late payment; and
- (c) no arrears are outstanding.

### Part 3 – Payment and recovery of child support debts

**Section 19** specifies payments in relation to an enforceable maintenance liability for the purposes of paragraph 71C(1)(b) of the Act.

**Section 20** prescribes a formula for a periodic deduction for the purposes of paragraph 72AA(1)(b) and subparagraph 72AA(2)(d)(i) of the Act. This periodic deduction will apply to a person who is in receipt of a social security pension or social security benefit, and is either a payer of an enforceable maintenance liability covered by subsection 17(2) of the Act, or has an unpaid child support debt.

**Section 21** prescribes a formula for a periodic deduction for the purposes of paragraph 72AC(2)(c) and subparagraph 72AC(2)(d)(i) of the Act. This periodic deduction will apply to a person who is in receipt of a veterans pension, supplement or allowance in accordance with paragraph 72AC(1)(b) of the Act, and is either a payer of an enforceable maintenance liability under section 17 of the Act, or has an unpaid child support debt.

#### Part 4 – Departure prohibition orders

**Section 22** prescribes the Comptroller-General of Customs, the Commissioner of Police of the Australian Federal Police and the Secretary of the Foreign Affairs Department as persons to whom the Registrar may give a copy of a departure prohibition order in accordance with subsection 72G(5) of the Act.

#### Part 5 – Payments to payees

**Section 23** sets out prescribed amounts for the purposes of subsection 76(2) of the Act. Subsection 76(2) of the Act states that, subject to the regulations, where the amount that a person is, but for this subsection, entitled to be paid at any time under subsection 76(1) in relation to a registered maintenance liability is less than the amount prescribed for the purposes of this subsection, the person is not entitled to be paid the amount at that time.

In effect, if a person is entitled to an amount in a calendar month under subsection 76(1) of the Act, and that amount is less than the prescribed amounts in this section, then the person is not entitled to be paid the amount at that time. The prescribed amounts are as follows:

- (a) for a payment to a person that is to be made to an address, or an account, in Australia—\$5;
- (b) for a payment to a person that is to be made to an account in another country, through an arrangement between Australia and that country under which amounts are transferred to a central authority of that country for payment, in accordance with section 76 of the Act, by electronic transfer—\$5;
- (c) in any other case—\$50.

**Section 24** prescribes the amount of \$50 for the purposes of subsection 78(3) of the Act. Subsection 78(3) of the Act sets out that where an amount received from a person's employer is less than the amount that should have been received (the expected amount), the received amount shall be deemed an amount equal to the expected amount, if the expected amount does not exceed the sum of the received amount and the amount prescribed in section 24 of the Regulations.

In effect, this section prescribes an amount by which the Registrar may calculate whether a received amount from an employer may be deemed to be equal to the expected amount.

#### Part 6 – Review by the Administrative Appeals Tribunal

**Section 25** prescribes provisions in the Act and in the Assessment Act that the AAT must not exercise for the purposes of AAT first review in accordance with section 95E of the Act. Section 95E of the Act provides that despite subsection 43(1) of the *Administrative Appeals Tribunal Act 1975*, the AAT must not, for the purposes of an AAT first review, exercise a power or discretion conferred on the Registrar by a prescribed provision of this Act or the Assessment Act. The prescribed provisions for the Act are specified in Part 1 of Schedule 3 to the Regulations, and the prescribed provisions for the Assessment Act are specified in Part 2 of Schedule 3 to the Regulations.

## Part 7 – Miscellaneous

**Section 26** sets out the prescribed places where and the manner by which a person may pay a debt due to the Commonwealth for the purposes of paragraph 113(1)(a) of the Act.

The prescribed places would be the Human Services Department, a payment agency that, by arrangement with the Human Services Department, accepts payment of such a debt, or a financial institution that, by arrangement with the Human Services Department, maintains an account for receipt of payment of such a debt.

The manner in which a debt is payable if the payment of the debt is made to the Human Services Department is by cheque or money order, or by electronic means capable of being processed by the Human Services Department. The manner in which a debt is payable if the payment of the debt is made to a payment agency or financial institution is by a means capable of being processed by the payment agency or financial institution.

A note to this section states that details of how payments may be made are set out in the Human Services Department website at [www.humanservices.gov.au](http://www.humanservices.gov.au).

**Section 27** prescribes scales of expenses to be allowed to a person required to attend before the Registrar under section 120 of the Act.

This section refers to amounts provided for in the *High Court Rules 2004* (High Court Rules) as in force at the commencement of this section.

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.

**Section 28** sets out that in an action for the recovery of a debt payable to the Registrar, a certificate signed by the Registrar certifying that the person named in the certificate is liable to pay the debt and that the debt is payable to the Registrar is prima facie evidence of the facts stated in the certificate.

This Section is made using the necessary or convenient power as set out in paragraph 125(b) of the Act. The 'necessary and convenient' power is relied upon to support the effective operation of the Act and Regulations.

This section is intended to extend the operation of section 116 of the Act by broadening the category of debts to which the evidentiary certificates issued by the Registrar apply. Section 116 of the Act does not include all debts such as court costs from previous proceedings that are payable to the Registrar.



This Section is procedural and assists with the administration of the child support scheme. It is not inconsistent with any provisions of the Act.

**Section 29** states that in an action for the recovery of a debt payable to the Registrar, a person may give evidence by affidavit. The court may require the person to attend before it to be cross-examined on the evidence or to give other evidence in relation to the action.

This Section is made using the necessary or convenient power as set out in paragraph 125(b) of the Act. The 'necessary and convenient' power is relied upon to support the effective operation of the Act and Regulations.

This Section is procedural and assists with the administration of the child support scheme. It is not inconsistent with any provisions of the Act.

**Section 30** provides that any certificate, notice or other document written, printed or stamped by the Registrar or their delegate, is taken to have been duly signed by the Registrar and that judicial notice must be taken of the names of persons who hold or have held the office of Registrar.

This Section is made using the necessary or convenient power as set out in paragraph 125(b) of the Act. The 'necessary and convenient' power is relied upon to support the effective operation of the Act and Regulations.

This Section intends to extend the judicial notice requirement under section 118 of the Act from signatures to names, and from the Registrar to delegates of the Registrar.

Section 118 of the Act provides that all courts and tribunals, and all judges and persons acting judicially or authorised by law or consent of parties to hear, receive and examine evidence, shall take judicial notice of the signature of a person who holds or has held the office of Registrar.

This section makes clear that judicial notice should be taken of names as well as signatures of persons who are, or were at any time, the Registrar or a delegate of the Registrar. This section is not inconsistent with any provisions of the Act.

**Section 31** provides methods of how a notice or other communication given by or on behalf of the Registrar under the Act may be served on a person.

A notice is validly served on a natural person by:

- (a) causing it to be personally served on the person; or
- (b) leaving it at the person's address for service; or
- (c) delivering the notice or other communication by means of electronic communication if the person has consented to receiving such notices or communications by way of electronic communication; or
- (d) sending it by prepaid post to the person's address for service.

A notice is validly served on a body corporate by:

- (a) leaving it at the person's address for service; or
- (b) delivering the notice or other communication by means of electronic communication if the person has consented to receiving such notices or communications by way of electronic communication; or
- (c) leaving it at, or sending it by prepaid post to, the head office, a registered office or a principal office of the body corporate.

This section makes clear that if service has been attempted by use of prepaid post, then, unless the contrary is proved, service will be taken to have been effected at the time when the notice or other communication would, in the ordinary course of the post, have arrived at the place to which it was addressed.

This Section is made using the necessary or convenient power as set out in paragraph 125(b) of the Act. The 'necessary and convenient' power is relied upon to support the effective operation of the Act and Regulations.

This Section is procedural and assists with determining when service of a notice is taken to have been effected. It is not inconsistent with any provisions of the Act.

**Section 32** states that if a document is required to be served by an overseas authority of a reciprocating jurisdiction on a person who is in Australia, the Registrar may do so on their behalf.

This Section will only apply if it is necessary or convenient to do so for the purposes of an international maintenance agreement with the reciprocating jurisdiction. Therefore, this Section is supported by the 'necessary or convenient' power as set out in paragraph 125(b) of the Act. It assists with the practicalities of service of documents, and it is not inconsistent with any provisions of the Act.

**Section 33** provides that, for the purposes of section 121C of the Act, a notice or other communication that is required to be given to a person who is a resident of a reciprocating jurisdiction may be given to an overseas authority of the reciprocating jurisdiction. This will occur if the Registrar considers that it is desirable or appropriate to do so.

**Section 34** provides that the address for service of a person is the address last notified by the person to the Registrar or the last address attributed to the person listed in the Registrar's record.

This Section is made using the necessary or convenient power as set out in paragraph 125(b) of the Act. The 'necessary and convenient' power is relied upon to support the effective operation of the Act and Regulations.

This Section is procedural and assists with working out the practicalities of how a copy of an order or a notice may be served on a person. It is not inconsistent with any provisions of the Act.

**Section 35** sets out that a person who changes address and fails to give the Registrar notice of the new address for service cannot plead the change of address as a defence in any proceedings (whether civil or criminal) instituted against that person under the Act or this instrument.

This Section is made using the necessary or convenient power as set out in paragraph 125(b) of the Act. The 'necessary and convenient' power is relied upon to support the effective operation of the Act and Regulations. It is not inconsistent with any provisions of the Act.

**Section 36** provides that a person in Australia may apply to the Registrar for assistance in communicating with an overseas authority of a reciprocating jurisdiction if either of the following occur:

- (a) a resident of the reciprocating jurisdiction is seeking payment of child support from the person; or
- (b) the overseas authority is seeking payment of child support from the person on behalf of a resident of the reciprocating jurisdiction.

This Section is made using the necessary or convenient power as set out in paragraph 125(b) of the Act. The 'necessary and convenient' power here is relied upon to support the effective operation of the Act and Regulations.

There is no strict requirement in the Act for the Registrar to assist a payer in communicating with an overseas authority. However, one of the objects of the Act is that Australia is in a position to give effect to its obligations under international agreements and arrangements relating to maintenance. Therefore, the Registrar should be able to provide assistance to communicate with overseas authorities if needed. This section is not inconsistent with any provisions of the Act.

**Section 37** applies to the overseas maintenance liability types as set out in section 37(1) of the Regulations. This section provides that if the amount of the overseas maintenance liability is expressed in foreign currency, the liability is taken to refer to the equivalent amount expressed in Australian dollars converted in accordance with subsection 37(3) of the Regulations.

This Section is made using the necessary or convenient power as set out in paragraph 125(b) of the Act. The 'necessary and convenient' power is relied upon to support the effective operation of the Act and Regulations.

The conversion of amounts into Australian dollars is required to ensure the proper functioning of the Act and Regulations which use Australian dollars instead of foreign currencies. This section is procedural and assists with the administration of the child support scheme. It is not inconsistent with any provisions of the Act.

**Section 38** applies if a decision is issued, made or registered by a judicial or administrative authority of Australia and the decision refers to an amount of money expressed in Australian currency. A decision in this section refers to a decision within the meaning of Article 1 of the Australia-New Zealand Agreement.

The amount contained in that decision must be converted into the equivalent amount expressed in New Zealand currency. This amount is to be converted using the international money transfer buying rates published by the Commonwealth Bank of Australia that applies to New Zealand currency on the day the decision is transmitted by the Registrar. If no such rate is available for New Zealand currency on that day,

then the Registrar may convert the amount using the exchange rate for the currency that the Registrar considers appropriate.

This Section is made using the necessary or convenient power as set out in paragraph 125(b) of the Act. The 'necessary and convenient' power is relied upon to support the effective operation of the Act and Regulations.

It is necessary to require the amount contained in a decision under the Australia-New Zealand Agreement to be converted into New Zealand currency to support the Australia-New Zealand Agreement and facilitate the registration and collection of Australian decisions in New Zealand.

This section is procedural and assists with the administration of the child support scheme. It is not inconsistent with any provisions of the Act.

**Schedule 1** contains the Australia-New Zealand Agreement.

**Schedule 2** lists the reciprocating jurisdictions for the purposes of section 10 of the Regulations.

**Schedule 3** is divided into two parts. Part 1 of the Schedule lists the provisions of the Act that describe powers of the Registrar that the AAT must not exercise for the purposes of an AAT first review. Part 2 of the Schedule lists the provisions of the Assessment Act that describe powers of the Registrar that the AAT must not exercise for the purposes of an AAT first review.

**Schedule 4** repeals the 1988 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 (Registration and Collection) 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 (Registration and Collection) Act 1988* (the Act) provides for the registration, collection and enforcement of maintenance liabilities, including court orders and court registered agreements for child and spousal maintenance, as well as administrative assessments of child support.

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.

The purpose of the *Child Support (Registration and Collection) Regulations 2018* (the Regulations) is to repeal and replace the *Child Support (Registration and Collection) Regulations 1988* (the 1988 Regulations), which cease operation on 1 April 2018 due to the sunset provisions in the *Legislation Act 2003*.

The Regulations are remade in substantially the same form as the 1989 Regulations. They prescribe matters relevant to the registration and collection of registrable maintenance liabilities and ensure that the current arrangements for the registration and collection of child and spousal maintenance liabilities remain in place.

Specifically, the Regulations prescribe:

- when a liability is not a registrable maintenance liability;
- which foreign countries, or parts of foreign countries, are reciprocating jurisdictions or excepted reciprocating jurisdictions for the purposes of the child support scheme;
- matters in relation to the payment and recovery of child support debts;
- which provisions conferring powers to the Registrar in the Act and the *Child Support (Assessment) Act 1989* must not to be exercised by the Administrative Appeals Tribunal (AAT) for the purposes of undertaking an AAT first review; and
- how the Registrar may communicate with a person or an overseas authority of a reciprocating jurisdiction.

#### 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 facilitate the registration and collection of registrable maintenance liabilities, and ensure that child support is paid to an appropriate carer for the benefit of the child.

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**