

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Families and Social Services

Child Support (Assessment) Act 1989
Child Support (Registration and Collection) Act 1988

Child Support Legislation Amendment (2020 Measures No. 1) Regulations 2020

Purpose

The *Child Support Legislation Amendment (2020 Measures No. 1) Regulations 2020* (the Amendment Regulations) will amend:

- the *Child Support (Assessment) Regulations 2018* (the Assessment Regulations); and
- the *Child Support (Registration and Collection) Regulations 2018* (the Registration and Collection Regulations).

The Assessment Regulations are made under the authority of the Governor-General in accordance with section 164 of the *Child Support (Assessment) Act 1989* (the Assessment Act). Similarly, the Registration and Collection Regulations are made under the authority of the Governor-General in accordance with section 125 of the *Child Support (Registration and Collection) Act 1988* (the Registration and Collection Act).

Background

The Legislative Framework

The Assessment Act provides for the assessment of child support to ensure that children receive a proper level of financial support from their parents.

The Assessment Regulations prescribe matters relevant to the assessment of the level of parents' child support liabilities for their children.

Section 164 of the Assessment Act provides that the Governor-General may make regulations, not inconsistent with the Assessment Act, prescribing all matters required or permitted by the Assessment Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Assessment Act.

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

The Registration and Collection Regulations prescribe matters relevant to the registration and collection of child and spousal maintenance liabilities.

Section 125 of the Registration and Collection Act provides that the Governor-General may make regulations, not inconsistent with the Registration and Collection Act, prescribing all matters required or permitted by the Registration and Collection Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Registration and Collection Act.

The Amendment Regulations

Amendments to the Assessment Regulations

The Amendment Regulations will make changes to the Assessment Regulations as a result of the commencement of the *Family Assistance and Child Support Legislation Amendment (Protecting Children) Act 2018* (the Protecting Children Act) and the subsequent adoption by the Western Australian Parliament of these amendments through the *Child Support (Commonwealth Powers) Act 2019 (WA)*. The Protecting Children Act repealed and replaced subsections 56(2) and 57(7) of the Assessment Act. Prior to repeal, these subsections only allowed the Child Support Registrar (the Registrar) to amend a parent's administrative assessment of child support to take account of an amended tax assessment in certain circumstances, which was supplemented by section 10 of the Assessment Regulations.

After repeal and replacement by the Protecting Children Act, subsections 56(2) and 57(7) of the Assessment Act now permit the Registrar to amend an administrative assessment of child support, after a parent's taxable income has been amended, to take account of the amended tax assessment. Section 10 of the Assessment Regulations ceased to have operational effect following the commencement of the Protecting Children Act.

The Amendment Regulations will also amend the Assessment Regulations to provide that any payments of 'redress', within the meaning of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the Redress Act), will not be considered income for the purposes of section 66A of the Assessment Act.

Under section 66A of the Assessment Act, if the Registrar has made an assessment under section 66 in respect of the minimum annual rate of child support payable by a parent for a child, the Registrar may, on an application made by the parent, reduce the annual rate of child support for a nominated period to nil in certain cases. In considering the application, the Registrar must determine the parent's income under subsection 66A(4) of the Assessment Act. Subsection 66A(4) defines income and provides that money prescribed by the Assessment Regulations is excluded from the definition of income. However, this is a very broad definition of income that did not foresee redress payments when it was enacted, hence the need to amend them under the Assessment Regulations. The definition found in subsection 66A(4) is also used in section 65B of the Assessment Act, where a parent can make an application for section 65A of the Assessment Act not to apply.

Payments of redress include a redress payment (of up to \$150,000) made to a person under sections 48 or 60 of the Redress Act, and any counselling and psychological component of redress, which may include a counselling and psychological services payment under section 51 of the Redress Act.

Exempting payments of redress from being considered part of a parent's income where the Registrar is determining whether to reduce an assessment of the annual rate of child support is consistent with the objects of the Redress Act that redress is to acknowledge harm, not to compensate for loss or provide damages. The Explanatory Memorandum for the Redress Act notes that "The redress payment or counselling and psychological services payment will be inalienable and cannot be used to recover debts due to the Commonwealth.

The payment will also not be subject to income tax.” This amendment is also consistent with redress being considered exempt income in other statutory schemes, such as under the *Social Security Act 1991* and the *Veterans’ Entitlements Act 1986*. It is appropriate to also exclude redress payments from the definition of income in subsection 66A(4) of the Assessment Act so that these payments are able to be used exclusively for the specific purpose for which they are made.

Amendments to the Registration and Collection Regulations

The Amendment Regulations will amend the Registration and Collection Regulations to replace a reference to newstart allowance in section 9 with jobseeker payment. On 20 March 2020, the *Social Services Legislation Amendment (Welfare Reform) Act 2018* amends the *Social Security Act 1991* to replace newstart allowance with the jobseeker payment. This amendment will take effect from 1 January 2021 because of how section 9 operates to prescribe a weekly rate for the purposes of the definition of ‘protected earnings rate’ in section 4 of the Registration and Collection Act.

Section 9 of the Registration and Collection Regulations provides that the prescribed weekly rate for a year commencing on 1 January is the rate that is 75% of the maximum fortnightly basic rate of newstart allowance, 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. In effect, the ‘protected earnings rate’ is set on 1 January of each calendar year and does not vary throughout the year once the rate has been set.

It follows that, on 1 January 2020, the ‘protected earnings rate’ for 2020 will be set at 75% of the maximum fortnightly basic rate of newstart allowance payable to a person who is partnered, has turned 21 years of age and who is without dependent children. This rate will not be varied after this date until 1 January 2021, at which time it will be linked to the relevant jobseeker payment rate.

Schedule 2 to the Registration and Collection Regulations, which prescribes each foreign country, or a part of a foreign country, that is a reciprocating jurisdiction for the purposes of the definition in subsection 4(1) of the Registration and Collection Act, will be amended to include Albania and Andorra as reciprocating jurisdictions. A country will be considered a reciprocating jurisdiction in circumstances where the country becomes a party to an international agreement or treaty relating to the recovery or enforcement of child maintenance. The Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations entered into force for Albania in December 2012 and Andorra in July 2012.

Additionally, Schedule 2 to the Registration and Collection Regulations will be amended to reflect that the name of the country formerly known as the Former Yugoslav Republic of Macedonia was officially changed in February 2019 to the Republic of North Macedonia.

Schedule 3 to the Registration and Collection Regulations sets out provisions in the Assessment Act and the Registration and Collection Act that the Administrative Appeals Tribunal (AAT) must not exercise for the purposes of AAT first review (see section 25 of the Registration and Collection Regulations and section 95E of the Registration and Collection Act).

The Amendment Regulations will add paragraphs 72AA(2)(e) and 72AC(2)(e) of the Registration and Collection Act, which were inserted into the Registration and Collection Act by the Protecting Children Act, into Schedule 3 to the Registration and Collection Regulations. Sections 72AA and 72AC of the Registration and Collection Act permit deductions to be made from social security pensions and benefits, and veterans' pensions and allowances (respectively), for the purpose of satisfying a person's child support debt or carer debt (see sections 30 and 69B of the Registration and Collection Act).

Paragraphs 72AA(2)(e) and 72AC(2)(e) of the Registration and Collection Act allow the Registrar to give a written notice to the Secretary or the Repatriation Commission (as the case may be), in respect of a carer debt, instructing the Secretary or Repatriation Commission to deduct an amount, determined by the Registrar, from the payer's relevant payment from a specified day until the debt is paid. The Protecting Children Act also inserted new subsections 72AA(2A) and 72AC(3) into the Registration and Collection Act. These subsections allow for the Registrar, in making a determination for the purposes of paragraphs 72AA(2)(e) and 72AC(2)(e) respectively, to determine an amount that reduces a person's relevant payment to nil if the person has consented to the amount of the deduction being an amount that would reduce the payment to nil.

The effect of the amendment is that the AAT on first review will not be able to exercise the powers of the Registrar under paragraphs 72AA(2)(e) and 72AC(2)(e) in circumstances where a person has consented to a deduction to be made from their payment in accordance with subsections 72AA(2A) and 72AC(3). This power is exempted to be consistent with the current exemptions in Schedule 3 to the Registration and Collection Regulations, as the powers in subsections 72AA(1) and (2) and 72AC(1) cannot be exercised by the AAT on first review.

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 is 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.

Commencement

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

Consultation

The Attorney-General's Department and Services Australia were consulted during the preparation of the Amendment Regulations. The Administrative Appeals Tribunal was also informed of the proposed amendment Items 9 and 10 as they are relevant. These agencies support the proposed amendments introduced by the Amendment Regulations.

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation (OBPR) was consulted on 6 September 2019 and confirmed that the Amendment Regulations do not require a Regulatory Impact Statement (OBPR Reference: 25586).

Explanation of the provisions

Section 1 provides that the name of the Amendment Regulations is the *Child Support Legislation Amendment (2020 Measures No. 1) Regulations 2020*.

Section 2 provides that the Amendment Regulations commence on the day after this instrument is registered on the Federal Register of Legislation.

Section 3 provides that the Amendment Regulations are made under the Assessment Act and the Registration and Collection Act.

Section 4 provides that the instruments that are specified in a Schedule to the Amendment Regulations are amended or repealed as set out in the applicable items of the Schedule, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1

Items 1 and 2 amend the Assessment Regulations.

Item 1 repeals section 10 of the Assessment Regulations. Section 10 of the Assessment Regulations has been superseded by amendments to subsections 56(2) and 57(7) of the Assessment Act, and is therefore no longer required.

Item 2 omits all words after “Act” in subsection 13(1) of the Assessment Regulations and substitutes new paragraphs 13(1)(a) and (b). New paragraphs 13(1)(a) and (b) set out that money received by a person as an NDIS amount, or money received by a person as redress to which the person is entitled under the Redress Act, will be a prescribed payment for the purpose of paragraph 66A(4)(a) of the Assessment Act. In effect, these prescribed payments will not be considered part of a parent’s income where the Registrar is determining whether to reduce an assessment of the annual rate of child support under section 66A of the Assessment Act, and where a parent makes an application under section 65B of the Assessment Act for section 65A to not apply.

Items 3 to 10 amend the Registration and Collection Regulations.

Item 3 amends paragraph 9(a) of the Registration and Collection Regulations to omit the phrase “newstart allowance” and substitute “jobseeker payment”. Newstart allowance will be replaced with jobseeker payment from 20 March 2020. In accordance with new section 39 inserted by **Item 4**, this amendment to paragraph 9(a) will apply in relation to the calendar year beginning on 1 January 2021 and each later calendar year.

Item 4 inserts a new Part 8, relating to application, transitional and savings provisions, into the Registration and Collection Regulations.

New section 39 provides that the amendment of paragraph 9(a) of the Registration and Collection Regulations made by **Item 3** applies in relation to the calendar year beginning on 1 January 2021 and each later calendar year.

New section 40 provides that the amendment of item 16 of the table in Part 1 of Schedule 3 to the Registration and Collection Regulations made by **Item 9** applies in relation to a determination by the Registrar on or after the commencement of the Amendment Regulations.

New section 41 provides that the amendment of item 18 of the table in Part 1 of Schedule 3 to the Registration and Collection Regulations made by **Item 10** applies in relation to a determination by the Registrar on or after the commencement of the Amendment Regulations.

Items 5 and 6 insert the countries Albania and Andorra into Schedule 2 to the Registration and Collection Regulations as new reciprocating jurisdictions.

Items 7 and 8 amend Schedule 2 to the Registration and Collection Regulations to omit the Former Yugoslav Republic of Macedonia and insert the Republic of North Macedonia to reflect the official name change of the country.

Item 9 amends item 16 of the table in Part 1 of Schedule 3 to the Registration and Collection Regulations to omit the references to subsections 72AA(1) and (2) of the Registration and Collection Act and substitute references to subsections 72AA(1) and (2) and paragraph 72AA(2)(e) (in the case described by subsection 72AA(2A)) of the Registration and Collection Act.

Item 10 amends item 18 of the table in Part 1 of Schedule 3 to the Registration and Collection Regulations to omit the reference to subsection 72AC(1) of the Registration and Collection Act and substitute references to subsections 72AC(1) and paragraph 72AC(2)(e) (in the case described by subsection 72AA(3)) of the Registration and Collection Act.

Anne Ruston, Minister for Families and Social Services

Statement of Compatibility with Human Rights

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

Child Support Legislation Amendment (2020 Measures No. 1) Regulations 2020

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*.

Overview of the legislative instrument

Child Support (Assessment) Regulations 2018

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

Section 164 of the Assessment Act provides that the Governor-General may make regulations, not inconsistent with the Assessment Act, prescribing all matters required or permitted by the Assessment Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Assessment Act.

The purpose of the *Child Support (Assessment) Regulations 2018* (the Assessment Regulations) is to prescribe matters relevant to the assessment of the level of parents' child support liabilities for their children and ensure that the current arrangements for the assessment of child support remain in place. Specifically, the Assessment Regulations prescribe:

- which children are not covered by the Assessment Act;
- which foreign countries, or parts of foreign countries, are excluded reciprocating jurisdictions for the purposes of the child support scheme;
- formulas for conversion of an annual rate of child support to periodic amounts; and
- how the Registrar may communicate with a person or an overseas authority of a reciprocating jurisdiction.

The purpose of the *Child Support Legislation Amendment (2020 Measures No. 1) Regulations 2020* (the Amendment Regulations) are to amend the Assessment Regulations to reflect recent legislative amendments and other matters. Specifically:

- repeal section 10, as this section has ceased to have effect following the commencement of the *Family Assistance and Child Support Legislation Amendment (Protecting Children) Act 2018* and the subsequent adoption by the Western Australian Parliament of these amendments through the *Western Australian Child Support (Commonwealth Powers) Act 2019*; and

- amend section 13 to prescribe money received by a person as redress to which the person is entitled under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*, so that these payments would not be ‘income’ for the purposes of subsection 66A(4)(a) of the Assessment Act.

Child Support (Registration and Collection) Regulations 2018

The *Child Support (Registration and Collection) Act 1988* (the Registration and Collection 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 Registration and Collection Act provides that the Governor-General may make regulations, not inconsistent with the Registration and Collection Act, prescribing all matters required or permitted by the Registration and Collection Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Registration and Collection Act.

The purpose of the *Child Support (Registration and Collection) Regulations 2018* (the Registration and Collection Regulations) is to 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 Registration and Collection Regulations prescribe:

- when a liability is not a registerable 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 Registration and Collection and the Assessment Acts 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.

The purpose of the Amendment Regulations are to amend the Registration and Collection Regulations to reflect recent legislative amendments and other matters. Specifically:

- amend section 9 to replace the reference to newstart allowance with jobseeker payment;
- amend Schedule 2 to include Albania and Andorra in the list of reciprocating jurisdictions and replace ‘Former Yugoslav Republic of Macedonia’ with ‘Republic of North Macedonia’; and
- amend Part 1 of Schedule 3 to include paragraphs 72AA(2)(e) and 72AC(2)(e) of the Registration and Collection Act that were introduced as part of the *Family Assistance and Child Support Legislation Amendment (Protecting Children) Act 2018*.

Human rights implications

The Amendment Regulations engage rights outlined in Article 27 of the *Convention on the Rights of the Child* (CRC).

The Assessment Regulations and the Collection and Registration 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 Amendment 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

The Amendment 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.

Anne Ruston, Minister for Families and Social Services