

LI 2022/9 - Explanatory statement -



Explanatory Statement

Notice of Requirement for Parents with a Child Support Assessment to Lodge a Return for the Income Year Ended 30 June 2022

General outline of instrument

1. This legislative instrument requires liable and recipient parents under a child support assessment to lodge an income tax return for the income year, by the due date specified in this instrument. Such persons may not otherwise be required to lodge an income tax return. The return must be in the approved form.
2. This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
3. 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.

Date of effect

4. This instrument is effective from the day after it is registered on the Federal Register of Legislation.

What this instrument is about

5. The purpose of this instrument is to notify that liable and recipient parents under a child support assessment are required to lodge an income tax return for the income year consistent with section 161 of the *Income Tax Assessment Act 1936* (ITAA 1936).
6. The instrument specifies the persons required to lodge and the due date for lodgment.
7. Additional lodgment information is also provided including that:
 - (a) the return must be in the approved form
 - (b) the Commissioner may defer the time for lodgment of a return specified in this instrument
 - (c) nothing in this instrument prevents the Commissioner from issuing a notice of requirement to lodge a return or a notice of requirement to provide information under section 162 or section 163 of the ITAA 1936, and
 - (d) penalties for non-compliance with lodgment requirements may apply.

What is the effect of this instrument

8. All persons who were either a liable parent or a recipient parent under a child support assessment are required to lodge a return unless:

- (a) their income calculated under the legislative instrument was **less than \$27,063**; and
- (b) they received one or more Australian Government pensions, allowances or payments listed in Table C of the instrument for the whole of the 2021–22 income year.

9. Further, the instrument provides notice to a liable parent or a parent receiving child support under a child support assessment of their obligation to lodge and when they must lodge. It also sets out how they should lodge and that penalties may apply if they don't lodge.

Compliance cost impact

10. Minor – there will be minimal impact for both implementation and ongoing compliance costs. The legislative instrument is minor and machinery in nature.

Background

11. Under the *Child Support (Assessment) Act 1989*, a child support assessment relies on the adjusted taxable income of both parents. This requires both a liable parent and a recipient parent to lodge an income tax return.

12. A legislative instrument is made each year by the Commissioner to require this class of taxpayers to lodge a return under section 161 of the ITAA 1936 if they are parents who are party to a child support assessment. Certain parents are exempt from this requirement to lodge a return, based on an income threshold and the receipt of certain government pensions, allowances or payments for the whole year.

13. This legislative instrument has been registered to oblige the persons mentioned above to lodge an income tax return, even though these taxpayers may not have a lodgment requirement under the legislative instrument *Notice of Requirement to Lodge a Return for the Income Year Ended 30 June 2022*.

Consultation

14. Subsection 17(1) of the *Legislation Act 2003* requires, before the making of a legislative instrument, that the Commissioner is satisfied that appropriate and reasonably practicable consultation has been undertaken.

15. Public consultation has been undertaken. The draft legislative instrument and draft explanatory statement were published on the ATO Legal Database at ato.gov.au on 7 February 2022 seeking feedback and comments until the closing date of 4 March 2022. The ATO Legal Database sends emails and news feeds to direct subscribers such as tax professionals and other industry stakeholders. Consultation on the draft legislative instrument and draft explanatory statement was also announced on “What we are consulting about” at ato.gov.au. The response from the consultation process was limited but supportive of the draft legislative instrument and draft explanatory statement.

Statement of Compatibility with Human Rights

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

Notice of Requirement for Parents with a Child Support Assessment to Lodge a Return for the Income Year Ended 30 June 2022

This Disallowable 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 this Disallowable Legislative Instrument

All persons who were either a liable parent or a recipient parent under a child support assessment are required to lodge an income tax return for the income year, even though they may not otherwise be required to lodge a return. Exemptions and conditions are identified in the instrument.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms as it simply provides notice to those persons who are either the liable parent under a child support assessment, or a parent receiving child support under a child support assessment, of their obligations to lodge returns.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.