



Statutory Rules 1984 / No.

426

Family Law Regulations

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Statutory Rules 1984 No. 426

426

Family Law Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Family Law Act 1975*.

Dated 10 December 1984.

N. M. STEPHEN

Governor-General

By His Excellency's Command,

Sgd) Garth Evans
Attorney-General

PART I—PRELIMINARY

Citation

1. These Regulations may be cited as the Family Law Regulations.

Commencement

2. Subject to section 111 of the Act, these Regulations shall come into operation on 2 January 1985.

Interpretation

3. (1) In these Regulations, unless the contrary intention appears—
“Act” means the *Family Law Act 1975*;
“applicant” means a person who institutes or has instituted proceedings under the Act or is an applicant in pending proceedings under the repealed Act;
“application” means an application to a court for the purpose of instituting

- proceedings under the Act or an application to a registrar made under these Regulations;
- “certified copy” means a copy of an order, decree or document certified to be a true copy by an officer of the court that made the order or by which the order has been registered or confirmed or, in the case of an overseas order, by the Secretary;
- “conference”, in relation to proceedings, includes any attendance in connection with the proceedings, whether in person or by telephone, by a solicitor who is acting for a party to the proceedings on—
- (a) that party;
 - (b) a witness, or a person who may be a witness, in the proceedings;
 - (c) another party to the proceedings or, where another solicitor is acting for that other party in the proceedings, that other solicitor;
 - (d) counsel for any party to the proceedings;
 - (e) a Judge;
 - (f) a registrar;
 - (g) a marriage counsellor, an approved marriage counselling organization or a welfare officer;
 - (h) a person or organization nominated under sub-section 14 (2A) or 44 (1B) of the Act to assist in considering a reconciliation; or
 - (j) any other person on whom the attendance is reasonable;
- “filed” means filed in accordance with rule 4 of Order 2 of the Rules of Court and “filing” has a corresponding meaning;
- “intervener” means, in relation to proceedings, the Attorney-General or any other person when intervening or applying to intervene under Part IX of the Act, or a child separately represented under section 65 of the Act;
- “party to proceedings” means an applicant, respondent or intervener in proceedings under the Act;
- “Principal Registrar” means the Principal Registrar of the Family Court;
- “registrar” includes the Principal Registrar, a Registrar within the meaning of section 4 of the Act, a Deputy Registrar and, in relation to a court of summary jurisdiction, the clerk of the court, clerk of petty sessions or other person holding or performing the duties of a similar office in the court;
- “respondent” means, in relation to proceedings, a party to the proceedings other than an applicant or an intervener;
- “Rules of Court” means the Family Law Rules made under section 123 of the Act;
- “sealed” means sealed with the seal of the court or otherwise endorsed by an officer of the court;
- “Secretary” means the Secretary to the Attorney-General’s Department;
- “State Family Court” means a court to which section 41 of the Act applies;

“the former Regulations” means Statutory Rules 1975 No. 210 as amended by the other Statutory Rules repealed by regulation 78.

(2) A reference in these Regulations, other than in regulation 10, to the Family Court shall be read as including a reference to a State Family Court.

PART II—GENERAL

Directions as to practice and procedure

4. (1) Where a court is satisfied in the circumstances of a particular case that—

- (a) the provisions of the Act, these Regulations and the Rules of Court do not make adequate provision for practice and procedure; or
- (b) a difficulty arises or doubt exists as to practice and procedure,

the court may give such directions with respect to the practice and procedure to be followed in the case as the court considers necessary.

(2) In proceedings to which section 9 of the Act applies, the court or a registrar may give directions in all matters of practice and procedure.

(3) Directions under this regulation shall be directed to providing a speedy and inexpensive hearing of the matters in issue between the parties and shall be consistent with these Regulations and the Rules of Court.

Non-compliance with Regulations

5. (1) Non-compliance with these Regulations, or with a rule of practice or procedure in a court exercising jurisdiction under the Act, does not render proceedings in that court void unless the court so directs.

(2) In exercising its discretion under this regulation, the court shall have regard to the real merits of the case, the minimizing of expense, and whether any party to the proceedings has suffered injustice or has been prejudicially affected by non-compliance with these Regulations.

(3) In relation to proceedings that commenced before the commencement of these Regulations, a reference, in sub-regulation (1), to these Regulations shall be read as including a reference to the former Regulations in their application in relation to those proceedings.

Court or registrar may relieve from consequences of non-compliance

6. (1) Subject to the Act and these Regulations—

- (a) the court or a registrar may, at any time, upon such terms as the court or registrar thinks fit, relieve a party from the consequences of non-compliance with these Regulations, a rule of practice and procedure of the court applicable to the proceedings or an order made by a registrar;
- (b) the court may at any time, upon such terms as the court thinks fit, relieve a party from the consequences of non-compliance with an order made by a court; and

- (c) the court may, upon such terms as the court thinks fit, dispense with the need for compliance by a party with any provision of these Regulations.

(2) Where these Regulations fail to make provision on any matter, the court is empowered to give, and shall give, such directions as to practice and procedure as the court thinks fit.

(3) In relation to proceedings that commenced before the commencement of these Regulations, a reference, in sub-regulation (1) or (2), to these Regulations shall be read as including a reference to the former Regulations in their application to those proceedings.

Authorized marriage counsellor

7. The Attorney-General may, by writing signed by him, authorize a person, being a person who is suitably qualified by reason of training and experience, to offer marriage counselling.

Appointment of welfare officers

8. The Attorney-General may, by writing signed by him, appoint a person, being a person who is suitably qualified by reason of training and experience, as a welfare officer.

Oath or affirmation of marriage counsellor

9. The oath or affirmation required to be made by a marriage counsellor under sub-section 19 (1) of the Act shall be in accordance with the following form:

I, _____, do swear by Almighty God (*or solemnly and sincerely affirm and declare*) that I will not disclose to any person any communication or admission made to me in my capacity as a marriage counsellor except in so far as it is necessary for me to do so for the proper discharge of my functions as a marriage counsellor.

Record of proceedings

10. (1) Wherever practicable, all proceedings in the Family Court shall be fully recorded.

(2) Proceedings in the Family Court need be transcribed only where a Judge or registrar so orders.

(3) Where proceedings in the Family Court are transcribed on the order of a Judge or registrar, a party to proceedings or the legal representative of a party to proceedings is entitled to one copy of the transcript of the proceedings free of charge.

Fee in respect of proceedings for divorce or nullity

11. (1) Subject to sub-regulation (4), a court fee of \$125 is payable in respect of proceedings for a decree of dissolution or of nullity of marriage.

(2) The court fee referred to in sub-regulation (1) is payable by the applicant at the time of filing the application.

(3) Except in a case to which sub-regulation (4) applies, the registrar of a court shall not accept an application for a decree of dissolution or of nullity of marriage for filing in the office of that court unless the fee referred to in sub-regulation (1) has been paid.

(4) The court fee referred to in sub-regulation (1) is not payable where the registrar of the court in the office of which the application is to be filed is satisfied—

- (a) that the applicant has been granted, in relation to the proceedings, legal aid from a legal aid scheme or service approved by the Attorney-General; or
- (b) that payment of the fee would impose hardship on the applicant.

Service in countries that are parties to certain conventions

12. (1) This regulation applies, subject to the provisions of the relevant convention, in relation to the service of a document in a country that is a party to a convention, extending to Australia, regarding legal proceedings in civil and commercial matters.

(2) Where, under a convention referred to in sub-regulation (1), service of a document relating to proceedings is not to be effected in a country referred to in that sub-regulation otherwise than in accordance with the convention, service of such a document in that country shall not be effected otherwise than in accordance with this regulation.

(3) Where a party to proceedings who desires to effect service of a document relating to the proceedings on a person in a country referred to in sub-regulation (1) files a request for service of the document in accordance with the Form in Schedule 1, and deposits with the registrar of the court in which the proceedings are pending the documents required by sub-regulation (4) to be deposited, the registrar shall forward the documents so deposited direct to the Secretary for transmission to that country for service.

(4) For the purposes of sub-regulation (3), the documents to be deposited are—

- (a) the document to be served;
- (b) a translation of the document into the language of the country in which the service is to be effected, being a translation bearing a certificate, in that language, of the person who made the translation certifying that it is a translation of the document of which it purports to be a translation;
- (c) a copy of the document to be served and of the translation; and
- (d) such further copies (if any) of the document and translation as are required by the relevant convention.

(5) A document, a translation of a document or a copy of a document shall, before being forwarded to the Secretary in accordance with sub-regulation (3), be sealed with the seal of the court.

(6) Where a registrar has received a certificate transmitted through diplomatic channels, by a judicial authority in a country referred to in sub-regulation (1), certifying that a document has been served on a person on a date specified in the certificate, the certificate may be filed and, subject to sub-regulation (7), is then evidence of the matters stated in the certificate.

(7) Where service of a document is required to be effected on a person in the manner referred to in paragraph 5 (1) (a) of Order 18 of the Rules of Court, the due service of the document shall be deemed not to have been proved by a certificate referred to in sub-regulation (6) unless—

- (a) it also certifies the means by which the person who served the document identified the person served; or
- (b) other evidence, whether by affidavit or otherwise, is furnished showing that the document came to the notice of the person on whom it was to be served.

Authentication of consent in writing

13. For the purposes of paragraphs 70A (1) (a), 70A (2) (a), 70B (1) (c) and 70B (2) (c) of the Act, a consent in writing shall be authenticated by a person referred to in section 8 of the *Statutory Declarations Act 1959* endorsing on the consent a statement that—

- (a) he or she has satisfied himself or herself as to the identity of the person signing the consent; and
- (b) that the consent has been signed in his or her presence.

Prescribed overseas jurisdiction in addition to New Zealand

14. The Independent State of Papua New Guinea is declared to be a prescribed overseas jurisdiction for the purposes of the definition of “overseas custody order” in section 60 of the Act and for the purposes of sections 69 and 89 of the Act.

Institution, &c., of proceedings by persons holding certain offices

15. (1) For the purposes of section 89A and paragraph 125 (1) (f) of the Act, each of the following offices under a law of a State or of a Territory is a prescribed office:

- (a) Collector of Maintenance;
- (b) Deputy Collector of Maintenance;
- (c) Assistant Collector of Maintenance.

(2) A person for the time being holding an office referred to in sub-regulation (1) is authorized, in his or her discretion, to institute, continue or prosecute proceedings with respect to the maintenance of a party to a marriage or of a child of a marriage, on behalf of that party or child.

(3) For the purposes of paragraph 125 (1) (f) of the Act, each person for the time being holding an office referred to in sub-regulation (1) is a person entitled, in his or her discretion, to institute, continue or prosecute proceedings, on behalf of the person entitled to moneys payable under a maintenance order under Part VIII of the Act, for the purpose of enforcing payment of those moneys.

Fee in respect of appeals

16. (1) Subject to sub-regulation (3), a court fee of \$190 is payable in respect of an appeal under section 94 of the Act.

(2) The court fee referred to in sub-regulation (1) is payable by the appellant not later than 1 month after the date on which the notice of appeal is filed.

(3) The court fee referred to in sub-regulation (1) is not payable where the Principal Registrar is satisfied—

- (a) that the appellant has been granted, in relation to the appeal, legal aid from a legal aid scheme or service approved by the Attorney-General; or
- (b) that payment of the fee would impose hardship on the appellant.

Registration of decrees

17. (1) A decree (other than a decree for principal relief) may be registered in any court having jurisdiction under the Act by filing a sealed copy of the decree in that court.

(2) For the purposes of sub-regulation (1), a decree may be filed—

- (a) by a party to the proceedings in which the decree was made;
- (b) by a child entitled to benefit under the decree;
- (c) by an officer of the court;
- (d) by an officer, authority or person entitled under paragraph 125 (1) (f) of the Act to take proceedings for the enforcement of the decree; or
- (e) with the leave of the court, by any other person.

(3) A decree filed and registered under sub-regulation (1) shall be numbered in accordance with the Rules of Court.

Interstate enforcement of affiliation and similar orders

18. (1) This regulation applies to orders to which section 109 of the Act applies.

(2) A reference in this regulation to an order made by a court shall be read as including a reference to an order made by another court on an appeal in connection with proceedings that originated in the first-mentioned court.

(3) For the purposes of this regulation, a person working in a place, whether temporarily or permanently, shall be deemed to be resident in that place as well as in the place in which he or she is in fact resident.

(4) Where an order to which this regulation applies is still in force and it appears that the person against whom the order has been made is resident in, or proceeding to, a State or Territory, other than the State or Territory in which the order was made, the registrar of the court in the State or Territory in which the order was made may, of his or her own motion, or on the application of a person for whose benefit the order was made, send to a court having jurisdiction under the Act in that other State or Territory—

- (a) 3 certified copies of the order;
- (b) a certificate setting out the amounts payable and remaining unpaid under the order;
- (c) such information and material (if any) as the registrar possesses for ascertaining the identity and whereabouts of the person against whom the order has been made; and
- (d) a request in writing that the order be made enforceable in that State or Territory.

(5) Where the registrar of a court receives the documents referred to in sub-regulation (4), the registrar of that court shall, if there are reasonable grounds for believing that the person against whom the order has been made is resident in or proceeding to the area over which the court has jurisdiction, register the order by filing in the court a certified copy of the order and certificate and noting the fact and date of the registration on that certified copy.

(6) An order registered under sub-regulation (5) is, until the registration is cancelled, enforceable in the court in which the certified copy of the order is filed both with respect to any moneys or arrears presently payable under the order and with respect to amounts becoming due under the order after it is so registered as if it were an order made under the Act.

(7) Upon registration under sub-regulation (5) of an order, the registrar of the court shall—

- (a) notify the registrar of the requesting court of the registration; and
- (b) cause a certified copy of the order to be served upon the person against whom the order has been made, together with a notice of registration of the order in the court specifying—
 - (i) the amount, if any, (including arrears) due under the order; and
 - (ii) the person, authority or court to whom or to which money payable under the order is to be paid.

(8) Service of the documents under sub-regulation (7) shall be in accordance with paragraph 5 (1) (a), (b) or (c) of Order 18 of the Rules of Court.

(9) Where an order has been registered in a court in accordance with this regulation and there are reasonable grounds for believing that the person against whom the order has been made is no longer resident in the State or Territory in which the order has been registered but is or is about to be resident in another State or Territory, the registrar of the court in which the order has

been registered shall forthwith notify the registrar of the court in which the order was made accordingly and shall give to that registrar such information as the registrar of the first-mentioned court possesses concerning the whereabouts and intended movements of that person.

(10) Where—

- (a) an order has been registered in accordance with this regulation; and
- (b) the registrar of a court receives from the requesting court a request in writing that the order be no longer enforced,

the registrar shall cancel the registration by noting the fact and date of the cancellation on the certified copy of the order filed in the court.

(11) Upon the cancellation of the registration of an order—

- (a) the order ceases to be enforceable by the court in which it has been registered;
- (b) the order remains unenforceable by that court unless and until it is again registered in that court; and
- (c) every warrant or other process arising out of the registration of the order ceases to have force or effect.

(12) Where—

- (a) an order to which this regulation applies made by a court in a State or Territory was, before the commencement of the Act, registered in a court in another State or Territory (being a court that has jurisdiction under the Act); and
- (b) the registration had not been cancelled before the commencement of this sub-regulation,

sub-regulations (6), (9), (10) and (11) apply in relation to that order as if it were an order registered in the last-mentioned court in accordance with this regulation.

Prescribed laws for purposes of sub-sections 114AB (1) and (2) of the Act

19. For the purposes of sub-sections 114AB (1) and (2) of the Act, the following are prescribed laws:

- (a) sections 407AA, 357F, 357G, 357H and 547AA of the Crimes Act, 1900 of the State of New South Wales;
- (b) the *Peace and Good Behaviour Act* 1982 of the State of Queensland;
- (c) sections 172, 173 and 174 of the *Justices Act, 1902* of the State of Western Australia;
- (d) section 99 of the Justices Act, 1921 of the State of South Australia.

Priority of attachment orders

20. For the purposes of the *Maintenance Orders (Commonwealth Officers) Act 1966*, an order made under the Rules of Court for the attachment of moneys payable by the Commonwealth, a State, a Territory or the Administration of a Territory or by an authority of the Commonwealth, of a State or of a Territory (other than moneys as to which it is provided by any law

of the Commonwealth, of a State or of a Territory that they are not liable to attachment) shall be regarded as having been made under this regulation and shall have the same force and effect as an order made under the Third Schedule to the repealed Act.

Conversion of currency

21. (1) For the purposes of these Regulations, an overseas order (including a provisional order) or a certificate or notice originating in an overseas jurisdiction that refers to an amount of money expressed in the currency of the overseas country in which that jurisdiction is located shall be deemed to refer to the equivalent amount in Australian currency on the date on which the order (whether by registration, confirmation or otherwise) becomes an enforceable order in Australia on the basis of the telegraphic transfer rate of exchange prevailing on that date.

(2) Where the registrar of a court receives an order, certificate or notice referred to in sub-regulation (1), the registrar shall ascertain the appropriate rate of exchange and endorse upon the order, certificate or notice, the rate of exchange and the conversion of the amount of money to Australian currency.

PART III—OVERSEAS ORDERS

Interpretation of Part III

22. In this Part, “maintenance order” has the same meaning as in section 110 of the Act and, for the purposes of paragraph (e) of the definition of “maintenance order” in that section, includes an order of a kind referred to in section 109 of the Act.

Registration of overseas custody orders

23. (1) Where the Secretary receives—

- (a) from a prescribed overseas jurisdiction a certified copy of an overseas custody order, being an overseas custody order to which section 68 of the Act applies, that was made in that jurisdiction; and
- (b) a certificate signed by an officer of a court or by some other authority in that jurisdiction relating to the order and containing a statement that the order is, at the date of the certificate, enforceable in that jurisdiction,

the Secretary shall, if there are reasonable grounds for believing that the child who is the subject of the order, a parent of that child, or a person having the right of custody of, or access to, that child, is present in, or proceeding to, Australia, send the documents received by the Secretary to a registrar of the Family Court or to the registrar of a State Family Court or the Registrar of a Supreme Court of a State or Territory.

(2) When the registrar of a court receives from the Secretary the documents referred to in sub-regulation (1), the registrar shall register the order by filing in the court a certified copy of the order and the certificate

relating to the order and noting the fact and the date of the registration on the certified copy.

(3) Where an overseas custody order has been registered in accordance with sub-regulation (2), the order may, on the application of the registrar of a court or a person interested in the order (including the child who is the subject of the order), be registered concurrently in any other court having jurisdiction under the Act.

(4) A certificate by a court that the order has been registered in that court in accordance with sub-regulation (2) shall be sufficient evidence to enable a concurrent registration to be made.

(5) An overseas order registered in accordance with this regulation is enforceable throughout Australia until the registration (including a concurrent registration) has been cancelled.

(6) Where it appears to a court that the documents referred to in sub-regulation (1) have been received by the court other than from the Secretary, the court may, if all other requirements of sub-regulation (1) are satisfied, register the order.

(7) Where a court exercising jurisdiction under sub-section 68 (3) or (4) of the Act substantially varies the order, the registrar of the court shall forthwith forward to the court or to the appropriate authority in the prescribed overseas jurisdiction—

- (a) 3 certified copies of the order of the court and the reasons for the order;
- (b) a copy of the depositions; and
- (c) such further material as the court directs.

(8) Nothing in this regulation precludes a court having jurisdiction under the Act from receiving evidence of an order made in any overseas jurisdiction (whether or not such a jurisdiction is a prescribed overseas jurisdiction) with respect to the custody of, or access to, a child.

Transmission of Australian custody orders to overseas jurisdiction

24. (1) Where—

- (a) an order made by a court in Australia with respect to the custody of, or access to, a child who has not attained the age of 18 years is still in force;
- (b) such an order may be enforced in a prescribed overseas jurisdiction under provisions corresponding to section 68 of the Act; and
- (c) a person having rights of custody or access in relation to that child so requests in writing,

the registrar of the court in which the order was made, registered or last varied shall send to the appropriate court or authority in the prescribed overseas jurisdiction—

- (d) 3 certified copies of the order;

- (e) a certificate signed by the registrar that the order so sent is, at the date of the certificate, enforceable in Australia;
- (f) such information and material (if any) as the registrar possesses for ascertaining the identity and whereabouts of the child and any other person who is subject to the order; and
- (g) a request in writing that the order be made enforceable in that prescribed overseas jurisdiction.

(2) Where a court in a prescribed overseas jurisdiction has made an order under provisions corresponding to sub-section 68 (3) or (4) of the Act, a court having jurisdiction under the Act may treat the order as an overseas custody order and apply to it the principles set out in those sub-sections.

(3) Where a court exercises jurisdiction under sub-regulation (2), the registrar of the court shall forthwith forward to the court in the prescribed overseas jurisdiction—

- (a) 3 certified copies of the further order of the court and the reasons for the order; and
- (b) such further material as the court directs.

(4) Nothing in this regulation prevents a person having rights of custody or access in relation to a child under the order from—

- (a) obtaining certified copies of the order; or
- (b) applying to a court in an overseas jurisdiction (whether or not it is a prescribed overseas jurisdiction) for registration and enforcement of the order in that jurisdiction.

Reciprocating jurisdictions

25. Each of the jurisdictions specified in Schedule 2 is declared to be a reciprocating jurisdiction for the purposes of section 110 of the Act.

Registration of overseas maintenance orders

26. (1) Subject to sub-regulation (2), where the Secretary receives—

- (a) a certified copy of a maintenance order from a reciprocating jurisdiction or a jurisdiction with restricted reciprocity being an order made in that jurisdiction; and
- (b) a certificate signed by an officer of a court or other authority in that jurisdiction relating to the order and containing—
 - (i) a statement that the order is, at the date of the certificate, enforceable in that jurisdiction; and
 - (ii) a statement as to the amount of any arrears due under the order,

the Secretary shall, if there are reasonable grounds for believing that the person against whom the order was made is resident in or proceeding to Australia, send the documents received by the Secretary to a court having jurisdiction under the Act.

(2) In the case of an order of a kind referred to in section 109 of the Act or an order consequent upon such an order, the Secretary shall not send the documents relating to the order to the court if it appears to the Secretary from those documents that the person against whom the order was made—

- (a) was not duly served with a summons to appear in the proceedings in which the order was made;
- (b) did not appear in those proceedings; and
- (c) did not consent to the making of the order.

(3) For the purposes of sub-regulation (2), an order referred to in that sub-regulation shall not be regarded as having been duly served where—

- (a) the respondent is outside the jurisdiction of the court that made the order; and
- (b) in the absence of the respondent from that jurisdiction, an order has been made in that jurisdiction dispensing with service of the respondent with the maintenance order or providing for a form of service other than service of a kind referred to in paragraph 5 (1) (a), (b) or (c) of Order 18 of the Rules of Court.

(4) Where the registrar of a court receives from the Secretary the documents referred to in sub-regulation (1), the registrar shall register the order by filing in the court a certified copy of the order and by noting the fact and date of the registration on that certified copy.

(5) An overseas maintenance order registered under this regulation is, until the registration is cancelled, enforceable in Australia and has effect in Australia as if it were an order made under the Act, both with respect to any arrears payable under the order and with respect to amounts becoming due under the order after it is so registered.

(6) Upon the registration of an order in a court, the registrar of the court shall—

- (a) notify an officer of the court or other authority in the reciprocating jurisdiction or jurisdiction with restricted reciprocity, as the case may be, of the registration; and
- (b) cause a certified copy of the order and a notice of registration of the order specifying—
 - (i) the amount, if any, (including arrears) due under the order; and
 - (ii) the person, authority or court to whom or to which money payable under the order is to be paid,to be served upon the person against whom the order was made.

(7) Service under sub-regulation (6) shall be in accordance with paragraph 5 (1) (a), (b) or (c) of Order 18 of the Rules of Court.

(8) Where, immediately before the date of commencement of the Act, an overseas maintenance order was registered in a court that has jurisdiction under

the Act, that order may continue to be enforced under these Regulations as if it were registered under this regulation.

(9) The receipt of a person, authority or registrar of a court for any amount paid, in pursuance of this regulation, to that person, authority or court under an order shall be sufficient discharge of the liability of the person required under the order to pay that amount.

Transmission of orders made in Australia for enforcement in reciprocating jurisdictions

27. (1) Where a maintenance order made in Australia is in force, and it appears that the person against whom the order was made is resident in or is proceeding to an overseas jurisdiction, being a reciprocating jurisdiction or a jurisdiction with restricted reciprocity, the registrar of the court in which the order was made or is registered may, of the registrar's own motion, or on the application of a person for whose benefit the order was made, send to the Secretary—

- (a) 3 certified copies of the order;
- (b) a certificate stating what moneys and arrears are due, payable and accruing under the order;
- (c) a certificate signed by the registrar that the order is, at the date of the certificate, enforceable in Australia;
- (d) such information and material (if any) as the registrar possesses for ascertaining the identity and the whereabouts of the person against whom the order was made; and
- (e) a request in writing that the Secretary should seek to have the Australian order made enforceable in that overseas jurisdiction,

and the Secretary shall, on receipt of those documents, cause the documents referred to in paragraphs (a), (b) and (c) and any information or material received by him being information or material referred to in paragraph (d) to be transmitted to that overseas jurisdiction with a request in writing that the Australian order be made enforceable in that overseas jurisdiction.

(2) In the case of an order referred to in section 109 of the Act or an order consequent upon such an order, the Secretary shall not cause the documents, information or material received by the Secretary under sub-regulation (1) in relation to the order to be transmitted to the overseas jurisdiction referred to in that sub-regulation if it appears to the Secretary from those documents or from that information or material that the person against whom the order was made—

- (a) was not duly served with a summons to appear in the proceedings in which the order was made;
- (b) did not appear in those proceedings; and
- (c) did not consent to the making of the order.

Confirmation of overseas maintenance orders

28. (1) Where—

- (a) a maintenance order has been made in an overseas jurisdiction being a reciprocating jurisdiction or a jurisdiction with restricted reciprocity;
- (b) the order has no effect under the law of that jurisdiction unless and until it is confirmed by a court outside that jurisdiction;
- (c) a certified copy of the order and a copy of the depositions of the witnesses in the proceedings in which the order was made, together with a statement of the grounds on which the order could have been opposed if the person against whom the order was sought had appeared at the hearing, have been received by the Secretary; and
- (d) there are reasonable grounds for believing that—
 - (i) the person is resident in, or is proceeding to, Australia; and
 - (ii) the order will have effect under the law of the overseas jurisdiction if it is confirmed by a court having jurisdiction under the Act,

the Secretary shall send the documents received by the Secretary to the registrar of a court having jurisdiction under the Act.

(2) After receipt of the documents by the registrar referred to in sub-regulation (1), an application may be issued by the registrar, calling upon the person against whom the order is sought to show cause why that order should not be confirmed.

(3) An application under sub-regulation (2) shall be served in accordance with paragraph 5 (1) (a), (b) or (c) of Order 18 of the Rules of Court.

(4) On the hearing of an application under sub-regulation (2), a person entitled to money payable under the order to which the application relates may appear personally or be represented by—

- (a) a legal practitioner;
- (b) the registrar of a court;
- (c) an officer of the Attorney-General's Department; or
- (d) a person holding office as the Collector of Maintenance, a Deputy Collector of Maintenance or an Assistant Collector of Maintenance under a law of the State or Territory in which the court is situated.

(5) On the hearing of an application under sub-regulation (2), it shall be open to the respondent to raise any ground of opposition that the respondent could have raised in the original proceedings or any ground of opposition that the respondent could have raised had the proceedings in which the provisional overseas order was made been heard in Australia, and the statement referred to in paragraph (1) (c) shall be conclusive evidence that the grounds referred to in that statement are the grounds of opposition that could have been raised in the original proceedings.

(6) Upon the hearing of the application, the court may—

- (a) confirm the provisional order (either with or without modification);

- (b) discharge the provisional order; or
- (c) adjourn the proceedings, and remit the provisional order to the court that made it with a request that that court take further evidence and further consider its provisional order.

(7) Where a provisional order is confirmed under this regulation, the court may, if it thinks fit, in the order confirming the provisional order, specify—

- (a) the time or times by which the money payable under the order that has been confirmed is to be paid;
- (b) the person, authority or court to whom or to which that money is to be paid; and
- (c) where necessary, the means by which that money shall be paid or disbursed.

(8) Where a provisional order is confirmed under this regulation (whether with or without modification), the order as so confirmed is enforceable in Australia and has effect in Australia as if it were an order made under the Act.

(9) Where the court adjourns the proceedings under paragraph (6) (c), the court may make such interim orders for periodic payments by the respondent as it thinks fit.

(10) Where a court confirms or discharges an order in accordance with paragraph (6) (a) or (b), the registrar shall notify an officer of the court or other authority in the overseas jurisdiction of the confirmation or discharge.

Power to make provisional order against person in reciprocating jurisdiction

29. (1) Where a respondent has not been served with an application to a court for a maintenance order, has not consented to the order and the court is satisfied that the respondent is resident in, or is proceeding to, a reciprocating jurisdiction or a jurisdiction with restricted reciprocity, the court may, in the absence of the respondent, make any order that it could have made if the application had been duly served on the respondent and the respondent had failed to appear at the hearing of the application.

(2) An order made under sub-regulation (1) shall be provisional only and shall have no effect unless and until confirmed (either with or without modification) by a competent court in a reciprocating jurisdiction or a jurisdiction with restricted reciprocity in which the respondent is resident at the time of that confirmation, and the order shall be expressed accordingly.

(3) Where a court makes an order under sub-regulation (1), the registrar shall send to the Secretary—

- (a) a copy of the depositions of the witnesses;
- (b) 3 certified copies of the order;
- (c) a statement of the grounds on which the making of the order could have been opposed if the respondent had appeared at the hearing; and
- (d) the information and material (if any) which the registrar possesses for ascertaining the identity and whereabouts of the respondent,

and the Secretary shall, on receipt of those documents, cause them to be transmitted to a court in the jurisdiction in which the respondent is resident or to which the respondent is proceeding, with a request in writing that proceedings be instituted with respect to the confirmation and enforcement of the provisional order.

(4) Where an order made under sub-regulation (1) has come before a court in an overseas jurisdiction for confirmation and the order has been remitted by that court to the court in which the order was made for the taking of further evidence, the latter court shall, after notice has been given to such persons and in such manner as the court thinks fit, proceed to take the evidence, and shall cause the depositions of the witnesses to be sent to the court in the overseas jurisdiction.

(5) If, upon the taking of further evidence, it appears that the order ought not to have been made, the court may rescind the order or may, if it thinks fit, make a fresh provisional order under sub-regulation (1).

(6) Where the court takes evidence in pursuance of a request made under sub-regulation (4), the court may, for the purposes of sub-regulation (5), have regard to the evidence given in that other court.

(7) Where a court in an overseas jurisdiction in which the respondent is resident for the time being confirms (either with or without modification) a provisional order made under this regulation, the order has effect in Australia as so confirmed.

(8) Where a court in an overseas jurisdiction confirms (either with or without modification) a provisional order made under this regulation, then, in any proceedings arising out of or relating to the order, it shall be presumed, unless the contrary is proved, that the respondent was resident in the overseas jurisdiction at the time the order was confirmed.

Proceedings for enforcement of overseas maintenance orders

30. (1) Where an overseas maintenance order is enforceable in Australia by virtue of these Regulations—

- (a) all proceedings may be taken for the enforcement of the order; and
- (b) the provisions of the Act, these Regulations and the Rules of Court shall, so far as they are applicable, and with such modifications as are necessary, apply to and in relation to proceedings for the enforcement of the order,

as if the order were a maintenance order made under Part VIII of the Act by the court in which the overseas order is registered under sub-regulation 26 (4) or confirmed under sub-regulation 28 (6), as the case may be.

(2) Proceedings for the enforcement of an overseas maintenance order may be taken by any person who would, if the order had been made in Australia, be entitled to take proceedings under the order or, on behalf of that person, by—

- (a) the registrar of a court having jurisdiction under the Act; or
- (b) an authority or person referred to in sub-regulation 15 (3).

Cancellation of registration in reciprocating jurisdiction**31. (1) Where—**

- (a) a maintenance order made in Australia is, under the law of a reciprocating jurisdiction or a jurisdiction with restricted reciprocity, enforceable in that jurisdiction; and
- (b) the court in which the order was made is satisfied that there are reasonable grounds for believing that the person against whom the order was made is not resident in, or proceeding to, that reciprocating jurisdiction, or it appears to the court that there is some good reason why the order should no longer be enforceable in that jurisdiction,

the court may direct that steps be taken to cancel the registration of the order in that jurisdiction.

(2) Where a court directs under sub-regulation (1) that steps be taken to cancel the registration of an order in a jurisdiction, the registrar of that court shall send to an appropriate authority in that jurisdiction a request in writing that the order be no longer enforceable in that jurisdiction.

(3) Where a court directs under sub-regulation (1) that steps be taken to cancel the registration of an order in a jurisdiction, the order shall cease to be enforceable in that jurisdiction for the purposes of these Regulations.

Cancellation of registration of overseas maintenance orders**32. (1) Where—**

- (a) an overseas maintenance order is registered or confirmed under these Regulations; and
- (b) the court in which the order is registered or confirmed receives a request in writing made by the court that made the order or some other competent authority in the overseas jurisdiction that the order be made no longer enforceable in Australia,

the first-mentioned court shall direct its registrar to cancel the registration of the order by noting the fact and date of the cancellation on the certified copy of the order filed in the court.

(2) Upon the cancellation of the registration of an overseas maintenance order, the order ceases to be enforceable in Australia.

(3) Where the registrar of a court cancels the registration of an overseas maintenance order in pursuance of a request in writing having been received from a court or authority referred to in paragraph (1) (b), the registrar shall cause notice in writing of the fact that the registration has been cancelled, and of the date of the cancellation, to be given to the person who was required to make payments under the order.

Registration of overseas maintenance agreements

33. (1) An overseas maintenance agreement that has force and effect in a prescribed overseas jurisdiction may be registered in a court having jurisdiction under the Act.

- (2) Where the Secretary receives—
- (a) a certified copy of an overseas maintenance agreement from a prescribed overseas jurisdiction; and
 - (b) a certificate signed by an officer of a court or other authority in that jurisdiction relating to the agreement and containing—
 - (i) a statement that the agreement is, at the date of the certificate, enforceable in that jurisdiction; and
 - (ii) a statement as to the amount of any arrears due under the agreement,
- the Secretary shall, if there are reasonable grounds for believing that the person against whom the agreement is enforceable is resident in or proceeding to Australia, send the documents received by the Secretary to a court having jurisdiction under the Act.
- (3) Where the registrar of a court receives from the Secretary the documents referred to in sub-regulation (1), the registrar shall register the agreement by filing in the court the certified copy of the agreement and by noting the fact and date of the registration on that certified copy.
- (4) An overseas maintenance agreement registered under sub-regulation (3) is, until the registration is cancelled, enforceable in Australia as if it were a maintenance agreement that had been entered into in Australia and registered under section 86 of the Act.
- (5) Upon registration of an overseas maintenance agreement in a court, the registrar of the court shall—
- (a) notify an officer of the court or other authority in the prescribed overseas jurisdiction of the registration; and
 - (b) cause a certified copy of the agreement and a notice of registration of the agreement specifying—
 - (i) the amount, if any, (including arrears) due under the agreement; and
 - (ii) the person, authority or court to whom or to which money payable under the agreement is to be paid,to be served upon the person required to make payments under the agreement.
- (6) Service under sub-regulation (5) shall be in accordance with paragraph 5 (1) (a), (b) or (c) of Order 18 of the Rules of Court.
- (7) The receipt of a person, authority or registrar of a court for any amount paid, in pursuance of this regulation, to that person, authority or court under an agreement shall be sufficient discharge of the liability of the person required under the agreement to pay that amount.

Cancellation of registration of overseas maintenance agreements

34. (1) Where—
- (a) an overseas maintenance agreement is registered under these Regulations; and

- (b) the court in which the agreement is registered receives a request in writing from—
- (i) the parties to the agreement; or
 - (ii) the court or other authority in the prescribed overseas jurisdiction an officer of which signed the certificate referred to in paragraph 33 (2) (b) relating to the agreement,

that the agreement be no longer enforceable in Australia,

the first-mentioned court shall direct its registrar to cancel the registration of the agreement by noting the fact and date of cancellation on the certified copy of the agreement filed in the court.

(2) Upon the cancellation of the registration of an overseas maintenance agreement under sub-regulation (1), the agreement ceases to be enforceable in Australia.

(3) Where the registrar of a court cancels the registration of an overseas maintenance agreement in pursuance of a request in writing having been received from a court or authority referred to in sub-paragraph (1) (b) (ii), the registrar shall cause notice in writing of the fact that the registration has been cancelled, and of the date of the cancellation, to be given to the person who was required to make payments under the agreement.

Transmission of maintenance agreements to prescribed overseas jurisdiction

35. (1) Where—

- (a) a maintenance agreement registered in a court having jurisdiction under the Act remains in force;
- (b) the agreement may be enforced in a prescribed overseas jurisdiction as if it were an order of a court of that jurisdiction; and
- (c) a person having rights under the agreement so requests in writing,

the registrar of the court in which the agreement is registered shall send to the appropriate court or authority in the prescribed overseas jurisdiction—

- (d) 3 certified copies of the agreement sealed by the court;
- (e) 3 certified copies of the order, if any, approving the agreement;
- (f) such information and material (if any) as the registrar possesses for ascertaining the identity and whereabouts of the person obliged to make payments under the agreement;
- (g) a certificate, signed by the registrar, containing a statement that the agreement is, at the date of the certificate, enforceable in Australia;
- (h) a certificate stating what moneys are due, payable and accruing under the agreement; and
- (j) a request in writing that the agreement be made enforceable in that prescribed overseas jurisdiction.

(2) Nothing in these Regulations prevents a party to a registered maintenance agreement or a child who is a beneficiary under such agreement from—

- (a) obtaining copies of the agreement sealed by the court and of any order approving the agreement; and
- (b) applying to a court in any overseas jurisdiction (whether or not the jurisdiction is a prescribed overseas jurisdiction) for enforcement of the maintenance agreement in that jurisdiction.

Party in Australia may apply to vary, &c., overseas maintenance order or agreement

36. (1) Where an overseas maintenance order is enforceable in Australia, a person for whose benefit the order was made or the person against whom the order was made may apply to a court in which the order is registered for an order discharging, suspending, reviving or varying the overseas maintenance order.

(2) Where an overseas maintenance agreement is enforceable in Australia, a person for whose benefit the agreement was entered into or the person who is liable to make payments under the agreement may apply to a court in which the agreement is registered for an order discharging, suspending, reviving or varying the agreement or discharging or waiving arrears under the agreement.

(3) In an application under sub-regulation (1) or (2), the law to be applied is the law in force in Australia under the Act.

Discharge, &c., of overseas maintenance order made in absence of party

37. Where—

- (a) an application is made under sub-regulation 36 (1) by the person against whom the order was made;
- (b) the applicant was not duly served with a summons to appear in the proceedings in which the order was made, did not appear in those proceedings and did not consent to the making of the order; and
- (c) the application is made within 6 months after service on the applicant of notice of registration of the order in Australia,

the applicant may raise any matter that the applicant could have raised under Part VIII of the Act had the proceedings in which the overseas maintenance order was made been heard in Australia.

Certain orders to be provisional only

38. (1) Where the court proposes to make an order under regulation 36 and the law of the overseas jurisdiction in which the original order was made or in which the maintenance agreement is enforceable, as the case may be, provides for the confirmation by a court of that jurisdiction of orders of a kind referred to in sub-regulation 36 (1) or (2) if made as provisional orders, the order under regulation 36 shall be provisional only and have no effect unless and until so confirmed (with or without modification), and the order shall be expressed accordingly.

(2) A provisional order in accordance with sub-regulation (1) may be made notwithstanding the fact that the respondent has not been served with the application to the court and has not consented to the order proposed in the application.

(3) Where a provisional order is made by a court in accordance with sub-regulation (1), the registrar of the court shall send a certified copy of the provisional order, together with a copy of the depositions of the witnesses, to the court in the overseas jurisdiction in which the original order was made.

(4) Where the court in the overseas jurisdiction confirms (with or without modification) a provisional order made on an application under regulation 36, the order has effect in Australia as so confirmed.

(5) Where a provisional order made in accordance with sub-regulation (1) is remitted by the court in an overseas jurisdiction for the taking of further evidence, the court to which the order has been remitted shall, after notice has been given to the applicant for the order and to such persons and in such manner as the court thinks fit, proceed to take the evidence, and shall cause a copy of the depositions of the witnesses to be sent to the court in the overseas jurisdiction.

(6) If, upon taking the further evidence, it appears to the court that the order ought not to have been made, the court may rescind the order and may, if it thinks fit, make a fresh provisional order.

Confirmation of variations made provisionally in overseas jurisdiction

39. (1) Where the registrar of a court receives—

(a) a certified copy of—

(i) a provisional order made by a court in an overseas jurisdiction varying, discharging, suspending or reviving a maintenance order made in Australia and enforceable in that overseas jurisdiction; or

(ii) a provisional order made by a court in an overseas jurisdiction varying, discharging, suspending or reviving an overseas maintenance order made in that jurisdiction and enforceable in Australia by virtue of these Regulations; and

(b) a copy of the depositions of the witnesses who gave evidence at the hearing of the application upon which the provisional order was made, the registrar shall apply to the court for an order confirming the provisional order.

(2) A registrar making an application under sub-regulation (1) shall cause a copy of the application to be served on the respondent in accordance with paragraph 5 (1) (a), (b) or (c) of Order 18 of the Rules of Court.

(3) Upon the hearing of the application the court may—

(a) confirm the provisional order (with or without modification);

(b) discharge the provisional order; or

(c) adjourn the proceedings and remit the provisional order to the court that made it with a request that the court take further evidence and further consider its provisional order.

(4) Where a provisional order is confirmed under this regulation (whether with or without modification), the order as so confirmed has effect in Australia as if it were an order made by a court having jurisdiction under the Act.

(5) In this regulation a reference to a provisional order shall be read as including a reference to a provisional variation of an Australian maintenance agreement or to a provisional variation of an overseas maintenance agreement, as the case requires.

PART IV—CONVENTION ON RECOVERY ABROAD OF MAINTENANCE

Interpretation of Part IV

40. (1) In this Part, unless the contrary intention appears—

“authorized person” means a person appointed under sub-regulation 46 (1) to be an authorized person;

“Controller” means the person appointed under regulation 41 to be the Controller of Overseas Maintenance Claims;

“Convention” means the Convention on the Recovery Abroad of Maintenance, referred to in section 111 of the Act, a copy of the English text of which is set out in Schedule 3;

“convention country” means a country that under regulation 48 is a convention country;

“Receiving Agency” has the meaning it has in the Convention;

“Transmitting Agency” has the meaning it has in the Convention.

(2) In this Part, unless the contrary intention appears—

(a) a reference to payment of money for the maintenance of a child includes a reference to payment of money for the education of that child; and

(b) a reference to proceedings under this Part in a court includes a reference to proceedings on appeal from original proceedings under this Part.

(3) The purpose of this Part is to give effect to section 111 of the Act.

Controller—appointment

41. The Attorney-General shall appoint an officer of the Australian Public Service to be the Controller of Overseas Maintenance Claims.

Controller—resignation

42. The Controller may resign the Controller’s office by writing signed by the Controller and delivered to the Attorney-General.

Controller—functions

43. (1) In addition to the other functions conferred upon the Controller by this Part, the functions of the Controller are—

- (a) subject to any directions of the Attorney-General—to do, or co-ordinate the doing of, anything that is required to be done for the purpose of performing the obligations of Australia under the Convention;
- (b) to provide to persons such legal advice and assistance as is required to be provided for the purpose of performing those obligations; and
- (c) to advise the Attorney-General, either on the Controller's initiative or upon a request made to the Controller by the Attorney-General, on all matters that concern, or arise out of performing, those obligations, including any need for additional legislation required for performing those obligations.

(2) The Controller shall have, and may exercise, in Australia all the powers, and shall perform all the functions, that a Transmitting Agency and Receiving Agency have under the Convention.

Acting Controller

44. (1) The Attorney-General may appoint an officer of the Australian Public Service to act as the Controller—

- (a) during a vacancy in the office of Controller, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Controller is, or is about to be, absent from duty or from Australia or is for any reason unable to perform the functions of his office.

(2) Where the office of Controller becomes vacant while a person is acting as the Controller, that person may continue so to act until the Attorney-General otherwise directs or until the vacancy is filled.

(3) An appointment of a person to act as the Controller ceases to have effect if that person resigns the Controller's appointment by writing signed by that person and delivered to the Attorney-General.

(4) While a person is acting as the Controller, that person has and may exercise all the powers, and shall perform all the functions, of the Controller.

(5) An appointment of a person under sub-regulation (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(6) The validity of anything done by or in relation to a person purporting to act in pursuance of an appointment under sub-regulation (1) shall not be called in question on the ground that the occasion for the appointment of that person had not arisen, that there is a defect or irregularity in or in connection with the appointment of that person, that the appointment had ceased to have effect or that the occasion for that person to act had not arisen or had passed.

Immunity of Controller in respect of orders to pay costs

45. A person who holds office as the Controller, who is appointed to act as the Controller or who, being an authorized person, exercises the powers and performs the functions of the Controller shall not be made subject to any order to pay costs in relation to his or her exercising the powers or performing the functions of the Controller.

Authorized persons—appointment

46. (1) The Attorney-General may appoint a person to be an authorized person for the purposes of this Part.

(2) A power to appoint a person in sub-regulation (1) includes a power to appoint any person from time to time holding, occupying or performing the duties of a specified office or position of the Commonwealth or of a State or Territory.

(3) An appointment of a person under sub-regulation (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

Authorized persons—functions

47. (1) Subject to sub-regulations (2) and 46 (2), an authorized person has and may exercise all the powers, and may perform all the functions, of the Controller and may institute and prosecute such proceedings with respect to maintenance as are necessary to fulfil the purposes of the Convention.

(2) Where in relation to a claimant, or a class of claimants, referred to in regulation 49 or 50, or in relation to specified circumstances, the Controller by instrument in writing directs an authorized person not to exercise a power, or perform a function, of the Controller, the authorized person shall not exercise that power or perform that function.

Convention countries

48. For the purposes of this Part, the countries specified in Schedule 4 are convention countries.

Application for recovery of maintenance in convention countries

49. (1) Where a person claims—

(a) to be entitled under the law of a convention country—

(i) to recover maintenance from another person; or

(ii) to variation of an order made in that country for payment of maintenance by another person; and

(b) that that other person is subject to the jurisdiction of that country,

the first-mentioned person may apply to the Controller through an authorized person to have the claim transmitted to a Receiving Agency in that country.

(2) An application under sub-regulation (1) shall be accompanied by a photograph of the claimant and, if practicable, by a photograph of the person from whom maintenance is claimed.

(3) Unless the Controller is satisfied that a claim referred to in sub-regulation (1) for maintenance is not in accordance with the requirements of the Convention the Controller shall take on behalf of the claimant any action required to be taken by a Transmitting Agency under the Convention to recover the maintenance.

(4) Where a person who is a resident of Australia is required, by an order to which the Convention applies, to pay maintenance to a claimant in a convention country, that person may apply under this regulation for the suspension or variation of that order as if Australia were a convention country.

Applications by persons in convention countries for recovery of maintenance under Commonwealth, State or Territory law

50. (1) Where the Controller receives from a Transmitting Agency in a convention country an application for the recovery of maintenance that a person claims is required, under a law of the Commonwealth or of a State or Territory, to be paid by another person, or where the Controller receives an application for the variation of an existing order for maintenance, and there are no reasonable grounds for believing that the other person is not subject to the jurisdiction of the Commonwealth or of a State or Territory, the Controller shall take on behalf of the claimant (through an authorized person if the Controller thinks fit) any action required to be taken by a Receiving Agency under the Convention to recover the maintenance.

(2) In proceedings under this Part in a court on behalf of the claimant—

(a) the court shall proceed as if the claimant were before a court; and

(b) the Controller or an authorized person shall, if so authorized by the claimant, do on behalf of the claimant anything that is required or authorized to be done by an applicant in proceedings in that court with respect to maintenance.

(3) In proceedings under this Part in a court on behalf of a claimant, the Controller or an authorized person shall, in any document to be filed in, or issued out of, the office of the court, be titled as the Controller of Overseas Maintenance Claims acting on behalf of the claimant whose name shall be set out in the document.

(4) Notwithstanding sub-regulation (2), in proceedings under this Part in a court, the Controller or an authorized person shall not, without the leave of the court, settle or compromise the proceedings or take any other action that is not, or may not be, for the benefit of the claimant.

(5) Where, in relation to an application referred to in sub-regulation (1) received from a Transmitting Agency in a convention country, a summons or other document that requires the other person referred to in that sub-regulation to appear in proceedings under this Part cannot be served on the other person,

the Controller shall furnish that Agency with a statement giving whatever information the Controller has been able to obtain concerning the whereabouts of that other person and shall return the application to that Agency.

(6) For the purposes of section 89A of the Act, the office of Controller is a prescribed office.

(7) Nothing in sub-regulation (6) limits the functions of the Controller under this Part.

Certain requests to be made only with leave of court

51. Notwithstanding any other provision of these Regulations, in order to prevent proceedings under this Part from being unduly protracted, a request under rule 1 of Order 19, rule 2 or 6 of Order 20 or rule 2 of Order 22 of the Rules of Court shall not be made by the respondent in the proceedings without the leave of the court.

Payment of sums under orders of courts

52. (1) Notwithstanding any other provision of these Regulations or the Rules of Court, sums of money required to be paid by a person in Australia under an order of a court in proceedings under this Part shall be paid to the court or to such person as the court directs.

(2) A court that receives under sub-regulation (1) a sum of money with respect to a claim for maintenance transmitted to the Controller by a Transmitting Agency in a convention country shall, as soon as practicable, remit the money to that Agency.

Taking of evidence at request of appropriate authority in convention countries

53. (1) Where under the Convention the Controller receives a request from a Transmitting Agency or a court in a convention country to obtain evidence concerning specified matters connected with an application referred to in regulation 49, the Controller and any court exercising jurisdiction under the Act shall take any action required to be taken under the Convention to obtain the evidence and the Controller shall transmit a certified copy of a record of the evidence to the Transmitting Agency or court in that country.

(2) Where under sub-regulation (1) the Controller or an authorized person requests a court to take evidence with respect to proceedings for the recovery of maintenance, the court shall give to the Controller or the authorized person, the person from whom the maintenance is claimed and the Transmitting Agency or court in the convention country such notice of the time when, and place where, the evidence is to be taken as, in the opinion of the court, is required to enable the parties to the proceedings to attend, or be represented at, the taking of the evidence.

Obtaining evidence in convention countries for purposes of proceedings under this Part

54. (1) In proceedings under this Part in a court on behalf of a claimant in a convention country, the court may require the Controller or an authorized

person to request the Transmitting Agency in the convention country to obtain evidence required for the proceedings.

- (2) A requirement by a court under this regulation shall set out—
- (a) the names and addresses of the claimant and respondent in the proceedings;
 - (b) the name and address of any person whose evidence is to be taken; and
 - (c) the matters concerning which evidence is required.

(3) The Controller shall transmit to the Transmitting Agency in the convention country a request that the Controller has been required under this regulation to make and shall request the Agency to give the Controller and the respondent in the proceedings notice of the time when, and place where, the evidence is to be taken in order that the respondent may attend, or be represented at, the taking of the evidence.

(4) Nothing in this regulation affects the operation of rule 6 or 7 of Order 30 of the Rules of Court.

Admissibility of evidence given in convention countries

55. In proceedings under this Part in a court, a statement contained in a document—

- (a) purporting to set out or summarize evidence given in proceedings in a court in a convention country and to have been signed by the person before whom the evidence was given;
- (b) purporting to set out or summarize evidence taken in a convention country for the purpose of proceedings under this Part in a court (whether in response to a request made by the court or otherwise) and to have been signed by the person before whom the evidence was taken; or
- (c) purporting to have been received as evidence in proceedings in a court in a convention country and to have been signed by a judge or other officer of the court,

is admissible as evidence of any fact stated in the document to the same extent as oral evidence of that fact is admissible in those proceedings, without proof of the signature of the person purporting to have signed it or of the official position of that person.

Orders of court in convention countries

56. In proceedings under this Part in a court, a document purporting to be an order, or a copy of an order, of a court in a convention country and to have been signed by a judge or other officer of the court is admissible as evidence of that order without proof of the signature of the person purporting to have signed it or of the official position of that person.

PART V—COSTS PAYABLE BY RELEVANT AUTHORITIES

Application of Part V

57. This Part applies to and in relation to work done by a solicitor acting in a matter arising under the Act, these Regulations or the Rules of Court, being a matter—

- (a) that was referred by a relevant authority to the solicitor on or after 1 November 1983; and
- (b) in respect of which no work was done by the solicitor before that date.

Interpretation of Part V

58. (1) In this Part, “relevant authority” has the same meaning as in section 116C of the Act.

(2) A reference in this Part to a basic composite amount, in respect of a solicitor acting in a matter, shall be read as a reference to an amount payable in respect of—

- (a) all attendances;
- (b) preparing documents;
- (c) perusing relevant documents furnished by the solicitor’s client or documents in reply;
- (d) furnishing the solicitor’s client with copies of any decree or order obtained; and
- (e) all other necessary procedural steps in the matter,

other than an amount payable in respect of an attendance at a conference held in pursuance of an order made under rule 1 of Order 24 of the Rules of Court.

(3) A reference in paragraph (2) (a) to an attendance, in respect of attendance at court for the hearing of a matter, shall be read as an attendance for a period that does not exceed 1 hour.

Undefended proceedings for dissolution

59. Subject to regulation 70, the basic composite amount that may be paid by a relevant authority to a solicitor acting in a matter included in the class of matters consisting of undefended proceedings for a decree of dissolution of marriage is—

- (a) in a case where there is a child of the marriage who had not attained the age of 18 years—\$297; or
- (b) in any other case—\$227.

Proceedings for order under section 64 of the Act

60. Subject to regulation 70, the basic composite amount that may be paid by a relevant authority to a solicitor acting in a matter included in the class of matters consisting of proceedings in which an order is sought, under section 64 of the Act, in the Family Court, a State Family Court or the Supreme Court of a State or Territory is \$270.

Proceedings for order under section 74, 78, 79 or 83 of the Act

61. Subject to regulation 70, the basic composite amount that may be paid by a relevant authority to a solicitor acting in a matter included in the class of matters consisting of proceedings in which an order is sought, under section 74, 78, 79 or 83 of the Act, in the Family Court, a State Family Court or the Supreme Court of a State or Territory is \$232.

Proceedings for order under section 114 of the Act

62. Subject to regulation 70, the basic composite amount that may be paid by a relevant authority to a solicitor acting in a matter included in the class of matters consisting of proceedings in which an order is sought, under section 114 of the Act, in the Family Court, a State Family Court or the Supreme Court of a State or Territory is \$292.

Proceedings in court of summary jurisdiction

63. (1) Subject to regulation 70, the basic composite amount that may be paid by a relevant authority to a solicitor acting in a matter included in the class of matters consisting of proceedings in which an order is sought, under section 64, 74, 78, 79, 83 or 114 of the Act, in a court of summary jurisdiction is \$168.

(2) Subject to regulation 70, where a matter is transferred from a court of summary jurisdiction to the Family Court, the basic composite amount that may be paid by a relevant authority to a solicitor acting in a matter included in a class of matters referred to in sub-regulation (1) is the amount payable to that solicitor under that sub-regulation together with, where the time spent by the solicitor on work of a legal professional nature on that matter exceeds 3 hours, any additional amount that may be paid to the solicitor under regulation 70.

Maintenance agreements

64. Subject to regulation 70, the basic composite amount that may be paid by a relevant authority to a solicitor acting in a matter included in the class of matters consisting of proceedings in respect of an agreement under section 86 or 87 of the Act is—

- (a) where the proceedings are brought in the Family Court, a State Family Court or the Supreme Court of a State or Territory—
 - (i) in the case of an agreement under section 86 of the Act—\$176;
and
 - (ii) in the case of an agreement under section 87 of the Act—\$232;
and
- (b) where the proceedings are brought in a court of summary jurisdiction—
 - (i) in the case of an agreement under section 86 of the Act—\$112;
and
 - (ii) in the case of an agreement under section 87 of the Act—\$168.

Contempt proceedings

65. (1) Subject to sub-regulation (2) and to regulation 70, the basic composite amount that may be paid by a relevant authority to a solicitor acting in a matter included in the class of matters consisting of proceedings for contempt under section 35 of the Act is—

- (a) where the proceedings are brought in the Family Court, a State Family Court or the Supreme Court of a State or Territory—\$292; and
- (b) where the proceedings are brought in a court of summary jurisdiction—\$168.

(2) Where the proceedings for contempt arise out of existing proceedings and are instituted during the course of those proceedings—

- (a) sub-regulation (1) does not apply; and
- (b) the amount that may be paid to a solicitor acting in the existing proceedings is increased by an amount calculated at the rate of \$56 per hour in respect of the time spent by the solicitor on the contempt proceedings.

Application for leave to proceed out of time

66. Subject to regulation 70, the basic composite amount that may be paid by a relevant authority to a solicitor acting in a matter included in the class of matters consisting of an application under sub-section 44 (3) of the Act is—

- (a) where the proceedings are brought in the Family Court, a State Family Court or the Supreme Court of a State or Territory—\$232; or
- (b) where the proceedings are brought in a court of summary jurisdiction—\$168.

Conference under rule 1 of Order 24 of Rules of Court

67. (1) The amount that may be paid by a relevant authority to a solicitor acting in a matter included in the class of matters consisting of a conference held in pursuance of an order made under rule 1 of Order 24 of the Rules of Court is an amount calculated at the rate of \$56 per hour in respect of the time spent by the solicitor at the conference.

(2) A reference in sub-regulation (1) to time spent by a solicitor at a conference—

- (a) includes time spent by the solicitor waiting at court while his client is taking part in the conference; and
- (b) does not include time spent by the solicitor waiting for the conference to begin.

Acting in other matters

68. (1) The amount that may be paid by a relevant authority to a solicitor acting in a matter included in the class of matters consisting of—

- (a) defended proceedings for a decree of dissolution of marriage;
- (b) proceedings in which an order is sought under section 65 or 92 of the Act;

- (c) proceedings in which the solicitor is acting for a child who is separately represented by virtue of an order made under section 65 of the Act;
- (d) proceedings in which the solicitor is acting for a person who has been granted an order under section 92 of the Act;
- (e) proceedings under the Act, these Regulations or the Rules of Court in which the solicitor is acting for the respondent to those proceedings; or
- (f) any other proceedings under the Act, these Regulations or the Rules of Court, being proceedings in respect of which no amount is otherwise fixed by these Regulations,

is an amount calculated at the rate of \$56 per hour in respect of the time that, in the opinion of the relevant authority, was reasonably spent by the solicitor on the matter.

(2) In determining whether it is reasonable for a solicitor to have spent time on a matter, the relevant authority shall have regard to the work performed in the matter by the solicitor and the work that is ordinarily performed in the class of matters in which the matter is included.

Proceedings that could have been instituted together

69. Where proceedings of a kind referred to in regulation 60, 61, 62, 63, 64 or 65 were, or could reasonably have been, instituted by a solicitor on behalf of a person in receipt of legal assistance at the same time as other proceedings of the kind referred to in one of those regulations were instituted by the solicitor on behalf of that person, there may be paid to the solicitor an amount equal to the higher or highest of the basic composite amounts that may, but for this regulation, have been paid to the solicitor in respect of the proceedings.

Additional fees

70. (1) In this regulation, "prescribed time", in relation to a matter, means—

- (a) where proceedings in the matter are brought in the Family Court, a State Family Court or the Supreme Court of a State or Territory—a total of not more than 5 hours' work of a legal professional nature; and
- (b) where proceedings in the matter are brought in a court of summary jurisdiction—a total of not more than 3 hours' work of a legal professional nature.

(2) Where—

- (a) the time spent by a solicitor on a matter exceeds the prescribed time in respect of that matter; and
- (b) the relevant authority is of the opinion that it is reasonable for the solicitor to have spent that time on the matter,

there may be paid to the solicitor an amount calculated at the rate of \$56 per hour in respect of the additional time spent on the matter.

(3) In determining whether it is reasonable for a solicitor to have spent time on a matter, the relevant authority shall have regard to the work

performed in the matter by the solicitor and the work that is ordinarily performed in the class of matters in which the matter is included.

Solicitor acting as counsel

71. Where—

- (a) a relevant authority has, before the hearing of a matter, approved the briefing of counsel to appear in the proceedings on the grounds that it is a matter in respect of which it would be reasonable to brief counsel so to appear; and
- (b) the solicitor acting in the matter acts as counsel at the hearing of the matter,

there may be paid to the solicitor an amount calculated at the rate of \$70 per hour in respect of the time after the first hour during which the solicitor so acts as counsel.

Reduction in payment where agent employed

72. Where a solicitor acting in a matter employs another solicitor as agent to instruct counsel or to appear personally for the applicant in the matter, the basic composite amount that may otherwise be paid under this Part to the solicitor in respect of that matter shall be reduced by the sum of \$56.

Instructing counsel

73. Where—

- (a) a solicitor instructs counsel to appear at the hearing of a matter; and
- (b) the hearing exceeds one hour in duration,

there may be paid by a relevant authority to the solicitor—

- (c) in respect of time spent in court on the first day of the hearing—
 - (i) in respect of each of the first 2 hours after the first hour—an amount calculated at the rate of \$47 per hour;
 - (ii) where the hearing is of 4 hours' duration—an amount of \$116;
 - (iii) where the hearing is of 5 hours' duration—\$151; or
 - (iv) where the hearing exceeds 5 hours in duration—an amount of \$151, together with an amount calculated at the rate of \$47 per hour for each hour in excess of 5; and
- (d) in respect of time spent in court on the second day, and any subsequent day, of the hearing—
 - (i) in respect of each of the first 2 hours—an amount calculated at the rate of \$47 per hour;
 - (ii) where the hearing is of 3 hours' duration—an amount of \$116;
 - (iii) where the hearing is of 4 hours' duration—an amount of \$151;
 - (iv) where the hearing is of 5 hours' duration—an amount of \$187;or
 - (v) where the hearing exceeds 5 hours in duration—an amount of \$187, together with an amount calculated at the rate of \$47 per hour for each hour in excess of 5.

Travelling allowance**74. Where—**

- (a) a solicitor uses the solicitor's own vehicle to attend the hearing of a matter included in a class of matters arising under the Act, these Regulations or the Rules of Court or to attend a conference under rule 1 of Order 24 of the Rules of Court; and
- (b) the place of the hearing is situated 35 kilometres or more from the usual place of practice of the solicitor,

the amount that may be paid to the solicitor under this Part in respect of the matter shall be increased by an amount calculated at the rate of 35 cents a kilometre in respect of each kilometre travelled by the solicitor for the purpose of attending the hearing of the matter.

Waiting time**75. (1) Where—**

- (a) a solicitor is required to wait at court for the hearing of a matter in which the solicitor is appearing for a person in receipt of legal assistance (in this regulation called the "relevant matter") for a period that exceeds 2 hours; and
- (b) it was, in the opinion of the relevant authority, reasonable for the solicitor so to wait,

there may be paid to the solicitor by the relevant authority an amount calculated at the rate of \$56 per hour in respect of the time spent waiting in excess of 2 hours.

(2) Where—

- (a) there would, but for this sub-regulation, be payable to a solicitor an amount calculated in accordance with sub-regulation (1); and
- (b) the solicitor was required to wait at court for the hearing of more than one matter,

the amount that may be paid to the solicitor in respect of each matter that is a relevant matter is an amount that bears the same proportion to the amount that would, but for this sub-regulation, have been payable to the solicitor as the number 1 bears to the total number of matters in respect of which the solicitor was required to wait.

(3) In determining whether it was reasonable for a solicitor to wait at court for the hearing of a matter, the relevant authority shall have regard to—

- (a) the number of other matters, if any, listed for hearing by the court on that day, being matters in which the solicitor was to appear;
- (b) whether any of the matters so listed were matters in which the solicitor was appearing for a person in receipt of legal assistance;
- (c) the time at which the solicitor arrived at court;
- (d) the position held by the relevant matter on the list of matters for hearing by the court on that day;
- (e) the time at which the hearing of the relevant matter commenced; and

- (f) such other matters as it considers relevant.

Settled or discontinued proceedings

76. (1) Where—

- (a) proceedings of a kind referred to in regulation 59, 60, 61, 62, 63, 64, 65 or 66 are settled or discontinued before hearing;
- (b) the court in which the proceedings were to be heard has not made any final order in respect of the proceedings; and
- (c) the matter has not been settled as a consequence of the holding of a conference under rule 1 of Order 24 of the Rules of Court,

there may be paid by the relevant authority to the solicitor an amount calculated at the rate of \$56 per hour in respect of the time that, in the opinion of the relevant authority, was reasonably spent by the solicitor on the matter.

(2) In determining whether it is reasonable for a solicitor to have spent time on a matter, the relevant authority shall have regard to the work performed in the matter by the solicitor and the work that is ordinarily performed in the class of matters in which the matter is included.

Disbursements

77. The amount that may be paid by a relevant authority by way of disbursements to a solicitor acting in a matter included in a class of matters arising under the Act, these Regulations or the Rules of Court—

- (a) includes all amounts in respect of disbursements that were properly incurred for the purposes of and incidental to the proceedings;
- (b) where the amount includes an amount in respect of agent's fees—shall be calculated at the rate of \$56 per hour in respect of the time spent by the agent in work of a legal professional nature on the matter; and
- (c) does not include an amount in respect of counsel's fees unless the relevant authority has, before the hearing of the matter, approved the briefing of counsel to appear in the proceedings on the grounds that the briefing of counsel in the matter was reasonably required.

PART VI—REPEAL AND SAVINGS

Repeal of former Family Law Regulations

78. Statutory Rules 1975 No. 210, 1976 Nos. 97 and 213, 1977 No. 172, 1979 No. 146, 1980 No. 215, 1982 Nos. 244 and 295, 1983 Nos. 243, 273 and 280 and 1984 No. 139 are repealed.

Savings—proceedings instituted before 5 January 1976

79. Subject to section 9 of the Act, regulation 4 and the Rules of Court, the Matrimonial Causes Rules and the rules, regulations, practice and procedure of any court having jurisdiction under the repealed Act as in force immediately before 5 January 1976 continue to apply to proceedings instituted before 5

January 1976, and the filing and serving of pleadings including affidavits may be continued as if the repealed Act had continued in force.

Savings in relation to the former Regulations

80. (1) Subject to sub-regulations (4) and (5), proceedings pending or orders or directions made, appointments made or authorizations given, documents filed or served, or any other act or thing done, before the commencement of these Regulations, in accordance with the former Regulations, shall, if of a kind to which these Regulations or the Rules of Court apply, be treated as if pending, made, given, filed, served, or done, as the case requires, in accordance with these Regulations or those Rules, as the case requires.

(2) Subject to sub-regulations (4) and (5), an obligation incurred or undertaking given under the former Regulations before the commencement of these Regulations if of a kind to which these Regulations or the Rules of Court apply shall be treated as if incurred or given under these Regulations or the Rules of Court, as the case requires.

(3) Subject to sub-regulations (4) and (5), where a person has, before the commencement of these Regulations, omitted to do any act or thing in accordance with the former Regulations and the act or thing is one to which these Regulations apply, the act or thing shall be treated as if omitted to be done under these Regulations unless subsequently done in accordance with these Regulations.

(4) These Regulations do not operate to revive any period of time for the doing of any act or thing, being a period of time which, under the former Regulations, had expired before the commencement of these Regulations.

(5) A period of time that commenced under the former Regulations but had not expired before the commencement of these Regulations shall, if the matter in respect of which that period has commenced is a matter to which these Regulations apply, continue as if these Regulations had not come into operation.

SCHEDULE 1

Regulation 12

FORM

REQUEST FOR SERVICE ABROAD

(Title in accordance with Order 7, rule 3 and Form 1 of the Rules of Court)

TO THE REGISTRAR:

I hereby request that a sealed copy of an application in these proceedings be transmitted through the proper channel to *(name of country)* for service personally on the respondent at , or elsewhere in , in accordance with the Convention with that country relating to Legal Proceedings in Civil and Commercial Matters.

I hereby undertake to be responsible personally for all expenses incurred by the Australian Government in respect of the service hereby requested, and on receiving due notification of the amount of those expenses I undertake to pay the amount of the expenses to the Australian Treasury and to produce the receipt for payment to the Registrar.

DATED this day of 19 .

Solicitor for the applicant

SCHEDULE 2

Regulation 25

RECIPROCATING JURISDICTIONS

Canada, the following Provinces and Territories:	United Kingdom, and—
Alberta	Guernsey, Alderney and Sark
British Columbia	Isle of Man
Manitoba	Jersey
Ontario	United States of America, the following States:
Newfoundland	Alaska
New Brunswick	Arkansas
Northwest Territories	California
Nova Scotia	Connecticut
Prince Edward Island	Delaware
Saskatchewan	Florida
Yukon	Indiana
Cook Islands (including Niue)	Kentucky
Cyprus	Louisiana
Fiji	Maine
Gibraltar	Maryland
Hong Kong	Massachusetts
India	Michigan
Kenya	Missouri
Malawi	Montana
Malaysia	Nevada
Malta	New Mexico
Nauru	New York
New Zealand	Oklahoma
Papua New Guinea	Oregon
Sierra Leone	Pennsylvania
Singapore	South Dakota
South Africa (excluding Namibia)	Tennessee
Sri Lanka	Texas
Tanzania (excluding Zanzibar)	Utah
Territory of Christmas Island	Virginia
Territory of Cocos (Keeling) Islands	Wisconsin
Trinidad and Tobago	Western Samoa
	Zambia
	Zimbabwe

SCHEDULE 3

Regulation 40

CONVENTION ON THE RECOVERY ABROAD OF MAINTENANCE

PREAMBLE

Considering the urgency of solving the humanitarian problem resulting from the situation of persons in need dependent for their maintenance on persons abroad,

Considering that the prosecution or enforcement abroad of claims for maintenance gives rise to serious legal and practical difficulties, and

Determined to provide a means to solve such problems and to overcome such difficulties,

The Contracting Parties have agreed as follows:

Article 1

SCOPE OF THE CONVENTION

1. The purpose of this convention is to facilitate the recovery of maintenance to which a person, hereinafter referred to as claimant, who is in the territory of one of the Contracting Parties, claims to be entitled from another person, hereinafter referred to as respondent, who is subject to the jurisdiction of another Contracting Party. This purpose shall be effected through the offices of agencies which will hereinafter be referred to as Transmitting and Receiving Agencies.

2. The remedies provided for in this Convention are in addition to, and not in substitution for, any remedies available under municipal or international law.

Article 2

DESIGNATION OF AGENCIES

1. Each Contracting Party shall, at the time when the instrument of ratification or accession is deposited, designate one or more judicial or administrative authorities which shall act in its territory as Transmitting Agencies.

2. Each Contracting party shall, at the time when the instrument of ratification or accession is deposited, designate a public or private body which shall act in its territory as Receiving Agency.

3. Each Contracting Party shall promptly communicate to the Secretary-General of the United Nations the designations made under paragraphs 1 and 2 and any changes made in respect thereof.

4. Transmitting and Receiving Agencies may communicate directly with Transmitting and Receiving Agencies of other Contracting Parties.

Article 3

APPLICATION TO TRANSMITTING AGENCY

1. Where a claimant is in the territory of one Contracting Party, hereinafter referred to as the State of the claimant, and the respondent is subject to the jurisdiction of another Contracting Party, hereinafter referred to as the State of the respondent, the claimant may make application to a Transmitting Agency in the State of the claimant for the recovery of maintenance from the respondent.

2. Each Contracting Party shall inform the Secretary-General as to the evidence normally required under the law of the State of the Receiving Agency for the proof of maintenance claims, of the manner in which such evidence should be submitted, and of other requirements to be complied with under such law.

3. The application shall be accompanied by all relevant documents, including, where necessary, a power of attorney authorizing the Receiving Agency to act, or to appoint some other person to act, on behalf of the claimant. It shall also be accompanied by a photograph of the claimant and, where available, a photograph of the respondent.

4. The Transmitting Agency shall take all reasonable steps to ensure that the requirements of the law of the State of the Receiving Agency are complied with; and, subject to the requirements of such law, the application shall include:

- (a) the full name, address, date of birth, nationality, and occupation of the claimant, and the name and address of any legal representative of the claimant;
- (b) the full name of the respondent, and, so far as known to the claimant, his addresses during the preceding five years, date of birth, nationality, and occupation;

SCHEDULE 3—continued

- (c) particulars of the grounds upon which the claim is based and of the relief sought, and any other relevant information such as the financial and family circumstances of the claimant and the respondent.

*Article 4***TRANSMISSION OF DOCUMENTS**

1. The Transmitting Agency shall transmit the documents to the Receiving Agency of the State of the respondent, unless satisfied that the application is not made in good faith.
2. Before transmitting such documents, the Transmitting Agency shall satisfy itself that they are regular as to form, in accordance with the law of the State of the claimant.
3. The Transmitting Agency may express to the Receiving Agency an opinion as to the merits of the case and may recommend that free legal aid and exemption from costs be given to the claimant.

*Article 5***TRANSMISSION OF JUDGMENTS AND OTHER JUDICIAL ACTS**

1. The Transmitting Agency shall, at the request of the claimant, transmit, under the provisions of article 4, any order, final or provisional, and any other judicial act, obtained by the claimant for the payment of maintenance in a competent tribunal of any of the Contracting Parties, and, where necessary and possible, the record of the proceedings in which such order was made.
2. The orders and judicial acts referred to in the preceding paragraph may be transmitted in substitution for or in addition to the documents mentioned in article 3.
3. Proceedings under article 6 may include, in accordance with the law of the State of the respondent, exequatur or registration proceedings or an action based upon the act transmitted under paragraph 1.

*Article 6***FUNCTIONS OF THE RECEIVING AGENCY**

1. The Receiving Agency shall, subject always to the authority given by the claimant, take, on behalf of the claimant, all appropriate steps for the recovery of maintenance, including the settlement of the claim and, where necessary, the institution and prosecution of an action for maintenance and the execution of any order or other judicial act for the payment of maintenance.
2. The Receiving Agency shall keep the Transmitting Agency currently informed. If it is unable to act, it shall inform the Transmitting Agency of its reasons and return the documents.
3. Notwithstanding anything in this Convention, the law applicable in the determination of all questions arising in any such action or proceedings shall be the law of the State of the respondent, including its private international law.

*Article 7***LETTERS OF REQUEST**

If Provision is made for letters of request in the laws of the two Contracting Parties concerned, the following rules shall apply:

- (a) A tribunal hearing an action for maintenance may address letters of request for further evidence, documentary or otherwise, either to the competent tribunal of the other Contracting Party or to any other authority or institution designated by the other Contracting Party in whose territory the request is to be executed.
- (b) In order that the parties may attend or be represented, the requested authority shall give notice of the date on which and the place at which the proceedings requested are to take place to the Receiving Agency and the Transmitting Agency concerned, and to the respondent.
- (c) Letters of request shall be executed with all convenient speed; in the event of such letters of request not being executed within four months from the receipt of the letters by the requested authority, the reasons for such non-execution or for such delay shall be communicated to the requesting authority.
- (d) The execution of letters of request shall not give rise to reimbursement of fees or costs of any kind whatsoever.
- (e) Execution of letters of request may only be refused:
 - (1) If the authenticity of the letters is not established;

SCHEDULE 3—continued

- (2) If the Contracting Party in whose territory the letters are to be executed deems that its sovereignty or safety would be compromised thereby.

Article 8

VARIATION OF ORDERS

The provisions of this Convention apply also to applications for the variation of maintenance orders.

Article 9

EXEMPTIONS AND FACILITIES

1. In proceedings under this Convention, claimants shall be accorded equal treatment and the same exemptions in the payment of costs and charges as are given to residents or nationals of the State where the proceedings are pending.
2. Claimants shall not be required, because of their status as aliens or non-residents, to furnish any bond or make any payment or deposit as security for costs or otherwise.
3. Transmitting and Receiving Agencies shall not charge any fees in respect of services rendered under this Convention.

Article 10

TRANSFER OF FUNDS

A Contracting party, under whose law the transfer of funds abroad is restricted, shall accord the highest priority to the transfer of funds payable as maintenance or to cover expenses in respect of proceedings under this Convention.

Article 11

FEDERAL STATE CLAUSE

In the case of a Federal or non-unitary State, the following provisions shall apply:

- (a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States;
- (b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;
- (c) A Federal State Party to this Convention shall, at the request of any other Contracting Party transmitted through the Secretary-General, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article 12

TERRITORIAL APPLICATION

The provisions of this Convention shall extend or be applicable equally to all non-self-governing, trust or other territories for the international relations of which a Contracting Party is responsible, unless the latter, on ratifying or acceding to this Convention, has given notice that the Convention shall not apply to any one or more of such territories. Any Contracting Party making such a declaration may, at any time thereafter, by notification to the Secretary-General, extend the application of the Convention to any or all of such territories.

Article 13

SIGNATURE, RATIFICATION AND ACCESSION

1. This Convention shall be open for signature until 31 December 1956 on behalf of any Member of the United Nations, any non-member State which is a Party to the Statute of the International Court of Justice, or member of a specialized agency, and any other non-member State which has been invited by the Economic and Social Council to become a Party to the Convention.

SCHEDULE 3—continued

2. This Convention shall be ratified. The instruments of ratification shall be deposited with the Secretary-General.

3. This Convention may be acceded to at any time on behalf of any of the States referred to in paragraph 1 of this article. The instruments of accession shall be deposited with the Secretary-General.

*Article 14***ENTRY INTO FORCE**

1. This Convention shall come into force on the thirtieth day following the date of deposit of the third instrument of ratification or accession in accordance with article 13.

2. For each State ratifying or acceding to the Convention after the deposit of the third instrument of ratification or accession, the Convention shall enter into force on the thirtieth day following the date of the deposit by such State of its instrument of ratification or accession.

*Article 15***DENUNCIATION**

1. Any Contracting Party may denounce this Convention by notification to the Secretary-General. Such denunciation may also apply to some or all of the territories mentioned in Article 12.

2. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General, except that it shall not prejudice cases pending at the time it becomes effective.

*Article 16***SETTLEMENT OF DISPUTES**

If a dispute should arise between Contracting Parties relating to the interpretation or application of this Convention, and if such dispute has not been settled by other means, it shall be referred to the International Court of Justice. The dispute shall be brought before the Court either by the notification of a special agreement or by a unilateral application of one of the parties to the dispute.

*Article 17***RESERVATIONS**

1. In the event that any State submits a reservation to any of the articles of this Convention at the time of ratification or accession, the Secretary-General shall communicate the text of the reservation to all States which are Parties to this Convention, and to the other States referred to in article 13. Any Contracting Party which objects to the reservation may, within a period of ninety days from the date of the communication, notify the Secretary-General that it does not accept it, and the Convention shall not then enter into force as between the objecting State and the State making the reservation. Any State thereafter acceding may make such notification at the time of its accession.

2. A Contracting Party may at any time withdraw a reservation previously made and shall notify the Secretary-General of such withdrawal.

*Article 18***RECIPROCITY**

A Contracting Party shall not be entitled to avail itself of this Convention against other Contracting Parties except to the extent that it is itself bound by the Convention.

*Article 19***NOTIFICATIONS BY THE SECRETARY-GENERAL**

1. The Secretary-General shall inform all Members of the United Nations and the non-member States referred to in article 13:

- (a) of communications under paragraph 3 of article 2;
- (b) of information received under paragraph 2 of article 3;
- (c) of declarations and notifications made under article 12;
- (d) of signatures, ratifications and accessions under article 13;
- (e) of the date on which the Convention has entered into force under paragraph 1 of article 14;
- (f) of denunciations made under paragraph 1 of article 15;
- (g) of reservations and notifications made under article 17.

SCHEDULE 3—continued

2. The Secretary-General shall also inform all Contracting Parties of requests for revision and replies thereto received under article 20.

Article 20

REVISION

1. Any Contracting Party may request revision of this Convention at any time by a notification addressed to the Secretary-General.

2. The Secretary-General shall transmit the notification to each Contracting Party with a request that such Contracting Party reply within four months whether it desires the convening of a Conference to consider the proposed revision. If a majority of the Contracting Parties favour the convening of a Conference it shall be convened by the Secretary-General.

Article 21

LANGUAGES AND DEPOSIT OF CONVENTION

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General, who shall transmit certified true copies thereof to all States referred to in article 13.

SCHEDULE 4

Regulation 48

CONVENTION COUNTRIES

Algeria	Finland	Monaco	Sweden
Argentina	France	Morocco	Switzerland
Austria	German Federal	Netherlands	Tunisia
Barbados	Republic	Niger	Turkey
Belgium	Greece	Norway	United Kingdom
Brazil	Guatemala	Pakistan	Upper Volta
Central African	Haiti	Philippines	Yugoslavia
Republic	Holy See	Poland	
Chile	Hungary	Portugal	
Czechoslovakia	Israel	Spain	
Denmark	Italy	Sri Lanka	
Ecuador	Luxembourg	Suriname	

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on

L 1984. 20 December/