

Family Law (Child Abduction Convention) Amendment Regulations 1998 (No. 1) 1998 No. 341

EXPLANATORY STATEMENT

Statutory Rules 1998 No. 341

Issued by the Authority of the Attorney-General

Family Law Act 1975

Family Law (Child Abduction Convention) Amendment Regulations 1998 (No. 1)

Subsection 125(1) of the Family Law Act 1975 (the Act) empowers the Governor-General to make Regulations prescribing all matters necessary to be prescribed for the purposes of the Act.

Sub-section 111B(1) of the Act provides that the Regulations may make such provision as is necessary to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Convention on the Civil Aspects of International Child Abduction (the Convention).

The Family Law (Child Abduction Convention) Regulations provide that the Family Court may make an order for the issue of a warrant for the apprehension or detention of a child who has been wrongfully removed to or from Australia in breach of the Convention. The purpose of the amendment Regulations is to prescribe the form of a warrant for the location of an abducted child. The amendment Regulations also correct references in other forms in the Regulations.

Details of the Regulations are as follows:

Regulation 1 is formal.

Regulation 2 provides that the Regulations commence on gazettal.

Regulation 3 provides that Schedule 1 in the Regulations amends the Family Law (Child Abduction Convention) Regulations.

Item 1 of Schedule 1 amends regulation 14 of the Family Law (Child Abduction Convention) Regulations. Regulation 14(1)(b) and 14(2)(a) provide that the Family Court may make an order for the issue of a warrant for the apprehension or detention of a child who has been wrongfully removed to or from Australia in breach of the Hague Convention. Item 1 of Schedule 1 inserts a new subregulation 14(4) to provide that a warrant issued under regulation 14(1)(b) and 14(2)(a) must be in accordance with Form 2C. Form 2C is inserted in the regulations by Item 5 of Schedule 1.

Item 2 of Schedule 1 amends regulation 25 of the Family Law (Child Abduction Convention) Regulations. Regulation 25 provides that the Family Court may make an order for the issue of a warrant for the apprehension or detention of a child who is the subject of an access application under the Hague Convention. Item 2 of Schedule 1 inserts a new sub-regulation 25(6) to provide that a warrant issued under regulation 25(1)(a) must be in accordance with Form 2C. Form 2C is inserted in the regulations by Item 5 of Schedule 1.

Item 3 of Schedule 1 amends Schedule 3 of the Family Law (Child Abduction Convention) Regulations. The heading to Form 2 in Schedule 3 incorrectly refers to sub-regulation 15(4).

Item 3 of Schedule 1 replaces the incorrect reference to regulation 15(4) with the correct reference to subregulations 14(1) and 14(2).

Item 4 of Schedule 1 amends Schedule 3 of the Family Law (Child Abduction Convention) Regulations. The heading to Form 2A in Schedule 3 incorrectly refers to sub-regulation 15(1B). Item 3 of Schedule 1 replaces the incorrect reference to regulation 15 (1 B) with the correct reference to subregulation 14(3).

Item 5 of Schedule 1 amends Schedule 3 of the Family Law (Child Abduction Convention) Regulations. The heading to Form 2B in Schedule 3 incorrectly refers to sub-regulation 15(4). Item 3 of Schedule 1 replaces the incorrect reference to regulation 15(4) with the correct reference to subregulation 14(4).

Item 6 of Schedule 1 amends Schedule 3 of the Family Law (Child Abduction Convention) Regulations to insert a new Form 2C. The new Form 2C is a form of warrant for the apprehension of a child which may be issued pursuant to an order of the Family Court under regulations 14(1)(b), 14(2)(a) or 25(1)(a) of the regulations.

Item 7 of Schedule 1 amends Schedule 3 of the Family Law (Child Abduction Convention) Regulations. The heading to Form 4 in Schedule 3 incorrectly refers to sub-regulation 24(7). Item 3 of Schedule 1 replaces the incorrect reference to regulation 24(7) with the correct reference to subregulation 25(2).

Item 8 of Schedule 1 amends Schedule 3 of the Family Law (Child Abduction Convention) Regulations. The heading to Form 4A in Schedule 3 incorrectly refers to sub-regulation 24(5B). Item 3 of Schedule 1 replaces the incorrect reference to regulation 24(5B) with the correct reference to subregulation 25(3).

Item 9 of Schedule 1 amends Schedule 3 of the Family Law (Child Abduction Convention) Regulations. The heading to Form 4A in Schedule 3 incorrectly refers to sub-regulation 24(7). Item 3 of Schedule 1 replaces the incorrect reference to regulation 24(7) with the correct reference to subregulation 25(5).