



# Family Law Amendment Regulations 2004 (No. 3)<sup>1</sup>

**Statutory Rules 2004 No. 371<sup>2</sup>**

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I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Family Law Act 1975*.

Dated 16 December 2004

P. M. JEFFERY  
Governor-General

By His Excellency's Command

PHILIP RUDDOCK  
Attorney-General

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### 1 Name of Regulations

These Regulations are the *Family Law Amendment Regulations 2004 (No. 3)*.

### 2 Commencement

These Regulations commence on the date of their notification in the *Gazette*.

### 3 Amendment of *Family Law Regulations 1984*

Schedule 1 amends the *Family Law Regulations 1984*.

### 4 Amendment of *Family Law (Child Abduction Convention) Regulations 1986*

Schedule 2 amends the *Family Law (Child Abduction Convention) Regulations 1986*.

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## **Schedule 1      Amendments of *Family Law Regulations 1984***

(regulation 3)

**[1]      Part III, Division 1, heading**

*substitute*

**Division 1              Overseas child orders**

**[2]      Regulation 23, heading**

*substitute*

**23              Registration of overseas child orders**

**[3]      Subregulation 23 (8)**

*substitute*

- (8) This regulation does not prevent a court that has jurisdiction under the Act from receiving evidence of an order made in an overseas jurisdiction (whether or not the jurisdiction is a prescribed overseas jurisdiction), being an order that:
- (a) deals with the person with whom a child is supposed to live or have contact; or
  - (b) provides for a person to have custody of, or access to, a child.

**[4] Regulation 24***substitute***24 Transmission of orders to overseas jurisdiction**

- (1) This regulation applies if:
  - (a) a residence order, contact order, specific issues order, or State child order is made by a court in Australia in relation to a child who is under 18; and
  - (b) the order may be enforced in a prescribed overseas jurisdiction under provisions corresponding to Subdivision C of Division 13 of Part VII of the Act.
- (2) If the registrar of the court in which the order was made, registered or last varied, receives a written request from a person mentioned in subregulation (3) to send the order to the prescribed overseas jurisdiction for registration and enforcement in that jurisdiction, the registrar must send the documents mentioned in subregulation (4) to the appropriate court or authority in the prescribed overseas jurisdiction.
- (3) For subregulation (2), a request may be made by a person:
  - (a) with whom the child is supposed to live or have contact under the order; or
  - (b) who has a right to custody of, or access to, the child under the order.
- (4) For subregulation (2), the documents are as follows:
  - (a) 3 certified copies of the order;
  - (b) a certificate signed by the registrar stating that the order is, at the date of the certificate, enforceable in Australia;
  - (c) any information and material the registrar holds that may assist in identifying and locating the child or any other person who is subject to the order;
  - (d) a request in writing that the order be made enforceable in the prescribed overseas jurisdiction.

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- (5) If:
- (a) the order is registered in a court in the prescribed overseas jurisdiction; and
  - (b) a court in that jurisdiction makes an order under a law corresponding to section 70J of the Act (the *overseas order*);
- a court having jurisdiction under the Act may treat the overseas order as an overseas child order for the purposes of exercising jurisdiction under that section.
- (6) If a court exercises jurisdiction under section 70J of the Act in relation to a child who is the subject of the overseas order, the registrar of the court must send to the court in the prescribed overseas jurisdiction:
- (a) 3 certified copies of any order made by the court and the reasons for the order; and
  - (b) such further material as the court directs.
- (7) Nothing in this regulation prevents a person having a right of custody of, access to or contact with, 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.
- (8) In this regulation:
- custody*, in relation to a child, includes:
- (a) guardianship of the child; and
  - (b) responsibility for the long-term or day-to-day care, welfare and development of the child; and
  - (c) responsibility as the person or persons with whom the child is to live.
- overseas child order* has the meaning given by section 70F of the Act.

**[5] Regulation 55***substitute***55 Admissibility of evidence given in convention countries**

In a proceeding under this Part in a court, a statement contained in a document that purports:

- (a) to set out or summarise evidence given in a proceeding in a court in a convention country and to have been signed by the person before whom the evidence was given; or
- (b) to set out or summarise evidence taken in a convention country for the purpose of a proceeding under this Part (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) to have been received as evidence in a proceeding 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 the proceeding, without proof of the signature of the person purporting to have signed it or of the official position of that person.

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**Schedule 2**      **Amendments of *Family Law***  
**(*Child Abduction Convention*)**  
**Regulations 1986**

(regulation 4)

**[1]      After regulation 1**

*insert*

**1A      Purpose**

- (1) The purpose of these Regulations is to give effect to section 111B of the Act.
- (2) These Regulations are intended to be construed:
  - (a) having regard to the principles and objects mentioned in the preamble to and Article 1 of the Convention; and
  - (b) recognising, in accordance with the Convention, that the appropriate forum for resolving disputes between parents relating to a child's care, welfare and development is ordinarily the child's country of habitual residence; and
  - (c) recognising that the effective implementation of the Convention depends on the reciprocity and mutual respect between judicial or administrative authorities (as the case may be) of convention countries.

**[2]      Subregulation 2 (1), definition of *applicant***

*substitute*

**Article 3 *applicant*** means a person, an institution or another body that has rights of custody in relation to a child for the purposes of the Convention, and has made an application under regulation 14.

**[3] Subregulation 2 (1), definition of *removal***

*omit*

**[4] Subregulation 2 (1), before definition of *responsible Central Authority***

*insert*

*request* means a request made to a responsible Central Authority for the purposes of Article 8 or 21 of the Convention.

**[5] Subregulation 2 (1), definition of *retention***

*omit*

**[6] Subregulation 2 (1), after definition of *rights of custody***

*insert*

*Secretary* means the Secretary of the Attorney-General's Department.

**[7] Subregulation 2 (2)**

*substitute*

- (2) The removal or retention of a child is *wrongful* in the circumstances mentioned in Article 3 of the Convention.

**[8] Regulation 3**

*omit*



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**[9] Subregulation 6 (1)**

*substitute*

- (1) These Regulations are not intended to prevent a person, an institution or another body that has rights of custody in relation to a child for the purposes of the Convention from applying to a court if the child is removed to, or retained in, Australia in breach of those rights.

**[10] Part 2**

*substitute*

**Part 2 Requests to central  
authorities, except for access**

**11 Request for return of child abducted from Australia**

- (1) If a person, an institution or another body claims under a law in force in Australia to have rights of custody in relation to a child who, in breach of those rights, has been:
- (a) removed from Australia to a convention country; or
  - (b) retained in a convention country;
- the person, institution or other body may send a request in writing to a responsible Central Authority to have the claim transmitted to the Central Authority in the country to which the child has been removed or in which the child is retained.
- (2) A request must be in accordance with Form 1.
- (3) If a request is made to a State Central Authority and that Authority is satisfied that the request is in accordance with the requirements of the Convention, the State Central Authority must send the request to the Commonwealth Central Authority.

- (4) If the Commonwealth Central Authority is satisfied that a request received by it is in accordance with the requirements of the Convention, the Commonwealth Central Authority must, on behalf of the person, institution or other body making the request, take any action required to be taken by a Central Authority under the Convention.

### **13 Request for return of child abducted to Australia**

- (1) If the Commonwealth Central Authority:
- (a) receives a request in relation to a child who has been removed from a convention country to Australia; and
  - (b) is satisfied that the request is in accordance with the Convention;
- the Commonwealth Central Authority must take action to secure the return of the child under the Convention.
- (2) The Commonwealth Central Authority may refuse to accept a request received by it if it is satisfied that the request is not in accordance with the Convention.
- (3) If the Commonwealth Central Authority refuses to accept a request, it must, as soon as practicable after doing so, inform the person, institution or other body, or the Central Authority, that made the request of the refusal and of the reason for the refusal.
- (4) For subregulation (1), the action taken may include, in appropriate circumstances, all or any of the following:
- (a) transferring the request to a responsible Central Authority;
  - (b) seeking an amicable resolution of the differences, in relation to the removal or retention of the child, between the person making the request for the child's return and the person opposing the child's return;
  - (c) seeking the voluntary return of the child;
  - (d) applying for an order under Part 3.

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**[11] Regulation 14**

*substitute*

**14 Applications to court**

- (1) If a child is removed from a convention country to, or retained in, Australia, the responsible Central Authority, or a person, an institution or another body that has rights of custody in relation to the child for the purposes of the Convention (an **Article 3 applicant**), may apply to the court, in accordance with Form 2, for any of the following orders:
  - (a) an order for the return of the child under the Convention;
  - (b) an order for the issue of a warrant mentioned in subregulation (4);
  - (c) an order directing that:
    - (i) the child not be removed from a specified place; and
    - (ii) members of the Australian Federal Police prevent the child being removed from that place;
  - (d) an order requiring that arrangements be made (as necessary) to place the child with an appropriate person, institution or other body to secure the welfare of the child, until a request under regulation 13 is determined;
  - (e) any other order that the responsible Central Authority considers appropriate to give effect to the Convention.
- (2) If a child is wrongfully removed from Australia to, or retained in, a convention country, the responsible Central Authority may apply to the court, in accordance with Form 2, for any of the following orders:
  - (a) an order for the issue of a warrant mentioned in subregulation (4);
  - (b) an order that the responsible Central Authority considers necessary or appropriate to give effect to the Convention in relation to the welfare of the child after his or her return to Australia;
  - (c) any other order that the responsible Central Authority considers appropriate to give effect to the Convention.

- (3) If a copy of an application under this regulation is served on a person:
- (a) the person must file an answer, or an answer and a cross-application, in accordance with Form 2A; and
  - (b) the applicant may file a reply in accordance with Form 2B.
- (4) For paragraphs (1) (b) and (2) (a), a warrant:
- (a) is a warrant that authorises a person named or described in the warrant, with such assistance as is necessary and reasonable, and, if necessary and reasonable, by force:
    - (i) to find and recover the child; and
    - (ii) if that person reasonably believes that the child is in, or on, a vehicle, vessel, aircraft or premises, and the circumstances are so serious and urgent as to justify the entry and search under the warrant:
      - (A) to stop, enter and search the vehicle, vessel or aircraft; or
      - (B) to enter and search the premises; and
    - (iii) to deliver the child to the person named in the warrant; and
  - (b) must be in accordance with Form 2C.

**[12] Paragraph 15 (4) (a)**

*omit*

the responsible Central Authority who made the application

*insert*

the responsible Central Authority or Article 3 applicant who made the application

**[13] Paragraph 15 (4) (b)**

*omit*

the responsible Central Authority.

*insert*

the responsible Central Authority or Article 3 applicant.

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**[14] Regulation 16, heading**

*substitute*

**16 Order for return of child removed to, or retained in, Australia**

**[15] Subregulations 16 (1) and (2)**

*substitute*

- (1) If:
- (a) an application is made to a court under subregulation 14 (1) for an order for the return of a child who has been removed to, or retained in, Australia; and
  - (b) the application is made within one year of the child's removal or retention; and
  - (c) the responsible Central Authority or Article 3 applicant satisfies the court that the child's removal or retention was wrongful under subregulation (1A);
- the court must, subject to subregulation (3), make the order.
- (1A) For subregulation (1), a child's removal to, or retention in, Australia is wrongful if:
- (a) the child was under 16; and
  - (b) the child habitually resided in a convention country immediately before the child's removal to, or retention in, Australia; and
  - (c) the person, institution or other body seeking the child's return had rights of custody in relation to the child under the law of the country in which the child habitually resided immediately before the child's removal to, or retention in, Australia; and
  - (d) the child's removal to, or retention in, Australia is in breach of those rights of custody; and
  - (e) at the time of the child's removal or retention, the person, institution or other body:
    - (i) was actually exercising the rights of custody (either jointly or alone); or

(ii) would have exercised those rights if the child had not been removed or retained.

(2) If:

- (a) an application is made to a court under subregulation 14 (1) for an order for the return of a child who has been removed to, or retained in, Australia; and
- (b) the application for the return of the child is made more than one year after the day on which the child was first removed to, or retained in, Australia; and
- (c) the court is satisfied that the person opposing the return has not established that the child has settled in his or her new environment;

the court must, subject to subregulation (3), make the order.

**[16] Subregulation 16 (3)**

*omit*

subregulation (1)

*insert*

subregulation (1) or (2)

**[17] Paragraph 16 (3) (a)**

*omit everything before subparagraph (i), insert*

- (a) the person, institution or other body seeking the child's return:

**[18] Paragraph 16 (3) (b)**

*omit*

to the country in which he or she habitually resided immediately before the removal or retention

*insert*

under the Convention

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**[19] Paragraph 16 (3) (c)**

*substitute*

(c) each of the following applies:

- (i) the child objects to being returned;
- (ii) the child's objection shows a strength of feeling beyond the mere expression of a preference or of ordinary wishes;
- (iii) the child has attained an age, and a degree of maturity, at which it is appropriate to take account of his or her views; or

**[20] Regulation 17, heading**

*substitute*

**17 Declaration that removal or retention was wrongful**

**[21] Subregulation 17 (2)**

*omit*

making application

*insert*

making a request

**[22] Subregulation 17 (2)**

*omit*

, or the retention of a child in Australia,

**[23] Subregulation 18 (1)**

*omit*

subregulation 14 (1) or (2):

*insert*

subregulation 14 (1):

**[24] Paragraph 18 (1) (a)**

*omit*

to the country in which he or she habitually resided immediately before his or her removal or retention

*insert*

under the Convention

**[25] After regulation 19**

*insert*

**19A Discharge of return order**

- (1) If a court makes an order under this Part for the return of a child (a **return order**), the responsible Central Authority or a respondent to the proceeding may apply to the court, in accordance with Form 2D, for the discharge of the order.
- (2) The court must not make an order discharging a return order, or a part of a return order, unless it is satisfied of all of the following:
  - (a) all the parties consent to the return order being discharged;
  - (b) since the return order was made, circumstances have arisen that make it impractical for the order to be carried out;
  - (c) exceptional circumstances exist that justify the return order being discharged;
  - (d) the day on which the application for the discharge of the return order was made is more than 2 years after the return order was made or any appeal in relation to the return order was determined.
- (3) In considering whether to make an order discharging a return order, the court must have regard to section 111CE of the Act.

*Note* Section 111CE of the Act limits the court's power to exercise jurisdiction when a child is removed from or retained outside a convention country.



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**[26] Regulation 20**

*substitute*

**20 Arrangements for return of child**

- (1) If the responsible Central Authority applies to the court for an order for the return of a child, and the order is made, the responsible Central Authority must cause such arrangements as are necessary to be made to give effect to the order.
- (2) If:
  - (a) an order is made under regulation 16; and
  - (b) within 7 days after the order is made, the responsible Central Authority or Article 3 applicant has not been notified that the order has been stayed;the child must be returned in accordance with the order.

**[27] Part 4**

*substitute*

**Part 4 Applications and requests in relation to rights of access**

**23 Purpose of Part 4**

This Part sets out procedures for section 111B of the Act in relation to rights of access to a child, in particular:

- (a) under regulation 24, for a request to a responsible Central Authority in relation to rights of access to a child in a convention country; and
- (b) under regulation 25, for an application to a court by the responsible Central Authority in relation to rights of access to a child in Australia.

*Note* Paragraph 111B (4) (d) of the Act provides that, for the purposes of the Convention, 'subject to any order of a court for the time being in force, a person who has a contact order in relation to a child should be regarded as having a right of access to the child'.

## **24 Request for access to child in Convention country**

- (1) If a person, an institution or another body claims under a law in force in Australia to have rights of access to a child in a convention country, the person, institution or other body may send a request to a responsible Central Authority, in accordance with Form 3, to have arrangements made for establishing, organising or securing the effective exercise of those rights in that convention country.
- (2) If a request is made to a State Central Authority, and the Authority is satisfied that the request is in accordance with the requirements of the Convention, the State Central Authority must send the request to the Commonwealth Central Authority.
- (3) If the Commonwealth Central Authority is satisfied that the request is a request to which the Convention applies and is in accordance with the requirements of the Convention, the Commonwealth Central Authority must take steps to enable the performance of Australia's obligations under Article 21 of the Convention.
- (4) The responsible Central Authority may refuse to accept a request if it is satisfied that the request is not in accordance with the Convention.
- (5) If the Commonwealth Central Authority refuses to accept a request, it must, as soon as practicable after doing so, inform the person, institution or other body, or the Central Authority that made the request of the refusal and of the reason for the refusal.

## **25 Request and application for access to child in Australia**

- (1) If a person, an institution or another body claims to have rights of access to a child in Australia under a law in force in a convention country, the person, institution or other body may send a request to the Commonwealth Central Authority to have arrangements made for establishing, organising or securing the effective exercise of those rights in Australia.

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- (2) If the Commonwealth Central Authority is satisfied that a request is in accordance with the requirements of the Convention and these Regulations, the responsible Central Authority may apply to a court, in accordance with Form 4, for an order under subregulation (4) that is necessary or appropriate to establish, organise or secure the effective exercise of the rights of access to which the application relates.
  - (3) If the Commonwealth Central Authority is not satisfied that a request is in accordance with the requirements of the Convention and these Regulations, the Commonwealth Central Authority:
    - (a) may refuse to accept the request; and
    - (b) must, as soon as practicable, inform the Central Authority of the convention country through which the request was made, of the refusal and the reasons for the refusal.
  - (4) An application to a court by the responsible Central Authority under subregulation (2) may seek any of the following orders:
    - (a) an order for contact between the child and a person (or persons);
    - (b) an order for the issue of a warrant mentioned in subregulation (9);
    - (c) any other order that the responsible Central Authority considers appropriate to give effect to the Convention.
  - (5) If an application is made under subregulation (2):
    - (a) a person on whom a copy of the application is served must file an answer, or an answer and cross-application, in accordance with Form 4A; and
    - (b) the responsible Central Authority may file a reply in accordance with Form 4B.
  - (6) In determining an application made under subregulation (2) seeking an order of the kind mentioned in paragraph (4) (a), the court must have regard to the matters set out in section 111CW of the Act.

- (7) The court may make:
  - (a) the order or orders sought in the application; or
  - (b) any other order that the court considers appropriate to give effect to the Convention.
- (8) The court may make an order under subregulation (7) regardless of:
  - (a) whether an order or determination (however described) has been made under a law in force in another convention country about rights of access to the child concerned; or
  - (b) if the child was removed to Australia — when that happened; or
  - (c) whether the child has been wrongfully removed to, or retained in, Australia.
- (9) For paragraph (4) (b), a warrant:
  - (a) is a warrant that authorises a person named or described in the warrant, with such assistance as is necessary and reasonable, and, if necessary and reasonable, by force:
    - (i) to find and recover the child; and
    - (ii) if that person reasonably believes that the child is in, or on, a vehicle, vessel, aircraft or premises, and the circumstances are so serious and urgent as to justify the entry and search under the warrant:
      - (A) to stop, enter and search the vehicle, vessel or aircraft; or
      - (B) to enter and search the premises; and
    - (iii) to deliver the child to the person named in the warrant; and
  - (b) must be made in accordance with Form 2C.
- (10) Nothing in this regulation prevents the responsible Central Authority from seeking an amicable resolution under Article 7 of the Convention in relation to the rights of access to the child.

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**[28] Subregulation 27 (1)**

*substitute*

- (1) Subject to subregulation (2), notice of an application under regulation 14, 19A or 25 that includes a copy of the application must be served by the applicant in accordance with the applicable Rules of Court:
  - (a) for an application under regulation 14 (in relation to wrongful removal or retention) — on the person (or persons) who the applicant claims has (or have) wrongfully removed or retained the child who is the subject of the application; and
  - (b) for an application under regulation 19A (for discharge of an order for the return of a child) — on any other party to the proceeding for return of the child; and
  - (c) for an application under regulation 25 (for access to a child in Australia) — on the person, institution or other body in possession of the child who is the subject of the application.

**[29] Subregulations 28 (1) and (2)**

*substitute*

- (1) If:
  - (a) an application (the ***original application***) is made to a court in a State or Territory under regulation 14, 19A or 25; and
  - (b) the child who is the subject of the original application is located in another State or Territory before the application is determined;the original applicant may make a corresponding application (a ***later application***) to another registry of the court, or to another court, in the State or Territory where the child is located.
- (2) If a later application is made, the applicant must:
  - (a) refer in the later application to the original application; and
  - (b) as soon as practicable, inform the Registrar of the court in which the original application was filed, in writing, of the later application.

- (2A) As soon as practicable after receiving information under paragraph (2) (b), the Registrar of the court in which the original application was filed must transfer all records and other documents filed in the court relating to the original application to the Registrar of the court in which the later application is made.

**[30] Subregulation 28 (4)**

*omit*

subregulation (2),

*insert*

subregulation (3),

**[31] Regulations 29 and 30**

*substitute*

**29 Evidentiary provisions**

- (1) This regulation applies in a proceeding in a court under regulation 14, 19A or 25 in which the applicant is a responsible Central Authority.
- (2) The application under regulation 14, 19A or 25, or a request under regulation 13, 24 or 25 relating to that application, or any document attached to or given in support of that application or request, is admissible as evidence of the facts stated in that application, request or document.
- (3) An affidavit of a witness who resides outside Australia that is filed in the proceeding is admissible as evidence even if the witness does not attend the proceeding for cross-examination.
- (4) A statement contained in a document that claims:
  - (a) to set out or summarise evidence given in a proceeding in a court in a convention country, or before a competent authority of that country, in relation to the custody of a child and to have been signed by the person before whom the evidence was given; or

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- (b) to set out or summarise evidence taken in a convention country for the purpose of a proceeding under these Regulations (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) to have been received as evidence in a proceeding in a court in a convention country or before a competent authority of that country in relation to the custody of a child and to have been signed by a judge, an officer of the court or that authority;

is admissible as evidence of any fact stated in the document to the same extent as oral evidence of that fact, without proof of that person's signature or official position.

- (5) The court may take judicial notice of the following matters:

- (a) a law in force in a convention country;
- (b) a decision of a judicial or administrative character made by a judicial or administrative authority of a convention country.

- (6) A document that claims:

- (a) to be an order, or a copy of an order, of a court in a convention country, or a decision of a competent authority of that country, in relation to the custody of a child; and
- (b) to have been signed by a judge, an officer of the court or that authority;

is admissible as evidence of that order or decision without proof of that person's signature or official position.

- (7) In this regulation:

**custody**, in relation to a child, includes:

- (a) guardianship of the child; and
- (b) responsibility for the long-term or day-to-day care, welfare and development of the child; and
- (c) responsibility as the person or persons with whom the child is to live.

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**30 Costs of applications**

- (1) If:
- (a) either:
    - (i) a responsible Central Authority has applied to the court for an order in relation to a child under Part 3 or 4; or
    - (ii) an Article 3 applicant has applied to the court for an order in relation to a child under Part 3; and
  - (b) the court makes an order under regulation 15, 17, 19A, 25 or 26; and
  - (c) the responsible Central Authority or Article 3 applicant applies to the court under this regulation;

the court may make an order that the person who removed or retained the child, or who prevented the exercise of rights of access to the child, must pay to the responsible Central Authority or the Article 3 applicant the costs of the application.

- (2) In this regulation:

***costs of the application:***

- (a) means the necessary expenses incurred:
  - (i) by or on behalf of the person, institution or other body on whose behalf the responsible Central Authority made the application; or
  - (ii) by the Article 3 applicant; and
- (b) may include any of the following:
  - (i) travelling expenses;
  - (ii) costs incurred in locating the child;
  - (iii) costs of legal representation;
  - (iv) expenses incurred in returning the child;
  - (v) costs incurred in relation to the attendance by the child or an interested party at a family counsellor, child counsellor or other welfare officer for the preparation of a report by that counsellor or officer.



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**[32] Schedule 1, Preamble, third paragraph**

*omit*

their prompt return to the State of their habitual residence,

*insert*

their prompt return to the State of their habitual residence,

**[33] Schedule 3, heading**

*substitute*

**Schedule 3 Forms**

(subregulation 2 (1A))

**[34] Schedule 3, Form 1, heading**

*substitute*

**Form 1 Request for return of child abducted  
from Australia**

(subregulation 11 (2))

**[35] Schedule 3, Form 1**

*omit*

APPLICATION IN ACCORDANCE WITH THE HAGUE  
CONVENTION

*insert*

REQUEST IN ACCORDANCE WITH THE HAGUE  
CONVENTION

**[36] Schedule 3, Form 1**

*omit*

Concerns the following child: ..... who  
will attain the age of 16 on ..... 19 .....

*insert*

Concerning the child (*full name*) .....,  
who will turn 16 on the ..... day of ..... (*year*)

*Note* Please give the following particulars in as much detail as possible.

**[37] Schedule 3, Form 2**

*omit*

\*RESPONSIBLE CENTRAL AUTHORITY'S ADDRESS  
FOR SERVICE:

*insert*

\*APPLICANT'S ADDRESS FOR SERVICE:

**[38] Schedule 3, Form 2**

*omit*

TAKE NOTICE that the attached application HAS BEEN SET DOWN  
FOR HEARING by the Court at ..... on the  
day of ..... 19 ....., at ..... o'clock.

*insert*

TAKE NOTICE that the attached application HAS BEEN SET DOWN  
FOR HEARING by the Court at

on the ..... day of ..... (*year*)

at ..... \*am/\*pm

---

**[39] Schedule 3, Form 2**

*omit*

Dated this                      day of                      19                      .

*insert*

Dated this                      day of                      (*year*)

**[40] Schedule 3, Form 2, Application**

*omit*

and who represented the responsible Central Authority,  
applies for the following orders:—

*insert*

applies for the following orders:

**[41] Schedule 3, Form 2, Application, paragraph 1**

*substitute*

1. The child, (*full name*)  
was born on the                      day of                      (*year*).

**[42] Schedule 3, Form 2, Application, paragraph 6**

*substitute*

6. The child was removed or retained on the                      day  
of                      (*year*), in the following circumstances:

**[43] Schedule 3, Form 2, Application**

*omit*

Dated this                      day of                      19                      .

*insert*

Dated this                      day of                      (*year*)

**[44] Schedule 3, Form 2, Affidavit**

*omit*

on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ .

*insert*

on the \_\_\_\_\_ day of \_\_\_\_\_ (year)

**[45] Schedule 3, Form 2A**

*omit*

In answer to the application filed on \_\_\_\_\_ 19 \_\_\_\_  
and served on \_\_\_\_\_ 19 \_\_\_\_ , the  
respondent states that:

*insert*

In answer to the application filed on the \_\_\_\_\_ day of \_\_\_\_\_ (year),  
and served on the \_\_\_\_\_ day of \_\_\_\_\_ (year),  
the respondent states that:

**[46] Schedule 3, Form 2A, Affidavit**

*omit*

on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_

*insert*

on the \_\_\_\_\_ day of \_\_\_\_\_ (year)

**[47] Schedule 3, Form 2A, Cross application, paragraph 1**

*substitute*

1. The child, (*full name*) \_\_\_\_\_ , was born on the  
day of \_\_\_\_\_ (year).

---

**[48] Schedule 3, Form 2A, Cross application**

*omit*

Dated this                    day of                    19                    .

*insert*

Dated this                    day of                    (*year*)

**[49] Schedule 3, Form 2A, Affidavit following cross application**

*omit*

on the                                    day of                                    19

*insert*

on the                                    day of                                    (*year*)

**[50] Schedule 3, Form 2B, heading**

*substitute*

**Form 2B Reply**

(subregulation 14 (3))

**[51] Schedule 3, Form 2B**

*omit*

In reply to the answer/\*and cross application filed on                    19  
and served on                                    19                    , the applicant states:

*insert*

In reply to the answer/\*and cross application filed on the                    day of  
                                  (*year*) and served on the                    day of  
(*year*), the applicant states:

**[52] Schedule 3, Form 2B, Affidavit**

*omit*

on the \_\_\_\_\_ day of \_\_\_\_\_ 19

*insert*

on the \_\_\_\_\_ day of \_\_\_\_\_ (*year*)

**[53] Schedule 3, Form 2C, heading**

*substitute*

**Form 2C Warrant for the apprehension or  
detention of a child**

(subregulations 14 (4) and 25 (9))

**[54] Schedule 3, Form 2C**

*omit*

\*subregulation 25 (1)

*insert*

\*subregulation 25 (7)

**[55] Schedule 3, after Form 2C**

*insert*

**Form 2D Application to discharge return order**

(subregulation 19A (1))

COMMONWEALTH OF AUSTRALIA

*Family Law (Child Abduction Convention) Regulations 1986*

APPLICATION TO DISCHARGE RETURN ORDER

*(Title as under applicable Rules of Court)*

---

*Details concerning child*

1. The child, (*full name*)  
was born on the                      day of                      (*year*) .
2. The habitual residence of the child immediately before the removal  
or retention of the child was                      , a  
convention country.
3. The child is now residing with (*full name*)                      ,  
(*relationship, if any, to child*)                      ,  
at                      .

*Details concerning child's custodian*

4. The applicant under the Convention, (*full name*)                      ,  
(*relationship, if any, to child*)                      , of  
(*address*)                      , has rights of  
custody in respect of the child by reason of the following factual  
and legal circumstances:  
*(include details of any custody order)*

*Details concerning child's removal or retention*

5. The child was removed or retained on the                      day  
of                      (*year*), in the following circumstances:

*Judicial proceedings in Australia*

- \*6. The following are particulars of any family law or child welfare  
proceedings concerning the child:  
*(set out brief particulars of any proceedings and the court in which  
the proceedings)*  
*or*
- \*6. There are no pending family law or child welfare proceedings  
concerning the child.

*Attachments*

7. The request for the discharge of the return of the child under the  
Convention is attached.

8. The following documents are also attached:
- \* (a) certified copy of relevant decision or agreement concerning rights of custody or rights of access;
  - \* (b) certificate or affidavit as to the applicable law;
  - \* (c) information relating to the social background of the child;
  - \* (d) authorisation empowering the Central Authority to act on behalf of the applicant;
  - \* (e) other (*specify*).

Dated this                      day of                      (year)

.....  
(*Signature of applicant*)

#### AFFIDAVIT

I, (*full name, address and occupation*)

make oath and say/affirm:

1. I am the applicant in, and I have read, this application.
2. The facts stated in this application that are within my personal knowledge are true. All other facts stated in this application are true to the best of my knowledge, information and belief.

SWORN (or AFFIRMED) by

the applicant at

on the    day of    (year)

.....  
(*Signature of applicant*)

Before me:

.....  
(*Signature and title of person  
before whom affidavit sworn*)

\* *Omit if not applicable*



---

**[56] Schedule 3, Form 3, heading**

**Form 3 Request in relation to rights of access to  
a child in a convention country**

(subregulation 24 (1))

**[57] Schedule 3, Form 3**

*omit*

APPLICATION FOR RIGHTS OF ACCESS

*insert*

REQUEST IN RELATION TO RIGHTS OF ACCESS

**[58] Schedule 3, Form 3**

*omit*

Concerns the following child: ....., who will  
attain the age of 16 on ..... 19.....

NOTE: The following particulars should be completed insofar as  
possible.

*insert*

Concerning the child (*full name*)  
who will turn 16 on the day of \_\_\_\_\_,  
(*year*)

*Note* Please give the following particulars in as much detail as possible.

**[59] Schedule 3, Form 4**

*omit*

\*APPLICANT'S/\*RESPONSIBLE CENTRAL  
AUTHORITY'S ADDRESS FOR SERVICE:

*insert*

RESPONSIBLE CENTRAL AUTHORITY'S ADDRESS  
FOR SERVICE:

**[60] Schedule 3, Form 4**

*omit*

TAKE NOTICE that the attached application HAS BEEN SET DOWN FOR HEARING by the Court at \_\_\_\_\_ on the day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ o'clock.

*insert*

TAKE NOTICE that the attached application HAS BEEN SET DOWN FOR HEARING by the Court at \_\_\_\_\_ on the day of \_\_\_\_\_ (year), at \_\_\_\_\_ \*am/\*pm

**[61] Schedule 3, Form 4**

*omit*

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

*insert*

Dated this \_\_\_\_\_ day of \_\_\_\_\_ (year)

**[62] Schedule 3, Form 4, Application, paragraph 1**

*substitute*

1. The child, (*full name*) \_\_\_\_\_, was born on the \_\_\_\_\_ day of \_\_\_\_\_ (year).

**[63] Schedule 3, Form 4, Application**

*omit*

*Details concerning rights of access*

*insert*

*Details concerning rights of access/contact*

---

**[64] Schedule 3, Form 4, Application, paragraph \*5  
(second mention)**

*substitute*

- \*5. The applicant under the Convention (*full name*) ,  
(*relationship, if any, to child*) ,  
of  
(*address*) , has no existing rights of access in respect  
of the child but wishes to establish or secure contact  
orders under Australian law.

**[65] Schedule 3, Form 4, Application, paragraph 9 \*(d)**

*substitute*

- \*(d) authorization empowering the responsible Central Authority  
to act on behalf of the applicant;

**[66] Schedule 3, Form 4, Application**

*omit*

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ .

*insert*

Dated this \_\_\_\_\_ day of \_\_\_\_\_ (year)

**[67] Schedule 3, Form 4, Affidavit**

*omit*

SWORN (*or* AFFIRMED) by the  
applicant at  
on the \_\_\_\_\_ day of \_\_\_\_\_  
19 \_\_\_\_\_ .

.....  
(*Signature of applicant*)

*insert*

SWORN (*or* AFFIRMED) by  
the applicant at  
on the \_\_\_\_\_ day of \_\_\_\_\_

(year)  
.....  
(*Signature of applicant*)

**[68] Schedule 3, Form 4A, heading**

*substitute*

**Form 4A Answer/\*and cross application**

(subregulation 25 (5))

**[69] Schedule 3, Form 4A**

*omit*

In answer to the application filed on \_\_\_\_\_ 19  
and served on \_\_\_\_\_ 19, the respondent states that:

*insert*

In answer to the application filed on the \_\_\_\_\_ day of \_\_\_\_\_ (year)  
and served on the \_\_\_\_\_ day of \_\_\_\_\_ (year), the respondent  
states that:

**[70] Schedule 3, Form 4A, Affidavit**

*omit*

SWORN (or AFFIRMED) by the  
applicant at \_\_\_\_\_ on the \_\_\_\_\_ day of 19

*insert*

SWORN (or AFFIRMED) by the applicant at  
on the \_\_\_\_\_ day of \_\_\_\_\_ (year)

**[71] Schedule 3, Form 4A, Cross application, paragraph 1**

*substitute*

1. The child, (*full name*) \_\_\_\_\_, was born on  
the \_\_\_\_\_ day of \_\_\_\_\_ (year).

**[72] Schedule 3, Form 4A, Cross application, paragraph \*3  
(second mention)**

*omit*

---

**[73] Schedule 3, Form 4A, Cross application**

*omit*

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19

*insert*

Dated this \_\_\_\_\_ day of \_\_\_\_\_ (year)

**[74] Schedule 3, Form 4A, Affidavit following Cross application**

*omit*

on the \_\_\_\_\_ day of \_\_\_\_\_ 19

*insert*

on the \_\_\_\_\_ day of \_\_\_\_\_ (year)

**[75] Schedule 3, Form 4B, heading**

*substitute*

**Form 4B Reply**

(subregulation 25 (5))

**[76] Schedule 3, Form 4B**

*omit*

In reply to the answer/\*and cross application filed on \_\_\_\_\_ 19  
and served on \_\_\_\_\_ 19 , the applicant states:

*insert*

In reply to the answer/\*and cross application filed on  
the \_\_\_\_\_ day of \_\_\_\_\_ (year) and served on  
the \_\_\_\_\_ day of \_\_\_\_\_ (year), the applicant states:

**[77] Schedule 3, Form 4B**

	<i>omit</i>		
on the		day of	19
	<i>insert</i>		
on the		day of	(year)

---

**Notes**

1. These Regulations amend (in Schedule 1) Statutory Rules 1984 No. 426, as amended by 1985 No. 183; 1986 Nos. 140 and 393; 1987 Nos. 85 and 175; 1988 Nos. 42, 44, 164 and 165; 1989 Nos. 8, 53, 74, 155, 205, 235 and 326; 1990 Nos. 294 and 373; 1991 Nos. 401 and 447 (disallowed by the Senate on 3 March 1992); 1992 Nos. 33, 160, 287, 376 and 404; 1994 Nos. 86 and 343; 1995 Nos. 297, 400 and 419; 1996 Nos. 71, 188 (as amended by 1996 No. 201), 253 and 265; 1997 Nos. 157 (disallowed by the Senate on 24 November 1997), 232, 251 and 376; 1998 Nos. 39, 121, 222, 270 and 329; 1999 Nos. 39 and 173; 2000 Nos. 16, 81, 207 and 254; 2001 Nos. 31, 117 and 264; 2003 No. 339; 2004 Nos. 319 and 370.

These Regulations also amend (in Schedule 2) Statutory Rules 1986 No. 85, as amended by 1989 No. 206; 1990 No. 37; 1992 Nos. 34 and 159; 1993 Nos. 263 and 358; 1994 Nos. 252, 275 and 344; 1995 Nos. 296 and 334; 1996 No. 74; 1997 Nos. 98, 292, 315 and 347; 1998 Nos. 59, 340 and 341; 1999 No. 222; 2000 Nos. 208 and 275; 2002 No. 110; 2003 No. 340.

2. Notified in the *Commonwealth of Australia Gazette* on 23 December 2004.