

EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 139

ISSUED BY AUTHORITY OF THE ATTORNEY-GENERAL

FAMILY LAW ACT 1975

*FAMILY LAW (CHILD ABDUCTION CONVENTION) AMENDMENT
REGULATIONS 2006 (No. 1)*

Subsection 125(1) of the *Family Law Act 1975* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by the Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 111B of the Act provides that the regulations may make such provision as is necessary or convenient to enable Australia to perform its obligations, or obtain any advantage or benefit, under the 1980 Hague Convention on the Civil Aspects of International Child Abduction (the Convention). The Convention deals with the civil, not criminal, aspects of international child abduction.

The objects of the Convention are to secure the prompt return of children wrongfully removed to or retained in any Convention country, and to ensure that rights of custody and access to children under the laws of a Convention country are effectively respected in the other Convention countries. Australia signed and ratified the Convention on 25 October 1986, and the Convention came into force in respect of Australia on 1 January 1987.

The purpose of the Regulations is to amend the *Family Law (Child Abduction Convention) Regulations 1986* (the Principal Regulations) to:

- reflect recent changes in child-related terminology throughout the Act, and
- reflect recent changes related to the new family dispute resolution procedures in the Act.

The Regulations commence on 1 July 2006, to coincide with the commencement of related amendments to the Act made by the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (the Shared Parental Responsibility Act).

Details of the Regulations are as follows:

Regulation 1 - Name of Regulations

Regulation 1 provides that the name of the Regulations is the *Family Law (Child Abduction Convention) Amendment Regulations 2006 (No. 1)*.

Regulation 2 – Commencement

Regulation 2 provides for the commencement of the Regulations on 1 July 2006.

Regulation 3 – Amendment of the *Family Law (Child Abduction Convention) Regulations 1986*

Regulation 3 provides that Schedule 1 amends the *Family Law (Child Abduction Convention) Regulations 1986* (the Principal Regulations).

Schedule 1 – Amendments

Item [1]: Regulation 23, note

Schedule 8 to the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (the Shared Parental Responsibility Act) removed references to the terminology of ‘residence’ and ‘contact’ throughout the *Family Law Act 1975* (the Act) and substituted revised terminology. The term ‘resides’ has been replaced by ‘lives with’ and references to ‘contact’ have been replaced by the phrases ‘a child is to spend time with a person’ and ‘the child is to communicate with a person’.

To reflect these changes to terminology, item 1 amends the note under regulation 23 of the Principal Regulations to replace the reference to ‘who has a contact order in relation to a child’ with a reference to ‘with whom a child is to spend time or communicate under a parenting order’.

Item [2]: Paragraph 25(4)(a)

Item 2 amends paragraph 25(4)(a) of the Principal Regulations to replace the reference to ‘an order for contact between the child and a person (or persons)’ with a reference to ‘an order specifying with whom a child is to spend time or communicate’. The revised reference reflects changes to the terminology of ‘contact’, ‘residence’ and ‘specific issues orders’ in that Act made by Schedule 8 to the Shared Parental Responsibility Act.

Item [3]: Regulation 26, heading

Item 3 replaces the heading to regulation 26 of the Principal Regulations of ‘Reports by family and child counsellors and welfare officers’ with ‘Reports by family consultants’ to reflect changes to the counselling and dispute resolution provisions in the Act made by Schedule 4 to the Shared Parental Responsibility Act. Those changes included the repeal of the definitions of ‘family and child counsellors’ and ‘welfare officers’, terms used in the heading to regulation 26, and provisions for the appointment of family consultants in the Family Court of Australia, the Federal Magistrates Court and the Family Court of Western Australia.

Item [4]: Paragraph 26(1)(a)

Item 4 amends paragraph 26(1)(a) of the Principal Regulations to replace reference to ‘family and child counsellor or welfare officer’ with ‘family consultant’. The revised reference reflects changes to the counselling and dispute resolution provisions in the Act made by Schedule 4 to the Shared Parental Responsibility Act.

Item [5]: Subregulation 26(2)

Item 5 amends subregulation 26(2) of the Principal Regulations to replace reference to ‘family and child counsellor or welfare officer’ with ‘family consultant’. The revised reference reflects changes to the counselling and dispute resolution provisions in the Act made by Schedule 4 to the Shared Parental Responsibility Act.

Item [6]: Subregulations 26(3), (4) and (5)

Item 6 amends subregulations 26(3), (4) and (5) of the Principal Regulations to replace references to ‘family and child counsellor or welfare officer’ with ‘family consultant’. The revised references reflect changes to the counselling and dispute resolution provisions in the Act made by Schedule 4 to the Shared Parental Responsibility Act.

Item [7]: Subparagraph 30(2)(b)(v)

Item 7 amends subparagraph 30(2)(b)(v) of the Principal Regulations to replace reference to ‘family and child counsellor or other welfare officer’ with ‘family consultant’. The revised reference reflects changes to the counselling and dispute resolution provisions in the Act made by Schedule 4 to the Shared Parental Responsibility Act.

Item [8]: Schedule 3, Form 4, paragraph 5, heading

Item 8 amends the heading to Schedule 3, Form 4, paragraph 5 to the Principal Regulations to replace reference to ‘contact’ with reference to ‘time spent or communication with the child’. The revised reference reflects changes to the terminology of ‘contact’, ‘residence’ and ‘specific issues orders’ in the Act made by Schedule 8 to the Shared Parental Responsibility Act.

Item [9]: Schedule 3, Form 4, paragraph 5, second occurring

Item 8 amends Schedule 3, Form 4, paragraph 5, second occurring to the Principal Regulations to replace reference to ‘establish or secure contact orders under

Australian law' with reference to 'establish or secure a parenting order under Australian law specifying with whom a child is to spend time or communicate'. The revised reference reflects changes to the terminology of 'contact', 'residence' and 'specific issues orders' in the Act made by Schedule 8 to the Shared Parental Responsibility Act.

Consultation on the content of the Regulations was not undertaken. The amendments made by the Regulations are minor in nature and reflect changes made to the Act by the Shared Parental Responsibility Act, on which there was extensive consultation.