



Family Law (Child Abduction Convention) Amendment Regulations 2007 (No. 1)¹

Select Legislative Instrument 2007 No. 213

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 19 July 2007

P. M. JEFFERY
Governor-General

By His Excellency's Command

PHILIP RUDDOCK
Attorney-General

1 Name of Regulations

These Regulations are the *Family Law (Child Abduction Convention) Amendment Regulations 2007 (No. 1)*.

2 Commencement

These Regulations commence on the day after they are registered.

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

Schedule 1 amends the *Family Law (Child Abduction Convention) Regulations 1986*.

Schedule 1 Amendments

(regulation 3)

[1] Paragraph 1A (2) (b)

omit

between parents

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

substitute

Article 3 applicant means a person, institution or other body that has made an application under paragraph 14 (1) (b) or subregulation 14 (2).

[3] Subregulation 2 (1), definition of *Commonwealth Central Authority*

omit

Secretary to the Department.

insert

Secretary of the Attorney-General's Department.

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- [4] **Subregulation 2 (1), definition of *Convention***
omit
or *Convention on the Civil Aspects of International Child Abduction*
- [5] **Subregulation 2 (1), definition of *filed***
omit
the Family Law Regulations.
insert
the applicable Rules of Court.
- [6] **Subregulation 2 (1), after definition of *responsible Central Authority***
insert
return order means an order under Part 3 for the return, under the Convention, of a child who has been removed to, or retained in, Australia.
- [7] **Subregulation 2 (1), definition of *Secretary***
omit
- [8] **Subregulation 2 (1), note**
substitute
Note applicable Rules of Court is defined in subsection 4 (1) of the Act.
- [9] **Subregulation 4 (1)**
substitute
- (1) For these Regulations, a person, institution or other body has rights of custody in relation to a child if:
- (a) the child was habitually resident in Australia or in a convention country immediately before his or her removal or retention; and
- (b) rights of custody in relation to the child are attributed to the person, institution or other body, either jointly or alone, under a law in force in Australia or in the

convention country in which the child habitually resided immediately before his or her removal or retention.

[10] Regulation 6, heading

substitute

6 These Regulations do not affect other powers of, or rights of application to, a court

[11] Subregulation 6 (2)

substitute

- (2) These Regulations are not to be taken as preventing a court from making an order at any time under Part VII of the Act or under any other law in force in Australia for the return of a child.

[12] Regulation 7

substitute

7 Immunity of Commonwealth Central Authority etc in respect of orders to pay costs

A court must not make an order that requires the Commonwealth Central Authority or a State Central Authority to pay costs in relation to his or her exercising the powers, or performing the functions, of the Commonwealth Central Authority.

[13] **Part 2**
substitute

Part 2 **Requests to Central Authorities, except for access**

11 Request for return of child abducted from Australia

- (1) A person, institution or other body that 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;may request a responsible Central Authority to have the claim sent 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:
 - (a) in accordance with Form 1; and
 - (b) in accordance with the Convention.
- (3) A State Central Authority that is satisfied that a request received by it complies with subregulation (2) must send the request to the Commonwealth Central Authority.
- (4) If the Commonwealth Central Authority is satisfied that a request received by it complies with subregulation (2), the Commonwealth Central Authority must, on behalf of the person, institution or other body, take any action required to be taken by a Central Authority under the Convention.
- (5) A responsible Central Authority that is satisfied that a request received by it does not comply with subregulation (2) may, by notice in writing, refuse to accept the request.
- (6) A notice under subregulation (5) from the Commonwealth Central Authority must:
 - (a) be sent to the person, institution or other body that made the request; and

- (b) if the Commonwealth Central Authority received the request from a State Central Authority — be sent to the State Central Authority; and
 - (c) include the reason for the refusal.
- (7) A notice under subregulation (5) from a State Central Authority must:
- (a) be sent to the person, institution or other body that made the request; and
 - (b) include the reason for the refusal.

13 Request for return of child abducted to Australia

- (1) The Commonwealth Central Authority must take action to secure the return of a child under the Convention if:
- (a) it receives a request from:
 - (i) a person, institution or other body that claims to have rights of custody in relation to the child who, in breach of those rights, has been removed from a convention country to Australia or has been retained in Australia; or
 - (ii) a Central Authority on behalf of a person, institution or other body mentioned in subparagraph (i); and
 - (b) it is satisfied that the request is in accordance with the Convention.
- (2) The Commonwealth Central Authority may, by notice in writing, refuse to accept a request received by it if it is satisfied that the request is not in accordance with the Convention.
- (3) A notice under subregulation (2) must:
- (a) be sent to the person, institution or other body that made the request; and
 - (b) if the Commonwealth Central Authority received the request from a Central Authority — be sent to the Central Authority; and
 - (c) include the reason for the refusal.
- (4) For subregulation (1), the action taken may include any of the following:

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- (a) transferring the request to a State 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.

[14] Regulation 14

substitute

14 Applications to court

- (1) If a child is removed from a convention country to, or retained in, Australia:
 - (a) the responsible Central Authority may apply to the court, in accordance with Form 2, for any of the following orders:
 - (i) a return order for the child;
 - (ii) an order for the delivery of the passport of the child, and the passport of any other relevant person, to the responsible Central Authority, a member of the Australian Federal Police or a person specified in the order, on conditions appropriate to give effect to the Convention;
 - (iii) an order for the issue of a warrant mentioned in regulation 31;
 - (iv) an order directing that:
 - (A) the child not be removed from a specified place; and
 - (B) members of the Australian Federal Police prevent the child being removed from that place;
 - (v) 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;

- (vi) any other order that the responsible Central Authority considers appropriate to give effect to the Convention; or
 - (b) a person, institution or other body that has rights of custody in relation to the child for the purposes of the Convention may apply to the court, in accordance with Form 2, for an order mentioned in subparagraph (a) (i), (ii), (iii), (iv) or (v).
- (2) If the responsible Central Authority, or a person, institution or other body that has rights of custody in relation to a child for the purposes of the Convention, has reasonable grounds to believe that there is an appreciable possibility or a threat that the child will be removed from Australia, the responsible Central Authority or person, institution or other body may:
 - (a) apply to the court, in accordance with Form 2, for an order for the issue of a warrant mentioned in regulation 31; or
 - (b) apply to the court for an order for the delivery of the passport of the child, and the passport of any other relevant person, to the responsible Central Authority, a member of the Australian Federal Police or a person specified in the order, on conditions appropriate to give effect to the Convention.
- (3) 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:
 - (a) 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; or
 - (b) any other order that the responsible Central Authority considers appropriate to give effect to the Convention.
- (4) If a copy of an application made under subregulation (1), (2) or (3) 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.

14A Further applications to court

- (1) A responsible Central Authority or person, institution or other body that has made an application under subregulation 14 (1), (2) or (3) may make a further application for an order mentioned in those subregulations.
- (2) An application under subregulation (1) must be in accordance with Form 2 in Schedule 2 to the *Family Law Rules 2004*.

[15] Subregulation 15 (3)

omit

[16] Subregulation 15 (4)

omit

made:

insert

filed:

[17] Paragraph 15 (4) (a)

omit

request

insert

ask

[18] Paragraph 15 (4) (b)

omit

a request is made,

insert

being asked,

[19] Regulation 16, heading

substitute

16 Obligation to make a return order

[20] Paragraphs 16 (1) (a) and (b)

substitute

- (a) an application for a return order for a child is made; and
- (b) the application (or, if regulation 28 applies, the original application within the meaning of that regulation) is filed within one year after the child's removal or retention; and

[21] Paragraph 16 (2) (a)

substitute

- (a) an application for a return order for a child is made; and

[22] Paragraph 16 (2) (b)

omit

for the return of the child is made

insert

is filed

[23] Subregulation 16 (5)

substitute

- (5) The court is not precluded from making a return order for the child only because a matter mentioned in subregulation (3) is established by a person opposing return.

[24] Subregulation 17 (2)

substitute

- (2) The court may ask a responsible Central Authority to arrange for the person, institution or other body making a request in relation to the return of a child under the Convention to obtain an order of a court, or a decision of a competent authority, of the country in which the child habitually resided immediately before his or her removal or retention declaring that the removal or retention was wrongful within the meaning of Article 3 of the Convention.

[25] Paragraph 18 (1) (a)

omit

an order for the return of the child under the Convention

insert

a return order for the child

[26] Subregulation 18 (2)

substitute

(2) 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.

[27] Regulation 19

omit

the return of a child

insert

a return order for a child

[28] Regulation 19A, including the note

substitute

19A Discharge of return order

- (1) If a court makes a return order, the responsible Central Authority, the Article 3 applicant 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 may make an order discharging a return order, or a part of a return order, only if it is satisfied that:

- (a) all the parties consent to the return order being discharged; or
 - (b) since the return order was made, circumstances have arisen that make it impracticable for the order to be carried out; or
 - (c) exceptional circumstances exist that justify the return order being discharged; or
 - (d) the day on which the application for the discharge of the return order was made is more than 1 year 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 if the convention country from which the child was removed is also a Convention country within the meaning of subsection 111CA (1) of the Act.

[29] Subregulation 20 (1)

substitute

- (1) If the responsible Central Authority applies to the court for a return order for a child, and the order is made, the responsible Central Authority must coordinate the making of the arrangements that are necessary to give effect to the order.

[30] Paragraph 20 (2) (a)

substitute

- (a) a return order for a child is made; and

[31] After subregulation 20 (2)

insert

- (3) Subregulation (1) does not require the Commonwealth Central Authority or the State Central Authority to make or pay for the arrangements that are necessary to give effect to the order.

[32] Regulation 21

substitute

21 Security for costs etc

A responsible Central Authority or a court must not require any security or bond for the payment of costs or expenses of, or incidental to, proceedings falling within the scope of the Convention.

[33] Part 4

substitute

Part 4 Requests to Central Authorities and court applications for access

23 Request for access to child in convention country

- (1) A person who claims under a law in force in Australia to have rights of access to a child in a convention country may request a responsible Central Authority to have arrangements made for establishing, organising or securing the effective exercise of those rights in that convention country.

Note For persons who should be regarded as having a right of access to a child, see paragraph 111B (4) (d) of the Act.

- (2) A request must be:
- (a) in accordance with Form 3; and
 - (b) in accordance with the Convention.
- (3) A State Central Authority that is satisfied that a request received by it complies with subregulation (2) must send the request to the Commonwealth Central Authority.
- (4) If the Commonwealth Central Authority is satisfied that a request received by it complies with subregulation (2), it must take any action required to be taken by a Central Authority under the Convention.

- (5) A responsible Central Authority that is satisfied that a request received by it does not comply with subregulation (2) may, by notice in writing, refuse to accept the request.
- (6) A notice under subregulation (5) from the Commonwealth Central Authority must:
 - (a) be sent to the person who made the request; and
 - (b) if the Commonwealth Central Authority received the request from a State Central Authority — be sent to the State Central Authority; and
 - (c) include the reason for the refusal.
- (7) A notice under subregulation (5) from a State Central Authority must:
 - (a) be sent to the person who made the request; and
 - (b) include the reason for the refusal.

24 Request for access to child in Australia

- (1) The Commonwealth Central Authority must take action to establish, organise or secure the effective exercise of rights of access to a child in Australia if:
 - (a) it receives a request from a Central Authority on behalf of a person who claims:
 - (i) to have rights of access to the child under a law in force in a convention country; and
 - (ii) that those rights have been breached; and
 - (b) it is satisfied that the request is in accordance with the Convention.
- (2) The Commonwealth Central Authority may, by notice in writing, refuse to accept a request received by it if it is satisfied that the request is not in accordance with the Convention.
- (3) A notice under subregulation (2) must:
 - (a) be sent to the Central Authority that sent the request; and
 - (b) include the reason for the refusal.

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- (4) For subregulation (1), the action taken may include any of the following:
- (a) transferring the request to a State Central Authority;
 - (b) applying to a court under regulation 25 for an order that is necessary or appropriate to establish, organise or secure the effective exercise of the rights of access to which the request relates;
 - (c) seeking an amicable resolution in relation to the rights of access to the child.

25 Application for access to child in Australia

- (1) The responsible Central Authority may apply to the court, in accordance with Form 4, for any of the following orders:
- (a) an order specifying with whom a child is to spend time or communicate;
 - (b) an order for the issue of a warrant mentioned in regulation 31;
 - (c) any other order that the responsible Central Authority considers appropriate to give effect to the Convention.
- (2) If a copy of an application made under subregulation (1) is served on a person:
- (a) the person must file an answer, or an answer and a cross-application, in accordance with Form 4A; and
 - (b) the responsible Central Authority may file a reply in accordance with Form 4B.

25A Orders

- (1) If a court is satisfied that it is desirable to do so, the court may, in relation to an application made under subregulation 25 (1):
- (a) make an order of a kind mentioned in that regulation; and
 - (b) make any other order that the court considers to be appropriate to give effect to the Convention; and
 - (c) include in an order to which paragraph (a) or (b) applies a condition that the court considers to be appropriate to give effect to the Convention.

- (2) In determining an application made under subregulation 25 (1) seeking an order of the kind mentioned in paragraph 25 (1) (a), the court must have regard to the matters set out in section 111CW of the Act if the convention country under the laws of which the person mentioned in paragraph 24 (1) (a) claims to have access rights to the child is also a Convention country within the meaning of subsection 111CA (1) of the Act.
- (3) The court may make an order under subregulation (1) 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.
- (4) If the responsible Central Authority applies to the court for an order under subregulation (1), and the order is made, the Commonwealth Central Authority or the State Central Authority is not required to make or pay for the arrangements that are necessary to give effect to the order.

[34] Paragraph 27 (1) (a)

substitute

- (a) for an application under regulation 14 — on the person whom the applicant claims has wrongfully removed or retained the child who is the subject of the application; and

[35] Paragraph 27 (1) (b)

omit

(for discharge of an order for the return of a child)

[36] Paragraph 27 (1) (c)

omit

(for access to a child in Australia)

[37] Subregulation 28 (1)

substitute

- (1) This regulation applies if:
 - (a) an application (the ***original application***) is made to a court in a State or Territory (the ***first jurisdiction***) 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 (the ***second jurisdiction***) before the application is determined.
- (1A) The Central Authority in the second jurisdiction may make a corresponding application (a ***later application***) to another registry of the court, or to another court, in the second jurisdiction.

[38] Subregulation 28 (2)

omit

applicant

insert

applicant for the later application

[39] Regulation 30

substitute

30 Costs of applications

- (1) This regulation applies 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, 25A or 26.

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- (2) The responsible Central Authority may apply to the court for 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 the costs of the application mentioned in subregulation (3).
- (3) For subregulation (2), the costs are the necessary expenses incurred by the responsible Central Authority, including the following:
- (a) costs incurred in locating the child;
 - (b) costs of legal representation;
 - (c) costs incurred in relation to the attendance by the child or an interested party at a family consultant for the preparation of a report by that consultant;
 - (d) costs incurred in coordinating the making of arrangements for the return of the child.
- (4) The Article 3 applicant may apply to the court for 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 Article 3 applicant the costs of the application mentioned in subregulation (5).
- (5) For subregulation (4), the costs are the necessary expenses incurred by the Article 3 applicant, including:
- (a) travelling expenses; and
 - (b) the costs mentioned in paragraphs (3) (a) to (c).

31 Warrants

For subparagraph 14 (1) (a) (iii) and paragraphs 14 (2) (a) and 25 (1) (b), a warrant:

- (a) 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 the person reasonably believes that the child is in, or on, a vehicle, vessel, aircraft or premises and the circumstances are so serious and urgent that the

entry and search of the vehicle, vessel, aircraft or premises is justified:

(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.

[40] Schedule 2, after entry for Brazil

insert

Bulgaria	1 October 2004	Article 26, third paragraph
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[41] Schedule 2, after entry for Greece

insert

Guatemala	1 October 2004	Article 24 and Article 26, third paragraph
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[42] Schedule 2, after entry for Latvia

insert

Lithuania	1 October 2004	Article 24 and Article 26, third paragraph
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[43] Schedule 2, after entry for Luxembourg

insert

Macedonia, the Former Yugoslav Republic of	1 December 1991	
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[44] Schedule 2, after entry for New Zealand*insert*

Nicaragua 1 October 2004

[45] Schedule 2, entry for Serbia and Montenegro*substitute*

Serbia 1 December 1991

[46] Schedule 2, entry for The former Yugoslav Republic of Macedonia*substitute*

Thailand 1 October 2004 Article 24

[47] Schedule 2, entry for United Kingdom of Great Britain and Northern Ireland*substitute*

United Kingdom — extended to include the following territories:	1 January 1987	Article 26, third paragraph
(a) Bailiwick of Jersey	1 March 2006	Article 26, third paragraph
(b) Bermuda	1 March 1999	Article 26, third paragraph
(c) Cayman Islands	1 August 1988	Article 26, third paragraph
(d) Falkland Islands	1 June 1998	Article 26, third paragraph
(e) Isle of Man	1 September 1991	Article 26, third paragraph
(f) Montserrat	1 March 1999	Article 26, third paragraph

[48] Schedule 3, Form 1*omit*

Family Law (Child Abduction Convention) Regulations

*insert**Family Law (Child Abduction Convention) Regulations 1986***[49] Schedule 3, Form 2, heading***substitute***Form 2 Application initiating proceedings (other than for access)**

(subregulations 14 (1), (2) and (3))

[50] Schedule 3, Form 2*omit*

Family Law (Child Abduction Convention) Regulations

APPLICATION INITIATING PROCEEDINGS

*insert**Family Law (Child Abduction Convention) Regulations 1986*

APPLICATION INITIATING PROCEEDINGS (OTHER THAN FOR ACCESS)

[51] Schedule 3, Form 2A, heading*substitute***Form 2A Answer/*and cross application**

(subregulation 14 (4))

[52] Schedule 3, Form 2A

omit

Family Law (Child Abduction Convention) Regulations

insert

Family Law (Child Abduction Convention) Regulations 1986

[53] Schedule 3, Form 2B, heading

substitute

Form 2B Reply

(subregulation 14 (4))

[54] Schedule 3, Form 2B

omit

Family Law (Child Abduction Convention) Regulations

insert

Family Law (Child Abduction Convention) Regulations 1986

[55] Schedule 3, Form 2C, heading

substitute

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

(regulation 31)

[56] Schedule 3, Form 2C

omit

*subregulation 14 (1)/*subregulation 14 (2)/*subregulation
25 (7)

insert

*regulation 15/*regulation 25A

[57] Schedule 3, Form 3, heading

substitute

**Form 3 Request for access to a child in a
convention country**

(subregulation 23 (2))

[58] Schedule 3, Form 3

omit

Family Law (Child Abduction Convention) Regulations

insert

Family Law (Child Abduction Convention) Regulations 1986

[59] Schedule 3, Form 4, heading

substitute

**Form 4 Application initiating proceedings for
access**

(subregulation 25 (1))

[60] Schedule 3, Form 4

omit

Family Law (Child Abduction Convention) Regulations

APPLICATION INITIATING PROCEEDINGS

insert

Family Law (Child Abduction Convention) Regulations 1986
APPLICATION INITIATING PROCEEDINGS FOR ACCESS

[61] Schedule 3, Form 4A, heading

substitute

Form 4A Answer/*and cross application (access)

(subregulation 25 (2))

[62] Schedule 3, Form 4A

omit

Family Law (Child Abduction Convention) Regulations
ANSWER/*AND CROSS APPLICATION

insert

Family Law (Child Abduction Convention) Regulations 1986

ANSWER/*AND CROSS APPLICATION (ACCESS)

[63] Schedule 3, Form 4B, heading

substitute

Form 4B Reply (access)

(subregulation 25 (2))

[64] Schedule 3, Form 4B*omit*

Family Law (Child Abduction Convention) Regulations

REPLY TO ANSWER/*AND CROSS APPLICATION

*insert**Family Law (Child Abduction Convention) Regulations 1986*

REPLY TO ANSWER/*AND CROSS APPLICATION (ACCESS)

[65] Further amendments

<i>Provision</i>	<i>omit each mention of</i>	<i>insert</i>
Subregulations 2 (1A), (1B) and (1C)	these regulations	these Regulations
Subregulation 5 (1)	these regulations,	these Regulations,
Subregulation 6 (1)	an institution or another body	institution or other body
Subregulation 8 (1)	these regulations.	these Regulations.
Subregulation 26 (1)	these regulations	these Regulations
Subregulation 26 (6)	these regulations.	these Regulations.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.