

FAMILY LAW AMENDMENT (FAMILY VIOLENCE MEASURES)
REGULATIONS 2019

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

Family Law Act 1975

Family Law Regulations 1984

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Family Law Act 1975* (the Act) concerns matters relating to the dissolution of married and de facto relationships, including divorce, parenting arrangements, property distribution, financial agreements, and child and spousal maintenance. It also deals with matters of parentage and the jurisdiction of the family law courts.

Subsection 125(1) of the Act provides that the Governor-General may make regulations, not inconsistent with the 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.

The primary purpose of the *Family Law Amendment (Family Violence Measures) Regulations 2019* (the Regulations) is to amend the *Family Law Regulations 1984* (the Principal Regulations) to support implementation of the *Family Law Amendment (Family Violence and Other Measures) Act 2018* (the Amendment Act). In particular, the Regulations are designed to:

- a) amend regulation 12CC of the Principal Regulations to ensure that family law courts are made aware of decisions by state and territory courts to revive, vary, or suspend family law orders in the course of making interim family violence orders;
- b) prescribe the Local Court of the Northern Territory to have parenting jurisdiction under Part VII of the Act; and
- c) prescribe the *Local Court (Civil Jurisdiction) Rules* (NT) to apply when the Local Court of the Northern Territory exercises its jurisdiction under Part VII.

The Regulations would support the Amendment Act in enhancing the capacity of the family law system to provide effective outcomes for people who are experiencing family violence, including by reducing the need for families to interact with multiple courts across the federal family law and state or territory family violence and child protection systems.

Regulation 12CC of the Principal Regulations provides that if a court revives, varies, discharges or suspends family law orders in the course of making or varying a final family violence order (under section 68R of the Act), the registrar of that court must send a sealed copy of the decision to the registrar of the Family Court as soon as practicable. Notice of the amended order must be given to the Family Court, regardless of whether the original family law order was made in the Family Court, or another court exercising family law jurisdiction. Family law orders that are revived, varied or suspended by a court in the course of making interim family violence orders are not covered by existing regulation 12CC.

The Amendment Act removed the 21 day time limit which previously applied to a family law order revived, varied or suspended by a state or territory court when making an interim family violence order (section 68T). The amended section 68T allows the state or territory court to set timeframes

according to the particular circumstances of the case. The court may therefore order that the revived, varied or suspended family law order remain in force for a substantial period of time, in which case it would be important that the family law court that made the original order is aware of the decision.

Amended regulation 12CC provides that family law orders that are revived, varied, or suspended by a court in the course of making family violence orders, whether interim or otherwise, must be registered with the court that made the family law order.

Section 69GA of the Act enables the Regulations to prescribe courts for which Subdivision C of Division 12 of Part VII applies in the same way as the subdivision applies to a court of summary jurisdiction. This is intended to enhance the capacity of the federal family law, and state and territory child protection and family violence systems, to deliver integrated services to families with multiple legal needs, by removing some of the existing Commonwealth legislative barriers to state and territory children's courts exercising family law jurisdiction.

Subregulation 39CA(1) prescribes the Local Court of the Northern Territory to have the same jurisdiction in family law parenting matters as that held by state and territory courts of summary jurisdiction under Part VII of the Act. Prescribing the Local Court addresses any uncertainty about whether the Local Court qualifies as a 'territory court of summary jurisdiction' for the purpose of Part VII.

Under subsection 69GA(3) of the Act, if a court is prescribed for the purposes of section 69GA, the Regulations can also prescribe the Rules of Court that would apply when the court is exercising family law jurisdiction. Subregulation 39CA(2) prescribes the *Local Court (Civil Jurisdiction) Rules* (NT) to apply when the Local Court of the Northern Territory exercises its jurisdiction under Part VII.

Regulation 39CA will be repealed at the end of 30 June 2020. Regulation 39CA will facilitate a time-limited family law pilot in the Local Court of the Northern Territory which will conclude on 30 June 2020.

Details of the Regulations are set out in **Attachment A**.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

CONSULTATION

In accordance with the requirement for consultation in subsection 69GA(5) of the Act, the Northern Territory Attorney-General has been consulted about the prescription of the Local Court of the Northern Territory and the *Local Court (Civil Jurisdiction) Rules* (NT) in Regulations under subsections 69GA(1) and (3) of the Act respectively, for the purposes of facilitating a time-limited family law pilot.

The Family Court of Australia and the Federal Circuit Court have been consulted about the amendments to regulation 12CC of the Principal Regulations.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The Regulations are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is set out in **Attachment B**.

ATTACHMENT A

Details of the *Family Law Amendment (Family Violence Measures) Regulations 2019*

PART 1 – Preliminary

Regulation 1 – Name of Regulations

Regulation 1 provides that the title of the Regulations is the *Family Law Amendment (Family Violence Measures) Regulations 2019*.

Regulation 2 – Commencement

Regulation 2 provides for the Regulations to commence on the day after the instrument is registered.

Regulation 3 – Authority

Regulation 3 provides that the *Family Law Amendment (Family Violence Measures) Regulations 2019* are made under the *Family Law Act 1975*.

Regulation 4 – Schedules

Regulation 4 provides that Schedule 1 amends the *Family Law Regulations 1984*.

SCHEDULE 1 – Amendments

Item 1 repeals paragraph 12CC(1)(a) of the Family Law Regulations and substitutes the words “makes or varies a family violence order (whether or not by interim order)”. The amendment extends the application of regulation 12CC to family law orders revived, varied or suspended by a state or territory court in the course of making or varying interim family violence orders.

Item 2 omits the words “Family Court” from subregulation 12CC(1) of the Family Law Regulations and substitutes “court that made the order, injunction or arrangement so revived, varied, discharged or suspended”. This amendment alters the existing requirement that notification of the revival, variation, discharge or suspension of a family law order is given to the registrar of the Family Court, and instead provides that notification must be given to the registrar of the court that made the family law order.

Item 3 inserts a new subregulation 39CA(1) which prescribes the Local Court of the Northern Territory for the purposes of subsection 69GA(1) of the Act. It inserts a new subregulation 39CA(2) which prescribes the *Local Court (Civil Jurisdiction) Rules* (NT) relation to the Local Court of the Northern Territory for the purposes of subsection 69GA(3) of the Act. It also inserts a new subregulation 39CA(3) which provides that regulation 39CA is repealed at the end of 30 June 2020. Regulation 39CA will facilitate a time-limited family law pilot in the Local Court of the Northern Territory which will conclude on 30 June 2020.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Family Law Amendment (Family Violence Measures) Regulations 2019

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Family Law Amendment (Family Violence Measures) Regulations 2019* (the Regulations) are made under section 125(1) of the *Family Law Act 1975* (the Act).

In particular, the Regulations amend the *Family Law Regulations 1984* to:

- a) amend regulation 12CC of the Principal Regulations to ensure that the family law courts are made aware of decisions by state and territory courts to revive, vary, or suspend family law orders in the course of making interim family violence orders
- b) prescribe the Local Court of the Northern Territory to have parenting jurisdiction under Part VII of the Act, and
- c) prescribe the *Local Court (Civil Jurisdiction) Rules* (NT) to apply when the Local Court of the Northern Territory exercises its jurisdiction under Part VII.

Human rights implications

The Legislative Instrument engages the following rights:

- Protection of children on dissolution of a marriage, and generally: Articles 23(4) and 24(1) of the International Covenant on Civil and Political Rights (ICCPR), and Article 3(2) of the Convention on the Rights of the Child (CRC).
 - Article 23(4) of the ICCPR requires parties to take appropriate steps to ensure provision is made for the protection of children on the dissolution of a marriage.
 - Article 24(1) of the ICCPR provides for protection for all children, without discrimination, by virtue of their status as minors.
 - Article 3(2) of the CRC provides that parties will take appropriate measures to ensure that children have the protection and care necessary for their well-being.
- Protection of children from physical, sexual or mental violence, injury or abuse: Articles 19(1) and 34 of the CRC.
 - Article 19(1) of the CRC requires parties to take all appropriate legislative measures to protect children from all forms of physical or mental violence, injury or abuse, including negligent treatment and sexual abuse.
 - Article 34 of the CRC provides that parties will protect children from all forms of sexual abuse.

Discussion of the how the amendments promote the above rights

Amended regulation 12CC

The instrument amends regulation 12CC of the Family Law Regulations to support the implementation of section 68T of the Act. The *Family Law Amendment (Family Violence and Other Measures) Act 2018* amended section 68T to remove the 21 day time limit on a state or territory court's ability to revive, vary or suspend a parenting or other related order to the extent to which that order provides for a child to spend time with a person. The courts have this power under section 68R when making a family violence order. This power is designed to protect children by avoiding any inconsistency between family violence orders and family law orders.

Under the amended section 68T, the court may order that the revived, varied or suspended family law order remain in force for a substantial period of time, in which case it is important that the family law court that made the original order is aware of the decision. Amended regulation 12CC ensures that if a court revives, varies, or suspends family law orders in the course of making or varying interim family violence orders under section 68R of the Act, the registrar of that court must send a copy of the decision to the registrar of the court that made the original family law order.

Regulation 12CC facilitates section 68T's promotion of children's right to be protected from violence. Ensuring that the family law courts are notified of changes to family law orders strengthens the courts' ability to protect children from violence by reducing the risk that can arise from inconsistent orders applying to their contact with a violent or abusive parent.

Prescription of matters under section 69GA of the Act

The Regulations promote the rights of children by enabling the Local Court of the Northern Territory to make appropriate orders under the Family Law Act where such orders would assist to resolve matters in the best interests of the child. Allowing parties, already before the Local Court with a territory matter, to resolve related family law matters in the Local Court reduces their need to commence proceedings in a second court and can reduce time, cost, pressure and risk for vulnerable families and children. The Regulations provide Northern Territory judicial officers with additional tools to resolve matters involving family violence holistically, and prevent further violence to children by reducing the sometimes complicated legal processes.

Regulation 39CA is time-limited because it will facilitate a short-term family law pilot in the Local Court of the Northern Territory, designed to measure the benefits and costs associated with territory courts exercising family law jurisdiction to inform government decision-making.

Conclusion

This legislative instrument is compatible with human rights because it promotes the protection of human rights, to the limited extent they are engaged.