

**FAMILY LAW LEGISLATION AMENDMENT (MISCELLANEOUS MEASURES)**  
**REGULATIONS 2019**

**EXPLANATORY STATEMENT**

Issued by the authority of the Attorney-General  
under section 125(1) of the *Family Law Act 1975*

*Family Law Regulations 1984*

*Family Law (Child Abduction Convention) Regulations 1986*

*Family Law (Child Protection Convention) Regulations 2003*

**PURPOSE AND OPERATION OF THE INSTRUMENT**

The *Family Law Act 1975* (the Family Law 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, welfare of children and the jurisdiction of the family law courts.

Subsection 125(1) of the Family Law Act provides that the Governor-General may make regulations, not inconsistent with the Family Law 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 purpose of the *Family Law Legislation Amendment (Miscellaneous Measures) Regulations 2019* (the Regulations) is to make minor, technical and consequential amendments to the *Family Law Regulations 1984* (Family Law Regulations), the *Family Law (Child Abduction Convention) Regulations 1986* (Abduction Regulations), and the *Family Law (Child Protection Convention) Regulations 2003* (Protection Regulations) to ensure they are accurate and fit-for-purpose.

The Family Law Regulations prescribe information to support the operation of the Family Law Act. The Family Law Regulations include references to Commonwealth and state and territory laws and authorities prescribed for the purposes of child welfare and registered relationships provisions in the Family Law Act. To improve the accuracy and efficient operation of the Family Law Regulations, the Regulations update a number of inaccurate and out-dated references to reflect the correct laws and authorities. Further, the Regulations update Schedule 2 to the Family Law Regulations, which prescribes the list of countries in respect of which Australia holds international child and spousal maintenance obligations.

The Regulations also make consequential amendments to the Family Law Regulations required following the passage of the *Civil Law and Justice Legislation Amendment Act 2018* (CLJLA Act), which received Royal Assent on 25 October 2018. Schedule 6 to the CLJLA Act amended the international child abduction offence provisions in the Family Law Act, inserting two new offences relating to the retention of children overseas. The offences do not apply if there was ‘consent in writing (authenticated as prescribed)’ to the removal or retention of the

child. The Family Law Regulations prescribe the requirements for authentication of consent in writing necessary for implementation of the CLJLA Act amendments.

The Abduction Regulations implement the Hague *Convention on the Civil Aspects of International Child Abduction* (Abduction Convention) in Australian law. The Regulations repeal the existing and complex meaning of ‘convention countries’ in regulation 10 of the Abduction Regulations and introduce a single, authoritative definition of ‘convention country’. The revised definition of ‘convention country’ provides that a convention country is any country in respect of which the Abduction Convention has entered into force with Australia, and directs readers to the website of the Attorney-General’s Department for a current list of Convention countries.

The Regulations amend Schedule 3 to the Abduction Regulations to repeal two prescribed forms – Form 1 and Form 3 – for applications to a Central Authority in Australia for assistance under the Abduction Convention, and provide instead for these forms to be approved in writing by the Minister. This will enable the prescribed forms to be updated more efficiently as required. The forms will be made available on the Attorney-General’s Department website.

The Protection Regulations implement the Hague *Convention on Jurisdiction, Applicable Law, Recognition and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children* (Protection Convention). The Regulations amend two incorrect references in regulations 12 and 23, correcting typographical errors. The Regulations also repeal the list of countries in Schedule 1 of the Protection Regulations in respect of which the Protection Convention is in force with Australia. The definition of Convention country in subsection 111CA(1) of the Family Law Act is the authoritative definition for the purposes of the Family Law Act and the Protection Regulations. The inclusion of a list in Schedule 1 is therefore unnecessary.

Details of the Regulations are set out in [Attachment A](#).

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

## **CONSULTATION**

The Attorney-General’s Department consulted relevant state and territory authorities in relation to updating prescribed state and territory legislation and authorities, and they support the amendments in the proposed Regulations.

## **REGULATION IMPACT STATEMENT**

The Office of Best Practice Regulation (OBPR) has confirmed that a Regulation Impact Statement is not required for the 2019 Regulations. The OBPR reference is ID 24802.

## **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](#).

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

**Section 1 – Name**

This section provides that the title of the Regulations is the *Family Law Legislation Amendment (Miscellaneous Measures) Regulations 2019*.

**Section 2 – Commencement**

This section provides that Schedule 1, item 26 of the instrument commences on the later of the start of the day after the instrument is registered, and the commencement of Part 2 of Schedule 6 to the *Civil Law and Justice Legislation Amendment Act 2018* (CLJLA Act). This is because the amendments made by this item do not need to come into effect until the relevant amendments to provisions of the *Family Law Act 1975* (Family Law Act) made by the CLJLA Act come into effect, which is on a date fixed by proclamation or on the day after 6 months from 25 October 2018 when the CLJLA Act received Royal Assent.

This section provides that the remainder of the instrument commences the day after the instrument is registered.

**Section 3 – Authority**

This section provides that the *Family Law Legislation Amendment (Miscellaneous Measures) Regulations 2019* are made under the Family Law Act.

**Section 4 – Schedules**

This section provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

**Schedule 1 – Amendments**

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

**Items 1-2**

Subregulation 2(1) of the Abduction Regulations defines ‘convention country’ as a country that under regulation 10 is a convention country. Regulation 10 provides that a convention country is a country specified in Schedule 2 or any other country in respect of which the *Hague Convention on the Civil Aspects of International Child Abduction* (Abduction Convention) has entered into force for Australia.

Currently, providing the Abduction Convention is in force between Australia and another country, the Abduction Regulations apply despite the absence of that country from the list of convention countries in Schedule 2. Therefore, the list of convention countries in Schedule 2 is unnecessary.

Item 1 repeals the current definition in subregulation 2(1) and substitutes a new definition that provides that a convention country is any country in respect of which the Abduction Convention has entered into force with Australia. This item also inserts a note which states

that a list of countries in respect of which the Abduction Convention has entered into force with Australia can be viewed on the Attorney-General's Department website.

Item 2 repeals regulation 10 as it is no longer required because of the amendment to the definition of a convention country by item 1.

Schedule 2, which currently contains the list of convention countries, is also repealed by these Regulations (see item 8).

#### **Items 3-4**

Subregulation 11(1) of the Abduction Regulations provides that 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 removed from Australia to a convention country, or 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.

Paragraph 11(2)(a) requires that requests made to a Central Authority in Australia for the return of a child to be made in accordance with prescribed Form 1 in Schedule 3.

Form 1 in Schedule 3 is no longer fit for purpose. The form uses unnecessarily technical and out-dated terminology. These factors make the form difficult to use.

Item 3 omits reference to 'Form 1' in paragraph 11(2)(a), and substitutes 'a form approved, in writing, by the Minister under subregulation 11(2A)'. This ensures that the forms can be regularly updated to remain responsive to administrative and client requirements.

Item 4 inserts subregulation 11(2A) after subregulation 11(2), which provides that the Minister may approve a form, in writing, for the purposes of paragraph 11(2)(a). This form will be available on the website of the Attorney-General's Department. An approved form is not a legislative instrument under the *Legislation (Exemptions and Other Matters) Regulation 2015*.

Form 1 is repealed from Schedule 3 by item 9.

#### **Items 5-6**

Subregulation 23(1) of the Abduction Regulations provides that 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.

Paragraph 23(2)(a) requires requests to a Central Authority in Australia for access to a child to be made in accordance with prescribed Form 3 in Schedule 3.

Form 3 in Schedule 3 is no longer fit for purpose. The form uses unnecessarily technical and out-dated terminology.

Item 5 similarly omits reference to ‘Form 3’ in paragraph 23(2)(a), and substitutes ‘a form approved, in writing, by the Minister under subregulation 23(2A)’. This ensures that the forms can be regularly updated to remain responsive to administrative and client requirements.

Item 6 inserts subregulation 23(2A) after subregulation 23(2), which provides that the Minister may approve a form, in writing, for the purposes of paragraph 23(2)(a). This form will be available on the website of the Attorney-General’s Department. An approved form is not a legislative instrument under the *Legislation (Exemptions and Other Matters) Regulation 2015*.

Form 3 is repealed from Schedule 3 by item 9.

#### **Item 7**

Item 7 inserts, after Part 5, a new part providing for application, transitional and saving provisions. This provides that, despite amendments made by items 3, 4, 5, 6, and 9, of the Regulations, Forms 1 and 3 in Schedule 3, as in force immediately before the commencement of those items, continue to be in force after that commencement until the Minister approves a form under subregulations 11(2A) and 23(2A). In effect, the repealed Forms 1 and 3 have effect until they are replaced.

#### **Item 8**

Schedule 2 contains a list of convention countries for the purposes of regulation 10.

Item 8 repeals Schedule 2 of the Abduction Regulations required as a consequence of the repeal of regulation 10 (see item 2) and the new definition of a convention country (see item 1).

#### **Item 9**

Item 9 repeals from Schedule 3 the entirety of Forms 1 and 3. These forms are no longer required under paragraphs 11(2)(a) or 23(2)(a) due to the amendments made in items 3-6.

#### **Family Law (Child Protection Convention) Regulations 2003**

#### **Item 10**

Paragraph 111CZ(2)(c) of the Family Law Act provides that regulations made in relation to the Hague *Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children* (the Protection Convention) may include a list of convention countries or territorial units of convention countries.

Subregulation 3(3) of the Protection Regulations currently provides that, for paragraph 111CZ(2)(c) of the Family Law Act, a Convention country is a country mentioned in Schedule 1.

Item 10 repeals subregulation 3(3) as prescribing countries for the purpose of paragraph 111CZ(2)(c) is unnecessary.

Schedule 1 to the Protection Regulations contains an out-dated list of countries in respect of which the Protection Convention is in force with Australia. Subregulation 3(2) of the Protection Regulations provides that the term ‘Convention country’ has the same meaning in the Protection Regulations as it has for Division 4 of Part XIII AA of the Family Law Act, where ‘Convention country’ is defined as a country, other than Australia, for which the Protection Convention has entered into force (subsection 111CA(1) of the Family Law Act refers).

Nothing in the Family Law Act or the Protection Regulations states that only the countries listed in Schedule 1 are convention countries, and the fact that a country is or is not prescribed under paragraph 111CZ(2)(c) of the Family Law Act does not override the definition in subsection 111CA(1).

The definition of ‘convention country’ in subsection 111CA(1) of the Family Law Act is the authoritative definition for the purposes of the Act and the Protection Regulations. The inclusion of a list in Schedule 1 is redundant and has caused confusion, particularly as the list is currently out of date.

Item 10 repeals subregulation 3(3), and item 13 repeals Schedule 1.

#### **Item 11**

Regulation 12(1) of the Protection Regulations provides for court recognition of a foreign measure on receipt, ‘under regulation 10 or with an application by an interested person’, of a foreign measure.

Item 11 omits reference to ‘regulation 10’ in subregulation 12(1), and substitutes reference to ‘regulation 11’, to amend a typographical error. The reference to regulation 10 should be a reference to regulation 11, which sets out the process in relation to foreign measures received by the Commonwealth Central Authority. Regulation 10 deals with overseas recognition of a Commonwealth protection measure, and is unrelated to regulations 11 and 12.

#### **Item 12**

Regulation 23 provides that a state court may make rules, and subject to those rules, the forms prescribed by regulation 25 are to be used in the proceedings.

Item 12 omits reference to ‘regulation 25’ in subregulation 23(2), and substitutes reference to ‘regulation 30’, to amend a typographical error. The forms are prescribed by regulation 30, not by regulation 25. Regulation 25 relates to state court recognition of a foreign measure, and is unrelated to regulations 23 and 30.

#### **Item 13**

Schedule 1 of the Protection Regulations contains a list of convention countries for the purpose of subregulation 3(3).

Item 13 repeals Schedule 1 of the Protection Regulations, required as a consequence of the repeal of subregulation 3(3) (see item 10).

## Family Law Regulations 1984

### **Items 14-20**

Subsection 4(1) of the Family Law Act defines a ‘child welfare officer’, in relation to a state or territory, as: (a) a person who, because he or she holds, or performs the duties of, a prescribed office of the state or territory, has responsibilities in relation to a child welfare law of the state or territory; or (b) a person authorised in writing by such a person for the purposes of Part VII.

Regulation 12BA of the Family Law Regulations prescribes state and territory offices for the purposes of paragraph (a) of the definition of child welfare officer in subsection 4(1) of the Family Law Act.

Several of the prescribed offices are out of date, for example due to title or function change in state or territory governments, and require amending.

Items 14-20 update several of the prescribed offices in regulation 12BA to reflect the current office performing the relevant duty.

### **Item 21**

Section 4AA of the Family Law Act defines ‘de facto relationships’, and includes factors for determining if a de facto relationship exists. Paragraph 4AA(2)(g) of the Family Law Act provides that one of the circumstances that a court may have regard to in determining if a person is in a de facto relationship is whether the relationship is or was registered under a prescribed law of a state or territory as a prescribed kind of relationship.

Regulation 12BC prescribes state and territory laws and kinds of relationship for the purposes of paragraph 4AA(2)(g) of the Family Law Act.

Item 21 repeals the table of prescribed laws and relationships in regulation 12BC, and substitutes a new table. Several of the state or territory laws prescribed in the current table are out of date or inaccurate, for a variety of reasons including the passage of new state or territory legislation. The new table updates the prescribed legislation. The amendments in the new table more accurately reflect the two separate requirements under paragraph 4AA(2)(g) of the Family Law Act, namely that a relationship is a prescribed ‘kind of relationship’ and secondly, that it is or was registered under a prescribed state or territory law. In particular, entries in relation to New South Wales and Victoria laws and relationships are amended to better meet the two requirements.

The table also updates the legislation prescribed for the Australian Capital Territory. The existing reference is to the *Civil Unions Act 2012* (ACT). However, civil unions as described in subsection 6(1) of the Civil Unions Act are registered under Part 5A of the *Births, Deaths and Marriages Registration Act 1997* (ACT) (BDMR Act), not the Civil Unions Act. The amendment correctly references section 32A of the BDMR Act. The reference to the BDMR Act is more consistent with the wording of paragraph 4AA(2)(g) of the Family Law Act. It is not intended to substantively change which ACT registered relationships are considered to be registered relationships under that paragraph.

## **Items 22-25**

Paragraph 67N(3)(b) of the Family Law Act relates to Commonwealth information orders, and provides conditions that must exist before a court makes such an order. This includes reference to if a department or Commonwealth instrumentality is prescribed for the purposes of paragraph 67N(3)(b).

Regulation 12CB prescribes departments and Commonwealth instrumentalities for the purpose of paragraph 67N(3)(b).

Several of the prescribed departments are out of date due to title or function change and require amending. Items 22-24 updates the prescribed departments in regulation 12CB to reflect the correct intended department that may hold relevant information for the purpose of Commonwealth information orders.

Item 25 adds the ‘Department of Education and Training’ and the ‘Department of Social Services’ to the list of departments prescribed in regulation 12CB. This is to reflect the correct intended departments that may hold relevant information for the purpose of Commonwealth information orders. This amendment does not impact the information that is accessible; it simply updates the titles of the relevant departments to reflect machinery of Government changes.

## **Item 26**

Subsections 65Y(1) and 65Z(1) of the Family Law Act respectively provide that if a parenting order is in place, or is pending, a person who was or is a party to those proceedings, or a person acting on behalf of or at the request of a party, must not take or send the child concerned from Australia to a place outside Australia. Paragraphs 65Y(2)(a) and 65Z(2)(a), respectively, provide that subsection (1) does not prohibit the taking or sending of the child from Australia to a place outside Australia if it is done with the consent in writing, authenticated as prescribed, of each person in whose favour the order referred to in subsection (1) was made.

Similarly, sections 65ZA and 65ZB place obligations on an owner, captain or charterer of an aircraft or vessel not to permit a child to leave a port or place in Australia in the aircraft or vessel for a destination outside Australia except as permitted. Paragraphs 65ZA(3)(a) and 65ZB(3)(a), respectively, provide that permitting the child to leave is not prohibited if there is consent in writing, authenticated as prescribed.

Regulation 13 of the Family Law Regulations outlines the requirements for authentication of consent in writing for the purposes of 65Y(2)(a), 65Z(2)(a), 65ZA(3)(a) and 65ZB(3)(a) of the Family Law Act. Schedule 6 of the CLJLA Act updates the international child abduction offence provisions in the Family Law Act and inserts two new offences, sections 65YA and 65ZAA, relating to the retention of children overseas. The new offences also contain reference to ‘consent in writing (authenticated as prescribed)’.



Regulation 13 requires updating to reflect the new offence provisions, subparagraphs 65YA(b)(i) and 65ZAA(b)(i) of the Family Law Act, and to amend previous provision references to reflect updated numbering of subparagraphs following enactment of the amendments contained in the CLJLA Act.

Item 26 omits from Regulation 13 ‘paragraphs 65Y(2)(a), 65Z(2)(a), 65ZA(3)(a) and 65ZB(3)(a)’ and substitutes ‘subparagraphs 65Y(1)(c)(i), 65YA(1)(b)(i), 65Z(1)(c)(i), 65ZAA(1)(b)(i), 65ZA(1)(g)(i) and 65ZB(1)(g)(i)’.

#### **Item 27**

Section 90SB of the Family Law Act allows for a court to make an order regarding maintenance, or alteration or declaration of property under sections 90SE, 90SG, 90SM or 90SL of the Family Law Act, in relation to a de facto relationship, if the court is satisfied of one of a number of conditions. Under paragraph 90SB(d) of the Family Law Act, a court may make such an order if the court is satisfied that the relationship is or was registered under a prescribed law of a state or territory.

Regulation 15AB prescribes state and territory legislation for the purposes of paragraph 90SB(d) of the Family Law Act.

Item 27 repeals the table of prescribed laws in regulation 15AB, and substitutes a new table. Several of the state or territory laws currently prescribed are out of date, for example due to the passage of new state or territory legislation, and require updating. The new table updates the prescribed legislation. In particular, as described above in item 21, the new table updates the legislation prescribed for the Australian Capital Territory.

#### **Item 28**

Section 114AB of the Family Law Act provides that sections 68B, 68C, 114 and 114AA, which relate to injunctions and powers of arrest, are not intended to exclude or limit the operation of a prescribed law of a state or territory that is capable of operating concurrently with those sections.

Regulation 19 prescribes state and territory laws for the purposes of section 114AB of the Family Law Act.

Item 28 omits ‘*Domestic Violence and Protection Orders Act 2008 (ACT)*’ and substitutes ‘*Family Violence Act 2016 (ACT)*’ in subregulation 19(g). Following the passage of legislation in the Australian Capital Territory, the latter is the correct legislation to be prescribed.

#### **Items 29-34**

Section 121 of the Family Law Act restricts the publication of family law proceedings. Paragraph 121(9)(aa) provides that section 121 does not apply to or in relation to the communication of any pleading, transcript of evidence or other document to authorities of states and territories that have responsibilities relating to the welfare of children and are prescribed by the regulations for the purposes of the paragraph.

Regulation 19A prescribes state and territory authorities that have responsibilities relation to the welfare of children for the purposes of paragraph 121(9)(aa) of the Family Law Act.

Several of the prescribed state and territory authorities are incorrect or out of date, for example due to title or function change in state or territory governments, and require amending.

Items 29-34 update several of the prescribed authorities in regulation 19A to accurately reflect the authorities with the relevant responsibilities relating to the welfare of children.

### **Item 35**

Section 110 of the Family Law Act relates to the enforcement of international maintenance orders and agreements. Section 110 defines a ‘reciprocating jurisdiction’ to be a country, or part of a country, outside Australia declared by the regulations to be a reciprocating jurisdiction for the purposes of section 110.

Regulation 25 provides that each of the jurisdictions specified in Schedule 2 is declared to be a reciprocating jurisdiction for the purposes of section 110 of the Family Law Act.

Schedule 2 lists reciprocating jurisdictions for the purposes of regulation 25. The current list is out of date, missing certain reciprocating jurisdictions, and not in alphabetical order.

Item 35 repeals the list of reciprocating jurisdictions in Schedule 2 and substitutes an updated list that includes the correct countries. Specifically, the updated list includes Lithuania, who is a signatory to the 1973 *Hague Convention on the Law Applicable to Maintenance Obligations*, amends the reference to Samoa, and alphabetises the list.

### **Items 36-37**

Schedule 4 to the Family Law Regulations lists convention countries (jurisdictions) for the purpose of subregulations 39B(1) and (2), and regulations 39BA and 48. These regulations and subregulations provide, under specified circumstances, for the application of particular provisions of the Family Law Act to jurisdictions specified in Schedule 4 of the Regulations.

The current list contains an outdated reference to the ‘Federal Republic of Yugoslavia (Serbia and Montenegro)’.

Item 36 omits reference to ‘Federal Republic of Yugoslavia (Serbia and Montenegro)’ and item 37 inserts ‘Serbia and Montenegro’ to reflect the correct country name.

### **Items 38-54**

Subsection 4(1) of the Family Law Act defines a ‘child welfare law’ as a law of a state or territory prescribed, or included in a class of laws of a state or territory prescribed, for the purposes of the definition.

Subregulation 12B(2) provides that, for the purposes of the definition of child welfare law in subsection 4(1) of the Family Law Act, each law specified in Column 2 of an item in Schedule 5, being a law of the state or territory specified in Column 3 of that item, is prescribed.

Schedule 5 prescribes state and territory laws under subregulation 12B(2) for the purposes of the definition of child welfare law in subsection 4(1) of the Family Law Act.

Several of the references to state and territory laws in schedule 5 of the Family Law Regulations are incorrect and require updating, for example due to the passage of new state legislation. Further, some of the formatting, including bolding of certain legislation titles, requires updating for consistency. Items 38-54 update and add prescribed laws to reflect the correct state and territory child welfare laws, and make necessary formatting changes.

#### **Item 55**

Schedule 8 of the Family Law Regulations prescribes state and territory laws for the purpose of regulation 12BB. Regulation 12BB provides that for the purposes of the definition of ‘family violence order’ in subsection 4(1) of the Family Law Act, each of the laws specified in column 2 of an item in Schedule 8 is a prescribed law of the state or territory set out in column 3 of that item. Under subsection 4(1) of the Family Law Act, a family violence order means an order (including an interim order) made under a prescribed law of a state or territory to protect a person from family violence.

Item 55 repeals ‘*Domestic Violence and Protection Orders Act 2008*’ and substitutes ‘*Family Violence Act 2016*’ in Schedule 8, Item 11 to reflect the correct reference following the passage of new legislation in the Australian Capital Territory.

#### **Items 56-65**

Subsection 69ZW(1) of the Family Law Act provides that a court may make an order in child-related proceedings requiring a prescribed state or territory agency to provide the court with the documents or information specified in the order.

Regulation 12CD provides that for subsection 69ZW(1) of the Family Law Act, an agency mentioned in column 2 of an item in Schedule 9 is a prescribed agency for the state or territory mentioned in column 3 of the item.

Schedule 9 prescribes state and territory agencies for the purpose of regulation 12CD.

Several of the prescribed state or territory agencies are incorrect due to title or function change in state governments, and require amending. Items 56-65 update various prescribed state or territory agencies in Schedule 9 to reflect the correct agencies which may hold evidence relating to child abuse or family violence.

**Statement of Compatibility with Human Rights**

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

*Family Law Legislation Amendment (Miscellaneous Measures) Regulations 2018*

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*.

**Overview of the Legislative Instrument**

The regulations make a number of technical and minor amendments to regulations under the *Family Law Act 1975*, specifically the *Family Law Regulations 1984*, the *Family Law (Child Abduction Convention) Regulations 1986* and the *Family Law (Child Protection Convention) Regulations 2003*. The proposed amendments update the regulations to ensure they are accurate and fit-for-purpose.

**Human rights implications**

The regulations do not engage any rights or freedoms as they do not make any substantive changes to the law.

The *Family Law (Child Abduction Convention) Regulations 1986* (Abduction Regulations) implement the *Hague Convention on the Civil Aspects of International Child Abduction* (Abduction Convention) in Australian law. The regulations repeal Schedule 2 of the Abduction Regulations as it is redundant. Schedule 2 contains an outdated list of countries in respect of which the Abduction Convention is in force with Australia. This amendment does not have any substantive effect on rights or freedoms as the Abduction Regulations apply to ‘any other country in respect of which the Convention has entered into force into Australia’ regardless of whether the country is specified in Schedule 2 (see regulation 10(b)). The link to the Hague Conference on Private International Law website, which publishes the up-to-date list of countries for which the Convention is in force for Australia, will be made available on the department’s website. These Regulations also make amendments to regulations 11 and 23 of the Abduction Regulations to replace references to certain ‘prescribed forms’ with references to forms approved by the Minister. This amendment is of an administrative nature and simply facilitates efficient updates to these forms to ensure they remain relevant and fit-for-purpose.

The *Family Law (Child Protection Convention) Regulations 2003* (Child Protection Regulations) implement the *Hague Convention on Jurisdiction, Applicable Law, Recognition and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children*. As with the Abduction Regulations, the information about Convention countries contained in the Schedules of the Child Protection Regulations is outdated and requires updating. Amendments are also required to correct typographical errors. These amendments do not have any human rights implications.

The *Family Law Regulations 1984* (Family Law Regulations) are made under the Family Law Act. The Family Law Regulations prescribe information to support the operation of the Family Law Act, including procedural requirements and relevant state and territory laws, entities and offices, for the purposes of the Family Law Act. The amendments to the Family Law Regulations update outdated or incorrect references to Commonwealth and state and territory laws and entities, which relate to child welfare and registered relationships. For example, regulation 12BA prescribes offices for the purpose of the definition of ‘child welfare officer’ in subsection 4(1) of the Family Law Act. The current Family Law Regulations contains numerous outdated references to Departments and Ministers which are updated by these Regulations. Further, Schedule 2 to the Family Law Regulations contains a list of countries in respect of which Australia holds international maintenance obligations which are updated by these Regulations. The amendments do not make any changes to the substantial operation of the law and therefore do not engage any rights or freedoms.

The second set of amendments to the Family Law Regulations are consequential amendments arising from the *Civil Law and Justice Legislation Amendment Act 2018*. Regulation 13 of the Family Law Regulations prescribes the requirements for authentication of consent in writing for the purposes of the existing offence provisions for international child abduction (sections 65Y, 65Z, 65ZA and 65ZB of the Family Law Act). Regulation 13 requires updating to also reference the new offence provisions in sections 65YA and 65ZAA of the Family Law Act, which were introduced by the Civil Law and Justice Legislation Amendment Act. This is a simple referencing update – the human rights implications of the introduction of these new offences are detailed in the explanatory memorandum to the Civil Law and Justice Legislation Amendment Act itself.

## **Conclusion**

The regulations are compatible with human rights as they do not raise any human rights issues.