

FAMILY LAW AMENDMENT (PRESCRIBED COURT) REGULATIONS 2020

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

in compliance with section 15J of the *Legislation Act 2003*

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 purpose of the *Family Law Amendment (Prescribed Court) Regulations 2020* (the Regulations) is to amend the *Family Law Regulations 1984* (the Principal Regulations) to extend, until 31 December 2020, the duration for which the following matters are prescribed:

- a) the Local Court of the Northern Territory (the Court), to have parenting jurisdiction under Part VII of the Act; and
- b) the *Local Court (Civil Jurisdiction) Rules* (NT), to apply when the Court exercises its jurisdiction under Part VII of the Act.

Section 69GA of the Act enables 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) of the Principal Regulations 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.

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

Regulation 39CA of the Principal Regulations is currently due to be repealed on 30 June 2020. The purpose of amending this regulation so that it will be repealed on 31 December 2020, is to allow the Court to continue to exercise family law jurisdiction under Part VII of the Act - and utilise its local

Rules of Courts while doing so - until 31 December 2020, as part of a pilot, which the Commonwealth and Northern Territory Governments have agreed to extend to this date.

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

The Regulations would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations would commence on the day after the instrument is registered.

CONSULTATION

In accordance with the requirement for consultation in subsection 69GA(5) of the Act, the Northern Territory Attorney-General has been consulted about extending 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 extending the time-limited family law pilot until 31 December 2020.

The Court and the Northern Territory Department of Attorney-General and Justice have also been consulted on the amendment.

REGULATION IMPACT STATEMENT

The Office of Best Practice Regulation was consulted in the preparation of the Regulations and advised that a Regulatory Impact Statement was not required (OPBR Ref: 42512).

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**.

NOTES ON SECTIONS

PART 1 – Preliminary

Section 1 – Name

Section 1 provides that the title of the Regulations is the *Family Law Amendment (Prescribed Court) Regulations 2020*.

Section 2 – Commencement

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

Section 3 – Authority

Section 3 provides that the *Family Law Amendment (Prescribed Court) Regulations 2020* are made under the *Family Law Act 1975* (the Act).

Section 4 – Schedules

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

SCHEDULE 1 – Amendments

Section 5 – Subregulation 39CA(3)

Section 5 repeals subregulation 39CA(3) and substitutes ‘This regulation is repealed at the end of 31 December 2020.’ The effect of this amendment is that:

- a) the Local Court of the Northern Territory will continue to be prescribed to have parenting jurisdiction under Part VII of the *Family Law Act 1975* (the Act), until 31 December 2020, and
- b) the *Local Court (Civil Jurisdiction) Rules 1998* (NT) will continue to be prescribed to apply when the Local Court of the Northern Territory is exercising jurisdiction under Part VII of the Act, until 31 December 2020.

Statement of Compatibility with Human Rights

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

Family Law Amendment (Prescribed Court) Regulations 2020

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 purpose of the *Family Law Amendment (Prescribed Court) Regulations 2020* (the Regulations) is to amend the *Family Law Regulations 1984* (the Principal Regulations) to extend, until 31 December 2020, the duration for which the following matters are prescribed:

- a) the Local Court of the Northern Territory (the Court), to have parenting jurisdiction under Part VII of the Act, and
- b) the *Local Court (Civil Jurisdiction) Rules* (NT), to apply when the Court exercises its jurisdiction under Part VII of the Act.

The regulation under which these matters are prescribed – regulation 39CA of the *Family Law Regulations 1984* – is currently due to be repealed on 30 June 2020. The purpose of amending this regulation so that it will be repealed on 31 December 2020, is to allow the Court to continue to exercise family law jurisdiction under Part VII of the Act - and utilise its local Rules of Courts while doing so - until 31 December 2020, as part of a pilot, which the Commonwealth and Northern Territory Governments have agreed to extend to this date.

The pilot has been established to allow parties, already before the Court with a territory family violence or child protection matter, to have related family law parenting matters resolved in the same forum.

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

Human rights implications

The Legislative Instrument engages the following rights regarding the right to respect for the family:

- 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 amendment promotes the above rights

The Regulations promote the rights of children by extending the period for which the Court is able to make appropriate orders under the Act where such orders would assist to resolve matters in the best interests of the child. Allowing parties, already before the Court with a territory matter, to resolve related family law matters in the 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 extend the period for which Northern Territory judicial officers have additional tools to resolve matters involving family violence holistically, and in the best interests of the child.

Regulation 39CA is time-limited because it will facilitate a short-term family law pilot in the Court, 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.