



Family Law (Child Abduction Convention) Amendment (Family Violence) Regulations 2022

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 8 December 2022

David Hurley
Governor-General

By His Excellency's Command

Mark Dreyfus KC
Attorney-General

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1 Name

This instrument is the *Family Law (Child Abduction Convention) Amendment (Family Violence) Regulations 2022*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	10 December 2022

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Family Law Act 1975*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Family Law (Child Abduction Convention) Regulations 1986

1 At the end of regulation 15

Add:

- (5) To avoid doubt, a court may make an order under paragraph (1)(b), or include a condition under paragraph (1)(c) in an order under paragraph (1)(a) or (b), for the purpose of reducing a risk referred to in paragraph 16(3)(b) regardless of whether the court is satisfied that:
 - (a) the risk will eventuate, or is likely to eventuate; or
 - (b) the risk has eventuated in the past.
- (6) In considering whether to include a condition under paragraph (1)(c) in an order under paragraph (1)(a) or (b), the court may have regard to the following matters:
 - (a) whether compliance with the proposed condition will be reasonably practicable;
 - (b) whether the condition is proportionate;
 - (c) whether the condition would usurp the regular functions of the courts or authorities in the child's state of habitual residence;
 - (d) whether the condition would be enforceable in the jurisdiction or jurisdictions in which it would apply.
- (7) Subregulation (6) does not limit the matters to which the court may have regard in considering whether to include a condition under paragraph (1)(c) in an order under paragraph (1)(a) or (b).

2 At the end of subregulation 16(3)

Add:

- Note 1: In considering whether the matter mentioned in paragraph (3)(b) is established:
- (a) the court may have regard to any risk that the return of the child under the Convention would result in the child being subject to, or exposed to, family violence; and
 - (b) the court may have regard to the extent to which the child could be protected from any such risk if the child was returned under the Convention; and
 - (c) the court may have regard to the matters mentioned in paragraphs (a) and (b) of this note regardless of whether the court is satisfied that family violence has occurred, will occur or is likely to occur.
- Note 2: For the definition of *family violence*, see section 4AB of the Act.

3 At the end of regulation 16

Add:

- (6) If:
 - (a) the court is considering whether to refuse to make an order under subregulation (1) or (2) on the basis of the matter mentioned in paragraph (3)(b); and
 - (b) a party to the proceedings, or an independent children's lawyer who represents the interests of the child in the proceedings, raises in the

proceedings any condition that could, for the purpose of reducing a risk mentioned in paragraph (3)(b), be included under paragraph 15(1)(c):

- (i) in a return order for the child; or
- (ii) in any other order that the court proposes to make under paragraph 15(1)(b) in relation to a return order;

the court must consider whether it would be appropriate to include the condition.

- (7) In considering whether to refuse to make an order under subregulation (1) or (2) on the basis of the matter mentioned in paragraph (3)(b), the court may have regard to any other measures that would be reasonably likely to reduce the risk mentioned in paragraph (3)(b).
- (8) Subregulations (6) and (7) do not limit the matters to which the court may have regard in considering whether to refuse to make an order under subregulation (1) or (2) on the basis of the matter mentioned in paragraph (3)(b).

4 In the appropriation position in Part 6

Insert:

Division 2—Saving provision relating to the Family Law (Child Abduction Convention) Amendment (Family Violence) Regulations 2022

33 Saving provision

Despite the amendments of this instrument made by the *Family Law (Child Abduction Convention) Amendment (Family Violence) Regulations 2022* (the **amending regulations**), this instrument continues to apply, in relation to any application made under regulation 14 or 14A of this instrument before the commencement of the amending regulations, as if those amendments had not been made.