

Family Law Amendment (Arbitration) Regulations 2024

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 12 June 2024

David Hurley

Governor‑General

By His Excellency’s Command

Mark Dreyfus KC

Attorney‑General

Contents

1 Name 1

2 Commencement 1

3 Authority 1

4 Schedules 1

Schedule 1—Amendments 2

Family Law Regulations 1984 2

1 Name

This instrument is the *Family Law Amendment (Arbitration) Regulations 2024*.

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. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table | The day after this instrument is registered. | 15 June 2024 |
| 2. Schedule 1 | 1 August 2024. | 1 August 2024 |

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 Regulations 1984

1 Regulation 67B

Repeal the regulation, substitute:

67B Prescribed requirements for arbitrator (Act s 10M)

(1) For the purposes of the definition of ***arbitrator*** in section 10M of the Act, this regulation prescribes the requirements that must be met for a person to be an arbitrator.

Requirement for name to be included in list of arbitrators

(2) The person’s name must be included in a list (the ***list***), kept by the Law Council of Australia or by another body nominated by the Law Council of Australia, of persons who are prepared to provide arbitration services under the Act.

(3) At the time of applying to be included in the list, the person must give a statutory declaration to the body keeping the list to the effect that the person meets the requirements mentioned in subregulation (4).

Requirements to be met to become an arbitrator

(4) During the 6‑year period ending immediately before the time the person applies to be included in the list:

(a) the person must have, for at least 5 of those years:

(i) practised as a legal practitioner; or

(ii) held office as a judge or magistrate of one or more of the courts mentioned in subregulation (5); or

(iii) either practised as a legal practitioner or held such office; and

(b) the person must have, for at least 5 of those years, spent at least 25% of the person’s time in such practice or office on family law matters; and

(c) the person must have gained the necessary experience in family law matters that is sufficient for the person to be an arbitrator; and

(d) the person must have successfully completed specialist arbitration training conducted by a tertiary institution or a professional association of arbitrators.

(5) For subparagraph (4)(a)(ii), the courts are the following:

(a) the Federal Circuit and Family Court of Australia (Division 1);

(b) the Federal Circuit and Family Court of Australia (Division 2);

(c) the Family Court of Western Australia;

(d) the Magistrates Court of Western Australia constituted by a magistrate who is not a Family Law Magistrate of Western Australia, sitting at a place outside the metropolitan region (within the meaning of the *Family Court Act 1997* (WA));

(e) the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia, sitting at any place in Western Australia;

(f) the former Family Court of Australia;

(g) the former Federal Circuit Court of Australia.

Note: For the definition of ***Family Law Magistrate of Western Australia***, see subsection 4(1) of the Act.

Requirements to be met to continue to be an arbitrator

(6) During the 2‑year period beginning on the day mentioned in subregulation (7), and during each subsequent 2‑year period:

(a) the person must complete at least 10 hours of continuing professional development; and

(b) at least 25% of the person’s practice as a legal practitioner must be in relation to family law matters; and

(c) the person must maintain the necessary experience in family law matters that is sufficient for the person to be an arbitrator.

(7) For subregulation (6), the day is:

(a) if, immediately before 1 August 2024, the person’s name is included in the list—1 August 2024; or

(b) otherwise—the day the person’s name is included in the list.

(8) Within a month of the end of each 2‑year period mentioned in subregulation (6), the person must give a statutory declaration to the body that keeps the list to the effect that the person has met the requirements of that subregulation for that period.

Continuing professional development

(9) For paragraph (6)(a), continuing professional development undertaken in a State or Territory by a person who does not hold a practising certificate must be of at least a similar standard to the continuing professional development required to be undertaken, in that State or Territory, as a condition of a legal practitioner’s practising certificate.

2 Part VI (heading)

Omit “**Repeal and savings**”, substitute “**Application, saving and transitional provisions**”.

3 In the appropriate position in Part VI

Insert:

84 Amendments made by the *Family Law Amendment (Arbitration) Regulations 2024*

(1) Subregulation 67B(3), as amended by Schedule 1 to the *Family Law Amendment (Arbitration) Regulations 2024* (the ***amending instrument***), applies on and after the commencement of that Schedule in relation to applications:

(a) made, but not decided, before that commencement; or

(b) made on or after that commencement.

(2) Subregulation 67B(4), as amended by Schedule 1 to the amending instrument, applies on and after the commencement of that Schedule in relation to persons who make applications mentioned in subregulation (1) of this regulation.

(3) To avoid doubt, a person meets the requirement in subregulation 67B(2) on the commencement of Schedule 1 to the amending instrument if, immediately before that commencement, the person’s name is included in the list mentioned in that subregulation.