

# **FAMILY LAW REGULATIONS 2024**

## **EXPLANATORY STATEMENT**

Issued by authority of the Attorney-General

Under subsection 125(1) the *Family Law Act 1975*

### **PURPOSE AND OPERATION OF THE INSTRUMENT**

The *Family Law Act 1975* (the Act) provides the legislative framework for resolving arrangements for children, finances and property following a relationship breakdown. Subsection 125(1) of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Family Law Regulations 2024* (2024 Regulations) replace and update the *Family Law Regulations 1984* (1984 Regulations), as that instrument is scheduled to sunset on 1 April 2025.

Chapter 3, Part 4 of the *Legislation Act 2003* provides that legislative instruments sunset after a fixed period of time, subject to some exceptions. Paragraph 4(d) of the *Legislation (Family Law Instruments) Sunset-altering Declaration 2018* deferred this date for the 1984 Regulations from 1 April 2018 to 1 April 2023. Paragraph 4(b) of the *Legislation (Deferral of Sunsetting-Family Law Instruments) Certificate 2022* then further deferred this date to 1 April 2025.

The deferral of sunseting enabled the Attorney-General's Department to conduct a fitness-for purpose and thematic review, which ensures that legislative instruments are kept up to date and only remain in force for so long as they are needed. The review found the 1984 Regulations were operating as intended and continue to be necessary. However, the review recommended some technical and factual updates. The 2024 Regulations incorporate the findings and recommendations of the review.

The 2024 Regulations ensure the ongoing and effective operation of family law proceedings by prescribing matters of practice and procedure in courts exercising jurisdiction under the Act. This includes matters pertaining to property, maintenance orders, parenting orders, overseas service of documents, arbitration and parentage testing. The 2024 Regulations have 15 Parts, including:

- **Part 3 – Arbitration**: this part provides requirements relating to arbitration, including the eligibility requirements for arbitrators, procedural considerations and how arbitral awards are to be made and registered. This also incorporates the amendments made in the *Family Law Amendment (Arbitration) Regulations 2024*, which relate to the eligibility requirements for arbitrators, and commenced on 1 August 2024.
- **Part 7 – Children**: this part includes matters of practice and procedure connected to child-related proceedings, including the registration and enforcement of State child orders and overseas child orders in family law courts, the prescription of information sharing

safeguards for the protection of sensitive information when it is shared, stored and used, and procedures and reporting requirements for the carrying out of a parentage testing order under the Act.

- Part 10 – International conventions, international agreements and international enforcement: this part deals with procedures for Australian courts to serve court documents on overseas parties under conventions which Australia is a party to, about legal proceedings in civil and commercial matters, and procedures to enforce overseas maintenance orders.

## DOCUMENTS INCORPORATED BY REFERENCE

The Regulations incorporate State and Territory legislation as in force from time to time. Section 10A of the *Acts Interpretation Act 1901* (as applied by paragraph 13(1)(a) of the *Legislation Act 2003*) has the effect that references to State and Territory Acts can also be taken to be references to those Acts as in force from time to time. Sections prescribing State and Territory Acts include the necessary references, descriptions and links to legislation in **Attachment B**. Relevant State and Territory legislation can be located at:

- NSW legislation <https://legislation.nsw.gov.au>,
- Victorian legislation [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au),
- Queensland legislation [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au),
- Western Australian legislation [www.legislation.wa.gov.au](http://www.legislation.wa.gov.au),
- South Australian Legislation [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au),
- Tasmanian Legislation [www.legislation.tas.gov.au](http://www.legislation.tas.gov.au),
- ACT Legislation Register [www.legislation.act.gov.au](http://www.legislation.act.gov.au),
- Northern Territory legislation <https://legislation.nt.gov.au/>,
- Federal Register of Legislation (Norfolk Island) [www.legislation.gov.au/search/ni](http://www.legislation.gov.au/search/ni).

## CONSULTATION

Engagement with relevant stakeholders was undertaken, with an exposure draft released for a five-week consultation period from 1 August to 5 September 2024. Targeted consultation was also undertaken. Feedback was received from stakeholders, including:

- the Federal Circuit and Family Court of Australia, and the Family Court of Western Australia
- State and Territory government agencies, including those responsible for child protection and justice
- relevant Commonwealth agencies, including the Department of Social Services, Services Australia, the Department of Health, the Department of Infrastructure, Transport, Regional Development, Communications and the Arts and the Department of Employment and Workplace Relations
- the Law Council of Australia
- the Family Law Practitioners' Association of Western Australia
- Relationships Australia
- Australian Institute of Family Law Arbitrators and Mediators

- the National Association of Testing Authorities, Australia.

Feedback received on the exposure draft of the 2024 Regulations was generally supportive, and covered various topics, including arbitration, parentage testing, prescribed state and territory laws, and overseas maintenance orders. This feedback has been addressed in the 2024 Regulations.

## **IMPACT ANALYSIS**

The Attorney-General's Department has certified that the 1984 Regulations are operating effectively and efficiently and therefore an Impact Analysis is not required for the instrument to be remade (OIA23-06106).

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

The disallowable Legislative Instrument is compatible with human rights because it protects the rights of parents and children and promotes the right to respect for the family, the right to a fair trial and fair hearing, the right to privacy and reputation, and the right to equality and non-discrimination. To the extent it may limit the right to privacy and the right to a fair trial and fair hearing, those limitations are reasonable, necessary and proportionate to achieve the legitimate aims of the Regulations and the Act. A Statement of Compatibility with Human Rights is set out in **Attachment A**.

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003* (Cth). Details of the instrument are set out in **Attachment B**.

## **Statement of Compatibility with Human Rights**

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

### **Family Law Regulations 2024**

This disallowable 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**

1. The *Family Law Act 1975* (the Act) provides the legislative framework for resolving arrangements for children, finances and property following a relationship breakdown.
2. Subsection 125(1) of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.
3. The *Family Law Regulations 2024* (the Regulations) replace the *Family Law Regulations 1984*, as that instrument is scheduled to sunset on 1 April 2025. The Regulations ensure the ongoing and effective operation of family law proceedings by prescribing matters of practice and procedure in courts exercising jurisdiction under the Act. This includes matters pertaining to property, maintenance orders, parenting orders, overseas service of documents, arbitration and parentage testing. The Regulations have 15 Parts, including:
  - Part 3 – Arbitration: this part provides requirements relating to arbitration, including the eligibility requirements for arbitrators, procedural considerations and how arbitral awards are to be made and registered. This also incorporates the amendments made in the *Family Law Amendment (Arbitration) Regulations 2024*, which relate to the eligibility requirements for arbitrators, and commenced on 1 August 2024.
  - Part 7 – Children: this part includes matters of practice and procedure connected to child-related proceedings, including the registration and enforcement of State child orders and overseas child orders in family law courts, the prescription of information sharing safeguards for the protection of sensitive information when it is shared, stored and used, and procedures and reporting requirements for the carrying out of a parentage testing order under the Act.
  - Part 10 – International conventions, international agreements and international enforcement: this part deals with procedures for Australian courts to serve court documents on overseas parties under conventions which Australia is a party to, about legal proceedings in civil and commercial matters, and procedures to enforce overseas maintenance orders.

4. As the Regulations replace the *Family Law Regulations 1984*, many sections replicate and update provisions from that instrument. Appropriate updates have been made, such as updating legislative references and modernising language.

### **Human rights implications**

5. This Legislative Instrument engages the following rights:
  - Rights of parents and children:
    - protection and best interests of the child: Article 3(1), 3(2), 9(1), 19(1) and 34 of the *Convention on the Rights of Children (CRC)*
    - responsibilities, rights and duties of parents: Article 7(1), 8(1) and 27(4) of the CRC and Article 24(1) of the *International Covenant on Civil and Political Rights (ICCPR)*
  - Right to respect for the family: Article 23(1) and 23(4) of the ICCPR
  - Right to a fair trial and fair hearing: Article 14(1) of the ICCPR
  - Right to privacy: Article 17 of the ICCPR
  - Right to equality and non-discrimination: Articles 5(a) and 16(1)(d) of the *Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)* and Article 26 of the ICCPR.

Rights relating to protection and best interests of the child: Articles 3(1), 3(2), 9(1), 19(1) and 34 of the CRC

6. Article 3(1) of the CRC provides that all actions concerning children undertaken by courts of law, public or private social welfare institutions, administrative authorities or legislative bodies should have the best interests of the child as a primary consideration.
7. Article 3(2) provides for appropriate legislative and administrative measures to be taken to ensure children have the protection and care necessary for their well-being.
8. Article 9(1) pertains to the circumstances where a child may be separated from their parents, where it is necessary for the best interests of the child.
9. Article 19(1) provides that all appropriate measures should be taken to protect children from all forms of physical or mental violence, abuse, neglect, maltreatment or exploitation, including sexual abuse, while in the care of their parents or other persons responsible for the care of the child.
10. Article 34 of the CRC provides for the protection of children from all forms of sexual exploitation and abuse.
11. The Regulations engage these rights through provisions on child welfare laws, information sharing, information, directions and orders of the court, family violence, child related proceedings, and overseas child and maintenance orders. These rights are promoted for the reasons below.

*Child welfare laws*

12. The Regulations engage Article 3(1) of the CRC and thus the best interests of the child. Section 5 of the Regulations prescribes State and Territory legislation for the purposes of a definition of ‘child welfare law’ in the Act. This definition applies to provisions in the Act related to obligations to inform the court about care arrangements made under child welfare laws, maintenance orders for children under the guardianship or care of a person under a child welfare law and other technical provisions.
13. Section 6 of the Regulations prescribes State and Territory offices for the definition of ‘child welfare officer’ in the Act. This definition applies to provisions regarding child maintenance orders, providing court orders to child welfare officers, consent of child welfare officers to institute or continue proceedings, and intervention of child welfare officers in proceedings under the Act.
14. These provisions facilitate necessary interactions between arrangements made under State and Territory laws and family law proceedings, ensuring the rights of children are protected.

*Information sharing*

15. Family law courts are required by the Act to consider the best interests of the child. The Regulations support this, and promote Articles 3(1), 3(2), 9(1), 19(1) and 34 of the CRC by enhancing the family law courts’ ability to order State or Territory information sharing

agencies to provide particulars, documents or information relating to family violence, child abuse and neglect risk. Improving the family law courts' access to this important information enhances their capacity to make well informed decisions in the best interests of the child, including consideration of their safety.

*Information, directions and orders*

16. In Part 5, the Regulations promotes Article 3(1) of the CRC by ensuring that courts and legal practitioners provide couples considering separation or divorce with information, including about court processes and relevant available services. The Regulations also prescribe information be provided on the consequences for children whose care, welfare or development may be affected by such proceedings. Informing people of these consequences ensures the best interests of the child can be better understood and protected.
17. Further, section 15 of the Regulations ensures that when the court exercises discretion and gives directions with respect to practice and procedure in a case, where the best interests of the child are the paramount consideration, the court must consider facilitating a just resolution in a way that promotes the best interests of the child.

*Family violence*

18. The Regulations engage Articles 9(1) and 19(1) of the CRC, by facilitating section 68T of the Act's protection of children from violence.
19. Section 55 of the Regulations supports the power in section 68R of the Act, which allows State or Territory courts to, when making a family violence order, 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. This power is designed to protect children by avoiding inconsistency between family violence orders and family law orders, reducing the need for families to interact with multiple courts, and strengthening the ability of State and Territory courts to protect children from violence.
20. Under the Act, the revived, varied or suspended family law order may remain in force for a substantial period of time. Therefore, it is important that the court which made the original order is aware of the decision. The Regulations ensure that if a court revives, varies, or suspends family law orders in the course of making or varying family violence orders under section 68R of the Act, the relevant Registrar of that court must send a copy of the decision to the relevant Registrar of the court that made the original family law order.
21. In this way, section 55 of the Regulations promotes Articles 9(1) and 19(1) of the CRC. Ensuring that the family law courts are notified of changes to family law orders strengthens the courts' ability to protect children from violence.

*Principles for conducting child-related proceedings*

22. The Regulations promote Article 3(1) of the CRC by prioritising the best interests of the child when considering whether relevant documents be disclosed or used as evidence.

23. Section 70 of the Regulations prescribes, for the purposes of paragraph 69ZX(4)(b) of the Act, State and Territory laws relating to professional confidential relationship privilege. Paragraph 69ZX(4) of the Act clarifies that the best interests of the child is the paramount consideration in determining whether evidence should be adduced in children's proceedings, notwithstanding prescribed confidential communications privileges in State and Territory legislation.
24. Section 70 of the Regulations also engages and promotes Article 19(1) and Article 34 of the CRC, by ensuring evidence would be available to the court when it is in the best interests of the child, ensuring that children are protected from harm and their interests are promoted in family law proceedings.

#### *Overseas maintenance orders*

25. The Regulations promote Article 3(2) of the CRC by prescribing how overseas maintenance orders made in respect to children can be recognised and enforced, thus ensuring necessary steps can be taken to obtain financial support for and in regard to the care of children.
26. Part 10, Division 4 of the Regulations prescribes matters related to maintenance orders emanating from Australia to an overseas jurisdiction and vice versa. The Regulations prescribe how foreign currency is to be converted, the process for confirming an overseas maintenance order, and the effect, enforcement and cancellation of such orders.

#### *Overseas child orders*

27. The Regulations engage Article 3(2) of the CRC by ensuring there are administrative and legislative processes in place to uphold decisions made to protect the wellbeing of children.
28. For the purposes of section 70G of the Act, the Regulations provide for overseas child orders that are made in prescribed overseas jurisdictions and pertain to whom a child lives, spends time or communicates with, to be registered in Australian courts. The Regulations provide that the overseas child order can be enforced as if it was an order made under the Act.
29. Section 73 of the Regulations provides for the transmission of state child orders and parenting orders (other than child maintenance orders) to prescribed overseas jurisdictions, if the order may be enforced in the prescribed overseas jurisdiction and it relates to a child to whom an overseas child order also relates. That is, in particular circumstances, the court may send a parenting order to be registered and enforced in particular overseas jurisdictions.
30. The Regulations promote Article 3(2) of the CRC, as they provide administrative and legislative processes which enable the recognition and enforcement of overseas orders regarding the care of children. Further, the Regulations enable orders made in Australian courts to be sent, registered and enforced overseas, for example, if a child and/or parent relocates overseas. This ensures families are not unnecessarily required to pursue further court proceedings, and enables Australian orders, which have been made in the best interests of the child, to be given effect internationally.



### *Convention on the Recovery Abroad of Maintenance*

31. The Regulations promote Article 3(2) of the CRC by ensuring there are appropriate processes in place to recover maintenance from individuals who owe a financial duty in respect of the care of a child.
32. Part 10, Division 5 of the Regulations implements Australia's obligations under the Convention on the Recovery Abroad of Maintenance. The Regulations ensure a person entitled to maintenance from someone subject to the jurisdiction of a different Recovery Convention country is able to recover that maintenance. They also ensure a person in a Recovery Convention country is able to register a maintenance order in Australia and have it enforced.
33. This Division of the Regulations provides the procedure for applications emanating from a Recovery Convention country for recovery of maintenance in Australia, and for applications emanating from Australia for recovery of maintenance in a Recovery Convention country.

### Responsibilities, rights and duties of parents: Articles 7(1), 8(1) and 27(4) of the CRC

34. Article 7(1) of the CRC provides that children have the right to be registered immediately after birth, to acquire a nationality and, as far as possible, to know and be cared for by their parents.
35. Article 8(1) of the CRC provides that children have the right to preserve their identity, including nationality, name and family relations as recognised by the law without any interference.
36. Article 27(4) of the CRC provides that appropriate measures will be taken to secure the recovery of maintenance for children from parents having financial responsibility for the child, both nationally and internationally. Where a person has financial responsibility for a child living in a different country, countries should promote access to international agreements or other appropriate arrangements to ensure this occurs.
37. The Regulations engage the responsibilities, rights and duties of parents through provisions which deal with artificial conception, surrogacy and overseas maintenance orders. These rights are promoted for the reasons below.

### *Artificial conception and surrogacy arrangements*

38. The Regulations engage Articles 7(1) and 8(1) of the CRC by promoting the responsibilities, right and duties of parents and the child's right to identity.
39. Sections 47 and 48 of the Regulations ensure that couples and individuals who engage in artificial conception procedures and are recognised as parents under prescribed State and Territory legislation are also recognised as parents for the purposes of the Act. By contributing towards recognition of parentage for children born of artificial conception procedures, the Regulations promote Article 7(1) of the CRC and the child's right to identity.
40. Section 49 of the Regulations ensures couples and individuals who have entered into non-commercial surrogacy arrangements and are recognised as parents of surrogate children under prescribed State and Territory legislation are also recognised as parents for the purposes of the

Act. This provision promotes Article 7(1) and Article 8(1) of the CRC by prescribing the legal frameworks for determining parentage of children under surrogacy arrangements, and ensuring that parental responsibilities and duties in relation to children are clear and operate as intended. By contributing towards comprehensive regulation of surrogacy in Australia and recognition of parentage for children born of lawful surrogacy, the Regulations promote the responsibilities, rights and duties of parents and the child's right to identity.

#### *Overseas Maintenance Orders*

41. The Regulations directly engage Article 27(4) of the CRC, by prescribing matters relating to overseas maintenance orders, which support access to arrangements to recover child maintenance.
42. Part 10, Division 4 of the Regulations provide the courts with the power to confirm, refuse and discharge an overseas maintenance order, along with the ability to adjourn proceedings. The maintenance order may specify the time or times the money is to be paid, who the money is payable to and how the money is to be disbursed.
43. Section 107 of the Regulations ensures that if an overseas maintenance order is confirmed, it is enforceable in Australia and has effect in Australia as if it was an order under the Act.
44. Section 114 of the Regulations ensures that if a court in a reciprocating jurisdiction confirms a provisional order under subsection 110(3), the order has effect in Australia.
45. The Regulations also give effect to the agreement between the Government of the United States of America (US) and Australia for the enforcement of overseas maintenance obligations. The Regulations provide for petitions emanating from the US to be dealt with in Australian courts. Section 110 provides that Australian courts in determining an application may make or refuse an order in relation to maintenance.
46. Part 10, Division 5 of the Regulations implement Australia's obligations under the Convention on the Recovery Abroad of Maintenance, which provides that a person entitled to maintenance from someone subject to the jurisdiction of a different Recovery Convention country is able to recover that maintenance. They also enable a person in a Recovery Convention country to register a maintenance order in Australia and have it enforced.
47. By prescribing how overseas maintenance orders made in respect of children can be recognised and enforced, the Regulations enable necessary steps to be taken to obtain financial support for and in regard to the care of children and therefore promotes Article 27(4) of the CRC and the right to recover child maintenance.

#### Respect for the family: Articles 23(1) and 23(4) of the ICCPR

48. Article 23(1) of the ICCPR provides that family as a fundamental group in society should be protected.

49. Article 23(4) of the ICCPR provides that appropriate steps should be taken to ensure equality of rights and responsibilities of spouses through marriage dissolution, and provision shall be made for the necessary protection of any children.
50. The Regulations engage the right to respect for the family through provisions on artificial conception and surrogacy arrangements and de-facto couples. This right is promoted for the reasons below.

*Artificial conception and surrogacy arrangements*

51. The Regulations clarify the legal framework for determining parentage of children born as a result of artificial conception procedures. These provisions promote the right to respect for family.
52. Section 47 and 48 of the Regulations ensure that couples and individuals to whom a child is born as a result of artificial conception procedures, and who are recognised as parents under prescribed State and Territory laws, are also recognised as parents for the purposes of the Act.
53. Section 49 of the Regulations promotes the right to respect for family by ensuring that couples and individuals who have entered into non-commercial surrogacy arrangements and are recognised as parents of surrogate children under prescribed State and Territory legislation are also recognised as parents for the purposes of the Act.

*De-facto couples*

54. The Regulations promote Articles 23(1) and 23(4) of the ICCPR by recognising and providing equal entitlements under the law to de facto couples.
55. The Regulations ensure that relationships registered under a prescribed scheme of relationship recognition are recognised for the purposes of the Act. The United Nations Human Rights Committee has made it clear that the definition of family is not confined by the concept of marriage. If countries recognise other arrangements that may constitute a family, those arrangements must be protected under Article 23 of the ICCPR. The Regulations, when read with the Act, support this protection by recognising and providing equal entitlements under the law to de facto couples.

Rights to equality and non-discrimination: Articles 5(a) and 16(1)(d) of the CEDAW and Article 26 of the ICCPR

56. Article 5(a) of the CEDAW provides that governments take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and practices based on the idea of inferiority or superiority of either of the sexes, or stereotyped roles for men and women.
57. Article 16(1)(d) of the CEDAW provides that governments take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular ensure, on a basis of equality of men and women, the same rights and

responsibilities as parents in matters relating to their children, and, the interests of the children shall be paramount.

58. Article 26 of the ICCPR states that all persons are equal before the law and are entitled without discrimination to the equal protection of the law. It states that the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property birth or other status.
59. The Regulations engage the rights of equality and non-discrimination through provisions relating to de-facto couples and family violence. These rights are promoted for the reasons below.

#### *De-facto couples*

60. The Regulations promote Article 26 of the ICCPR by ensuring that couples who are not married can be treated equally before the law and are entitled to non-discrimination.
61. Registration of de-facto couples under a relationship recognition scheme is a consideration when determining whether two people are in a de facto relationship for the purposes of the Act. The Regulations give effect to this by prescribing State and Territory laws that establish such relationship recognition schemes. This ensures couples who are not married can be treated equally before the law and are entitled to non-discrimination, by invoking the jurisdiction of the family courts and providing access to the same legal entitlements as married couples.

#### *Family violence*

62. Section 54 of the Regulations promotes Articles 5(a) and 16(1)(d) of the CEDAW by ensuring that appropriate measures are taken to address gender-based violence and its impacts on women and girls. Discrimination against women includes gender-based violence, as it is violence perpetrated against a woman on the basis that she is a woman. While family violence is disproportionately experienced by women, it is perpetrated against both men and women. The Act and the Regulations are accordingly gender-neutral.
63. Section 54 of the Regulations seeks to better protect victim-survivors of family violence, and address the disproportionate impacts of gender-based violence on women and girls. The Regulations prescribe information sharing safeguards which seek to mitigate risks to personal safety which can arise from sharing personal information, including ensuring that all information sharing is undertaken with appropriate regard to physical and psychological safety of those involved or affected.

#### Right to a fair trial and fair hearing: Article 14(1) of the ICCPR

64. Article 14(1) of the ICCPR provides that all people shall be equal before the courts and tribunals, where everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by the law. The right applies to both civil and criminal proceedings.

65. The Regulations engage the right to a fair trial and fair hearing through provisions relating to arbitration, information sharing and implementing Australia's obligations under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Service Convention). While the Regulations may limit the right to a fair trial and fair hearing through a provision regarding provisional overseas maintenance, that limitation is reasonable, necessary and proportionate.

#### *Arbitration*

66. The Regulations engage Article 14(1) of the ICCPR through provisions relating to arbitration. While arbitration in family law matters are not court proceedings, it is imperative that they operate consistently with procedural fairness and the fully informed consent of the parties. The Regulations promote this right by strengthening the requirements for eligibility as a family law arbitrator. The focus on recent, relevant and ongoing experience in family law, ensures that all family law arbitrators have up to date legal and practical knowledge, helping to ensure fair processes and just and equitable outcomes for separated couples with financial disputes.
67. Similarly, including retired judges and magistrates in the eligible class of people who can become family law arbitrators provides separating couples with greater access to competent and impartial decision-makers with significant experience in determining complex family law matters.

#### *Information Sharing*

68. The Regulations promote equality before the courts and the right to a fair trial and fair hearing by supporting an effective process through which the family law courts obtain information relevant to family violence, child abuse and/or neglect to inform decision-making in family law proceedings (see Division 5, Part 7). The Regulations ensure the family law courts can access the full scope of relevant information held by information sharing agencies, no matter which State or Territory the proceeding is filed in. This is achieved through appropriately prescribing State and Territory agencies, or parts of agencies, with responsibility for child protection, police and firearms.

#### *Service overseas to countries under a convention*

69. The Regulations promote Article 14(1) of the ICCPR by ensuring that documents can be served in overseas Hague Service Convention countries where they relate to court proceedings, thus providing the opportunity for applicants to access and receive information relevant to court proceedings and, consequently, receive a fair hearing.
70. The Regulations implement Australia's obligations under the Hague Service Convention. The Regulations promote Article 14(1) of the ICCPR by clarifying the power of courts to enter default judgements where service has been attempted under the Hague Service Convention.
71. If a Hague Service Convention certificate of service has been filed stating service was effected, but the defendant has not appeared or filed a notice of address for service, default judgement against the defendant may only be made if the court is satisfied the initiating process was served in accordance with the criteria in the Regulations.

72. Similarly, if a Hague Service Convention certificate of service stating service was effected has not been filed, or is filed but states service was not effected, default judgement against the defendant may only be given in certain circumstances, including that a period of not less than 6 months has elapsed since the initiative process was forwarded to the relevant overseas country.
73. Section 90 of the Regulations provides the circumstances in which the court may set aside default judgement entered against the defendant. Together, these provisions implement the Hague Service Convention and establish reasonable requirements regarding service and default judgement, ensuring the process established by the law is fair on all parties.
74. Part 10, Division 3 of the Regulations also provides for service in countries that are party to conventions other than the Hague Service Convention. The Regulations provide the process for requesting service abroad in Cooperation Convention countries and how applications are to be dealt with and the payment of costs for service.
75. The Regulations ensure that documents can be served in overseas Convention countries where they relate to court proceedings, consequently supporting all parties to receive a fair hearing.

*Provisional overseas maintenance orders*

76. Section 111 of the Regulations limits Article 14(1) of the ICCPR, by providing courts with the power to make a provisional maintenance order against a person, even if that person has not been served with an application or consented to the order. The Regulations provide that the court may make a provisional order of any kind that it could have made if the application had been served and the respondent failed to appear at the hearing.
77. This section of the Regulations may limit the right to a fair trial and fair hearing, as it may be seen to affect procedural fairness and the equality of all parties to a civil proceeding. However, this is a reasonable and necessary limitation, as it allows a provisional maintenance order to be made in circumstances where service on an overseas respondent may be particularly difficult. Further, section 111 of the Regulations only applies to provisional overseas maintenance orders, which are temporary.
78. Section 112 provides that the overseas court must confirm the provisional order for it to be of effect, and section 113 of the Regulations allows the court in the reciprocating jurisdiction to seek further evidence in relation to the order. Section 114 provides an Australian court with the power to revoke the order or make a new provisional order if, during this process of taking further evidence, it appears the order should not have been made.
79. This limitation on the right to a fair trial and fair hearing is reasonable, for it allows a provisional maintenance order to be made in circumstances where service on an overseas respondent may be particularly difficult. The Regulations ensure there is an option for a legal matter to progress when service cannot be effected, while still providing appropriate safeguards for the respondent. For these reasons, the limitation on the right to a fair trial and fair hearing is reasonable, necessary and proportionate.

## Right to privacy and reputation: Article 17 of the ICCPR

80. Article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. It also prohibits unlawful attacks on a person's reputation. It provides that persons have the right to legal protection against such interference or attacks.
81. The Regulations engage the right to privacy and reputation through provisions regarding arbitration, information sharing and parentage. The Regulations may limit the right to privacy and reputation through a provision regarding child related proceedings, however, that limitation is reasonable, necessary and proportionate.

### *Arbitration*

82. Part 3 of the Regulations promotes Article 17 of the ICCPR by ensuring arbitrators have the necessary skills and knowledge to protect any sensitive and personal information that the parties provide when they engage in arbitration to resolve their family law matter.
83. The Regulations require arbitrators to complete at least 10 hours of continuing professional development training every two years, to ensure they maintain a good working knowledge, including of family law, family violence and related ethical considerations (i.e. obligations of confidentiality).

### *Information Sharing*

84. The Regulations promote the right to privacy by supporting the establishment of a court-driven information sharing framework for child-related proceedings. At all stages, information sharing agencies and the family law courts are guided in the use of shared material by the Regulations. Section 54 of the Regulations includes privacy protective measures, such as:
- limiting the purpose for the sharing and use of information to those included in the Act and as authorised or required by a law of the Commonwealth, State or Territory or a court order
  - prescribing agencies based on functions, rather than prescribing entire agencies, limiting the sharing of personal information to those functions which are relevant to the framework, and
  - promoting data minimisation best practice concepts, subject to record-keeping obligations.
85. The Regulations, specifically the information sharing safeguards prescribed by section 54, provide a minimum standard for the protection of sensitive information when it is used, shared and accessed. These safeguards complement existing practices within the family law courts and information sharing agencies, providing greater assurances and transparency for families and individuals regarding the sharing and use of their information.

### *Parentage Evidence*

86. The Regulations engage Article 17 of the ICCPR by prescribing the parenting testing procedure for a person under a parentage testing order. This includes who can conduct the procedure, and how the samples are taken, labelled, stored and tested. Section 61 of the

Regulations ensures relevant information is provided by the donor to protect against wrongful identification. Section 65 prescribes steps a sampler must take to ensure any tampering with the identifying information of the bodily sample would be evident.

87. Section 68 prescribes the process for preparing a report on the results of a parentage testing procedure. It ensures that the person writing the report is the person who carried out or supervised the procedure, thus protecting against any interference and promoting a person's right to privacy and reputation.

#### *Principles for conducting child-related proceedings*

88. Section 70 of the Regulations may limit Article 17 of the ICCPR, by prescribing for the purposes of paragraph 69ZX(4)(b) of the Act, State and Territory laws relating to professional confidential relationship privilege. Paragraph 69ZX(4) of the Act clarifies that the best interests of the child is the paramount consideration in determining whether evidence should be adduced in children's proceedings, notwithstanding prescribed confidential communications privileges in State and Territory legislation.
89. The Regulations may limit the right to privacy. However, this is a reasonable and necessary limitation, as it ensures evidence would be available to the court when it is in the best interests of the child, ensuring that children are protected from harm and their interests are promoted in family law proceedings. For this reason, the limitation on the right to a fair trial and fair hearing is reasonable, necessary and proportionate.

#### **Conclusion**

90. The disallowable Legislative Instrument is compatible with human rights because it protects the rights of parents and children and promotes the right to respect for the family, the right to a fair trial and fair hearing, the right to privacy and reputation, and the right to equality and non-discrimination. To the extent it may limit the right to privacy and the right to a fair trial and fair hearing, those limitations are reasonable, necessary and proportionate to achieve the legitimate aims of the Regulations and the Act.



**Details of the proposed *Family Law Regulations 2024***

**Section 1 – Name of Regulations**

This section provides that the title of the Regulations is the *Family Law Regulations 2024* (the Regulations).

**Section 2 - Commencement**

This section provides that the Regulations commence on 1 April 2025.

**Section 3 - Authority**

This section provides that the *Family Law Regulations 2024* are made under the *Family Law Act 1975* (the Act).

**Section 4 – Definitions**

This section provides definitions for terms used in the Regulations. This section contains a note to make clear that some expressions used throughout the Regulations are defined within the Act, including ‘applicable Rules of Court’, ‘Chief Executive Officer’ and ‘Federal Circuit and Family Court of Australia’. This is to ensure users of the Regulations are aware these terms are given meaning by the Act.

Section 4 of the Regulations sets out specific technical definitions relevant to this instrument, which assist in giving effect to court processes, the administration of the Act and these regulations. Specifically, this section defines the term ‘family law’ to mean the *Family Law Act 1975*, the Regulations and any other Regulations made under the Act. The definition of ‘application’ in this section means an application to a court for the purpose of instituting proceedings under the Act or an application to a relevant Registrar made under this instrument. ‘Maintenance order’ has the same meaning as in section 110 of the Act.

A definition of ‘certified copy’ is also contained within this section, meaning a copy or an order decree or document certified to be a true copy by an officer of the court that made or varied the order, decree or document; or registered or confirmed the order, decree or document. The definition relates to numerous provisions in the Regulations, including provisions relating to the registration of overseas child orders, inter-State enforcement of child bearing expenses orders and Australian maintenance orders. This definition therefore enables such sections to operate as intended by ensuring that relevant orders, decrees and documents are provided in an appropriately certified form. For clarity and to remove ambiguity, this section also makes clear that references to the ‘Attorney-General’s Department’ are taken to mean the Department administered by the Attorney-General, and references to ‘Secretary’ are taken to mean the Secretary of the Attorney-General’s Department. In some circumstances, the Secretary has an implied power to authorise another person to exercise the power invested in them. The power is exercised by the authorised person for and on the Secretary’s behalf.<sup>1</sup>

Section 4 also includes definitions of roles involved in family law proceedings. Providing definitions of ‘party to proceedings’, ‘respondent’ and ‘legal practitioner’ promotes clarity. ‘Party

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<sup>1</sup> This is commonly referred to as an implied power to authorise, the ‘alter ego’ principle, or the *Carltona* principle.

to proceedings’ is defined to mean an applicant, respondent or intervener in proceedings under the Act. ‘Respondent’ means a party to proceedings other than an applicant or intervener. ‘Legal practitioner’ is defined to mean a person enrolled as a barrister, a solicitor, a barrister and solicitor, or a legal practitioner, of the High Court of Australia, or of the Supreme Court of a State or Territory. A definition of ‘intervener’ is included to make clear that an intervener in proceedings is the Attorney-General or any other person when, or applying to, intervene in proceedings under Part IX of the Act, or a child independently represented in proceedings.

The term ‘relevant Registrar’ is used throughout the Regulations, including in relation to relieving parties from consequences of non-compliance with the Regulations or orders, obligations in relation to family violence orders, receiving and transmitting documents, procedural issues and other matters. For the purposes of this instrument, a definition of ‘relevant Registrar’ is contained in section 4 to include Chief Executive Officers and Principal Registrars within the meaning of the *Federal Circuit and Family Court of Australia Act 2021*, Senior Registrars or Registrars of the court, or, in relation to any other court, the principal officer of the court or any other appropriate officer or staff member of the court.

The term ‘arbitration agreement’ is referenced in this section, referring users of the instrument to the definition of ‘arbitration agreement’ contained in section 22 of the Regulations, meaning an agreement made between parties to an arbitration under section 27 of the instrument. This assists people reading the Regulations to locate definitions within the instrument.

For the purposes of sections relating to parentage testing, a reference to the term ‘bodily sample’, ‘donor’, ‘nominated reporter’, ‘sample’, ‘sampler’, and ‘testing’ have been included to refer users to section 58 of the Regulations. Section 58 of the Regulations contain the definitions of these terms to give effect to sections relating to parentage testing procedures.

Section 4 also introduce references to sections within the Regulations that define terms relating to the Hague Service Convention, Cooperation Conventions, and the Convention on the Recovery Abroad of Maintenance for the purposes of this instrument. This section defines ‘Hague Service Convention’ to mean the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, done at The Hague on 15 November 1965. These references in section 4 assist users of the Regulations to locate definitions with ease, including relating to the following terms: ‘Central Authority’, ‘Convention additional authority’, ‘Convention certificate of service’, ‘Convention certifying authority’, ‘Convention country’, ‘Cooperation Convention’, ‘Cooperation Convention country’, ‘forwarding authority’, ‘initiating process’, ‘local judicial document’, ‘Receiving Agency’, ‘Recovery Convention’, ‘Recovery Convention country’, ‘request for service abroad’, and ‘Transmitting Agency’. Section 4 therefore ensures that necessary definitions relating to Conventions are incorporated into this instrument, and improves clarity and useability of the instrument.

The definition of ‘Child Support Registrar’ refers users of the instrument to section 10 of the *Child Support (Registration and Collection) Act 1988*, which establishes the position of Child Support Registrar. That definition of Child Support Registrar is then applied to the definition of ‘appropriate authority’ for the purposes of requesting the taking of evidence in Recovery Convention countries, in section 132.

## Section 5 - Meaning of *child welfare law*—prescribed State or Territory laws

Subsection 4(1) of the Act defines ‘child welfare law’ to mean prescribed State or Territory laws. This definition applies to provisions in the Act relating to obligations to inform the court about care arrangements made under child welfare laws, maintenance orders for children under the guardianship or care of a person under a child welfare law, and other technical provisions.

Section 5 of the Regulations prescribes the State and Territory legislation that relate to matters regarding imprisonment, detention or residence of a child in respect of a criminal offence as ‘child welfare laws’ for the purposes of subsection 4(1) of the Act. It also prescribes specific State and Territory Acts relating to children and youth, including in relation to justice, education and mental health.<sup>2</sup> This ensures the provisions that rely on the definition of ‘child welfare law’ in the Act can operate as intended, facilitating necessary interactions between arrangements made under State and Territory laws and family law proceedings.

## Section 6 - Meaning of *child welfare officer*—prescribed State or Territory offices

Subsection 4(1) of the Act contains a definition of ‘child welfare officer’ that applies to provisions in the Act regarding standing to apply for child maintenance orders, providing court orders to child welfare officers, consent of child welfare officers to institute or continue proceedings, and intervention of child welfare officers in proceedings under the Act.

The definition in subsection 4(1) of the Act states that a ‘child welfare officer’ is a person within a prescribed office that has responsibilities in relation to a State or Territory child welfare law. Section 6 of the Regulations prescribes offices for the purpose of this definition of ‘child welfare officer’ in the Act. These include State and Territory offices, including offices of ministers, secretaries, and other executives and specialists relating to adoption, guardianship, families, children and young people.<sup>3</sup> This ensures provisions of the Act that rely on the definition of ‘child

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<sup>2</sup> The prescribed Acts are: *Adoption Act 2000* (NSW), *Children and Young Persons (Care and Protection) Act 1998* (NSW), *Guardianship Act 1987* (NSW), *Adoption Act 1984* (Vic.), *Children, Youth and Families Act 2005* (Vic.), *Child Wellbeing and Safety Act 2005* (Vic.), *Education and Training Reform Act 2006* (Vic.), *Mental Health and Wellbeing Act 2022* (Vic.), *Adoption Act 2009* (Qld), *Child Protection Act 1999* (Qld), *Maintenance Act 1965* (Qld), *Mental Health Act 2016* (Qld), *Public Health Act 2005* (Qld), *Youth Justice Act 1992* (Qld), *Adoption Act 1994* (WA), *Children and Community Services Act 2004* (WA), *Children’s Court of Western Australia Act 1988* (WA), *Criminal Law (Mental Impairment) Act 2023* (WA), *Family Court Act 1997* (WA), *Mental Health Act 2014* (WA), *School Education Act 1999* (WA), *Surrogacy Act 2008* (WA), *Young Offenders Act 1994* (WA), *Adoption Act 1988* (SA), *Children and Young People (Safety) Act 2017* (SA), *Children’s Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017* (SA), *Family and Community Services Act 1972* (SA), *Mental Health Act 2009* (SA), *Adoption Act 1988* (Tas.), *Children, Young Persons and Their Families Act 1997* (Tas.), *Mental Health Act 2013* (Tas.), *Youth Justice Act 1997* (Tas.), *Adoption Act 1993* (ACT), *Children and Young People Act 2008* (ACT), *Guardianship and Management of Property Act 1991* (ACT), *Mental Health Act 2015* (ACT), *Adoption of Children Act 1994* (NT), *Care and Protection of Children Act 2007* (NT), *Guardianship of Infants Act 1972* (NT), *Mental Health and Related Services Act 1998* (NT), *Adoption of Children Act 1932* (NI), *Child Welfare Act 2009* (NI), *Lunacy Act 1932* (NI), *Mental Health Act 1996* (NI). These Acts can be located at NSW legislation <https://legislation.nsw.gov.au>, Victorian legislation [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au), Queensland legislation [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au), Western Australian legislation [www.legislation.wa.gov.au](http://www.legislation.wa.gov.au), South Australian Legislation [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au), Tasmanian Legislation [www.legislation.tas.gov.au](http://www.legislation.tas.gov.au), ACT Legislation Register [www.legislation.act.gov.au](http://www.legislation.act.gov.au), Northern Territory legislation <https://legislation.nt.gov.au/>, Federal Register of Legislation (Norfolk Island) [www.legislation.gov.au/search/ni](http://www.legislation.gov.au/search/ni).

<sup>3</sup> Prescribed offices include the offices of the Minister administering the *Adoption Act 2000* (NSW), Minister administering the *Children and Young Persons (Care and Protection) Act 1998* (NSW), Secretary, within the meaning of the *Adoption Act 2000* (NSW), Secretary, within the meaning of the *Children and Young Persons (Care and*

welfare officer' can operate as intended, allowing for the involvement of relevant State and Territory child welfare officers in family law proceedings.

#### Section 7 - Meaning of *family violence order*—prescribed State or Territory laws

Subsection 4(1) of the Act contains a definition of 'family violence order' for the purposes of the Act. Under this subsection, 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. The definition of 'family violence order' applies to provisions in the Act relating to parenting matters, including considering what may be in a child's best interests, obligations on the court where there are inconsistencies between family court injunctions or orders and family violence orders, powers for State and Territory courts to revive, vary, discharge or suspend various family law orders in proceedings for family violence orders, and other related provisions.

For the purpose of subsection 4(1) of the Act, section 7 of the Regulations prescribes State and Territory laws under which orders may be made to protect a person from family violence. These Acts are the *Crimes (Domestic and Personal Violence) Act 2007* (NSW), *Property (Relationships) Act 1984* (NSW), *Family Violence Protection Act 2008* (Vic.), *Domestic and Family Violence Protection Act 2012* (Qld), *Restraining Orders Act 1997* (WA), *Intervention Orders (Prevention of Abuse) Act 2009* (SA), *Sentencing Act 2017* (SA), *Family Violence Act 2004* (Tas.), *Justices Act 1959* (Tas.), *Family Violence Act 2016* (ACT), *Domestic and Family Violence Act 2007* (NT) and *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI).<sup>4</sup> This ensures State and Territory family violence orders can be duly considered in family law proceedings, facilitating safer family law outcomes for children and family members.

#### Section 8 - Meaning of *forfeiture order*—declared State and Territory orders

Subsection 4(1) of the Act contains a definition of 'forfeiture order', which includes an order made under State or Territory proceeds of crime laws. The definition of 'forfeiture order' is used

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*Protection) Act 1998* (NSW), Secretary, within the meaning of the *Guardianship Act 1987* (NSW), the office of the Secretary within the meaning of the *Children, Youth and Families Act 2005* (Vic.), the Chief Executive, responsible for administering Part 1 of the *Adoption Act 2009* (QLD), the offices of the Chief Executive, responsible for administering the *Child Protection Act 1999* (QLD), the offices of the CEO, within the meaning of the *Children and Community Services Act 2004* (WA), the CEO, within the meaning of the *Adoption Act 1994* (WA), the office of the Chief Executive, within the meaning of the *Children and Young People (Safety) Act 2017* (SA), the offices of the Secretary, within the meaning of the *Adoption Act 1988* (Tas), the Secretary within the meaning of the *Children, Young Persons and Their Families Act 1997* (Tas), the Secretary, within the meaning of the *Youth Justice Act 1997* (Tas), the Director-General of the Community Services Directorate, and the Chief Psychiatrist, within the meaning of the *Mental Health Act 2015* (ACT), the office of the Minister administering the *Adoption of Children Act 1994* (NT) and the office of the child welfare officer, within the meaning of the *Child Welfare Act 2009* (NI). The relevant Acts can be located at NSW legislation <https://legislation.nsw.gov.au>, Victorian legislation [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au), Queensland legislation [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au), Western Australian legislation [www.legislation.wa.gov.au](http://www.legislation.wa.gov.au), South Australian Legislation [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au), Tasmanian Legislation [www.legislation.tas.gov.au](http://www.legislation.tas.gov.au), ACT Legislation Register [www.legislation.act.gov.au](http://www.legislation.act.gov.au), Northern Territory legislation <https://legislation.nt.gov.au/>, Federal Register of Legislation (Norfolk Island) [www.legislation.gov.au/search/ni](http://www.legislation.gov.au/search/ni).

<sup>4</sup> The relevant Acts can be located at These Acts can be located at NSW legislation <https://legislation.nsw.gov.au>, Victorian legislation [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au), Queensland legislation [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au), Western Australian legislation [www.legislation.wa.gov.au](http://www.legislation.wa.gov.au), South Australian Legislation [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au), Tasmanian Legislation [www.legislation.tas.gov.au](http://www.legislation.tas.gov.au), ACT Legislation Register [www.legislation.act.gov.au](http://www.legislation.act.gov.au), Northern Territory legislation <https://legislation.nt.gov.au/>, Federal Register of Legislation (Norfolk Island) [www.legislation.gov.au/search/ni](http://www.legislation.gov.au/search/ni).

in the Act in relation to provisions dealing with proceeds of crime, specifically in relation to property and spousal maintenance proceedings.

Section 8 of the Regulations prescribes that an ‘interstate forfeiture order within the meaning of the *Proceeds of Crime Act 2002*’ is a ‘forfeiture order’ for the purposes of the Act. Under the *Proceeds of Crime Act 2002*, an ‘interstate forfeiture order’ is an order made under corresponding law declared by the *Proceeds of Crime Regulations 2019*. These regulations prescribe orders made under specified State and Territory laws.<sup>5</sup> The effect is that orders made under these State and Territory laws are considered to be ‘forfeiture orders’ within the Act and, therefore, can apply to provisions relating to spousal and property maintenance.

#### Section 9 - Meaning of *income tested pension, allowance or benefit*—prescribed pensions, allowances or benefits

Subsection 4(1) of the Act contains a definition of ‘income tested pension, allowance or benefit’ for the purposes of provisions under the Act relating to child maintenance, spousal maintenance and contributions in relation to the birth of a child. The definition of ‘income tested pension, allowance or benefit’ means a pension, allowance or benefit prescribed, or included in a class of pensions, allowances or benefits that is prescribed.

Section 9 of the Regulations prescribe pensions, allowances and benefits for the purposes of subsection 4(1) of the Act, including entitlements, pensions, benefits and allowances under the *Veterans’ Entitlements Act 1986*, *Social Security Act 1991*, *A New Tax System (Family Assistance) Act 1999*, *Student Assistance Act 1973* and payments under the New Enterprise Incentive Scheme or Self-Employment Assistance program.<sup>6</sup>

Prescribing these entitlements, pensions, benefits and allowances is necessary to give effect to provisions in the Act that ensure parents’ duty to maintain a child is not affected by an entitlement of the child or another person to such a payment, and to give effect to provisions that require a court to disregard the entitlement of a child or any other person to these payments when considering child and spousal maintenance, financial contributions and child bearing contributions.

#### Section 10 - Meaning of *prescribed overseas jurisdiction*

Subsection 4(1) of the Act contains a definition of ‘prescribed overseas jurisdiction’ for the purpose of provisions in the Act relating to presumptions of parentage and paternity in other

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<sup>5</sup> Orders that are forfeiture orders for the purpose of the Act include orders made under *Confiscation of Proceeds of Crime Act 1989* (NSW) subsections 18(1), *Criminal Assets Recovery Act 1900* (NSW) section 22 and subsections 29(1) and 31A(3), *Confiscation Act 1997* (Vic) Division 1 of Part 3, Division 2 of Part 4, and subsections 34C(1), 36(1), 36F(1), 36GB(1), 40ZB, *Criminal Proceeds Confiscation Act 2002* (Qld) section 93ZZB and subsections 58(1), 151(1) and 153D(1), *Criminal Property Confiscation Act 2000* (WA) section 30 and subsection 28(1), *Criminal Assets Confiscation Act 2005* (SA) subsection 47(1), sections 48, 56B, 77, and item 11 of Schedule 1, *Crime (Confiscation of Profits) Act 1993* (Tas) sections 16 and 152, *Confiscation of Criminal Assets Act 2003* (ACT) subsections 54(1), 59(2) and 67(2), *Criminal Property Forfeiture Act 2002* (NT) subsections 81(2), 92(1), 94(4), 96(1) and sections 97, 99, 100 and 101. These Acts can be located at NSW legislation <https://legislation.nsw.gov.au>, Victorian legislation [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au), Queensland legislation [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au), Western Australian legislation [www.legislation.wa.gov.au](http://www.legislation.wa.gov.au), South Australian Legislation [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au), Tasmanian Legislation [www.legislation.tas.gov.au](http://www.legislation.tas.gov.au), ACT Legislation Register [www.legislation.act.gov.au](http://www.legislation.act.gov.au), Northern Territory legislation <https://legislation.nt.gov.au/>, Federal Register of Legislation (Norfolk Island) [www.legislation.gov.au/search/ni](http://www.legislation.gov.au/search/ni).

<sup>6</sup> These Acts can be located on the Federal Register of Legislation [www.legislation.gov.au](http://www.legislation.gov.au).

jurisdictions, sharing documents and orders with and from overseas jurisdictions, enforceability of orders, and overseas maintenance and financial agreements. The definition in subsection 4(1) of the Act includes any country or part of a country outside of Australia declared by the Regulations. Section 10 of the Regulations therefore provides that:

- for the purposes of provisions relating to State, Territory and overseas child orders, each country or part of a country specified in Schedule 1 of the Regulations is a ‘prescribed overseas jurisdiction’
- for the purposes of provisions relating to the presumption of parentage and proof of birth, parentage, death or marriage, each country or part of a country specified in Schedule 2 and Schedule 4 of the Regulations is a ‘prescribed overseas jurisdiction’
- for the purposes of provisions relating to overseas maintenance agreements and financial agreements, each country or part of a country specified in Schedule 2 of the Regulations is a ‘prescribed overseas jurisdiction’.

This section ensures that necessary and appropriate overseas jurisdictions are prescribed for the purposes of provisions in the Act, facilitating the sharing of documents and orders with and from overseas jurisdictions, ensuring that presumptions of parentage and paternity in other jurisdictions are given effect to, and allowing for processes relating to birth registrations in overseas jurisdictions and enforcement provisions.

#### Section 11 - Meaning of *restraining order*—declared State and Territory orders

Subsection 4(1) of the Act contains a definition of ‘restraining order’ for the purposes of the definition of ‘proceeds of crime order’ in relation to provisions dealing with proceeds of crime in property and spousal maintenance proceedings under the Act. Under the definition of ‘restraining order’ in the Act, prescribed State and Territory proceeds of crime laws can be declared by the Regulations to be a restraining order.

Section 11 of the Regulations prescribes ‘interstate restraining orders’ under the *Proceeds of Crime Act 2002* to be restraining orders for the purpose of subsection 4(1) of the Act. These include various orders made under the *Confiscation of Proceeds of Crime Act 1989 (NSW)*, *Criminal Assets Recovery Act 1990 (NSW)*, *Confiscation Act 1997 (Vic)*, *Criminal Proceeds Confiscation Act 2002 (Qld)*, *Criminal Property Confiscation Act 2000 (WA)*, *Criminal Assets Confiscation Act 2005 (SA)*, *Crime (Confiscation of Profits) Act 1993 (Tas)*, *Confiscation of Criminal Assets Act 2003 (ACT)* and *Criminal Property Forfeiture Act 2002 (NT)*.<sup>7</sup>

Section 11 of the Regulations ensures restraining orders made under State and Territory laws are captured for the purpose of provisions under the Act that deal with proceeds of crime and restraining orders in property and spousal maintenance proceedings, including in relation to setting aside orders, notification obligations, requirements to stay proceedings, and intervention by proceeds of crime authorities in proceedings where a proceeds of crime order exists.

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<sup>7</sup> These Acts can be located at NSW legislation <https://legislation.nsw.gov.au>, Victorian legislation [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au), Queensland legislation [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au), Western Australian legislation [www.legislation.wa.gov.au](http://www.legislation.wa.gov.au), South Australian Legislation [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au), Tasmanian Legislation [www.legislation.tas.gov.au](http://www.legislation.tas.gov.au), ACT Legislation Register [www.legislation.act.gov.au](http://www.legislation.act.gov.au), Northern Territory legislation [https://legislation.nt.gov.au/](http://https://legislation.nt.gov.au/).

## Section 12 - Definition of *State or Territory proceeds of crime law*—declared State or Territory corresponding laws

Subsection 4(1) of the Act contains the definition of ‘State or Territory proceeds of crime law’, meaning a law in force in a State or Territory that is declared by the Regulations to be a law that corresponds to the *Proceeds of Crime Act 2002*.

Section 12 of the Regulations prescribe that each law declared by section 7 of the *Proceeds of Crime Regulations 2019* is to be a law that corresponds to the *Proceeds of Crime Act 2002*. These include the *Confiscation of Proceeds of Crime Act 1989* (NSW), *Criminal Assets Recovery Act 1900* (NSW), *Confiscation Act 1997* (Vic), *Criminal Proceeds Confiscation Act 2002* (Qld), *Criminal Property Confiscation Act 2000* (WA), *Criminal Assets Confiscation Act 1996* (SA), *Criminal Assets Confiscation Act 2005* (SA), *Serious and Organised Crime (Unexplained Wealth) Act 2009* (SA), *Crime (Confiscation of Profits) Act 1993* (Tas), *Confiscation of Criminal Assets Act 2003* (ACT) and the *Criminal Property Forfeiture Act 2002* (NT).<sup>8</sup>

Section 12 of the Regulations ensure that necessary State and Territory proceeds of crime laws are captured for the purpose of the relevant provisions in the Act. The definition of ‘State or Territory proceeds of crime law’ is used throughout the Act to define ‘proceeds of crime authority’ and in the definitions of forfeiture, restraining and freezing orders.

## Section 13 - Meaning of *de facto relationship*—prescribed laws and relationships

Section 4AA of the Act sets out the meaning of ‘de facto relationship’. The section sets out circumstances to consider in determining whether a person is in a de facto relationship with another person. In particular, paragraph 4AA(2)(g) outlines one of these circumstances as whether the relationship has been registered under a prescribed law of a State or Territory as a prescribed kind of relationship.

Section 13 of the Regulations prescribe the State and Territory laws and kinds of relationships that are registered under such laws. These include relationships registered under the *Relationships Register Act 2010* (NSW), *Relationships Act 2008* (Vic), *Civil Partnerships Act 2011* (Qld), *Relationships Register Act 2016* (SA), *Relationships Act 2003* (Tas), *Domestic Relationships Act 1994* (ACT), *Births, Deaths and Marriages Registration Act 1997* (ACT).<sup>9</sup> Relationships that can be registered under these Acts include relationships that are between two adults who are not married, not in another registered relationship and are not related.

Section 13 of the Regulations ensures that relationships registered under the above Acts can be considered in determining the existence of a de facto relationship for the purpose of section 4AA of the Act.

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<sup>8</sup> These Acts can be located at NSW legislation <https://legislation.nsw.gov.au>, Victorian legislation [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au), Queensland legislation [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au), Western Australian legislation [www.legislation.wa.gov.au](http://www.legislation.wa.gov.au), South Australian Legislation [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au), Tasmanian Legislation [www.legislation.tas.gov.au](http://www.legislation.tas.gov.au), ACT Legislation Register [www.legislation.act.gov.au](http://www.legislation.act.gov.au), Northern Territory legislation <https://legislation.nt.gov.au/>.

<sup>9</sup> These Acts can be located at NSW legislation <https://legislation.nsw.gov.au>, Victorian legislation [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au), Queensland legislation [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au), Western Australian legislation [www.legislation.wa.gov.au](http://www.legislation.wa.gov.au), South Australian Legislation [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au), Tasmanian Legislation [www.legislation.tas.gov.au](http://www.legislation.tas.gov.au), ACT Legislation Register [www.legislation.act.gov.au](http://www.legislation.act.gov.au), Northern Territory legislation <https://legislation.nt.gov.au/>, Federal Register of Legislation (Norfolk Island) [www.legislation.gov.au/search/ni](http://www.legislation.gov.au/search/ni).

## Section 14 - Definition of *proceeds of crime authority*

Subsection 4C(4) of the Act sets out the definition of ‘proceeds of crime authority’; a term used in provisions relating to property or maintenance proceedings under the Act. The definition of ‘proceeds of crime authority’ in the Act enables persons or bodies to be prescribed by the regulations as a proceeds of crime authority under State or Territory law.

Section 14 of the Regulations prescribes persons and bodies under State and Territory proceeds of crime laws relating to forfeiture orders, restraining orders and forfeiture applications. These authorities are prescribed with reference to relevant State and Territory laws; specifically, the *Criminal Assets Recovery Act 1990* (NSW), *Confiscation of Proceeds of Crime Act 1989* (NSW), *Confiscation Act 1997* (Vic.), *Criminal Proceeds Confiscation Act 2002* (Qld), *Criminal Property Confiscation Act 2000* (WA), *Criminal Assets Confiscation Act 2005* (SA), *Crime (Confiscation of Profits) Act 1993* (Tas.), *Confiscation of Criminal Assets Act 2003* (ACT) and the *Criminal Property Forfeiture Act 2002* (NT).<sup>10</sup>

Prescribing relevant State and Territory persons and bodies ensures that provisions in the Act that rely on the definition of ‘proceeds of crime authority’ can operate as intended, facilitating processes that involve State and Territory proceeds of crime authorities.

### **Division 3—Directions and orders**

## Section 15 - Directions as to practice and procedure

This section of the Regulations provides the court with a power to give directions with respect to practice and procedures to be followed in a case as the court considers necessary where the Act, the Regulations or the applicable Rules of Court do not otherwise provide. The Act defines the ‘applicable Rules of Court’ in section 4 as being the Federal Circuit and Family Court of Australia (Division 1) Rules (in relation to the Federal Circuit and Family Court of Australia (Division 1)), and the Federal Circuit and Family Court of Australia (Division 2) Rules (in relation to the Federal Circuit and Family Court of Australia (Division 2)). In relation to any other court, this phrase means the standard Rules of Court. A court must consider facilitating the just resolution of the dispute, proceedings or matter when making directions under this section, in a way that ensures the safety of families and children, and that, for child related proceedings, promotes the best interests of children, according to law and as quickly, inexpensively and efficiently as possible. These factors align with the overarching purpose in section 95 of the Act and ensure consistency in the powers that relate to procedures, rules and directions made under family law legislation.

## Section 16 – Non-compliance with this instrument

This section of the Regulations makes clear that non-compliance with these regulations, or with a rule of practice or procedure in a court exercising jurisdiction under the family law, does not render proceedings in that court void unless the court so directs. Section 4 of the Regulations defines ‘family law’ to mean the Act, the Regulations and any other regulations made under the

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<sup>10</sup> These Acts can be located at NSW legislation <https://legislation.nsw.gov.au>, Victorian legislation [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au), Queensland legislation [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au), Western Australian legislation [www.legislation.wa.gov.au](http://www.legislation.wa.gov.au), South Australian Legislation [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au), Tasmanian Legislation [www.legislation.tas.gov.au](http://www.legislation.tas.gov.au), ACT Legislation Register [www.legislation.act.gov.au](http://www.legislation.act.gov.au), Northern Territory legislation <https://legislation.nt.gov.au/>, Federal Register of Legislation (Norfolk Island) [www.legislation.gov.au/search/ni](http://www.legislation.gov.au/search/ni).



Act. In exercising its discretion under section 16, the court may have regard to the real merits of the case, the safety of families and children, promoting the best interests of the child, resolving matters as quickly, inexpensively and efficiently as possible, whether any party to the proceedings has suffered injustice or has been prejudicially affected by non-compliance with this instrument, and any other matter the court considers relevant.

A minor non-compliance with these regulations may not necessarily justify proceedings being deemed invalid, which may otherwise impose unnecessary stress, cost and safety risks on children and parties to proceedings. This section ensures that non-compliance with the Regulations will not necessarily impact the validity of proceedings under the Act, while preserving the ability for the court to render proceedings invalid after considering relevant factors.

#### Section 17 - Court or relevant Registrar may relieve from consequences of non-compliance

This section of the Regulations provides the court or a relevant Registrar with a power to, at any time and upon such terms as the court or relevant Registrar thinks fit, relieve a party from the consequences of non-compliance with these regulations, rules of court or an order made by a relevant Registrar or the court. The court may also dispense with the need for compliance by a party with any provision of these regulations as it sees fit.

It is necessary to provide the court with a broad discretion to respond to the circumstances of each case and to relieve parties of consequences in circumstances where it may be considered justified, for example, where cost consequences of non-compliance would impose significant hardship on a party, or where non-compliance may not have effected proceedings or the ability for parties to comply with court orders.

### **Part 2—Protection of names and symbols**

This Part of the Regulations is made for the purposes of section 9A of the Act. Section 9A of the Act protects the names of services funded by the Government to provide assistance and support to people in the family law system (such as Family Relationship Centres), the domain names used to access these services online, and the symbols (or logos) used to identify these services. The section prohibits the use of protected names for various purposes relating to businesses, trade, professions, occupations, premises, corporations, institutions, vehicles and crafts, trademarks, and goods and services, without the written consent of the Minister. The section also protects names and symbols that are likely to be mistaken for protected names and symbols because they so closely resemble them. Section 9A was designed to ensure the public is not misled by unauthorised use of names or symbols that designate services funded by the Government.

#### Section 18 - Protected names

Section 18 of the Regulations prescribe the specific protected names for the purpose of subsection 9A(4) of the Act. These include names relating to Family Relationship Centres, Family Relationship Advice Lines, Family Relationships Online or Family Relationships Services more generally, and related acronyms and domain extensions that could be used in conjunction with those names. This section provides protection against unauthorised use of prescribed names, ensuring that a private entity cannot represent itself as any of the named services, thereby promoting public confidence and certainty about family relationship services.

## Section 19 - Protected symbols

Section 19 of the Regulations prescribe the specific protected symbols for the purpose of subsection 9A(4) of the Act. These include symbols relating to Family Relationship Centres, Family Law Pathways Networks and symbols used in the Family Dispute Resolution Register. This section provides protection against unauthorised use of prescribed symbols, ensuring that a private entity cannot represent itself as one of the services authorised to use the protected symbols, thereby promoting public confidence and certainty about those services.

## **Part 3—Arbitration**

Division 4 in Part II and Division 4 in Part IIIB of the Act provide the framework to support the use of arbitration in family law matters. Subsection 10L(2) of the Act defines arbitration as a process (other than the judicial process) in which parties to a financial dispute present arguments and evidence to an independent arbitrator, who makes a determination to resolve the dispute. The provision provides for certain matters that can be ordered by the court to arbitration with the consent of the parties, or can be arranged by the parties without an order of the court.

Part 3 of the Regulations contain provisions to support the operation of the arbitration framework. The Part replicates Part V of the *Family Law Regulations 1984* (1984 Regulations) with updates to strengthen some parts of the arbitration process, and preserves the eligibility requirements for arbitrators established by the repealed *Family Law Amendment (Arbitration) Regulations 2024*, which commenced on 1 August 2024.

## Section 20 – Purposes of this Part

Section 20 of the Regulations provide that the legal authority for each section in Part 3, unless otherwise specifically stated, is paragraph 125(1)(bc) of the Act. This paragraph provides the authority to make regulations about anything dealt with in Rules of Court, which includes providing for and in relation to procedures relating to the conduct of arbitration (under paragraph 123(1)(sdc) of the Act).

## Section 21 – Prescribed requirements for arbitrator

Section 21 of the Regulations prescribe the eligibility requirements for family law arbitrators. These requirements are the same as the eligibility requirements that were in the 1984 Regulations. Subsection 21(1) prescribe the requirements that must be met for the purposes of the definition of ‘arbitrator’ in section 10M of the Act.

### *Requirement for name to be included in list of arbitrators*

To provide arbitration services a person must have their name in a list (the list) of arbitrators that is held by the Law Council of Australia or another body nominated by the Law Council of Australia (subsection 21(2)). For a person to be included in the list, the person must provide a statutory declaration to the body keeping the list (subsection 21(3)). The statutory declaration is to the effect that the person meets the requirements in subsection 21(4).

### *Requirements to be met to become an arbitrator*

Subsection 21(4) requires that a person applying to be included in the list of arbitrators must have during the previous 6 years:

- practised as a legal practitioner or held office in a court listed at subsection 21(5) as a judge or magistrate, or a combination of both, for at least 5 of those years (paragraph 21(4)(a)), and
- spent at least 25% of their experience in practice or judicial office on family law matters, for at least five of those years (paragraph 21(4)(b)), and
- gained the necessary experience in family law matters that is sufficient for the person to be an arbitrator (paragraph 21(4)(c)), and
- successfully completed a specialist arbitration training course provided by a tertiary institution or professional association of arbitrators (paragraph 21(4)(d)).

The phrase ‘practised as a legal practitioner’ in subparagraphs 21(4)(a)(i) and (iii) captures a broad range of professional experience, including work as a solicitor or barrister. Section 4 of the Regulations defines the term ‘legal practitioner’.

Paragraph 21(4)(c) ensures an assessment is made based on a person’s particular working arrangement and experience to ensure they have recent and relevant experience, including in family law, so as to be well equipped to support separated couples and determine a family law financial matter using arbitration. This ensures different working arrangements, including full time, part time and semi-retired practice, can be used to meet the requirement in paragraph 21(4)(b).

For a retired judge or magistrate to be eligible to apply to be in the list as a family law arbitrator, they must have held office as a judge or magistrate at a court exercising family law jurisdiction listed in subsection 21(5).

The inclusion of the Magistrates Court of Western Australia in paragraphs 21(5)(d)-(e) reflects that both ‘specialist’ Family Law Magistrates, who are co-located with the Family Court of Western Australia, and magistrates in regional Western Australia, can exercise jurisdiction in family law matters in Western Australia. A legislative note refers users to the defined term ‘Family Law Magistrate of Western Australia’ in subsection 4(1) of the Act to explain this distinction.

#### *Requirements to be met to continue to be an arbitrator*

Once a person is on the list of family law arbitrators, they must meet the requirements in subsection 21(6) to remain in the list. The requirements in subsection 21(6) recognise the importance of maintaining ongoing experience in family law matters, to be well equipped to support separated couples to resolve their financial disputes through arbitration. The person must, during the two-year period beginning from the day their name is included in the list, and during each two-year period after that:

- complete at least 10 hours of continuing professional development (CPD) (paragraph 21(6)(a)), and
- demonstrate that at least 25% of their practice as a legal practitioner in that period was in relation to family law matters (paragraph 21(6)(b)), and

- maintain the necessary experience in family law matters that is sufficient for them to be an arbitrator (paragraph 21(6)(c)).

The reference to CPD in paragraph 21(6)(a) includes courses, seminars and conferences that practising legal practitioners are required to attend as part of holding a practising certificate issued by State or Territory Law Societies and Bar Associations. This requirement for completing CPD, is irrespective of whether or not a person has a practising certificate, recognising the importance of a person continuing to undertake professional education as part of their commitment to working as an arbitrator in family law matters.

The phrase ‘person’s practice as a legal practitioner’ in paragraph 21(6)(b) captures a broad range of professional experience, including a person’s work as a solicitor, barrister, or family law arbitrator while in the list. Section 4 of the Regulations defines the term ‘legal practitioner’.

Paragraph 21(6)(c) ensures an assessment is made based on a person’s particular working arrangement and experience to ensure they have recent and relevant experience, including in family law, so as to be well equipped to support separated couples and determine a family law financial matter using arbitration. This ensures different working arrangements, including full time, part time and semi-retired practice, can be used to meet the requirement in paragraph 21(6)(b).

Subsection 21(7) identifies the day the two-year period in subsection 21(6) begins. This assists a person to understand when they must meet the continuing requirements. If the person’s name is included in the list of arbitrators before 1 August 2024 (the date the *Family Law Amendment (Arbitration) Regulations 2024* commenced), the period for which the person would need to meet the continuing requirements started on 1 August 2024. Otherwise, the period starts the day the person’s name is included in the list.

Subsection 145(1) provides that arbitrators who are on the list prior to the commencement of these regulations, remain on the list.

Subsection 21(8) provides that the person must, within a month from the end of each two-year period mentioned in subsection 21(6), give a statutory declaration to the body that keeps the list to the effect that they have met the requirements in new subsection 21(6).

#### *Continuing professional development*

Subsection 21(9) provides that a person who does not hold a legal practitioner’s practising certificate can meet the continuing requirement for CPD at paragraph 21(6)(a) with CPD that is at least a similar standard to CPD required to be undertaken, in that State or Territory, as a condition of a legal practitioner’s practising certificate. This enables government lawyers who may engage in family law matters and retired judges or magistrates who are arbitrators to meet the continuing CPD requirement.

#### Section 22 – Meaning of *arbitration agreement*

Section 22 of the Regulations provides for a defined term ‘arbitration agreement’ as meaning an agreement under section 27 between the parties to an arbitration. A legislative note under the section signposts to users of the Regulations that arbitration is a defined term in section 10L of the Act.

### Section 23 – Disputes, proceedings or matters that may not be arbitrated

Section 23 of the Regulations makes clear that disputes, proceedings or matters with respect to an approved maintenance agreement made under section 87 of the Act cannot be arbitrated. This is because section 86A of the Act prescribes that such agreements made after 27 December 2000 (the date provisions relating to Binding Financial Agreements in the *Family Law Amendment Act 2000* commenced) are unenforceable. This provision ensures that arbitration is not used as a mechanism to seek an arbitral award in order to enforce agreements made under section 87 of the Act.

### Section 24 – Application for referral to arbitration

Subsection 13E(1) of the Act empowers a court exercising jurisdiction in a family law property or financial proceeding to make an order referring it to arbitration. Section 24 of the Regulations provides that an application by parties to have their proceedings referred by the court to arbitration must:

- be in accordance with Form 6 in Schedule 3 of the Regulations and accompanied by a financial statement in accordance with the Family Law Rules, and
- be made jointly by all parties to the proceedings. If there are third parties in the proceeding (for example, a company), these parties also need to sign the Form 6, in addition to the parties of the relationship who are seeking to arbitrate the family law proceeding.

### Section 25 – Application relating to relevant property or financial arbitration

Section 13F of the Act empowers a court with jurisdiction under the Act to make appropriate orders to facilitate the effective conduct of arbitrations.

Section 25 of the Regulations requires that an application for an order must be made in accordance with Form 7 in Schedule 3 of the Regulations and can be made by one party, or jointly by all parties, to the arbitration.

### Section 26 – Action arbitrator must take before arbitrating a dispute, proceeding or matter

Section 26 of the Regulations provides certain actions that an arbitrator must take before arbitrating a dispute, proceeding or matter under the family law. These are new requirements intended to ensure best practice in undertaking arbitration. Section 4 of the Regulations defines ‘family law’ to mean the Act, the Regulations and any other regulations made under the Act.

An arbitrator may arbitrate a dispute, proceeding or matter only if:

- the arbitrator has provided the following information to the parties – information about the arbitration process including a template arbitration agreement, information about the binding nature of arbitration, and information about how the costs of the arbitration will be shared, and
- the arbitrator is satisfied that the parties have made an arbitration agreement in accordance with the requirements of section 27 of the Regulations.

These requirements for arbitrators are intended to support parties considering arbitration to have a proper understanding of the arbitration process prior to commencing the arbitration. It is important

that parties have this information to assist them to genuinely consider if arbitration is an appropriate dispute resolution mechanism to resolve their dispute. Arbitration may not be an appropriate form of dispute resolution, for example, where there is a serious safety risk or where a party is not legally represented and may not fully appreciate the nature of the arbitration process.

### Section 27 – Arbitration agreement

Section 27 of the Regulations prescribes the requirements for arbitration agreements. The requirement to have a written arbitration agreement is a new requirement intended to strengthen the arbitration framework.

Arbitration agreements confirm the authority and jurisdiction of the arbitrator; encourage parties to consider how the arbitration might be conducted; and provide an opportunity for parties to explore appropriate safeguards, especially when there may be issues of family violence or a power imbalance.

Subsection 27(1) provides that parties must make an agreement in relation to the arbitration. A legislative note clarifies that an agreement made under the section is defined as an ‘arbitration agreement’ and signposts the reader to the defined term in section 22 of the Regulations.

Subsections 27(2) and 27(3) identifies the content that must be in an arbitration agreement. This provides guidance to the parties about what they must settle when negotiating an agreement, and promotes a standard of best practice among arbitrators, who may be assisting parties with their negotiations. The arbitration agreement includes basic administrative details (contact details, time, date and place for the arbitration and estimated time needed for the arbitration) as well as details relating to the conduct of the arbitration (the issues that will be dealt with, the estimated costs, procedures relating to how the arbitration is conducted and circumstances in which it may be suspended or terminated).

Importantly, paragraph 27(2)(e) requires an arbitration agreement to include a statement that each party has been provided with legal advice on the draft arbitration agreement before the parties sign the agreement. The party’s must each obtain legal advice to ensure they are informed and able to genuinely consider whether arbitration is an appropriate process to resolve their dispute (where the arbitration is being privately arranged), and to have the opportunity to consider what procedures and safeguards should be in the agreement. Parties who are already legally represented would meet this requirement by obtaining this advice and signed statement from their legal practitioner.

Further, the signed arbitration agreement must ‘include’ the statements of legal advice. This supports the arbitrator to be satisfied that the parties have made an arbitration agreement under subsection 26(b).

Subsection 27(4) clarifies that any applicable Rules of Court or a section in the Regulations that prescribes a dispute, proceeding or matter that may or may not be arbitrated under the family law would operate to limit the negotiation and content of arbitration agreements. Section 4 of the Regulations defines ‘family law’ to mean the Act, the Regulations and any other regulations made under the Act. This ensures arbitration agreements do not contain matters that are not permitted to be arbitrated.

### Section 28 – Costs of arbitration

Section 28 of the Regulations provides that the costs of an arbitration are to be shared equally between the parties, unless they agree otherwise in writing (for example, within their arbitration agreement).

### Section 29 – Duties of arbitrator

Section 29 of the Regulations identifies the duties of an arbitrator.

Subsection 29(1) requires an arbitrator to determine the issues in dispute between the parties in accordance with the family law. Section 4 of the Regulations defines ‘family law’ to mean the Act, the Regulations and any other regulations made under the Act. This confines arbitrators to only consider and apply the law under the family law.

Subsection 29(2) mandates an arbitrator to conduct an arbitration with procedural fairness. This requires the arbitrator to give each party an opportunity to be heard, and to respond to the issues raised by the other party or parties, before a decision can be made.

Subsection 29(3) requires an arbitrator to inform each party in writing about anything arising during the conduct of the arbitration that could lead to any bias in favour or against any party. This recognises the ongoing duty of arbitrators to determine issues impartially and fairly.

### Section 30 – Oath or affirmation by arbitrator

Section 30 of the Regulations provides a standard form oath or affirmation that an arbitrator must make before they conduct an arbitration. The arbitrator must declare they will not disclose any communication or admission made to them, unless the arbitrator reasonably believes that disclosure is necessary in the specific circumstances described in the oath or affirmation, for example, to protect a child. This ensures the confidentiality of the arbitration is upheld by the arbitrator.

### Section 31 – Suspension of arbitration—failure to comply with direction

Section 31 of the Regulations outlines the circumstances in which an arbitrator may suspend an arbitration. The section provides that an arbitrator may suspend the arbitration if a party does not comply with a procedural direction given by an arbitrator. For a proceeding referred by a court to arbitration under subsection 13E(1) of the Act, when a party’s failure to comply exceeds 14 days, the arbitrator may refer the proceeding back to the court.

### Section 32 – Termination of arbitration—inability to take part

Section 32 of the Regulations outlines the circumstances when an arbitrator may terminate an arbitration.

Subsection 32(1) provides that an arbitrator must terminate an arbitration (and for a proceeding referred by a court to arbitration under subsection 13E(1) of the Act, refer the proceeding back to the court) if a party does not have the ability to take part in the arbitration.

Subsection 32(2) provides an exhaustive list of circumstances when the arbitration could be terminated:

- a party does not understand the nature and possible consequences of the arbitration, or

- a party is not able to give adequate instruction to their legal practitioner during the arbitration, or to satisfactorily appear in person in the arbitration (for example, the party could be experiencing systemic technological issues in a virtual arbitration, or are experiencing a major health issue, which means they are not able to satisfactorily advance their case in the arbitration). ‘Legal practitioner’ is defined in section 4 of the Regulations.

### Section 33 – Appearance in arbitration

Section 33 of the Regulations provides that a party may appear in person in an arbitration, or be represented by a legal practitioner. ‘Legal practitioner’ is defined in section 4 of the Regulations.

### Section 34 – Attendance of persons to give evidence

Section 34 of the Regulations provides matters relating to the production of evidence from a person whether or not they are a party to the arbitration.

Subsection 34(1) identifies the powers of an arbitrator to require a person to attend an arbitration to give evidence, produce documents, or give evidence and produce documents.

Subsection 34(2) allows a party to an arbitration to apply to a court for a subpoena for a person to give evidence, produce documents, or give evidence and produce documents.

A legislative note under section 34 explains what processes are available if a person does not comply with a requirement to attend the arbitration to give evidence or produce documents, or does not comply with a subpoena. It clarifies that the parties could seek an order from a court about the effective conduct of the arbitration, either under sections 13E and 13F of the Act.

### Section 35 – Application of rules of evidence

Section 35 of the Regulations outlines how the rules of evidence apply to arbitrations.

The section provides that, if the parties to the arbitration consent, the rules of evidence will not apply to the arbitration. The rules of evidence are outlined in the *Evidence Act 1995*. Subsection 35(2) makes clear that the arbitrator may inform himself or herself on any matter in any way that the arbitrator considers appropriate.

Arbitration is not a judicial process, and it would not be appropriate for the conduct of arbitration to be restricted by the formal rules of evidence that are generally an important feature and safeguard in court proceedings. This approach ensures that any evidence that a party or the arbitrator considers relevant can be presented to the arbitrator, in whatever suitable form.

### Section 36 – Making an award

Section 36 of the Regulations provides requirements for making an arbitral award.

Subsection 36(1) provides that the arbitrator must make an award at the end of the arbitration. Subsection 36(2) provides that the award must indicate the arbitrator’s reasons for making the award and indicate the evidence on which the findings of fact are based when making the award. Subsections 36(3) and (4) provides that the award must be typewritten and be in a single document and copies must be provided to each of the parties. If a proceeding was referred to arbitration by a court order under subsection 13E(1) of the Act, the arbitrator must also inform the court that the award has been made.



There is no requirement in subsection 36(4) for the arbitrator to provide an award to the parties using a certain communication method. Paragraph 9(2)(d) of the *Electronic Transactions Act 1999* provides that when a person must ‘give’ written information under Commonwealth law, the document may be provided electronically to another non-Commonwealth entity with their consent.

### Section 37 – Registration of award

Section 37 of the Regulations provides the framework to register an arbitral award. Section 13H of the Act allows the parties to register the award in any court exercising jurisdiction under the Act. A registered award binds the parties to the outcome of the arbitration. Registering the award is not mandatory; parties may choose to formalise the award using other frameworks under the Act if they prefer, such as consent orders.

Subsection 37(1) provides that the legal authority for this regulation is paragraph 125(1)(bba) of the Act. The paragraph in the Act enables regulations to be made prescribing the registration of awards made in arbitration.

Subsection 37(2) provides that an application to register an award must be made using Form 8 in Schedule 3 of the Regulations.

Subsection 37(3) provides that the application must be served on each other party to the award.

Subsection 37(4) provides that if the applicant had complied with the requirements in this section, the court must register the award. The 1984 Regulations provided an opportunity for a party to object to registration. This subsection removes this right, addressing recommendation 27 of the Australian Law Reform Commission’s Report *Family Law for the Future – An inquiry into the Family Law System* (Report No. 135, March 2019). A party may still apply to review the registered arbitration award on a question of law under section 13J of the Act or to set the registered award aside under section 13K of the Act.

Under subsection 13H(2) of the Act, a registered award has the effect of a decree made by the court the award is registered in. A legislative note under subsection 37(4) of the Regulations signposts readers to subsection 13H(2) of the Act.

Subsections 37(5) and (6) provide that a court must give notice of the registration to each party to the award, and the notice must identify the date and place of registration.

### Section 38 – Enforcement of registered award

Section 38 of the Regulations provides that a registered award can be enforced on application by a party, as if the award was a decree made under the Act. Part XIII of the Act provides the framework to enforce a decree made under the Act.

### Section 39 – Registration of decree affecting registered award

Section 39 of the Regulations provides that where a court (on application by one of the parties) makes a decree reviewing a registered award or setting a registered award aside under sections 13J and 13K of the Act, the decree must be registered in the court that registered the award. An application to register the decree must be made using Form 9 in Schedule 3 of the Regulations.

This section is necessary to ensure that the court that registered the award is notified of the decree. Under sections 13J and 13K of the Act, only the Federal Circuit and Family Court of Australia or a single judge of a Family Court of a State are empowered to review or set aside a registered award. However, any court exercising family law jurisdiction can register an award (such as a Local Court or Magistrates Court of a State or Territory exercising summary family law jurisdiction).

#### **Part 4—Family consultants**

##### Section 40 - Appointment of family consultants

Section 11B of the Act contains the definition of ‘family consultant’ for the purposes of the provision of family law services provided under the Act. Paragraph 11B(c) defines ‘family consultant’ to include a person appointed as a ‘family consultant’ under the regulations. Section 40 of the Regulations therefore provides that, for the purposes of paragraph 11B(c), the Chief Executive Officer may, in writing, appoint a ‘family consultant’. The Chief Executive Officer is defined in section 4 of the Act to mean ‘the Chief Executive Officer and Principal Registrar of the Federal Circuit and Family Court of Australia (Division 1)’. The Chief Executive Officer is appointed to assist the Chief Justice or Chief Judge to administer the Court, therefore it is appropriate for them to have the power to appoint a ‘family consultant’.

#### **Part 5—Obligations to inform people about non-court based family services and about court’s processes and services**

Part 5 of the Regulations prescribes information for the purposes of Part IIIA of the Act. Part IIIA of the Act imposes obligations on family law professionals (including legal professionals, the principal executive officer of the court, family counsellors, family dispute resolution practitioners and arbitrators) to provide information to persons considering instituting proceedings. Part IIIA of the Act ensures that people receive useful information about these services, as well as information about the court’s processes, early in the process of separation or divorce to allow them to consider whether and how such services may be able to assist them to resolve their disputes, and to consider the impact of litigation.

##### Section 41 - Prescribed information about non-court based family services and court’s processes and services

Section 12B of the Act states that the regulations may prescribe information that must be provided to people relating to non-court based family services and court processes and services. Section 41 of the Regulations prescribes that the following information must be provided in accordance with the obligations under Part IIIA:

- the legal and possible social effects of the proposed proceedings (including the consequences for children whose care, welfare or development is likely to be affected by the proceedings)
- the services provided by family counsellors and family dispute resolution practitioners to help people affected by separation or divorce
- the steps involved in the proposed proceedings

- the role of family consultants
- the arbitration facilities available to arbitrate disputes in relation to separation and divorce.

Such information can assist people to obtain a clearer understanding of the court process, its potential effects on themselves and their children, the support services that are available to assist people experiencing family law problems and the alternatives to formal court action that may assist in resolving disputes.

#### Section 42 - Prescribed information about reconciliation

Section 12C of the Act provides that the regulations may prescribe information relating to services to help with a reconciliation between the parties to a marriage, which is to be included in the documents to be provided under Part IIIA of the Act. Such information is required to be provided by certain family law professionals, including legal professionals, the principal executive officer of the court, family counsellors, family dispute resolution practitioners and arbitrators.

Section 42 of the Regulations prescribes that information relating to services available to help with a reconciliation between the parties to a marriage (and that is to be included in documents provided under Part IIIA of the Act) must include information about family counselling and family dispute resolution services.

A legislative note under the section references section 13B of the Act, which allows a court to adjourn proceedings to give parties the opportunity to consider a reconciliation. In such circumstances, the parties will be advised to attend family counselling or other appropriate services.

Section 42 assists separating parties to access information about family counselling and family dispute resolution services, which may ultimately assist with considering the prospect of reconciliation of a marriage.

#### Section 43 - Prescribed information about Part VII proceedings

Section 12D of the Act provides that the regulations may prescribe information that is to be included in documents provided (under Part IIIA of the Act) to people involved in proceedings under Part VII of the Act. Part VII of the Act deals with matters concerning children.

Section 43 of the Regulations prescribes that the information to be provided to people involved in proceedings under Part VII of the Act is information about the family counselling services available to assist the parties, and the child or children concerned, to help adjust to the consequences of orders made under Part VII.

A legislative note is also included to set out that Part VII of the Act deals with parental responsibility, parenting orders and maintenance orders in relation to children. Access to information about family counselling and family dispute resolution services may assist those involved in family law proceedings to understand and comply with court orders and may also help parents and carers to better support children who have been subject to Part VII orders. Exploring the court order and its consequences with a family counsellor may assist people to comply with the order and avoid further court action for contravention of orders.

## **Part 6—Jurisdiction of Courts**

### Section 44 - Certain jurisdiction of Federal Circuit and Family Court of Australia (Division 2) must not be exercised in States and Territories

Section 40(1) of the Act allows for regulations to be made that prevent the jurisdiction of the Federal Circuit and Family Court of Australia (Division 2) under the Act or the *Federal Circuit and Family Court of Australia Act 2021* in relation to certain proceedings from being exercised in specified States and Territories.

Section 44(1) of the Regulations prescribe New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania, Australian Capital Territory, Northern Territory, Norfolk Island, Territory of Christmas Island, and the Territory of Cocos (Keeling) Islands as States and Territories that must not exercise the jurisdiction of the Federal Circuit and Family Court of Australia (Division 2) in respect of proceedings referred to in paragraph 132(1)(c) of the *Federal Circuit and Family Court of Australia Act 2021* from 1 April 2025. Paragraph 132(1)(c) of that Act includes matters arising under a Territory law (other than the Northern Territory) relating to adoption, property, rights and status of a person who is an ex-nuptial child, and the relationship of such a person to the person's parents.

Section 44(2) of the Regulations specifies that from 1 April 2025 jurisdiction of the Federal Circuit and Family Court of Australia (Division 2) must not be exercised in Western Australia, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands in relation to instituting or continuing matrimonial causes matters, de facto financial causes, matters under the *Marriage Act 1961* with the exception of Part VII of that Act, proceedings which may be instituted in the Federal Circuit and Family Court of Australia (Division 2) under the *Federal Circuit and Family Court of Australia Act 2021*, proceedings relating to matrimonial causes as contained in subsection 39(5) of the Act, and matters relating to de facto financial causes in accordance with section 39B of the Act.

### Section 45 - Proceedings for divorce order not to be instituted in a court of summary jurisdiction other than a prescribed court

Section 44A of the Act provides that regulations may prescribe that proceedings for divorce may not be instituted in, or transferred to, a court of summary jurisdiction other than a court that is prescribed.

Section 45 of the Regulations prevents proceedings for a divorce order being instituted or transferred to a court of summary jurisdiction other than the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia, and the Court of Petty Sessions of Norfolk Island.

The Family Court of Western Australia has specialist family law magistrates and registrars who hold appointments as both Magistrates of the Magistrates Court of Western Australia and as Registrars of the Family Court of Western Australia. Therefore, it is necessary to prescribe the Magistrates Court of Western Australia to facilitate the hearing of divorce applications by those who hold such dual appointments.

The Court of Petty Sessions of Norfolk Island is also prescribed as a court within which proceedings for divorce can be instituted in or transferred to, to facilitate access to divorce

proceedings for those who reside in Norfolk Island without the need to travel to other Australian jurisdictions. While parties may not necessarily be required to attend court for divorce proceedings, in some cases, such as where there are contested issues that require a hearing, parties may need to attend court in person and therefore access to a local court is necessary to facilitate such circumstances.

#### Section 46 - Jurisdiction of courts

Subsection 124A(1) of the Act creates, in part, a power for regulations to be made to give effect to international maintenance obligations. Subsection 124A(2) of the Act also provides a power for any such regulations to confer and vest jurisdiction in State, Territory and federal courts (other than the High Court).

Subsections 39(5) and (6) of the Act invest State and Territory courts with federal jurisdiction relating to specified family law proceedings (including matrimonial causes, attachment of money, child bearing expenses, maintenance orders, performance of obligations under the Hague Convention and other matters). Section 69H of the Act confers jurisdiction on Division 2 of the Federal Circuit and Family Court of Australia in respect of child related matters under Part VII of the Act.

Section 46 of the Regulations provides that for proceedings mentioned in Subdivision B or C of Division 9 of Part 7 or Division 1 or 4 or Part 10 of these regulations (which relate to parentage evidence and State, Territory and overseas orders, and overseas maintenance orders), jurisdiction is vested in State, Territory and federal courts where jurisdiction has not otherwise been vested or conferred by subsections 39(5) and (6) and section 69H of the Act. This is to ensure that the necessary courts can hear matters relating to overseas maintenance obligations in accordance with regulations made for the purposes of section 124A of the Act.

### **Part 7—Children**

#### **Division 1—Interpretation – How the family law applies to certain children**

##### Section 47 – Artificial conception procedures: child of woman and other intended parent—prescribed laws

This section of the Regulations prescribes State and Territory legislation that governs the parentage of a child born of an artificial conception procedure, for the purposes of subparagraph 60H(1)(b)(ii) of the Act. Subparagraph 60H(1)(b)(ii) of the Act provides that a child born to a woman as a result of an artificial conception procedure, while married or in a de facto relationship, is the child of the woman and her partner for the purposes of the Act, if the child is the child of the woman and her partner under a prescribed State or Territory law.<sup>11</sup> Section 47

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<sup>11</sup> The prescribed laws are: Section 14 of the *Status of Children Act 1996* (NSW), sections 10C, 10D, 10E, 13 and 14 of the *Status of Children Act 1974* (Vic.), sections 17, 18, 19, 19C, 19D and 19E of the *Status of Children Act 1978* (Qld), section 5, 6 and 6A of the *Artificial Conception Act 1985* (WA), section 10C of the *Family Relationships Act 1975* (SA), section 10C of the *Status of Children Act 1974* (Tas.), section 11 of the *Parentage Act 2004* (ACT), section 5C, 5D and 5DA of the *Status of Children Act 1978* (NT), section 13 of the *Status of Children Act 2012* (NI). These Acts can be located at NSW legislation, <https://legislation.nsw.gov.au>, Victorian legislation, [legislation.vic.gov.au](https://legislation.vic.gov.au), Queensland legislation <https://www.legislation.qld.gov.au>, Western Australian legislation <https://www.legislation.wa.gov.au/>, South Australian legislation <https://www.legislation.sa.gov.au/legislation>, Tasmanian legislation, <https://www.legislation.tas.gov.au/>, ACT Legislation Register <https://www.legislation.act.gov.au/>, Northern Territory legislation <https://legislation.nt.gov.au/>, Federal Register of Legislation (Norfolk Island) <https://www.legislation.gov.au/search/ni>.

prescribes the relevant State and Territory legislation, using pinpoint references to ensure other provisions outside the scope and intent of subparagraph 60H(1)(b)(ii) of the Act are not inadvertently captured. Interpretation and application provisions within the State or Territory law are excluded noting these would, in any case, be read together with the prescribed sections.

#### Section 48 – Artificial conception procedures: child of woman—prescribed laws

This section of the Regulations prescribes State and Territory legislation that governs the parentage of a child born of an artificial conception procedure, for the purposes of paragraph 60H(2)(b) of the Act. Paragraph 60H(2)(b) of the Act provides that a child born to a woman as a result of an artificial conception procedure, whether or not the child is biologically a child of the woman, is her child for the purposes of the Act, if the child is the child of the woman under a prescribed State or Territory law.<sup>12</sup> Section 48 prescribes the relevant sections of State and Territory legislation. Pinpoint references are included to ensure other provisions outside the scope and intent of paragraph 60H(2)(b) of the Act are not inadvertently captured. Interpretation and application provisions within the State or Territory laws are not included noting these would, in any case, be read together with the prescribed sections.

#### Section 49 – Children born under surrogacy arrangements—prescribed laws

This section of the Regulations prescribes State and Territory legislation for the purposes of subsection 60HB(1) of the Act. Subsection 60HB(1) of the Act provides that if a court has made an order under a prescribed State or Territory law to the effect that a child is the child of one or more persons, or one or more persons is a parent of a child, the child is the child of each of those persons for the purposes of the Act. Section 49 prescribes the relevant sections of State and Territory legislation.<sup>13</sup> Pinpoint references are included to ensure other provisions outside the scope and intent of subsection 60HB(1) of the Act are not inadvertently captured.

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<sup>12</sup> The prescribed laws are: Section 14 of the *Status of Children Act 1996* (NSW), sections 15 and 16 of the *Status of Children Act 1974* (Vic.), section 23 of the *Status of Children Act 1978* (Qld), section 5 of the *Artificial Conception Act 1985* (WA), section 10C of the *Family Relationships Act 1975* (SA), section 10C of the *Status of Children Act 1974* (Tas.), section 11 of the *Parentage Act 2004* (ACT), section 5C of the *Status of Children Act 1978* (NT), section 13 of the *Status of Children Act 2012* (NI). These Acts can be located at NSW legislation <https://legislation.nsw.gov.au/>, Victorian legislation <https://www.legislation.vic.gov.au/>, Queensland legislation <https://www.legislation.qld.gov.au/>, Western Australian legislation <https://www.legislation.wa.gov.au/>, South Australian legislation <https://www.legislation.sa.gov.au/legislation>, Tasmanian legislation <https://www.legislation.tas.gov.au/>, ACT Legislation Register <https://www.legislation.act.gov.au/>, Northern Territory legislation <https://legislation.nt.gov.au/>, Federal Register of Legislation (Norfolk Island) <https://www.legislation.gov.au/search/ni>.

<sup>13</sup> The prescribed laws are: Section 12 of the *Surrogacy Act 2010* (NSW), section 22 of the *Status of Children Act 1974* (Vic.), section 22 of the *Surrogacy Act 2010* (Qld), section 21 of the *Surrogacy Act 2008* (WA), section 18 of the *Surrogacy Act 2019* (SA), section 10HB of the *Family Relationships Act 1975* (SA) as in force immediately before it was repealed, sections 16 and 22 of the *Surrogacy Act 2012* (Tas.), section 26 of the *Parentage Act 2004* (ACT), section 34 of the *Surrogacy Act 2022* (NT). These Acts can be located at NSW legislation <https://legislation.nsw.gov.au/>, Victorian legislation <https://www.legislation.vic.gov.au/>, Queensland legislation <https://www.legislation.qld.gov.au/>, Western Australian legislation <https://www.legislation.wa.gov.au/>, South Australian legislation <https://www.legislation.sa.gov.au/legislation>, Tasmanian legislation <https://www.legislation.tas.gov.au/>, ACT Legislation Register <https://www.legislation.act.gov.au/>, Northern Territory legislation <https://legislation.nt.gov.au/>.

## **Division 2—Family dispute resolution**

### Section 50 – Other circumstances in which court is not prevented from hearing an application for Part VII order

Under subsection 60I(7) of the Act, a court must not hear an application for an order under Part VII of the Act (which deals with matters relating to children) unless the applicant files a certificate provided by a family dispute resolution practitioner under subsection 60I(8). This is known as a Genuine Steps Certificate. The purpose of this requirement is to ensure people make a genuine effort to resolve their disputes about children’s matters through family dispute resolution, before applying to the court for an order.

Subsection 60I(9) of the Act specifies exceptions to subsection 60I(7) of the Act, including if other circumstances specified in the regulations are satisfied. Section 50 of the Regulations specifies, as an exception, the circumstance that an application has been made to the court for any other order in proceedings in which a Genuine Steps Certificate has been filed.

This provision makes it clear that, once proceedings under Part VII of the Act are already underway, parties are not required to file another Genuine Steps Certificate where, as part of those same proceedings, they choose to seek other Part VII orders, including interlocutory, interim, procedural, incidental or ancillary orders. This prevents duplication within family law matters, while upholding the policy goal of ensuring genuine efforts are made to resolve disputes outside the court system.

## **Division 3—Obligations under parenting orders relating to taking or sending children from Australia**

### Section 51 – Authentication of consent in writing

This section of the Regulations outlines the requirements for the authentication of consent in writing for the purposes of specific subparagraphs in Part VII, Division 6, Subdivision E of the Act.

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) of the Act deal with obligations under parenting orders, other than child maintenance orders, relating to taking or sending children from Australia. These provisions refer to ‘the consent in writing (authenticated as prescribed)’ for a child to be taken or sent outside Australia.

Subsection 51(2) of the Regulations require that a consent in writing be authenticated by a prescribed person, within the meaning of the *Statutory Declarations Act 1959*, endorsing that it was signed in their presence and they are satisfied about the signatory’s identity. This provision ensures a consistent level of formality and accountability for consents in writing.

## **Division 4—Location and recovery of children**

### Section 52 – Commonwealth information orders—prescribed Departments and Commonwealth instrumentalities

This section of the Regulations prescribes departments and Commonwealth instrumentalities for the purposes of paragraph 67N(3)(b) of the Act. Section 67N of the Act empowers the family law courts to make Commonwealth information orders that compel a Commonwealth department or instrumentality to provide information concerning the location of a missing child. This

information is often used by the court to make further orders for the recovery of a child, or to facilitate service of a parenting application.

Under subsection 67N(3) of the Act, a Commonwealth information order must not be made against a prescribed department or instrumentality until seven days after service of the application, except in special circumstances. This provides the department or instrumentality with time to put information relevant to the making of an order to the court. Section 52 of the Regulations reflects the correct intended departments and instrumentalities that may hold relevant information for the purpose of Commonwealth information orders.<sup>14</sup> It is drafted to refer to the legislation under which the departments are administered, in order to safeguard against interpretation issues arising from departmental name changes or other machinery of government processes.

## **Division 5—Orders for information etc. in child-related proceedings**

### Section 53 – Information sharing agencies

This section of the Regulations prescribes State and Territory child protection, policing and firearms agencies as information sharing agencies for the purposes of Subdivision DA, Division 8, Part VII of the Act. Subdivision DA operationalises key aspects of the National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems (National Framework). The National Framework establishes an enhanced court-led information sharing framework for information relating to family violence, child abuse and neglect risks in parenting, and parenting and property proceedings before the Federal Circuit and Family Court of Australia, and the Family Court of Western Australia.<sup>15</sup>

Section 53 of the Regulations provides that the relevant State or Territory information sharing agencies, or parts of agencies, are those with responsibilities for child protection, policing and firearms licensing. These agencies hold primary responsibility for the conduct of investigations into, and possess critical information in relation to, child abuse, neglect and family violence. The intention of this provision is to ensure that where allegations of child abuse, neglect or family violence are raised, the family law courts are able to seek information from the prescribed agencies to ensure the court has as much information as possible when making determinations in the best interests of the child, promoting safety and wellbeing.

Section 53 of the Regulations prescribes information sharing agencies based on the function they perform, rather than by reference to establishing legislation or departmental names, in order to:

- ensure all State and Territory agencies or parts of agencies intended to be captured are clearly and appropriately prescribed
- ensure parts of agencies outside the scope of the National Framework are not inadvertently captured
- safeguard against interpretation issues arising from departmental name changes or other machinery of government processes.

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<sup>14</sup> The prescribed departments and instrumentalities are the Attorney-General's Department, the Australian Institute of Family Studies, the Department of Education, the Department of Employment and Workplace Relations, the Department of Foreign Affairs and Trade, the Department of Health and Aged Care, the Department of Home Affairs, the Department of Social Services, the Department of Veterans' Affairs, the National Indigenous Australians Agency, and Services Australia.

<sup>15</sup> The *Family Court Act 1997 (WA)* covers child and property matters for de facto relationships heard before the Family Court of Western Australia.



## Section 54 – Information sharing safeguards

This section of the Regulations prescribes information sharing safeguards as provided by subsection 67ZBI(1) of the Act. These safeguards represent a minimum standard for the protection of sensitive information when it is shared, stored and used under the National Framework and in accordance with subdivision DA of Division 8 of Part VII of the Act. Section 54 of the Regulations refer to persons affected, parties to proceedings, children to whom proceedings relate, and another person to whom shared material relates. These broad characterisations allow for the safeguards to cover a range of persons potentially connected to the shared material, not just parties to proceedings.

Prescribing information sharing safeguards in the Regulations is necessary and appropriate given their operational nature. This approach provides flexibility for amendments to reflect emerging best practice, whilst still being subject to sufficient Parliamentary oversight and scrutiny.

Subsection 54(1) of the Regulations connects the operation of section 54 to section 67ZBI of the Act, prescribing that information sharing agencies and the family law courts must have regard to the information sharing safeguards when providing or using particulars, documents or information shared under sections 67ZBD or 67ZBE of the Act. Paragraph 54(1)(b) of the Regulations introduce the term ‘shared material’ to collectively refer to these particulars, documents or information.

### Extent material is to be provided, stored or used – subsection 54(2)

Subsection 54(2) of the Regulations prescribes the extent that shared material is to be provided, stored or used, to support the principle of data minimisation. In the context of information sharing, data minimisation seeks to limit the personal and identifying data shared and held to that required for the specific purpose the information was shared. Paragraph 54(2)(a) of the Regulations make clear that there must be a link between the shared material and a matter mentioned in subsections 67ZBD(2) or 67ZBE(2) of the Act, so that material is only requested and shared to the extent necessary to identify, assess and manage actual or potential child abuse, neglect or family violence risk, and support decision-making in the best interests of children. Paragraph 54(2)(b) provides that the shared material must be required or authorised under an Australian law or a court order.

### Reasonable care to be taken to protect from physical and psychological harm – subsection 54(3)

Subsection 54(3) provides that good faith should be exercised in providing, using or storing shared material, and that reasonable care should be taken to protect persons who are involved in, or could be affected by, the provision, storage or use of shared material from physical and psychological harm.

The subsection is non-prescriptive in what may constitute reasonable care or reasonable steps, recognising that these will depend on the specific circumstances of an individual matter. From the perspective of the family law courts, what amounts to reasonable care will be informed by the court’s understanding of a particular matter. This understanding will be informed by information provided by parties to proceedings as well as shared material or advice provided by information sharing agencies under relevant provisions of the Act.

For information sharing agencies, reasonable care could include having debriefing and deidentification processes to support the physical and psychological safety of those involved in

information sharing. In practice, this could involve using redactions, excluding protected material (as defined in subsection 67ZBF(3) of the Act), or engaging with the family law courts to understand the greater context of a matter.

In both instances, this subsection is intended to recognise that reasonable care is only able to be exercised to the extent of the knowledge held by the family law courts or the information sharing agencies.

Additionally, subsection 54(3) requires that shared material is to be provided, stored and used in good faith by all involved, including information sharing agencies and the family law courts, and recognises the potential impact information sharing can have on persons affected. The inclusion of good faith seeks to make it clear that information sharing is to be conducted in an honest and fair manner, for a proper purpose and with reasonable care. Consistent with the National Framework, the proper purpose of information sharing is to promote the safety and wellbeing of children and families affected by child abuse, neglect and family violence, by supporting informed and appropriate decision-making.

#### Prevention of improper provision, storage and use – subsections 54(4), 54(5), 54(6)

Subsections 54(4), (5) and (6) are complementary to subsection 54(3), focussing on preventing the improper provision, storage and use of shared material, and providing discrete practical guidance on key components of ensuring information sharing is conducted in good faith.

Subsection 54(4) directs that shared material is to be provided, stored and used in a manner preventing improper access or disclosure. This may include using secure methods to share information, and placing access controls on the shared material.

Subsection 54(5) provides that reasonable steps should be taken to prevent the shared material being accessed or disclosed to a person who poses, or potentially poses, a risk of child abuse, neglect or family violence to any of the following: a party to proceedings, a child to whom the proceedings relates, or another person to whom the shared material relates (such as a notifier). Consistent with the principles of natural justice and procedural fairness, this subsection expressly notes that disclosure may occur where it is in accordance with an order of a court. In this circumstance, the court may take any reasonable steps to restrict access to the shared material to the extent necessary to protect safety while ensuring the requirements of procedural fairness are satisfied, such as only allowing inspection of, or requiring legal representatives to inspect, the shared materials.

Consistent with subsection 54(3) of the Regulations, subsection 54(5) is non-prescriptive in what may constitute reasonable steps, recognising that these will depend on the specific circumstances of an individual matter. Without limiting what reasonable steps could mean, as per the above, this could include placing restrictions on the way in which shared material is accessed by parties to proceedings and/or their legal representative. Reasonable steps are also envisaged to include the redaction or removal of protected or sensitive material by information sharing agencies in responding to information sharing orders.

Subsection 54(6) prevents persons with an actual or potential conflict of interest from providing or using shared material. The actual or potential conflict of interest could be with a party to proceedings, a child to whom proceedings relate, or another person to whom the material relates (such as a notifier).

#### Correction of errors – subsection 54(7)

Subsection 54(7) provides an expectation that information sharing agencies notify the relevant family law court of corrections to shared material as soon as possible after becoming aware of the need for a correction. This subsection also requires the court to correct their records in line with the correction notification.

Subsection 54(7) recognises that errors, including misidentification, can occur in the context of family violence, child abuse and neglect information and is intended to provide an avenue for errors to be corrected and records updated as soon as possible after identification.

#### Requests for documents or information not in possession or control – subsections 54(8), 54(9)

Subsections 54(8) and (9) seeks to embed data minimisation best practice within the enhanced information sharing framework to mitigate the potential privacy risks associated with data breaches or unauthorised disclosure. These subsections achieve this by limiting the collection and retention of personal and identifying information to what is directly relevant for operation of the framework.

Under proposed subsections 54(8) or (9), if an information sharing agency or court does not have possession or control of any documents or information relating to an information sharing order or information sharing request, they are to destroy or redact records relating to the order or request after providing a response.

#### Record-keeping obligations not affected – subsection 54(10)

Subsection 54(10) makes it clear that compliance with subsections 54(7), (8) and (9) remains subject to record-keeping obligations imposed on an information sharing agency or family law court. The subsection recognises there are strong policy reasons behind existing record keeping obligations, and while the information sharing safeguards promote a data minimisation best practice approach, this is not achievable in all circumstances.

### **Division 6—Family violence**

#### Section 55 – Registration of court decision

This section of the Regulations provides that if a court revives, varies, discharges or suspends family law orders in the course of making or varying a family violence order under section 68R of the Act, the relevant Registrar of that court must send a sealed copy of the decision to the relevant Registrar of the court that made the family law order. Upon receiving the copy of the decision, the relevant Registrar must register the decision in accordance with subsection 55(3) of the Regulations, by filing the copy and noting on it the fact and date of registration.

Section 55 operates with section 68R of the Act to reduce the need for families to interact with multiple courts across the federal family law and State or Territory family violence systems. Ensuring the courts are notified of changes to family law orders strengthens the courts' ability to protect children from violence.

## **Division 7—Parentage evidence**

### **Subdivision A—General**

#### Section 56 – Purposes of this Division

This section of the Regulations provides for the purpose of Division 7, Part 7 of the Regulations. Unless otherwise stated, this Division is made for the purposes of section 69ZB of the Act, which states that the regulations may make provision relating to:

- the carrying out of parentage testing procedures under parentage testing orders, and
- the preparation of reports relating to the information obtained as the result of carrying out such procedures.

#### Section 57 – Application of this Division

This section of the Regulations provides for the application of Division 7, Part 7 of the Regulations. This Division applies to a parentage testing procedure that is required to be conducted under a parentage testing order.

A legislative note makes it clear that parentage testing orders are made under subsection 69W(1) of the Act, and associated orders may be made under section 69X of the Act. Section 69W of the Act provides that the court may make a parentage testing order if a child’s parentage is a question in issue in family law proceedings, while section 69X of the Act empowers the court to make associated orders to enable the parentage testing procedure to be carried out, or made more effective or reliable.

#### Section 58 – Meaning of certain terms relating to parentage testing procedures

This section of the Regulations defines several key terms used in Division 7, Part 7 of the Regulations. Definitions are provided for the terms ‘bodily sample’, ‘donor’, ‘nominated reporter’, ‘sample’, ‘sampler’ and ‘testing’. The inclusion of specific definitions assists to remove any doubt concerning the meaning of these words and phrases.

#### Section 59 – Parentage testing procedures

This section of the Regulations prescribes the medical procedure for the purposes of the definition of ‘parentage testing procedure’ in subsection 4(1) of the Act. The medical procedure is DNA profiling carried out in compliance with Subdivision B of Division 7 of Part 7 of the Regulations, at a laboratory accredited by the National Association of Testing Authorities Australia (NATA), and in accordance with the standards of practice that entitle the laboratory to be so accredited. Consultation with NATA has confirmed that DNA profiling is currently best practice for parentage testing. The credibility of the results of parentage testing depends on the procedure conforming with the requirements proposed in this provision.

### **Subdivision B—Collection, storage and testing of samples**

#### Section 60 – Samplers

This section of the Regulations provides for the persons who may take a bodily sample for the purposes of a parentage testing procedure. This provision requires the sampler to be a registered medical practitioner, or be employed by a registered medical practitioner or a particular type of organisation for the purposes of taking a bodily sample. The particular organisations that the

sampler may be employed by are a hospital, a pathology practice or a parentage testing practice. The credibility of parentage testing procedures depends on them being done by appropriate people.

### Section 61 – Provision of information by donor—Form 3

This section of the Regulations provides that before a bodily sample is taken from a donor, but on the same day, the applicable person must complete an affidavit in accordance with Form 3 in Schedule 3 and attach a recent photograph of the donor. Subsection 61(1) states that the applicable person is:

- the donor, or
- if the donor is a child: the donor’s parent, guardian or responsible person under a parenting order, or
- if the donor does not have decision-making ability: the donor’s trustee or manager under a State or Territory law, or the donor’s parent, guardian or responsible person under a parenting order.

The applicable person is required to provide the sampler with a facial photograph of the donor, or make a written arrangement for a photograph to be taken. Paragraph 61(2)(b) of the Regulations sets out guidance on the requirements for the photograph, including the approximate size of the image, being approximately 45 millimetres by 35 millimetres.

A legislative note clarifies that the photograph required to be provided to the sampler is in addition to the photograph required to be attached to the affidavit. The requirement for two photographs operates as a safeguard to reduce the risk of fraud and ensure a high ethical standard is met. It enables the two photographs to be compared to assess whether the same person completed the affidavit and provided the bodily sample to the sampler.

The affidavit in Form 3 in Schedule 3 is used to ensure the identification of the donor and that the donor has provided informed consent for the parentage testing procedure to occur. The affidavit also requires a donor to provide particulars of any illness, medical condition or blood transfusion that may affect the inheritable characteristics of their blood.

### Section 62 – Collection of blood samples

This section of the Regulations provides for the collection of a sample of blood from a donor. A sampler must use a sterilised, unused and disposable needle or syringe, and must clean the donor’s skin with antiseptic before taking the sample. This provision is intended to support the integrity of the sample of blood.

### Section 63 – Collection of other bodily samples

This section of the Regulations provides for the collection of a bodily sample, other than a sample of blood, from a donor. A sampler must use a sterilised implement and, if that implement is a swab, it must not have been used for any previous purpose. This provision is intended to support the integrity of the bodily sample.

#### Section 64 – Container to be sealed and labelled

This section of the Regulations provides for the immediate placement of a bodily sample in an unused container while in the presence of the applicable person, as well as the sealing and labelling of the container. The provision requires the container to be labelled with particulars, in such a way that it would be evident if the label was removed or impaired, and sealed in such a way that it would be evident if it was reopened. Both the sampler and the applicable person must sign the label. Subsection 64(2) states that the applicable person is:

- the donor, or
- if the donor is a child: the donor’s parent, guardian or responsible person under a parenting order, or
- if the donor does not have decision-making ability: the donor’s trustee or manager under a State or Territory law, or the donor’s parent, guardian or responsible person under a parenting order.

This provision is intended to support the integrity of the bodily sample, including by making it evident if the container is reopened after being sealed, or if the label is tampered with.

#### Section 65 – Statement by sampler—Form 4

This section of the Regulations provides that after taking a bodily sample, the sampler must complete a statement in accordance with Form 4 in Schedule 3 and attach the photograph of the donor referred to in paragraph 61(2)(b) of the Regulations. Subsection 65(c) requires the sampler to sign their name partly on the photograph and partly on the statement. This requirement reduces the risk of fraud by making it evident if the photograph was removed after signature.

#### Section 66 – Packing and storage requirements

This section of the Regulations provides for the packing, storage and transportation of a bodily sample to a laboratory so as to preserve its integrity and produce results as if the testing had occurred immediately after the taking of the sample. The sampler must also ensure that all necessary documentation, namely the affidavit under paragraph 61(2)(a) and the statement under subsection 65(a) accompanies the sample to the laboratory.

#### Section 67 – Testing of bodily samples

This section of the Regulations requires a laboratory to ensure that a bodily sample is tested within a reasonable time after the sample is taken, having regard to ensuring accurate results and preserving the sample’s integrity. This provision supports parentage testing meeting high technical standards.

### **Subdivision C—Reports**

#### Section 68 – Reports—Form 5

This section of the Regulations provides for the preparation of a report of the parentage testing, in accordance with Form 5 in Schedule 3, as soon as practicable after the testing is complete. The Form relates to the information obtained as a result of the parentage testing procedure. Part I of the report must be completed by a nominated reporter, while Part II must be completed by the person who carried out the parentage testing procedure, or their supervisor. Subsection 68(5) of

the Regulations provides that a report not completed in accordance with these requirements is of no effect.

The purpose of Form 5 is to certify that a donor's bodily sample has been tested in accordance with accredited parentage testing protocols. The report contains a conclusion as to the probability that a donor is the genetic father or mother of the child.

#### **Subdivision D—Miscellaneous**

##### Section 69 – Notification of accredited laboratories and nominated reporters

This section of the Regulations deals with how NATA notifies relevant people of which laboratories are accredited to carry out parentage testing procedures, and their nominated reporters. This provision supports quality assurance and transparency.

Subsection 69(1) of the Regulations provide that NATA must, each financial year, prepare a list of accredited laboratories and, for each such laboratory, the nominated reporter. NATA must provide that list to the Attorney-General's Department, the Chief Executive Officer and Principal Registrar of the Federal Circuit and Family Court of Australia (Division 1), and the relevant Registrar of the Family Court of Western Australia, immediately before the beginning of each financial year. Subsection 69(4) specifies that, if NATA amends the list during the year, notice of the amendment must also be given to these bodies. The Attorney-General's Department is required to publish the list provided by NATA.

#### **Division 8—Principles for conducting child-related proceedings: matters relating to evidence**

##### Section 70 – Evidence relating to professional confidential relationship privilege—specified laws

This section of the Regulations prescribes State and Territory laws for paragraph 69ZX(4)(b) of the Act. Subsection 69ZX(4) of the Act ensures that the best interests of the child are paramount when a court is determining whether confidential communications should be disclosed in family law proceedings concerning children.

NSW, WA, Tasmania and the ACT have enacted legislation relating to confidential relationship privilege, and the relevant provisions are prescribed by section 70 of the Regulations. The prescribed laws are section 126B of the *Evidence Act 1995* (NSW), section 20C of the *Evidence Act 1906* (WA), section 126B of the *Evidence Act 2001* (Tas.) and section 126B of the *Evidence Act 2011* (ACT).<sup>16</sup> Pinpoint references are included to ensure other provisions outside the scope and intent of paragraph 69ZX(4)(b) of the Act are not inadvertently captured.

#### **Division 9—State, Territory and overseas orders**

##### **Subdivision A – Registration of State and Territory orders**

##### Section 71 – State child orders for and in relation to which applicable Rules of Court may make provision—prescribed States

Section 70C of the Act states that the applicable Rules of Court may make provision regarding the registration of State child orders made under a law of a prescribed State, in a court with

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<sup>16</sup> These Acts can be located at NSW legislation <http://legislation.nsw.gov.au>, Western Australian legislation [www.legislation.wa.gov.au](http://www.legislation.wa.gov.au), Tasmanian legislation <https://www.legislation.tas.gov.au/>, and ACT Legislation Register [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

jurisdiction under Part VII of the Act. Rule 15.09 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* refers to this section of the Act, and makes provision regarding the registration of State child orders.

Section 71 of the Regulations prescribes States for the purposes of section 70C of the Act. A legislative note clarifies that, under the Act, the definition of ‘State’ includes a Territory. New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania, the Australian Capital Territory, the Northern Territory and the Territory of Norfolk Island are prescribed by section 71 of the Regulations.

Section 71 operates with the Act and the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* to enable child orders made under the legislation of the listed States and Territories to be registerable in a family law court. This registration makes the State child order enforceable under the Act.

### **Subdivision B—Registration of overseas orders**

#### **Section 72 – Registration of overseas child orders**

This section of the Regulations makes provision in relation to the receipt, registration and enforcement in Australia of relevant overseas child orders made in prescribed overseas jurisdictions, for the purposes of section 70G of the Act. This section also applies where an order is varied and must be sent to the prescribed overseas jurisdiction for the purposes of subsection 70N(1) of the Act. In accordance with subsection 10(2) of the Regulations, Schedule 1 lists the prescribed overseas jurisdictions for the purposes of section 72.

Section 4 of the Act defines ‘overseas child orders’ as an order made by a court of a prescribed overseas jurisdiction that:

- however it is expressed, determines with whom a child is to live, or provides for someone to have custody of a child, or provides for someone to spend time with a child, or provides for contact between a child and another person, or provides for someone to have access to a child, or
- varies or discharges an order of the above kind, including an order of that kind made under the Act (or regulations under the Act).

The definition of ‘overseas child orders’ also includes orders made for the purposes of the Convention on the Civil Aspects of International Child Abduction, by a judicial or administrative authority of a convention country (within the meaning of the *Family Law (Child Abduction Convention) Regulations 1986*).

Section 70G of the Act states that the regulations may deal with the registration of overseas child orders, other than excluded orders, in Australian courts. Subsection 70N(1) states that the regulations may also deal with sending a State child order or a parenting order (other than a maintenance order) to a prescribed overseas jurisdiction, when that order relates to a child to whom an overseas child order relates.

Section 72 of the Regulations makes it clear that any parts of overseas child orders that have the effect of declaring or transferring parentage are excluded from being registered (and therefore from being enforced) under this provision. This ensures that the operation of section 72 aligns with the definition of overseas child orders under section 4 of the Act. This provision specifies the



process for registering the relevant order whether it is received by the Secretary or a court exercising family law jurisdiction. It also provides for concurrent registration and situations where, under section 70J of the Act, the Australian Court substantially varies a registered order.

### **Subdivision C—Transmission of Australian orders to overseas jurisdictions**

#### **Section 73 – Transmission of orders to overseas jurisdiction**

This section of the Regulations operates for the purposes of subsection 70N(1) of the Act, which states that the regulations may deal with sending certain orders to a prescribed overseas jurisdiction, when that order relates to a child to whom an overseas child order relates. Section 73 provides for the transmission of state child orders and parenting orders (other than child maintenance orders) to prescribed overseas jurisdictions, if the order may be enforced in the prescribed overseas jurisdiction and it relates to a child to whom an overseas child order also relates.

Section 73 specifies the relevant process, including who may request transmission of an order, the certification requirements and the number of copies of orders required to be transmitted to the prescribed overseas jurisdiction. In accordance with subsection 10(2) of the Regulations, Schedule 1 lists the prescribed overseas jurisdictions for the purposes of the provision.

Subsection 73(4) specifies the documents to be sent by the relevant Registrar if the court exercises jurisdiction under 70J of the Act in relation to a child who is the subject of the overseas order. Subsection 73(5) specifies that a person with custody, access, time or communication rights under an order is not prevented from obtaining certified copies of that order and attempting to enforce it in an overseas jurisdiction, whether or not that jurisdiction is a prescribed overseas jurisdiction.

### **Part 8—Orders and injunctions binding third parties**

#### **Section 74 – Third party expenses**

This section of the Regulations is made for the purpose of subsection 90AJ(4) of the Act, which allows regulations to be made regarding the charging of fees to a third party in situations where the court has not made an order under subsection 90AJ(2) of the Act. Section 90AJ(2) of the Act provides that the court may make any order it considers just for the payment of the reasonable expenses of the third party incurred as a result of an order or injunction made in relation to a marriage under Part VIIIAA of the Act.

Section 74 provides that a third party may charge fees to cover the reasonable expenses incurred in complying with a court order or injunction, without needing a separate court order under subsection 90AJ(2) of the Act. Subsection 74(2) provides that the expenses must have been a necessary result of compliance with the order. A note to subsection 74(3) gives examples of the fees which may reasonably be charged. Not all of the examples in subsection 74(3) will be expenses incurred in every case. The list is intended to be a guide as to the type of expenses that may be considered to be reasonably incurred and is not an exhaustive list.

Subsection 74(4) also provides that each party to the marriage is liable for half of the total amount of the fees charged. This split between the parties to a marriage is specifically provided for under paragraph 90AJ(4)(b) of the Act. The intention is to provide a standard method for sharing the costs between the parties. If parties are concerned this is not just and equitable, they can go to the court pursuant to subsection 90AJ(2) and seek an order. Subsection 74(5) also provides that the

court has the jurisdiction to determine the reasonableness of the fees and to make an order to collect and recover the fees charged by a third party. This provides a debt recovery jurisdiction additional to that which already exists in State and Territory court systems. It also makes clear that the reasonableness of the charges will be open to scrutiny by the court.

## **Part 9—Registration and enforcement of decrees**

### Section 75 – Registration of decrees

For the purposes of subsection 105(2) of the Act, section 75 of the Regulations provides for the registration of a decree, other than a divorce order or a decree of nullity of marriage, in another court with jurisdiction under the Act. ‘Decree’ means decree, judgment or order, as defined in subsection 4(1) of the Act.

Subsection 75(2) lists the persons and authorities entitled to file for the registration of a decree. It enables a broad range of individuals to file decrees, including by providing discretion in paragraph 75(2)(e), which enables ‘any other person’ to file a decree with the leave of the court.

This provision supports the operation of section 105 of the Act, which requires a decree to be registered in a court before the court can entertain an enforcement proceeding.

### Section 76 – Inter-State enforcement of child bearing expenses order

This section of the Regulations is made for the purposes of section 109 of the Act, which allows regulations to be made in relation to the interstate enforcement of orders that relate to child bearing expenses. Section 76 of the Regulations provides for these orders to be registered and enforced in another State or Territory, where the person against whom the order has been made has moved or is proceeding interstate.

Section 76 provides the procedure and requirements for the relevant Registrar of the requesting court (being the court where the relevant order was made) to follow. Subsection 76(2) provides that the relevant Registrar of the requesting court may send the documents on their own motion or following an application by a person for whose benefit the order was made. Subsection 76(3) includes an exhaustive list of documents that the relevant Registrar may send to the receiving court (being the court in the State or Territory where the person against whom the order was made is now resident or proceeding to).

The information or material provided in paragraph 76(3)(c) of the Regulations should be the information the relevant Registrar has used to ensure they are satisfied that the person against whom the order is made is resident in, or proceeding to, the other State or Territory. The request in writing as required by paragraph 76(3)(d) is from the relevant Registrar of the requesting court to the receiving court.

Subsection 76(4) provides the process and procedure that the relevant Registrar of the receiving court must follow in registering the order. Subsection 76(5) provides that once the order is registered in the receiving court it would operate in the same way as if the order was made in the receiving court with respect to any money payable under the order, and any amounts that become due after the order is registered.

Subsection 76(7) provides the process the relevant Registrar of the receiving court must undertake to notify the relevant Registrar of the requesting court, in circumstances where they have

reasonable grounds for believing that the person against whom the order has been made is no longer resident in the State or Territory. Subsections 76(8) and (9) also provides that the relevant Registrar of the receiving court must cancel the registration of the order upon a request in writing from the relevant Registrar of the requesting court that the order no longer be enforceable, and outlines the consequences of cancellation.

## **Part 10—International conventions, international agreements and international enforcement**

### **Division 1—General**

#### Section 77 - Extension of provisions of the Act

This section of the Regulations is made for the purposes of subsection 124A(1) of the Act, which provides that regulations may be made to give effect to an international agreement that relates to maintenance obligations arising from family relationship, parentage or marriage. Section 77 provides that in particular proceedings relating to an international agreement or arrangement, subdivisions D and E of Division 12 of Part VII of the Act apply, except for subsection 69U(3). These subdivisions relate to evidence of the results of parentage testing and presumptions of parentage. Section 77 of the Regulations applies when the international agreement is with one of the relevant overseas jurisdictions listed in Schedules 2 and 4 of the Regulations, and relates to maintenance obligations arising from family relationship, parentage or marriage.

The section also clarifies that section 69H of the Act applies to matters mentioned in this section. Section 69H of the Act confers jurisdiction for matters arising under Part VII of the Act on the Federal Circuit and Family Court of Australia (Division 2) and the Supreme Court of the Northern Territory. It also invests each Family Court of a State with federal jurisdiction in relation to Part VII matters and clarifies that a presumption of parentage is rebuttable in proceedings under this section.

### **Division 2—Service under the Hague Service Convention**

#### **Subdivision A—Preliminary**

##### **Notes**

Note 1 states that Division 2 of Part 10 of the Regulations implements Australia’s obligations under the Hague Service Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Service Convention). It also specifies that the Attorney-General’s Department is the Central Authority in Australia for the Hague Service Convention, and that certain courts and government departments are designated as ‘other’ or ‘additional’ authorities under the Hague Service Convention.

Note 2 outlines the matters dealt with by Division 2 of Part 10. Note 3 states that a list of all Hague Service Convention countries, and details of Central Authorities, can be found at [www.hcch.net](http://www.hcch.net).

#### Section 78 – Purposes of this Division

This section of the Regulations provides that each section in Division 2 of Part 10 is made for the purpose of paragraph 125(1)(a) of the Act. Paragraph 125(1)(a) of the Act provides that regulations may be made providing for and in relation to the service overseas, pursuant to any

convention between Australia and another country, of any documents in proceedings under the Act.

#### Section 79 – Meaning of *Convention country* and of certain other terms used in this Division

This section of the Regulations sets out the definitions of key terms used in Division 2 of Part 10. The terms defined by this section are ‘Central Authority’, ‘Convention additional authority’, ‘Convention certificate of service’, ‘Convention certifying authority’, ‘Convention country’, ‘forwarding authority’, and ‘initiating process’. The inclusion of specific definitions assists to remove any doubt concerning the meaning of these words and phrases.

#### Section 80 – Provisions of this Division to prevail

This section of the Regulations provides that Division 2 of Part 10 will prevail where there is any inconsistency between this Part and any other provision of the Regulations. This ensures Australia is able to meet all the requirements and obligations in the Hague Service Convention.

### **Subdivision B – Service abroad of local judicial documents**

#### Section 81 – Application of the Subdivision

This section of the Regulations provides that Subdivision B of Division 2 of Part 10 applies to service in a Convention country of a local judicial document. ‘Convention country’ is defined at section 79 and means a country, other than Australia, that is a party to the Hague Service Convention.

Subsection 81(2) provides that Subdivision B does not apply if the service of the document is done by an Australian diplomatic or consular agent.

#### Section 82 – Application for request for service abroad

This section of the Regulations outlines the requirements for the form and content of an application to the relevant Registrar requesting service of a local judicial document in a Convention country, and the documents that must accompany such an application, including translation requirements. The intent of this section is to provide clarity on the required contents of an application for a request for service and to ensure that the requirements of the Hague Service Convention are met. Subsection 82(1) also clarifies that when forwarding an application for request for service abroad, the relevant Registrar is forwarding the documents in their capacity as a forwarding authority for a Convention country as outlined in the Hague Service Convention. Subsection 82(3) includes a requirement that the application must contain a written undertaking that the applicant will:

- be personally liable for all costs that are incurred to serve the local judicial document in the Convention country
- pay the amount of the costs within 28 days of receipt of a notice specifying the amount of those costs under subsection 84(3), and
- give security for those costs, as may be determined by the relevant Registrar.

The undertaking must be signed by the legal practitioner on record for the applicant, or the applicant themselves if there is no legal practitioner on record.

### Section 83 – How application is to be dealt with

This section of the Regulations provides the actions to be undertaken by the relevant Registrar when they receive an application for a request for service abroad, including signing the request and forwarding relevant documents. The intent of this section is to provide clarity for the relevant Registrar regarding the actions they must undertake upon receipt of an application for a request for service to ensure that the requirements of the Hague Service Convention are met, in particular the requirements outlined in Article 15. Subsection 83(3) provides that the relevant Registrar must inform the applicant if the application does not meet the requirements in section 82, which is intended to give the applicant an opportunity to correct any non-compliance.

### Section 84 – Procedure on receipt of Convention certificate of service

This section of the Regulations outlines the procedure to be undertaken by the relevant Registrar when a Convention certificate of service is received, including filing the certificate and sending a copy to the applicant or their legal practitioner. The intent of this section is to provide clarity for the relevant Registrar regarding the actions they must undertake upon receipt of a Convention certificate of service, to ensure the requirements of the Hague Service Convention are met, in particular the requirements outlined in Article 15.

### Section 85 – Payment of costs

This section of the Regulations outlines that on receipt of a notice from the relevant Registrar for the costs of service under subsection 84(3), the legal practitioner or applicant must pay the specified amount to the relevant Registrar. The section also outlines the consequence of the legal practitioner or applicant failing to pay that amount within 28 days of receiving the notice. The intent of subsection 85(2) is to clarify that the relevant Registrar has the authority to enforce the security provided by the applicant or legal practitioner if payment is not made within 28 days.

### Section 86 – Evidence of service

This section of the Regulations provides that in the absence of any evidence to the contrary, a Convention certificate of service is sufficient proof that service of the document was effected by the method, and on the date, specified in the certificate. It is also evidence that, where the method of service was requested by the applicant, that method is compatible with the law in force in the Convention country in which service was effected.

## **Subdivision C – Default judgment following service abroad of initiating process**

### Section 87 – Application of this Subdivision

This section of the Regulations provides that Subdivision C of Division 2 of Part 10 applies to civil proceedings under the Act where an initiating process has been forwarded, following a request for service abroad to a Convention country – the requirements of which are set out in Subdivision B of Division 2 of Part 10. Subdivision C provides for the issuance and setting aside of a default judgment in civil proceedings following the service abroad of an initiating process, where the defendant has not appeared or filed a notice of address for service.

### Section 88 – Restriction on power to enter default judgment if Convention certificate of service is filed

This section of the Regulations provides that default judgment may be given against the defendant if the court is satisfied that the initiating process was served on the defendant in accordance with a method listed in paragraph 88(2)(a), and in sufficient time to enable the defendant to enter an appearance in the proceedings. Section 88 applies when a Convention certificate of service (within the meaning of subsection 84(2)) has been filed in the proceedings and the defendant has not appeared or filed a notice of address for service. The intent of this section is to provide clarification regarding when a default judgment can be entered into under those circumstances, to ensure the requirements outlined in Article 15 of the Hague Service Convention are met.

### Section 89 – Restriction on power to enter default judgment if Convention certificate of service is not filed

This section of the Regulations applies when a Convention certificate of service has not been filed in the proceedings, or where it has been filed but service has not been effected, and the defendant has not appeared or filed a notice of address for service. In these circumstances, default judgment can be entered into if the court is satisfied that an adequate time period has elapsed since the initiating process was forwarded to the appropriate authority, and every reasonable effort has been made to effect service or obtain a Convention certificate of service. The intent of this section is to provide clarification regarding when a default judgment can be entered into in the circumstances outlined in subsection 89(1), to ensure the requirements outlined in Article 15 of the Hague Service Convention are met.

### Section 90 – Setting aside judgment in default of appearance

This section of the Regulations applies when default judgment has been entered against the defendant in proceedings to which Division 2 of Part 10 applies, and outlines when the court may set aside that judgment. Subsection 90(2) provides that the court may set aside the default judgment if satisfied that the defendant did not have knowledge of the initiating process (through no fault on the defendant's part) and has a *prima facie* defence to the proceedings. Subsection 90(3) provides that an application to set aside judgment may be filed within 12 months of the date that the judgment was entered. Where the 12-month time period has expired, the court may allow the application to be filed if it is within a time (from when the defendant acquired knowledge of the judgment) that the court considers reasonable. The intent of this section is to provide clarification regarding when a default judgment may be set aside to ensure the requirements of Article 16 of the Hague Service Convention are met.

## **Division 3—Service in countries that are parties to conventions other than the Hague Service Convention**

### Section 91 – Purposes of this Division

This section of the Regulations provides that each section in Division 3 of Part 10 is made for the purpose of paragraph 125(1)(a) of the Act. Paragraph 125(1)(a) of the Act provides that regulations may be made that provide for and in relation to the service overseas, pursuant to any convention between Australia and another country, of any documents in proceedings under the Act.

### Section 92 – Application of this Division

This section of the Regulations provides that Division 3 of Part 10 applies to the service of a local judicial document in a Cooperation Convention country for a Cooperation Convention. The intent of this Division is to capture any Cooperation Conventions in force for Australia about legal proceedings in civil and commercial matters, other than the Hague Service Convention. If the Hague Service Convention is to be used then Division 2 of Part 10 applies. To ensure this Division can operate as broadly as possible, relevant Conventions these provisions may apply to have not been listed.

### Section 93 – Meaning of *Cooperation Convention* and *Cooperation Convention country*

This section of the Regulations provides definitions for ‘Cooperation Convention’ and ‘Cooperation Convention country’. The inclusion of specific definitions assists to remove any doubt about the meaning of these words and phrases.

### Section 94 – Service in accordance with Cooperation Convention

This section of the Regulations provides that documents to be served under a Cooperation Convention must be served in accordance with Division 3 of Part 10.

### Section 95 – Application for request for service abroad

This section of the Regulations outlines the requirements for the form and content of an application to the relevant Registrar to request service in a Cooperation Convention country of a local judicial document, and the documents that must accompany such an application to enable service to be validly effected.

The intent of this section is to provide clarity on the required contents of an application for a request for service and to ensure that the requirements of the Cooperation Convention are met. To ensure this section is able to operate as broadly as possible, the section also clarifies at subsection (3) that, for the purposes of paragraphs (2)(a) and (c), Form 1 and Form 2 in Schedule 3 may be modified as necessary to facilitate the application of the Forms to the Cooperation Convention, notwithstanding the fact that these Forms were originally developed for use under the Hague Service Convention.

### Section 96 – How application is to be dealt with

This section of the Regulations provides the actions to be undertaken by the relevant Registrar when they receive an application for a request for service abroad, including signing the request and forwarding relevant documents. The intent of this section is to provide clarity for the relevant Registrar regarding the actions they must undertake upon receipt of an application for a request for service to ensure that the requirements of the Cooperation Convention are met. Subsection (3) provides that the relevant Registrar must inform the applicant if the application does not meet the requirements in section 95, which is intended to give the applicant an opportunity to correct any non-compliance.

### Section 97 – Procedure on receipt of certificate of service

This section of the Regulations outlines the procedure to be undertaken by the relevant Registrar when a Cooperation Convention certificate of service is received, including filing the certificate

and sending a copy to the applicant or their legal practitioner. The intent of this section is to provide clarity for the relevant Registrar regarding the actions they must undertake upon receipt of a Cooperation Convention certificate of service, to ensure that the requirements of the Cooperation Convention are met. To ensure this section is able to operate as broadly as possible, subsection 97(2) clarifies that a certificate of service is in due form if it has been completed in compliance with the requirements (if any) of the Cooperation Convention, rather than listing what the relevant requirements are.

#### Section 98 – Payment of costs

This section of the Regulations outlines that, on receipt of a notice for the costs of service under subsection 97(3) of the Regulations, the legal practitioner or applicant must pay the specified amount to the relevant Registrar. The section also outlines the consequence of the legal practitioner or applicant failing to pay that amount within 28 days of receiving the notice. The intent of subsection 98(2) is to clarify that the relevant Registrar has the authority to enforce the security provided by the applicant or legal practitioner if payment is not made within 28 days of receiving the notice.

#### Section 99 – Evidence of service

This section of the Regulations provides that in the absence of any evidence to the contrary, a Cooperation Convention certificate of service is sufficient proof that service of the document was effected by the method, and on the date, specified in the certificate. It is also evidence that where the method of service was requested by the applicant, that method is compatible with the law in force in the Cooperation Convention country in which service was effected.

### **Division 4—Overseas maintenance orders**

#### **Subdivision A—General**

#### Section 100 – Purposes of this Division

This section of the Regulations provides that each section in Division 4 of Part 10 is made for the purposes of section 110 of the Act. Section 110 of the Act provides, in part, that regulations may make provision for and in relation to a range of matters regarding overseas maintenance orders.

#### Section 101 – Meaning of *maintenance order*—prescribed orders

This section of the Regulations provides that an order made under sections 67D or 67E of the Act is a maintenance order within the definition of ‘maintenance order’ in paragraph 110(1)(e) of the Act.

#### Section 102 – Reciprocating jurisdictions

This section of the Regulations provides that each of the countries, and parts of countries, specified in the table at Schedule 2 are reciprocating jurisdictions for the purposes of section 110 of the Act. The ‘reciprocating jurisdictions’ are countries, and parts of countries, from which Australia can accept applications for the registration and enforcement of child and spousal maintenance liabilities.



### Section 103 – Institution of spousal maintenance proceedings

This section of the Regulations provides that the office of Secretary of the Attorney-General's Department is a prescribed authority for the purposes of section 89A of the Act. Section 89A of the Act provides that regulations may stipulate and regulate the prescribed authorities that may institute and prosecute proceedings relating to the maintenance of a party to a marriage, on behalf of that party. This section enables the Secretary of the Attorney-General's Department, and persons authorised by the Secretary, to undertake functions under the Act. The office of Secretary is prescribed to, at their discretion, institute and prosecute proceedings with respect to the maintenance of a party to a marriage, on behalf of that party.

### Section 104 – Conversion of foreign currency – overseas maintenance order, agreement or liability

This section of the Regulations provides the procedure for the conversion of foreign currency into Australian dollars in relation to overseas maintenance orders, agreements and liabilities. The section outlines the types of documents this procedure applies to, and clarifies that a document that contains an amount expressed in foreign currency is taken to refer to the equivalent amount in Australian dollars for the purposes of enforcement and registration. The intent of the procedure outlined in section 104 is to provide consistency with the *Child Support (Registration and Collection) Regulations 2018*, and ensure use of the same currency conversion process as the Child Support Registrar.

### **Subdivision B – Confirmation of an overseas maintenance order made in a reciprocating jurisdiction**

#### Section 105 – Provisional overseas maintenance orders made in a reciprocating jurisdiction

This section of the Regulations outlines the requirements for a provisional overseas maintenance order to be confirmed in Australia. This section also provides that where the requirements outlined in subsection 105(1) are met, the Secretary of the Attorney-General's Department, and persons authorised by the Secretary, must make and serve the respondent with an application calling upon the respondent to show cause why the provisional maintenance order should not be confirmed.

Section 105 also provides that the Secretary is prevented from issuing an application in overseas maintenance cases where administrative assessments of child support could be issued by the Registrar of Child Support. This is to ensure the system established by the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988* is used for all suitable matters.

#### Section 106 – Determination of Secretary's application

This section of the Regulations provides for the actions that may be taken by the court to determine an application made by the Secretary of the Attorney-General's Department in relation to a provisional overseas maintenance order that has been received in accordance with section 105 of the Regulations. Subsection 106(1) also outlines the grounds of opposition that may be raised by the respondent to the application, and subsection 106(5) provides that the Secretary must notify an officer of the court in the reciprocating jurisdiction of the court's determination.

Subsection 106(4) provides that, if the court adjourns proceedings, they may make a temporary order for the respondent to make periodic payments.

Section 106 also provides that that Australian courts are prevented from issuing maintenance orders in overseas maintenance cases where administrative assessments of child support could be issued by the Registrar of Child Support. This is to ensure the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988* are applied to all suitable matters.

#### Section 107 – Effect of order confirming provisional overseas maintenance order

This section of the Regulations provides that once an order is confirmed by the court it has the same effect in Australia as if it were an order made under the Act. This section ensures that, as a matter of practicality, all maintenance orders in Australia have the same effect, regardless of whether or not they were originally made in a reciprocating jurisdiction.

#### **Subdivision C—Confirmation of provisional variation etc. of Australian maintenance order**

##### Section 108 – Confirmation of provisional variation etc. of Australian maintenance order

This section of the Regulations provides the requirements for the Secretary of the Attorney-General's Department to undertake to apply for confirmation of a provisional variation of an order made in Australia. Subsection 108(1) outlines that this section will apply when the Secretary receives:

- a certified copy of a provisional order made by a court in a reciprocating jurisdiction varying, discharging, suspending or reviving a maintenance order, and
- a copy of the depositions of the witnesses who gave evidence at the hearing when the provisional order was made.

Subparagraphs 108(1)(a)(i) and (ii) provides that the relevant provisional order must be either made in Australia and be enforceable in the reciprocating jurisdiction, or made in the reciprocating jurisdiction and enforceable in Australia.

This section also provides that, as a matter of practicality, all provisional orders once confirmed by Australian courts have the same effect as an order made under the Act, regardless of whether they were originally made in a reciprocating jurisdiction or not.

#### **Subdivision D—Order in response to a United States petition seeking a support order**

Subdivision D of Division 4 of Part 10 of the Regulations gives effect to the Agreement between the Government of the United States of America and the Government of Australia for the enforcement of Maintenance (Support) Obligations, which was concluded and entered into force on 12 December 2002.

##### Section 109 – United States petition seeking a support order

This section of the Regulations outlines the requirements for the Secretary of the Attorney-General's Department (the Secretary), and persons authorised by the Secretary, to undertake when a petition has been filed in a United States court seeking a support order. Subsection 109(1) outlines that this section will apply when:

- a petition for a support order has been filed in a US court claiming that a person has a duty of support

- the United States court has given a certificate that, based on the facts set out in the petition, determines the person owes a duty of support
- the Secretary has received certified copies of the petition and the certificate, and a copy of the relevant provisions of the United States law to which the petition and certificate relate, and
- there are reasonable grounds for believing that the person is resident in, present in or proceeding to Australia.

Subsection 109(2) provides that where the requirements outlined in subsection 109(1) are met, the Secretary must make an application to the court calling on the respondent to show cause why such an order should not be made. Subsection 109(3) provides that the Secretary must serve a copy of the application on the respondent.

Section 109 also provides that the Secretary is prevented from issuing an application in overseas maintenance cases where administrative assessments of child support could be issued by the Registrar of Child Support. This is to ensure the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988* are applied to all suitable matters.

#### Section 110 – Determination of Secretary’s application

This section of the Regulations provides for the actions that may be taken by the court to determine an application made by the Secretary of the Attorney-General’s Department in relation to a petition from a United States court received in accordance with section 108. Paragraphs 110(1)(a) and (b) also outline the grounds of opposition that may be raised by the respondent to the application. Subsection 110(5) provides that the Secretary must notify the court in the United States of the Australian court’s determination.

Subsection 110(4) provides that, if the court adjourns proceedings, they may make a temporary order for the respondent to make periodic payments.

Section 110(6) provides that Australian courts are prevented from issuing maintenance orders in overseas maintenance cases where administrative assessments of child support could be issued by the Registrar of Child Support. This is to ensure the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988* are applied to all suitable matters.

#### **Subdivision E—Australian provisional maintenance order against person in reciprocating jurisdiction**

##### Section 111 – Provisional maintenance order against person in reciprocating jurisdiction

This section of the Regulations provides the circumstances in which an Australian court may make a provisional maintenance order against a person in a reciprocating jurisdiction. Notably, under subsection 111(2), this includes circumstances where the respondent has not been served with the application and has not consented to the order. Subsection 111(3) provides that the court can make any order that could have otherwise been made, as if the application had been served on the respondent and the respondent failed to appear at the hearing.

Subsection 111(4) provides that Australian courts are prevented from issuing provisional orders where an application could properly be made under the *Child Support (Assessment) Act 1989* and

the *Child Support (Registration and Collection) Act 1988*. This ensures the child support framework is applied to all suitable matters.

#### Section 112 – Provisional maintenance order must be confirmed by a court in the reciprocating jurisdiction

This section of the Regulations provides that a provisional order made by the court in accordance with section 111 of the Regulations has no effect unless expressed to be provisional, and until confirmed by an overseas court in the jurisdiction the respondent is resident in at the time of confirmation. This section also provides the procedure to be undertaken by the relevant Registrar and the Secretary of the Attorney-General's Department where a provisional order has been made by the court in accordance with section 111 of the Regulations. This procedure relates to the sending of relevant documents and information and supports the purpose of this section, which is to ensure the overseas court has access to all relevant information needed to confirm and enforce the order.

#### Section 113 – Taking of further evidence

This section of the Regulations provides the procedure to be followed by the court where a reciprocating jurisdiction has returned a provisional order (made in accordance with section 111) to the court for the taking of further evidence. Subsection 113(3) provides that the Australian court may, on the taking of further evidence, revoke the order or make a fresh provisional order if it appears to the court that the provisional order should not have been made. Subsection 113(4) clarifies that the Australian court may have regard to the evidence given in the reciprocating jurisdiction when making its decision.

#### Section 114 – Effect of confirmation of a provisional order against person in reciprocating jurisdiction

This section of the Regulations provides that it must be presumed that, where a court in a reciprocating jurisdiction confirms a provisional order made under section 111, the respondent was resident in the overseas jurisdiction at the time the order was confirmed. The presumption stands unless the contrary is proved. The intent of this section is to allow the court, as a matter of practicality, to assume the person was in the reciprocating jurisdiction when the order was confirmed without requiring evidence of the person's residence.

#### **Subdivision F—Enforcement of an overseas maintenance liability**

#### Section 115 – Proceedings for enforcement of overseas maintenance liabilities

This section of the Regulations allows overseas maintenance liabilities that are included in the Child Support Register under section 25A of the *Child Support (Registration and Collection) Act 1988* to be enforced under the Act. Section 115 provides that such liabilities may be taken as if they were an order made under Part VII or VIII of the Act, and clarify that the Act, the Regulations and the applicable Rules of Court apply in relation to the proceedings. Subsection 115(4) specifies who proceedings may be taken by. The intent of this section is to ensure consistency with the *Child Support (Registration and Collection) Act 1988*.

## **Subdivision G—Cancellation**

### Section 116 – Cancellation of Australian maintenance order in a reciprocating jurisdiction

This section of the Regulations provides for the court to direct that steps be taken to cancel the registration of a maintenance order in a reciprocating jurisdiction, being a maintenance order that was originally made in an Australian court. The court can make this direction if satisfied there are reasonable grounds for believing the person against whom the order was made is not resident in, or proceeding to, the reciprocating jurisdiction, or there is some good reason why the order should no longer be enforceable. Subsection 116(3) outlines the procedure to be undertaken when the court has directed that steps be taken to cancel the registration of the order in the reciprocating jurisdiction.

### Section 117 – Cancellation of overseas maintenance order

This section of the Regulations provides for the cancellation of an overseas maintenance order in an Australian court. The section outlines the procedure for the court to cancel a registration or revoke a confirmation of an order where a request has been received from a reciprocating jurisdiction to cancel the order. The section applies to overseas maintenance orders confirmed in an Australian court under the Regulations or the 1984 Regulations; or maintenance orders registered in an Australian court before 1 July 2000 under the 1984 Regulations or the *Family Law Regulations 1975*. Subsection 117(3) confirms that when the order's registration or confirmation is cancelled or revoked, it is no longer enforceable in Australia. The section requires the relevant Registrar of the Australian court to notify the person who was required to make payments under the order that it has been cancelled or revoked.

## **Subdivision H—Variation etc. of certain overseas maintenance orders, agreements and liabilities**

### Section 118 – Purpose of this Subdivision

This section of the Regulations provides that each section in Subdivision H of Part 10, Division 4 is made for the purposes of sections 89, 110 and 110A of the Act. Sections 89, 110 and 110A of the Act provide that regulations may regulate the making, registering, enforcing and other procedures of overseas maintenance orders, overseas maintenance agreements and overseas administrative assessments of maintenance liabilities.

### Section 119 – Party in Australia may apply to vary etc. overseas maintenance order, agreement or liability

This section of the Regulations provides that the court may make an order to discharge, suspend, revive or vary certain overseas maintenance orders. Subsection 119(1) provides that this section applies to the following:

- an overseas maintenance order made in a reciprocating jurisdiction that was registered in an Australian court under the 1984 Regulations or the Family Law Regulations 1975 before 1 July 2000
- an overseas maintenance agreement registered in an Australian court under the 1984 Regulations or the Family Law Regulations 1975 before 1 July 2000

- an overseas maintenance liability included in the Child Support Register under section 25A of the *Child Support (Registration and Collection) Act 1988*
- a registerable overseas maintenance liability within the meaning of the *Child Support (Registration and Collection) Act 1988*.

Subsection 119(3) provides that an application to the court to discharge, suspend, revive or vary an overseas maintenance order (in accordance with subsection 119(1)) may be made by the person for whose benefit the order was created, the person against who the order was made, or the Secretary of the Attorney-General's Department on behalf of either person. Section 119 provides that the court may make an order under section 119 to discharge, suspend, revive or vary the order, agreement or liability, even if the respondent has not been served and has not consented to the order.

To ensure consistency with the *Child Support (Registration and Collection) Act 1988*, this section clarifies that overseas maintenance orders include an overseas maintenance liability included in the Child Support Register under section 25A of that Act, and a registerable overseas maintenance liability within the meaning of the *Child Support (Registration and Collection) Act 1988*.

#### Section 120 – Determination of application made in absence of party

This section of the Regulations applies to an application made under subsection 119(2) where the applicant is the person against whom the maintenance order or liability (made under paragraph 119(1)(a), (c) or (d)) was made. Paragraph 120(1)(b) provides this section applies where the applicant did not:

- have notice of the proceedings giving rise to the order or liability
- appear in those proceedings, and
- consent to the making of the order or the creation of the liability.

In those circumstances, it is open to the applicant to raise any matter that they could have raised under Part VII or VIII of the Act had the proceedings been heard in Australia. The application must be made within 6 months of the person receiving notice that the order or liability is enforceable in Australia.

#### Section 121 – Status of variation etc. order

This section of the Regulations provides that an order made under section 119 of the Regulations is provisional if it has been made in Brunei Darussalam, a Canadian Province or Territory specified in an item of the table in Schedule 2, Cook Islands, Cyprus, Fiji, Gibraltar, Hong Kong, India, Kenya, Malawi, Malaysia, Malta, Nauru, New Zealand, Papua New Guinea, Republic of Ireland, Sierra Leone, Singapore, South Africa, Sri Lanka, Tanzania (excluding Zanzibar), the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, Trinidad and Tobago, or the United Kingdom, including Alderney, Guernsey, Isle of Man, Jersey and Sark.

The intent of this section is to capture circumstances where the law of a reciprocating country states that the variation of these orders must be confirmed by a court in that country. In these circumstances, the variation by the Australian court is provisional and has no effect until a court in the reciprocating country confirms the variation.

Subsection 121(2) provides that the variation by the Australian court is otherwise final and has effect immediately. This applies where the law in a reciprocating country makes no provision for confirmation of variations.

#### Section 122 – Provisional variation etc. order must be confirmed by court in reciprocating jurisdiction

This section of the Regulations provides that a provisional order made by the court in accordance with section 119 of the Regulations has no effect unless expressed to be provisional, and until confirmed by an overseas court in the jurisdiction the respondent is resident in at the time of confirmation. This section also provides the procedure to be undertaken by the relevant Registrar and the Secretary of the Attorney-General's Department, and persons authorised by the Secretary, where a provisional order has been made by the court in accordance with section 119 of the Regulations. This procedure relates to the sending of relevant documents and information and supports the purpose of this section, which is to ensure the overseas court has access to all relevant information needed to confirm and enforce the order.

#### Section 123 – Taking of further evidence

This section of the Regulations provides the procedure the court must take where the court has made a provisional order under section 119 of the Regulations and the reciprocating jurisdiction has remitted the order to the Australian court for the taking of further evidence, including requirements about notice, taking evidence and sharing witness depositions with the reciprocating jurisdiction. Subsection 123(3) provides that the Australian court may, on the taking of further evidence, revoke the order or make a fresh provisional order if it appears to the court that the provisional order should not have been made. Subsection 123(4) clarifies that the Australian court may have regard to evidence given in the reciprocating jurisdiction if the order is to be revoked or if a new provisional order is to be made.

#### Section 124 – Effect of confirmation of provisional order against person in reciprocating jurisdiction

This section of the Regulations provides that where a court in a reciprocating jurisdiction confirms a provisional order made under subsection 119(4) of the Regulations, the order will have effect in Australia as so confirmed. This section provides certainty about the operation of provisional orders.

### **Division 5—Convention on the Recovery Abroad of Maintenance**

#### Section 125 – Purposes of this Division

This section of the Regulations provides that each section in Division 5 of Part 10 is made for the purposes of section 111 of the Act. Section 111 of the Act provides that regulations may be made to enable the performance of Australia's obligations under the United Nations Convention on the Recovery Abroad of Maintenance 1956 (Recovery Convention), signed at New York on 20 June 1956.

#### Section 126 – Meaning of *Recovery Convention*, *Recovery Convention country* and of certain other terms used in this Division

This section of the Regulations sets out the definition of terms used in Division 5 of Part 10. The terms defined by this section are 'Receiving Agency', 'Recovery Convention', 'Recovery

Convention country’ and ‘Transmitting Agency’. The inclusion of specific definitions assists to remove any doubt concerning the meaning of these words and phrases, and enables shorter titles to be used to increase readability.

#### Section 127 – Immunity of Secretary from orders to pay costs

This section of the Regulations provides that the Secretary of the Attorney-General’s Department must not be made subject to any order to pay costs in relation to the exercise of a power conferred under Division 5 of Part 10 of the Regulations.

#### Section 128 – Applications by persons in Recovery Convention countries for recovery of maintenance under Commonwealth, State or Territory law

This section of the Regulations provides for the procedure where an application is received by the Secretary of the Attorney-General’s Department for the recovery of maintenance under the Recovery Convention, including an application to vary an existing order. Subsection 128(2) provides that the Secretary may do anything required to be done by a Receiving Agency under the Recovery Convention to recover maintenance on behalf of the person to be paid maintenance. Subsection 128(3) clarifies that ‘things that may be done’ does not include registration or enforcement of an order. The intent of this section is to provide clarification of the procedure to be undertaken upon receipt of an application under the Recovery Convention, to ensure the requirements outlined in Article 6 of the Recovery Convention are met.

#### Section 129 – Proceedings on behalf of persons in Recovery Convention countries for recovery of maintenance

This section of the Regulations applies in relation to proceedings on behalf of a person in a convention country for the recovery of maintenance. The section directs that the court must proceed as if the claimant were before the court. The section also prevents courts in Australia from issuing maintenance orders in overseas maintenance cases where administrative assessments of child support could be issued by the Registrar of Child Support. This is to ensure the system established by the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988* is used for all suitable matters.

#### Section 130 – Return of applications

This section of the Regulations provides the procedure for the Secretary of the Attorney-General’s Department to return an application received under subsection 128(1) of the Regulations, where the person is required to appear in person in the proceedings and a summons is not able to be served on the person. In that situation, the Secretary must return the application to the Transmitting Agency and provide a statement giving whatever information has been obtained in relation to the whereabouts of the person. The requirements outlined in this section ensures that Australia is meeting its obligations as a Receiving Agency under Article 6 of the Recovery Convention.

#### Section 131 – Certain request to be made only with leave of court

This section provides that in proceedings under Division 5 of Part 10, without the leave of the court respondents may not seek:

- a request for answers to specific question



- a request to make discovery of documents
- a notice to produce documents, or
- a notice to admit facts or documents.

#### Section 132 – Taking of evidence at request of appropriate authority in Recovery Convention countries

This section of the Regulations provides for the procedure and requirements for the Secretary of the Attorney-General's Department, and persons authorised by the Secretary, and the court when a request is received from a Recovery Convention country to obtain evidence about an application to recover maintenance, or vary an order, where the person is subject to the jurisdiction of the Recovery Convention country. Subsection 132(3) provides that the Secretary must send a certified copy of a record of the evidence to the appropriate authority of the Recovery Convention country. Section 132 provides that if the Secretary requests the court to take evidence the court must give sufficient notice of the time and place where the evidence is to be taken.

The requirements outlined in this section ensures that Australia is meeting its obligations as a Receiving Agency under the Recovery Convention to undertake all appropriate steps for the recovery of maintenance.

#### Section 133 – Obtaining evidence in Recovery Convention countries for purposes of proceedings under this Division

This section of the Regulations provides that for the purpose of overseas maintenance proceedings the court may require the Secretary of the Attorney-General's Department to request the Recovery Convention country obtain evidence required for the proceedings. The section outlines the requirements and procedure for the court and the Secretary. The requirements outlined in this section ensures that Australia is meeting its obligations as a Receiving Agency under the Recovery Convention.

The section also provides that nothing in section 133 affects the power of a court to request the taking of evidence within or outside Australia.

#### Section 134 – Admissibility of evidence given in Recovery Convention countries

This section of the Regulations provides for the admissibility of evidence in Australian courts, of evidence given in a Recovery Convention country. The section provides that a statement contained in a document that meets the requirements of paragraphs (a) to (c) is admissible as evidence in an Australian court of any fact stated in the document to the same extent that oral evidence is admissible in the proceedings. This section provides that evidence given in a Recovery Convention country is admissible in proceedings in Australia, despite any inconsistency with the *Evidence Act 1995* or with any other law about evidence. The section provides that proof of the signature of the person that signed the document and the official position of that person is not necessary.

#### Section 135 – Orders of court in Recovery Convention countries

This section of the Regulations provides for the admissibility of an order made in a Recovery Convention country that has been signed by a judge or other officer of the court. The section

provides that proof of the signature of the person purporting to have signed it or of the official position of that person is not required for the order to be admissible as evidence.

### **Part 11—Sanctions for failure to comply with orders, and other obligations, that do not affect children**

#### Section 136 – Prescribed maximum period—sentence or order

This section of the Regulations prescribes 200 hours as the ‘maximum period’ in relation to each State and Territory, for the purposes of subsection 112AG(6) of the Act.

Section 112AG of the Act empowers the court to order community-based sentences or orders (for example, a community service order), where the necessary arrangements are in place with a State or Territory. The duration of a sentence imposed on a person, or an order directed to a person, under this provision shall not exceed the maximum period of 200 hours.

### **Part 12—Declarations and injunctions**

#### Section 137 – Operation of State and Territory laws—prescribed laws

This section of the Regulations prescribes relevant State and Territory legislation for the purposes of section 114AB of the Act. The prescribed laws are those under which family violence protection orders can be made in each Australian State and Territory.<sup>17</sup>

Section 114AB of the Act provides that, in summary, if a person has sought, or is seeking, a family violence protection order under a prescribed State or Territory law, they are not entitled to also seek an injunction under sections 68B or 114 of the Act. An exception to this is where the protection order proceedings have lapsed, been discontinued or dismissed, or the orders have been set aside or are no longer in force.

### **Part 13—Restriction on communication of accounts and lists of proceedings**

#### Section 138 – When a communication is not a communication to the public—prescribed authorities of States or Territories that have responsibilities relating to the welfare of children

Subsections 114Q(1)(a) and 114R(1) of the Act contain offences that protect against the public communication of identifiable information about people in family law proceedings. Subsection 114S(2) of the Act specifies when a communication is not a communication to the public for the purposes of the offences contained in paragraph 114Q(1)(a) and subsection 114R(1). Paragraph 114S(2)(c) of the Act states that a communication of a pleading, transcript of evidence, or other document, to a prescribed authority of a State or Territory that has responsibilities relating to welfare of children is not a communication to the public.

Section 138 of the Regulations prescribes State and Territory departments and directorates that have responsibilities for the welfare of children. These include the New South Wales Department of Communities and Justice; the Victorian Department of Families, Fairness and Housing; the Queensland Department of Families, Seniors, Disability Services and Child Safety; the Western

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<sup>17</sup> The prescribed laws include the *Crimes (Domestic and Personal Violence) Act 2007* (NSW), *Property (Relationships) Act 1984* (NSW), *Family Violence Protection Act 2008* (Vic.), *Domestic and Family Violence Protection Act 2012* (Qld), *Restraining Orders Act 1997* (WA), *Intervention Orders (Prevention of Abuse) Act 2009* (SA), *Sentencing Act 2017* (SA), *Family Violence Act 2004* (Tas.), *Justices Act 1959* (Tas.), *Family Violence Act 2016* (ACT), *Domestic and Family Violence Act 2007* (NT) and *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI).

Australian Department of Communities; the South Australian Department for Child Protection; the Tasmanian Department for Education, Children and Young People; the Australian Capital Territory Community Services Directorate; and the Northern Territory Department of Territory.

This section ensures that necessary information can be shared with agencies that may have direct care and responsibilities for children, including information sharing in relation to children who may be the subject of state-based child welfare orders, communications about family violence risks and other related information sharing.

## **Part 14—Miscellaneous**

### Section 139 – Priority of attachment orders

Courts exercising family law jurisdiction can make various types of maintenance orders. An attachment of earnings order can be made by a court and directed to a third party, such as an employer, who holds money on behalf of a person subject to a maintenance order to require the third party to set aside payments for the purposes of the maintenance order.

Paragraph 125(1)(g) of the Act contains a power to make regulations providing for and relating to the execution of orders made under the regulations or the repealed *Matrimonial Causes Act 1959*, for the attachment of moneys payable by the Commonwealth, State or Territory and the execution of orders made in accordance with the *Maintenance Orders (Commonwealth Officers) Act 1966*. The *Maintenance Orders (Commonwealth Officers) Act 1966* deals with maintenance orders, attachment of earnings and interaction of State, Territory and Commonwealth provisions.

Section 139 of the Regulations provides for the priority of attachment orders. This section states that for the purposes of the *Maintenance Orders (Commonwealth Officers) Act 1966*, an order made under the applicable Rules of Court for the attachment of moneys payable by the Commonwealth, a State, a Territory (or their authorities) or an Administration of a Territory has the same force and effect as an order made under the Third Schedule of the now repealed *Matrimonial Causes Act 1959*, with the exception of any moneys which State or Territory legislation states are not liable to attachment. This regulation makes clear that attachment orders made under the *Maintenance Orders (Commonwealth Officers) Act 1966* are not invalid due to the existence of orders that have been made under the *Matrimonial Causes Act 1959*, making clear that orders made under either Act remain in effect and in force.

Where orders are made under both Acts, the *Maintenance Orders (Commonwealth Officers) Act 1966* provides that attachment of earnings orders under the Third Schedule of the *Matrimonial Causes Act 1959* are deemed to have priority over attachment of earnings under the *Maintenance Orders (Commonwealth Officers) Act 1966*. If such a case arises, any difference in payment required under the *Maintenance Orders (Commonwealth Officers) Act 1966*, taking into account the amount required in accordance with an order made under the *Matrimonial Causes Act 1959*, remains payable.

## **Part 15—Application, saving and transitional provisions**

### Section 140 – Transition from the *Family Law Regulations 1984*

This section of the Regulations contains transitional provisions to ensure that these regulations apply to a dispute, proceedings or a matter under the Act that starts on or after the commencement of these regulations. The Regulations also apply to disputes, proceedings or matters under the Act,

that started before the Regulations commence but are continuing after that commencement. The Regulations do not have retrospective application; they apply as the dispute, proceedings or matter continue on and past the commencement date of 1 April 2025. This section provides clarity and certainty on when the Regulations apply.

A subsection is also inserted to allow the court to order that a provision of the 1984 Regulations is to apply to a thing being done on or after commencement of these regulations, in disputes, proceedings or matters started before that commencement. This is to ensure the court can effectively manage matters fairly, and apply the 1984 Regulations where appropriate in the circumstances.

#### Section 141 – Things done under the *Family Law Regulations 1984*

This section specifies that if a thing was done under the 1984 Regulations, and could be done under the Regulations, then it has effect for the purposes of the Regulations as if it was done for that purpose under the Regulations. Subsection 2 provides a non-exhaustive list of examples of what those things might be, including the giving or making of an application, direction, notice or order. This provision enables actions taken under the 1984 Regulations to still have effect after commencement of the Regulations, and assists in ensuring a smooth transition between the two instruments.

#### Section 142 – Conduct, event or circumstance occurring before commencement of this instrument

This section confirms that functions, duties and powers under the Regulations can be performed or exercised in relation to conduct, events or circumstances that occurred prior to the Regulations commencing. Subsection 2 reiterates that this section does not limit this Part or section 7 of the *Acts Interpretation Act 1901*.

#### Section 143 – Directions and relief relating to non-compliance

Section 143 specifies that sections 16 and 17 of the Regulations also apply to non-compliance, or the need to comply, with the 1984 Regulations, as in force immediately before the Regulations commenced. In summary, section 16 provides that non-compliance with these regulations does not render proceedings court void unless the court so directs, and provides matters the court may have regard to when exercising its discretion under section 16. Section 17 provides, in summary, that the court or a relevant Registrar has the power to relieve a party from the consequences of non-compliance with these regulations, rules of court or an order made by a relevant Registrar or the court. Ensuring these sections apply to non-compliance with both the 1984 Regulations and the Regulations provides courts and relevant Registrars with consistent powers to deal with non-compliance, regardless of when that non-compliance occurred.

#### Section 144 – Saving of certain provisions of the *Family Law Regulations 1984*

Sections 69D and 89A of the Act establish powers to prescribe Commonwealth, State and Territory authorities for the purpose of instituting, conducting and prosecuting proceedings relating to child and spousal maintenance. Regulation 15 of the 1984 Regulations prescribes offices of the Collector of Maintenance, Deputy Collector of Maintenance and Assistant Collector of Maintenance established under State or Territory laws as prescribed authorities for the purposes of sections 69D and 89A, and sets out that such officeholders may institute, continue or prosecute child or spousal maintenance proceedings.

Regulation 15 of the 1984 Regulations also sets out that such officeholders and officers of State and Territory summary courts can institute, continue or prosecute proceedings on behalf of a person entitled to moneys under child or spousal maintenance orders. Section 144 of the Regulations makes clear that regulation 15 of the 1984 Regulations continues to apply in relation to orders that were in force immediately before the commencement of these regulations.

### Section 145 – Arbitration matters

Section 145 of the Regulations provides the transitional and savings arrangements for arbitration matters.

#### *Requirement for name to be included in list of arbitrators*

Subsection 145(1) clarifies that people who are in the list of arbitrators before the Regulations commence, will continue to be in the list under subsection 21(2). This means that these people only need to meet the continuing eligibility requirements under subsection 21(6) to remain in the list.

#### *Application of additional safeguards*

Sections 26 and 27 of the Regulations introduces safeguards to the arbitration process that require parties to make an arbitration agreement, and for the arbitrator to be satisfied that certain information has been given to the parties before they can conduct an arbitration.

Subsection 145(2) ensures these safeguards apply to all arbitrations, whether the arbitration commenced before, on or after the Regulations, other than only arbitration to which subsection 145(4) applies.

Subsection 145(3) clarifies that sections 26 and 27 shall not apply to arbitrations if, before the Regulations commence:

- the parties to the arbitration have made an arbitration agreement under regulation 67F of the 1984 Regulations
- each party to the arbitration has been given a notice by the arbitrator under regulation 67G of the 1984 Regulations, or
- a court has made an order under subsection 13E(1) of the Act referring a proceeding to arbitration.

Subsection 145(4) provides for regulations 67F and 67G of the 1984 Regulations to continue applying in relation to the arbitrations that are underway when these regulations commence. Saving these provisions ensures the exceptions in paragraph 145(3)(a) and (b) can apply to arbitrations.

#### *Registration of award made in arbitration*

Section 37 of the Regulations provides the registration process for an award, including to remove the right that previously existed in the 1984 Regulations for a party to object to the registration of an award.

Subsection 145(5) provides for section 37 to apply to all awards made before, on, or after the Regulations commence. This means that parties cannot object to the registration of an award if the

application to register the award is made after the Regulations commence. However, subsections 145(6) and (7) provides that section 37 does not apply when a party raises an objection to registration before the commencement of the Regulations and the court has not made a determination about if the award will be registered. This ensures these parties' right to object continues despite the Regulations commencing.

#### Section 146 – Cancellation of registration of overseas maintenance agreement registered before 1 July 2000

This section provides a power for regulations to be made about the registration, operation and transmission of overseas maintenance agreements. Section 146 of the Regulations is made for the purposes of section 89 of the Act, and deals with the cancellation of registration of overseas maintenance agreements registered before July 2000.

Section 146 applies if:

- an overseas maintenance agreement made in a prescribed overseas jurisdiction, was registered under the 1984 Regulations before 1 July 2000, and is enforceable in Australia, and
- the Australian court the agreement was registered in receives a written request that the agreement no longer be enforceable in Australia, from the parties or the overseas court or authority which signed the certificate for the agreement.

In these circumstances, section 146 of the Regulations prescribes that the relevant Registrar of the Australian court must cancel the registration of an overseas maintenance agreement, and note this fact and the date of cancellation on a certified copy of the agreement filed in the court.

Section 146 of the Regulations also makes clear that an overseas maintenance agreement cancelled under this section ceases to be enforceable in Australia and requires the relevant Registrar cancelling the agreement to provide notice of cancellation to the person required to make payments. This section provides necessary mechanisms for the cancellation of specified overseas maintenance orders, ensuring that appropriate notification of cancellation occurs.

#### Section 147 – Continuation of appointment of family consultants

This section states that an appointment of a family consultant made under regulation 7 of the 1984 Regulations (that is in force immediately before the commencement of the Regulations) continues to be in force, and may be dealt with as if it had been made under section 40 of the Regulations. This section makes clear that appointments of family consultants made under the 1984 Regulations continue to be in force after 1 April 2025.

#### Section 148 – Continuation of list of accredited laboratories and nominated reporters

This section states that a list prepared by NATA made under regulation 21N of the 1984 Regulations for the financial year in which the Regulations commence (and in force immediately before the commencement of this instrument), continues to be in force, and may be dealt with as if it had been made under section 69 of the Regulations. This section makes clear that the list prepared by NATA made under the 1984 Regulations for the 2024-25 financial year continues to apply after 1 April 2025, until the end of the financial year.

## Section 149 – Parentage testing procedures

This section states that Division 7 of Part 7 of the Regulations applies in relation to parentage testing procedures done on or after commencement of the Regulations. This is the case regardless of whether the parentage testing order was made before, on or after commencement. This section makes clear that the requirements for parentage testing set out in the Regulations apply to all tests done on or after 1 April 2025.

### **Schedule 1 – Countries, or parts of countries, declared to be prescribed overseas jurisdictions for certain purposes**

Schedule 1 prescribes countries and parts of countries for the purposes of section 10 of the Regulations. Subsection 4(1) of the Act defines ‘prescribed overseas jurisdiction’ to mean any country or part of a country outside of Australia declared by the Regulations to be a prescribed overseas jurisdiction for the purposes of the provision in which the expression is used. Subsection 10(2) of the Regulations provides that, for the purposes of provisions relating to State, Territory and overseas child orders, each country or part of a country specified in Schedule 1 of the Regulations is a ‘prescribed overseas jurisdiction’.

### **Schedule 2 – Reciprocating jurisdictions etc.**

Schedule 2 specifies countries and parts of countries as reciprocating jurisdictions for the purposes of subsections 10(3) and 10(4) and section 102. To the extent it refers to foreign countries or parts of foreign countries, Schedule 2 also specifies those foreign countries or parts for the purposes of section 77.

### **Schedule 3—Forms**

This schedule provides 9 forms. Providing templates for users helps to ensure consistent levels of information are provided.

Forms 1 and 2 relate to international conventions and the service of local judicial documents overseas. Form 1 is to be used to request service abroad of judicial documents and certificates, as required by sections 82, 84 and 95. Form 2 provides a summary of the document to be served, as required by sections 82 and 95.

Forms 3, 4 and 5 relates to parentage evidence. Form 3 provides the template for a parentage testing procedure Affidavit, which is to be completed by/in relation to a donor, as set out in section 61. Form 4 provides the template statement that the sampler must complete, after taking a bodily sample for the purposes of a parentage test, in accordance with section 65. Form 5 provides the template for a parentage testing procedure report, which must be prepared in accordance with section 68.

Forms 6, 7, 8 and 9 relate to arbitration. Form 6 provides the application for arbitration form, as required by section 24. Form 7 provides the application form relating to relevant property or financial arbitration. In accordance with section 25 of the Regulations, an application under section 13F of the Act, for an order to facilitate the effective conduct of the relevant property or financial arbitration of a dispute, must be in accordance with Form 7. Form 8 provides the template application form to register an arbitration award, as required under section 37 of the

Regulations. Form 9 provides the template application form to register a decree affecting a registered arbitration award. This form is to be used in accordance with section 39 of the Regulations. That is, if a decree is made by a court under section 13J or 13K of the Act in relation to a registered award, the party who registered the award must apply for registration of the decree in the court in which the award is registered, using Form 9.

#### **Schedule 4—Jurisdictions and Recovery Convention countries**

This schedule provides the jurisdictions declared to be prescribed jurisdictions for the purposes of paragraph 69S(1A)(a) and subsection 69XA(4) of the Act, and subsection 10(3) of the Regulations. Schedule 4 also specifies jurisdictions for the purposes of subparagraph 77(2)(a)(ii) of the Regulations and specifies countries for the purposes of the definition of 'Recovery Convention country' in subsection 126(1) of the Regulations.

#### **Schedule 4A—Jurisdictions and Convention countries**

This schedule provides the jurisdictions declared to be prescribed jurisdictions for the purposes of paragraph 69S(1A)(a) and subsection 69XA(4) of the Act. Schedule 4A also list Convention countries within the meaning of section 117AC of the Act, for the purposes of that section.

#### **Comparison table from the *Family Law Regulations 1984***

<b>2024 Provision</b>	<b>Old number</b>	<b>New number</b>
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Meaning of <i>child welfare officer</i> – prescribed State or Territory offices	12BA	6
Meaning of <i>family violence order</i> – prescribed State or Territory laws	12BB	7
Meaning of forfeiture order – declared State and Territory orders	17A	8
Meaning of <i>income tested pension, allowance or benefit</i> – prescribed pensions, allowances or benefits	12A	9
Meaning of <i>prescribed overseas jurisdiction</i>	14	10
Meaning of <i>restraining order</i> – declared State and Territory orders	17B	11
Definition of <i>State or Territory proceeds of crime law</i> – declared State or Territory corresponding laws	17C	12
Meaning of <i>de facto relationship</i> – prescribed laws and relationships	12BC	13
Definition of <i>proceeds of crime authority</i>	17D	14
Directions as to practice and procedure	4	15
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Court or relevant Registrar may relieve from consequences of non-compliance	6	17
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Protected symbols	21AAB	19
Purposes of this Part	New	20
Prescribed requirements for arbitrator	67B	21
Meaning of arbitration agreement	67A	22
Disputes, proceedings or matters that may not be arbitrated	67C	23
Application for referral to arbitration	67D	24
Application relating to relevant property or financial arbitration	67E	25
Action arbitrator must take before arbitrating a dispute, proceeding or matter	New	26
Arbitration agreement	67F	27
Costs of arbitration	67H	28
Duties of arbitrator	67I	29
Oath or affirmation by arbitrator	67J	30
Suspension of arbitration – failure to comply with direction	67K	31
Termination of arbitration – inability to take part	67L	32
Appearance in arbitration	67M	33
Attendance of persons to give evidence	67N	34
Application of rules of evidence	67O	35
Making an award	67P	36
Registration of award	67Q	37
Enforcement of registered awards	67S	38
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Appointment of family consultants	7	40
Prescribed information about non-court based family services and court’s processes and services	8	41
Prescribed information about reconciliation	8A	42
Prescribed information about Part VII proceedings	8B	43
Certain jurisdiction of Federal Circuit and Family Court of Australia (Division 2) must not be exercised in States and Territories	39BB	44
Proceedings for divorce order not to be instituted in a court of summary jurisdiction other than a prescribed court	10A	45
Jurisdiction of courts	39C	46
Artificial conception procedures: child of woman and other intended parent—prescribed laws	12C	47
Artificial conception procedures: child of woman—prescribed laws	12CA	48
Children born under surrogacy arrangements—prescribed laws	12CAA	49
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