

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

The *Family Law Regulations 1984* (1984 Regulations) are 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, recommended some technical and factual updates. The *Family Law Regulations 2024* (the 2024 Regulations) will incorporate the findings and recommendations of the review.

The 1984 Regulations will be replaced by the 2024 Regulations.

Under subsection 33(3) of the Acts Interpretation Act 1901, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Consequential amendments are required to give effect to the 2024 Regulations when they commence. The *Family Law Legislation Amendment (Consequential Amendments) Regulations 2024* (the Consequential Regulations) will repeal the 1984 Regulations and make consequential amendments to one legislative instrument.

The Consequential Regulations are also made under section 285 of the *Federal Circuit and Family Court of Australia Act 2021*, which provides that regulations may be made to prescribe matters relating to fees. The Consequential Regulations will omit references to the 1984 Regulations and substitute references to the 2024 Regulations, in the Commonwealth *Family Law (Fees) Regulations 2022* made under the Family Law Act.

The consequential amendments do not give effect to any policy change. The purpose of the Consequential Regulations is to facilitate a smooth repeal and commencement of the remade 2024 Regulations and update references to the 1984 Regulations in one Commonwealth Regulation made under the Family Law Act.

CONSULTATION

As the primary purpose of the Consequential Regulations is repealing the 1984 Regulations, consultation was not considered necessary.

However, as the 2024 Regulations will replace the 1984 Regulations, they were subject to a public consultation process, with an exposure draft released for a five-week 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 with responsibility 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
 - 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 was relatively minor and technical in nature, covering 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 Office of Impact Analysis has confirmed that no impact analysis is required (OIA24-08312).

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues. 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 Legislation Amendment (Consequential Amendments) 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 Disallowable Legislative Instrument

The Regulations repeal the 1984 Regulations, which are due to sunset on 1 April 2025. The Regulations omit and replace references to the 1984 Regulations with Family Law Regulations 2024, in the following Commonwealth *Family Law (Fees) Regulations 2022* made under the Family Law Act.

The purpose of the Regulations is to facilitate a smooth repeal and commencement of the remade Family Law Regulations 2024 and update references to the 1984 Regulations in Commonwealth Regulations made under the Family Law Act.

Human rights implications

This Disallowable Legislative Instrument is technical in nature only and does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Details of the proposed *Family Law Legislation Amendment (Consequential Amendments) Regulations 2024*

Section 1 – Name of Regulations

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

Section 2 – Commencement

This section provides that the proposed instrument will commence on the day that the *Family Law Regulations 2024* commence.

Section 3 – Authority

This section provides that the proposed instrument is made under the *Family Law Act 1975* and the *Federal Circuit and Family Court of Australia Act 2021*.

Section 4 – Schedules

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

Schedule 1 – Consequential amendments

Family Law (Fees) Regulations 2022

Item [1] – Schedule 1 (table item 2)

This item will omit “paragraph 10A(a) or (c) of the *Family Law Regulations 1984*” and substitute “paragraph 45(a) or (b) of the *Family Law Regulations 2024*” in Schedule 1 (table item 2) of the *Family Law (Fees) Regulations 2022*. This amendment will reflect the repeal of the *Family Law Regulations 1984* and the commencement of the *Family Law Regulations 2024*. This amendment will not change the operation of the schedule.

Item [2] – Schedule 1 (table item 2)

This item will omit “paragraph 10A(a) or (c) of those Regulations” and substitute “paragraph 45(a) or (b) of those Regulations” in Schedule 1 (table item 2) of the *Family Law (Fees) Regulations 2022*. This amendment will reflect the repeal of the *Family Law Regulations 1984* and the commencement of the *Family Law Regulations 2024*. This amendment will not change the operation of the Schedule.

Schedule 2 – Repeals

Family Law Regulations 2024

Item [1] – The whole of the instrument

This item will repeal the *Family Law Regulations 1984*.