



August 2024

# Family Law Regulations 2024: Consultation Paper

## About this consultation paper

The Family Law Regulations 1984 (the existing Regulations) are due to sunset on 1 April 2025. The process of 'sunsetting' is outlined in the *Legislation Act 2003* (Cth) and is the automatic repeal of a legislative instrument after a fixed period. The sunsetting process is intended to ensure that legislative instruments are kept up to date and only remain in force for so long as they are needed. The Australian Government Attorney-General's Department (the department) has been reviewing the existing Regulations and has determined that new regulations are needed to ensure the ongoing and effective operation of family law proceedings. The department has released an exposure draft of the Family Law Regulations 2024 (the new Regulations) for the purpose of public consultation.

The new Regulations remain substantially the same as the existing Regulations. However, as the existing Regulations were made in 1984, drafting changes are necessary to modernise, clarify and update provisions, and ensure they continue to operate effectively. Those parts of the new Regulations where more substantive changes are being made are outlined in this consultation paper.

This consultation paper reflects the structure of the new Regulations (which differs from the structure of the existing Regulations) and provides an explanation of proposed changes. Please note that the scope and contents of the final Regulations will not necessarily reflect the exposure draft, and this document is not intended to represent the Explanatory Statement which will support the final Regulations.

## Request for submissions

The department welcomes feedback from interested stakeholders, particularly legal professionals who regularly engage with the existing Regulations. The department appreciates the time and effort involved in considering draft legislation and legislative instruments. Your feedback and perspectives are invaluable to ensuring the effective operation of the new Regulations.

Written feedback on the exposure draft of the new Regulations can be submitted via the department's consultation hub webpage at: [www.consultations.ag.gov.au](http://www.consultations.ag.gov.au).

The deadline for submissions is **5 September 2024**.

The department will only publish your submission if you advise us to do so. When making a submission through the consultation hub, you can indicate if you would like your submission published, or if you would like to make an anonymous submission.

Submissions must not directly or indirectly identify persons, associates of persons, or witnesses involved in family law proceedings. This means that submissions should not include details like a person's name (or the

name of their children), address, workplace, or school. Under Part XIVB of the *Family Law Act 1975* (Family Law Act) it is an offence, except in very limited circumstances, to publish this information.

Please do not include any photographs as part of your submission. Photographs provided as part of the submission process will not be published. Further, the department will not review or publish submissions that are larger than 25MB, or are in a file type format other than PDF or Microsoft Word file (for example, Apple Pages, or locked in a password protected PDF file).

If you advise us to publish your submission, you acknowledging that you have made all reasonable efforts to:

- clearly label material in your submission where the copyright is owned by a third party, and
- ensure that the third party has consented to this material being published.

Even if you advise the department to publish your submission, the department reserves the right to leave unpublished any submission or part thereof, in particular if the department considers that:

- publishing a submission or part of a submission would be in breach of Part XIVB of the Family Law Act,
- a submission or part of a submission contains copyright material, publication of which may be in breach of the *Copyright Act 1968* (Cth), or
- a submission breaches the department's submission requirements, in particular, if it contains photographs, has a file size larger than 25MB, or does not comply with file type requirements.

Submissions may be subject to freedom of information requests or requests from Parliament, which the department will consider and respond to in line with regulatory requirements.

## Contact us

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## Background

The Family Law Act provides the legislative framework to help people resolve the legal aspects of family relationship issues, including divorce, parenting arrangements, property distribution, financial agreements and child and spousal maintenance.

Subsection 125(1) of the Family Law 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 Act also contains a range of other provisions that enable the making of regulations to support the Act.

The existing Regulations support the operation of the Family Law Act by prescribing matters of practice and procedure, for example:

- relevant state and territory laws and agencies
- protected names and symbols
- requirements regarding family law arbitration
- the conferral of family law jurisdiction on certain state or territory courts
- requirements for parentage testing procedures
- requirements for the registration of overseas orders
- the process for overseas service of judicial documents, and
- the process for the recovery abroad of maintenance.

Recent changes were made to the Family Law Act by the *Family Law Amendment Act 2023* and the *Family Law Amendment (Information Sharing) Act 2023*. The new Regulations incorporate further amendments to ensure alignment with these changes.

Consequential amendments resulting from the new Regulations will be progressed as part of a separate legislative instrument. These will be minor and technical in nature.

The Family Law (Family Dispute Resolution Practitioners) Regulations 2008 (Cth) and the Family Law (Superannuation) Regulations 2001 (Cth) are also due to sunset on 1 April 2025. The remaking of those regulations is being progressed separately by the department.

### Minor and technical amendments

The amendments to the existing Regulations are largely minor and technical in nature, and are intended to modernise references, ensure alignment with the Family Law Act, and provide clarity. Minor amendments throughout the new Regulations include:

- ensuring there is a clearly stated link between a provision (or group of provisions) with a head of power in the Family Law Act
- reorganising groups of provisions to make clearer how they fit together, based on their subject matter, and renumbering accordingly
- removing or updating outdated references to legislation and legislative instruments, and
- aligning the new Regulations with current Office of Parliamentary Counsel drafting practice (for example, better use of reader aids like subsection headings).

The provisions in the new Regulations, including old and new section numbers, are listed at **Attachment A**.

The following Parts or Divisions of the new Regulations have nothing more than minor and technical amendments made to them, and are therefore not covered in this paper (however, feedback on these provisions is also welcome):

- Part 4 – Family consultants
- Part 5 – Obligations to inform people about non-court based family services and about court’s processes and services
- Part 6 – Jurisdiction of Courts
- Part 7, Division 2 – Family dispute resolution
- Part 7, Division 5—Orders for information etc. in child-related proceedings
- Part 7, Division 9—Registration of State and Territory orders
- Part 8 – Orders and injunctions binding third parties
- Part 9 – Enforcement of decrees
- Part 10, Division 4 – Overseas maintenance orders (excl. Subdivision A – see [below](#))
- Part 10, Division 5—Convention on the Recovery Abroad of Maintenance
- Part 14 – Restriction on communication of accounts and lists of proceedings
- Part 15 – Miscellaneous

## Matters for Consultation

### Part 1 – Introduction

Part 1 of the new Regulations deals with preliminary matters, definitions, and directions and orders. Division 1 of Part 1 includes provisions about the name of the instrument, timeframes for commencement, and authority for the new Regulations to be made.

Division 2 provides definitions for key terms used throughout the new Regulations and the Family Law Act. Section 4 replicates and updates s 3 of the existing Regulations, with some defined terms being relocated from elsewhere in the instrument, some being updated for clarity, and unused terms being removed (e.g. ‘Shared Parental Responsibility Act’).

Division 2 also prescribes relevant laws and offices for the following defined terms, with content from the existing Regulations being replicated and updated for currency:

Defined term	New Section	Existing Section
<i>child welfare law</i>	5	12B
<i>child welfare officer</i>	6	12BA
<i>family violence order</i>	7	12BB
<i>forfeiture order</i>	8	17A
<i>income tested pension, allowance or benefit</i>	9	12A
<i>restraining order</i>	11	17B
<i>State or Territory proceeds of crime law</i>	12	17C
<i>de facto relationships</i>	13	12BC and 15AB
<i>proceeds of crime authority</i>	14	17D

Section 10 provides the meaning for the defined term ‘prescribed overseas jurisdiction’. It merges and updates s 14 and sub-s 39B(2) of the existing Regulations. The term ‘prescribed overseas jurisdiction’ refers to different jurisdictions for the purposes of different parts of the Family Law Act and the new Regulations. Section 10 consolidates these different meanings, and refers to Schedules 1, 2 and 4 of the new Regulations.

Division 3 includes ss 15, 16 and 17, which replicate and update ss 4, 5 and 6 of the existing Regulations. These provisions set out some directions and orders that the court may make, and related considerations. These sections have been updated to reflect the considerations set out in s 95 of the Family Law Act as part of the ‘overarching purpose of the family law practice and procedure provisions’. Section 95 was added by the recent *Family Law Amendment Act 2023*.

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

Part 2 deals with the protection of names and symbols, for the purposes of Part IA of the Family Law Act. Sections 18 and 19 replicate and update ss 21AAA and 21AAB and Schedules 10 and 11 of the existing Regulations. The protected names have been condensed, to focus on protecting Australian domain names. The protected symbols have been expanded to include the logo for the Family Law Pathways Network and icons used in the Family Dispute Resolution Register.

## **Part 3 – Arbitration**

Arbitration is 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 (see section 10L of the Family Law Act). For the purposes of the Family Law Act, Part 3 of the new Regulations sets out requirements relating to arbitration, including the eligibility requirements for arbitrators (s 21), procedural considerations (s 24 to s 35) and how arbitral awards are to be made (s 36) and registered (s 37).

Part 3 of the new Regulations replicates and updates Part V of the existing Regulations, and incorporates the amendments in the Family Law Amendment (Arbitration) Regulations 2024 which relate to the eligibility requirements for arbitrators, and commence on 1 August 2024.

The updates seek to strengthen the arbitration framework, by removing the ability for a party to object to the registration of an arbitral award (s 37), and mandating the use of an arbitration agreement (s 27). To support this, safeguards have been included to protect parties from agreeing to arbitrate their dispute without a proper understanding of the arbitration process or where the process may not be a safe or appropriate mechanism for the matter to be resolved. These safeguards include:

- Arbitrators will be required to provide a template arbitration agreement to the parties with information about the process and the binding nature of arbitration (para 26(a)).
- Before signing an arbitration agreement, the parties must have separately obtained legal advice on the arbitration agreement (sub-para 27(2)(e)).
- Arbitrators must be satisfied that the parties have made an arbitration agreement before they can start an arbitration (para 26(b)).

Some further minor and technical amendments have been included in Part 3, including making references to enabling provisions in the Family Law Act more consistent (s 20), clarifying the requirement for the arbitral award to be ‘printed’ (s 36), and clarifying that all registered arbitral awards can be enforced under the Family Law Act (s 38).

## **Part 7 – Children**

### **Division 1 – Interpretation – how the Act applies to certain children**

Division 1 in Part 7 of the new Regulations prescribes state and territory laws, for the purposes of specific provisions within Part VII of the Family Law Act (subpara 60H(1)(b)(ii), para 60H(2)(b), and sub-s 60HB(1)). These provisions relate to when a child is a child of a person, under the Family Law Act.

Division 1 replicates and updates ss 12C, 12CA and 12CAA of the existing Regulations. The prescribed laws have been updated to ensure the legislative and policy intent of these provisions is being achieved. This includes prescribing a Norfolk Island law for ss 47 and 48 (see ss 12C and 12CA of the existing Regulations), and removing specific references to interpretation or application provisions (as these would necessarily be read together with the prescribed sections).

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

Section 51 of the new Regulations prescribes the requirements for a consent in writing to be authenticated, for the purposes of specific subparagraphs in Part VII (Children), Division 6, Subdivision E of the Family Law Act. This subdivision relates to obligations under parenting orders relating to taking or sending children from Australia. Section 51 replicates and updates s 13 of the existing Regulations, to reflect some recent changes to the *Statutory Declarations Act 1959*.

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

Division 4 of the new Regulations replicates and updates section 12CB of the existing Regulations. Section 52 of the new Regulations prescribes the Commonwealth departments and agencies relevant for the purposes of para 67N(3)(b) of the Family Law Act, which relates to Commonwealth information orders. The list has been updated to include the Attorney-General's Department and the National Indigenous Australians Agency, as these departments may hold relevant records that could locate a child.

### **Division 6—Family violence**

Division 6 of the new Regulations comprises only s 55, which replicates and updates s 12CC of the existing Regulations. Section 55 provides that where a court revives, varies, discharges or suspends orders described under subsection 68R(1) of the Family Law Act, and makes or varies a family violence order, the court is obligated to notify the court that made the affected orders of any changes. Further, s 55 requires the notified Registrar to then register the decision. This provision has been updated for clarity.

### **Division 7—Parentage evidence**

The court may make a parentage testing order under s 69W and s 69X of the Family Law Act if the parentage of a child is in question during proceedings under the Act. Part 7, Division 7 of the new Regulations applies to the parentage testing procedure required to be carried out under such orders.

Division 7 includes 4 Subdivisions:

- Subdivision A outlines general information, including definitions of key terms (s 58) and the type of testing prescribed as a 'parentage testing procedure' (s 59).
- Subdivision B establishes procedural requirements, including how to appropriately collect, store and test bodily samples as a part of the parentage testing procedure, with the relevant forms being Forms 3 and 4 in Schedule 3.
- Subdivision C focuses on reporting requirements, with the relevant form being Form 5 in Schedule 3.
- Subdivision D outlines the National Association of Testing Authorities' (NATA) responsibility to provide a list of accredited laboratories and their nominated reporters.

Division 7 of the new Regulations replicates and updates Part IIA of the existing Regulations, with some amendments. Most significantly, in s 59, DNA typing is now the only medical procedure prescribed for the purposes of the definition of ‘parentage testing procedure’ in sub-s 4(1) of the Act. The other methods listed in the existing Regulations (blood grouping, HLA tissue typing, and testing for serum markers) will no longer be prescribed, as they are old technology and no longer used.

The new Regulations include other minor amendments, such as:

- removing unnecessary definitions (s 58)
- streamlining and modernising the language of provisions and establishing definitions consistent with the Act (for example, s 61), and
- requiring the Attorney-General’s Department (rather than the Attorney-General) to receive and publish the list of NATA accredited laboratories and their reporters (s 69).

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

Section 69ZX(4)(b) of the Family Law Act relates to circumstances in which the court must not direct, under a State or Territory law relating to professional confidential relationship privilege specified in the regulations, that evidence not be adduced if the court considers that adducing the evidence would be in the best interests of the child. The relevant State or Territory laws are specified in s 70 of the new Regulations, which replicates and updates s 12CE and Schedule 9A of the existing Regulations. This provision has been updated to include laws from WA, Tasmania and the ACT, in addition to NSW.

## **Division 10—State, Territory and overseas orders**

Part 7, Division 10 of the new Regulations deals with registering overseas child orders (s 72) and transmitting Australian orders overseas (s 73). Apart from some minor changes for the purposes of clarity, it replicates and updates Part III, Division 1 of the existing Regulations, including by more clearly stating the types of overseas orders that cannot be registered under s 72 (see s 23 of the existing Regulations).

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

## **Division 1 - General**

Section 76 replicates and updates s 39B of the existing Regulations. In summary, this provision provides that certain provisions of the Family Law Act apply to proceedings relating to an international agreement or arrangement concerning maintenance obligations to which Australia is a party. Those provisions relate to presumptions of parentage and evidence of parentage. As noted above, sub-s 39B(2) of the existing Regulations, which relates to the meaning of ‘prescribed overseas jurisdiction’, has been incorporated into s 10 of the new Regulations.

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

Part 10, Division 2 of the new Regulations contributes to the implementation of Australia’s obligations under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Service Convention). The Hague Service Convention enables judicial and extrajudicial documents to be transmitted for service between countries that are party to the Convention.

Division 2 provides for service in overseas Hague Service Convention countries of judicial documents that relate to civil proceedings under the Family Law Act, and for default judgment in proceedings in the court after service overseas of such a document. This Division is arranged into three Subdivisions:

- Subdivision A contains preliminary matters, such as defining key terms.



- Subdivision B deals with service abroad of local judicial documents, including the use of Forms 1 and 2 in Schedule 3, and other requirements for applications.
- Subdivision C relates to default judgment following service abroad of an initiating process.

Part 10, Division 2 of the new Regulations replicates and updates Part IIAB of the existing Regulations. These provisions have been reproduced with only minor and technical amendments, such as clarifying some of the defined terms in s 78 (see s 21AC of the existing Regulations).

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

Part 10, Division 3 of the new Regulations applies to service of a document that relates to civil proceedings under the Family Law Act, in a country that is party to a convention about legal proceedings in civil and commercial matters (other than the Hague Service Convention), that is in force for Australia.

Division 3 of the new Regulations replicates Part IIAC of the existing Regulations, and has been updated to provide more clarity and, align more closely (where applicable) with the process under the Hague Service Convention. For example, s 94 of the new Regulations better recognises that some countries have more than one official language, and clarifies how Forms 1 and 2 are to be used and that the Forms may be modified to facilitate their use under Conventions other than the Hague Service Convention.

### **Division 4 – Overseas maintenance orders**

#### **Subdivision A - General**

Subdivision A of Division 4 sets out general matters relating to overseas maintenance orders. For example, s 100 sets out the definition of ‘maintenance order’, while s 101 specifies that ‘reciprocating jurisdictions’ are those countries and parts of countries listed in Schedule 2. These provisions replicate and update ss 24AA and 25 of the existing Regulations.

Section 103 of the new Regulations updates s 21 of the existing Regulations, which provides the specifications for converting amounts expressed in a foreign currency in an overseas maintenance order, agreement or liability, into Australian dollars. Section 103 has been updated to align the conversion process in the new Regulations with the equivalent process in s 37 of the Child Support (Registration and Collection) Regulations 2018.

### **Part 11 – Registration of decrees**

Part 11 solely comprises s 135, which replicates and updates s 17 of the existing Regulations. This provision, which relates to the registration of decrees, has been updated to remove an outdated requirement to number the registered decree.

### **Part 12 – Sanctions for failure to comply with orders, and other obligations, that do not affect children**

Part 12 comprises only s 136, which replicates and updates s 14A of the existing Regulations. This provision establishes the prescribed ‘maximum period’ for the purposes of s 112AG of the Family Law Act. Section 136 has been updated to remove a reference to s 70NFC(6) of the Family Law Act, which has been repealed.

### **Part 13 – Declarations and Injunctions**

Section 137 lists prescribed laws for the purposes of s 114AB of the Family Law Act, which relates to circumstances in which a person is not entitled to institute proceedings for an injunction under the Act. Section 137 replicates and updates s 19 of the existing Regulations, including by prescribing entire Acts rather

than specific Parts of Acts. This ensures all relevant provisions (relating to family violence intervention orders specifically) are captured when s 137 is read together with s 114AB of the Family Law Act.

## **Part 16 – Application, savings and transitional provisions**

Part 16 of the new Regulations outlines the proposed approach to transition from the existing Regulations to the new Regulations. There are general transition arrangements in s 140 and specific arrangements for arbitration matters in s 142. Further consideration will be given to any necessary specific transitional provisions before the new Regulations are finalised.

## Attachment A: Renumbering List

Provision	Old Number	New Number
Name	1	1
Commencement	2	2
Authority	2A	3
Definitions	3	4
Meaning of child welfare law—prescribed State or Territory laws	12B	5
Meaning of child welfare officer—prescribed State or Territory offices	12BA	6
Meaning of family violence order—prescribed State or Territory laws	12BB	7
Meaning of forfeiture order—declared State and Territory orders	17A	8
Meaning of income tested pension, allowance or benefit—prescribed pensions, allowances or benefits	12A	9
Meaning of prescribed overseas jurisdiction	14	10
Meaning of restraining order—declared State and Territory orders	17B	11
Definition of State or Territory proceeds of crime law—declared State or Territory corresponding laws	17C	12
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