

EXPOSURE DRAFT



EXPOSURE DRAFT

Family Law Regulations 2024

I, the Honourable Sam Mostyn AC, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2024

Sam Mostyn
Governor-General

By Her Excellency's Command

Mark Dreyfus KC [DRAFT ONLY—NOT FOR SIGNATURE]
Attorney-General

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Introduction **Part 1**
Preliminary **Division 1**

Section 1

Part 1—Introduction

Division 1—Preliminary

1 Name

This instrument is the *Family Law Regulations 2024*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	31 March 2025.	31 March 2025

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

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

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Division 2—Definitions

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) applicable Rules of Court;
- (b) Chief Executive Officer;
- (c) Federal Circuit and Family Court of Australia;
- (d) this Act.

In this instrument:

Act means the *Family Law Act 1975*.

application means an application to a court for the purpose of instituting proceedings under this Act or an application to a relevant Registrar made under this instrument.

arbitration agreement: see section 22.

Attorney-General's Department means the Department administered by the Attorney-General.

bodily sample: see section 58.

Central Authority: see section 78.

Note: This definition relates to the Hague Service Convention.

certified copy means a copy of an order, decree or document certified to be a true copy by an officer of the court that:

- (a) made or varied the order, decree or document; or
- (b) registered or confirmed the order, decree or document.

Child Support Registrar means the Child Support Registrar mentioned in section 10 of the *Child Support (Registration and Collection) Act 1988*.

Convention additional authority: see section 78.

Note: This definition relates to the Hague Service Convention.

Convention certificate of service: see section 78.

Note: This definition relates to the Hague Service Convention.

Convention certifying authority: see section 78.

Note: This definition relates to the Hague Service Convention.

Convention country: see section 78.

Note: This definition relates to the Hague Service Convention.

Cooperation Convention: see section 92.

Cooperation Convention country: see section 92.

donor: see section 58.

forwarding authority: see section 78.

Note: This definition relates to the Hague Service Convention.

Hague Service Convention means the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, done at The Hague on 15 November 1965.

Note: The Convention is in Australian Treaty Series 2010 No. 23 ([2010] ATS 23) and could in 2024 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

initiating process: see section 78.

Note: This definition relates to the Hague Service Convention.

intervener, in relation to proceedings, means:

- (a) the Attorney-General or any other person when intervening in the proceedings, or applying to intervene in the proceedings, under Part IX of the Act; or
- (b) a child independently represented in the proceedings under subsection 68L(2) of the Act.

legal practitioner means 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.

local judicial document means a judicial document that relates to civil proceedings under this Act in the court.

Note: This definition relates to the Hague Service Convention and Cooperation Conventions.

nominated reporter: see section 58.

party to proceedings means an applicant, respondent or intervener in proceedings under this Act.

Receiving Agency: see subsection 125(1).

Note: This definition relates to the Recovery Convention.

Recovery Convention: see subsection 125(1).

Recovery Convention country: see subsection 125(1).

relevant Registrar of a court means:

- (a) in relation to the Federal Circuit and Family Court of Australia (Division 1)—the following:
 - (i) the Chief Executive Officer and Principal Registrar, within the meaning of the *Federal Circuit and Family Court of Australia Act 2021*;
 - (ii) a Senior Registrar or Registrar of that court; or
- (b) in relation to the Federal Circuit and Family Court of Australia (Division 2)—the following:

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- (i) the Chief Executive Officer and Principal Registrar, within the meaning of the *Federal Circuit and Family Court of Australia Act 2021*;
- (ii) a Senior Registrar or Registrar of that court; or
- (c) in relation to any other court—the principal officer of the court or any other appropriate officer or staff member of the court.

request for service abroad:

- (a) in relation to service in a Convention country—see section 78; and
- (b) in relation to service in a Cooperation Convention country—see section 92.

respondent, in relation to proceedings, means a party to the proceedings other than an applicant or an intervener.

sample: see section 58.

sampler: see section 58.

Secretary means the Secretary of the Attorney-General's Department.

testing: see section 58.

Transmitting Agency: see subsection 125(1).

Note: This definition relates to the Recovery Convention.

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

- (1) For the purposes of the definition of *child welfare law* in subsection 4(1) of the Act:
 - (a) any law of a State, the Australian Capital Territory or the Northern Territory; and
 - (b) a law in force in Norfolk Island (whether the law is a law of the Commonwealth or a law of Norfolk Island);that relates to a matter mentioned in subsection (2) of this section is prescribed
- (2) For the purposes of subsection (1), the matters are the imprisonment, detention or residence of a child upon being dealt with for a criminal offence.
- (3) For the purposes of the definition of *child welfare law* in subsection 4(1) of the Act, each law specified in an item of the following table is prescribed.

Prescribed child welfare laws

Item State or Territory law

1 *Adoption Act 2000* (NSW)

2 *Children and Young Persons (Care and Protection) Act 1998* (NSW)

3 *Guardianship Act 1987* (NSW)

4 *Adoption Act 1984* (Vic.)

5 *Children, Youth and Families Act 2005* (Vic.)

6 *Child Wellbeing and Safety Act 2005* (Vic.)

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Prescribed child welfare laws

Item State or Territory law

7	<i>Education and Training Reform Act 2006 (Vic.)</i>
8	<i>Mental Health and Wellbeing Act 2022 (Vic.)</i>
9	<i>Adoption Act 2009 (Qld)</i>
10	<i>Child Protection Act 1999 (Qld)</i>
11	<i>Maintenance Act 1965 (Qld)</i>
12	<i>Mental Health Act 2016 (Qld)</i>
13	<i>Public Health Act 2005 (Qld)</i>
14	<i>Youth Justice Act 1992 (Qld)</i>
15	<i>Adoption Act 1994 (WA)</i>
16	<i>Children and Community Services Act 2004 (WA)</i>
17	<i>Children’s Court of Western Australia Act 1988 (WA)</i>
18	<i>Criminal Law (Mental Impairment) Act 2023 (WA)</i>
19	<i>Family Court Act 1997 (WA)</i>
20	<i>Mental Health Act 2014 (WA)</i>
21	<i>School Education Act 1999 (WA)</i>
22	<i>Surrogacy Act 2008 (WA)</i>
23	<i>Young Offenders Act 1994 (WA)</i>
24	<i>Adoption Act 1988 (SA)</i>
25	<i>Children and Young People (Safety) Act 2017 (SA)</i>
26	<i>Children’s Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017 (SA)</i>
27	<i>Family and Community Services Act 1972 (SA)</i>
28	<i>Mental Health Act 2009 (SA)</i>
29	<i>Adoption Act 1988 (Tas.)</i>
30	<i>Children, Young Persons and Their Families Act 1997 (Tas.)</i>
31	<i>Mental Health Act 2013 (Tas.)</i>
32	<i>Youth Justice Act 1997 (Tas.)</i>
33	<i>Adoption Act 1993 (ACT)</i>
34	<i>Children and Young People Act 2008 (ACT)</i>
35	<i>Guardianship and Management of Property Act 1991 (ACT)</i>
36	<i>Mental Health Act 2015 (ACT)</i>
37	<i>Adoption of Children Act 1994 (NT)</i>
38	<i>Care and Protection of Children Act 2007 (NT)</i>
39	<i>Guardianship of Infants Act 1972 (NT)</i>
40	<i>Mental Health and Related Services Act 1998 (NT)</i>
41	<i>Adoption of Children Act 1932 (NI)</i>
42	<i>Child Welfare Act 2009 (NI)</i>
43	<i>Lunacy Act 1932 (NI)</i>
44	<i>Mental Health Act 1996 (NI)</i>

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

For the purposes of paragraph (a) of the definition of *child welfare officer* in subsection 4(1) of the Act, each of the following is a prescribed office:

- (a) for New South Wales—the offices of:
 - (i) Minister administering the *Adoption Act 2000* (NSW); and
 - (ii) Minister administering the *Children and Young Persons (Care and Protection) Act 1998* (NSW); and
 - (iii) Secretary, within the meaning of the *Adoption Act 2000* (NSW); and
 - (iv) Director-General, within the meaning of the *Children and Young Persons (Care and Protection) Act 1998* (NSW); and
 - (v) Secretary, within the meaning of the *Guardianship Act 1987* (NSW);
- (b) for Victoria—the offices of:
 - (i) Secretary of the Department of Health; and
 - (ii) Secretary of the Department of Families, Fairness and Housing;
- (c) for Queensland—the office of Director-General of the Department of Child Safety, Seniors and Disability Services;
- (d) for Western Australia—the office of Director General of the Department of Communities;
- (e) for South Australia—the office of Chief Executive of the Department for Child Protection;
- (f) for Tasmania—the office of Secretary for Education, Children and Young People;
- (g) for the Australian Capital Territory—the offices of:
 - (i) Director-General of the Community Services Directorate; and
 - (ii) Chief Psychiatrist appointed under subsection 196(1) of the *Mental Health Act 2015* (ACT);
- (h) for the Northern Territory—the office of Minister for Territory Families.

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

For the purposes of the definition of *family violence order* in subsection 4(1) of the Act, each of the laws specified in an item of the following table is prescribed.

Prescribed laws under which orders may be made to protect a person from family violence	
Item	State or Territory law
1	<i>Crimes (Domestic and Personal Violence) Act 2007</i> (NSW)
2	<i>Property (Relationships) Act 1984</i> (NSW)
3	<i>Family Violence Protection Act 2008</i> (Vic.)
4	<i>Domestic and Family Violence Protection Act 2012</i> (Qld)
5	<i>Restraining Orders Act 1997</i> (WA)
6	<i>Intervention Orders (Prevention of Abuse) Act 2009</i> (SA)
7	<i>Sentencing Act 2017</i> (SA)
8	<i>Family Violence Act 2004</i> (Tas.)

Prescribed laws under which orders may be made to protect a person from family violence

Item State or Territory law

9 *Justices Act 1959* (Tas.)

10 *Family Violence Act 2016* (ACT)

11 *Domestic and Family Violence Act 2007* (NT)

12 *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI)

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

For the purposes of paragraph (b) of the definition of *forfeiture order* in subsection 4(1) of the Act, each kind of order that is an interstate forfeiture order within the meaning of the *Proceeds of Crime Act 2002* is declared to be a forfeiture order.

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

For the purposes of the definition of *income tested pension, allowance or benefit* in subsection 4(1) of the Act, each of the following pensions, allowances or benefits is prescribed:

- (a) the following entitlements under the *Veterans' Entitlements Act 1986*:
 - (i) a service pension, within the meaning of subsection 5Q(1) of that Act;
 - (ii) a veteran payment, within the meaning of subsection 5Q(1) of that Act;
 - (iii) income support supplement under Part IIIA of that Act;
- (b) a social security pension, or a social security benefit, within the meaning of subsection 23(1) of the *Social Security Act 1991*;
- (c) a family tax benefit, within the meaning of subsection 3(1) of the *A New Tax System (Family Assistance) Act 1999*, the Part A rate of which is higher than the base rate under clause 4 of Schedule 1 to that Act;
- (d) so much of an allowance under the Aboriginal study assistance scheme, within the meaning of subsection 23(1) of the *Social Security Act 1991*, as is means tested;
- (e) the amount of a boarding allowance under the Assistance for Isolated Children Scheme, referred to in paragraph (a) of the definition of *current special educational assistance scheme* in subsection 3(1) of the *Student Assistance Act 1973*, that is greater than the non means tested amount of the allowance;
- (f) a payment under the scheme known as the New Enterprise Incentive Scheme;
- (g) a payment under the program known as:
 - (i) the Self-Employment Assistance program; or
 - (ii) if the Self-Employment Assistance program is known by another name—that other name.

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Note: For the purposes of subparagraph (g)(ii), if the name of the Self-Employment Assistance program changes, notice must be given of that change: see subsection 23(25) of the *Social Security Act 1991*.

10 Meaning of *prescribed overseas jurisdiction*

- (1) For the purposes of the definition of *prescribed overseas jurisdiction* in subsection 4(1) of the Act, this section declares countries, or parts of a country, outside Australia to be a prescribed overseas jurisdiction for the purposes of provisions.

Provisions relating to State, Territory and overseas child orders

- (2) Each country, or part of a country, specified in an item of the table in Schedule 1 is declared to be a prescribed overseas jurisdiction for the purposes of:
- (a) the definition of *overseas child order* in subsection 4(1) of the Act; and
 - (b) each provision of Division 13 of Part VII of the Act.

Note: This meaning applies in provisions of this instrument that use that defined term or that are made for the purposes of those provisions: see subsection 13(1) of the *Legislation Act 2003*. For example, this meaning applies in sections 72 and 73 of this instrument.

Provisions relating to presumptions of parentage and proof of birth, parentage, death or marriage

- (3) Each country, or part of a country, specified in an item of the table in Schedule 2 as a reciprocating jurisdiction, and each jurisdiction prescribed in an item of the table in Schedule 4, is declared to be a prescribed overseas jurisdiction for the purposes of:
- (a) each provision of Division 12 of Part VII of the Act; and
 - (b) section 102 of the Act.

Note: This meaning applies in provisions of this instrument that are made for the purposes of those provisions: see subsection 13(1) of the *Legislation Act 2003*.

Provisions relating to overseas maintenance agreements and financial agreements

- (4) Each country, or part of a country, specified in an item of the table in Schedule 2 as a reciprocating jurisdiction is declared to be a prescribed overseas jurisdiction for the purposes of:
- (a) the definition of *overseas maintenance agreement* in subsection 4(1) of the Act; and
 - (b) each provision of Part VIII of the Act; and
 - (c) section 110B of the Act.

Note: This meaning applies in provisions of this instrument that use that defined term or that are made for the purposes of those provisions: see subsection 13(1) of the *Legislation Act 2003*. For example, this meaning applies in section 143 of this instrument.

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

For the purposes of paragraph (b) of the definition of *restraining order* in subsection 4(1) of the Act, each kind of order that is an interstate restraining

order within the meaning of the *Proceeds of Crime Act 2002* is declared to be a forfeiture order.

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

For the purposes of the definition of *State or Territory proceeds of crime law* in subsection 4(1) of the Act, each law declared by section 7 of the *Proceeds of Crime Regulations 2019* to be a law that corresponds to the *Proceeds of Crime Act 2002* is declared to be a law that corresponds to the *Proceeds of Crime Act 2002*.

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

- (1) For the purposes of paragraph 4AA(2)(g) of the Act, each kind of relationship specified in column 2 of an item of the following table, registrable under the State or Territory law specified in column 1 of that item, is prescribed.

Prescribed registrable relationships		
Item	Column 1 Law	Column 2 Kind of relationship
1	<i>Relationships Register Act 2010</i> (NSW)	A relationship that may be registered in accordance with Part 2 of that Act
2	<i>Relationships Act 2008</i> (Vic.)	A registrable domestic relationship that may be registered in accordance with Part 2.2 of that Act
3	<i>Civil Partnerships Act 2011</i> (Qld)	A relationship that may be entered into in accordance with sections 4 and 5 of that Act
4	<i>Relationships Register Act 2016</i> (SA)	A relationship that may be registered in accordance with Part 2 of that Act
5	<i>Relationships Act 2003</i> (Tas.)	A significant relationship in relation to which a deed of relationship may be registered in accordance with Part 2 of that Act
6	<i>Domestic Relationships Act 1994</i> (ACT)	A civil partnership that may be entered into in accordance with sections 37C and 37D of that Act
7	<i>Births, Deaths and Marriages Registration Act 1997</i> (ACT)	A civil union that must be registered under section 32A of that Act

Prescribed laws for orders etc, relating to maintenance, declarations of property interests and alterations of property interests relating to de facto relationships

- (2) For the purposes of paragraph 90SB(d) of the Act, each State or Territory law specified in column 1 of an item of the table in subsection (1) of this section is prescribed.

EXPOSURE DRAFT

Part 1 Introduction

Division 2 Definitions

Section 14

14 Definition of *proceeds of crime authority*

Forfeiture orders

- (1) For the purposes of subsection 4C(4) of the Act, each person or body mentioned in an item of the following table is prescribed to be a ***proceeds of crime authority***, in relation to a forfeiture order, for sections 79B, 79C, 79D, 79E, 90M, 90N, 90P, 90Q, 90VA, 90VB, 90VC and 90VD of the Act.

Proceeds of crime authorities—forfeiture orders

Item	Person or body
1	The Commission, within the meaning of the <i>Criminal Assets Recovery Act 1990</i> (NSW)
2	An appropriate officer, within the meaning of the <i>Confiscation of Proceeds of Crime Act 1989</i> (NSW)
3	The DPP, within the meaning of the <i>Confiscation Act 1997</i> (Vic.)
4	An appropriate officer, within the meaning of the <i>Confiscation Act 1997</i> (Vic.)
5	A prescribed person, or a person belonging to a prescribed class of persons, for the purposes of subsection 37(1) of the <i>Confiscation Act 1997</i> (Vic.)
6	The commission, within the meaning of the <i>Criminal Proceeds Confiscation Act 2002</i> (Qld)
7	A police officer approved by the commission, within the meaning of the <i>Criminal Proceeds Confiscation Act 2002</i> (Qld), for the purposes of subparagraph 12(1)(a)(ii) of that Act
8	An appropriate officer, within the meaning of the <i>Criminal Proceeds Confiscation Act 2002</i> (Qld)
9	The CCC, within the meaning of the <i>Criminal Property Confiscation Act 2000</i> (WA)
10	The DPP, within the meaning of the <i>Criminal Property Confiscation Act 2000</i> (WA)
11	The DPP, within the meaning of the <i>Criminal Assets Confiscation Act 2005</i> (SA)
12	An authorized officer, within the meaning of the <i>Crime (Confiscation of Profits) Act 1993</i> (Tas.)
13	The DPP, within the meaning of the <i>Confiscation of Criminal Assets Act 2003</i> (ACT)
14	The DPP, within the meaning of the <i>Criminal Property Forfeiture Act 2002</i> (NT)
15	A police officer, within the meaning of the <i>Criminal Property Forfeiture Act 2002</i> (NT)

Restraining orders

- (2) For the purposes of subsection 4C(4) of the Act, each person or body mentioned in an item of the following table is prescribed to be a ***proceeds of crime authority***, in relation to a restraining order, for sections 79B, 79C, 79D, 79E, 90M, 90N, 90P, 90Q, 90VA, 90VB, 90VC and 90VD of the Act.

Proceeds of crime authorities—restraining orders

Item	Person or body
1	The Commission, within the meaning of the <i>Criminal Assets Recovery Act 1990</i> (NSW)
2	An appropriate officer, within the meaning of the <i>Confiscation of Proceeds of Crime Act 1989</i> (NSW)
3	An authorised officer, within the meaning of the <i>Confiscation of Proceeds of Crime Act 1989</i> (NSW)

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Proceeds of crime authorities—restraining orders

Item	Person or body
4	The DPP, within the meaning of the <i>Confiscation Act 1997</i> (Vic.)
5	An appropriate officer, within the meaning of the <i>Confiscation Act 1997</i> (Vic.)
6	A prescribed person, or a person belonging to a prescribed class of persons, for the purposes of subsection 16(2) of the <i>Confiscation Act 1997</i> (Vic.)
7	A prescribed person, or a person belonging to a prescribed class of persons, for the purposes of subsection 36K(1) of the <i>Confiscation Act 1997</i> (Vic.)
8	The commission, within the meaning of the <i>Criminal Proceeds Confiscation Act 2002</i> (Qld)
9	A police officer approved by the commission, within the meaning of the <i>Criminal Proceeds Confiscation Act 2002</i> (Qld), for the purposes of subparagraph 12(1)(a)(ii) of that Act
10	An appropriate officer, within the meaning of the <i>Criminal Proceeds Confiscation Act 2002</i> (Qld)
11	The CCC, within the meaning of the <i>Criminal Property Confiscation Act 2000</i> (WA)
12	The DPP, within the meaning of the <i>Criminal Property Confiscation Act 2000</i> (WA)
13	A police officer, within the meaning of the <i>Criminal Property Confiscation Act 2000</i> (WA)
14	The DPP, within the meaning of the <i>Criminal Assets Confiscation Act 2005</i> (SA)
15	An authorised officer, within the meaning of the <i>Criminal Assets Confiscation Act 2005</i> (SA)
16	An authorized officer, within the meaning of the <i>Crime (Confiscation of Profits) Act 1993</i> (Tas.)
17	The DPP, within the meaning of the <i>Confiscation of Criminal Assets Act 2003</i> (ACT)
18	The DPP, within the meaning of the <i>Criminal Property Forfeiture Act 2002</i> (NT)
19	A police officer, within the meaning of the <i>Criminal Property Forfeiture Act 2002</i> (NT)

Forfeiture applications

- (3) For the purposes of subsection 4C(4) of the Act, each person or body mentioned in an item of the following table is prescribed to be a **proceeds of crime authority**, in relation to a forfeiture application, for sections 79B, 79C, 79D, 79E, 90M, 90N, 90P, 90Q, 90VA, 90VB, 90VC and 90VD of the Act.

Proceeds of crime authorities—forfeiture applications

Item	Person or body
1	The Commission, within the meaning of the <i>Criminal Assets Recovery Act 1990</i> (NSW)
2	An appropriate officer, within the meaning of the <i>Confiscation of Proceeds of Crime Act 1989</i> (NSW)
3	The DPP, within the meaning of the <i>Confiscation Act 1997</i> (Vic.)
4	An appropriate officer, within the meaning of the <i>Confiscation Act 1997</i> (Vic.)
5	A prescribed person, or a person belonging to a prescribed class of persons, for the purposes of subsection 37(1) of the <i>Confiscation Act 1997</i> (Vic.)
6	The commission, within the meaning of the <i>Criminal Proceeds Confiscation Act 2002</i> (Qld)
7	A police officer approved by the commission, within the meaning of the <i>Criminal Proceeds Confiscation Act 2002</i> (Qld), for the purposes of subparagraph 12(1)(a)(ii) of that Act
8	An appropriate officer, within the meaning of the <i>Criminal Proceeds Confiscation Act 2002</i>

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Part 1 Introduction

Division 2 Definitions

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Proceeds of crime authorities—forfeiture applications

Item	Person or body
	(Qld)
9	The CCC, within the meaning of the <i>Criminal Property Confiscation Act 2000</i> (WA)
10	The DPP, within the meaning of the <i>Criminal Property Confiscation Act 2000</i> (WA)
11	The DPP, within the meaning of the <i>Criminal Assets Confiscation Act 2005</i> (SA)
12	An authorized officer, within the meaning of the <i>Crime (Confiscation of Profits) Act 1993</i> (Tas.)
13	The DPP, within the meaning of the <i>Confiscation of Criminal Assets Act 2003</i> (ACT)
14	The DPP, within the meaning of the <i>Criminal Property Forfeiture Act 2002</i> (NT)
15	A police officer, within the meaning of the <i>Criminal Property Forfeiture Act 2002</i> (NT)

Division 3—Directions and orders

15 Directions as to practice and procedure

- (1) If a court is satisfied in the circumstances of a particular case that:
 - (a) the provisions of the Act, this instrument and the applicable Rules of Court do not make adequate provision for practice and procedure; or
 - (b) a difficulty arises or doubt exists as to practice and procedure;the court may give such directions with respect to the practice and procedure to be followed in the case as the court considers necessary.
- (2) When making a direction under this section, the court must consider facilitating the just resolution of the dispute, proceedings or matter:
 - (a) in a way that ensures the safety of families and children; and
 - (b) in relation to proceedings under this Act in which the best interests of a child are the paramount consideration—in a way that promotes the best interests of the child; and
 - (c) according to law; and
 - (d) as quickly, inexpensively and efficiently as possible.

16 Non-compliance with this instrument

- (1) Non-compliance with this instrument, or with a rule of practice or procedure in a court exercising jurisdiction under this Act, does not render proceedings in that court void unless the court so directs.
- (2) In exercising its discretion under this section, the court may have regard to:
 - (a) the real merits of the case; and
 - (b) the safety of families and children; and
 - (c) promoting the best interests of the child; and
 - (d) resolving matters as quickly, inexpensively and efficiently as possible; and
 - (e) whether any party to the proceedings has suffered injustice or has been prejudicially affected by non-compliance with this instrument; and
 - (f) any other matter the court considers relevant.

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

Subject to the Act and this instrument:

- (a) the court or a relevant Registrar may, at any time, upon such terms as the court or relevant Registrar thinks fit, relieve a party from the consequences of non-compliance with this instrument, a rule of practice and procedure of the court applicable to the proceedings, or an order made by a relevant Registrar; and
- (b) the court may at any time, upon such terms as the court thinks fit, relieve a party from the consequences of non-compliance with an order made by a court; and

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Part 1 Introduction

Division 3 Directions and orders

Section 17

- (c) the court may, upon such terms as the court thinks fit, dispense with the need for compliance by a party with any provision of this instrument.

Part 2—Protection of names and symbols

18 Protected names

- (1) This section is made for the purposes of the definition of *protected name* in subsection 9A(4) of the Act.

Note: It is an offence to use etc. a protected name without the Minister's consent. This includes a name so closely resembling a protected name as to be likely to be mistaken for it: see section 9A of the Act.

- (2) Each of the following names are prescribed:

- (a) Family Relationship Centre;
- (b) Family Relationship Centres;
- (c) Family Relationships Centre;
- (d) Family Relationships Centres;
- (e) Family Relationship Advice Line;
- (f) Family Relationships Advice Line;
- (g) Family Relationship Online;
- (h) Family Relationships Online;
- (i) Family Relationship;
- (j) Family Relationships;
- (k) fral;
- (l) fralcms.

- (3) Each domain name that includes one of the names in subsection (2) and one of the following domain extensions is prescribed:

- (a) .com.au;
- (b) .net.au;
- (c) .org.au;
- (d) .gov.au.

- (4) The following domain names are prescribed:

- (a) frc.com.au;
- (b) frc.net.au;
- (c) frc.org.au.

19 Protected symbols







The following table sets out designs of symbols for the purposes of the definition of *protected symbol* in subsection 9A(4) of the Act.

Note: It is an offence to use etc. a protected symbol without the Minister's consent. This includes a symbol so closely resembling a protected symbol as to be likely to be mistaken for it: see section 9A of the Act.

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Part 2 Protection of names and symbols

Section 19

Protected symbols	
Item	Symbol
1	
2	
3	
4	FAMILY RELATIONSHIP CENTRE: HELPING FAMILIES BUILD BETTER RELATIONSHIPS
5	HELPING FAMILIES BUILD BETTER RELATIONSHIPS
6	
7	
8	

Part 3—Arbitration

20 Purposes of this Part

Unless otherwise stated, each section in this Part is made for the purposes of paragraph 125(1)(bc) of the Act.

21 Prescribed requirements for arbitrator

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

Requirement for name to be included in list of arbitrators

- (2) The person's name must be included in a list (the *list*), kept by the Law Council of Australia or by another body nominated by the Law Council of Australia, of persons who are prepared to provide arbitration services under the Act.
- (3) At the time of applying to be included in the list, the person must give a statutory declaration to the body keeping the list to the effect that the person meets the requirements mentioned in subsection (4).

Requirements to be met to become an arbitrator

- (4) During the 6-year period ending immediately before the time the person applies to be included in the list:
 - (a) the person must have, for at least 5 of those years:
 - (i) practised as a legal practitioner; or
 - (ii) held office as a judge or magistrate of one or more of the courts mentioned in subsection (5); or
 - (iii) either practised as a legal practitioner or held such office; and
 - (b) the person must have, for at least 5 of those years, spent at least 25% of the person's time in such practice or office on family law matters; and
 - (c) the person must have gained the necessary experience in family law matters that is sufficient for the person to be an arbitrator; and
 - (d) the person must have successfully completed specialist arbitration training conducted by a tertiary institution or a professional association of arbitrators.
- (5) For the purposes of subparagraph (4)(a)(ii), the courts are the following:
 - (a) the Federal Circuit and Family Court of Australia (Division 1);
 - (b) the Federal Circuit and Family Court of Australia (Division 2);
 - (c) the Family Court of Western Australia;
 - (d) the Magistrates Court of Western Australia constituted by a magistrate who is not a Family Law Magistrate of Western Australia, sitting at a place outside the metropolitan region (within the meaning of the *Family Court Act 1997* (WA));

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Part 3 Arbitration

Section 22

- (e) the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia, sitting at any place in Western Australia;
- (f) the former Family Court of Australia;
- (g) the former Federal Circuit Court of Australia.

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

Requirements to be met to continue to be an arbitrator

- (6) During the 2-year period beginning on the day mentioned in subsection (7), and during each subsequent 2-year period:
 - (a) the person must complete at least 10 hours of continuing professional development; and
 - (b) at least 25% of the person's practice as a legal practitioner must be in relation to family law matters; and
 - (c) the person must maintain the necessary experience in family law matters that is sufficient for the person to be an arbitrator.
- (7) For the purposes of subsection (6), the day is:
 - (a) if, immediately before 1 August 2024, the person's name is included in the list—1 August 2024; or
 - (b) otherwise—the day the person's name is included in the list.
- (8) Within a month of the end of each 2-year period mentioned in subsection (6), the person must give a statutory declaration to the body that keeps the list to the effect that the person has met the requirements of that subsection for that period.

Continuing professional development

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

22 Meaning of *arbitration agreement*

In this instrument:

arbitration agreement means an agreement made under section 27 between the parties to an arbitration.

Note: For the meaning of *arbitration*, see section 10L of the Act.

23 Matters that may not be arbitrated

Part VIII proceedings, a part of Part VIII proceedings, or a matter arising in Part VIII proceedings, with respect to property to which an approved maintenance agreement under section 87 of the Act applies, must not be dealt with by arbitration under this Act.

Note: For the definition of *Part VIII proceedings*, see section 4 of the Act.

24 Application for referral to arbitration

An application for an order under section 13E of the Act in relation to proceedings must be:

- (a) in accordance with Form 6 in Schedule 3; and
- (b) made jointly by all parties to the proceedings; and
- (c) accompanied by a financial statement in accordance with the applicable Rules of Court.

25 Application relating to relevant property or financial arbitration

- (1) 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 in Schedule 3.
- (2) For the avoidance of doubt, an application may be made:
 - (a) by a party to the arbitration; or
 - (b) jointly by all parties to the arbitration.

26 Action arbitrator must take before conducting arbitration conferences

An arbitrator may arbitrate a dispute, proceedings or a matter under this Act only if:

- (a) the arbitrator has given the parties to the arbitration information about:
 - (i) the arbitration process (including a template arbitration agreement); and
 - (ii) the binding nature of arbitration; and
 - (iii) how the parties will share costs of the arbitration; and
- (b) the arbitrator is satisfied that the parties have made an arbitration agreement in accordance with the requirements of section 27 of this instrument.

27 Arbitration agreement

- (1) The parties to an arbitration must make an agreement in relation to the arbitration.

Note: An agreement under this section is an *arbitration agreement*: see section 22.

- (2) An arbitration agreement must:
 - (a) be in writing; and
 - (b) set out the information mentioned in subsection (3) in relation to the arbitration; and
 - (c) give details of the arrangements agreed by the parties in relation to the payment of the costs of the arbitration; and
 - (d) include a statement to the effect that each party agrees to pay the party's agreed share of the costs of the arbitration within 28 days, or another specified period agreed by the parties and the arbitrator, after an award has been made; and

EXPOSURE DRAFT

Part 3 Arbitration

Section 28

- (e) be signed by each party to the arbitration, but only after each party has separately obtained legal advice on a draft agreement that meets the requirements in paragraphs (a) to (d).
- (3) For the purposes of paragraph (2)(b), the information is as follows:
- (a) the name, address and contact details of each party to the arbitration;
 - (b) the name of the arbitrator;
 - (c) the date, time and place at which the arbitration is to be conducted;
 - (d) the issues to be dealt with in the arbitration;
 - (e) the estimated time needed for the arbitration;
 - (f) information about how the arbitration will be conducted (for example, information about the exchange of documents and witness statements, scheduling and receiving expert evidence);
 - (g) the circumstances in which the arbitration may be suspended or terminated;
 - (h) the estimated costs of the arbitration, including the costs of any disbursements that may be incurred in respect of the arbitration (for example, hire of a venue for the arbitration).
- (4) For the avoidance of doubt, paragraph (3)(d) is subject to:
- (a) any rule that prescribes, for the purposes of paragraph 123(1)(sc) of the Act, a dispute, proceedings or a matter that may or may not be arbitrated under this Act; or
 - (b) section 23 of this instrument, or any other provision that prescribes, for the purposes of paragraph 123(1)(sc) of the Act, as applied by paragraph 125(1)(bc) of the Act, a dispute, proceedings or a matter that may or may not be arbitrated under this Act.

28 Costs of arbitration

The costs of an arbitration are to be shared equally between the parties to the arbitration unless the parties agree, in writing, otherwise.

29 Duties of arbitrator

- (1) In an arbitration, an arbitrator must determine the issues in dispute between the parties to the arbitration in accordance with this Act.
- (2) An arbitrator must conduct an arbitration with procedural fairness (for example, giving each party to the arbitration a reasonable opportunity to be heard and to respond to anything raised by another party).
- (3) An arbitrator must inform each party, in writing, if during the arbitration, the arbitrator becomes aware of anything that could lead to direct or indirect bias in favour of or against any party.

30 Oath or affirmation by arbitrator

An arbitrator must, before acting in the capacity of an arbitrator, make an oath or affirmation in the following form.

I, [*name of arbitrator*], do swear by Almighty God [*or solemnly and sincerely affirm and declare*] that I will not disclose to any person any communication or admission made to me in my capacity as arbitrator, unless I reasonably believe that it is necessary for me to do so:

- (a) to protect a child; or
- (b) to prevent or lessen a serious and imminent threat to:
 - (i) the life or health of a person; or
 - (ii) the property of a person; or
- (c) to report the commission, or prevent the likely commission, of an offence involving:
 - (i) violence or a threat of violence to a person; or
 - (ii) intentional damage to property of a person or a threat of damage to property; or
- (d) to enable me to discharge properly my functions as an arbitrator; or
- (e) if a child is separately represented by a person under an order under section 68L of the Act—to assist the person to represent the child properly.

31 Suspension of arbitration—failure to comply with direction

If a party to an arbitration does not comply with a procedural direction given by the arbitrator, the arbitrator:

- (a) may suspend the arbitration; and
- (b) if the failure to comply exceeds 28 days, must, for an arbitration under section 13E of the Act, refer the matter to the court that ordered the arbitration.

32 Termination of arbitration—inability to take part

- (1) If an arbitrator considers that a party to an arbitration does not have the ability to take part in the arbitration, the arbitrator must:
 - (a) terminate the arbitration; and
 - (b) for an arbitration under section 13E of the Act, refer the matter to the court that ordered the arbitration.
- (2) For the purposes of subsection (1), a person who is a party to an arbitration does not have the ability to take part in the arbitration if:
 - (a) the person does not understand the nature and possible consequences of the arbitration; or
 - (b) the person is not able to:
 - (i) give adequate instruction to the person’s representative for the conduct of the arbitration; or
 - (ii) satisfactorily appear in person in the arbitration.

33 Appearance in arbitration

In an arbitration, a party may appear in person or be represented by a legal practitioner.

EXPOSURE DRAFT

Part 3 Arbitration

Section 34

34 Attendance of persons to give evidence

- (1) An arbitrator conducting an arbitration may require a person (whether a party to the arbitration or not):
 - (a) to attend the arbitration to give evidence; or
 - (b) to produce documents; or
 - (c) to attend the arbitration to give evidence and produce documents.
- (2) A party to an arbitration may apply to the court for the issue of a subpoena requiring a person (whether a party to the arbitration or not):
 - (a) to attend the arbitration to give evidence; or
 - (b) to produce documents; or
 - (c) to attend the arbitration to give evidence and produce documents.
- (3) An application under subsection (2) must be made in accordance with the applicable Rules of Court.

Note: If a person does not comply with a requirement under subsection (1), or with a subpoena issued under subsection (2), in relation to an arbitration, a court may make such orders as it considers appropriate to facilitate the effective conduct of the arbitration: see subsection 13E(2) of the Act in relation to arbitration under section 13E of the Act, and section 13F of the Act in relation to relevant property and financial arbitration.

35 Application of rules of evidence

- (1) This section applies to an arbitration if all parties to the arbitration consent to its application.
- (2) In conducting an arbitration, an arbitrator is not bound by the rules of evidence but may inform himself or herself on any matter in any way that the arbitrator considers appropriate.

36 Making an award

- (1) At the end of an arbitration, the arbitrator must make an award.
- (2) The award must include a concise statement setting out:
 - (a) the arbitrator's reasons for making the award; and
 - (b) the arbitrator's findings of fact in the matter, referring to the evidence on which the findings are based.
- (3) The award must:
 - (a) be printed clearly or typewritten; and
 - (b) be contained in a single document.
- (4) The arbitrator must:
 - (a) give a copy of the award to each party to the award; and
 - (b) if the award was made in an arbitration under section 13E of the Act—inform the court that ordered the arbitration that:
 - (i) the arbitration has ended; and

- (ii) an award has been made in relation to all, or part, of the proceedings to which the arbitration relates.

37 Registration of award

- (1) For the purposes of paragraph 125(1)(bba) of the Act, this section sets out the requirements for the registration of awards made in arbitration.
- (2) An application made under subsection 13H(1) of the Act to a court for the registration of an award made in arbitration must be in accordance with Form 8 in Schedule 3.
- (3) The applicant must serve a copy of the application on each other party to the award.
- (4) If the applicant has complied with the requirements in this section, the court must register the award under subsection 13H(1) of the Act.

Note: For the effect of registration, see subsection 13H(2) of the Act.

Notice of registration of award

- (5) If a court registers an award, the court must give notice of the registration to each party to the award.
- (6) The notice must state:
 - (a) the date when the award was registered; and
 - (b) the place where the award was registered.

38 Enforcement of registered awards

A party to a registered award may apply for enforcement of the award as if the award were an order made under the Act.

39 Registration of decree affecting registered award

- (1) 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.
- (2) The application must be in accordance with Form 9 in Schedule 3.

EXPOSURE DRAFT

Part 4 Family consultants

Section 40

Part 4—Family consultants

40 Appointment of family consultants

For the purposes of paragraph 11B(c) of the Act, the Chief Executive Officer may, in writing, appoint a family consultant.

EXPOSURE DRAFT

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

41 Prescribed information about non-court based family services and court's processes and services

For the purposes of section 12B of the Act, the information that must be included in documents provided to persons under Part IIIA of the Act in relation to non-court based family services and court's processes and services is information about:

- (a) 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); and
- (b) the services provided by family counsellors and family dispute resolution practitioners to help people affected by separation or divorce; and
- (c) the steps involved in the proposed proceedings; and
- (d) the role of family consultants; and
- (e) the arbitration facilities available to arbitrate disputes in relation to separation and divorce.

42 Prescribed information about reconciliation

For the purposes of section 12C of the Act, the information that must be included in documents provided to persons under Part IIIA of the Act is information about family counselling and family dispute resolution services.

Note: Section 13B of the Act allows a court to adjourn proceedings to give the parties the opportunity to consider a reconciliation. The parties will be advised in such circumstances to attend family counselling or other appropriate services.

43 Prescribed information about Part VII proceedings

For the purposes of section 12D of the Act, the information that must be included in documents provided under Part IIIA of the Act to persons involved in Part VII proceedings, is information about family counselling services available to assist the parties and the child or children concerned in the proceedings to adjust to the consequences of orders made under Part VII of the Act.

Note: Part VII deals with issues including parental responsibility, parenting orders and maintenance orders in relation to a child or children concerned in the proceedings.

EXPOSURE DRAFT

Part 6 Jurisdiction of Courts

Section 44

Part 6—Jurisdiction of Courts

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

- (1) For the purposes of subsection 40(1) of the Act, the jurisdiction of the Federal Circuit and Family Court of Australia (Division 2) must not be exercised in relation to proceedings referred to in paragraph 132(1)(c) of the *Federal Circuit and Family Court of Australia Act 2021* in the following States and Territories:
- (a) New South Wales;
 - (b) Victoria;
 - (c) Queensland;
 - (d) Western Australia;
 - (e) South Australia;
 - (f) Tasmania;
 - (g) Australian Capital Territory;
 - (h) Northern Territory;
 - (i) Norfolk Island;
 - (j) Territory of Christmas Island;
 - (k) Territory of Cocos (Keeling) Islands.
- (2) For the purposes of subsection 40(1) of the Act, the 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 the following:
- (a) matters arising under the Act or under the repealed Act in respect of which matrimonial causes are instituted or continued under the Act;
 - (b) matters arising under the Act in respect of which de facto financial causes are instituted under the Act;
 - (c) matters arising under the *Marriage Act 1961* in respect of which proceedings (other than proceedings under Part VII of that Act) are instituted or continued under that Act;
 - (d) matters (other than matters referred to in any of the preceding paragraphs) with respect to which proceedings may be instituted in the Federal Circuit and Family Court of Australia (Division 2) under this Act;
 - (e) proceedings under the following provisions of the Act:
 - (i) subsection 39(5);
 - (ii) paragraph 39B(1)(a).

Note: The repealed Act is the *Matrimonial Causes Act 1959*: see the definition of **repealed Act** in subsection 4(1) of the Act.

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

For the purposes of section 44A of the Act, proceedings for a divorce order in relation to a marriage may not be instituted in, or transferred to, a court of summary jurisdiction other than the following:

- (a) the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia;
- (b) the Court of Petty Sessions of Norfolk Island.

46 Jurisdiction of courts

- (1) This section is made for the purposes of subsection 124A(2) of the Act.
- (2) To the extent that subsections 39(5) and (6) and section 69H of the Act do not invest the courts of a State or Territory mentioned in those provisions with federal jurisdiction, or confer jurisdiction on a federal court mentioned in those provisions, for proceedings mentioned in Division 7 or 11 of Part 7 or Division 4 of Part 10 of this instrument, the relevant courts are invested with jurisdiction, or jurisdiction is conferred on them for those proceedings, by this section.

EXPOSURE DRAFT

Part 7 Children

Division 1 Interpretation—how this Act applies to certain children

Section 47

Part 7—Children

Division 1—Interpretation—how this Act applies to certain children

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

For the purposes of subparagraph 60H(1)(b)(ii) of the Act, each of the laws specified in an item of the following table is prescribed.

Prescribed laws under which a child is a child of a woman and of the other intended parent	
Item	Commonwealth, State or Territory law
1	Section 14 of the <i>Status of Children Act 1996</i> (NSW)
2	Sections 10C, 10D, 10E, 13 and 14 of the <i>Status of Children Act 1974</i> (Vic.)
3	Sections 17, 18, 19, 19C, 19D and 19E of the <i>Status of Children Act 1978</i> (Qld)
4	Sections 5, 6 and 6A of the <i>Artificial Conception Act 1985</i> (WA)
5	Section 10C of the <i>Family Relationships Act 1975</i> (SA)
6	Section 10C of the <i>Status of Children Act 1974</i> (Tas.)
7	Section 11 of the <i>Parentage Act 2004</i> (ACT)
8	Sections 5C, 5D and 5DA of the <i>Status of Children Act 1978</i> (NT)
9	Section 13 of the <i>Status of Children Act 2012</i> (NI)

48 Artificial conception procedures: child of woman—prescribed laws

For the purposes of paragraph 60H(2)(b) of the Act, each of the laws specified in an item of the following table is prescribed.

Prescribed laws under which a child is a child of a woman	
Item	Commonwealth, State or Territory law
1	Section 14 of the <i>Status of Children Act 1996</i> (NSW)
2	Sections 15 and 16 of the <i>Status of Children Act 1974</i> (Vic.)
3	Section 23 of the <i>Status of Children Act 1978</i> (Qld)
4	Section 5 of the <i>Artificial Conception Act 1985</i> (WA)
5	Section 10C of the <i>Family Relationships Act 1975</i> (SA)
6	Section 10C of the <i>Status of Children Act 1974</i> (Tas.)
7	Section 11 of the <i>Parentage Act 2004</i> (ACT)
8	Section 5C of the <i>Status of Children Act 1978</i> (NT)
9	Section 13 of the <i>Status of Children Act 2012</i> (NI)

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Children **Part 7**

Interpretation—how this Act applies to certain children **Division 1**

Section 49

49 Children born under surrogacy arrangements—prescribed laws

For the purposes of subsection 60HB(1) of the Act, each of the laws specified in an item of the following table is prescribed.

Prescribed laws under which court order as to parentage may be made	
Item	State or Territory law
1	Section 12 of the <i>Surrogacy Act 2010</i> (NSW)
2	Section 22 of the <i>Status of Children Act 1974</i> (Vic.)
3	Section 22 of the <i>Surrogacy Act 2010</i> (Qld)
4	Section 21 of the <i>Surrogacy Act 2008</i> (WA)
5	Section 18 of the <i>Surrogacy Act 2019</i> (SA)
6	Section 10HB of the <i>Family Relationships Act 1975</i> (SA), as that section was in force immediately before it was repealed by the <i>Surrogacy Act 2019</i> (SA)
7	Sections 16 and 22 of the <i>Surrogacy Act 2012</i> (Tas.)
8	Section 26 of the <i>Parentage Act 2004</i> (ACT)
9	Section 34 of the <i>Surrogacy Act 2022</i> (NT)

EXPOSURE DRAFT

Part 7 Children

Division 2 Family dispute resolution

Section 50

Division 2—Family dispute resolution

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

For the purposes of paragraph 60I(9)(f) of the Act, the circumstance specified is that an application has been made to the court for any other order in proceedings in which a certificate under subsection 60I(8) of the Act has been filed.

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

51 Authentication of consent in writing

- (1) This section prescribes how consent in writing is to be authenticated for the purposes of 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.
- (2) A consent in writing must be authenticated by a prescribed person (within the meaning of the *Statutory Declarations Act 1959*) endorsing on the consent a statement that:
 - (a) the prescribed person is satisfied about the identity of the person signing the consent; and
 - (b) the consent was signed in the prescribed person's presence.

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Part 7 Children

Division 4 Location and recovery of children

Section 52

Division 4—Location and recovery of children

52 Commonwealth information orders—prescribed Departments and Commonwealth instrumentalities

- (1) For the purposes of paragraph 67N(3)(b) of the Act, the following Departments and Commonwealth instrumentalities are prescribed:
- (a) the Attorney-General’s Department;
 - (b) the Australian Institute of Family Studies;
 - (c) the Department of Education;
 - (d) the Department of Employment and Workplace Relations;
 - (e) the Department of Foreign Affairs and Trade;
 - (f) the Department of Health and Aged Care;
 - (g) the Department of Home Affairs;
 - (h) the Department of Social Services;
 - (i) the Department of Veterans’ Affairs;
 - (j) the National Indigenous Australians Agency;
 - (k) Services Australia.

- (2) In this section:

Department of Education means the Department administered by the Minister administering the *Tertiary Education Quality and Standards Agency Act 2011*.

Department of Employment and Workplace Relations means the Department administered by the Minister administering Division 3AA of Part 3 of the *Social Security (Administration) Act 1999*.

Department of Foreign Affairs and Trade means the Department administered by the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

Department of Health and Aged Care means the Department administered by the Minister administering the *National Health Act 1953*.

Department of Home Affairs means the Department administered by the Minister administering the *Australian Border Force Act 2015*.

Department of Social Services means the Department administered by the Minister administering section 1 of the *Social Security Act 1991*.

Department of Veterans’ Affairs means the Department administered by the Minister administering the *Veterans’ Entitlements Act 1986*.

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

53 Information sharing agencies

For the purposes of section 67ZBC of the Act, each of the following is prescribed as an information sharing agency:

- (a) the police force or police service of a State or Territory;
- (b) the part of the police force or police service of a State or Territory that has primary responsibility for firearms licensing;
- (c) the part of the Australian Federal Police that provides police services in relation to the Australian Capital Territory;
- (d) the part of the Australian Federal Police that has primary responsibility for firearms licensing in relation to the Australian Capital Territory;
- (e) either:
 - (i) the Department of a State or Territory that has primary responsibility for child protection in that State or Territory; or
 - (ii) if, in a State or Territory, only a part of a Department has primary responsibility for child protection—that part of the Department.

54 Information sharing safeguards

- (1) For the purposes of subsection 67ZBI(1) of the Act, this section prescribes information sharing safeguards that:
 - (a) an information sharing agency must have regard to when providing particulars, documents or information (the *shared material*) under an order made under section 67ZBD or 67ZBE, or under subsection 67ZBD(5) or 67ZBE(5), of the Act; and
 - (b) the court must have regard to when using particulars, documents or information (the *shared material*) provided by an information sharing agency under an order made under section 67ZBD or 67ZBE, or under subsection 67ZBD(5) or 67ZBE(5), of the Act.

Note: For the purposes of paragraph (b), *use* includes handle, store and access: see subsection 67ZBI(3) of the Act.

Extent material is to be provided, stored or used

- (2) Particulars and documents are, and information is, only to be provided, and shared material is only to be stored and used, to the extent:
 - (a) that the material relates to a matter mentioned in subsection 67ZBD(2) or 67ZBE(2) of the Act; or
 - (b) required or authorised by a law of the Commonwealth, State or Territory or a court order (including an order made under section 67ZBD or 67ZBE of the Act).

Reasonable care to be taken to protect from physical and psychological harm

- (3) The shared material is to be provided, stored and used in good faith and with reasonable care to protect persons who are involved in, or could be affected by,

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Part 7 Children

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

Section 54

the provision, storage or use of the shared material from physical and psychological harm.

Prevention of improper provision, storage and use

- (4) The shared material is to be provided, stored and used in a manner that prevents improper access to or disclosure of the shared material.
- (5) Reasonable steps are to be taken to prevent the shared material being accessed by or disclosed to a person who poses, or potentially, poses a risk of subjecting or exposing any of the following to abuse, neglect or family violence:
 - (a) a party to the proceedings;
 - (b) a child to whom the proceedings relates;
 - (c) another person to whom the shared material relates;unless the access or disclosure is in accordance with an order of a court.
- (6) The shared material is not to be provided by or used by a person who has a personal relationship with or has any other actual or potential conflict of interest in relation to:
 - (a) a party to the proceedings; or
 - (b) a child to whom the proceedings relates; or
 - (c) another person to whom the shared material relates.

Correction of errors

- (7) If the information sharing agency becomes aware that the shared material is incorrect, then as soon as possible:
 - (a) the information sharing agency is to notify the court of the correction; and
 - (b) subject to subsection (10), the court is to correct its records accordingly.

Requests for documents or information not in possession or control

- (8) If:
 - (a) an information sharing agency receives an order under section 67ZBD or 67ZBE of the Act relating to a matter; and
 - (b) the information sharing agency does not have in its possession or control any documents or information relating to the matter;then, subject to subsection (10), the information sharing agency is to destroy or redact its records relating to the order after responding to the order.
- (9) If:
 - (a) a person requests access to the shared material or to material that is purported to be shared material provided to the court; and
 - (b) the court does not have such material in its possession or control;then, subject to subsection (10), the court is to destroy or redact its records relating to the request.

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Children **Part 7**
Orders for information etc. in child-related proceedings **Division 5**

Section 54

Record-keeping obligations not affected

- (10) Subsections (7), (8) and (9) are subject to any record-keeping obligations imposed on the information sharing agency or the court by a law of the Commonwealth, a State or a Territory or an order of a court.

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Part 7 Children

Division 6 Family violence

Section 55

Division 6—Family violence

55 Registration of court decision

- (1) For the purposes of subsection 68R(6) of the Act, this section provides for the registration of a decision if, in proceedings to make or vary a family violence order, a court:
 - (a) makes or varies a family violence order (whether or not by interim order); and
 - (b) revives, varies, discharges or suspends an order, injunction or arrangement mentioned in subsection 68R(1) of the Act that was made or granted by another court.

Note: For the definition of *family violence order*, see subsection 4(1) of the Act and section 7 of this instrument.
- (2) The relevant Registrar of the court must send a copy of the decision mentioned in paragraph (1)(b), sealed with the seal of the court or otherwise endorsed by an officer of the court, to the relevant Registrar of the other court as soon as practicable.
- (3) On receiving the copy of the decision, the relevant Registrar of the other court must register the decision by:
 - (a) filing the copy; and
 - (b) noting on the copy the fact and date of registration.

Division 7—Parentage evidence

Subdivision A—General

56 Purposes of this Division

Unless otherwise stated, each section in this Division is made for the purposes of section 69ZB of the Act.

57 Application of this Division

This Division applies to a parentage testing procedure that is required to be carried out on a person under a parentage testing order.

Note: Parentage testing orders are made under subsection 69W(1) of the Act. Associated orders relating to the parentage testing procedure may be made under section 69X of the Act.

58 Meaning of certain terms relating to parentage testing procedures

In this instrument:

bodily sample is not limited to a sample of blood.

donor means the person required to provide a bodily sample for the purposes of a parentage testing procedure.

nominated reporter means the person nominated by a laboratory to prepare a report relating to the information obtained as a result of carrying out a parentage testing procedure at that laboratory.

sample means a sample taken from a donor for the purposes of a parentage testing procedure.

sampler means a person who takes a bodily sample from a donor for the purposes of a parentage testing procedure.

testing means the implementation, or any part of the implementation, of a parentage testing procedure.

59 Parentage testing procedures

- (1) For the purposes of the definition of *parentage testing procedure* in subsection 4(1) of the Act, the medical procedure in subsection (2) of this section is prescribed.
- (2) The procedure is DNA typing that is carried out:
 - (a) in compliance with Subdivision B; and
 - (b) at a laboratory that is accredited by the National Association of Testing Authorities Australia for the purpose of carrying out parentage testing procedures; and

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Part 7 Children

Division 7 Parentage evidence

Section 60

- (c) in accordance with standards of practice that entitle the laboratory to be so accredited.

Note: A report of the information obtained as a result of the procedure must be prepared: see section 68.

Subdivision B—Collection, storage and testing of samples

60 Samplers

A person must not take a bodily sample from a donor for the purposes of a parentage testing procedure unless:

- (a) the person is a registered medical practitioner; or
- (b) the person is employed by a hospital, a pathology practice, a parentage testing practice, or a registered medical practitioner, for the purpose of taking a bodily sample from a donor.

61 Provision of information by donor—Form 3

- (1) Before a sampler takes a bodily sample from a donor, the procedure in subsection (2) must have been complied with by the following person (the *applicable person*):
 - (a) if paragraphs (b) and (c) do not apply—the donor; or
 - (b) if the donor is a child under the age of 18 years—a parent of the donor, a guardian of the donor or a person who, under a parenting order, has responsibility for the donor’s long-term or day-to-day care, welfare and development; or
 - (c) if the donor is a person who does not have decision-making ability:
 - (i) a trustee or manager in relation to the donor under a law of the State or Territory whose laws apply to the donor; or
 - (ii) a parent of the donor, a guardian of the donor or a person who, under a parenting order, has responsibility for the donor’s long-term or day-to-day care, welfare and development.
- (2) The procedure is that the applicable person must:
 - (a) have completed an affidavit on the day the sample is taken:
 - (i) that is in accordance with Form 3 in Schedule 3; and
 - (ii) to which a recent photograph of the donor named in the affidavit is attached; and
 - (b) either:
 - (i) provided to the sampler a recent photograph of the donor, measuring approximately 45 millimetres by 35 millimetres, that shows a full face view of the donor’s head and the donor’s shoulders against a plain background; or
 - (ii) made a written arrangement with the sampler for a photograph of that kind to be taken.

Note: The photograph required by subparagraph (b)(i) is in addition to the photograph that is required under subparagraph (a)(i) to be attached to Form 3 in Schedule 3.

62 Collection of blood samples

- (1) This section applies to the taking of a bodily sample from a donor that is a sample of blood.
- (2) A sampler must take the sample of blood from a donor with a needle or syringe that:
 - (a) has not been used for any purpose; and
 - (b) has been sterilised; and
 - (c) is disposable.
- (3) Before taking the sample of blood from a donor, the sampler must ensure that the area of the donor's skin into which the needle is to be inserted to withdraw the blood has been cleaned with an antiseptic.

63 Collection of other bodily samples

- (1) This section applies to the taking of a bodily sample from a donor that is not a sample of blood.
- (2) A sampler must not take the bodily sample from a donor with a swab unless the swab:
 - (a) has not been used for any purpose; and
 - (b) has been sterilised.
- (3) Any other implement used by a sampler to take the bodily sample must be sterilised before that use.

64 Container to be sealed and labelled

- (1) If a bodily sample is taken from a donor, the sampler must ensure that the following procedures are complied with:
 - (a) the sample is placed in a container:
 - (i) immediately after it is taken; and
 - (ii) in the presence of the applicable person;
 - (b) the container has not previously been used for any purpose;
 - (c) the container is sealed in a way that, if it were opened after being sealed, that fact would be evident on inspection of the container;
 - (d) the container is labelled in a way that:
 - (i) if the label, or any part of the label, were removed; or
 - (ii) if writing on the label were impaired by alteration or erasure; the removal of the label, or the impairment, would be evident on inspection of the container;
 - (e) the particulars are indelibly printed or written on the label, and include:
 - (i) the full name of the donor; and
 - (ii) the date of birth and the sex of the donor; and
 - (iii) the date and time at which the sample was taken;
 - (f) the sampler and the applicable person sign the label in ink.

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Part 7 Children

Division 7 Parentage evidence

Section 65

- (2) The applicable person for the purposes of subparagraph (1)(a)(ii) and paragraph (1)(f) is:
- (a) if paragraphs (b) and (c) do not apply—the donor; or
 - (b) if the donor is a child under the age of 18 years—a parent of the donor, a guardian of the donor or a person who, under a parenting order, has responsibility for the donor’s long-term or day-to-day care, welfare and development; or
 - (c) if the donor is a person who does not have decision-making ability:
 - (i) a trustee or manager in relation to the donor under a law of the State or Territory whose laws apply to the donor; or
 - (ii) a parent of the donor, a guardian of the donor or a person who, under a parenting order, has responsibility for the donor’s long-term or day-to-day care, welfare and development.

65 Statement by sampler—Form 4

After taking a bodily sample from a donor, the sampler must:

- (a) complete a statement in accordance with Form 4 in Schedule 3; and
- (b) affix the photograph of the donor referred to in paragraph 61(2)(b) to the statement; and
- (c) sign the sampler’s name partly on the photograph and partly on the statement in a way that, if the photograph were later removed from the statement, the removal would be evident from inspection of the statement.

66 Packing and storage requirements

- (1) A bodily sample must be packed, stored and transported to a laboratory for testing in a manner that:
- (a) will preserve the integrity of the sample; and
 - (b) ensures that the testing of the sample will produce the same results as would have been obtained if the sample had been tested immediately after collection.
- (2) The sampler must ensure that the following documents are sent to the laboratory with the sample:
- (a) the affidavit completed under paragraph 61(2)(a);
 - (b) the statement completed under paragraph 65(a).

67 Testing of bodily samples

A laboratory to which a bodily sample has been sent for testing must ensure that the testing is completed within a reasonable time after the sample is taken.

Subdivision C—Reports

68 Reports—Form 5

- (1) For the purposes of paragraph 69ZB(b) of the Act, a report must be prepared, in accordance with this section, relating to the information obtained as a result of carrying out a parentage testing procedure.
- (2) The report must be in accordance with Form 5 in Schedule 3.
- (3) Part I of the report must be completed by the nominated reporter identified in the report.
- (4) Part II of the report must be completed by:
 - (a) the person who carried out the parentage testing procedure; or
 - (b) the person under whose supervision the parentage testing procedure was carried out.
- (5) A report completed otherwise than in accordance with this section is taken to be of no effect.

Subdivision D—Miscellaneous

69 Notification of accredited laboratories and nominated reporters

- (1) The National Association of Testing Authorities Australia (*NATA*) must, for each financial year, prepare a list of all laboratories that are accredited by NATA to carry out parentage testing procedures and each laboratory's nominated reporter.
- (2) Immediately before the beginning of each financial year, NATA must give a copy of the list to:
 - (a) the Attorney-General's Department; and
 - (b) the Chief Executive Officer; and
 - (c) the relevant Registrar of the Family Court of Western Australia.
- (3) The Attorney-General's Department must publish the list.
- (4) If NATA amends the list during the year to which it applies, it must give written notice of the amendment to each person referred to in subsection (2).
- (5) If NATA gives notice under subsection (4), the Attorney-General's Department must publish a revised list.

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Part 7 Children

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

Section 70

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

70 Evidence relating to professional confidential relationship privilege— specified laws

For the purposes of paragraph 69ZX(4)(b) of the Act, each of the laws specified in an item of the following table is prescribed.

Prescribed laws relating to professional confidential relationship privilege	
Item	State or Territory law
1	Section 126B of the <i>Evidence Act 1995</i> (NSW)
2	Section 20C of the <i>Evidence Act 1906</i> (WA)
3	Section 126B of the <i>Evidence Act 2001</i> (Tas.)
4	Section 126B of the <i>Evidence Act 2011</i> (ACT)

Division 9—Registration of State and Territory orders

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

For the purposes of section 70C of the Act, each of the following is a prescribed State:

- (a) New South Wales;
- (b) Victoria;
- (c) Queensland;
- (d) Western Australia;
- (e) South Australia;
- (f) Tasmania;
- (g) the Australian Capital Territory;
- (h) the Northern Territory;
- (i) the Territory of Norfolk Island.

Note: In Subdivision B of Division 13 of Part VII of the Act, *State*, includes a Territory: see subsection 4(1) of the Act.

Division 10—State, Territory and overseas orders

Subdivision A—Registration of overseas orders

72 Registration of overseas child orders

- (1) For the purposes of section 70G and subsection 70N(1) of the Act, this section applies if:
- (a) an overseas child order is made in a prescribed overseas jurisdiction; and
 - (b) the order is not:
 - (i) an excluded order; or
 - (ii) an order that only has the effect of declaring or transferring the parentage of a child; and
 - (c) both of the following documents are received, by the Secretary or a court exercising jurisdiction under this Act, from the prescribed overseas jurisdiction:
 - (i) a certified copy of the overseas child order;
 - (ii) a certificate signed by an officer of a court, or by some other authority, in the prescribed overseas jurisdiction relating to the order and containing a statement that the order is, at the date of the certificate, enforceable in that jurisdiction.

Note 1: For the definitions of *excluded order* and *overseas child order*, see subsection 4(1) of the Act.

Note 2: For the meaning of *prescribed overseas jurisdiction*, see subsection 10(2) of this instrument.

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Part 7 Children

Division 10 State, Territory and overseas orders

Section 72

- (2) If the Secretary receives the documents, and there are reasonable grounds for believing that any of the following persons is ordinarily resident in, present in, or proceeding to, Australia, the Secretary must send the documents to the relevant Registrar of a court exercising jurisdiction under this Act:
 - (a) the child who is the subject of the order;
 - (b) a parent of that child;
 - (c) a person having:
 - (i) the right to have the child live with the person; or
 - (ii) the right of custody of or access to the child; or
 - (iii) the right to spend time or communicate with the child.
- (3) The relevant Registrar must, on receiving the documents from the Secretary, register the order, excluding any parts of the order that have the effect of declaring or transferring the parentage of a child.
- (4) A court exercising jurisdiction under this Act may register the order, excluding any parts of the order that have the effect of declaring or transferring the parentage of a child, if:
 - (a) the court has received the documents (other than from the Secretary under subsection (2)); and
 - (b) there are reasonable grounds for believing that a person referred to in paragraph (2)(a), (b) or (c) is ordinarily resident in, present in, or proceeding to, Australia.
- (5) The order is to be registered under subsection (3) or (4) by:
 - (a) filing the certified copy of the order and the certificate; and
 - (b) noting on the certified copy of the order the fact and the date of the registration.

Concurrent registration

- (6) An overseas child order registered under subsection (3) or (4), may be registered concurrently in any other court having jurisdiction under this Act, on the application of:
 - (a) the relevant Registrar of a court; or
 - (b) a person interested in the order (including the child who is the subject of the order).
- (7) A certificate by a court, that an overseas child order has been registered in the court in accordance with subsection (3) or (4) is sufficient evidence to enable a concurrent registration to be made.

Enforcement

- (8) An overseas child order registered in accordance with this section is enforceable throughout Australia until the registration (including a concurrent registration) has been cancelled.

Note: See also section 70H of the Act.

- (9) If a court (the *Australian court*) exercising jurisdiction as permitted by section 70J of the Act substantially varies the order registered under this section, the relevant Registrar of the Australian court must send to the court, or appropriate authority, in the prescribed overseas jurisdiction:
- (a) 3 certified copies of the order of the Australian court and the reasons for the order; and
 - (b) a copy of the depositions; and
 - (c) such further material as the Australian court directs.

Interpretation

- (10) This section does not prevent a court that has jurisdiction under this Act from receiving evidence of an order made in an overseas jurisdiction (whether or not the jurisdiction is a prescribed overseas jurisdiction), being an order that:
- (a) deals with the person with whom a child is supposed to live, spend time or communicate; or
 - (b) provides for a person to have custody of, or access to, a child.

Subdivision B—Transmission of Australian orders to overseas jurisdictions

73 Transmission of orders to overseas jurisdiction

- (1) For the purposes of subsection 70N(1) of the Act, this section applies if:
- (a) a State child order, or a parenting order (other than a child maintenance order), is made by a court in Australia in relation to a child who is under 18; and
 - (b) the order relates to a child to whom an overseas child order relates; and
 - (c) the order may be enforced in a prescribed overseas jurisdiction under provisions corresponding to Subdivision C of Division 13 of Part VII of the Act.

Note: For the meaning of *prescribed overseas jurisdiction*, see subsection 10(2) of this instrument.

- (2) A person:
- (a) with whom the child is supposed to live, spend time or communicate under the order; or
 - (b) who has a right to custody of, or access to, the child under the order; may request, in writing, the relevant Registrar of a court in Australia in which the order was made, registered or last varied, send the order to the prescribed overseas jurisdiction for registration and enforcement.
- (3) On receiving the request, the relevant Registrar of the court in Australia must send to the appropriate court or authority in the prescribed overseas jurisdiction:
- (a) 3 certified copies of the order; and
 - (b) a certificate signed by the relevant Registrar stating that the order is, at the date of the certificate, enforceable in Australia; and

EXPOSURE DRAFT

Part 7 Children

Division 10 State, Territory and overseas orders

Section 73

- (c) any information and material the relevant Registrar holds that may assist in identifying and locating the child or any other person who is subject to the order; and
 - (d) a request, in writing, that the order be made enforceable in the prescribed overseas jurisdiction.
- (4) If:
- (a) the order is registered in a court in the prescribed overseas jurisdiction; and
 - (b) a court in that jurisdiction makes an order under a law corresponding to section 70J of the Act (the *overseas order*);
- a court having jurisdiction under this Act may treat the overseas order as an overseas child order for the purposes of exercising jurisdiction under that section.
- (5) If a court (the *Australian court*) exercises jurisdiction under section 70J of the Act in relation to a child who is the subject of the overseas order, the relevant Registrar of the Australian court must send to the court in the prescribed overseas jurisdiction:
- (a) 3 certified copies of any order made by the Australian court and the reasons for the order; and
 - (b) such further material as the court directs.
- (6) Nothing in this section prevents a person having a right of custody of or access to a child, or a right to spend time or communicate with the child, under the order from:
- (a) obtaining certified copies of the order; or
 - (b) applying to a court in an overseas jurisdiction (whether or not it is a prescribed overseas jurisdiction) for registration and enforcement of the order in that jurisdiction.
- (7) In this section:
- custody*, in relation to a child, includes:
- (a) guardianship of the child; and
 - (b) responsibility for the long-term or day-to-day care, welfare and development of the child; and
 - (c) responsibility as the person or persons with whom the child is to live.

Part 8—Orders and injunctions binding third parties

74 Third party expenses

- (1) For the purposes of subsection 90AJ(4) of the Act, this section provides for matters relating to the expenses of a third party in relation to a marriage in situations where the court has not made an order under subsection 90AJ(2) of the Act in relation to those expenses.
- (2) A third party in relation to a marriage may charge reasonable fees to cover the reasonable expenses of the third party incurred as a necessary result of an order made or an injunction granted, in accordance with Part VIII AA of the Act, in relation to the marriage.
- (3) Without limiting subsection (2), the fees may cover the reasonable expenses incurred by the third party in complying with the order or injunction.
Examples: Expenses incurred for any of the following matters could be covered in the fees charged by the third party:
 - (a) legal and registration fees;
 - (b) valuation fees;
 - (c) government charges and duties;
 - (d) searching, obtaining and producing documents;
 - (e) postage, delivery, transport or other transmission of documents;
 - (f) communications with the parties to the marriage or another person.
- (4) Each of the parties to the marriage is separately liable to pay to the third party half of the total amount of the fees charged.
- (5) Jurisdiction is conferred on, and invested in, the court:
 - (a) to decide whether fees charged by a third party under subsection (2) are reasonable; and
 - (b) to make an order in relation to the collection or recovery of such reasonable fees.

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Part 9 Enforcement of decrees

Section 75

Part 9—Enforcement of decrees

75 Inter-State enforcement of child bearing expenses order

- (1) For the purposes of section 109 of the Act, this section applies if:
 - (a) an order to which section 109 of the Act applies is made by a court (the *requesting court*) in a State or Territory; and
 - (b) the order is still in force.

Request for enforcement in another State or Territory

- (2) The relevant Registrar of the requesting court may, on their own motion or on application by a person for whose benefit the order was made, send the documents mentioned in subsection (3) to a court (the *receiving court*) in another State or Territory for registration and enforcement if:
 - (a) it appears to the relevant Registrar of the requesting court that the person against whom the order has been made is resident in, or proceeding to, that other State or Territory; and
 - (b) the receiving court has jurisdiction under this Act in relation to orders to which section 109 of the Act applies.
- (3) For the purposes of subsection (2), the documents are:
 - (a) 3 certified copies of the order; and
 - (b) a certificate setting out the amounts payable and remaining unpaid under the order; and
 - (c) such information and material (if any) as the relevant Registrar of the requesting court possesses for ascertaining the identity and whereabouts of the person against whom the order has been made; and
 - (d) a request in writing that the order be made enforceable in that State or Territory.

Registration and enforcement in other State or Territory

- (4) If, after the order is registered, it appears to the relevant Registrar of the receiving court that there are reasonable grounds for believing that the person against whom the order has been made is resident in or proceeding to that State or Territory, the relevant Registrar of the receiving court must, on receiving the documents, register the order by:
 - (a) filing a certified copy of the order and the certificate setting out the amounts payable and remaining unpaid under the order; and
 - (b) noting the fact and date of registration on the certified copy of the order.
- (5) The registered order is, until the registration is cancelled, enforceable in the receiving court, in the same way the order would be if it were made under the Act, with respect to:
 - (a) any moneys or arrears presently payable under the order; and
 - (b) any amounts becoming due under the order after it is registered.

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- (6) On registration of the order, the relevant Registrar of the receiving court must:
- (a) notify the relevant Registrar of the requesting court of the registration; and
 - (b) cause a certified copy of the order to be served on the person against whom the order has been made, together with a notice of registration of the order in the receiving court:
 - (i) specifying the amount (including arrears), if any, due under the order; and
 - (ii) stating the person, authority or court to whom or to which money payable under the order is to be paid; and
 - (iii) giving an address at which such payments may be made.

Note: Service is dealt with by the applicable Rules of Court.

Notification when person leaves other State or Territory

- (7) If it appears to the relevant Registrar of the receiving court that there are reasonable grounds for believing that the person against whom the order has been made is no longer resident in that State or Territory, and is resident in or proceeding to another State or Territory, the relevant Registrar of the receiving court must:
- (a) notify the relevant Registrar of the requesting court; and
 - (b) give the relevant Registrar of the requesting court such information as the relevant Registrar of the receiving court possesses concerning the whereabouts and intended movements of that person.

Cancellation

- (8) On receipt of a request, in writing, from the relevant Registrar of the requesting court, that the order no longer be enforceable, the relevant Registrar of the receiving court must cancel the registration of the order.
- (9) If the registration is cancelled:
- (a) the order ceases to be enforceable in the receiving court; and
 - (b) the order remains unenforceable in the receiving court unless and until it is again registered in the receiving court; and
 - (c) every warrant or other process arising out of the registration of the order in the receiving court ceases to have force or effect.

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Part 10 International conventions, international agreements and international enforcement

Division 1 General

Section 76

Part 10—International conventions, international agreements and international enforcement

Division 1—General

76 Extension of provisions of the Act

- (1) This section is made for the purposes of subsection 124A(1) of the Act
- (2) Subdivisions D (except subsection 69U(3)) and E of Division 12 of Part VII of the Act apply, subject to this section, to proceedings for the purposes of an international agreement or arrangement that:
 - (a) is with:
 - (i) a reciprocating jurisdiction; or
 - (ii) a jurisdiction specified in an item of the table in Schedule 4 to this instrument; and
 - (b) relates to maintenance obligations arising from family relationship, parentage or marriage.

Note: For the meaning of *reciprocating jurisdiction*, see section 101 of this instrument.

- (3) Matters mentioned in this section are taken to be matters arising under Part VII of the Act for the purposes of the application of section 69H of the Act in relation to those matters.
- (4) Despite subsections 69S(1) and 69U(3) of the Act, the presumption of parentage provided for by subsection 69S(1) of the Act is taken, for the purposes of proceedings mentioned in subsection (2) of this section to be rebuttable under subsection 69U(1) of the Act.

Note: Subsection 69U(3) of the Act is not extended by subsection (2) of this section.

Division 2—Service under the Hague Service Convention

Subdivision A—Preliminary

Note 1: This Division forms part of a scheme to implement Australia's obligations under the Hague Service Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (see the definition of *Hague Service Convention* in section 4). Under the Convention, the Attorney-General's Department of the Commonwealth is designated as the Central Authority (under Article 2 of the Convention) and certain courts and government departments are, for certain purposes, designated as "other" or "additional" authorities (under Article 18 of the Convention).

Note 2: This Division provides for service in overseas Convention countries of local judicial documents (documents that relate to proceedings in the court) and for default judgment in proceedings in the court after service overseas of such a document.

Note 3: A list of all Convention countries, details of declarations and objections made under the Convention by each of those countries and the names and addresses of the Central and other authorities of each of those countries could in 2024 be viewed at <http://www.hcch.net>.

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77 Purposes of this Division

Unless otherwise stated, each section in this Division is made for the purposes of paragraph 125(1)(a) of the Act.

78 Meaning of *Convention country* and of certain other terms used in this Division

In this instrument:

Central Authority, for a Convention country, means an authority that is for the time being designated by that country, under Article 2 of the Hague Service Convention, to be the Central Authority for that country.

Convention additional authority, for a Convention country, means an authority that is:

- (a) for the time being designated by the Convention country, under Article 18 of the Hague Service Convention, to be an authority (other than the Central Authority) for the Convention country; and
- (b) competent to receive requests for service abroad emanating from Australia.

Convention certificate of service means a certificate of service that has been completed for the purposes of Article 6 of the Hague Service Convention.

Convention certifying authority, for a Convention country, means the Central Authority for the country or some other authority that is for the time being designated by the country, under Article 6 of the Hague Service Convention, to complete certificates of service in the form annexed to the Hague Service Convention.

Convention country means a country, other than Australia, that is a party to the Hague Service Convention.

forwarding authority, for a Convention country, means the authority that is competent under the law of the Convention country to forward requests for service abroad under Article 3 of the Hague Service Convention.

initiating process means any document by which proceedings (including proceedings on any cross-claim or third party notice) are commenced.

request for service abroad means a request for service in a Convention country of a local judicial document.

79 Provisions of this Division to prevail

The provisions of this Division prevail to the extent of any inconsistency between those provisions and any other provisions of this instrument.

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Part 10 International conventions, international agreements and international enforcement

Division 2 Service under the Hague Service Convention

Section 80

Subdivision B—Service abroad of local judicial documents

80 Application of this Subdivision

- (1) Subject to subsection (2), this Subdivision applies to service in a Convention country of a local judicial document.
- (2) This Subdivision does not apply if service of the document is effected, without application of any compulsion, by an Australian diplomatic or consular agent mentioned in Article 8 of the Hague Service Convention.

81 Application for request for service abroad

- (1) A person may apply to the relevant Registrar, in the relevant Registrar's capacity as a forwarding authority for a Convention country, for a request for service in the Convention country of a local judicial document.
- (2) The application must be accompanied by 3 copies of each of the following documents:
 - (a) a draft request for service abroad, which must be in accordance with Part 1 of Form 1 in Schedule 3;
 - (b) the local judicial document to be served;
 - (c) a summary of the local judicial document to be served, which must be in accordance with Form 2 in Schedule 3;
 - (d) if, under Article 5 of the Hague Service Convention, the Central Authority for the Convention country, or any Convention additional authority for the Convention country, requires the local judicial document to be served to be written in, or translated into, an official language of that country—a translation into that language of both the document to be served and the summary of the document to be served.
- (3) The application must contain a written undertaking to the court, signed by the legal practitioner on the record for the applicant or, if there is no legal practitioner on the record for the applicant, by the applicant:
 - (a) to be personally liable for all costs that are incurred:
 - (i) by the employment of a person to serve the local judicial document to be served, being a person who is qualified to do so under the law of the Convention country in which the document is to be served; or
 - (ii) by the use of any particular method of service that has been requested by the applicant for the service of the local judicial document to be served; and
 - (b) to pay the amount of those costs to the relevant Registrar within 28 days after receipt from the relevant Registrar of a notice specifying the amount of those costs under subsection 83(3); and
 - (c) to give such security for those costs as the relevant Registrar may require.
- (4) The draft request for service abroad:
 - (a) must be completed (except for signature) by the applicant; and
 - (b) must state whether, if the time fixed for entering an appearance in the proceedings to which the local judicial document relates expires before

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service is effected, the applicant wants service to be attempted after the expiry of that time; and

- (c) must be addressed to the Central Authority, or to a Convention additional authority, for the Convention country in which the person is to be served; and
 - (d) may state that the applicant requires a Convention certificate of service that is completed by a Convention additional authority to be countersigned by the Central Authority for the Convention country.
- (5) Any translation required under paragraph (2)(d) must bear a certificate (in both English and the language used in the translation) signed by the translator stating:
- (a) that the translation is an accurate translation of the document to be served; and
 - (b) the translator's full name, address and qualifications for making the translation.

82 How application is to be dealt with

- (1) If satisfied that the application and its accompanying documents comply with section 81, the relevant Registrar:
 - (a) must sign the request for service abroad; and
 - (b) must forward 2 copies of the relevant documents:
 - (i) if the applicant has asked for the request to be forwarded to a nominated Convention additional authority for the Convention country in which service of the local judicial document is to be effected—to the nominated Convention additional authority; or
 - (ii) in any other case—to the Central Authority for the Convention country in which service of the local judicial document is to be effected.
- (2) For the purposes of paragraph (1)(b) the relevant documents are the following:
 - (a) the signed request for service abroad;
 - (b) the local judicial document to be served;
 - (c) the summary of the local judicial document to be served;
 - (d) if required under paragraph 81(2)(d), a translation into the relevant language of each of the documents mentioned in paragraphs (b) and (c) of this subsection.
- (3) If not satisfied that the application or any of its accompanying documents comply with section 81, the relevant Registrar must inform the applicant of the respects in which the application or document fails to comply.

83 Procedure on receipt of Convention certificate of service

- (1) Subject to subsection (5), on receipt of a Convention certificate of service in due form in relation to a local judicial document to which a request for service abroad relates, the relevant Registrar:
 - (a) must arrange for the original certificate to be filed in the proceedings to which the document relates; and

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- (b) must send a copy of the certificate to:
 - (i) the legal practitioner on the record for the applicant in the proceedings; or
 - (ii) if there is no legal practitioner on the record for the applicant in the proceedings—the applicant.
- (2) For the purposes of subsection (1), a Convention certificate of service is in due form if:
 - (a) it is in accordance with Part 2 of Form 1 in Schedule 3; and
 - (b) it has been completed by a Convention certifying authority for the Convention country in which service was requested; and
 - (c) if the applicant requires a certificate of service that is completed by an Convention additional authority to be countersigned by the Central Authority for the Convention country—it has been countersigned.
- (3) On receipt of a statement of costs in due form in relation to the service of a local judicial document mentioned in subsection (1), the relevant Registrar must send to the legal practitioner or applicant who gave the undertaking mentioned in subsection 81(3) a notice specifying the amount of those costs.
- (4) For the purposes of subsection (3), a statement of costs is in due form if:
 - (a) it relates only to costs of a kind mentioned in paragraph 81(3)(a); and
 - (b) it has been completed by a Convention certifying authority for the Convention country in which service was requested.
- (5) Subsection (1) does not apply unless:
 - (a) adequate security to cover the costs mentioned in subsection (3) has been given under paragraph 81(3)(c); or
 - (b) to the extent to which the security so given is inadequate to cover those costs—an amount equal to the amount by which those costs exceed the security so given has been paid to the relevant Registrar.

84 Payment of costs

- (1) On receipt of a notice under subsection 83(3) in relation to the costs of service, the legal practitioner or applicant, as the case may be, must pay to the relevant Registrar the amount specified in the notice as the amount of the costs.
- (2) If the legal practitioner or applicant fails to pay that amount within 28 days after receiving the notice:
 - (a) except by leave of the court, the applicant may not take any further step in the proceedings to which the local judicial document relates until the costs are paid to the relevant Registrar; and
 - (b) the relevant Registrar may take such steps as are appropriate to enforce the undertaking for payment of the costs.

85 Evidence of service

A Convention certificate of service in relation to a local judicial document (being a certificate in due form, within the meaning of subsection 83(2)) that certifies

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that service of the document was effected on a specified date is, in the absence of any evidence to the contrary, sufficient proof that:

- (a) service of the document was effected by the method specified in the certificate on that date; and
- (b) if that 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

86 Application of this Subdivision

This Subdivision applies to civil proceedings under this Act for which an initiating process has been forwarded following a request for service abroad to the Central Authority, or to a Convention additional authority, for a Convention country.

87 Restriction on power to enter default judgment if Convention certificate of service is filed

- (1) This section applies if:
 - (a) a Convention certificate of service of initiating process has been filed in the proceedings (being a certificate in due form, within the meaning of subsection 83(2)) that states that service was effected; and
 - (b) the defendant has not appeared or filed a notice of address for service.
- (2) Default judgment may not be given against the defendant unless the court is satisfied that:
 - (a) the initiating process was served on the defendant:
 - (i) by a method of service prescribed by the internal law of the Convention country for the service of documents in domestic proceedings on persons who are within its territory; or
 - (ii) if the applicant requested a particular method of service (being a method under which the document was actually delivered to the defendant or to the defendant's residence) and that method is compatible with the law in force in the Convention country—by that method; or
 - (iii) if the applicant did not request a particular method of service—in circumstances where the defendant accepted the document voluntarily; and
 - (b) the initiating process was served in sufficient time to enable the defendant to enter an appearance in the proceedings.
- (3) For the purposes of paragraph (2)(b), *sufficient time* means:
 - (a) 42 days from the date specified in the Convention certificate of service in relation to the initiating process as the date on which service of the process was effected; or

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- (b) such lesser time as the court considers, in the circumstances, to be a sufficient time to enable the defendant to enter an appearance in the proceedings.

88 Restriction on power to enter default judgment if Convention certificate of service is not filed

- (1) This section applies if:
 - (a) a Convention certificate of service of initiating process has not been filed in the proceedings; or
 - (b) a Convention certificate of service of initiating process has been filed in the proceedings (being a certificate in due form, within the meaning of subsection 83(2)) that states that service has not been effected; and the defendant has not appeared or filed a notice of address for service.
- (2) Default judgment may not be given against the defendant unless the court is satisfied that:
 - (a) the initiating process was forwarded to the Central Authority, or to a Convention additional authority, for the Convention country in which service of the initiating process was requested; and
 - (b) a period that is adequate in the circumstances (being a period of not less than 6 months) has elapsed since the date on which initiating process was so forwarded; and
 - (c) every reasonable effort has been made to, as the case requires:
 - (i) obtain a Convention certificate of service from the relevant Convention certifying authority; or
 - (ii) effect service of the initiating process.

89 Setting aside judgment in default of appearance

- (1) This section applies if default judgment has been entered against the defendant in proceedings to which this Division applies.
- (2) The court may set aside the judgment on the application of the defendant if it is satisfied that the defendant:
 - (a) without any fault on the defendant's part, did not have knowledge of the initiating process in sufficient time to defend the proceedings; and
 - (b) has a prima facie defence to the proceedings on the merits.
- (3) An application to have a judgment set aside under this section may be filed:
 - (a) at any time within 12 months after the date on which the judgment was given; or
 - (b) after the expiry of that 12-month period, within such time after the defendant acquires knowledge of the judgment as the court considers reasonable in the circumstances.
- (4) Nothing in this section affects any other power of the court to set aside or vary a judgment.

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

90 Purposes of this Division

Unless otherwise stated, each section in this Division is made for the purposes of paragraph 125(1)(a) of the Act.

91 Application of this Division

This Division applies to the service of a local judicial document in a Cooperation Convention country for a Cooperation Convention, subject to the provisions of the Cooperation Convention.

92 Meaning of *Cooperation Convention*, *Cooperation Convention country* and *request for service abroad*

In this instrument:

Cooperation Convention means a convention (other than the Hague Service Convention), that is in force for Australia, about legal proceedings in civil and commercial matters.

Cooperation Convention country, for a Cooperation Convention, means a country, other than Australia, that is a party to the Cooperation Convention.

request for service abroad means a request for service in a Cooperation Convention country of a local judicial document.

93 Service in accordance with Cooperation Convention

If the Cooperation Convention provides that a document may be served in a Cooperation Convention country, for the Cooperation Convention, only in accordance with the Cooperation Convention, the document must be served in accordance with this Division.

94 Application for request for service abroad

- (1) A party to proceedings may apply to the relevant Registrar for a request for service in a Cooperation Convention country of a local judicial document.
- (2) The application must be accompanied by the following documents:
 - (a) a draft request for service abroad, which must be in accordance with Part 1 of Form 1 in Schedule 3;
 - (b) the local judicial document to be served;
 - (c) a summary of the local judicial document to be served, which must be in accordance with Form 2 in Schedule 3;

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- (d) if, under the Cooperation Convention, a relevant authority of the Cooperation Convention country requires the local judicial document to be served to be written in, or translated into, an official language of that country—a translation into that language of both the document to be served and the summary of the document to be served;
 - (e) a copy of each document mentioned in paragraphs (a) to (c) and the translations (if required) mentioned in paragraph (d);
 - (f) if more copies of the document to be served and the translation are required under the Cooperation Convention—those further copies.
- (3) For the purposes of paragraphs (2)(a) and (c), the Forms may be modified as necessary to facilitate the application of the Forms to the Cooperation Convention.
- (4) If required under the Cooperation Convention, the application must contain a written undertaking to the court, signed by the legal practitioner on the record for the applicant or, if there is no legal practitioner on the record for the applicant, by the applicant:
- (a) to be personally liable for all costs that are incurred:
 - (i) by the employment of a person to serve the local judicial document to be served, being a person who is qualified to do so under the law of the Cooperation Convention country in which the document is to be served; or
 - (ii) by the use of any particular method of service that has been requested by the applicant for the service of the local judicial document to be served; and
 - (b) to pay the amount of those costs to the relevant Registrar within 28 days after receipt from the relevant Registrar of a notice specifying the amount of those costs under subsection 96(3); and
 - (c) to give such security for those costs as the relevant Registrar may require.
- (5) The draft request for service abroad:
- (a) must be completed (except for signature) by the applicant; and
 - (b) must state whether, if the time fixed for entering an appearance in the proceedings to which the local judicial document relates expires before service is effected, the applicant wants service to be attempted after the expiry of that time; and
 - (c) must be addressed to a relevant authority for the Cooperation Convention country in which the person is to be served.
- (6) Any translation required under paragraph (2)(d) must bear a certificate (in both English and the language used in the translation) signed by the translator stating:
- (a) that the translation is an accurate translation of the document to be served; and
 - (b) the translator's full name, address and qualifications for making the translation.

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95 How application is to be dealt with

- (1) If satisfied that the application and its accompanying documents comply with section 94, the relevant Registrar:
 - (a) must sign the request for service abroad; and
 - (b) must forward copies of the relevant documents:
 - (i) if the Cooperation Convention requires that requests only be forwarded by a nominated Australian authority to a relevant authority for the Cooperation Convention country in which service of the local judicial document is to be effected—to the nominated Australian authority; or
 - (ii) if subparagraph (i) does not apply and the applicant has asked for the request to be forwarded to a particular relevant authority for the Cooperation Convention country in which service of the local judicial document is to be effected—to the relevant authority; or
 - (iii) in any other case—to a relevant authority for the Cooperation Convention country in which service of the local judicial document is to be effected.
- (2) For the purposes of paragraph (1)(b) the relevant documents are the following:
 - (a) the signed request for service abroad;
 - (b) the local judicial document to be served;
 - (c) the summary of the local judicial document to be served;
 - (d) if required under paragraph 94(2)(d), a translation into the relevant language of each of the documents mentioned in paragraphs (b) and (c) of this subsection.
- (3) If not satisfied that the application or any of its accompanying documents comply with section 94, the relevant Registrar must inform the applicant of the respects in which the application or document fails to comply.

96 Procedure on receipt of certificate of service

- (1) Subject to subsection (5), on receipt of a certificate of service in due form in relation to a local judicial document to which a request for service abroad relates, the relevant Registrar:
 - (a) must arrange for the original certificate to be filed in the proceedings to which the document relates; and
 - (b) must send a copy of the certificate to:
 - (i) the legal practitioner on the record for the applicant in the proceedings; or
 - (ii) if there is no legal practitioner on the record for the applicant in the proceedings—the applicant.
- (2) For the purposes of subsection (1), a certificate of service is in due form if it has been completed by an appropriate authority for the Cooperation Convention country in compliance with the requirements (if any) of the Cooperation Convention.

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

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- (3) If the undertaking mentioned in subsection 94(4) has been given, on receipt of a statement of costs in due form in relation to the service of a local judicial document mentioned in subsection (1), the relevant Registrar must send to the legal practitioner or applicant a notice specifying the amount of those costs.
- (4) For the purposes of subsection (3), a statement of costs is in due form if:
 - (a) it relates only to costs of a kind mentioned in paragraph 94(4)(a); and
 - (b) it has been completed by an appropriate authority for the Cooperation Convention country in which service was requested.
- (5) If the undertaking mentioned in subsection 94(4) has been given, subsection (1) does not apply unless:
 - (a) adequate security to cover the costs mentioned in subsection (3) has been given under paragraph 94(4)(c); or
 - (b) to the extent to which the security so given is inadequate to cover those costs—an amount equal to the amount by which those costs exceed the security so given has been paid to the relevant Registrar.

97 Payment of costs

- (1) On receipt of a notice under subsection 96(3) in relation to the costs of service, the legal practitioner or applicant, as the case may be, must pay to the relevant Registrar the amount specified in the notice as the amount of the costs.
- (2) If the legal practitioner or applicant fails to pay that amount within 28 days after receiving the notice:
 - (a) except by leave of the court, the applicant may not take any further step in the proceedings to which the local judicial document relates until the costs are paid to the relevant Registrar; and
 - (b) the relevant Registrar may take such steps as are appropriate to enforce the undertaking for payment of the costs.

98 Evidence of service

A certificate of service in relation to a local judicial document (being a certificate in due form, within the meaning of subsection 96(2)) that certifies that service of the document was effected on a specified date is, in the absence of any evidence to the contrary, sufficient proof that:

- (a) service of the document was effected by the method specified in the certificate on that date; and
- (b) if that 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.

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Division 4—Overseas maintenance orders

Subdivision A—General

99 Purposes of this Division

Unless otherwise stated, each section in this Division is made for the purposes of section 110 of the Act.

100 Meaning of *maintenance order*—prescribed orders

For the purposes of the paragraph (e) of the definition of *maintenance order* in subsection 110(1) of the Act, an order made under section 67D or 67E of the Act is a maintenance order.

101 Reciprocating jurisdictions

Each of the countries and parts of countries specified in the table in Schedule 2 is:

- (a) declared to be a reciprocating jurisdiction for the purposes of section 110 of the Act; and
- (b) prescribed to be a reciprocating jurisdiction for the purposes of section 124A of the Act.

102 Institution of spousal maintenance proceedings

- (1) For the purposes of section 89A of the Act, the office of Secretary is prescribed.
- (2) The Secretary may, in the Secretary's discretion, institute and prosecute proceedings with respect to the maintenance of a party to a marriage, on behalf of that party.

103 Conversion of foreign currency—overseas maintenance order, agreement or liability

- (1) For the purposes of sections 110, 110A, 111 and 124A of the Act, this section applies to:
 - (a) an overseas maintenance order (including a provisional order); and
 - (b) an overseas maintenance agreement; and
 - (c) an overseas maintenance liability, within the meaning of the *Child Support (Registration and Collection) Act 1988*, included in the Child Support Register under section 25A of that Act.
- (2) For the purposes of registration and enforcement in Australia of the order, agreement or liability, an amount expressed in a foreign currency in a document to which this section applies is taken to refer to the equivalent amount, expressed in Australian dollars, worked out under subsection (4).
- (3) This section applies to the following documents:

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- (a) the overseas maintenance order (including a provisional order);
 - (b) the overseas maintenance agreement;
 - (c) a document for the purposes of this Division about the overseas maintenance liability;
 - (d) a certificate or notice, originating in an overseas jurisdiction, about the overseas maintenance order or agreement.
- (4) The equivalent amount is:
- (a) if the document relates to an overseas maintenance liability to which section 37 of the *Child Support (Registration and Collection) Regulations 2018* applies—the equivalent Australian dollar amount for the foreign currency amount worked out under that section; or
 - (b) otherwise—the equivalent Australian dollar amount for the foreign currency amount, converted using:
 - (i) the international money transfer buying rate for the foreign currency, being the rate published by the Commonwealth Bank of Australia that applies to the foreign currency on the day on which the Secretary receives the document; or
 - (ii) if no such rate is available for the foreign currency on that day—an exchange rate for the foreign currency that the Secretary considers appropriate.

Subdivision B—Confirmation of an overseas maintenance order made in a reciprocating jurisdiction

104 Provisional overseas maintenance orders made in a reciprocating jurisdiction

- (1) This section applies if:
- (a) a maintenance order (the *provisional overseas maintenance order*) has been made in a reciprocating jurisdiction; and
 - (b) the provisional overseas maintenance order has no effect under the law of the reciprocating jurisdiction unless and until it is confirmed by a court outside the reciprocating jurisdiction; and
 - (c) the Secretary has received:
 - (i) a certified copy of the provisional overseas maintenance order; and
 - (ii) a copy of the depositions of the witnesses in the proceedings in which the order was made; and
 - (iii) a statement of the grounds on which the order could have been opposed by the person (the *respondent*) against whom the order was sought if the respondent had appeared in the proceedings in which the order was made; and
 - (d) there are reasonable grounds for believing that:
 - (i) the respondent is ordinarily resident in, is present in, or is proceeding to, Australia; and
 - (ii) the provisional overseas maintenance order will have effect under the law of the reciprocating jurisdiction if it is confirmed by a court having jurisdiction under this Act.

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(2) Subject to subsection (4), the Secretary must make an application, calling upon the respondent to show cause why the provisional overseas maintenance order should not be confirmed.

(3) The Secretary must serve a copy of the application on the respondent.

Note: Service is dealt with by the applicable Rules of Court.

Exception where administrative assessment of child support available

(4) An application must not be made if an application could properly be made at that time, under the *Child Support (Assessment) Act 1989*, read with the *Child Support (Registration and Collection) Act 1988*, for administrative assessment of child support (within the meaning of the *Child Support (Assessment) Act 1989*) by a person seeking payment of child support for the child from the respondent.

(5) Subsection (4) has effect whether or not an application for administrative assessment of child support for the child has in fact been made.

105 Determination of Secretary's application

(1) In proceedings with respect to the Secretary's application to the court:

(a) it is open to the respondent to raise:

(i) any ground of opposition that the respondent could have raised in the original proceedings; or

(ii) any ground of opposition that the respondent could have raised if the proceedings leading to the making of the provisional overseas order had been heard in Australia; and

(b) the statement mentioned in subparagraph 104(1)(c)(iii) is conclusive evidence of the grounds of opposition that could have been raised in the original proceedings.

(2) Subject to subsection (6), the court may, in determining the application:

(a) make an order confirming (with or without modification) the provisional overseas maintenance order; or

(b) discharge the provisional overseas maintenance order; or

(c) adjourn the proceedings and remit the provisional overseas maintenance order to the court that made it with a request that that court take further evidence and further consider its provisional overseas maintenance order.

(3) An order confirming the provisional overseas maintenance order may specify:

(a) the time or times by which the money payable under the provisional overseas maintenance order is to be paid; and

(b) the person, authority or court to whom or to which that money is to be paid; and

(c) where necessary, the means by which that money must be paid or disbursed.

(4) If the court adjourns the proceedings, the court may make a temporary order for periodic payments by the respondent.

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Notification by the Secretary

- (5) If the court confirms or discharges the provisional overseas maintenance order, the Secretary must notify an officer of the court, or another relevant authority, in the reciprocating jurisdiction of that decision.

Exception where administrative assessment of child support available

- (6) The court must not determine the application if an application could properly be made at that time, under the *Child Support (Assessment) Act 1989*, read with the *Child Support (Registration and Collection) Act 1988*, for administrative assessment of child support (within the meaning of the *Child Support (Assessment) Act 1989*) by a person seeking payment of child support for the child from the respondent.
- (7) Subsection (6) has effect whether or not an application for administrative assessment of child support for the child has in fact been made.

106 Effect of order confirming provisional overseas maintenance order

If the provisional overseas maintenance order is confirmed (with or without modification), it is enforceable in Australia, as so confirmed, and has effect in Australia as if it were an order made under the Act.

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

107 Confirmation of provisional variation etc. of Australian maintenance order

- (1) This section applies if the Secretary receives:
- (a) a certified copy of a provisional order made by a court in a reciprocating jurisdiction varying, discharging, suspending or reviving a maintenance order:
 - (i) made in Australia and enforceable in the reciprocating jurisdiction; or
 - (ii) made in the reciprocating jurisdiction and enforceable in Australia;and
 - (b) a copy of the depositions of the witnesses who gave evidence at the hearing of the application upon which the provisional order was made.
- (2) The Secretary must apply to a court for an order confirming the provisional order.
- (3) The Secretary must serve a copy of the application on the respondent.
- Note: Service is dealt with by the applicable Rules of Court.
- (4) The court may:
- (a) confirm the provisional order (with or without modification); or
 - (b) discharge the provisional order; or
 - (c) adjourn the proceedings and remit the provisional order to the court that made it with a request that the court take further evidence and further consider its provisional order.

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- (5) A provisional order that is confirmed (with or without modification) under this section has effect in Australia as if it were an order made under the Act.

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

108 United States petition seeking a support order

- (1) This section applies if:
- (a) a petition is filed in a court in a State or Territory of the United States of America seeking a support order against a person claimed in the petition to have a duty of support (within the meaning of the law under which the petition is filed); and
 - (b) that court gives a certificate to the effect that the petition sets out facts from which it may be determined that the person owes a duty of support; and
 - (c) the Secretary has received:
 - (i) certified copies of the petition and the certificate; and
 - (ii) a copy of the provisions of the law of the State or Territory to which the petition and certificate relate; and
 - (d) there are reasonable grounds for believing that the person is ordinarily resident in, present in, or proceeding to, Australia.
- (2) Subject to subsection (4), the Secretary must make an application to a court calling on the person (the *respondent*) claimed in the petition to owe a duty of support to show cause why an order in the same terms as the order sought in the petition should not be made.

- (3) The Secretary must serve a copy of the application on the respondent.

Note: Service is dealt with by the applicable Rules of Court.

Exception where administrative assessment of child support available

- (4) An application must not be made if an application could properly be made at that time, under the *Child Support (Assessment) Act 1989*, read with the *Child Support (Registration and Collection) Act 1988*, for administrative assessment of child support (within the meaning of the *Child Support (Assessment) Act 1989*) by a person seeking payment of child support for the child from the respondent.
- (5) Subsection (4) has effect whether or not an application for administrative assessment of child support for the child has in fact been made.

109 Determination of Secretary's application

- (1) In proceedings with respect to the Secretary's application to the court, it is open to the respondent to raise:
- (a) any ground of opposition that the respondent could have raised to the petition in the relevant court in the United States of America; or
 - (b) any ground of opposition that the respondent could raise in proceedings in relation to the provision of maintenance in a court having jurisdiction under the Act in Australia.

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- (2) Subject to subsection (6), the court may, in determining the application:
 - (a) make an order for the provision of maintenance in the terms of the order sought in the petition (with or without modification); or
 - (b) refuse to make an order; or
 - (c) adjourn the proceedings and remit the petition and certificate to the court in which the petition was originally filed with a request that that court take further evidence and further consider the certifying of the petition.
- (3) An order for the provision of maintenance may specify:
 - (a) the time or times by which the money payable under the order is to be paid; and
 - (b) the person, authority or court to whom or to which that money is to be paid; and
 - (c) where necessary, the means by which that money must be paid or disbursed.
- (4) If the court adjourns the proceedings, the court may make a temporary order for periodic payments by the respondent.

Notification by the Secretary

- (5) If the court makes or refuses to make an order, the Secretary must notify the court in which the petition was filed, or the authority in the United States of America that caused the petition to be sent to the Secretary, of the decision.

Exception where administrative assessment of child support available

- (6) The court must not determine the application if an application could properly be made, at that time, under the *Child Support (Assessment) Act 1989*, read with the *Child Support (Registration and Collection) Act 1988*, for administrative assessment of child support (within the meaning of the *Child Support (Assessment) Act 1989*) by a person seeking payment of child support for the child from the respondent.
- (7) Subsection (6) has effect whether or not an application for administrative assessment of child support for the child has in fact been made.

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

110 Provisional maintenance order against person in reciprocating jurisdiction

- (1) This section applies if:
 - (a) an application for a maintenance order under the Act has been made; and
 - (b) the court is satisfied that a respondent to the application is resident in, or proceeding to, a reciprocating jurisdiction.
- (2) This section applies even if the respondent has not been served with the application and has not consented to the order.

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- (3) Subject to subsection (4), the court may make, in the absence of the respondent, a provisional order of any kind that it could have made if the application had been served on the respondent and the respondent had failed to appear at the hearing of the application.

Exception where administrative assessment of child support available

- (4) The court must not make a provisional order if an application could properly be made, at that time, under the *Child Support (Assessment) Act 1989*, read with the *Child Support (Registration and Collection) Act 1988*, for administrative assessment of child support (within the meaning of the *Child Support (Assessment) Act 1989*) by a person seeking payment of child support for the child from the respondent.
- (5) Subsection (4) has effect whether or not an application for administrative assessment of child support for the child has in fact been made.

111 Provisional maintenance order must be confirmed by a court in the reciprocating jurisdiction

- (1) The provisional order is of no effect:
- (a) unless it is expressed to be provisional; and
 - (b) unless and until confirmed (with or without modification) by a competent court (the *overseas court*) in the jurisdiction that the respondent is resident in at the time of confirmation.
- (2) The relevant Registrar of the court that made the provisional order must send to the Secretary:
- (a) 3 certified copies of the provisional order; and
 - (b) a copy of the depositions of the witnesses; and
 - (c) a statement of the grounds on which the making of the provisional order could have been opposed by the respondent if the respondent had appeared in the proceedings in which the order was made; and
 - (d) the information and material (if any) that the relevant Registrar has for working out the identity and whereabouts of the respondent.
- (3) On receipt of the documents and information, the Secretary must send to a competent court, or another relevant authority, in the jurisdiction that the respondent is resident in or proceeding to:
- (a) the documents and information; and
 - (b) a request in writing that proceedings be started for the confirmation and enforcement of the provisional order.

112 Taking of further evidence

- (1) This section applies if:
- (a) proceedings are started in a court in a reciprocating jurisdiction for the confirmation and enforcement of a provisional order made by a court (the *Australian court*) under subsection 110(3); and

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- (b) the court in the reciprocating jurisdiction remits the order to the Australian court for the taking of further evidence.
- (2) The Australian court must:
 - (a) give notice of the taking of further evidence to such persons and in such manner as the court thinks fit; and
 - (b) take the further evidence; and
 - (c) cause the depositions of the witnesses to be sent to the court in the reciprocating jurisdiction.
- (3) If, on the taking of further evidence, it appears to the Australian court that the provisional order ought not to have been made, the Australian court may:
 - (a) revoke the order; or
 - (b) make a fresh provisional order under subsection 110(3).
- (4) For the purposes of making a decision under subsection (3), the Australian court may have regard to the evidence given in the court in the reciprocating jurisdiction.

113 Effect of confirmation of provisional order against person in reciprocating jurisdiction

- (1) This section applies if a court in a reciprocating jurisdiction confirms (with or without modification) a provisional order made under subsection 110(3).
- (2) The order has effect in Australia as so confirmed.
- (3) In proceedings arising out of or relating to the order, it must be presumed, unless the contrary is proved, that the respondent was resident in the overseas jurisdiction at the time the order was confirmed.

Subdivision F—Enforcement of an overseas maintenance liability

114 Proceedings for enforcement of overseas maintenance liabilities

- (1) This section is about enforcement proceedings for an overseas maintenance liability, within the meaning of the *Child Support (Registration and Collection) Act 1988*, included in the Child Support Register under section 25A of that Act.
- (2) Proceedings may be taken as if the liability were an order made under Part VII or VIII of the Act.
- (3) The Act, this instrument and the applicable Rules of Court, so far as they are applicable, and with such modifications as are necessary, apply in relation to the proceedings.
- (4) Proceedings may be taken:
 - (a) by the person who would be entitled to take proceedings if the liability were an order under Part VII or VIII of the Act, as mentioned in subsection (2); or
 - (b) by the Secretary, on behalf of the person.

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Subdivision G—Cancellation

115 Cancellation of Australian maintenance order in reciprocating jurisdiction

- (1) This section applies if:
 - (a) a maintenance order made in Australia is, under the law of a reciprocating jurisdiction, enforceable in the reciprocating jurisdiction; and
 - (b) either:
 - (i) the court (the *Australian court*) in which the maintenance order was made is satisfied that there are reasonable grounds for believing that the person against whom the order was made is not resident in, or proceeding to, the reciprocating jurisdiction; or
 - (ii) it appears to the Australian court that there is some good reason why the maintenance order should no longer be enforceable in the reciprocating jurisdiction.
- (2) The Australian court may direct that steps be taken to cancel the registration of the order in the reciprocating jurisdiction.
- (3) If the Australian court directs under subsection (2) that steps be taken to cancel the registration of an order in a jurisdiction:
 - (a) the order ceases to be enforceable in the reciprocating jurisdiction under the Act; and
 - (b) the relevant Registrar of the Australian court must send to a court, or another relevant authority, in the reciprocating jurisdiction a request, in writing, that the order be no longer enforceable in the reciprocating jurisdiction.

116 Cancellation of overseas maintenance order

- (1) This section applies if:
 - (a) a maintenance order (the *overseas maintenance order*) made in a reciprocating jurisdiction is enforceable in Australia; and
 - (b) a request, in writing, that the overseas maintenance order no longer be enforceable in Australia is received by the court (the *Australian court*) from the court that made the order or from some other competent authority in the reciprocating jurisdiction:
 - (i) in which the overseas maintenance order was confirmed for the purposes of enforcement in Australia under this Act; or
 - (ii) if the order was registered before 1 July 2000—in which the overseas maintenance order was registered.
- (2) The Australian court must direct its relevant Registrar to cancel the registration of the overseas maintenance order by noting the fact and date of the cancellation on the certified copy of the overseas maintenance order filed in the court.
- (3) Upon the cancellation of the registration of the overseas maintenance order, the order ceases to be enforceable in Australia.

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- (4) The relevant Registrar of the Australian court must cause notice in writing of the fact that the registration has been cancelled, and of the date of the cancellation, to be given to the person who was required to make payments under the order.

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

117 Purpose of this Subdivision

Unless otherwise stated, each section in this Subdivision is made for the purposes of sections 89, 110 and 110A of the Act.

118 Party in Australia may apply to vary etc. overseas maintenance order, agreement or liability

- (1) This section applies to the following:
- (a) a maintenance order (the *overseas maintenance order*) made in a reciprocating jurisdiction that is enforceable in Australia and was registered in a court before 1 July 2000;
 - (b) an overseas maintenance agreement registered in a court before 1 July 2000;
 - (c) an overseas maintenance liability, within the meaning of the *Child Support (Registration and Collection) Act 1988*, included in the Child Support Register under section 25A of that Act;
 - (d) a registrable overseas maintenance liability, within the meaning of the *Child Support (Registration and Collection) Act 1988*.
- (2) Application may be made to a court having jurisdiction under this Act for an order discharging, suspending, reviving or varying an order, agreement or liability to which this section applies.
- (3) An application may be made by:
- (a) the person for whose benefit the order or agreement was made, or for whose benefit the liability was created; or
 - (b) the person against whom the order was made or the person who is liable to make payments because of the agreement or the liability; or
 - (c) the Secretary, on behalf of a person mentioned in paragraph (a) or (b).
- (4) The court may, in determining the application, make an order discharging, suspending, reviving or varying the order, agreement or liability.
- Note: Some orders must be provisional orders: see section 120.
- (5) A court may make an order under this section even if the respondent to the application has not been served with the application and has not consented to the order.

119 Determination of application made in absence of party

- (1) This section applies to an application that is made under subsection 118(2) if:

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- (a) the applicant is the person against whom a maintenance order mentioned in paragraph 118(1)(a) was made or the person who is liable to make payments because of a liability mentioned in paragraph 118(1)(c) or (d); and
 - (b) the applicant:
 - (i) did not have notice of the proceedings giving rise to the order or liability; and
 - (ii) did not appear in those proceedings; and
 - (iii) did not consent to the making of the order or to the creation of the liability; and
 - (c) the application is made within 6 months after the applicant was given notice that the order or liability is enforceable in Australia.
- (2) In proceedings with respect to the application, it is open to the applicant to raise any matter that the applicant could have raised under Part VII or VIII of the Act if the proceedings giving rise to the order or to the liability had been heard in Australia.

120 Status of variation etc. order

- (1) An order made under subsection 118(4) is provisional if it relates to an overseas maintenance order, overseas maintenance agreement, overseas maintenance liability or registrable overseas maintenance liability made in any of the following reciprocating jurisdictions:
- (a) Brunei Darussalam;
 - (b) a Canadian Province or Territory specified in an item of the table in Schedule 2;
 - (c) Cook Islands;
 - (d) Cyprus;
 - (e) Fiji;
 - (f) Gibraltar;
 - (g) Hong Kong;
 - (h) India;
 - (i) Kenya;
 - (j) Malawi;
 - (k) Malaysia;
 - (l) Malta;
 - (m) Nauru;
 - (n) New Zealand;
 - (o) Papua New Guinea;
 - (p) Republic of Ireland;
 - (q) Sierra Leone;
 - (r) Singapore;
 - (s) South Africa;
 - (t) Sri Lanka;
 - (u) Tanzania (excluding Zanzibar);

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- (v) the Territory of Christmas Island;
- (w) the Territory of Cocos (Keeling) Islands;
- (x) Trinidad and Tobago;
- (y) the United Kingdom, including Alderney, Guernsey, Isle of Man, Jersey and Sark.

(2) Otherwise, an order made under subsection 118(4) is final.

121 Provisional variation etc. order must be confirmed by court in reciprocating jurisdiction

- (1) A provisional order made under subsection 118(4) is of no effect:
 - (a) unless it is expressed to be provisional; and
 - (b) unless and until it is confirmed (with or without modification) by a competent court (the *overseas court*) in the reciprocating jurisdiction that the respondent is resident in at the time of confirmation.
- (2) The relevant Registrar of the court that made the provisional order must send to the Secretary:
 - (a) 3 certified copies of the provisional order; and
 - (b) a copy of the depositions of the witnesses; and
 - (c) a statement of the grounds on which the making of the provisional order could have been opposed by the respondent if the respondent had appeared in the proceedings in which the provisional order was made; and
 - (d) the information and material (if any) that the relevant Registrar has for working out the identity and whereabouts of the respondent.
- (3) On receipt of the documents and information, the Secretary must send to a competent court, or another relevant authority, in the reciprocating jurisdiction that the respondent is resident in or proceeding to:
 - (a) the documents and information; and
 - (b) a request in writing that proceedings be started for the confirmation and enforcement of the provisional order.

122 Taking of further evidence

- (1) This section applies if:
 - (a) proceedings are started in a court in a reciprocating jurisdiction for the confirmation of a provisional order made by a court (the *Australian court*) under subsection 118(4); and
 - (b) the court in the reciprocating jurisdiction remits the order to the Australian court for the taking of further evidence.
- (2) The Australian court must:
 - (a) give notice of the taking of further evidence to such persons and in such manner as the court thinks fit; and
 - (b) take the further evidence; and
 - (c) cause the depositions of the witnesses to be sent to the court in the reciprocating jurisdiction.

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- (3) If, on the taking of further evidence, it appears to the Australian court that the provisional order ought not to have been made, the Australian court may:
 - (a) revoke the order; or
 - (b) make a fresh provisional order under subsection 110(3).
- (4) For the purposes of making a decision under subsection (3), the Australian court may have regard to the evidence given in the court in the reciprocating jurisdiction.

123 Effect of confirmation of provisional order against person in reciprocating jurisdiction

- (1) This section applies if a court in a reciprocating jurisdiction confirms (with or without modification) a provisional order made under subsection 118(4).
- (2) The order has effect in Australia as so confirmed.

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Division 5—Convention on the Recovery Abroad of Maintenance

124 Purposes of this Division

Unless otherwise stated, each section in this Division is made for the purposes of section 111 of the Act.

125 Meaning of *Recovery Convention*, *Recovery Convention country* and of certain other terms used in this Division

(1) In this instrument:

Receiving Agency has the same meaning as in the Recovery Convention.

Recovery Convention means the Convention on the Recovery Abroad of Maintenance, referred to in section 111 of the Act.

Note: The Convention is in Australian Treaty Series 1985 No. 12 ([1985] ATS 12) and could in 2024 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Recovery Convention country means:

- (a) a country specified in Schedule 4; or
- (b) any other country in respect of which the Recovery Convention has entered into force for Australia.

Transmitting Agency has the same meaning as in the Recovery Convention.

(2) In this Division:

- (a) a reference to payment of money for the maintenance of a child includes a reference to payment of money for the education of that child; and
- (b) a reference to proceedings under this Division in a court includes a reference to proceedings on appeal from original proceedings under this Division.

126 Immunity of Secretary from orders to pay costs

The Secretary must not be made subject to any order to pay costs in respect of the exercise of a power, or performance of a function, conferred on the Secretary under this Division.

127 Applications by persons in Recovery Convention countries for recovery of maintenance under Commonwealth, State or Territory law

(1) This section applies if:

- (a) the Secretary receives from a Transmitting Agency in a Recovery Convention country an application for:
 - (i) recovery of maintenance that a person claims is required, under a law of the Commonwealth or of a State or Territory, to be paid by another person; or

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- (ii) variation of an existing order for maintenance; and
 - (b) there are no reasonable grounds for believing that the other person is not subject to the jurisdiction of the Commonwealth or of a State or Territory.
- (2) The Secretary may do anything required to be done by a Receiving Agency under the Recovery Convention to recover the maintenance on behalf of the person to be paid maintenance.
 - (3) Things that may be done by the Secretary do not include registration or enforcement of an order mentioned in, or sought by, the application.
 - (4) However, an Australian court may, in proceedings under this Division, have regard to the application and the record of proceedings of a court that made any order to which the application relates.
 - (5) This section does not affect the operation of Division 10 of Part 7 or Division 4 of this Part.

128 Proceedings on behalf of persons in Recovery Convention countries for recovery of maintenance

- (1) This section applies to proceedings under this Division in a court on behalf of a claimant.
- (2) The court must proceed as if the claimant were before the court.
- (3) A court must not make a maintenance order in proceedings under this Part if an application could properly be made at that time, under the *Child Support (Assessment) Act 1989*, read with the *Child Support (Registration and Collection) Act 1988*, for administrative assessment of child support (within the meaning of the *Child Support (Assessment) Act 1989*) by a person seeking payment of child support for the child from the respondent.
- (4) Subsection (3) has effect whether or not an application for administrative assessment of child support for the child has in fact been made.
- (5) The Secretary may do anything that is required or authorised to be done by an applicant in proceedings in that court in relation to maintenance.
- (6) In any document to be filed in, or issued out of, the court, the Secretary may be described as the Secretary of the Attorney-General's Department acting on behalf of the claimant whose name must be set out in the document.

129 Return of applications

- (1) This section applies if:
 - (a) an application mentioned in subsection 127(1) is received from a Transmitting Agency in a Recovery Convention country in relation to maintenance to be paid by a person; and
 - (b) in relation to the application, a summons or other document that requires the person to appear in proceedings under this Division cannot be served on the person.

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- (2) The Secretary must:
 - (a) return the application to the Transmitting Agency; and
 - (b) send the Transmitting Agency a statement giving whatever information the Secretary has been able to obtain concerning the whereabouts of that person.
- (3) Subsection (2) does not limit the functions of the Secretary under this Division.

130 Certain requests to be made only with leave of court

Notwithstanding any other provision of this instrument, in order to prevent proceedings under this Division from being unduly protracted, a respondent must not seek, without leave of the court:

- (a) a request for answers to specific questions; or
- (b) a request to make discovery of documents; or
- (c) a notice to produce documents; or
- (d) a notice to admit facts or documents.

131 Taking of evidence at request of appropriate authority in Recovery Convention countries

- (1) This section applies if the Secretary receives a request from the appropriate authority of a Recovery Convention country to obtain evidence concerning specified matters about an application under the law of the Recovery Convention country:
 - (a) to recover maintenance from another person; or
 - (b) for variation of an order made in the Recovery Convention country for payment of maintenance by another person;where the person is subject to the jurisdiction of the Recovery Convention country.
- (2) The Secretary and any court exercising jurisdiction under this Act must do anything required to be done under the Recovery Convention to obtain the evidence.
- (3) When the evidence is obtained, the Secretary must send a certified copy of a record of the evidence to the appropriate authority of the Recovery Convention country.
- (4) If, under subsection (2), the Secretary requests a court to take evidence for the proceedings mentioned in subsection (1), the court must give notice of the time when, and the place where, the evidence is to be taken to:
 - (a) the Secretary; and
 - (b) the person from whom the maintenance is claimed; and
 - (c) the appropriate authority of the Recovery Convention country.
- (5) The notice must be sufficient, in the opinion of the court, to enable the parties to the proceedings to attend or be represented at the taking of the evidence.
- (6) In this section:

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appropriate authority of a Recovery Convention country means:

- (a) the Transmitting Agency for the Recovery Convention under the Recovery Convention; or
- (b) a court in that country; or
- (c) if the request is made through the Child Support Registrar—the Child Support Registrar.

132 Obtaining evidence in Recovery Convention countries for purposes of proceedings under this Division

- (1) In proceedings under this Division in a court on behalf of a person in a Recovery Convention country, the court may require the Secretary to request the Transmitting Agency in the Recovery Convention country to obtain evidence required for the proceedings.
- (2) A requirement by a court under this section must set out:
 - (a) the names and addresses of the claimant and respondent in the proceedings; and
 - (b) the name and address of any person whose evidence is to be taken; and
 - (c) the matters concerning which evidence is required.
- (3) If the court requires the Secretary to make the request, the Secretary must:
 - (a) send the Transmitting Agency the request; and
 - (b) request the Transmitting Agency to give the Secretary and the respondent in the proceedings notice of the time when, and place where, the evidence is to be taken in order that the respondent may attend, or be represented at, the taking of the evidence.
- (4) Nothing in this section affects the power of a court to order or request the taking of evidence within or outside Australia.

133 Admissibility of evidence given in Recovery Convention countries

In proceedings under this Division in a court, a statement contained in a document that purports:

- (a) to set out or summarise evidence given in proceedings in a court in a Recovery Convention country and to have been signed by the person before whom the evidence was given; or
- (b) to set out or summarise evidence taken in a Recovery Convention country for the purpose of proceedings under this Division (whether in response to a request made by the court or otherwise) and to have been signed by the person before whom the evidence was taken; or
- (c) to have been received as evidence in proceedings in a court in a Recovery Convention country and to have been signed by a judge or other officer of the court;

is admissible as evidence of any fact stated in the document to the same extent as oral evidence of that fact is admissible in the proceedings, without proof of the signature of the person purporting to have signed it or of the official position of that person.

EXPOSURE DRAFT

Part 10 International conventions, international agreements and international enforcement

Division 5 Convention on the Recovery Abroad of Maintenance

Section 134

134 Orders of court in Recovery Convention countries

In proceedings under this Division in a court, a document purporting:

- (a) to be an order, or a copy of an order, of a court in a Recovery Convention country; and
- (b) to have been signed by a judge or other officer of the court;

is admissible as evidence of that order without proof of the signature of the person purporting to have signed it or of the official position of that person.

Part 11—Registration of decrees

135 Registration of decrees

- (1) For the purposes of subsection 105(2) of the Act, a decree (other than a divorce order or a decree of nullity of marriage) made by a court (the *first* court) may be registered in another court, that has jurisdiction under this Act, by filing in the other court a copy of the decree that has been sealed with the seal of the first court or otherwise endorsed by an officer of the first court.
- (2) For the purposes of subsection (1), a decree may be filed in the other court:
 - (a) by a party to the proceedings in which the decree was made; or
 - (b) by a child entitled to benefit under the decree; or
 - (c) by an officer of the other court; or
 - (d) by an officer, authority or person entitled under paragraph 125(1)(f) of the Act to take proceedings for the enforcement of the decree; or
 - (e) with the leave of the other court, by any other person.

EXPOSURE DRAFT

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

Section 136

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

136 Prescribed maximum period—sentence or order

For the purposes of the definition of *maximum period* in subsection 112AG(6) of the Act, 200 hours is prescribed in relation to each State and Territory.

Part 13—Declarations and injunctions

137 Operation of State and Territory laws—prescribed laws

For the purposes of section 114AB of the Act, each of the laws specified in an item of the following table is prescribed.

Prescribed laws that are capable of operating concurrently	
Item	State or Territory law
1	<i>Crimes (Domestic and Personal Violence) Act 2007</i> (NSW)
2	<i>Property (Relationships) Act 1984</i> (NSW)
3	<i>Family Violence Protection Act 2008</i> (Vic.)
4	<i>Domestic and Family Violence Protection Act 2012</i> (Qld)
5	<i>Restraining Orders Act 1997</i> (WA)
6	<i>Intervention Orders (Prevention of Abuse) Act 2009</i> (SA)
7	<i>Sentencing Act 2017</i> (SA)
8	<i>Family Violence Act 2004</i> (Tas.)
9	<i>Justices Act 1959</i> (Tas.)
10	<i>Family Violence Act 2016</i> (ACT)
11	<i>Domestic and Family Violence Act 2007</i> (NT)
12	<i>Crimes (Domestic and Personal Violence) Act 2007</i> (NSW) (NI)

EXPOSURE DRAFT

Part 14 Restriction on communication of accounts and lists of proceedings

Section 138

Part 14—Restriction on communication of accounts and lists of proceedings

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

For the purposes of paragraph 114S(2)(c) of the Act, each of the following authorities of a State or Territory that has responsibilities relating to the welfare of children is prescribed:

- (a) for New South Wales—the Department of Communities and Justice;
- (b) for Victoria—the Department of Families, Fairness and Housing;
- (c) for Queensland—the Department of Child Safety, Seniors and Disability Services;
- (d) for Western Australia—the Department of Communities;
- (e) for South Australia—the Department for Child Protection;
- (f) for Tasmania—the Department for Education, Children and Young People;
- (g) for the Australian Capital Territory—the Community Services Directorate;
- (h) for the Northern Territory—the Department of Territory Families, Housing and Communities.

Part 15—Miscellaneous

139 Priority of attachment orders

- (1) This section is made for the purposes of paragraph 125(1)(g) of the Act.
- (2) 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:
 - (a) the Commonwealth, a State, a Territory or the Administration of a Territory; or
 - (b) by an authority of the Commonwealth, of a State or of a Territory;has the same force and effect as an order made under the Third Schedule to the repealed Act.

Note: The repealed Act is the *Matrimonial Causes Act 1959*: see the definition of *repealed Act* in subsection 4(1) of the Act.
- (3) Subsection (2) does not apply to moneys as to which it is provided by any law of the Commonwealth, of a State or of a Territory that they are not liable to attachment.

EXPOSURE DRAFT

Part 16 Application, saving and transitional provisions

Division 1 Matters relating to the repeal of the Family Law Regulations 1984

Section 140

Part 16—Application, saving and transitional provisions

Division 1—Matters relating to the repeal of the Family Law Regulations 1984

140 Transition from the *Family Law Regulations 1984*

- (1) Subject to this Division, this instrument applies to a dispute, proceedings or a matter under this Act started on or after the commencement of this instrument.
- (2) This instrument also applies to a step in a dispute, proceedings or a matter under this Act started before the commencement of this instrument if the step is taken on or after the commencement of this instrument.
- (3) However, the court may order that a provision of the *Family Law Regulations 1984*, as in force immediately before the commencement of this instrument, is to apply, with or without modification, to a step mentioned in subsection (2).
- (4) Otherwise, despite the repeal of the *Family Law Regulations 1984* by the *Family Law Amendment (Consequential Amendments) Regulations 2024*, the *Family Law Regulations 1984*, as in force immediately before the commencement of this instrument, continue to apply in relation to a dispute, proceedings or a matter started before that commencement.

141 Saving of certain provisions of the *Family Law Regulations 1984*

Institution etc. of proceedings by persons holding certain offices

Despite the repeal of the *Family Law Regulations 1984* by the *Family Law Amendment (Consequential Amendments) Regulations 2024*, regulation 15 of the *Family Law Regulations 1984*, as in force immediately before the commencement of this instrument, continues to apply in relation to an order that was in force immediately before the commencement of this instrument.

142 Arbitration matters

Requirement for name to be included in list of arbitrators

- (1) To avoid doubt, a person meets the requirement in subsection 21(2) on the commencement of this instrument if, immediately before that commencement, the person's name is included in the list mentioned in that subsection.

Application of additional safeguards

- (2) Subject to subsection (3), sections 26 and 27, as in force on the commencement of this instrument, apply in relation to the arbitration of a dispute, proceedings or a matter under this Act, whether the dispute, proceedings or matter started before, on or after the commencement of this instrument.

EXPOSURE DRAFT

Application, saving and transitional provisions **Part 16**
Matters relating to the repeal of the Family Law Regulations 1984 **Division 1**

Section 143

- (3) Sections 26 and 27, as in force on the commencement of this instrument, do not apply to the arbitration if, before the commencement of this instrument:
 - (a) the parties to the arbitration have made an arbitration agreement under section 67F of the *Family Law Regulations 1984*; or
 - (b) each party to the arbitration has been given a notice by the arbitrator under regulation 67G of the *Family Law Regulations 1984*; or
 - (c) an order has been made under section 13E of the Act in relation to the arbitration.
- (4) Instead, despite the repeal of the *Family Law Regulations 1984* by the *Family Law Amendment (Consequential Amendments) Regulations 2024*, regulations 67F and 67G of the *Family Law Regulations 1984*, as in force immediately before the commencement of this instrument, continue to apply in relation to the arbitration.

Registration of award made in arbitration

- (5) Section 37, as in force on the commencement of this instrument, applies in relation to the registration, on and after the commencement of this instrument, of an award made in arbitration, whether the award was made before, on or after the commencement of this instrument.

143 Cancellation of registration of overseas maintenance agreement registered before 1 July 2000

- (1) This section is made for the purposes of section 89 of the Act.
- (2) This section applies if:
 - (a) an overseas maintenance agreement made in a prescribed overseas jurisdiction is enforceable in Australia; and
 - (b) the overseas maintenance agreement was registered under the *Family Law Regulations 1984* before 1 July 2000; and
 - (c) the court (the *Australian court*) in which the agreement was registered receives a request, in writing, that the agreement be no longer enforceable in Australia, from:
 - (i) the parties to the agreement; or
 - (ii) the court or other authority in the prescribed overseas jurisdiction, an officer of which signed the certificate for the agreement mentioned in paragraph 33(2)(b) of the *Family Law Regulations 1984* as in force before 1 July 2000.

Note: For the meaning of *prescribed overseas jurisdiction*, see subsection 10(3) of this instrument.

- (3) The Australian court must direct its relevant Registrar to cancel the registration of the overseas maintenance agreement by noting the fact and date of the cancellation on the certified copy of the agreement filed in the court.
- (4) Upon the cancellation of the registration of an overseas maintenance agreement under subsection (3), the agreement ceases to be enforceable in Australia.

EXPOSURE DRAFT

Part 16 Application, saving and transitional provisions

Division 1 Matters relating to the repeal of the Family Law Regulations 1984

Section 143

- (5) The relevant Registrar of the Australian court must cause notice in writing of the fact that the registration has been cancelled, and of the date of the cancellation, to be given to the person who was required to make payments under the agreement.

EXPOSURE DRAFT

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

Clause 1

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

Note: See section 10.

1 Prescribed overseas jurisdictions

The following table specifies countries and parts of countries for the purposes of section 10.

Prescribed overseas jurisdictions	
Item	Country or part of a country
1	Alabama
2	Alaska
3	Arizona
4	Arkansas
5	Austria
6	California
7	Colorado
8	Connecticut
9	Delaware
10	District of Columbia
11	Florida
12	Georgia
13	Hawaii
14	Idaho
15	Illinois
16	Indiana
17	Iowa
18	Kansas
19	Kentucky
20	Louisiana
21	Maine
22	Maryland
23	Massachusetts
24	Michigan
25	Minnesota
26	Mississippi
27	Montana

EXPOSURE DRAFT

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

Clause 1

Prescribed overseas jurisdictions	
Item	Country or part of a country
28	Nebraska
29	Nevada
30	New Hampshire
31	New Jersey
32	New York
33	New Zealand
34	North Carolina
35	North Dakota
36	Ohio
37	Oklahoma
38	Oregon
39	Papua New Guinea
40	Pennsylvania
41	Rhode Island
42	South Carolina
43	Switzerland
44	Tennessee
45	Texas
46	Utah
47	Vermont
48	Virginia
49	Washington
50	West Virginia
51	Wisconsin
52	Wyoming

Schedule 2—Reciprocating jurisdictions

Note: See sections 10 and 101.

1 Reciprocating jurisdictions

The following table specifies countries and parts of countries as reciprocating jurisdictions for the purposes of sections 10 and 101.

Reciprocating jurisdictions	
Item	Country or part of a country
1	Austria
2	Belarus
3	Belgium
4	Brunei Darussalam
5	The following Provinces and Territories of Canada: (a) the Canadian Province of Alberta; (b) the Canadian Province of British Columbia; (c) the Canadian Province of Manitoba; (d) the Canadian Province of New Brunswick; (e) the Canadian Province of Newfoundland and Labrador; (f) the Canadian Province of Nova Scotia; (g) the Canadian Province of Ontario; (h) the Canadian Province of Prince Edward Island; (i) the Canadian Province of Saskatchewan; (j) the Canadian Territory of Northwest Territories; (k) the Canadian Territory of Nunavut; (l) the Canadian Territory of Yukon.
6	Colombia
7	Cook Islands
8	Cyprus
9	Czech Republic
10	Denmark
11	Estonia
12	Fiji
13	France
14	Germany
15	Gibraltar
16	Hong Kong
17	India
18	Italy
19	Kazakhstan

EXPOSURE DRAFT

Schedule 2 Reciprocating jurisdictions

Clause 1

Reciprocating jurisdictions	
Item	Country or part of a country
20	Kenya
21	Lithuania
22	Luxembourg
23	Malawi
24	Malaysia
25	Malta
26	Nauru
27	Netherlands
28	New Zealand
29	Niue
30	Norway
31	Papua New Guinea
32	Poland
33	Portugal
34	Republic of Ireland
35	Samoa
36	Sierra Leone
37	Singapore
38	Slovak Republic
39	South Africa
40	Spain
41	Sri Lanka
42	Sweden
43	Switzerland
44	Tanzania (excluding Zanzibar)
45	Territory of Christmas Island
46	Territory of Cocos (Keeling) Islands
47	Trinidad and Tobago
48	Türkiye
49	United Kingdom, including Alderney, Guernsey, Isle of Man, Jersey and Sark
50	United States of America
51	Zambia
52	Zimbabwe

Schedule 3—Forms

Part 1—International Conventions

Note: See sections 81, 83 and 94.

Form 1—Request for service abroad of judicial documents and certificate

Part 1—Request for service abroad of judicial documents

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, done at The Hague on 15 November 1965

Identity and address of the forwarding authority requesting service

Identity and address of receiving authority [<i>Central Authority/Convention additional authority</i>]

The undersigned forwarding authority (on the application of [*name and address of applicant on whose behalf forwarding authority requests service*]) has the honour to transmit – in duplicate – the documents listed below and, in conformity with Article 5 of the abovementioned Convention, requests prompt service of one copy thereof on the addressee, ie:

(identity and address)

-
- * (a) in accordance with the provisions of subparagraph (a) of the first paragraph of Article 5 of the Convention.
 - * (b) in accordance with the following particular method (subparagraph (b) of the first paragraph of Article 5):
.....
.....
 - * (c) by delivery to the addressee, if the addressee accepts it voluntarily (second paragraph of Article 5).

The receiving authority [*Central Authority/Convention additional authority*] is requested to return or to have returned to the forwarding authority a copy of the documents – and of the annexes* – with a certificate as provided in Part 2 of this Form on the reverse side.

List of documents

.....
.....
.....

Done at, the

Signature or stamp (or both) of forwarding authority.

*Delete if inappropriate.

EXPOSURE DRAFT

Schedule 3 Forms

Part 1 International Conventions

Part 2—Certificate

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, done at The Hague on 15 November 1965

The undersigned authority has the honour to certify, in conformity with Article 6 of the Convention:

- *1. that the documents listed in Part 1 have been served
- the (date)
 - at (place, street, number)
 - in one of the following methods authorised by Article 5:
 - *a) in accordance with the provisions of subparagraph (a) of the first paragraph of Article 5 of the Convention.
 - *b) in accordance with the following particular method:
 -
 - *c) by delivery to the addressee, who accepted it voluntarily.

The document referred to in the request, has been delivered to:

- (identity and description of person)
-
- relationship to the addressee (family, business or other.)
-
-

- *2. that the document has not been served, by reason of the following facts:
-
-
-

*In conformity with the second paragraph of Article 12 of the Convention, the forwarding authority is requested to pay or reimburse the expenses detailed in the attached statement.

Annexes

Documents returned:

.....

.....

In appropriate cases, documents, establishing the service:

.....

EXPOSURE DRAFT

Forms **Schedule 3**
International Conventions **Part 1**

.....

Done at....., the.....

Signature or stamp (or both)

*Delete if inappropriate.

EXPOSURE DRAFT

EXPOSURE DRAFT

Schedule 3 Forms

Part 1 International Conventions

Form 2—Summary of the document to be served

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, done at The Hague on 15 November 1965

(Article 5, fourth paragraph)

Identity and address of the addressee [Central Authority/Convention additional authority]:

IMPORTANT

THE ENCLOSED DOCUMENT IS OF A LEGAL NATURE AND MAY AFFECT YOUR RIGHTS AND OBLIGATIONS. THE SUMMARY OF THE DOCUMENT TO BE SERVED WILL GIVE YOU SOME INFORMATION ABOUT ITS NATURE AND PURPOSE. YOU SHOULD HOWEVER READ THE DOCUMENT ITSELF CAREFULLY. IT MAY BE NECESSARY TO SEEK LEGAL ADVICE.

IF YOUR FINANCIAL RESOURCES ARE INSUFFICIENT YOU SHOULD SEEK INFORMATION ON THE POSSIBILITY OF OBTAINING LEGAL AID OR ADVICE EITHER IN THE COUNTRY WHERE YOU LIVE OR IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED.

ENQUIRIES ABOUT THE AVAILABILITY OF LEGAL AID OR ADVICE IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED MAY BE DIRECTED TO:

.....

SUMMARY OF THE DOCUMENT TO BE SERVED

Name and address of the forwarding authority:

.....

Particulars of the parties:

.....

**JUDICIAL DOCUMENT

Nature and purpose of the document:

.....

Nature and purpose of the proceedings and, where appropriate, the amount in dispute:

.....

.....

.....

EXPOSURE DRAFT

Forms **Schedule 3**
International Conventions **Part 1**

Date and place for entering appearance:

.....

Court in which proceedings pending/judgment given:

.....

**Date of judgment (if applicable):

Time limits stated in the document:

.....

EXPOSURE DRAFT

EXPOSURE DRAFT

Schedule 3 Forms

Part 2 Parentage evidence

Part 2—Parentage evidence

Note: See sections 61, 65 and 68.

Form 3—Parentage testing procedure Affidavit by/in relation to donor

PARENTAGE TESTING PROCEDURE

AFFIDAVIT BY/IN RELATION TO DONOR

NAME OF CHILD WHOSE PARENTAGE IS IN ISSUE: *(insert child's name)*

NAME OF DONOR: *(insert donor's name)*

DATE OF BIRTH OF DONOR: *(insert donor's date of birth)*

*RELATIONSHIP/*PUTATIVE RELATIONSHIP OF DONOR TO CHILD WHOSE PARENTAGE IS IN ISSUE: *(if donor is not the child whose parentage is in issue, insert relationship of donor to child)*

DATE OF TAKING SAMPLE FROM DONOR: *(insert date sample is to be taken)*

I, *(insert name)*, of *(insert address)*, *(insert occupation)*, *make oath and say/*affirm:

<p style="text-align: center;">IMPORTANT</p>

<p>Either Part 1 or 2 of this form must be completed and duly sworn or affirmed by the person completing it, and the signature witnessed, on the day the donor's sample is taken.</p>

PART 1

<p>Part 1 must be completed if the person swearing or affirming the affidavit is the donor.</p>

1. I am the person appearing in the photograph attached to this affidavit, being Attachment 'A'.
2. My racial background is *(insert details)*.
3. In the last 2 years:
 - (a) I *have/*have not suffered from leukaemia;
 - (b) I *have/*have not received a bone marrow transplant.
- *4. The particulars of the *leukaemia/*bone marrow transplant are as follows:
(insert particulars).
5. I *have/*have not received a transfusion of blood or a blood product within the last 6 months.
- *6. The particulars of the transfusion of blood or blood product are as follows:
(insert particulars).
7. I consent to:

EXPOSURE DRAFT

Forms **Schedule 3**
Parentage evidence **Part 2**

- (a) the taking of *a bodily sample/*bodily samples from me on (*insert date sample is to be taken*) at (*insert place sample is to be taken*) for the purposes of *a parentage testing procedure/*parentage testing procedures; and
- (b) the carrying out of *that procedure/*those procedures on the *sample/*samples.

PART 2

Part 2 must be completed on behalf of a child or adult who is not capable of swearing or affirming the affidavit. Under subsection 69Z(2) of the Act, a parentage testing procedure must not be carried out in relation to a child without the consent of a parent or guardian of the child or a person who, under a parenting order, is responsible for the child's long-term or day-to-day care, welfare and development.

1. I am the (*state relationship or other status in relation to the donor*) of (*insert name of donor*) who was born on (*insert date of birth of donor*).
2. (*insert name of donor*) is the person appearing in the photograph attached to this affidavit, being Attachment 'A'.
3. (*insert name of donor*) is a person whose racial background is (*insert details*).
4. In the last 2 years:
 - (a) the donor *has/*has not suffered from leukaemia;
 - (b) the donor *has/*has not received a bone marrow transplant.
- *5. The particulars of the *leukaemia/*bone marrow transplant are as follows:
(*insert particulars*).
6. The donor *has/*has not received a transfusion of blood or a blood product within the last 6 months.
- *7. The particulars of the transfusion of blood or blood product are as follows:
(*insert particulars*).
8. I consent to:
 - (a) the taking of *a bodily sample/*bodily samples from the donor on (*insert date sample is to be taken*) at (*insert place sample is to be taken*) for the purposes of *a parentage testing procedure/*parentage testing procedures; and
 - (b) the carrying out of *that procedure/*those procedures on the *sample/*samples.

*SWORN/*AFFIRMED by the
deponent at

on 20

(*Signature of deponent*)

BEFORE ME: (*insert name of person
before whom the affidavit is sworn
or affirmed*)

(*Signature of person*)

EXPOSURE DRAFT

Schedule 3 Forms

Part 2 Parentage evidence

before whom affidavit is

sworn or affirmed)

Attach a recent photograph of the donor named in the affidavit, measuring approximately 45 millimetres by 35 millimetres, that shows a full face view of the donor's head and the donor's shoulders against a plain background. The photograph must be marked 'A', and must bear a statement, signed by both the person before whom the affidavit is sworn or affirmed and the deponent, identifying it as the photograph mentioned in the affidavit.

**Omit if not applicable.*

Form 4—Parentage testing procedure Collection of bodily samples

PARENTAGE TESTING PROCEDURE

COLLECTION OF BODILY SAMPLES

NAME OF CHILD WHOSE

PARENTAGE IS IN ISSUE: *(insert child's name)*

1. I, *(insert name of sampler)*, of *(insert professional address)*, *(insert occupation)*, took the *bodily sample/*bodily samples specified below at *(insert time)* *am/*pm on *(insert date)* at *(insert place of collection)* from the following *person/*persons:
 - (a) *(insert name of person, type of bodily sample and person's photograph)*;
 - **(b) (insert name of person, type of bodily sample and person's photograph)*;
 - **(c) (insert name of person, type of bodily sample and person's photograph)*;
 - **(d) (insert name of person, type of bodily sample and person's photograph)*.
2. When I took the *bodily sample/*bodily samples specified above, I strictly observed the procedures provided under Division 7 of Part 7 of the Family Law Regulations.
3. I placed the *bodily sample/*each of the bodily samples specified above in a container that was immediately sealed and then labelled in accordance with section 64 of the Family Law Regulations.

DATED:

(Signature of sampler)

**Omit if not applicable.*

EXPOSURE DRAFT

Schedule 3 Forms

Part 2 Parentage evidence

Form 5—Parentage testing procedure report

PARENTAGE TESTING PROCEDURE REPORT

NAME OF CHILD WHOSE

PARENTAGE IS IN ISSUE: *(insert child's name)*

PART 1

1. I, *(insert name of nominated reporter)*, of *(insert street address of laboratory where testing was performed)*, *(insert occupation)*, am a person nominated by the laboratory specified below to prepare a report for the purposes of paragraph 69ZB(b) of the *Family Law Act 1975*.
2. I report that *a parentage testing procedure/*parentage testing procedures, being DNA typing, *has/*have been carried out on the bodily *sample/*samples contained in the sealed *container/*containers bearing the *name/*names of the following *donor/*donors:
 - (a) *(insert donor's name, date of birth and relationship to child whose parentage is in issue)*;
 - * (b) *(insert donor's name, date of birth and relationship to child whose parentage is in issue)*;
 - * (c) *(insert donor's name, date of birth and relationship to child whose parentage is in issue)*;
 - * (d) *(insert donor's name, date of birth and relationship to child whose parentage is in issue)*.
3. Each bodily sample referred to in item 2 is the same bodily sample as the bodily sample specified in the statement completed on *(insert date)* by *(insert name of sampler)* in accordance with Form 4 in Schedule 3 of the Family Law Regulations.
4. The parentage testing *procedure was/*procedures were carried out at *(insert name and street address of *laboratory/*laboratories where testing was performed)* on *(insert date/s)*.
5. The results of the parentage testing *procedure/*procedures are set out in Part 2 of this report.
- *6. I report that the results of the parentage testing *procedure/*procedures carried out on the bodily *sample/*samples of the donors specified above show that *(insert name of putative parent)* is not excluded from identification as the *father/*mother of *(insert name of child whose parentage is in issue)*.

[OR]

- *6. I report that the results of the parentage testing *procedure/*procedures carried out on the bodily *sample/*samples of the donors specified above show that *(insert name of putative parent)* is excluded from identification as the *father/*mother of *(insert name of child whose parentage is in issue)*.

EXPOSURE DRAFT

Forms **Schedule 3**
Parentage evidence **Part 2**

-
- *7. I further report that the probability that (*insert name of putative parent*) is the genetic *father/*mother of (*insert name of child whose parentage is in issue*) has been calculated as follows:

Putative *father/*mother is (*insert figure*) times more likely to produce a child with the required alleles than a *man/*woman drawn randomly from the general population. This equates to a Relative Chance of *Paternity/*Maternity of (*insert figure*).

[OR]

- *7. I further report that the exclusion is based on contradictions of the laws of genetic inheritance in (*insert amount*) of the (*insert amount*) genetic markers: (*insert the names of the genetic markers and whether the contradictions are of the first or second order*).
- *8. I further report (*if necessary, provide further explanation of results detailed in item 6 or 7, or both*).

DATED:

(*Signature of nominated reporter*)

PART 2

- The bodily *sample/*samples referred to in Part 1 of this report were received at (*insert name and street address of laboratory at which parentage testing *procedure was/*procedures were carried out*) on the following date/s:
 - (*specify sample*) — (*insert date*)
 - *(*specify sample*) — (*insert date*)
 - *(*specify sample*) — (*insert date*)
 - *(*specify sample*) — (*insert date*)
 - *(*specify sample*) — (*insert date*).
- The following identification *number was/*numbers were allocated respectively to the bodily *sample/*samples in the *container/*containers in respect of which the parentage testing *procedure was/*procedures were carried out:
 - (*insert name of donor and identification number*);
 - *(*insert name of donor and identification number*);
 - *(*insert name of donor and identification number*);
 - *(*insert name of donor and identification number*).
- The results obtained from the parentage testing *procedure/*procedures are: (*set out the results*).
- *4. The results set out above in item 3 refer to the parentage testing *procedure/*procedures carried out *by me/*under my supervision on (*insert date/s*). The bodily *sample was/*samples were tested with the same probes/primers and in parallel with appropriate known controls. Fragment length and/or hybridisation patterns were in accordance with scientifically accepted standards. I am satisfied that the results obtained have been correctly coded from the fragment and/or hybridisation pattern and that they have been correctly transcribed from the laboratory records.

DATED:

EXPOSURE DRAFT

Schedule 3 Forms

Part 2 Parentage evidence

*(Signature of person who carried
out parentage testing procedure
or person under whose
supervision parentage testing
procedure was carried out)*

**Omit if not applicable.*

Part 3—Arbitration

Note: See sections 24, 25, 37 and 39.

Form 6—Application for arbitration

[name of court]

Application for arbitration

Form 6—Section 24 of the *Family Law Regulations 2024*

Fill in box A (file numbers)

A File Number

B Filed at

C Hearing date

Hearing time

AM

PM

Application

The parties seek an order referring the matter, details of which are given below, to arbitration

Notice

Take notice that:

- this application is set down for hearing before the Court sitting at the time and place in box C above
- if you do not appear at the hearing, the Court may hear and decide the matter in your absence

Details of parties

1 Names of parties making this application

give details for each

attach extra page if you need more space

2 Postal address for service of documents on each applicant

Applicant 1

family name (surname)

given names

family name (surname)

given names

family name (surname)

given names

family name (surname)

given names

send to solicitor/s in 3 other give details:

EXPOSURE DRAFT

Schedule 3 Forms
Part 3 Arbitration

<p><i>Applicant 2</i></p> <p><i>Attach separate sheet for any others</i></p> <p>3 Solicitor for each applicant</p> <p><i>Applicant 1</i></p> <ul style="list-style-type: none">- name- firm name- address- phone/email <p><i>Applicant 2</i></p> <ul style="list-style-type: none">- name- firm name- address- phone/email <p><i>Attach separate sheet for any others</i></p>	<div style="border: 1px solid black; padding: 5px;"><p style="text-align: center;">postcode</p><p>tel () email ()</p></div> <p>send to solicitor/s in 3 <input type="checkbox"/> other <input type="checkbox"/> give details:</p> <div style="border: 1px solid black; padding: 5px;"><p style="text-align: center;">postcode</p><p>tel () email ()</p></div> <p style="text-align: center;">code postcode</p> <p>tel () email ()</p> <p style="text-align: center;">code postcode</p> <p>tel () email ()</p>
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Details of issue(s) to be arbitrated

<p>4</p>	
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Details of arbitrator

<p>5 If the parties have agreed on an arbitrator, give brief details of the proposed arbitrator, including name and address</p>	
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Signature

<p>Signed</p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div> <p style="text-align: center;">applicant(s) <input type="checkbox"/> solicitor for applicant(s) <input type="checkbox"/></p>	<p>Date</p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>
<p>This application was prepared by applicant <input type="checkbox"/> solicitor <input type="checkbox"/> counsel <input type="checkbox"/></p> <p><i>(print name if solicitor/counsel)</i></p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>	

EXPOSURE DRAFT

Forms **Schedule 3**
Arbitration **Part 3**

Form 7—Application relating to relevant property or financial arbitration

[name of court]

Application relating to relevant property or financial arbitration

Form 7—Section 25 of the *Family Law Regulations 2024*

Fill in box A (file numbers)

A File Number

B Filed at

C Hearing date
Hearing time AM
PM

Application

The parties seek an order, details of which are given below, in relation to the relevant property or financial arbitration of a dispute

Notice

Take notice that:

- this application is set down for hearing before the Court sitting at the time and place in box C above
- if you do not appear at the hearing, the Court may hear and decide the matter in your absence

Details of parties

1 Names of parties making this application

give details for each

attach extra page if you need more space

2 Postal address for service of documents on each applicant

Applicant 1

Applicant 2

family name (surname)

given names

family name (surname)

given names

family name (surname)

given names

send to solicitor/s in 3 other give details:

postcode

tel ()

email ()

send to solicitor/s in 3 other give details:

EXPOSURE DRAFT

Schedule 3 Forms
Part 3 Arbitration

<p><i>Attach separate sheet for any others</i></p>	<p>postcode tel () email ()</p>
<p>3 Solicitor for each applicant</p> <p><i>Applicant 1</i></p> <ul style="list-style-type: none">- name- firm name- address- phone <p><i>Applicant 2</i></p> <ul style="list-style-type: none">- name- firm name- address- phone/email <p><i>Attach separate sheet for any others</i></p>	<p>code postcode tel () email ()</p> <p>code postcode tel () email ()</p>

Details of order sought

4

Details of arbitration

5 Give brief details of the arbitration or proposed arbitration, including the name and address of the arbitrator (if already appointed), whether any arbitration proceedings have already taken place (and, if so, when and where)

Attach copy of any award made

Signature

Signed Date

applicant(s) solicitor for applicant(s)

This application was prepared by applicant solicitor counsel

(print name if solicitor/counsel)

EXPOSURE DRAFT

Forms **Schedule 3**
Arbitration **Part 3**

Form 8—Application to register arbitration award

[name of court]

Application to register arbitration award

Form 8—Section 37 of the *Family Law Regulations 2024*

Fill in box A (file numbers)

A	File Number	
B	Filed at	

Hearing date (if hearing needed)	AM PM
Hearing time	

Notice

Take notice that the applicant seeks registration of the award described below

Application

The applicant seeks registration of the award described below

Details of parties

1 Name(s) of applicant(s) making this application
give details for each

family name (surname)

given names

attach extra page if you need more space

family name (surname)

given names

family name (surname)

given names

2 Name(s) of respondent(s)
(other parties to the award, if any)
give details for each

family name (surname)

given names

family name (surname)

given names

family name (surname)

given names

3 Postal address for service of documents on applicants

send to solicitor in 4 other give details:

Phone or
Email

State Postcode

EXPOSURE DRAFT

Schedule 3 Forms
Part 3 Arbitration

- 4 Solicitor for applicant(s)
- name
- firm name
- address
- phone or email
- Lawyer's code

Phone or Email	State	Postcode
	Lawyer's code	

Details of award

- 5 Give brief details of the award, including date made and name and address of arbitrator

Attach a copy of the award

Signature

Signed

Date

applicant(s) solicitor for applicant(s)

This application was prepared by applicant solicitor counsel

(print name if solicitor/counsel)

EXPOSURE DRAFT

Forms **Schedule 3**
Arbitration **Part 3**

Form 9—Application to register decree affecting registered arbitration award

[name of court]

Application to register decree affecting registered arbitration award

Form 9—Section 39 of the *Family Law
Regulations 2024*

Fill in box A (file numbers)

A	File Number	
B	Filed at	

Application

The applicant seeks registration of the decree described below

Details of parties

1 Name(s) of applicant(s)
making this application
give details for each

family name (surname)

given names

family name (surname)

given names

*attach extra page if you
need more space*

family name (surname)

given names

2 Name(s) of respondent(s)

family name (surname)

given names

(other parties to the
award, if any)

family name (surname)

given names

give details for each

family name (surname)

given names

3 Postal address for service
of documents on
applicants

send to solicitor in 4 other give details:

postcode

tel () email ()

4 Solicitor for applicant(s)

- name
- firm name
- address
- phone/email

code

postcode

tel () email ()

EXPOSURE DRAFT

Schedule 3 Forms
Part 3 Arbitration

Details of decree

5 Give brief details of the decree and the award affected by the decree, including date the decree made and name and address of arbitrator who made the award

Attach a copy of the decree

Signature

Signed

Date

applicant(s) solicitor for applicant(s)

This application was prepared by applicant solicitor counsel
(print name if solicitor/counsel)

Schedule 4—Jurisdictions and Recovery Convention countries

Note: See subsections 69S(1A) and 69XA(4) of the Act and subsection 10(3) and subparagraph 76(2)(a)(ii) of this instrument and the definition of *Recovery Convention country* in subsection 125(1) of this instrument.

1 Jurisdictions

The following table:

- (a) prescribes jurisdictions for the purposes of paragraph 69S(1A)(a) of the Act; and
- (b) prescribes jurisdictions for the purposes of subsection 69XA(4) of the Act; and
- (c) prescribes jurisdictions for the purposes of subsection 10(3) of this instrument; and
- (d) specifies jurisdictions for the purposes of subparagraph 76(2)(a)(ii) of this instrument; and
- (e) specifies countries for the purposes of the definition of *Recovery Convention country* in subsection 125(1) of this instrument.

Prescribed jurisdictions and countries	
Item	Jurisdiction and country
1	Algeria
2	Argentina
3	Austria
4	Barbados
5	Belarus
6	Belgium
7	Bosnia and Herzegovina
8	Brazil
9	Burkina Faso
10	Cape Verde
11	Central African Republic
12	Chile
13	Colombia
14	Croatia
15	Cyprus
16	Czech Republic
17	Denmark
18	Ecuador
19	Estonia
20	Finland

EXPOSURE DRAFT

Schedule 4 Jurisdictions and Recovery Convention countries

Clause 1

Prescribed jurisdictions and countries	
Item	Jurisdiction and country
21	France
22	Germany
23	Greece
24	Guatemala
25	Haiti
26	Holy See
27	Hungary
28	Israel
29	Italy
30	Kazakhstan
31	Kyrgyzstan
32	Liberia
33	Luxembourg
34	Mexico
35	Monaco
36	Montenegro
37	Morocco
38	Netherlands
39	New Zealand
40	Niger
41	North Macedonia
42	Norway
43	Pakistan
44	Philippines
45	Poland
46	Portugal
47	Republic of Ireland
48	Republic of Moldova
49	Romania
50	Serbia
51	Seychelles
52	Slovak Republic
53	Slovenia
54	Spain
55	Sri Lanka
56	Suriname
57	Sweden
58	Switzerland
59	Tunisia
60	Türkiye

EXPOSURE DRAFT

Jurisdictions and Recovery Convention countries **Schedule 4**

Clause 1

Prescribed jurisdictions and countries	
Item	Jurisdiction and country
61	Ukraine
62	United Kingdom, including Alderney, Guernsey, Isle of Man, Jersey and Sark
63	Uruguay

EXPOSURE DRAFT

Schedule 4A Jurisdictions and Convention countries

Clause 1

Schedule 4A—Jurisdictions and Convention countries

Note: See subsections 69S(1A) and 69XA(4) and section 117AC of the Act.

1 Jurisdictions

The following table:

- (a) prescribes jurisdictions for the purposes of paragraph 69S(1A)(a) of the Act; and
- (b) prescribes jurisdictions for the purposes of subsection 69XA(4) of the Act; and
- (c) lists Convention countries, within the meaning of section 117AC of the Act, for the purposes of that section.

Jurisdictions and Convention countries	
Item	Jurisdiction and country
1	Albania
2	Andorra
3	Belgium
4	Czech Republic
5	Denmark
6	Estonia
7	Finland
8	France
9	Germany
10	Greece
11	Italy
12	Lithuania
13	Luxembourg
14	Netherlands
15	Norway
16	Poland
17	Portugal
18	Slovakia
19	Spain
20	Sweden
21	Switzerland
22	Türkiye
23	Ukraine
24	United Kingdom