



2001B00083

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Legislative Services Unit
Office of Legislative Drafting
Attorney-General's Department



Family Law Amendment Regulations 2001 (No. 1)¹

Statutory Rules 2001 No. 1²

31

I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Family Law Act 1975*.

Dated 22 FEB 2001 2001

WILLIAM DEANE
Governor-General

By His Excellency's Command

DARYL WILLIAMS
Attorney-General

1 Name of Regulations

These Regulations are the *Family Law Amendment Regulations 2001 (No. 1)*.

2 Commencement

These Regulations commence on gazettal.

3 Amendment of *Family Law Regulations 1984*

Schedule 1 amends the *Family Law Regulations 1984*.

Schedule 1 Amendments

(regulation 3)

[1] Subregulation 3 (1), after definition of *intervener*

insert

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.

[2] After regulation 12A

insert

12AB Appeal division — prescribed number of members (Act s 22 (2AC))

For subsection 22 (2AC) of the Act, the prescribed number of members is 9.

[3] **After regulation 14**

insert

14A Prescribed maximum period — sentence or order (Act s 70NK (5), 112AG (6))

For the definitions of *maximum period* in subsections 70NK (5) and 112AG (6) of the Act, 200 hours is prescribed in relation to each State and Territory.

[4] **After regulation 15**

insert

15A Leave to appeal — prescribed decrees (Act s 94AA)

- (1) For subsection 94AA (1) of the Act, a decree of the kind mentioned in subsection 94 (1) of the Act that is an interlocutory decree (other than a decree in relation to a child welfare matter) is prescribed.
- (2) For subsection 94AA (2A) of the Act, a decree of the kind mentioned in subsection 94AAA (1) of the Act that is an interlocutory decree (other than a decree in relation to a child welfare matter) is prescribed.
- (3) In this regulation:
child welfare matter means a matter relating to:
 - (a) the person or persons with whom a child is to live; or
 - (b) contact between a child and another person or persons; or
 - (c) any other aspect of parental responsibility, within the meaning of Part VII of the Act, for a child.

[5] Regulation 18A

omit

[6] Paragraph 65 (1) (a)

omit

approved

[7] Part 5, after Division 2

insert

Division 2A Arbitration**67A Definitions for Division 2A**

In this Division, unless the contrary intention appears:

arbitration means arbitration under section 19D of the Act or private arbitration.

arbitration agreement means an agreement made under regulation 67F between the parties to an arbitration.

67B Prescribed requirements for arbitrator (Act s 4 (1))

For the definition of *arbitrator* in subsection 4 (1) of the Act, a person meets the requirements for an arbitrator if:

- (a) the person is a legal practitioner; and
- (b) either:
 - (i) the person is accredited as a family law specialist by a State or Territory legal professional body; or
 - (ii) the person has practised as a legal practitioner for at least 5 years and at least 25% of the work done by the person in that

time was in relation to family law matters;
and

- (c) the person has completed specialist arbitration training conducted by a tertiary institution or a professional association of arbitrators; and
- (d) the person's name is included in a list, kept by the Law Council of Australia or by a body nominated by the Law Council of Australia, of legal practitioners who are prepared to provide arbitration services under the Act.

67C Matters that may not be arbitrated

A Part VIII proceeding, a part of a Part VIII proceeding, or a matter arising in a Part VIII proceeding, 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 the Act.

**67D Application for referral to arbitration
(Act s 19D)**

An application for an order under section 19D of the Act in relation to a Part VIII proceeding, a part of a Part VIII proceeding, or a matter arising in a Part VIII proceeding, must be:

- (a) in accordance with Form 6; and
- (b) made jointly by all parties to the proceeding; and
- (c) accompanied by a financial statement in accordance with Form 17 of the *Family Law Rules 1984*.

**67E Application relating to private arbitration
(Act s 19E)**

- (1) An application, under subsection 19E (1) of the Act, for an order to facilitate the effective conduct of the private arbitration of a dispute must be in accordance with Form 7.

- (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.

67F Arbitration agreement

- (1) The parties to an arbitration may make an agreement in relation to the arbitration (an *arbitration agreement*).
- (2) An arbitration agreement must:
 - (a) be in writing; and
 - (b) set out the information mentioned in subregulation (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 his or her 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
 - (e) be signed by each party to the arbitration.
- (3) For 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).

67G Notice of arbitration

- (1) This regulation does not apply if the parties to an arbitration have made an arbitration agreement in relation to the arbitration.
- (2) Before conducting an arbitration, the arbitrator must give to each party to the arbitration a written notice setting out:
- (a) the information mentioned in subregulation 67F (3) in relation to the arbitration; and
 - (b) in relation to the costs of the arbitration, information explaining the effect of regulation 67H.
- (3) The notice must also state that any party to the arbitration may attend, and be heard at, the arbitration.
- (4) The notice must be given at least 28 days before the arbitration is conducted, unless the parties have agreed on another period of notice.

67H Costs of arbitration

- (1) The costs of an arbitration are to be shared equally between the parties to the arbitration unless the parties agree, in writing, otherwise.
- (2) If the parties have not made an arbitration agreement, each party must inform the arbitrator, in writing, before the arbitration starts, that he or she agrees to pay his or her equal or agreed share of the costs of the arbitration, within 28 days, or another period agreed by the parties and the arbitrator, after an award has been made.

- (3) If the parties have not made an arbitration agreement, and do not comply with subregulation (2), the arbitrator must:
- (a) proceed no further with the arbitration; and
 - (b) for an arbitration under section 19D of the Act, refer the matter to the court that ordered the arbitration.

67I Duties of arbitrator

- (1) In an arbitration, an arbitrator must determine the issues in dispute between the parties to the arbitration in accordance with the 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.

67J Oath or affirmation by arbitrator

For section 19L of the Act, an oath or affirmation made by an arbitrator must be 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.

67K 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 19D of the Act, refer the matter to the court that ordered the arbitration.

67L Termination of arbitration — lack of capacity

- (1) If an arbitrator considers that a party to an arbitration does not have the capacity to take part in the arbitration, the arbitrator must:
 - (a) terminate the arbitration; and
 - (b) for an arbitration under section 19D of the Act, refer the matter to the court that ordered the arbitration.
- (2) For subregulation (1), a person who is a party to an arbitration does not have the capacity 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 capable of:
 - (i) giving adequate instruction to his or her representative for the conduct of the arbitration; or
 - (ii) satisfactorily appearing in person in the arbitration.

67M Appearance in arbitration

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

67N 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 subregulation (2) must be made in accordance with Form 3 of the *Family Law Rules 1984*.

Note If a person does not comply with a requirement under subregulation (1), or a subpoena issued under subregulation (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 19D (3) of the Act in relation to arbitration under section 19D of the Act, and subsection 19E (1) of the Act in relation to private arbitration.

67O Application of rules of evidence

- (1) Subregulation (2) 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 he or she considers appropriate.

67P 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 mechanically or electronically printed; 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 19D 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 proceeding to which the arbitration relates.

67Q Registration of award (Act s 19D, s 19E)

- (1) For subsections 19D (5) and 19E (2) of the Act, an application to register an award made in an arbitration must be in accordance with Form 8.

(2) The applicant must serve a copy of the application on each other party to the award.

(3) A party on whom an application is served may, within 28 days after service, bring to the attention of the court any reason why the award should not be registered.

Note An example of a way of bringing a matter to the attention of the court is by filing an affidavit.

(4) If nothing is brought to the court's attention under subregulation (3), the court must register the award.

(5) If a party brings a matter to the court's attention under subregulation (3), the court must, after giving all parties a reasonable opportunity to be heard in relation to the matter, determine whether to register the award.

Note For the effect of registration, see subsections 19D (5) and 19E (2) of the Act.

67R Notice of registration of award

(1) If a court registers an award, the court must give notice of the registration to each party to the award.

(2) The notice must state:

- (a) the date when the award was registered; and
- (b) the place where the award was registered.

67S 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 Part VIII of the Act.

67T Registration of decree affecting registered award

(1) If a decree is made by a court under section 19F, 19FA, 19G or 19GA 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.

[8] Subparagraph 68 (1) (a) (iii)

omit

approved

[9] Part 5, Division 3, Subdivision 4, heading

substitute

Subdivision 4 Advertising: arbitrators

[10] Regulation 73, heading

substitute

73 Content of advertising — arbitrator

[11] Subregulations 73 (1) and (2)

omit

approved

[12] Schedule 1, after Form 5*insert***Form 6 Application for arbitration**

(regulation 67D)

Application for arbitration

Form 6 — Family Law Regulation 67D

[name of court]

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

family name (surname)

given names

give details for each

family name (surname)

given names

	family name (surname)	given names
<i>attach extra page if you need more space</i>	family name (surname)	given names
<p>2 Postal address for service of documents on each applicant</p> <p><i>Applicant 1</i></p> <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: right;">postcode</p> <p>tel () fax ()</p> </div> <p><i>Applicant 2</i></p> <p><i>Attach separate sheet for any others</i></p> <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: right;">postcode</p> <p>tel () fax ()</p> </div>		
<p>3 Solicitor for each applicant</p> <p><i>Applicant 1</i></p> <ul style="list-style-type: none"> - name - firm name - address - phone/fax/DX <p><i>Applicant 2</i></p> <ul style="list-style-type: none"> - name - firm name - address - phone/fax/DX <p><i>Attach separate sheet for any others</i></p>		<div style="border: 1px solid black; padding: 5px;"> <p style="text-align: right;">code postcode</p> <p>tel () fax () DX and suburb/town</p> </div> <div style="border: 1px solid black; padding: 5px;"> <p style="text-align: right;">code postcode</p> <p>tel () fax () DX and suburb/town</p> </div>

Details of issue(s) to be arbitrated

4

Details of arbitrator

5 If the parties have agreed on an arbitrator, give brief details of the proposed arbitrator, including name and address

Signature

Signed

Date

applicant(s)

solicitor for applicant(s)

This application was prepared by

applicant

solicitor

counsel

(print name if solicitor/counsel)

Form 7 Application relating to private arbitration
(regulation 67E)

Application relating to private arbitration

Form 7 — Family Law Regulation 67E

[name of court]

Fill in box A (file numbers)		
A	File Number	
B	Filed at	
C	Hearing date	AM
	Hearing time	PM

Application

The parties seek an order, details of which are given below, in relation to the private 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

family name (surname)

given names

give details for each

family name (surname)

given names

attach extra page if you need more space

family name (surname)	given names
-----------------------	-------------

2 Postal address for service of documents on each applicant

Applicant 1

send to solicitor/s in 3 other give details:

tel ()		fax ()		postcode
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Applicant 2

Attach separate sheet for any others

send to solicitor/s in 3 other give details:

tel ()		fax ()		postcode
---------	--	---------	--	----------

3 Solicitor for each applicant

Applicant 1

- name
- firm name
- address
- phone/fax/DX

tel ()		fax ()		code	postcode	DX and suburb/town
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Applicant 2

- name
- firm name
- address
- phone/fax/DX

tel ()		fax ()		code	postcode	DX and suburb/town
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Attach separate sheet for any others

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)

Form 8 Application to register arbitration award

(regulation 67Q)

[name of court]

Fill in box A (file numbers)

Application to register arbitration award

Form 8 — Family Law Regulation 67Q

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
- within 28 days of service of this application, another party to the award may bring to the court's attention any reason why the award should not be registered
- if nothing is brought to the court's attention, the court must register the award

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*
- attach extra page if you need more space*

family name (surname)

given names

family name (surname)

given names

family name (surname)

given names

<p>2 Name(s) of respondent(s)</p>	<p>family name (surname)</p>	<p>given names</p>
<p>(other parties to the award, if any)</p>	<p>family name (surname)</p>	<p>given names</p>
<p><i>give details for each</i></p>	<p>family name (surname)</p>	<p>given names</p>
<p>3 Postal address for service of documents on applicants</p>	<p>send to solicitor in 4 <input type="checkbox"/> other <input type="checkbox"/> give details:</p> <p>tel () fax () postcode</p>	
<p>4 Solicitor for applicant(s)</p> <ul style="list-style-type: none"> - name - firm name - address - phone/fax/DX 	<p>code</p> <p>postcode</p> <p>DX and suburb/town</p> <p>tel () fax ()</p>	

Details of award

<p>5 Give brief details of the award, including date made and name and address of arbitrator</p>	<p><i>Attach a copy of the award</i></p>
--	--

Signature

Signed Date

applicant(s) solicitor for applicant(s)

This application was prepared by applicant solicitor counsel

(print name if solicitor/counsel)

Form 9 Application to register decree affecting registered arbitration award

(regulation 67T)

<p>[name of court]</p> <p style="text-align: center;">Application to register decree affecting registered arbitration award</p>	Fill in box A (file numbers)						
<p>Form 9 — Family Law Regulation 67T</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%; text-align: center; vertical-align: top;">A</td> <td style="width: 40%; text-align: center; vertical-align: top;">File Number</td> <td style="width: 50%;"></td> </tr> <tr> <td style="text-align: center; vertical-align: top;">B</td> <td style="text-align: center; vertical-align: top;">Filed at</td> <td></td> </tr> </table>	A	File Number		B	Filed at	
A	File Number						
B	Filed at						

Application

The applicant seeks registration of the decree described below

Details of parties

<p>1 Name(s) of applicant(s) making this application</p> <p><i>give details for each</i></p> <p><i>attach extra page if you need more space</i></p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="height: 40px; text-align: center;">family name (surname)</td></tr> <tr><td style="height: 40px; text-align: center;">family name (surname)</td></tr> <tr><td style="height: 40px; text-align: center;">family name (surname)</td></tr> </table>	family name (surname)	family name (surname)	family name (surname)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="height: 40px; text-align: center;">given names</td></tr> <tr><td style="height: 40px; text-align: center;">given names</td></tr> <tr><td style="height: 40px; text-align: center;">given names</td></tr> </table>	given names	given names	given names
family name (surname)								
family name (surname)								
family name (surname)								
given names								
given names								
given names								
<p>2 Name(s) of respondent(s)</p> <p>(other parties to the award, if any)</p> <p><i>give details for each</i></p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="height: 40px; text-align: center;">family name (surname)</td></tr> <tr><td style="height: 40px; text-align: center;">family name (surname)</td></tr> <tr><td style="height: 40px; text-align: center;">family name (surname)</td></tr> </table>	family name (surname)	family name (surname)	family name (surname)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="height: 40px; text-align: center;">given names</td></tr> <tr><td style="height: 40px; text-align: center;">given names</td></tr> <tr><td style="height: 40px; text-align: center;">given names</td></tr> </table>	given names	given names	given names
family name (surname)								
family name (surname)								
family name (surname)								
given names								
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given names								

3 Postal address for service of documents on applicants

send to solicitor in 4 other give details:

	postcode
tel ()	fax ()

4 Solicitor for applicant(s)

- name
- firm name
- address
- phone/fax/DX

	code
	postcode
tel ()	fax ()
	DX and suburb/town

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*)

Notes

1. These Regulations amend Statutory Rules 1984 No. 426, as amended by 1985 No. 183; 1986 Nos. 140 and 393; 1987 Nos. 85 and 175; 1988 Nos. 42, 44, 164 and 165; 1989 Nos. 8, 53, 74, 155, 205, 235 and 326; 1990 Nos. 294 and 373; 1991 Nos. 401 and 447 (disallowed by the Senate on 3 March 1992); 1992 Nos. 33, 160, 287, 376 and 404; 1994 Nos. 86 and 343; 1995 Nos. 297, 400 and 419; 1996 Nos. 71, 188 (as amended by 1996 No. 201), 253 and 265; 1997 Nos. 157 (disallowed by the Senate on 24 November 1997), 232, 251 and 376; 1998 Nos. 39, 121, 222, 270 and 329; 1999 Nos. 39 and 173; 2000 Nos. 16, 81, 207 and 254.
2. Notified in the *Commonwealth of Australia Gazette* on 2001. *1 March*