

EXPLANATORY STATEMENT

Select Legislative Instrument No. 113, 2015

Issued by the authority of the Attorney-General

Acts Interpretation Act 1901

Family Law Act 1975

Attorney-General's Legislation Amendment (Updated References) Regulation 2015

Section 51 of the *Acts Interpretation Act 1901* (Acts Interpretation Act) and subsection 125(1) of the *Family Law Act 1975* (Family Law Act) provide that the Governor-General may make regulations prescribing matters required or permitted by the Acts Interpretation Act or the Family Law Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to those Acts.

The purpose of this Regulation is to amend the *Acts Interpretation (Registered Relationships) Regulations 2008*, and the *Family Law Regulations 1984* following the commencement of the *Civil Unions Act 2012* (ACT) which created a new scheme for the registration of civil unions in the ACT, transferred the civil partnerships registration scheme to the *Domestic Relationships Act 1994* (ACT), and repealed the *Civil Partnerships Act 2008* (ACT).

The Regulation also amends the Family Law Regulations following the enactment of the *Surrogacy Act 2012* (Tas).

The Regulation also amends the *Family Law (Superannuation) Regulations 2011* following the making of the *Retirement Benefits (Parliamentary Superannuation) Regulations 2012* (Tas).

In particular, the Regulation:

- prescribes laws of the Australian Capital Territory providing for the registration of relationships, and certain kinds of relationships registered under those laws, for the purpose of the definition of 'de facto relationship' in the Acts Interpretation Act and the Family Law Act.
- prescribes laws of the Australian Capital Territory providing for the registration of relationships, to enable de facto couples who have registered their relationship under those laws to satisfy the requirements for invoking the jurisdiction of the Family Court for making a property settlement or maintenance order under the Family Law Act.
- prescribes a law of Tasmania providing for the transfer of parentage in certain non-commercial surrogacy arrangements entered into in Tasmania, for the purposes of recognising the parentage of children born under surrogacy arrangements under the Family Law Act.
- repeals the note at the end of subregulation 3(1) of the Family Law Regulations to omit the obsolete reference to the 'Federal Magistrates Rules' and replaces it with a note at the beginning of regulation 3 of the Family Law Regulations with a reference to the 'applicable rules of court' and 'standard rules of court'.
- Prescribes a law of Tasmania providing for the continuation of the Parliamentary Superannuation Fund and the Parliamentary Retiring Benefits Fund in the Family

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Law Superannuation Regulations to ensure that the definition of a ‘percentage-only interest’ is current.

The Australian Capital Territory Government and the Federal Courts Branch of the Attorney-General’s Department were consulted on the draft Regulation.

The Family Law Act and the Acts Interpretation Act specify no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Details of the Regulation are as follows:

Regulation 1 – Name of Regulation

This Regulation provides that the title of the Regulation is the *Attorney-General’s Legislation Amendment (Updated References) Regulation 2015*.

Regulation 2 – Commencement

This Regulation provides that the Regulation commences on the day after it is registered.

Regulation 3 – Authority

This Regulation provides that this Regulation is made under the authority of the Acts Interpretation Act and the Family Law Act.

Regulation 4 – Schedules

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

Schedule 1 – Amendments

Item [1] – Paragraph 3(c)

Item 1 of Schedule 1 substitutes paragraph 3(c) of the *Acts Interpretation (Registered Relationships) Regulations 2008* to prescribe the *Civil Unions Act 2012* (ACT) (Civil Unions Act), and the type of registered relationship (a civil union described in subsection 6(1) of the Civil Unions Act) for the purposes of section 2E of the Acts Interpretation Act.

This item also inserts new paragraph 3(ca) to prescribe the *Domestic Relationships Act 1984* (ACT) (Domestic Relationships Act), and the type of registered relationship (a relationship as a couple between 2 adult persons who meet the eligibility criteria for entering into a civil partnership mentioned in section 37C of the Domestic Relationships Act) for the purposes of section 2E of the Acts Interpretation Act.

Item [2] – Regulation 3 (after the heading)

Item 2 of Schedule 1 inserts a note after the heading of regulation 3 to clarify that the terms ‘applicable rules of court’ and ‘standard rules of court’ are defined in the Act. This note will replace the note repealed by Item 3.

Item [3] – Subregulation 3(1) (note)

Item 3 of Schedule 1 repeals the note at the end of subregulation 3(1) of the *Family Law Regulations 1984*. This reflects the change in name of the Federal Magistrates Rules to the Federal Circuit Rules made by the *Federal Circuit Court of Australia Legislation (Consequential Amendments) Regulation 2013 (No. 1)*, and is related to Item 2

Item [4] – Regulation 12BC (table item 4)

Item 4 of Schedule 1 substitutes item 4 of the table in regulation 12BC to prescribe the *Civil Unions Act 2012 (ACT)* (Civil Unions Act), and the type of relationship for entry into a de facto relationship (a civil union described in section 6 of the Civil Unions Act) for the purposes of section 4AA(2)(g) of the Family Law Act.

Item 4 also inserts new item 5 in the table of regulation 12BC, to prescribe Part 4A of the *Domestic Relationships Act 1994 (ACT)* (Domestic Relationships Act), and the type of relationship for entry into a de facto relationship (a relationship as a couple between 2 adult persons who meet the eligibility criteria for entering into a civil partnership mentioned in section 37C of the Domestic Relationships Act) for the purposes of section 4AA(2)(g) of the Family Law Act.

Item [5] – Regulation 12CAA (at the end of the table)

Item 5 of Schedule inserts new item 7 to the table in regulation 12CAA of the *Family Law Regulations 1984* to prescribe section 16 of the *Surrogacy Act 2012 (TAS)* for the purposes of section 60HB of the Family Law Act.

Item [6] – Regulation 15AB (table item 4)

Item 6 of Schedule 1 substitutes item 4 of the table in Regulation 15AB to prescribe the *Civil Unions Act 2012 (ACT)* for the purposes of paragraph 90SB(d) of the Family Law Act.

Item 6 also inserts new item 5 in the table of regulation 15AB to prescribe Part 4A of the *Domestic Relationships Act 1994 (ACT)* for the purposes of paragraph 90SB(d) of the Family Law Act.

Item [7] – Paragraph 9A(1)(e)

Item 7 of Schedule 1 substitutes paragraph 9A(1)(e) of the *Family Law (Superannuation) Regulations 2001* to prescribe regulation 50 of the *Retirements Benefits (Parliamentary Superannuation) Regulation 2012 (Tas)* for the purposes of section 90MD of the Family Law Act.

Statement of Compatibility with Human Rights

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

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This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

This Regulation amends the *Acts Interpretation (Registered Relationships) Regulations 2008* (Acts Interpretation (Registered Relationships) Regulations), the *Family Law Regulations 1984* (Family Law Regulations) and the *Family Law (Superannuation) Regulations 2011* (Family Law Superannuation Regulations) to:

- Prescribe the *Civil Unions Act 2012* (ACT) (Civil Unions Act) and the *Domestic Relationships Act 1994* (ACT) (Domestic Relationships Act) in paragraph 3(1) of the Acts Interpretation (Registered Relationships) Regulations, following the commencement of the Civil Unions Act. The effect of this prescription will be that couples registered in a civil union or civil partnership under ACT law will be conclusively recognised as two people in a 'de facto relationship' for the purposes of the *Acts Interpretation Act 1901*. This will ensure consistency in the definition of 'de facto relationship', and the recognition of couples in a civil union or civil partnership, throughout Commonwealth legislation.
- Prescribe the Civil Unions Act and Part 4A of the Domestic Relationships Act in Regulations 12BC and 15AB of the Family Law Regulations, following the commencement of the Civil Unions Act. The effect of this prescription will be that couples registered in a civil union or a civil partnership under ACT law will be conclusively recognised as two people in a 'de facto relationship' for the purposes of the Family Law Act. This means that couples are able to invoke the jurisdiction of the Family Court for making a property settlement or maintenance order under the Family Law Act.
- Prescribe the *Surrogacy Act 2012* (Tas) (Surrogacy Act) in Regulation 12CAA of the Family Law Regulations following its enactment on 1 May 2013. The Surrogacy Act provides for the transfer of parentage from the surrogate to the intended parents who have entered into certain non-commercial surrogacy arrangements. The amendment will ensure that people recognised as parents of surrogate children under the Surrogacy Act are recognised as parents of surrogate children for the purposes of the Family Law Act.
- Repeal the note at the end of subregulation 3(1) which contains an obsolete reference to the 'Federal Magistrates Rules', and insert a note at the beginning of regulation 3 of the Family Law Regulations, to clarify that the terms 'applicable rules of court' and 'standard rules of court' are defined in the Act.
- Update references to the legislation prescribed in paragraph 9A(e) of the Family Law Superannuation Regulations following the enactment of the *Retirement Benefits (Parliamentary Superannuation) Regulations 2012* (Tas) to ensure that the relevant definition of a 'percentage-only interest' is current. This will enable the accurate interpretation of 'percentage-only interest' throughout Part VIII B of the Family Law Act, which deals with the division of superannuation upon relationship breakdown.

Human rights implications

The amendments to the Acts Interpretation Regulations and the Family Law Regulations promote the following human rights:

Article 23 of the *International Covenant on Civil and Political Rights* (ICCPR). This Article guarantees the right to respect for family.

Article 26 of the ICCPR. This Article guarantees the right to equal protection of the law without discrimination.

Article 2 of the ICCPR. This Article guarantees that all individuals are equal, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 7 of the *United Nations Convention on the Rights of the Child* (UNCRC). This Article guarantees the right of children to know their parents and be cared for by their family.

Prescription of the *Civil Unions Act 2012* (ACT) and the *Domestic Relationships Act 1994* (ACT)

Article 23 ICCPR states that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. The United Nations Human Rights Committee (HRC) has made it clear that the definition of family is not confined by the concept of marriage. If countries recognise other arrangements that may constitute a family, those arrangements must be protected under Article 23 of the ICCPR.

The Regulation promotes the right to respect for family and the right to non-discrimination by ensuring that couples who enter a civil union or civil partnership under ACT law are recognised for the purposes of the Acts Interpretation Act and Family Law Act, and have access to the same entitlements as married opposite-sex couples.

Article 26 ICCPR states that all persons are equal before the law and are entitled without discrimination to the equal protection of the law. It states that the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property birth or other status.

Article 2 ICCPR requires States to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the ICCPR without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

The Regulation promotes Article 26 and Article 2 of the ICCPR as couples who enter a civil union or civil partnership under ACT law can now bypass time requirements to achieve de facto status for the purposes of the Family Law Act. This means that those couples who cannot marry are treated equally before the law and are entitled without discrimination to invoke the jurisdiction of the Family Court for making a property settlement or maintenance order under the Family Law Act, in the same way married couples are.

Prescription of the *Surrogacy Act 2012 (Tas)*

Article 23 ICCPR states that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. If countries recognise other arrangements that may constitute a family, those arrangements must be protected under Article 23 of the ICCPR.

The Regulation promotes the right to respect for family and the right to non-discrimination by ensuring that couples and individuals who have entered certain non-commercial surrogacy arrangements in Tasmania and are recognised as parents of the surrogate children under the *Surrogacy Act 2012 (ACT)* are also recognised as parents for the purposes of the Family Law Act. This is regardless of whether a couple is married.

Article 7 UNCRC provides that children have the right to know their parents and to be cared for by their family. The Regulation promotes these rights by ensuring that couples and individuals who have entered certain non-commercial surrogacy arrangements in Tasmania and are recognised as parents of the surrogate children under the *Surrogacy Act 2012 (ACT)* are also recognised as parents for the purposes of the Family Law Act.

Repeal of reference to the Federal Magistrates Rules

The removal of the reference to the Federal Magistrates Rules in the Family Law Regulations does not engage any human rights as it is a technical change.

Prescription of the Family Law Superannuation Regulations

Amendment to Regulation 9A(e) of the *Family Law Superannuation Regulations* does not engage any human rights as it is a technical change required to reflect the amendments made by the *Retirement Benefits (Parliamentary Superannuation) Regulations 2012 (Tas)*.

Conclusion

This Regulation is compatible with human rights because the aspects of the Regulation that engage human rights promote the protection of human rights.