FAMILY LAW REGULATIONS 2024

SUPPLEMENTARY EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

Under subsection 125(1) the *Family Law Act 1975*

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Family Law Act 1975* (the Act) provides the legislative framework for resolving arrangements for children, finances and property following a relationship breakdown. Subsection 125(1) of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Family Law Regulations 2024* (2024 Regulations) replace and update the *Family Law Regulations 1984* (1984 Regulations), as that instrument is scheduled to sunset on 1 April 2025. The 2024 Regulations ensure the ongoing and effective operation of family law proceedings by prescribing matters of practice and procedure in courts exercising jurisdiction under the Act.

This supplementary explanatory statement responds to:

1. further information by the Senate Standing Committee for the Scrutiny of Delegated Legislation as noted in its *Delegated Legislation Monitor 1 of 2025* dated 5 February 2025, and
2. advice for the inclusion of further human rights analysis raised by the Parliamentary Joint Committee on Human Rights in *Report 2 of 2025*.

in relation to:

- Part 3 – Arbitration: this part provides requirements relating to arbitration, including the eligibility requirements for arbitrators, procedural considerations and how arbitral awards are to be made and registered.
- Part 4 – Appointment of family consultants: this part contains a discretionary power for the Chief Executive Officer to appoint a private practitioner as a family consultant, so that the person may provide professional services to the Courts.
- Part 7 – Children: this part includes matters of practice and procedure connected to child-related proceedings, including the registration and enforcement of State child orders and overseas child orders in family law courts, the prescription of information sharing safeguards for the protection of sensitive information when it is shared, stored and used, and procedures and reporting requirements for the carrying out of a parentage testing order under the Act.

- Part 10 – International conventions, international agreements and international enforcement: this part deals with procedures for Australian courts to serve court documents on overseas parties under conventions which Australia is a party to, about legal proceedings in civil and commercial matters, and procedures to enforce overseas maintenance orders.

CONSULTATION

For the purposes of this Supplementary Explanatory Statement, consultation occurred with the National Association of Testing Authorities and the Federal Circuit and Family Court of Australia in February 2025.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Human rights implications

1. On page 5, replace paragraph 5 with the following paragraph:

   This Legislative Instrument engages the following rights:

   - Rights of parents and children:
     - protection and best interests of the child: Articles 2, 3(1), 3(2), 9(1), 16, 19(1) and 34 of the *Convention on the Rights of Children* (CRC)
     - responsibilities, rights and duties of parents: Articles 7(1), 8(1) and 27(4) of the CRC and Article 24(1) of the *International Covenant on Civil and Political Rights* (ICCPR)
   - Right to respect for the family: Articles 23(1) and 23(4) of the ICCPR
   - Right to a fair trial and fair hearing: Article 14(1) of the ICCPR
   - Right to privacy: Article 17 of the ICCPR
   - Right to equality and non-discrimination: Articles 5(a) and 16(1)(d) of the *Convention on the Elimination of all forms of Discrimination Against Women* (CEDAW) and Article 26 of the ICCPR.
   - Rights of people with disability: Articles 17, 22(1) and 22(2) of the *Convention of the Rights of Persons with Disabilities* (CRPD).

2. On page 6, replace the heading ‘Rights relating to protection and best interests of the child: Articles 3(1), 3(2), 9(1), 19(1) and 34 of the CRC’ with the following:

   Rights relating to protection and best interests of the child: Articles 2(1), 3(1), 3(2), 9(1), 16(1), 19(1) and 34 of the CRC

3. On page 6, insert the following paragraph after the line ‘Rights relating to protection and best interests of the child: Articles 3(1), 3(2), 9(1), 19(1) and 34 of the CRC’:

   Article 2(1) of the CRC provides that the rights of each child shall be respected and ensured without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

4. On page 6, insert the following paragraph after the line ‘Article 9(1) pertains to the circumstances where a child may be separated from their parents, where it is necessary for the best interests of the child.’:

   Article 16(1) provides that no child shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on his or her honour or reputation.

5. On page 6, insert the following paragraph after the line ‘The Regulations engage these rights through provisions on child welfare laws, information sharing, information, directions and orders of the court, family violence, child related proceedings, and overseas child and maintenance orders. These rights are promoted for the reasons below.’:

   The Regulations engage the right to a child’s privacy through provisions regarding parentage. The Regulations may limit the right to privacy and reputation through provisions which provide for parentage testing procedures and reporting in child related proceedings, however, that limitation is reasonable, necessary and proportionate.

6. On page 7, insert the following paragraphs after the line ‘In this way, section 55 of the Regulations promotes Articles 9(1) and 19(1) of the CRC. Ensuring that the family law courts are notified of changes to family law orders strengthens the courts’ ability to protect children from violence.’:

   Parentage evidence

   Section 61 of the Regulations engages Article 2(1) of the CRC by providing that where a donor in a parentage testing procedure 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, must undertake specified procedures on behalf of the donor. This includes completing an affidavit on the same day that the sample is taken that confirms the identity of the donor and consent to the parentage testing procedure, and providing a recent photograph or making arrangements for a photograph to be taken.

Section 61 of the Regulations permits substituted decision-making for a child under the age of 18 years, however, this is reasonable, necessary and proportionate because it is required to ensure the integrity of the parentage testing procedure and report, and directly serves the legitimate objective of resolving parentage disputes, which is fundamental to a child's right to know and be cared for by their parents.

The Regulations engage Article 16(1) of the CRC by providing that a child's personal information can be collected, used and disclosed for the purposes of a parentage testing procedure which is ordered to determine the parentage of a child.

Part 7, Division 7, and the associated forms in Schedule 3, Part 2 of the Regulations outline the steps to be taken for the provision of information by a donor, and how results from parenting testing procedures are to be reported. These provisions ensure that where a child's personal information is collected for the purposes of parentage testing, it is done in a way that is reasonable, necessary and proportionate to ensure the integrity of the parentage testing procedures, directly serves the legitimate objective of resolving parenting disputes, and does not impinge on a child's privacy in an arbitrary or unlawful manner. This includes by specifying who can conduct the procedure, and how the samples are taken, labelled, stored and tested.

7. On page 10, insert the following paragraphs after the line 'By contributing towards comprehensive regulation of surrogacy in Australia and recognition of parentage for children born of lawful surrogacy, the Regulations promote the responsibilities, rights and duties of parents and the child's right to identity.':

   Parentage evidence

   The Regulations engage Articles 7(1) and 8(1) of the CRC by promoting the responsibilities, right and duties of parents, and affirming a child's right to know and be cared for by their parents.

   Part 7, Division 7 of the Regulations provide a structured framework for parentage testing procedures and reporting which ensures that courts have access to accurate evidence about parentage determinations where this is an issue in dispute in family law proceedings.

8. On page 15, insert the following after the line 'The Regulations engage Article 17 of the ICCPR by prescribing the parenting testing procedure for a person under a parentage testing order':

   to ensure that where a person's personal information is collected, used and disclosed, it is done so in a way that is reasonable, necessary and proportionate to ensure the integrity of the parentage testing procedures, directly serves the legitimate objective of resolving parenting disputes, and does not impinge on a person's privacy in an arbitrary or unlawful

manner. This includes by specifying who can conduct the procedure, and how the samples are taken, labelled, stored and tested.

9. On page 16, insert the following paragraphs after the line 'For this reason, the limitation on the right to a fair trial and fair hearing is reasonable, necessary and proportionate.'

Rights of people with disability: Articles 17, 22(1) and 22(2) of the CRPD

Article 17 of the CRPD provides that every person with disabilities has the right to respect for their physical and mental integrity on an equal basis with others.

Articles 22(1) and 22(2) of the CRPD prohibits unlawful or arbitrary interferences with a person with disability's privacy, family, home and correspondence. It also prohibits unlawful attacks on a person with disability's honour or reputation. It provides that persons with disabilities have the right to legal protection against such interference or attacks, and the right to protection of the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

The Regulations engage the right to respect for physical and mental integrity on an equal basis with others, and the right to privacy through provisions regarding parentage testing. The Regulations may limit the right to respect for physical and mental integrity, privacy and reputation, however, that limitation is reasonable, necessary and proportionate.

Parentage evidence

Section 61 of the Regulations engage Article 17 of the CRPD by providing that where the donor in a parentage testing procedure does not have decision-making ability, a trustee, manager, parent, guardian or person who has parental responsibility for the donor must undertake specified procedures on behalf of the donor. This includes completing an affidavit on the same day that the sample is taken that confirms the identity of the donor and consent to the procedure, and providing a recent photograph or making arrangements for a photograph to be taken.

Section 61 of the Regulations permits substituted decision making for a person with disability who does not have decision-making ability, however, this is reasonable, necessary and proportionate because it is required to ensure the integrity of the parentage testing procedure and report, and directly serves the legitimate objective of resolving parentage disputes, which is fundamental to a child's right to know and be cared for by their parents.

The Regulations engages Articles 22(1) and 22(2) of the CRPD by providing that a person with disability's personal information can be collected, used and disclosed for the purposes of a parentage testing procedure which is ordered to determine the parentage of a child.

Part 7, Division 7 and the associated forms in Schedule 3, Part 2 of the Regulations, outline the steps to be taken for the provision of information by a donor, the type of personal information to be collected, and how results from parentage testing procedures are to reported. These provisions ensure that where a person with disability's personal information is collected for the purposes of parentage testing, it is done so in a way that is reasonable, necessary and proportionate to ensure the integrity of the parentage testing procedures, directly serves the legitimate objective of resolving parenting disputes, does not impinge on a person with disability's privacy in an arbitrary or unlawful manner, and is undertaken on an equal basis with others. This includes by specifying who can conduct the procedure, and how the samples are taken, labelled, stored and tested.

NOTES ON SECTIONS

Part 3 – Arbitration

1. On page 34, insert the following new paragraphs after the line 'However, any court exercising family law jurisdiction can register an award (such as a Local Court or Magistrates Court of a State or Territory exercising summary family law jurisdiction)':

   Nature and scope of provisions under the instrument that enable the collection, use or disclosure of personal information

   Sections 24, 25, 27, 37 and 39 and Forms 6, 7, 8 and 9 in Schedule 1 require parties to provide personal information for the purpose of enabling arbitration to be conducted.

   Type of personal information that may be collected, used or disclosed under the relevant provisions

   Sections 24 and 25 require an application in relation to arbitration to be made in accordance with Form 6 of Schedule 3 (for section 13E arbitration) or Form 7 of Schedule 3 (for relevant property or financial arbitration), respectively. Section 27 requires parties to an arbitration to make an arbitration agreement, which details essential procedural matters (such as the issues to be dealt with, and the date, time and place at which the arbitration will be conducted) as well as the parties to the arbitration and the arbitrator. Sections 37 and 39 provide for an application to be made for the registration of an award made in arbitration or for the registration of a decree affecting a registered award, using Forms 8 and 9, respectively.

   Forms 6, 7, 8 and 9 require personal information in the form of each party's name and contact details (postal address for service, telephone number and email address), the name and contact details for parties' legal representatives (if appointed), and the name and contact details of the arbitrator. Form 6 also requires information about the issues to be arbitrated, which could include personal information. An arbitration agreement under section 27 also contains these types of personal information.

   The purpose of collecting this personal information is to identify the parties to the arbitration (and their legal representatives, if appointed), identify the arbitrator, enable the

service of documents on the parties, and to document the issues that have been agreed to be referred for arbitration. This information is necessary and appropriate to enable an arbitration to be conducted as a means of resolving property or financial disputes under the family law. This information is provided to the Federal Circuit and Family Court of Australia, each party to the arbitration and their legal representative (if appointed), and the arbitrator.

Safeguards to protect the personal information

Information collected by the Federal Circuit and Family Court of Australia is protected by family law frameworks, including the Family Law Act, the *Federal Circuit and Family Court of Australia Act 2021* and the Federal Circuit and Family Court of Australia (Family Law) Rules 2021 (Family Law Rules). Access to information held by the Federal Circuit and Family Court of Australia in applications and forms is strictly limited by Part 15.4 of the Family Law Rules. Further, Part XIVB of the Family Law Act protects the privacy of families and other persons connected with family law proceedings by restricting public communication of information that identifies persons involved in family law matters.

Part 4 – Family consultants

2. On page 34, insert the following new paragraph after the line 'The Chief Executive Officer is appointed to assist the Chief Justice or Chief Judge to administer the Court, therefore it is appropriate for them to have the power to appoint a 'family consultant'.:

   The purpose and scope of the power in section 40 to appoint a family consultant is to enable the Chief Executive Officer to appoint a private practitioner as a family consultant, so that the person may provide professional services to the Courts. The discretionary power is necessary and appropriate because it enables the Chief Executive Officer to maintain a panel of appointed persons that are available to deliver services that are critical to the proper and effective functioning of the family law courts system. Factors taken into account in the exercise of power include qualification and experience considerations, and relevant suitability and background checks. Applicable safeguards in the exercise of the power include procedural fairness requirements, and that decisions are subject to review.

Part 7 – Children

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

3. On page 40, under the heading 'Section 53 – Information sharing agencies', insert the words 'section 67ZBC,' in the first sentence after the words 'This section of the Regulations prescribes State and Territory child protection, policing and firearms agencies as information sharing agencies for the purposes of.'
4. On page 41, before the heading 'Section 54 – Information sharing safeguards', insert the following new sub-headings and paragraphs:

Type of personal information that may be collected, used or disclosed

Subsections 67ZBD(1) and 67ZBE(1) of the Act specify that the court may seek information (which may include personal information) relating to family violence, child abuse or neglect risk held by the information sharing agencies prescribed by section 53 of the Regulations.

The information sought may relate to:

- a child who is subject of the court proceedings
- a party to the proceedings, or
- a child of a party to the proceedings.

Safeguards to protect personal information

Subdivision DA of the Act and section 54 of the Regulations work together to provide safeguards when sharing information, in recognition of the inherently sensitive nature of family violence, child abuse and neglect information.
The safeguards to protect personal information include provisions intended to ensure that:

- information is only shared to the extent required to identify, assess, manage and respond to family violence, child abuse and neglect risk
- information sharing is conducted in good faith, and with reasonable care to the safety of all people involved
- information is sent, received and stored in a secure manner
- reasonable steps are taken to ensure that parties who may pose, or are alleged to pose, a family safety or child abuse risk cannot access sensitive information, and
- if discovered that information recorded and shared is incorrect, best efforts are made to correct the information shared and update relevant records.'

5. On page 41, under the heading 'Section 54 – Information sharing safeguards', insert the words ', supporting the safe use, disclosure and storage of information in practice' after the words 'These safeguards represent a minimum standard for the protection of sensitive information when it is shared, stored and used under the National Framework and in accordance with subdivision DA of Division 8 of Part VII of the Act'.

Division 7 – Parentage evidence

Subdivision B--Collection, storage and testing of sample

6. On page 45, insert the following new paragraphs after the line 'The affidavit also requires a donor to provide particulars of any illness, medical condition or blood transfusion that may affect the inheritable characteristics of their blood.':

The affidavit in Form 3 in Schedule 3 requires the collection and disclosure of personal information such as racial background, leukemia/bone marrow transplant/blood transfusion history.

Safeguards and limitations that apply to the collection, use and disclosure of personal information include relevant accreditation standards, federal and state and territory legislation. Relevant accreditation standards include those applied by the National Association of Testing Authorities (NATA) which is responsible for preparing a list of laboratories that are accredited to carry out parentage testing (see Regulation 69 of the Family Law Regulations 2024). NATA applies ISO/IEC 17025 which requires laboratories to keep patient information confidential and secure.

The Australian Privacy Principles (APPs) in the *Privacy Act 1988* (Privacy Act) govern the standards, rights and obligations around the collection, use and disclosure of personal information, governance and accountability, integrity and correction of personal information, and the rights of individuals to access their personal information. The APPs generally apply to Australian government agencies and also to private sector organisations with an annual turnover of over $3 million (APP entities).

Laboratories that are accredited to carry out parentage testing have responsibilities under the Privacy Act where they meet the definition of an APP entity, such as where annual turnover exceeds $3 million. NATA accredited laboratories will also have responsibilities under the Act where turnover is less than $3 million if they provide a health service and hold health information (Privacy Act, section 6D(4)(b)). Genetic information which is not otherwise health information is deemed to be 'sensitive information' and attracts a higher level of privacy protection (when the Privacy Act applies). Relevant state or territory privacy legislation may also apply, unless the jurisdiction is otherwise bound by the federal Privacy Act.

7. On page 47, insert the following new text after the line 'The purpose of Form 5 is to certify that a donor's bodily sample has been tested in accordance with accredited parentage testing protocols':

   , and provides for the use and disclosure of personal information insofar as a report must be prepared in accordance with Schedule 3, Part 2, Form 5 of the Regulations. Form 5 provides that the report must include details such as the results of DNA typing of an individual and the nominated reporter's assessment of parentage

8. On page 47, insert the following new paragraph after the line 'The report contains a conclusion as to the probability that a donor is the genetic father or mother of the child.':

   The same safeguards and limitation to the collection, use and disclosure of personal information under section 68 are the same as those outlined for section 61.

Division 9 – State, Territory and overseas orders

Subdivision B – Registration of overseas orders

9. On page 48, insert the following new paragraph after the subheading 'Section 72 – Registration of overseas child orders':

   Parenting orders made in certain countries can be registered in Australia so that they are enforceable in Australia. Regulation 72 sets out what types of orders may be registered, and, the process to do so.

10. On page 49, insert the following new paragraphs after the line 'It also provides for concurrent registration and situations where, under section 70J of the Act, the Australian Court substantially varies a registered order.':

    The registration of orders process under Regulation 72 will result in the department:
    - being provided with personal information, including information contained in court orders from a prescribed overseas jurisdictions
    - using this information to determine the appropriate registry to provide the orders to, and
    - disclosing personal information contained in orders to the relevant Registrar in order to have the orders registered.

    The use, collection and disclosure of such information is governed by the Privacy Act and the APPs. The department has implemented a range of practices to ensure compliance with obligations under the APPs. Only necessary and relevant private information is sought, and disclosure of information under this regulation is limited to the Registrar of the relevant court to allow them to take steps to make orders enforceable in Australia.

Subdivision C—Transmission of Australian orders to overseas jurisdictions

11. On page 49, insert the following new paragraphs after the line 'Subsection 73(5) specifies that a person with custody, access, time or communication rights under an order is not prevented from obtaining certified copies of that order and attempting to enforce it in an overseas jurisdiction, whether or not that jurisdiction is a prescribed overseas jurisdiction.':

    Section 73 requires the Registrar receiving the request to send the order, along with a certificate stating the order is enforceable in Australia and any information and material the Registrar holds that may assist in identifying and locating the child and other persons subject to an order, to a prescribed overseas jurisdiction and request that it be enforced.

    Therefore, personal information may be shared in accordance with this Regulation as it may be contained within a court order and may also be shared as part of the requirement on the Registrar to provide any information that assists with identifying and locating

children and persons subject to the order. Information shared in accordance with this regulation is limited to those who are receiving the information in the prescribed overseas jurisdiction. It is also limited to the information contained within the court order, and any additional information shared by the Registrar can only be shared for a specified purpose, to assist in identifying and locating persons subject to the order with the objective of enforcing the order.

Part 9—Registration and enforcement of decrees

12. On page 50, insert the following new paragraphs after the line 'Subsections 76(8) and (9) also provides that the relevant Registrar of the receiving court must cancel the registration of the order upon a request in writing from the relevant Registrar of the requesting court that the order no longer be enforceable, and outlines the consequences of cancellation.':

    Personal information may be contained within the relevant orders and within information provided for the purpose of this section to a receiving jurisdiction to assist with identification and locating the person to whom the order applies. This power is limited as the information is provided for a specified purpose, to enforce relevant orders relating to birth, pregnancy and death, and is provided to a specified recipient being the receiving jurisdiction and those concerned with the enforcement of the order. The sharing of information under this Regulation is also limited by the prescriptive nature of this regulation and the obligations it imposes on Registrars, for example, filing copies of the order and associated materials, and ensuring that service is dealt with by the applicable Rules of Court.

    The APPs in the Privacy Act govern the standards, rights and obligations around the collection, use and disclosure of personal information, governance and accountability, integrity and correction of personal information, and the rights of individuals to access their personal information. The Federal Circuit and Family Court of Australia publishes public information about how personal information is used and handled by the Court, and the relevant legislative provisions. This includes noting that the Privacy Act only applies to information of the Court that is administrative in nature.

Part 10 - International conventions, international agreements and international enforcement
Division 4 – Overseas maintenance orders

13. On page 56, insert the following new paragraphs after the heading 'Overseas maintenance orders':

    Part 10, Division 4, of the Regulation relates to overseas maintenance orders, and contains provisions which permit the collection use or disclosure of personal information, including Regulations 112, 122 and 130. The use, collection and disclosure of such information by the Attorney-General's Department is governed by the Privacy Act, the Australian Privacy Principles (APPs), and the Australian Government Agencies Privacy

Code (the Code). The Privacy Act and the APPs impose obligations to respect and uphold privacy and personal information, and the Code sets out specific requirements and practical steps to implement towards a best practice approach to privacy governance and assist in building consistent high standards of personal information management.

In order to meet obligations under the APPs, when dealing with the collection, use or disclosure of personal information under the powers contained in Part 10, Division 4, the Attorney-General's Department has implemented a range of practices to ensure compliance, including:

- only necessary and relevant private information is sought
- personal information must be secured appropriately
- prior to proceeding to a step which would require disclosure of information (eg filing in a court) the applicant's consent to proceed will be sought, and
- in the event translations are needed, the privacy obligations under the Act and the APPs are explained and translators are required to sign a Privacy and Confidentiality clause.

14. On page 57, insert the following new paragraphs after the line 'The office of Secretary is prescribed to, at their discretion, institute and prosecute proceedings with respect to the maintenance of a party to a marriage, on behalf of that party.':

    The Secretary's powers under subsection 103(2) are necessary and appropriate to enable the Secretary to take action to uphold the obligations placed upon Australia under the various international maintenance agreements that we are party to. The obligations differ based on the requirements set out in each agreement.

    The Secretary's discretionary power ensures the person in the office has sufficient authority under the Regulations to institute and prosecute the proceedings mentioned in section 89A of the *Family Law Act 1975*.

    When exercising these powers, the Secretary will consider firstly whether it would be more appropriate for the matter to be dealt with by administrative assessment rather than pursuing court proceedings. If this is the case, the Secretary will exercise the discretionary power and refer the matter to the relevant Commonwealth agency where it could be more appropriately and efficiently dealt with by administrative assessment. If court proceedings are required, the decision to proceed will be based on the obligations placed on the Secretary under the relevant international maintenance agreement and the Commonwealth's model litigant obligations.

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

15. On page 57, insert the following new paragraphs after the line 'This is to ensure the system established by the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988* is used for all suitable matters.':

The Secretary's discretionary powers under subsection 105(1)(d) are necessary and appropriate to enable the Secretary to take action to uphold the obligations placed upon Australia under the various international maintenance agreements that Australia is party to. The obligations differ based on the requirements set out in each agreement.

The Secretary's discretionary power under section 105 provides for the actions to be undertaken by the Secretary for a provisional overseas maintenance order (made in a reciprocating jurisdiction) to be confirmed in Australia.

When exercising these powers, the Secretary will consider the obligations placed on the Secretary under the relevant international maintenance agreement and the Commonwealth's model litigant obligations.

Division 5 – Convention on the Recovery Abroad of Maintenance

16. On page 64, insert the following new paragraphs after the line 'The intent of this section is to provide clarification of the procedure to be undertaken upon receipt of an application under the Recovery Convention, to ensure the requirements outlined in Article 6 of the Recovery Convention are met':

The intent of this section is to clarify the procedure to be undertaken upon receipt of an application under the 1956 United Nations Convention on the Recovery Abroad of Maintenance (the Recovery Convention).

The Secretary's discretionary powers under subsection 128(2) are necessary and appropriate to enable the Secretary to take action to meet Australia's obligations and take action as required under the Recovery Convention.

When exercising these powers, the Secretary will consider firstly whether it would be more appropriate for the matter to be dealt with by administrative assessment. If this is the case, the Secretary will exercise the discretionary power and refer the matter to the relevant Commonwealth agency where it could be more appropriately and efficiently dealt with by administrative assessment. If further action is required, the decision around what actions the Secretary may take will be based on the obligations placed on the Secretary under the Recovery Convention.

Subsection 128(3) sets out the actions the Secretary cannot undertake in exercising the powers.

17. On page 64, insert the following new paragraphs after the line 'This is to ensure the system established by the Child Support (Assessment) Act 1989 and the Child Support (Registration and Collection) Act 1988 is used for all suitable matters.':

The Secretary's discretionary powers under subsection 129(5) are necessary and appropriate to enable the Secretary to take action, to uphold the obligations placed upon Australia under the Recovery Convention.

When exercising these powers, the Secretary will have regard to the obligations placed on the Secretary under the Recovery Convention, and the Commonwealth's model litigant obligations.