

FAMILY LAW AMENDMENT (ARBITRATION) REGULATIONS 2025

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General
under section 125(1) of 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. Division 4 of Part II and Division 4 of Part IIIB of the Act provide a framework supporting the use of arbitration to resolve disputes between separated couples about financial and property matters.

Subsection 125(1) of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that are required or permitted by the Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Family Law Amendment (Arbitration) Regulations 2025 (the instrument) amends the Family Law Regulations 2024 (the 2024 Regulations) to support the operation of amendments to the Act made by the *Family Law Amendment Act 2024* (the Amendment Act) that commence on 10 June 2025. The instrument updates the 2024 Regulations with references to specific terms and provision numbers that will be in the Act, and makes technical amendments, to ensure the 2024 Regulations are accurate and clear.

CONSULTATION

The Attorney-General's Department has not consulted stakeholders on the instrument. The amendments made by the instrument are consequential and technical in nature and result from the policy changes implemented through the Amendment Act which followed an extensive 3-month consultation process.

REGULATION IMPACT STATEMENT

The Office of Impact Analysis has advised the instrument is unlikely to have more than a minor regulatory impact and that the preparation of an Impact Analysis is not required (OIA reference number OIA25-09000).

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The 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*. A Statement of Compatibility with Human Rights is set out in **Attachment A**.

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*. Details of the instrument are set out in **Attachment B**.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

1. The disallowable 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

2. The *Family Law Act 1975* (the Act) provides the legislative framework for resolving arrangements for children, finances and property following a relationship breakdown. Division 4 of Part II and Division 4 of Part IIIB of the Act provide a framework supporting the use of arbitration to resolve disputes between separated couples about financial and property matters.
3. The Family Law Amendment (Arbitration) Regulations 2025 (the instrument) amends the provisions in Part 3 of the *Family Law Regulations 2024* (the 2024 Regulations) to support the operation of amendments to the Act, made by the *Family Law Amendment Act 2024*, that will commence on 10 June 2025.
4. The instrument updates references to specific terms and provision numbers in the 2024 Regulations, and makes other minor technical amendments, to ensure provisions are clear and consistent with the changes made through the *Family Law Amendment Act 2024*.

Human Rights Implications

5. The amendments in the instrument are technical in nature and do not engage any of the applicable rights or freedoms.

Conclusion

6. The instrument is compatible with human rights because it does not raise any human rights issues.

NOTES ON SECTIONS

PART 1 – Preliminary

Section 1 – Name

1. This section provides that the title of the instrument is the Family Law Amendment (Arbitration) Regulations 2025 (the instrument).

Section 2 – Commencement

2. This section states the instrument is to commence on the later of the day after this instrument is registered, and 10 June 2025.

Section 3 – Authority

3. This section states the instrument is made under the *Family Law Act 1975* (the Act).

Section 4 – Schedules

4. This section provides that each instrument specified in a Schedule to this instrument is amended or repealed in accordance with the items set out in the relevant Schedule, and any other item in a Schedule to this instrument has effect according to its terms.

SCHEDULE 1 – Amendments

Family Law Regulations 2024

Items [1], [6], [7], [8], [11], [12], [14], [15], [16] and [17] – Section 22, subsection 27(1), section 28, subsections 29(1) and (2), section 33, subsections 34(1) and (2), subsections 35(1) and (2), subsection 36(1), subsection 37(1) and subsection 37(2)

5. These items replace references to ‘arbitration’ or ‘an arbitration’ with ‘family law arbitration’ in the relevant provisions of Part 3 of the Family Law Regulations 2024 (the 2024 Regulations). On 10 June 2025, amendments will commence that insert a new defined term ‘family law arbitration’ into subsection 4(1) of the Act (item 89 in Schedule 1 of the *Family Law Amendment Act 2024* (the Amendment Act)). ‘Family law arbitration’ will be defined in new subsection 10L(2) of the Act (item 91 in Schedule 1 of the Amendment Act).
6. The amendments made by these items ensure terminology is consistent between the Amendment Act and Part 3 of the 2024 Regulations. This ensures the provisions are accurate and clear following the commencement of the Amendment Act.

Item [2] – Section 22 (note)

7. This item amends the note under section 22 of the 2024 Regulations, to replace ‘*arbitration*, see section 10L of the Act’ with ‘*family law arbitration*, see subsection 10L(2) of the Act’. This updates the note to refer to the new defined term of ‘family law arbitration’ that will be in new subsection 10L(2) of the Act when items 89-91 in Schedule 1 of the Amendment Act commence on 10 June 2025.

Item [3] – Section 25 (heading)

8. This item replaces ‘relevant property or financial arbitration’ with ‘family law arbitration’ in the heading of section 25 of the 2024 Regulations. ‘Relevant property or financial arbitration’ is currently defined in paragraph 10L(2)(b) of the Act. This defined term will be repealed by item 91 in the Amendment Act and replaced with the new defined term ‘family law arbitration’.
9. Amendments to the heading of section 25 of the 2024 Regulations ensure the section is accurate and clear when items 89-91 in Schedule 1 of the Amendment Act commence on 10 June 2025.

Item [4] – Subsection 25(1)

10. This item repeals subsection 25(1) of the 2024 Regulations and inserts a new subsection 25(1). The new subsection provides that an application under subsection 13F(1) of the Act, for an order to facilitate the effective conduct of family law arbitration, must be in accordance with Form 7 of Schedule 3.
11. The new subsection is substantively similar to existing subsection 25(1), with two minor updates that:
 - replace the reference to section 13F of the Act with a reference to ‘subsection 13F(1)’, and
 - replace a reference to ‘relevant property or financial arbitration’ with ‘family law arbitration’.
12. These amendments ensure subsection 25(1) of the 2024 Regulations is consistent with the Act when items 89-91 and 94 in Schedule 1 of the Amendment Act commence on 10 June 2025.

Item [5] – At the end of subsection 25(2)

13. This item amends subsection 25(2) of the 2024 Regulations to insert new paragraph 25(2)(c), which provides that an arbitrator may make an application under subsection 13F of the Act for orders about the effective conduct of family law arbitration.
14. On 10 June 2025, section 13F of the Act will be repealed and replaced with a new section 13F by item 94 in the Amendment Act. The new section provides, in part, that an arbitrator may apply to the court for an order to facilitate the effective conduct of family law arbitration. New paragraph 25(2)(c) of the 2024 Regulations ensures consistency with the amendment to the Act.

Items [9] and [10] – Section 31 and subsections 32(1) and (2)

15. These items replace ‘party to an arbitration’ with ‘party to a family law arbitration’ in section 31 and subsections 32(1) and (2) of the 2024 Regulations. This ensures the provisions are accurate following amendments made by items 89-91 in Schedule 1 of the Amendment Act which commence on 10 June 2025.

Item [13] – Subsection 34(3) (note)

16. This item repeals the note under subsection 34(3) of the 2024 Regulations and replaces it with a new note. The new note references the new defined term ‘family law arbitration’, instead of ‘arbitration ordered under subsection 13E(1) of the Family Law Act’ and ‘relevant property and financial arbitration’. This ensures the note is accurate following amendments made by items 89-91 in Schedule 1 of the Amendment Act which commence on 10 June 2025.

Items [18], [19] and [20] – Form 6 of Schedule 3

17. These items amend Form 6 – Application for arbitration in Part 3 of Schedule 3 of the 2024 Regulations. These items make technical amendments to modernise the form to:
 - replace ‘tel’ with ‘phone’ and ‘email ()’ with ‘email’, and
 - provide for a ‘hearing place’ to be identified in the form, as well as the ‘hearing date’ and ‘hearing time’, if a court hearing is needed to determine the application.

Item [21] – Form 7 of Schedule 3

18. This item repeals the existing Form 7 – Application relating to relevant property or financial arbitration of Schedule 3, and inserts a new Form 7 – Application relating to family law arbitration, in Part 3 of Schedule 3 of the 2024 Regulations.
19. The new form replicates the existing form, with minor updates to modernise usage of the form and ensure consistent terminology with the Act, when amendments made by items 89-91 in Schedule 1 of the Amendment Act commence on 10 June 2025.
20. The new form:
 - refers to ‘Application relating to family law arbitration’ instead of ‘Application relating to relevant property or financial arbitration’. This ensures consistent use of the new defined term ‘family law arbitration’, when the Act is amended by items 89-91 in Schedule 1 of the Amendment Act.
 - provides for an arbitrator to use the form when they wish to apply to a court for orders about the effective conduct of a family law arbitration under new subsection 13F(3) of the Act, and
 - includes ‘hearing place’ in addition to ‘hearing date’ and ‘hearing time’, to ensure consistency with text in the ‘notice’ box of the form that refers to the application having a hearing, and a requirement for appearances at that hearing.

Items [22], [23] and [24] – Form 8 of Schedule 3 (heading) and Form 8 of Schedule 3

21. These items amend Form 8 – Application to register arbitration award in Part 3 of Schedule 3 of the 2024 Regulations. The items make minor updates to modernise the form, and make a consequential amendment.
22. These amendments:
 - update the heading of the form ‘Application to register arbitration award’ to ‘Application to register family law arbitration award’. The form is made for the purposes of section 37 of the

2024 Regulations, which deals with the process to register an award. This update reflects amendments made to subsections 37(1) and (2) by items 16 and 17 of the instrument, which reference the new defined term ‘family law arbitration’ that will be in the Act from 10 June 2025.

- provide for a ‘hearing place’ to be identified in the form, as well as the ‘hearing date’ and ‘hearing time’, if a court hearing is needed to register the award.

Items [25] [26], [27] and [28] – Form 9 of Schedule 3 (heading) and Form 9 of Schedule 3

23. These items make technical amendments to Form 9 – Application to register decree in Part 3 of Schedule 3 of the 2024 Regulations. The items make technical minor updates to modernise the form to:

- remove ‘arbitration’ from the heading of the form, and replace ‘Application to register decree affecting registered arbitration award’ with ‘application to register decree affecting registered award’ in the form.

The form is made for the purposes of section 39 of the 2024 Regulations, which deals with the requirements to register a decree affecting a registered award. The amendments made by these items ensure the language in the form is consistent with the language of ‘registered award’, which is used in section 39 of the 2024 Regulations.

- replace ‘tel’ with ‘phone’ and ‘email ()’ with ‘email’