



New South Wales

Property (Relationships) Regulation 2000

under the

Property (Relationships) Act 1984

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Property (Relationships) Act 1984*.

BOB DEBUS, M.P.,

Attorney General

Explanatory note

This Regulation replaces (without any changes in substance) the *De Facto Relationships Regulation 1994*, which is repealed on 1 September 2000 under section 10 (2) of the *Subordinate Legislation Act 1989*. The new Regulation deals with the following matters:

- (a) proceedings under the Act that are taken before a Local Court, including:
 - (i) the making of applications for orders under Part 3 of the Act,
 - (ii) service of applications for such orders,
 - (iii) the hearing of such applications,
 - (iv) provisions to maintain privacy for the parties to proceedings on such applications,
 - (v) the payment of maintenance,
- (b) the enforcement of orders for periodic maintenance,
- (c) other matters of a formal or machinery nature.

This Regulation comprises or relates to matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

2000 No 457

Property (Relationships) Regulation 2000

Explanatory note

This Regulation is made under the *Property (Relationships) Act 1984*, including sections 47, 54, 57, and 61 (the general regulation-making power).

Property (Relationships) Regulation 2000

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Property (Relationships) Regulation 2000

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Property (Relationships) Regulation 2000*.

2 Commencement

This Regulation commences on 1 September 2000.

Note. This Regulation replaces the *De Facto Relationships Regulation 1994* which is repealed on 1 September 2000 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

judgment of a Local Court means a judgment of a Local Court under the *Local Courts (Civil Claims) Act 1970*.

maintenance order means an order under Part 3 of the Act for maintenance.

Part 3 order means an order under Part 3 of the Act.

periodic maintenance order means an order under Part 3 of the Act for periodic maintenance.

the Act means the *Property (Relationships) Act 1984*.

(2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 1.

(3) The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

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Clause 4 Property (Relationships) Regulation 2000

Part 2 Proceedings before a Local Court

Division 1 Preliminary

Part 2 Proceedings before a Local Court

Division 1 Preliminary

4 Application of Part

This Part applies to proceedings that are dealt with by a Local Court.

5 Applications for Part 3 orders

An application for a Part 3 order must be in Form 1.

Division 2 Service of copies of applications on respondents

6 Applicants to cause copies of applications to be served on respondents

- (1) An applicant for a Part 3 order must cause a copy of the application to be served on the respondent.
- (2) The copy may be served:
 - (a) by delivering it personally to the respondent, or
 - (b) by leaving it at, or by posting it to, the last address of the respondent known to the applicant.

7 Personal service by applicant prohibited

The applicant must not personally serve the respondent with a copy of an application but may be present when it is personally served by another person.

8 Time for effecting service

- (1) A copy of an application must be served on the day on which the application is filed or as soon as practicable after that day.
- (2) A copy of the application must be served at least 7 days before the date of hearing of the application.

9 Refusal to accept service

A copy of an application that the respondent refuses or fails to accept is taken to have been served personally on the respondent if it is put down in the respondent's presence and the person serving the copy tells the respondent the nature of it.

10 Order dispensing with service

- (1) An applicant may apply to a Local Court, ex parte, for an order that service of a copy of an application be dispensed with.
- (2) In making an order under subsection (1), the Local Court must have regard to the following matters:
 - (a) whether the applicant has taken reasonable steps to discover the whereabouts of the respondent and to serve the copy,
 - (b) the means of the applicant and the likely cost to the applicant of effecting service,
 - (c) any other relevant matter.

11 Acknowledgment of service

- (1) A respondent may acknowledge service of a copy of an application by signing an acknowledgment of service in Form 2.
- (2) A copy of an application that is to be served in accordance with clause 6 (2) (b) must be accompanied by a reply paid envelope (suitably addressed) to enable the respondent to return to the sender an acknowledgment of service.
- (3) A respondent's signature on an acknowledgment of service may be proved by oral evidence or by affidavit.
- (4) An affidavit of proof of a respondent's signature must be in Form 3.

12 Proof of service

- (1) Service of a copy of an application may be proved by oral evidence or by the affidavit of the person who served, delivered or posted the copy.
- (2) An affidavit of service must be in Form 4 or 5, as the case requires.

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Clause 13 Property (Relationships) Regulation 2000

Part 2 Proceedings before a Local Court

Division 2 Service of copies of applications on respondents

13 Date of service of copy of application

- (1) Service of a copy of an application that the respondent has acknowledged in accordance with clause 11 is taken to have been served:
 - (a) on the date on which it was acknowledged that the copy was received, or
 - (b) on the date on which the acknowledgment was signed, or
 - (c) if the acknowledgment is signed but undated, on the date the acknowledgment is filed,whichever is the earlier.
- (2) Service of a copy of an application in accordance with clause 6 (2) (b) (not being service that the respondent has acknowledged in accordance with clause 11) is taken to have been effected on the seventh day:
 - (a) after the date that the copy was left at the relevant address, or
 - (b) after the date of posting,as the case may be, unless the contrary is proved.
- (3) Despite subclause (2), if a Local Court is satisfied that a copy of an application was served on a particular date, it is taken to have been served on that date.

Division 3 Hearings

14 Record of proceedings

- (1) Wherever practicable, all proceedings in a Local Court exercising jurisdiction under the Act must be fully recorded.
- (2) Proceedings are to be transcribed only if the Magistrate or Clerk of the Local Court so orders.

15 Directions as to practice and procedure

- (1) A Local Court may give such directions as it considers necessary with respect to the practice or procedure to be followed in a particular case if it is satisfied:

- (a) that the Act or this Regulation does not make adequate provision for the practice or procedure to be followed in that case, or
 - (b) that a difficulty arises or doubt exists as to the practice or procedure to be followed in that case.
- (2) Any directions must seek to facilitate a speedy and inexpensive hearing of the matters in issue between the parties and must be consistent with the Act and this Regulation.

Division 4 Maintaining privacy

16 Information concerning proceedings

- (1) Information concerning proceedings under the Act must not be published otherwise than in the form of a list of proceedings that has been provided by the Clerk of the Local Court for that purpose.
- (2) A list of proceedings may contain such of the following particulars as the Clerk of the Local Court thinks fit:
 - (a) the surnames of the parties, but not their given names,
 - (b) the name of the Magistrate,
 - (c) the time at which, and the place or courtroom in which, the Magistrate will sit,
 - (d) the general nature of the applications to be heard by the Magistrate.
- (3) A list of proceedings may be published:
 - (a) to members of the legal profession and their employees, and
 - (b) to litigants in person.
- (4) A list of proceedings may also be published on a notice board exhibiting lists of cases for the information of the legal profession.

17 Searches

- (1) A person must not search the records of a Local Court relating to proceedings or matters under the Act or this Regulation or inspect any document forming part of any such records.

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Clause 17 Property (Relationships) Regulation 2000

Part 2 Proceedings before a Local Court

Division 4 Maintaining privacy

- (2) Subclause (1) does not prevent the following persons from searching records or inspecting documents referred to in that subclause:
 - (a) the Attorney General or a person authorised by the Attorney General,
 - (b) if the records relate to particular proceedings—a party to those proceedings,
 - (c) a person who has been granted leave by the Local Court or the Clerk of the Local Court to search the records or inspect the document.
- (3) Leave to search records or inspect a document may be granted only to a person who demonstrates a proper interest in searching the records or inspecting the document.
- (4) Leave may be granted subject to such conditions as the Local Court or the Clerk of the Local Court determines.

Division 5 Payment of maintenance

18 Payment of maintenance

- (1) A sum of money required to be paid under a maintenance order must be paid to the Local Court by which the order was made or to such person as the Local Court directs.
- (2) The Local Court or person must, as soon as practicable, remit the money to the person in whose favour the order was made.

Part 3 Enforcement of periodic maintenance orders

19 Mode of enforcing Supreme Court order

A periodic maintenance order made by the Supreme Court under section 27 of the Act may be enforced in a Local Court as if it were a judgment of the Local Court.

20 Certificate of court as to periodic maintenance order

- (1) A person in whose favour a periodic maintenance order has been made under section 27 of the Act (whether by the Supreme Court or by a Local Court) may obtain from the Prothonotary of the Supreme Court or the Clerk of the Local Court a certificate in Form 6.
- (2) The certificate:
 - (a) must be signed by the Prothonotary and sealed with the seal of the Supreme Court, in the case of an order made by the Supreme Court, or
 - (b) must be signed by the Clerk of the Local Court, in the case of an order made by a Local Court.

21 Certificate as to amount of maintenance paid

- (1) A Registrar or Clerk of a Local Court who is specified in a periodic maintenance order as the person to whom the maintenance is to be paid must, on request, give to the person who obtained the order a certificate in Form 7 stating:
 - (a) the amount that, according to the relevant records, has been paid under the order on or before the date specified in the certificate in that regard, and
 - (b) the amount that, according to the relevant records, was due under the order but is unpaid on that date.
- (2) Such a certificate is evidence of the matters so stated.

22 Matters to be satisfied before recording order as judgment

- (1) The Registrar of a Local Court may record as a judgment of the Local Court a periodic maintenance order in respect of which a certificate under clause 20 has been issued.

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Clause 22 Property (Relationships) Regulation 2000

Part 3 Enforcement of periodic maintenance orders

- (2) An application to record a periodic maintenance order as such a judgment must be accompanied by:
 - (a) the certificate under clause 20, and
 - (b) a recent certificate under clause 21, in the case of a periodic maintenance order that specifies a Registrar or Clerk of a Local Court as the person to whom the maintenance is to be paid, and
 - (c) affidavits as to the matters referred to in subclause (4).
- (3) A certificate under clause 21 is a recent certificate if the specified date as at which the amounts under the order are stated to have been paid, or to remain unpaid, is no more than 10 days before the date of the application referred to in subclause (2).
- (4) The Registrar must not record a periodic maintenance order as a judgment of the Local Court unless the Registrar is satisfied:
 - (a) that a copy of the order has been duly served on the person liable to make payments under the order, or that service of a copy of the order on that person has been dispensed with by the Local Court, and
 - (b) that the maintenance order has not been complied with for a period of at least 14 days, and that a specified amount of money remains due and unpaid, and
 - (c) that no judgment has been entered in any other Local Court in respect of the arrears, and that no enforcement action is pending in respect of any other arrears of maintenance which remain due and unpaid.
- (5) An affidavit is not necessary with respect to the matters referred to in subclause (4) (b) if the Registrar or Clerk of the Local Court is specified in the order as the person to whom the maintenance is to be paid.

23 Notice of transmission of money

If:

- (a) a Registrar or Clerk of a Local Court is specified in a periodic maintenance order as the person to whom the maintenance is to be paid, and
- (b) the order is recorded as a judgment of some other Local Court, and

- (c) money is paid into the Local Court for which the Registrar or Clerk so specified is the Registrar or Clerk,

the Registrar or Clerk so specified must give notice to the Registrar of the other Local Court of any money remitted to the person in whose favour the order was made.

24 Notice of discharge, variation or suspension of periodic maintenance order

- (1) The parties to a periodic maintenance order made by the Supreme Court under section 27 of the Act (being an order that is recorded as a judgment of a Local Court) must give notice in writing to the Registrar of the Local Court in which the order is recorded of any discharge, variation or suspension of the order.
- (2) On receipt of the notice, the Registrar must cancel the judgment.
- (3) On cancellation of the judgment:
 - (a) the maintenance order ceases to be enforceable by the Local Court in which it is recorded, and
 - (b) the maintenance order remains unenforceable by that Court until it is again recorded in that Court, and
 - (c) any enforcement process arising out of the recording of the maintenance order ceases to have effect.

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Clause 25 Property (Relationships) Regulation 2000

Part 4 Miscellaneous

Part 4 Miscellaneous

25 Advice of effect of domestic relationship agreements or termination agreements

For the purposes of section 47 (1) (d) of the Act, the prescribed form of certificate is Form 8.

26 Service of injunctions

For the purposes of section 54 (1) (a) of the Act, a copy of an order for an injunction granted under section 53 of the Act may be served:

- (a) by delivering it personally to the person against whom it is made, or
- (b) by leaving it at, or by posting it to, the last address of that person known to the person by whom it is served.

27 Savings provision

Any act, matter or thing that, immediately before the repeal of the *De Facto Relationships Regulation 1994*, had effect under that Regulation is taken to have effect under this Regulation.

Property (Relationships) Regulation 2000

Forms

Schedule 1

Schedule 1 Forms

Form 1

(Clause 3)

Property (Relationships) Act 1984
Property (Relationships) Regulation 2000

(Clause 5)

* Please cross out any text that does not apply

Application

*** for adjustment of interests with respect to property**

*** for an order for maintenance**

between:

Applicant

Address

and

Respondent

Address

Please take notice

that I,

apply to the Local Court at in New South Wales

for:

* an order under Division 2 of Part 3 of the *Property (Relationships) Act 1984* to adjust interests with respect to property, namely (*please identify the property concerned*):
.....

* an order under Division 3 of Part 3 of the *Property (Relationships) Act 1984* of maintenance, namely (*please specify if periodic or lump sum maintenance*):
.....

* an order (*please specify nature of order*):
.....

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Schedule 1 Forms

on the following grounds:

- *1 A domestic relationship **exists/existed* between me and the respondent *(please state period of relationship)*:
.....
- *2 I made a **financial/non-financial* contribution towards the acquisition, conservation or improvement of the property referred to above, in that *(please set out details of the contribution)*:
.....
.....
- *3 My contributions include contributions made in the capacity of **homemaker/parent* to the welfare of the family *(please state names of child or children and birth dates)*:
.....
.....
- *4 I am unable to support myself adequately by reason of having the care and control of **a child/children*, namely *(please state name and age of child or children and, if they have any physical or intellectual disability, details of the disability)*:
.....
.....
- *5 I am unable to support myself adequately because my earning capacity has been adversely affected by the circumstances of the relationship *(please give details)*:
.....
.....

Signature of applicant

Date signed

Notice of hearing

To the respondent

c/o Clerk of the Court at

Please take notice

that the above application has been set down for hearing at the Local Court at
..... in New South Wales
on the day of 20 at 10 am.

Property (Relationships) Regulation 2000

Forms

Schedule 1

Form 2

Property (Relationships) Act 1984
Property (Relationships) Regulation 2000

(Clause 11)

Acknowledgement of service

Title of proceedings

I (*full name and occupation*)

.....

of (*address*)

.....

acknowledge that on the day of 20

I received copies of the following documents:

(a) application for

(b)

I also acknowledge that I am the person referred to in the application as the respondent.

My signature

Date signed

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Property (Relationships) Regulation 2000

Schedule 1 Forms

Form 3

Property (Relationships) Act 1984
Property (Relationships) Regulation 2000

(Clause 11)

** Please cross out any text that does not apply*

Affidavit of proof of signature

Title of proceedings

I (*full name and occupation*)

of (*address*)

*swear/affirm that:

1 The signature on the photocopy of the acknowledgment of service attached to this form and marked "A" is the signature of (*full name of person*)

2 I am able to identify the signature because (*please set out manner of identification*)

Signature of deponent

This affidavit was *sworn/affirmed by the deponent at
on the day of 20 before me:

Signature of witness

Title of witness

Property (Relationships) Regulation 2000

Forms

Schedule 1

Form 4

Property (Relationships) Act 1984
Property (Relationships) Regulation 2000

(Clause 12)

* Please cross out any text that does not apply

Affidavit of personal service

Title of proceedings

I (full name and occupation)

.....

of (address)

.....

*swear/affirm that:

1 On the day of 20

I served (full name of person)

with a sealed copy of the application filed in the proceedings referred to above
by delivering it to that person personally at (address)

.....

*2 Attached and marked with the letter "A" is an acknowledgment of service
signed in my presence by the person served.

3 The means by which I established that the person to whom the application was
delivered was the person required to be served with the application were as
follows (please set out the means by which you identified the person served)

.....

.....

Signature of deponent

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Property (Relationships) Regulation 2000

Schedule 1 Forms

This affidavit was *sworn/affirmed by the deponent at

on the day of 20 before me:

Signature of witness

Title of witness

Property (Relationships) Regulation 2000

Forms

Schedule 1

Form 5

Property (Relationships) Act 1984
Property (Relationships) Regulation 2000

(Clause 12)

* Please cross out any text that does not apply

Affidavit of service by post (by hand or mail)

Title of proceedings

I (full name and occupation)

.....

of (address)

.....

*swear/affirm that:

1 On the day of 20

I posted to (full name of person)

a sealed copy of the application filed in the proceedings referred to above by
posting it at (place of posting)

.....

in one envelope addressed to that person at (address)

.....

*2 In the same envelope, I posted a form of acknowledgment of service.

3 Attached and marked with the letter "A" is the form of acknowledgment of
service I received by (please state how received):

.....

Signature of deponent

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Property (Relationships) Regulation 2000

Schedule 1 Forms

This affidavit was *sworn/affirmed by the deponent at

on the day of 20 before me:

Signature of witness

Title of witness

Property (Relationships) Regulation 2000

Forms

Schedule 1

Form 6

Property (Relationships) Act 1984
Property (Relationships) Regulation 2000

(Clause 20)

* Please cross out any text that does not apply

Certificate of order for payment of periodic maintenance

In the Court of

Applicant

Name of person in whose favour the order was made

.....

Address

Respondent

Name of person ordered to pay periodic maintenance

.....

Address

Abstract of Order

- 1 The application under section 27 of the *Property Relationships Act 1984* was heard on the day of20
- 2 The Court ordered that the respondent pay maintenance of \$ a week to the applicant.
- 3 The payments of maintenance are to be made to the *applicant/Registrar/Clerk of the Court.
- 4 Order for payment of maintenance takes effect from with the first payment being made on or before
- 5 Payments of maintenance are to continue until further order of the Court or otherwise in accordance with the provisions of the *Property (Relationships) Act 1984*.

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Property (Relationships) Regulation 2000

Schedule 1 Forms

Other relevant particulars

(eg name, birth date of any child and details of any physical or intellectual disability)

.....
.....

I certify that this certificate correctly states particulars of an order made in this Court.

Dated this day of 20

Signed

(*Prothonotary/Clerk of the Court)

Property (Relationships) Regulation 2000

Forms

Schedule 1

Form 7

Property (Relationships) Act 1984
Property (Relationships) Regulation 2000

(Clause 21)

** Please cross out any text that does not apply*

Certificate of amounts paid under order for periodic maintenance

In the Court of

Applicant

Name of person in whose favour the order was made

.....

Address

Respondent

Name of person ordered to pay periodic maintenance

.....

Address

I certify that the amount which according to the records of this Court has been paid under the order made in the proceedings between the applicant and the respondent on the day of 20 is \$, and that the amount that according to those records remains unpaid at this date is \$

Dated this day of 20

Signed

(*Clerk of the Court/Registrar)

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Property (Relationships) Regulation 2000

Schedule 1 Forms

Form 8

Property (Relationships) Act 1984
Property (Relationships) Regulation 2000

(Clause 25)

Certificate for the purposes of section 47 (1) (d)

I
solicitor, certify that, in relation to an agreement in writing proposed to be entered
into between
and (*the parties*),

I advised (*my client*),
independently of the other party and before the time at which my client signed the
agreement, of the following matters:

- 1 the effect of the agreement on the rights of the parties to apply for an order
under Part 3 of the *Property (Relationships) Act 1984*,
- 2 whether or not, at that time, it was to the advantage, financially or otherwise,
of my client to enter into the agreement,
- 3 whether or not, at that time, it was prudent for my client to enter into the
agreement,
- 4 whether or not, at that time, and in the light of such circumstances as were, at
that time, reasonably foreseeable, the provisions of the agreement were fair and
reasonable.

Dated this day of 20

Signed
(Solicitor)

BY AUTHORITY