

# Property (Relationships) Regulation 2005

[2005-414]



New South Wales

## Status Information

### Currency of version

Historical version for 10 August 2005 to 5 July 2009 (accessed 21 December 2024 at 0:56)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
*Miscellaneous Acts (Local Court) Amendment Act 2007 No 94* (not commenced)

### Authorisation

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File last modified 13 December 2007

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# Property (Relationships) Regulation 2005



New South Wales

Her 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

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Property (Relationships) Regulation 2005*.

### 2 Commencement

This Regulation commences on 15 August 2005.

**Note—**

This Regulation replaces the *Property (Relationships) Regulation 2000* which is repealed by clause 18 and would otherwise be repealed on 1 September 2005 under section 10 (2) of the *Subordinate Legislation Act 1989*.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 in its civil jurisdiction.

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

**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) Notes included in this Regulation do not form part of this Regulation.

## **Part 2 Proceedings before a Local Court**

### **4 Application of Part**

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

### **5 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 registrar of the Local Court so orders.

### **6 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.

### **7 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 registrar of the Local Court for that purpose.
- (2) A list of proceedings may contain such of the following particulars as the registrar 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.

## **8 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.
- (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 registrar 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 registrar of the Local Court determines.

## **9 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**

### **10 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.

### **11 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 registrar of the Local Court a certificate in Form 1.
- (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 registrar of the Local Court, in the case of an order made by a Local Court.

## **12 Certificate as to amount of maintenance paid**

- (1) A registrar 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 2 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.

## **13 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 11 has been issued.
- (2) An application to record a periodic maintenance order as such a judgment must be accompanied by:
  - (a) the certificate under clause 11, and
  - (b) a recent certificate under clause 12, in the case of a periodic maintenance order that specifies a registrar 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 12 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 of a Local Court 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 of the Local Court is specified in the order as the person to whom the maintenance is to be paid.

#### **14 Notice of transmission of money**

If:

(a) the registrar 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 so specified is the registrar, the registrar 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.

#### **15 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 of the Local Court 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.

### **Part 4 Miscellaneous**

#### **16 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 3.



## 17 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.

## 18 Repeal and savings

- (1) The *Property (Relationships) Regulation 2000* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Property (Relationships) Regulation 2000*, had effect under that Regulation is taken to have effect under this Regulation.

## Schedule 1 Forms

(Clause 3)

### Form 1 Certificate of order for payment of periodic maintenance

(Clause 11)

*(Property (Relationships) Act 1984)*

*(Property (Relationships) Regulation 2005)*

\* Please cross out any text that does not apply

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 [date].
- 2 The Court ordered that the respondent pay maintenance of \$[amount] a week to the applicant.
- 3 The payments of maintenance are to be made to the \*applicant/registrars 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*.

**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/registrar of the Court)

**Form 2 Certificate of amounts paid under order for periodic maintenance**

(Clause 12)

(*Property (Relationships) Act 1984*)

(*Property (Relationships) Regulation 2005*)

\* Please cross out any text that does not apply

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 [date] is \$[amount], and that the amount that according to those records remains unpaid at this date is \$[amount].

Dated this     day of                     20     .

Signed:

(\*Registrar of the Court)

**Form 3 Certificate for the purposes of section 47 (1) (d)**

(Clause 16)

(*Property (Relationships) Act 1984*)

(*Property (Relationships) Regulation 2005*)

I [name] solicitor, certify that, in relation to an agreement in writing proposed to be entered into between [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 the advantages and disadvantages, at the time that the advice was provided, to my client of making the agreement.

Dated this     day of                     20     .

Signed:

(Solicitor)