



New South Wales

# Property (Relationships) Regulation 2010

under the

Property (Relationships) Act 1984

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

JOHN HATZISTERGOS, MLC  
Attorney General

## Explanatory note

The object of this Regulation is to remake, with minor amendments, the provisions of the *Property (Relationships) Regulation 2005*, which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) the practice and procedure to be followed when proceedings under the *Property (Relationships) Act 1984 (the Act)* are dealt with by the Local Court,
- (b) the publication of information and the searching of records in relation to such proceedings,
- (c) the payment of maintenance,
- (d) the enforcement of orders for periodic maintenance,
- (e) the forms to be used for the purposes of the Act,
- (f) the service of injunctions,
- (g) savings and formal matters.

This Regulation is made under the *Property (Relationships) Act 1984*, including sections 47 (1) (d), 54 (1) (a), 57 and 61 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely 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.

## 2010 No 446

Property (Relationships) Regulation 2010

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## Property (Relationships) Regulation 2010

under the

Property (Relationships) Act 1984

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Property (Relationships) Regulation 2010*.

#### 2 Commencement

This Regulation commences on 1 September 2010 and is required to be published on the NSW legislation website.

**Note.** This Regulation replaces the *Property (Relationships) Regulation 2005* which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.

#### 3 Definitions

(1) In this Regulation:

***judgment of the Local Court*** means a judgment of the 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.

## **2010 No 446**

Clause 4 Property (Relationships) Regulation 2010

Part 2 Proceedings before Local Court

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

#### **4 Application of Part**

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

#### **5 Record of proceedings**

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

#### **6 Directions as to practice and procedure**

- (1) The 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 a 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.

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- (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 the 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 a 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 a 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 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.

## **2010 No 446**

Clause 10            Property (Relationships) Regulation 2010

Part 3                Enforcement of periodic maintenance orders

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### **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 the 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 the Local Court) may obtain from the Prothonotary of the Supreme Court or the relevant 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 relevant registrar of the Local Court, in the case of an order made by the Local Court.

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

- (1) A registrar of the 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) A registrar of the 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

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- (b) a recent certificate under clause 12, in the case of a periodic maintenance order that specifies a registrar of the 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) A registrar of the 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.
  - (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 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 the Local Court) and recorded in the Local Court under clause 13 must give notice in writing to the relevant registrar of the Local Court 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.

## **2010 No 446**

Clause 15          Property (Relationships) Regulation 2010

Part 4              Miscellaneous

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### **Part 4    Miscellaneous**

#### **15    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.

#### **16    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.

#### **17    Savings**

Any act, matter or thing that, immediately before the repeal of the *Property (Relationships) Regulation 2005*, had effect under that Regulation continues to have effect under this Regulation.



