

DE FACTO RELATIONSHIPS ACT 1984—REGULATION

(De Facto Relationships Regulation 1994)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the De Facto Relationships Act 1984, has been pleased to make the Regulation set forth hereunder.

J. P. HANNAFORD
Attorney General.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the De Facto Relationships Regulation 1994.

Commencement

2. This Regulation commences on 1 September 1994.

Definitions

3. (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 De Facto Relationships Act 1984.

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

PART 2—PROCEEDINGS BEFORE A LOCAL COURT

Division 1—Preliminary

Application of Part

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

Applications for Part 3 orders

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

Division 2—Service of copies of applications on respondents

Applicants to cause copies of applications to be served on respondents

6. (1) An applicant for a Part 3 order must cause a copy of the application to be served on the respondent.

(2) Service of the copy may be effected:

- (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.

Personal service by applicant prohibited

7. Personal service of a copy of an application on a respondent must not be effected by the applicant, but may be effected by another person in the presence of the applicant.

Time for effecting service

8. (1) Service of a copy of an application must be effected on the day on which the application is filed or as soon as practicable after that day.

(2) Service of a copy of an application must not be effected less than 7 days before the date of hearing of the application.

Refusal to accept service

9. 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.

Order dispensing with service

10. (1) A Local Court, on application made ex parte, may order that service of a copy of an application be dispensed with.

(2) In exercising its power to make such an order, 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.

Acknowledgment of service

11. (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 by post 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.

Proof of service

12. (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.

Date of service of copy of application

13. (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 that has been effected by post (not being service that the respondent has acknowledged in accordance with clause 11) is taken to have been effected on the seventh day after the date of posting, unless the contrary is proved.

(3) However, 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

Record of proceedings

14. (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.

Directions as to practice and procedure

15. (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

Information concerning proceedings

16. (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.

Searches

17. (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 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 Court or the Clerk of the Local Court determines.

Division 5—Payment of maintenance

Payment of maintenance

18. (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**Mode of enforcing Supreme Court order**

19. 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.

Certificate of court as to periodic maintenance order

20. (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.

Certificate as to amount of maintenance paid

21. (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.

Matters to be satisfied before recording order as judgment

22. (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.

(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.

Notice of transmission of money

23. 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.

Notice of discharge, variation or suspension of periodic maintenance order

24. (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.

PART 4—MISCELLANEOUS**Advice of effect of cohabitation agreements or separation agreements**

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

Service of injunctions

26. For the purposes of section 54 (1) (a) of the Act, service of an injunction under section 53 of the Act is to be effected:

- (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.

Repeal

27. (1) The De Facto Relationships Regulation 1985 is repealed.

(2) Any act, matter or thing that, immediately before the commencement of this Regulation, had effect under the De Facto Relationships Regulation 1985 is taken to have effect under this Regulation.

SCHEDULE 1—FORMS

Form 1

(Cl.5)

DE FACTO RELATIONSHIPS ACT 1984

APPLICATION FOR * ADJUSTMENT OF INTERESTS WITH RESPECT TO
PROPERTY.

* AN ORDER FOR MAINTENANCE.

BETWEEN

of (Applicant)

AND

of (Respondent)

TAKE NOTICE THAT I, apply
to the Local Court at in the State of New South Wales for

* an order under Division 2 of Part 3 of the De Facto Relationships Act 1984 to
adjust interests in respect to property, namely:

.....

* an order under Division 3 of Part 3 of the De Facto Relationships Act 1984 of
maintenance, namely:

.....

(specify whether lump sum maintenance or periodic maintenance)

* an order:

.....

(specify nature of order)

on the following grounds:

*1. A de facto relationship exists/existed between myself and the abovenamed
respondent:

.....

(period of de facto relationship to be stated)

*2. A financial/non-financial contribution was made to the acquisition, conservation or improvement of the abovementioned property in that:

.....
.....
(set out the details of the contribution)

*3. The contributions include contributions made in the capacity of homemaker/parent' to the welfare of the family:

.....
.....
(set out names of children and dates of birth)

4. I am unable to support myself adequately by reason of having the care and control of a child or children, namely:

.....
.....
(set out the names and ages of the child or children and whether physically or mentally handicapped)

*5. I am unable to support myself adequately because my earning capacity has been adversely affected by the circumstances of the relationship:

.....
.....
(give particulars)

Dated at this day of.....19.

* Cross out whichever does not apply.

.....
(Applicant)

NOTICE OF HEARING

TAKE NOTICE that the above application has been set down for hearing at the Local Court at in the State of New South Wales on the day of 19 at ten o'clock in the forenoon.

Dated at this day of 19 ..

TO: THE RESPONDENT Clerk of the Court at

Form 2

(Cl.11)

DE FACTO RELATIONSHIPS ACT 1984
ACKNOWLEDGMENT OF SERVICE

(Title of proceedings)

I.
.....
.....
(full name, address and occupation)

acknowledge that on the day of 19
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.

Dated this day of 19

.....
(Signature)

Form 3

(Cl. 11)

DE FACTO RELATIONSHIPS ACT 1984
AFFIDAVIT OF PROOF OF SIGNATURE

(Title of proceedings)

I,
.....
.....
(full name, address and occupation)

make oath and say/affirm:

1. The signature on the photocopy of the acknowledgment of service marked "A" annexed is the signature of
(full name)

2. I am able to identify the signature because

.....
.....

(set out the manner of identification)

SWORN (or AFFIRMED) by the deponent at }
on the 19 . day of }

.....
(Signature)

Before me:

.....
(Signature and title of person before whom
affidavit sworn or affirmed)

Form 4

(Cl. 12)

DE FACTO RELATIONSHIPS ACT 1984
AFFIDAVIT OF PERSONAL SERVICE

(Title of proceedings)

I.
.....
.....
(full name, address and occupation)

make oath and say/affirm:

1 . On the day of 19 ,
I duly served
(full name)

with a sealed copy of the application filed in the abovementioned proceedings
by delivering it to that person personally at:

.....
.....
(address)

*2. Annexed 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:

.....

(set out the means by which the deponent identified the person served)

SWORN (or AFFIRMED) by the deponent at }
 on the day of }
 19 . }

Before me:

.....
(Signature and title of person before whom affidavit sworn or affirmed)

.....
(Signature)

* *Cross out if not applicable.*

Form 5

(Cl. 12)

DE FACTO RELATIONSHIPS ACT 1984
AFFIDAVIT OF SERVICE BY POST

(Title of proceedings)

I,

.....

.....
(full name, address and occupation)

make oath and say/affirm:

1. On the day of 19 ,

I duly posted to
(full name)

a sealed copy of the application in the abovementioned proceedings by posting it at

(place of posting)
in one envelope addressed to that person at

.....

.....
(address)

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

3. Annexed and marked "A" is the form of acknowledgment of service received by me by
(state how received)

on the day of 19.....

SWORN (or AFFIRMED) by the deponent at }
on the day of }
19 .. . }

.....
(Signature)

Before me:

.....
(Signature and title of person before whom
affidavit sworn or affirmed)

* Cross out if not applicable.

Form 6

(Cl. 20)

DE FACTO RELATIONSHIPS ACT 1984

CERTIFICATE OF ORDER FOR THE PAYMENT OF PERIODIC
MAINTENANCE

In the court
of
Name and address of
party in whose favour
order was made:

Applicant

Name and address of
party ordered to pay
periodic maintenance:

Respondent

Abstract of Order:

1. The application under section 27 of the De Facto Relationships Act 1984 was heard on the day of 19 .
2. The Court ordered that the respondent pay maintenance to the applicant in the sum of \$ per week.
3. Payments of maintenance to be made to (Applicant/Registrar/Clerk of the Court).
4. Order for the payment of maintenance to take effect from with the first payment being made on or before
5. Payments of maintenance in respect of the applicant to continue until further order of the Court or otherwise in accordance with the provisions of the De Facto Relationships Act 1984.

Other particulars (e.g. names and dates of birth of children, whether physically or mentally handicapped child):

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

Dated this day of 19 .

Prothonotary/Clerk of the Court

Form 7

(Cl. 21)

DE FACTO RELATIONSHIPS ACT 1984

CERTIFICATE OF AMOUNTS PAID UNDER ORDER FOR PERIODIC MAINTENANCE

In the Local Court
at

.....
Name and address of
party in whose favour
order was made:

Applicant

Name and address of party
ordered to pay periodic
maintenance:

Respondent

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 abovementioned parties on the _____ day of _____ 19____ is \$ _____, and that the amount that according to those records remains unpaid at this date is \$ _____.

Dated this _____ day of _____ 19____ .
Clerk of the Court/Registrar

Form 8

(Cl. 25)

DE FACTO RELATIONSHIPS ACT 1984
CERTIFICATE FOR THE PURPOSES OF SECTION 47 (1) (d)

I, _____ of _____, solicitor, certify that, in relation to an agreement in writing proposed to be entered into between _____

and _____ (hereinafter called “the parties”),

I advised _____ (hereinafter called “my client”), independently of the other party and before the time at which my client signed the agreement, as to the following matters:

- (a) the effect of the agreement on the rights of the parties to apply for an order under Part 3 of the De Facto Relationships Act 1984;
- (b) whether or not, at that time, it was to the advantage, financially or otherwise, of my client to enter into the agreement;
- (c) whether or not, at that time, it was prudent for my client to enter into the agreement;
- (d) 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 _____ 19____ .

Solicitor

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SCHEDULE 1—FORMS

EXPLANATORY NOTE

The object of this Regulation is to repeal and remake, without any major changes in substance, the provisions of the De Facto Relationships Regulation 1985 under the De Facto Relationships Act 1984. The new Regulation deals with the following matters:

- (a) proceedings under the Act that are taken before a Local Court (Part 2), including:
 - (i) the making of applications for orders under Part 3 of the Act (Division 1);
 - (ii) service of applications for such orders (Division 2);
 - (iii) the hearing of such applications (Division 3);
 - (iv) provisions to maintain privacy for the parties to proceedings on such applications (Division 4);
 - (v) the payment of maintenance (Division 5);
- (b) the enforcement of orders for periodic maintenance (Part 3);
- (c) other matters of a formal or machinery nature (Parts 1 and 4).

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

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
