

**FAMILY LAW ACT 2003**  
(Act No. 18 of 2003)

**FAMILY LAW REGULATIONS 2005**

In exercise of the powers conferred upon me by section 213 of the Act, I make these Regulations—

**PART I—PRELIMINARY**

**Short title and commencement**

1.—(1) These regulations may be cited as the Family Law Regulations 2005 and, subject to subregulation (2), shall come into operation on 1<sup>st</sup> July 2005.

(2) Part V comes into operation on the day on which the Convention on the Recovery Abroad of Maintenance, being the Convention mentioned in section 198 of the Act, enters into force for the Fiji Islands.

**Interpretation**

2.—(1) In these Regulations, unless the contrary intention appears—

“Act” means the Family Law Act 2003;

“applicant” means a person who institutes or has instituted proceedings under the Act or is an applicant in pending proceedings under a repealed Act;

“application” means an application to a court for the purpose of instituting proceedings under the Act or an application to a registrar made under these Regulations;

“CEO” means —

(a) the Chief Executive Officer of the Ministry of Justice; or

(b) a person authorised by the Chief Executive Officer of the Ministry of Justice to perform a function in relation to which the expression is used;

“certified copy” means a copy of an order, decree or document certified to be a true copy by an officer of the court that made the order or by which the order has been registered or confirmed or, in the case of an overseas order, by the CEO;

“filed” has the same meaning as in the Rules of Court;

“legal practitioner” means a person enrolled as a barrister and solicitor of the High Court of Fiji;

“party to proceedings” means an applicant, respondent or intervener in proceedings under the Act;

“registrar” has the same meaning as in the Rules of Court;

“respondent” means, in relation to proceedings, a party to the proceedings other than an applicant or an intervener;

“Rules of Court” means—

- (a) the Family Law Rules 2005; and
- (b) to the extent to which they are applicable—
  - (i) the High Court Rules; or
  - (ii) the Magistrates’ Court Rules,
 as the case requires;

“sealed”, in relation to a document issued out of or filed or otherwise received in a court, means sealed with the seal of that court or otherwise endorsed by an officer of that court.

(2) A reference in these Regulations to a form by number is a reference to the form so numbered in Schedule 1.

## **PART II—GENERAL**

### *Division 1—Welfare, counselling, etc.*

#### **Authorised family and child counsellor**

**211.**—(1) For the purposes of paragraph (c) of the definition of “family and child counsellor” in section 2 (1) of the Act, the Attorney-General may authorise a person, in writing, to offer family and child counselling.

(2) The Attorney-General may authorise a person only if the Attorney-General considers that the person is suitable by reason of the person’s training and experience.

#### **Welfare officers**

**212.**—(1) For the purposes of paragraph (c) of the definition of “welfare officer” in section 2 (1) of the Act, the Attorney-General may appoint a person, in writing, to be a welfare officer.

(2) The Attorney-General may appoint a person only if the Attorney-General considers that the person is suitable by reason of the person’s training and experience.

#### **Oath or affirmation of marriage counsellor (section 14)**

**213.** For the purposes of section 14 of the Act, a marriage counsellor must make an oath or affirmation in the following form:

I, [*name of marriage counsellor*] do swear by Almighty God [*or do solemnly and sincerely affirm and declare*] that I will not disclose to any person any communication or admission made to me in my capacity as a marriage counsellor, unless I reasonably believe that it is necessary for me to do so —

- (a) to protect a child; or
- (b) to prevent or lessen a serious and imminent threat to —

- (i) the life or health of a person; or
- (ii) the property of a person; or
- (c) to report the commission, or prevent the likely commission, of an offence involving —
  - (i) violence or a threat of violence to a person; or
  - (ii) intentional damage to property of a person or a threat of damage to property; or
- (d) to enable me to discharge properly my functions as a marriage counsellor; or
- (e) if a child is separately represented by a person under an order under section 125 of the Family Law Act 2003 — to assist the person to represent the child properly.

#### **Prescribed child welfare laws (section 42)**

**214.** The following laws are prescribed for the purposes of the definition of “child welfare law” in section 42 (1) of the Act: *[Instructions required.]*

#### **Prescribed child welfare authority (section 113)**

**215.** For the purposes of section 113 (3) of the Act, the Department of Social Welfare is a prescribed welfare authority.

### *Division 2—Court proceedings and related matters*

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

- 221.—**(1) Where a court is satisfied in the circumstances of a particular case that—
- (a) the provisions of the Act, these Regulations and the applicable Rules of Court do not make adequate provision for practice and procedure; or
  - (b) a difficulty arises or doubt exists as to practice and procedure,
- the court may give such directions with respect to the practice and procedure to be followed in the case as the court considers necessary.
- (2) In proceedings to which section 4 of the Act applies, the court may give directions in all matters of practice and procedure.
- (3) Directions under this regulation shall be directed to providing a speedy and inexpensive hearing of the matters in issue between the parties and shall be consistent with these Regulations and the applicable Rules of Court.

### **Non-compliance with Regulations and Rules**

**222.**—(1) Non-compliance with these Regulations, or with a rule of practice or procedure in a court exercising jurisdiction under the Act, does not render proceedings in that court void unless the court so directs.

(2) In exercising its discretion under this regulation, the court shall have regard to the real merits of the case, the minimizing of expense, and whether any party to the proceedings has suffered injustice or has been prejudicially affected by non-compliance with these Regulations.

### **Court may relieve from consequences of non-compliance**

**223.**—(1) Subject to the Act and these Regulations—

- (a) the court may, at any time, upon such terms as the court thinks fit, relieve a party from the consequences of non-compliance with these Regulations, a rule of practice and procedure of the court applicable to the proceedings or a decision of a registrar;
- (b) the court may at any time, upon such terms as the court thinks fit, relieve a party from the consequences of non-compliance with an order made by a court; and
- (c) the court may, upon such terms as the court thinks fit, dispense with the need for compliance by a party with any provision of these Regulations.

(2) Where these Regulations fail to make provision on any matter, the court is empowered to give, and shall give, such directions as to practice and procedure as the court thinks fit.

### **Service in countries that are parties to certain conventions**

**224.**—(1) This regulation applies, subject to the provisions of the relevant convention, in relation to the service of a document in a country that is a party to a convention, extending to the Fiji Islands, regarding legal proceedings in civil and commercial matters.

(2) Where, under a convention referred to in subregulation (1), service of a document relating to proceedings is not to be effected in a country referred to in that subregulation otherwise than in accordance with the convention, service of such a document in that country shall not be effected otherwise than in accordance with this regulation.

(3) Where a party to proceedings who desires to effect service of a document relating to the proceedings on a person in a country referred to in subregulation (1) files a request for service of the document in accordance with Form 1, and deposits with the registrar of the court in which the proceedings are pending the documents required by subregulation (4) to be deposited, the registrar shall forward the documents so deposited direct to the CEO for transmission to that country for service.

- (4) For the purposes of subregulation (3), the documents to be deposited are—
- (a) the document to be served;
  - (b) a translation of the document into the language of the country in which the service is to be effected, being a translation bearing a certificate, in that language, of the person who made the translation certifying that it is a translation of the document of which it purports to be a translation;
  - (c) a copy of the document to be served and of the translation; and
  - (d) such further copies (if any) of the document and translation as are required by the relevant convention.

(5) A document, a translation of a document or a copy of a document shall, before being forwarded to the CEO in accordance with subregulation (3), be sealed with the seal of the court.

(6) Where a registrar has received a certificate transmitted through diplomatic channels, by a judicial authority in a country referred to in subregulation (1), certifying that a document has been served on a person on a date specified in the certificate, the certificate may be filed and, subject to subregulation (7), is then evidence of the matters stated in the certificate.

(7) Where service of a document is required to be effected on a person by delivering the document to that person personally, the due service of the document shall be deemed not to have been proved by a certificate referred to in subregulation (6) unless—

- (a) it also certifies the means by which the person who served the document identified the person served; or
- (b) other evidence, whether by affidavit or otherwise, is provided showing that the document came to the notice of the person on whom it was to be served.

### **Proceedings that may be held in open court or in chambers (section 185)**

#### **225. *[Instructions required.]***

### **Authentication of consent in writing (sections 81, 82, 83 and 84)**

**226.—**(1) For the purposes of sections 81 (2) (a), 82 (3) (a), 83 (3) (a) and 84 (3) (a) of the Act, a consent in writing must be authenticated by a qualified person endorsing on the consent a statement that—

- (a) the qualified person is satisfied about the identity of the person signing the consent; and
- (b) the consent was signed in the qualified person's presence.

(2) For the purposes of subregulation (1), a qualified person is a Justice of the Peace, a notary or a legal practitioner.

### **Prescribed overseas jurisdictions**

**227.** For the purposes of the definition of “prescribed overseas jurisdiction” in section 2 (1) of the Act —

- (a) each country or part of a country, specified in Schedule 2 is declared to be a prescribed overseas jurisdiction for the purposes of —
  - (i) section 147 of the Act, in relation to the definition of “overseas child order”; and
  - (ii) sections 152 and 153 of the Act; and
- (b) each country, or part of a country, specified in Schedule 3 as a reciprocating jurisdiction is declared to be a prescribed overseas jurisdiction for the purposes of —
  - (i) section 2 (1) of the Act, in relation to the definition of “overseas maintenance agreement”; and
  - (ii) section 174 (b) of the Act.

### **Bringing of proceedings on behalf of child (section 128)**

**228.** *[Instructions required.]*

### **Orders for dissolution and nullity of marriage — recording in central register and notification to Registrar-General (section 37)**

**229.** — (1) The Registrar of the Family Division of the High Court shall cause to be maintained a register (in this regulation called “the central register”) of all final orders for dissolution of marriage and nullity of marriage made by courts exercising jurisdiction under the Act.

- (2) As soon as practicable after —
  - (a) the preparation of a memorandum that a conditional order for the dissolution of marriage has become final; or
  - (b) the making of an order of nullity of a marriage,

the registrar at the place where the order was made shall transmit to the person responsible for the maintenance of the central register (in this regulation called “the record-keeper”) a copy of that memorandum or order.

(3) As soon as practicable after receiving a copy of a memorandum or order, the record-keeper shall —

- (a) enter particulars of the orders concerned in the central register; and
- (b) forward a copy of the register entry to the Registrar-General.

### **Recovery orders — prescribed public offices (section 106)**

**230.** For the purposes of section 106 (1) (b) of the Act, the office of police officer is a prescribed public office.

### **Conversion of currency**

**231.**—(1) For the purposes of these Regulations, an overseas order (including a provisional order) or a certificate or notice originating in an overseas jurisdiction that refers to an amount of money expressed in the currency of the overseas country in which that jurisdiction is located shall be deemed to refer to the equivalent amount in Fiji Islands currency on the date on which the order (whether by registration, confirmation or otherwise) becomes an enforceable order in the Fiji Islands on the basis of the telegraphic transfer rate of exchange prevailing on that date.

(2) Where the registrar of a court receives an order, certificate or notice referred to in sub-regulation (1), the registrar shall ascertain the appropriate rate of exchange and endorse upon the order, certificate or notice, the rate of exchange and the conversion of the amount of money to Fiji Islands currency.

## **PART III — PARENTAGE TESTING AND REPORTS**

### *Division 1 — General*

#### **Interpretation**

**311.** In this Part, unless the contrary intention appears —  
“accredited laboratory” means—

- (a) a laboratory in the Fiji Islands specified by the Attorney-General, by notice under regulation 312; or
- (b) a laboratory in Australia or New Zealand that is competent, for the purposes of the provisions of the law of that country corresponding to Subdivision C of Division 11 of Part VI of the Act, to carry out parentage testing procedures;

“bodily sample” is not limited to a sample of blood;

“donor” means the person required to provide a bodily sample for the purposes of a parentage testing procedure;

“HLA” means human leucocyte antigen;

“nominated reporter” means—

- (a) in relation to an accredited laboratory in the Fiji Islands—the person specified as the nominated reporter for that laboratory under regulation 312;
- (b) in relation to an accredited laboratory in Australia or New Zealand—the person who, for the purposes of the provisions of the law of that country corresponding to Subdivision C of Division 11 of Part VI of the Act, is authorised to report the results of parentage testing procedures;

“report” means a report in accordance with regulation 331;

“sample” means a sample taken from a donor for the purposes of a parentage testing procedure;

“sampler” means a person who takes a bodily sample from a donor for the purposes of a parentage testing procedure;

“testing” means the implementation, or any part of the implementation, of a parentage testing procedure.

### **Notification of accredited laboratories and nominated reporters**

**312.** — (1) The Attorney-General—

- (a) may, by notice in the *Gazette*, specify laboratories in the Fiji Islands as accredited laboratories for the purposes of this Part; and
- (b) shall, in the same or a different notice, specify for each accredited laboratory a nominated reporter.

(2) The Attorney-General shall not specify a laboratory as an accredited laboratory unless he is satisfied that the standards of practice of the laboratory are equivalent to those applicable for the accreditation or recognition of a laboratory, for the purposes of the provisions of the law of Australia or New Zealand corresponding to Subdivision C of Division 11 of Part VI of the Act, as a laboratory competent to carry out parentage testing procedures under that law.

### **Parentage testing procedures**

**313.** For the purposes of the definition of “parentage testing procedure” in section 42 (1) of the Act, the following medical procedures are prescribed:

- (a) red cell antigen blood grouping;
- (b) red cell enzyme blood grouping;
- (c) HLA tissue typing;
- (d) testing for serum markers;
- (e) DNA typing.

### **Compliance with Regulations**

**314.** A parentage testing procedure is taken to be carried out in accordance with these Regulations if—

- (a) it is carried out—
  - (i) in compliance with Division 2;
  - (ii) at an accredited laboratory; and
  - (iii) in accordance with standards of practice that entitle the laboratory to be so accredited; and
- (b) it is supplemented by a report under Division 3.

*Division 2 — Collection, storage and testing of samples*

**Samplers**

**321.** A person must not take a bodily sample from a donor for the purposes of a parentage testing procedure unless—

- (a) the person is a registered medical practitioner; or
- (b) the person is employed by a hospital, a pathology practice, a parentage testing practice or a registered medical practitioner for the purpose of taking a bodily sample from a donor.

**Provision of information by donor — Form 2**

**322.** — (1) A sampler must not take a bodily sample from a donor before the donor or, if appropriate, a person described in sub-regulation (2), has—

- (a) completed an affidavit in accordance with Form 2, immediately before the sampler takes the bodily sample from the donor; and
- (b) either:
  - (i) provided to the sampler a recent photograph of the donor, measuring approximately 45 millimetres by 35 millimetres, that shows a full face view of the donor's head and the donor's shoulders against a plain background; or
  - (ii) made a written arrangement with the sampler for a photograph of that kind to be taken.

(2) If the donor is a child under the age of 18 years, or a person who is suffering from a mental disability, the affidavit referred to in paragraph (1) (a) may be completed only —

- (a) in the case of a child under the age of 18 years — by a person who is responsible for the long-term care, welfare and development of the child; or
- (b) in the case of a person who is suffering from a mental disability—
  - (i) by a trustee or manager in relation to the person appointed under law; or
  - (ii) by a person who is responsible for the care, welfare and development of the person suffering from a mental disability.

**Collection of blood samples**

**323.** — (1) A sampler may take a sample of blood from a donor only with a needle or syringe that —

- (a) has not been used for any purpose;
- (b) has been sterilised; and
- (c) is disposable.

(2) Before taking a sample of blood from a donor, the sampler must ensure that the area of the donor's skin into which the needle is to be inserted to withdraw the blood has been cleaned with an antiseptic.

### **Collection of bodily samples for DNA typing**

**324.** — (1) This regulation applies to the taking of a bodily sample (except a sample of blood) from a donor for the purposes of a parentage testing procedure that is DNA typing.

(2) A sampler must not take a bodily sample from a donor with a swab unless the swab —

- (a) has not been used for any purpose; and
- (b) has been sterilised.

(3) If the bodily sample to be taken from a donor is a skin scraping or a hair root, the implement used by the sampler to take the sample must have been sterilised before use.

### **Container to be sealed and labelled**

**325.**—(1) If a bodily sample is taken from a donor, the sampler must ensure that—

- (a) the sample is placed in a container—
  - (i) immediately after it is taken; and
  - (ii) in the presence of the donor;
- (b) the container has not previously been used for any purpose; and
- (c) the container is sealed in a way that, if it were opened after being sealed, that fact would be evident on inspection of the container;
- (d) the container is labelled in a way that—
  - (i) if the label, or any part of the label, were removed; or
  - (ii) if writing on the label were impaired by alteration or erasure, the removal of the label, or the impairment, would be evident on inspection of the container;
- (e) the particulars on the label are inscribed in ink and include—
  - (i) the full name of the donor;
  - (ii) the date of birth and the sex of the donor; and
  - (iii) the date and time at which the sample was taken; and
- (f) when paragraph (e) is complied with— the sampler and the donor sign the label, in ink.

(2) If the donor is a child under the age of 18 years—

- (a) the procedure specified in sub-regulation (1) (a) must be completed in the presence of the person who is responsible for the long-term care, welfare and development of the child; and

- (b) the procedure specified in sub-regulation (1) (f) is taken to be satisfied only if the person who is responsible for the long-term care, welfare and development of the child signs the label.
- (3) If the donor is a person who is suffering from a mental disability—
  - (a) the procedure specified in sub-regulation (1) (a) must be completed in the presence of —
    - (i) a trustee or manager in relation to the person appointed under law; or
    - (ii) a person who is responsible for the care, welfare and development of the person suffering from a mental disability; and
  - (b) the procedure specified in sub-regulation (1) (f) is taken to be complied with only if the label is signed—
    - (i) by a trustee or manager in relation to the person appointed under law; or
    - (ii) by a person who is responsible for the care, welfare and development of the person suffering from a mental disability.

### **Statement by sampler—Form 3**

- 326.** After taking a bodily sample from a donor, the sampler must
- (a) complete a statement in accordance with Form 3;
  - (b) affix the photograph of the donor referred to in regulation 322 (1) (b) to the statement; and
  - (c) sign his or her name partly on the photograph and partly on the statement in such a way that, if the photograph were later removed from the statement, the removal would be evident from inspection of the statement.

### **Packing and storage requirements**

**327.—(1)** A bodily sample must be packed, stored and transported to a laboratory for testing in a manner that—

- (a) will preserve the integrity of the sample; and
- (b) ensures that the testing of the sample will produce the same results as would have been obtained if the sample had been tested immediately after collection.

(2) The sampler must ensure that the following documents are sent to the laboratory with the sample—

- (a) the affidavit completed under regulation 322 (1) (a);
- (b) the statement completed under regulation 326.

### **Testing of bodily samples**

**328.** — (1) A laboratory to which a bodily sample has been sent for testing must ensure that the testing is completed—

- (a) if the proposed procedure is red cell antigen blood grouping, red cell enzyme blood grouping or testing for serum markers—within 6 days after the sample is taken;
- (b) if the proposed procedure is HLA tissue typing—within 3 days after the sample is taken; or
- (c) if the proposed procedure is DNA typing—within a reasonable time after the sample is taken.

(2) If the proposed procedure is red cell enzyme blood grouping or testing for serum markers, sub-regulation (1) (a) is complied with if a dried sample of the bodily sample to be tested is prepared within 6 days after the sample is taken from the donor.

### ***Division 3 — Reports***

#### **Reports—Form 4**

**331.** — (1) For the purposes of section 143 (b) of the Act, a report must be prepared, in accordance with this regulation, relating to the information obtained as a result of carrying out a parentage testing procedure.

(2) The report must be in accordance with Form 4.

(3) Part 1 of the report must be completed by the nominated reporter for the laboratory.

(4) Part 2 of the report must be completed by—

- (a) the person who carried out the parentage testing procedure; or
- (b) the person under whose supervision the parentage testing procedure was carried out.

(5) A report completed otherwise than in accordance with this regulation is taken to be of no effect.

## PART IV—RECIPROCAL INTERNATIONAL ENFORCEMENT OF ORDERS

### *Division 1—Residence, contact and care orders*

#### **Reciprocating jurisdictions**

**411.** Each of the jurisdictions specified in Schedule 3 is declared to be a reciprocating jurisdiction for the purposes of this Division.

#### **Registration of overseas care orders**

**412.**—(1) Where the CEO receives—

- (a) from a prescribed overseas jurisdiction a certified copy of an overseas child order, within the meaning given by section 147 of the Act, that was made in that jurisdiction; and
- (b) a certificate signed by an officer of a court or by some other authority in that jurisdiction relating to the order and containing a statement that the order is, at the date of the certificate, enforceable in that jurisdiction,

the CEO shall, if there are reasonable grounds for believing that the child who is the subject of the order, a parent of that child, or a person having the right of custody of, access to or contact with that child, is present in, or proceeding to, the Fiji Islands, send the documents received by the CEO to a registrar of the Family Division of the High Court.

(2) When the registrar receives from the CEO the documents referred to in subregulation (1), the registrar shall register the order by filing in the court at Suva a certified copy of the order and the certificate relating to the order and noting the fact and the date of the registration on the certified copy.

(3) An overseas order registered in accordance with this regulation is enforceable throughout the Fiji Islands until the registration has been cancelled.

(4) Where it appears to a court that the documents referred to in subregulation (1) have been received by the court from a person other than the CEO, the court may, if all other requirements of subregulation (1) are satisfied, register the order.

(5) Where a court exercising jurisdiction under section 149 of the Act substantially varies the order, the registrar of the court shall forthwith forward to the court or to the appropriate authority in the prescribed overseas jurisdiction—

- (a) 3 certified copies of the order of the court and the reasons for the order;
- (b) a copy of the depositions; and
- (c) such further material as the court directs.

(6) This regulation does not prevent a court that has jurisdiction under the Act from receiving evidence of an order made in an overseas jurisdiction (whether or not the jurisdiction is a prescribed overseas jurisdiction), being an order that—

- (a) deals with the person with whom a child is supposed to live or have contact; or
- (b) provides for a person to have custody of, or access to, a child.

### **Transmission of Fiji Islands child orders to overseas jurisdiction**

**413.**— (1) This regulation applies if—

- (a) a residence order, contact order or specific issues order is made by a court in the Fiji Islands in relation to a child who is under 18; and
- (b) the order may be enforced in a prescribed overseas jurisdiction under provisions corresponding to Subdivision A of Division 12 of Part VI of the Act.

(2) If the registrar of the court in which the order was made, registered or last varied, receives a written request from a person mentioned in subregulation (3) to send the order to the prescribed overseas jurisdiction for registration and enforcement in that jurisdiction, the registrar must send the documents mentioned in subregulation (4) to the appropriate court or authority in the prescribed overseas jurisdiction.

- (3) For the purposes of subregulation (2), a request may be made by a person—
  - (a) with whom the child is supposed to live or have contact under the order; or
  - (b) who has a right to custody of, or access to, the child under the order.

(4) For the purposes of subregulation (2), the documents are as follows:

- (a) 3 certified copies of the order;
- (b) a certificate signed by the registrar stating that the order is, at the date of the certificate, enforceable in the Fiji Islands;
- (c) any information and material the registrar holds that may assist in identifying and locating the child or any other person who is subject to the order;
- (d) a request in writing that the order be made enforceable in the prescribed overseas jurisdiction.

(5) If—

- (a) the order is registered in a court in the prescribed overseas jurisdiction; and
- (b) a court in that jurisdiction makes an order under a law corresponding to section 149 of the Act (the “overseas order”);

a court having jurisdiction under the Act may treat the overseas order as an overseas child order for the purposes of exercising jurisdiction under that section.

(6) If a court exercises jurisdiction under section 149 of the Act in relation to a child who is the subject of the overseas order, the registrar of the court must send to the court in the prescribed overseas jurisdiction—

- (a) 3 certified copies of any order made by the court and the reasons for the order; and
- (b) such further material as the court directs.

(7) Nothing in this regulation prevents a person having a right of custody of, access to or contact with, a child under the order from—

- (a) obtaining certified copies of the order; or
- (b) applying to a court in an overseas jurisdiction (whether or not it is a prescribed overseas jurisdiction) for registration and enforcement of the order in that jurisdiction.

(8) In this regulation—

“custody”, in relation to a child, includes—

- (a) guardianship of the child;
- (b) responsibility for the long-term or day-to-day care, welfare and development of the child; and
- (c) responsibility as the person or persons with whom the child is to live;

“overseas child order” has the meaning given by section 147 of the Act.

### *Division 2—Maintenance*

#### **Definitions**

**421.** In this Division—

“jurisdiction with restricted reciprocity” has the same meaning as in section 197 of the Act;

“maintenance order” means—

- (a) a maintenance order within the meaning of section 197 of the Act; and
- (b) an order made under section 102 or 103 of the Act;

“reciprocating jurisdiction” has the same meaning as in section 197 of the Act.

#### **Reciprocating jurisdictions and jurisdictions with restricted reciprocity**

**422.—**(1) Each of the jurisdictions specified in Part I of Schedule 2 is declared to be a reciprocating jurisdiction for the purposes of section 197 of the Act.

(2) Each of the jurisdictions specified in Part II of Schedule 2 is declared to be a jurisdiction with restricted reciprocity for the purposes of section 197 of the Act.

### Registration of overseas maintenance orders

- 423.**—(1) Subject to subregulation (2), where the CEO receives—
- (a) a certified copy of a maintenance order from a reciprocating jurisdiction or a jurisdiction with restricted reciprocity, being an order made in that jurisdiction; and
  - (b) a certificate signed by an officer of a court or other authority in that jurisdiction relating to the order and containing—
    - (i) a statement that the order is, at the date of the certificate, enforceable in that jurisdiction; and
    - (ii) a statement as to the amount of any arrears due under the order,

the CEO shall, if there are reasonable grounds for believing that the person against whom the order was made is resident in or proceeding to the Fiji Islands, send the documents received by the CEO to the registrar of the Family Division of the High Court.

(2) Where the registrar receives from the CEO the documents referred to in subregulation (1), the registrar shall register the order by filing in the court a certified copy of the order and by noting the fact and date of the registration on that certified copy.

(3) An overseas maintenance order registered under this regulation is, until the registration is cancelled, enforceable in the Fiji Islands and has effect in the Fiji Islands as if it were an order made under the Act, both with respect to any arrears payable under the order and with respect to amounts becoming due under the order after it is so registered.

- (4) Upon the registration of an order in a court, the registrar of the court shall—
  - (a) notify an officer of the court or other authority in the reciprocating jurisdiction or jurisdiction with restricted reciprocity, as the case may be, of the registration; and
  - (b) cause a certified copy of the order and a notice of registration of the order specifying—
    - (i) the amount (if any), including arrears, due under the order; and
    - (ii) the person, authority or court to whom or to which money payable under the order is to be paid,

to be served, in accordance with Division 4.2 of the Family Law Rules 2005, upon the person against whom the order was made.

(5) Where, immediately before the date of commencement of section 197 of the Act, an overseas maintenance order was registered in a court in the Fiji Islands, that order may continue to be enforced under these Regulations as if it were registered under this regulation.

(6) The receipt of a person, authority or registrar of a court for any amount paid, in pursuance of this regulation, to that person, authority or court under an order shall be sufficient discharge of the liability of the person required under the order to pay that amount.

### **Transmission of orders made in the Fiji Islands for enforcement in reciprocating jurisdictions**

**424.** Where a maintenance order made in the Fiji Islands is in force, and it appears that the person against whom the order was made is resident in or is proceeding to an overseas jurisdiction, being a reciprocating jurisdiction or a jurisdiction with restricted reciprocity, a registrar of the court in which the order was made or is registered may, of the registrar's own motion, or on the application of a person for whose benefit the order was made, send to the CEO—

- (a) 3 certified copies of the order;
- (b) a certificate stating what moneys and arrears are due, payable and accruing under the order;
- (c) a certificate signed by the registrar that the order is, at the date of the certificate, enforceable in the Fiji Islands;
- (d) such information and material (if any) as the registrar possesses for ascertaining the identity and the whereabouts of the person against whom the order was made; and
- (e) a request in writing that the CEO should seek to have the Fiji Islands order made enforceable in that overseas jurisdiction,

and the CEO shall, on receipt of those documents, cause the documents referred to in paragraphs (a), (b) and (c) and any information or material received by him, being information or material referred to in paragraph (d), to be transmitted to that overseas jurisdiction with a request in writing that the Fiji Islands order be made enforceable in that overseas jurisdiction.

### **Confirmation of provisional overseas maintenance orders**

**425.—(1)** Where—

- (a) a maintenance order has been made in an overseas jurisdiction being a reciprocating jurisdiction or a jurisdiction with restricted reciprocity;
- (b) the order has no effect under the law of that jurisdiction unless and until it is confirmed by a court outside that jurisdiction;
- (c) a certified copy of the order and a copy of the depositions of the witnesses in the proceedings in which the order was made, together with a statement of the grounds on which the order could have been opposed if the person against whom the order was sought had appeared at the hearing, have been received by the CEO; and
- (d) there are reasonable grounds for believing that—
  - (i) the person is resident in, or is proceeding to, the Fiji Islands; and
  - (ii) the order will have effect under the law of the overseas jurisdiction if it is confirmed by a court having jurisdiction under the Act,

the CEO shall send the documents received by the CEO to a registrar of the Family Division of the Magistrates' Court.

(2) After receipt by the registrar of the documents referred to in subregulation (1), an application may be issued by the registrar, calling upon the person against whom the order is sought to show cause why that order should not be confirmed.

(3) An application under subregulation (2) shall be served in accordance with Division 4.2 of the Family Law Rules 2005.

(4) On the hearing of an application under subregulation (2), a person entitled to money payable under the order to which the application relates may appear personally or be represented by—

- (a) a legal practitioner;
- (b) a person holding office as a family law enforcement officer under rule 7.13 (1) of the Family Law Rules 2005.

(5) On the hearing of an application under subregulation (2), it shall be open to the respondent to raise any ground of opposition that the respondent could have raised in the original proceedings or any ground of opposition that the respondent could have raised had the proceedings in which the provisional overseas order was made been heard in the Fiji Islands, and the statement referred to in subregulation (1) (c) shall be conclusive evidence that the grounds referred to in that statement are the grounds of opposition that could have been raised in the original proceedings.

(6) Upon the hearing of the application, the court may—

- (a) confirm the provisional order (either with or without modification);
- (b) discharge the provisional order; or
- (c) adjourn the proceedings, and remit the provisional order to the court that made it with a request that that court take further evidence and further consider its provisional order.

(7) Where a provisional order is confirmed under this regulation, the court may, if it thinks fit, in the order confirming the provisional order, specify—

- (a) the time or times by which the money payable under the order that has been confirmed is to be paid;
- (b) the person, authority or court to whom or to which that money is to be paid; and
- (c) where necessary, the means by which that money shall be paid or disbursed.

(8) Where a provisional order is confirmed under this regulation (whether with or without modification), the order as so confirmed is enforceable in the Fiji Islands and has effect in the Fiji Islands as if it were an order made under the Act.

(9) Where the court adjourns the proceedings under subregulation (6) (c), the court may make such interim orders for periodic payments by the respondent as it thinks fit.

(10) Where a court confirms or discharges an order in accordance with subregulation (6) (a) or (b), the registrar shall notify an officer of the court or other authority in the overseas jurisdiction of the confirmation or discharge.

### **Power to make provisional order against person in reciprocating jurisdiction**

**426.**—(1) Where a respondent has not been served with an application to a court for a maintenance order and has not consented to the order, and the court is satisfied that the respondent is resident in, or is proceeding to, a reciprocating jurisdiction or a jurisdiction with restricted reciprocity, the court may, in the absence of the respondent, make any order that it could have made if the application had been duly served on the respondent and the respondent had failed to appear at the hearing of the application.

(2) An order made under subregulation (1) shall be provisional only and shall have no effect unless and until confirmed (either with or without modification) by a competent court in a reciprocating jurisdiction, or a jurisdiction with restricted reciprocity, in which the respondent is resident at the time of that confirmation, and the order shall be expressed accordingly.

(3) Where a court makes an order under subregulation (1), the registrar shall send to the CEO—

- (a) a copy of the depositions of the witnesses;
- (b) 3 certified copies of the order;
- (c) a statement of the grounds on which the making of the order could have been opposed if the respondent had appeared at the hearing; and
- (d) the information and material (if any) which the registrar possesses for ascertaining the identity and whereabouts of the respondent,

and the CEO shall, on receipt of those documents, cause them to be transmitted to a court in the jurisdiction in which the respondent is resident or to which the respondent is proceeding, with a request in writing that proceedings be instituted with respect to the confirmation and enforcement of the provisional order.

(4) Where an order made under subregulation (1) has come before a court in an overseas jurisdiction for confirmation and the order has been remitted by that court to the court in which the order was made for the taking of further evidence, the latter court shall, after notice has been given to such persons and in such manner as the court thinks fit, proceed to take the evidence, and shall cause the depositions of the witnesses to be sent to the court in the overseas jurisdiction.

(5) If, upon the taking of further evidence, it appears that the order ought not to have been made, the court may rescind the order or may, if it thinks fit, make a fresh provisional order under subregulation (1).

(6) Where the court takes evidence in pursuance of a request made under subregulation (4), the court may, for the purposes of subregulation (5), have regard to the evidence given in that other court.

(7) Where a court in an overseas jurisdiction in which the respondent is resident for the time being confirms (either with or without modification) a provisional order made under this regulation, the order has effect in the Fiji Islands as so confirmed.

(8) Where a court in an overseas jurisdiction confirms (either with or without modification) a provisional order made under this regulation, then, in any proceedings

arising out of or relating to the order, it shall be presumed, unless the contrary is proved, that the respondent was resident in the overseas jurisdiction at the time when the order was confirmed.

### **Proceedings for enforcement of overseas maintenance orders**

**427.**—(1) Where an overseas maintenance order is enforceable in the Fiji Islands by virtue of these Regulations—

- (a) all proceedings may be taken for the enforcement of the order; and
- (b) the provisions of the Act, these Regulations, the Family Law Rules 2005 and any other applicable Rules of Court shall, so far as they are applicable, and with such modifications as are necessary, apply to and in relation to proceedings for the enforcement of the order, as if the order were a maintenance order made under Part VII of the Act by the court in which the overseas order is registered under regulation 423 (2) or confirmed under regulation 425 (6), as the case may be.

(2) Proceedings for the enforcement of an overseas maintenance order may be taken by any person who would, if the order had been made in the Fiji Islands, be entitled to take proceedings under the order or, on behalf of that person, by a person holding office as a family law enforcement officer under rule 7.13 (1) of the Family Law Rules 2005.

### **Cancellation of registration in reciprocating jurisdiction**

**428.**—(1) Where—

- (a) a maintenance order made in the Fiji Islands is, under the law of a reciprocating jurisdiction or a jurisdiction with restricted reciprocity, enforceable in that jurisdiction; and
- (b) the court in which the order was made is satisfied that there are reasonable grounds for believing that the person against whom the order was made is not resident in, or proceeding to, that reciprocating jurisdiction, or it appears to the court that there is some good reason why the order should no longer be enforceable in that jurisdiction,

the court may direct that steps be taken to cancel the registration of the order in that jurisdiction.

(2) Where a court directs under subregulation (1) that steps be taken to cancel the registration of an order in a jurisdiction, the registrar of that court shall send to an appropriate authority in that jurisdiction a request in writing that the order be no longer enforceable in that jurisdiction.

(3) Where a court directs under subregulation (1) that steps be taken to cancel the registration of an order in a jurisdiction, the order shall cease to be enforceable in that jurisdiction for the purposes of these Regulations.

### **Cancellation of registration of overseas maintenance orders**

**429.**—(1) Where—

- (a) an overseas maintenance order is registered or confirmed under these Regulations; and
- (b) the court in which the order is registered or confirmed receives a request in writing made by the court that made the order or some other competent authority in the overseas jurisdiction that the order be made no longer enforceable in the Fiji Islands,

the first-mentioned court shall direct its registrar to cancel the registration of the order by noting the fact and date of the cancellation on the certified copy of the order filed in the court.

(2) Upon the cancellation of the registration of an overseas maintenance order, the order ceases to be enforceable in the Fiji Islands.

(3) Where the registrar of a court cancels the registration of an overseas maintenance order in pursuance of a request in writing having been received from a court or authority referred to in subregulation (1) (b), the registrar shall cause notice in writing of the fact that the registration has been cancelled, and of the date of the cancellation, to be given to the person who was required to make payments under the order.

### **Registration of overseas maintenance agreements**

**430.**—(1) An overseas maintenance agreement that has force and effect in a prescribed overseas jurisdiction may be registered in a court having jurisdiction under the Act.

(2) Where the CEO receives—

- (a) a certified copy of an overseas maintenance agreement from a prescribed overseas jurisdiction; and
- (b) a certificate signed by an officer of a court or other authority in that jurisdiction relating to the agreement and containing—

(i) a statement that the agreement is, at the date of the certificate, enforceable in that jurisdiction; and

(ii) a statement as to the amount of any arrears due under the agreement,

the CEO shall, if there are reasonable grounds for believing that the person against whom the agreement is enforceable is resident in or proceeding to the Fiji Islands, send the documents received by the CEO to the registrar of the Family Law Division of the High Court.

(3) Where the registrar receives from the CEO the documents referred to in subregulation (1), the registrar shall register the agreement by filing in the court the certified copy of the agreement and by noting the fact and date of the registration on that certified copy.

(4) An overseas maintenance agreement registered under subregulation (3) is, until the registration is cancelled, enforceable in the Fiji Islands as if it were a

maintenance agreement that had been entered into in the Fiji Islands and registered under section 171 of the Act.

(5) Upon registration of an overseas maintenance agreement under this regulation, the registrar shall—

- (a) notify an officer of the court or other authority in the prescribed overseas jurisdiction of the registration; and
- (b) cause a certified copy of the agreement and a notice of registration of the agreement specifying—
  - (i) the amount (if any), including arrears, due under the agreement; and
  - (ii) the person, authority or court to whom or to which money payable under the agreement is to be paid,

to be served, in accordance with Division 4.2 of the Family Law Rules 2005, upon the person required to make payments under the agreement.

(6) The receipt of a person, authority or registrar of a court for any amount paid, in pursuance of this regulation, to that person, authority or court under an agreement shall be sufficient discharge of the liability of the person required under the agreement to pay that amount.

### **Cancellation of registration of overseas maintenance agreements**

**431.**—(1) Where—

- (a) an overseas maintenance agreement is registered under these Regulations; and
- (b) the court in which the agreement is registered receives a request in writing from—
  - (i) the parties to the agreement; or
  - (ii) the court or other authority in the prescribed overseas jurisdiction an officer of which signed the certificate referred to in subregulation 430 (2) (b) relating to the agreement,

that the agreement be no longer enforceable in the Fiji Islands,

the first-mentioned court shall direct its registrar to cancel the registration of the agreement by noting the fact and date of cancellation on the certified copy of the agreement filed in the court.

(2) Upon the cancellation of the registration of an overseas maintenance agreement under subregulation (1), the agreement ceases to be enforceable in the Fiji Islands.

(3) Where the registrar of a court cancels the registration of an overseas maintenance agreement in pursuance of a request in writing having been received from a court or authority referred to in subregulation (1) (b) (ii), the registrar shall cause notice in writing of the fact that the registration has been cancelled, and of the date of the cancellation, to be given to the person who was required to make payments under the agreement.

### **Transmission of maintenance agreements to prescribed overseas jurisdiction**

**432.**—(1) Where—

- (a) a maintenance agreement registered in a court exercising jurisdiction under the Act remains in force;
- (b) the agreement may be enforced in a prescribed overseas jurisdiction as if it were an order of a court of that jurisdiction; and
- (c) a person having rights under the agreement so requests in writing,

the registrar of court in which the agreement is registered shall send to the appropriate court or authority in the prescribed overseas jurisdiction—

- (d) 3 certified copies of the agreement sealed by the court;
- (e) 3 certified copies of the order, if any, approving the agreement;
- (f) such information and material (if any) as the registrar possesses for ascertaining the identity and whereabouts of the person obliged to make payments under the agreement;
- (g) a certificate, signed by the registrar, containing a statement that the agreement is, at the date of the certificate, enforceable in the Fiji Islands;
- (h) a certificate stating what moneys are due, payable and accruing under the agreement; and
- (j) a request in writing that the agreement be made enforceable in that prescribed overseas jurisdiction.

(2) Nothing in these Regulations prevents a party to a registered maintenance agreement or a child who is a beneficiary under such agreement from—

- (a) obtaining copies of the agreement sealed by the court and of any order approving the agreement; and
- (b) applying to a court in any overseas jurisdiction (whether or not the jurisdiction is a prescribed overseas jurisdiction) for enforcement of the maintenance agreement in that jurisdiction.

**433.**—[Number not used.]

### **Party in the Fiji Islands may apply to vary, &c., overseas maintenance order or agreement**

**434.**—(1) Where an overseas maintenance order is enforceable in the Fiji Islands, a person for whose benefit the order was made or the person against whom the order was made may apply to a court in which the order is registered for an order discharging, suspending, reviving or varying the overseas maintenance order.

(2) Where an overseas maintenance agreement is enforceable in the Fiji Islands, a person for whose benefit the agreement was entered into or the person who is liable to make payments under the agreement may apply to a court in which the agreement is registered for an order discharging, suspending, reviving or varying the agreement or discharging or waiving arrears under the agreement.

(3) In an application under subregulation (1) or (2), the law to be applied is the law in force in the Fiji Islands under the Act.

**Discharge, &c., of overseas maintenance order made in absence of party**

**435.** Where—

- (a) an application is made under regulation 434 (1) by the person against whom the order was made;
- (b) the applicant was not duly served with a summons to appear in the proceedings in which the order was made, did not appear in those proceedings and did not consent to the making of the order; and
- (c) the application is made within 6 months after service on the applicant of notice of registration of the order in the Fiji Islands,

the applicant may raise any matter that the applicant could have raised under Part VII of the Act as if the proceedings in which the overseas maintenance order was made had been heard in the Fiji Islands.

**Certain orders to be provisional only**

**436.**—(1) Where the court proposes to make an order under regulation 434 and the law of the overseas jurisdiction in which the original order was made or in which the maintenance agreement is enforceable, as the case may be, provides for the confirmation by a court of that jurisdiction of orders of a kind referred to in subregulation (1) or (2) of that regulation if made as provisional orders, the order under regulation 434 shall be provisional only and have no effect unless and until so confirmed (with or without modification), and the order shall be expressed accordingly.

(2) A provisional order in accordance with subregulation (1) may be made notwithstanding the fact that the respondent has not been served with the application to the court and has not consented to the order proposed in the application.

(3) Where a provisional order is made by a court in accordance with subregulation (1), the registrar of the court shall send a certified copy of the provisional order, together with a copy of the depositions of the witnesses, to the court in the overseas jurisdiction in which the original order was made.

(4) Where the court in the overseas jurisdiction confirms (with or without modification) a provisional order made on an application under regulation 434, the order has effect in the Fiji Islands as so confirmed.

(5) Where a provisional order made in accordance with subregulation (1) is remitted by the court in an overseas jurisdiction for the taking of further evidence, the court to which the order has been remitted shall, after notice has been given to the applicant for the order and to such persons and in such manner as the court thinks fit, proceed to take the evidence, and shall cause a copy of the depositions of the witnesses to be sent to the court in the overseas jurisdiction.

(6) If, upon taking the further evidence, it appears to the court that the order ought not to have been made, the court may rescind the order and may, if it thinks fit, make a fresh provisional order.

### **Confirmation of variations made provisionally in overseas jurisdiction**

**437.**—(1) Where the registrar of a court receives—

(a) a certified copy of—

(i) a provisional order made by a court in an overseas jurisdiction varying, discharging, suspending or reviving a maintenance order made in the Fiji Islands and enforceable in that overseas jurisdiction; or

(ii) a provisional order made by a court in an overseas jurisdiction varying, discharging, suspending or reviving an overseas maintenance order made in that jurisdiction and enforceable in the Fiji Islands by virtue of these Regulations; and

(b) a copy of the depositions of the witnesses who gave evidence at the hearing of the application upon which the provisional order was made,

the registrar shall apply to the court for an order confirming the provisional order.

(2) A registrar making an application under subregulation (1) shall cause a copy of the application to be served on the respondent in accordance with Division 4.2 of the Family Law Rules 2005.

(3) Upon the hearing of the application the court may—

(a) confirm the provisional order (with or without modification);

(b) discharge the provisional order; or

(c) adjourn the proceedings and remit the provisional order to the court that made it with a request that the court take further evidence and further consider its provisional order.

(4) Where a provisional order is confirmed under this regulation (whether with or without modification), the order as so confirmed has effect in the Fiji Islands as if it were an order made by a court having jurisdiction under the Act.

(5) In this regulation, a reference to a provisional order shall be read as including a reference to a provisional variation of a Fiji Islands maintenance agreement or to a provisional variation of an overseas maintenance agreement, as the case requires.

## **PART V—CONVENTION ON RECOVERY ABROAD OF MAINTENANCE**

### **Interpretation of this Part**

**501.**—(1) In this Part, unless the contrary intention appears—

“Convention” means the Convention on the Recovery Abroad of Maintenance, referred to in section 198 of the Act, a copy of the English text of which is set out in Schedule 5;

“convention country” means a country that under regulation 503 is a convention country;

“Receiving Agency” has the meaning that it has in the Convention;

“Transmitting Agency” has the meaning that it has in the Convention.

- (2) In this Part, unless the contrary intention appears—
  - (a) a reference to payment of money for the maintenance of a child includes a reference to payment of money for the education of that child; and
  - (b) a reference to proceedings under this Part in a court includes a reference to proceedings on appeal from original proceedings under this Part.
- (3) The purpose of this Part is to give effect to section 198 of the Act.

### **Immunity of CEO in respect of orders to pay costs**

**502.** The CEO shall not be made subject to any order to pay costs in relation to the exercise of the powers, or the performance of the functions, of the CEO under this Part.

### **Convention countries**

**503.—**(1) For the purposes of this Part, each country in respect of which the Convention is in force for the Fiji Islands is a convention country.

- (2) The CEO shall—
  - (a) upon the entry into force for the Fiji Islands of the Convention, publish a notice in the *Gazette* specifying the countries in respect of which the Convention then has force for the Fiji Islands; and
  - (b) thereafter, as soon as practicable after—
    - (i) a country becomes, or ceases to be, a country in respect of which the Convention has force for the Fiji Islands; or
    - (ii) any reservations become applicable, or cease to be applicable, in relation to a country in respect of which the Convention has force for the Fiji Islands,
 publish a replacement notice in the *Gazette* specifying—
    - (iii) the countries in respect of which the Convention then has force for the Fiji Islands; and
    - (iv) the countries in respect of which the Convention has ceased to have force for the Fiji Islands.
- (3) A notice under subregulation (2) shall specify—
  - (a) in relation to each country mentioned in the notice as a country in respect of which the Convention has force for the Fiji Islands—
    - (i) the date on which it became a country in respect of which the Convention has force for the Fiji Islands; and
    - (ii) the reservations (if any) applicable to the Convention having force for Fiji in relation to that country; and
  - (b) in relation to each country mentioned in the notice as a country in respect of which the Convention has ceased to have force for the Fiji Islands—
    - (i) the date on which it became a country in respect of which the Convention had force for the Fiji Islands;

- (ii) the date on which it ceased to be a such country; and
- (iii) the reservations (if any) that were applicable to the Convention having force for Fiji in relation to that country.

(4) A notice under subregulation (2) is for public information only, and neither the failure to publish such a notice nor any inaccuracy in such a notice shall affect the rights and obligations of any person under this Part or under the Convention.

### **Application for recovery of maintenance in convention countries**

**504.**—(1) Where a person in the Fiji Islands claims—

- (a) to be entitled under the law of a convention country—
  - (i) to recover maintenance from another person; or
  - (ii) to variation of an order made in that country for payment of maintenance by another person; and
- (b) that that other person is subject to the jurisdiction of that country,

the first-mentioned person may apply to the CEO to have the claim transmitted to a Receiving Agency in that country.

(2) An application under subregulation (1) shall be accompanied by a photograph of the claimant and, if practicable, by a photograph of the person from whom maintenance is claimed.

(3) Unless the CEO is satisfied that a claim referred to in subregulation (1) for maintenance is not in accordance with the requirements of the Convention the CEO shall take on behalf of the claimant any action required to be taken by a Transmitting Agency under the Convention to recover the maintenance.

(4) Where a person who is a resident of the Fiji Islands is required, by an order to which the Convention applies, to pay maintenance to a claimant in a convention country, that person may apply under this regulation for the suspension or variation of that order as if the Fiji Islands were a convention country.

### **Applications by persons in convention countries for recovery of maintenance under Family Law Act**

**505.**—(1) This regulation applies if—

- (a) the CEO receives from a Transmitting Agency in a convention country an application for—
  - (i) recovery of maintenance that a person claims is required, under the Family Law Act, to be paid by another person; or
  - (ii) variation of an existing order for maintenance; and
- (b) there are no reasonable grounds for believing that the other person is not subject to the jurisdiction of the courts of the Fiji Islands.

(2) The CEO may do anything required to be done on behalf of the claimant by a Receiving Agency under the Convention to recover the maintenance.

(3) Things that may be done by the CEO do not include registration or enforcement of an order mentioned in, or sought by, the application.

(4) However, a Fiji Islands court may, in proceedings under this Part, have regard to the application and the record of proceedings of a court that made any order to which the application relates.

(5) This regulation does not affect the operation of Part VI of these Regulations.

### **Proceedings on behalf of persons in convention countries for recovery of maintenance**

**506.**—(1) This regulation applies to proceedings under this Part in a court on behalf of a claimant.

(2) The court must proceed as if the claimant were before the court.

(3) The CEO may do anything that is required or authorised to be done by an applicant in proceedings in that court in relation to maintenance.

(4) In any document to be filed in, or issued out of, the court, the CEO may be described as the Chief Executive Officer of the Ministry of Justice acting on behalf of the claimant, whose name must be set out in the document.

### **Return of applications**

**507.**—(1) If, in relation to an application mentioned in regulation 506 (1) received from a Transmitting Agency in a convention country, a summons or other document that requires the other person mentioned in that subregulation to appear in proceedings under this Part cannot be served on the other person, the CEO must send to that Agency a statement giving whatever information the CEO has been able to obtain concerning the whereabouts of that other person and must return the application to that Agency.

(2) For the purposes of section 175 of the Act, the office of CEO is a prescribed office.

(3) Subregulation (2) does not limit the functions of the CEO under this Part.

### **Certain requests to be made only with leave of court**

**508.** Notwithstanding any other provision of these Regulations, in order to prevent proceedings under this Part from being unduly protracted a respondent must not seek, without leave of the court:

- (a) a request for answers to interrogatories;
- (b) a request to make discovery of documents;
- (c) a notice to produce documents; or
- (d) a notice to admit facts or documents.

### **Payment of sums under orders of courts**

**509.**—(1) Notwithstanding any other provision of these Regulations or the Family Law Rules, sums of money required to be paid by a person in the Fiji Islands under an order of a court in proceedings under this Part shall be paid to the court or to such person as the court directs.

(2) A court that receives under subregulation (1) a sum of money with respect to a claim for maintenance transmitted to the CEO by a Transmitting Agency in a convention country shall, as soon as practicable, remit the money to that Agency.

### **Taking of evidence at request of appropriate authority in convention countries**

**510.**—(1) This regulation applies if the CEO receives a request from the appropriate authority to obtain evidence concerning specified matters about an application under the law of a convention country—

- (a) to recover maintenance from another person; or
- (b) to the variation of an order made in that country for payment of maintenance by another person;

where the person is subject to the jurisdiction of that country.

(2) The CEO and any court exercising jurisdiction under the Act must do anything required to be done under the Convention to obtain the evidence.

(3) When the evidence is obtained, the CEO must send a certified copy of a record of the evidence to the appropriate authority.

(4) If under subregulation (2), the CEO requests a court to take evidence for the proceedings mentioned in subregulation (1), the court must give notice of the time when, and the place where, the evidence is to be taken to:

- (a) the CEO; and
- (b) the person from whom the maintenance is claimed; and
- (c) the appropriate authority.

(5) The notice must be sufficient, in the opinion of the court, to enable the parties to the proceedings to attend or be represented at the taking of the evidence.

(6) In this regulation, “appropriate authority”, in relation to a request to obtain evidence for proceedings in a convention country, means—

- (a) the Transmitting Agency for that country under the convention; or
- (b) a court in that country.

### **Obtaining evidence in convention countries for purposes of proceedings under this Part**

**511.**—(1) In proceedings under this Part in a court on behalf of a claimant in a convention country, the court may require the CEO to request the Transmitting Agency in the convention country to obtain evidence required for the proceedings.

- (2) A requirement by a court under this regulation shall set out—
- (a) the names and addresses of the claimant and respondent in the proceedings;
  - (b) the name and address of any person whose evidence is to be taken; and
  - (c) the matters concerning which evidence is required.

(3) The CEO shall transmit to the Transmitting Agency in the convention country a request that the CEO has been required under this regulation to make and shall request the Agency to give to the CEO and the respondent in the proceedings notice of the time when, and place where, the evidence is to be taken in order that the respondent may attend, or be represented at, the taking of the evidence.

(4) Nothing in this regulation affects the power of a court to order or request the taking of evidence within or outside the Fiji Islands.

### **Admissibility of evidence given in convention countries**

**512.** In a proceeding under this Part in a court, a statement contained in a document that purports—

- (a) to set out or summarize evidence given in proceedings in a court in a convention country and to have been signed by the person before whom the evidence was given;
- (b) to set out or summarize evidence taken in a convention country for the purpose of a proceeding under this Part in a court (whether in response to a request made by the court or otherwise) and to have been signed by the person before whom the evidence was taken; or
- (c) to have been received as evidence in a proceeding in a court in a convention country and to have been signed by a judge or other officer of the court,

is admissible as evidence of any fact stated in the document to the same extent as oral evidence of that fact is admissible in the proceeding, without proof of the signature of the person purporting to have signed it or of the official position of that person.

### **Orders of courts in convention countries**

**513.** In proceedings under this Part in a court, a document purporting to be an order, or a copy of an order, of a court in a convention country and to have been signed by a judge or other officer of the court is admissible as evidence of that order without proof of the signature of the person purporting to have signed it or of the official position of that person.

## PART VI—CHILD ABDUCTION CONVENTION

### *Division 1—Preliminary*

#### **Purpose**

- 611.**—(1) The purpose of this Part is to give effect to section 200 of the Act.
- (2) This Part is intended to be construed—
- (a) having regard to the principles and objects mentioned in the preamble to, and Article 1 of, the Convention;
  - (b) recognising, in accordance with the Convention, that the appropriate forum for resolving disputes between parents relating to a child’s care, welfare and development is ordinarily the child’s country of habitual residence; and
  - (c) recognising that the effective implementation of the Convention depends on the reciprocity and mutual respect between judicial or administrative authorities (as the case may be) of convention countries.

#### **Interpretation**

- 612.**—(1) In this Part, unless the contrary intention appears—
- “Article 3 applicant” means a person, an institution or another body that has rights of custody in relation to a child for the purposes of the Convention, and has made an application under regulation 631;
- “Central Authority” has the meaning it has in the Convention;
- “child” means a person who has not attained the age of 16 years;
- “Convention” means the Convention on the Civil Aspects of International Child Abduction referred to in section 200 of the Act, a copy of the English text of which is set out in Schedule 6;
- “convention country” means a country that under regulation 617 is a convention country;
- “request” means a request made to the CEO, as Central Authority for the Fiji Islands, for the purposes of Article 8 or 21 of the Convention;
- “rights of access” include the right to take a child for a limited period of time to a place other than the child’s habitual residence;
- “rights of custody” has the meaning given in regulation 613.

(2) The removal or retention of a child is “wrongful” in the circumstances mentioned in Article 3 of the Convention.

(3) Unless the contrary intention appears, an expression that is used in this Part and in the Convention has the same meaning in this Part as in the Convention.

- (4) A reference in this Part to a child who is removed—
- (a) from the Fiji Islands to a convention country; or

- (b) from a convention country to another convention country or to the Fiji Islands,

includes a reference to the removal of the child to the convention country concerned or to the Fiji Islands, as the case may be, whether or not the child is first removed to another country.

### **Meaning of “rights of custody”**

**613.**—(1) For the purposes of this Part, a person, an institution or another body has rights of custody in relation to a child, if—

- (a) the child was habitually resident in the Fiji Islands or in a convention country immediately before his or her removal or retention; and
- (b) rights of custody in relation to the child are attributed to the person, institution or other body, either jointly or alone, under a law in force in the convention country in which the child habitually resided immediately before his or her removal or retention.

(2) For the purposes of subregulation (1), rights of custody include rights relating to the care of the person of the child and, in particular, the right to determine the place of residence of the child.

- (3) For the purposes of this regulation, rights of custody may arise—
  - (a) by operation of law;
  - (b) by reason of a judicial or administrative decision; or
  - (c) by reason of an agreement having legal effect under a law in force in the Fiji Islands or a convention country.

### **Central Authority for the Fiji Islands**

**614.**—(1) The duties, powers and functions of the Central Authority for the Fiji Islands under the Convention are conferred on the CEO.

(2) In addition to the other functions conferred on the CEO by this Part, the functions of the CEO are—

- (a) to do, or co-ordinate the doing of, anything that is necessary to enable the performance of the obligations of the Fiji Islands, or to obtain for the Fiji Islands any advantage or benefit, under the Convention;
- (b) to advise the Attorney-General, either on the initiative of the CEO or on a request made to the CEO by the Attorney-General, on all matters that concern, or arise out of performing, those obligations, including any need for additional legislation required for performing those obligations; and
- (c) to do everything that is necessary or appropriate to give effect to the Convention in relation to the welfare of a child on the return of the child to the Fiji Islands.

(3) The CEO has all the duties, may exercise all the powers, and shall perform all the functions, that a Central Authority has under the Convention.

(4) The CEO must perform the functions, and exercise the powers, of a Central Authority as quickly as a proper consideration of each matter relating to the performance of a function or the exercise of a power allows.

**This Part does not affect other powers of, or rights of application to, a court**

**615.**—(1) This Part is not intended to prevent a person, an institution or another body that has rights of custody in relation to a child for the purposes of the Convention from applying to a court if the child is removed to, or retained in, the Fiji Islands in breach of those rights.

(2) This Part is not to be taken as preventing a court from making an order at any time under Part VI of the Act or under any other law in force in the Fiji Islands for the return of a child to the country in which he or she habitually resided immediately before his or her removal or retention.

**Immunity of CEO from orders to pay costs**

**616.** The CEO shall not be made subject to any order to pay costs in relation to the exercise of the powers, or the performance of the functions, of the Central Authority for the Fiji Islands.

**Convention countries**

**617.**—(1) Subject to the Convention, each country in respect of which the Convention has entered into force for the Fiji Islands is a convention country for the purposes of this Part.

- (2) The CEO shall—
- (a) as soon as practicable after the commencement of this Part, publish a notice in the *Gazette* specifying the countries in respect of which the Convention then has force for the Fiji Islands; and
  - (b) thereafter, as soon as practicable after—
    - (i) a country becomes, or ceases to be, a country in respect of which the Convention has force for the Fiji Islands; or
    - (ii) any reservations become applicable, or cease to be applicable, in relation to a country in respect of which the Convention has force for the Fiji Islands,
 publish a replacement notice in the *Gazette* specifying—
    - (iii) the countries in respect of which the Convention then has force for the Fiji Islands; and
    - (iv) the countries in respect of which the Convention has ceased to have force for the Fiji Islands.

- (3) A notice under subregulation (2) shall specify—
- (a) in relation to each country mentioned in the notice as a country in respect of which the Convention has force for the Fiji Islands—
    - (i) the date on which it became a country in respect of which the Convention has force for the Fiji Islands; and
    - (ii) the reservations (if any) applicable to the Convention having force for Fiji in relation to that country; and
  - (b) in relation to each country mentioned in the notice as a country in respect of which the Convention has ceased to have force for the Fiji Islands—
    - (i) the date on which it became a country in respect of which the Convention had force for the Fiji Islands;
    - (ii) the date on which it ceased to be a such country; and
    - (iii) the reservations (if any) that were applicable to the Convention having force for Fiji in relation to that country.

(4) A notice under subregulation (2) is for public information only, and neither the failure to publish such a notice nor any inaccuracy in such a notice shall affect the rights and obligations of any person under this Part or under the Convention.

*Division 2—Requests to central authorities, except for access*

**Request for return of child abducted from the Fiji Islands**

**621.**—(1) If a person, an institution or another body claims under a law in force in the Fiji Islands to have rights of custody in relation to a child who, in breach of those rights, has been—

- (a) removed from the Fiji Islands to a convention country; or
- (b) retained in a convention country,

the person, institution or other body may send a request in writing to the CEO to have the claim transmitted to the Central Authority in the country to which the child has been removed or in which the child is retained.

(2) A request application under subregulation (1) must be in accordance with Form 61.

(3) Where the CEO is satisfied that an application made under subregulation (1) is in accordance with the requirements of the Convention, the CEO must, on behalf of the person, institution or other body making the request, take any action required to be taken by a Central Authority under the Convention.

### **Request for return of child abducted to the Fiji Islands**

**622.**—(1) If the CEO—

- (a) receives a request in relation to a child who has been removed from a convention country to the Fiji Islands; and
  - (b) is satisfied that the request is in accordance with the Convention,
- the CEO must take action to secure the return of the child under the Convention.

(2) The CEO may refuse to accept a request if the CEO is not satisfied that the application is in accordance with the Convention.

(3) If the CEO refuses to accept a request, it must, as soon as practicable after doing so, inform the person, institution or other body, or the Central Authority, that made the request of the refusal and of the reason for the refusal.

(4) For the purposes of subregulation (1), the action taken by the CEO includes—

- (a) seeking an amicable resolution of the differences between the applicant and the person opposing return of the child in relation to the removal or retention of the child;
- (b) seeking the voluntary return of the child; and
- (c) applying for an order under Division 3.

### ***Division 3—Court applications, except for access***

#### **Applications to court**

**631.**—(1) If a child is removed from a convention country to, or retained in, the Fiji Islands, the CEO, or a person, an institution or another body that has rights of custody in relation to the child for the purposes of the Convention (an “Article 3 applicant”), may apply to the court, in accordance with Form 62, for any of the following orders:

- (a) an order for the return of the child under the Convention;
- (b) an order for the issue of a warrant mentioned in subregulation (4);
- (c) an order directing that—
  - (i) the child not be removed from a specified place; and
  - (ii) members of the Fiji Police Force prevent the child being removed from that place;
- (d) an order requiring that arrangements be made (as necessary) to place the child with an appropriate person, institution or other body to secure the welfare of the child, until a request under regulation 622 is determined;
- (e) any other order that the responsible Central Authority considers appropriate to give effect to the Convention.

(2) If a child is wrongfully removed from the Fiji Islands to, or retained in, a convention country, the CEO may apply to the court, in accordance with Form 62, for any of the following orders:

- (a) an order for the issue of a warrant mentioned in subregulation (4);
- (b) an order that the CEO considers necessary or appropriate to give effect to the Convention in relation to the welfare of the child after his or her return to the Fiji Islands;
- (c) any other order that the CEO considers appropriate to give effect to the Convention.

(3) If a copy of an application under this regulation is served on a person—

- (a) the person must file an answer, or an answer and a cross-application, in accordance with Form 63; and
- (b) the applicant may file a reply in accordance with Form 64.

(4) For the purposes of subregulations (1) (b) and (2) (a), a warrant—

- (a) is a warrant that authorises a person named or described in the warrant, with such assistance as is necessary and reasonable, and, if necessary and reasonable, by force—
  - (i) to find and recover the child; and
  - (ii) if that person reasonably believes that the child is in, or on, a vehicle, vessel, aircraft or premises, and the circumstances are so serious and urgent as to justify the entry and search under the warrant—
    - (A) to stop, enter and search the vehicle, vessel or aircraft; or
    - (B) to enter and search the premises; and
  - (iii) to deliver the child to the person named in the warrant; and
- (b) must be in accordance with Form 65.

## Orders

**632.**—(1) If a court is satisfied that it is desirable to do so, the court may, in relation to an application made under regulation 631—

- (a) make an order of a kind mentioned in that regulation;
- (b) make any other order that the court considers to be appropriate to give effect to the Convention; and
- (c) include in an order to which paragraph (a) or (b) applies a condition that the court considers to be appropriate to give effect to the Convention.

(2) A court must, so far as practicable, give to an application such priority as will ensure that the application is dealt with as quickly as a proper consideration of each matter relating to the application allows.

(3) If a court is satisfied that there is an appreciable possibility or a threat that a child will be removed from the Fiji Islands, the court may order the delivery of the passport of the child, and of any other relevant person, to the CEO, a member of the Fiji

Police Force, or such other person as the court considers appropriate, on such conditions as the court considers to be appropriate to give effect to the Convention.

(4) If an application made under regulation 631 is not determined by a court within the period of 42 days commencing on the day on which the application is made—

- (a) the CEO or Article 3 applicant may request the Registrar of the court to state in writing the reasons for the application not having been determined within that period; and
- (b) as soon as practicable after a request is made, the Registrar must give the statement to the CEO or Article 3 applicant.

### **Order for the return of child removed to, or retained in, the Fiji Islands**

**633.**— (1) If—

- (a) an application is made to a court under regulation 631 (1) for an order for the return of a child who has been removed to, or retained in, the Fiji Islands;
- (b) the application is made within one year of the child's removal or retention; and
- (c) the CEO or Article 3 applicant satisfies the court that the child's removal or retention was wrongful under subregulation (2);

the court must, subject to subregulation (4), make the order.

(2) For the purposes of subregulation (1), a child's removal to, or retention in, the Fiji Islands is wrongful if—

- (a) the child was under 16;
- (b) the child habitually resided in a convention country immediately before the child's removal to, or retention in, the Fiji Islands;
- (c) the person, institution or other body seeking the child's return had rights of custody in relation to the child under the law of the country in which the child habitually resided immediately before the child's removal to, or retention in, the Fiji Islands;
- (d) the child's removal to, or retention in, the Fiji Islands is in breach of those rights of custody; and
- (e) at the time of the child's removal or retention, the person, institution or other body—
  - (i) was actually exercising the rights of custody (either jointly or alone); or
  - (ii) would have exercised those rights if the child had not been removed or retained.

(3) If—

- (a) an application is made to a court under regulation 631 (1) for an order for the return of a child who has been removed to, or retained in, the Fiji Islands;

- (b) the application for the return of the child is made more than one year after the day on which the child was first removed to, or retained in, the Fiji Islands; and
  - (c) the court is satisfied that the person opposing the return has not established that the child has settled in his or her new environment,
- the court must, subject to subregulation (4), make the order.

(4) A court may refuse to make an order under subregulation (1) or (3) if a person opposing return establishes that—

- (a) the person, institution or other body seeking the child's return—
  - (i) was not actually exercising rights of custody when the child was removed to, or first retained in, the Fiji Islands and those rights would not have been exercised if the child had not been so removed or retained; or
  - (ii) had consented or subsequently acquiesced in the child being removed to, or retained in, the Fiji Islands;
- (b) there is a grave risk that the return of the child under the Convention would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation;
- (c) each of the following applies:
  - (i) the child objects to being returned;
  - (ii) the child's objection shows a strength of feeling beyond the mere expression of a preference or of ordinary wishes;
  - (iii) the child has attained an age, and a degree of maturity, at which it is appropriate to take account of his or her views; or
- (d) the return of the child would not be permitted by the fundamental principles of the Fiji Islands relating to the protection of human rights and fundamental freedoms.

(5) For the purposes of subregulation (4), the court must take into account any information relating to the social background of the child that is provided by the Central Authority or other competent authority of the country in which the child habitually resided immediately before his or her removal or retention.

(6) The court to which an application for the return of a child is made is not precluded from making an order for the return of a child to the country in which he or she habitually resided immediately before his or her removal or retention only because a matter mentioned in subregulation (4) is established by a party opposing return.

### **Declaration that removal or retention was wrongful**

**634.**—(1) On application, a court may by order declare that—

- (a) the removal of a child from the Fiji Islands to a convention country; or
  - (b) the retention of a child in a convention country,
- was wrongful within the meaning of Article 3 of the Convention.

(2) The court may request the CEO to arrange for the person, institution or other body making a request in relation to the return of a child to a convention country to obtain an order of a court, or a decision of a competent authority, of the country in which the child habitually resided immediately before his or her removal or retention declaring that the removal or retention was wrongful within the meaning of Article 3 of the Convention.

### **Effect of other custody orders in the Fiji Islands or overseas**

**635.**—(1) The following rules apply to the hearing of an application made under regulation 631 (1):

- (a) the court must not refuse to make an order for the return of the child under the Convention only because there is in force or enforceable in the Fiji Islands an order relating to the custody of the child;
- (b) the court may take into account the reasons for the making of any order relating to the custody of the child;
- (c) an order for the return of the child does not determine the merits of any custody issue in relation to the child.

(2) In this regulation, “custody”, in relation to a child, includes—

- (a) guardianship of the child;
- (b) responsibility for long-term, or day-to-day, care, welfare and development of the child; and
- (c) responsibility as the person or persons with whom the child is to live.

### **When a court not to make certain orders**

**636.** If an application for the return of a child is made, a court must not make an order, except an interim order, providing for the custody of the child, within the meaning of regulation 635, until the application is determined.

### **Discharge of return order**

**637.**—(1) If a court makes an order under this Division for the return of a child (a “return order”), the CEO or a respondent to the proceeding may apply to the court, in accordance with Form 65A, for the discharge of the order.

(2) The court must not make an order discharging a return order, or a part of a return order, unless it is satisfied of all of the following:

- (a) all the parties consent to the return order being discharged;
- (b) since the return order was made, circumstances have arisen that make it impractical for the order to be carried out;
- (c) exceptional circumstances exist that justify the return order being discharged;

- (d) the day on which the application for the discharge of the return order was made is more than 2 years after the return order was made or any appeal in relation to the return order was determined.

### **Arrangements for return of child**

**638.**—(1) If the CEO applies to the court for an order for the return of a child, and the order is made, the CEO must cause such arrangements as are necessary to be made to give effect to the order.

(2) If—

- (a) an order is made under regulation 633; and  
 (b) within 7 days after the order is made, the CEO or Article 3 applicant has not been notified that the order has been stayed,

the child must be returned in accordance with the order.

### **Security for costs etc**

**639.** The CEO or a court, as the case may be, shall not require any security or bond for the payment of costs or expenses of or incidental to proceedings falling within the scope of the Convention.

## ***Division 4—Applications and requests in relation to access***

### **Request for access to child in convention country**

**641.**—(1) If a person, an institution or another body claims under a law in force in the Fiji Islands to have rights of access to a child in a convention country, the person, institution or other body may send a request to the CEO, in accordance with Form 66, to have arrangements made for establishing, organising or securing the effective exercise of those rights in that convention country.

(2) If the CEO is satisfied that the request is a request to which the Convention applies and is in accordance with the requirements of the Convention, the CEO must take steps to enable the performance of the obligations of the Fiji Islands under Article 21 of the Convention.

(3) The CEO may refuse to accept a request if the CEO is satisfied that the request is not in accordance with the Convention.

(4) If the CEO refuses to accept a request, the CEO must, as soon as practicable after doing so, inform the person, institution or other body, or the Central Authority that made the request of the refusal and of the reason for the refusal.

### **Request and application for access to child in the Fiji Islands**

**642.**—(1) If a person, an institution or another body claims to have rights of access to a child in the Fiji Islands under a law in force in a convention country, the person, institution or other body may send a request to the CEO to have arrangements made for establishing, organising or securing the effective exercise of those rights in the Fiji Islands.

(2) If the CEO is satisfied that a request is in accordance with the requirements of the Convention and this Part, the CEO may apply to a court, in accordance with Form 67, for an order under subregulation (4) that is necessary or appropriate to establish, organise or secure the effective exercise of the rights of access to which the application relates.

(3) If the CEO is not satisfied that a request is in accordance with the requirements of the Convention and this Part, the CEO—

- (a) may refuse to accept the request; and
- (b) must, as soon as practicable, inform the Central Authority of the convention country through which the request was made of the refusal and the reasons for the refusal.

(4) An application to a court by the CEO under subregulation (2) may seek any of the following orders:

- (a) an order for contact between the child and a person (or persons);
- (b) an order for the issue of a warrant mentioned in subregulation (8);
- (c) any other order that the CEO considers appropriate to give effect to the Convention.

(5) If an application is made under subregulation (2)—

- (a) a person on whom a copy of the application is served must file an answer, or an answer and cross-application, in accordance with Form 68; and
- (b) the CEO may file a reply in accordance with Form 69.

(6) The court may make—

- (a) the order or orders sought in the application; or
- (b) any other order that the court considers appropriate to give effect to the Convention.

(7) The court may make an order under subregulation (6) regardless of—

- (a) whether an order or determination (however described) has been made under a law in force in another convention country about rights of access to the child concerned;
- (b) if the child was removed to the Fiji Islands, when that happened; or
- (c) whether the child has been wrongfully removed to, or retained in, the Fiji Islands.

- (8) For the purposes of subregulation (4) (b), a warrant—
- (a) is a warrant that authorises a person named or described in the warrant, with such assistance as is necessary and reasonable, and, if necessary and reasonable, by force—
    - (i) to find and recover the child; and
    - (ii) if that person reasonably believes that the child is in, or on, a vehicle, vessel, aircraft or premises, and the circumstances are so serious and urgent as to justify the entry and search under the warrant—
      - (A) to stop, enter and search the vehicle, vessel or aircraft; or
      - (B) to enter and search the premises; and
    - (iii) to deliver the child to the person named in the warrant; and
  - (b) must be made in accordance with Form 65.

(9) Nothing in this regulation prevents the CEO from seeking an amicable resolution under Article 7 of the Convention in relation to the rights of access to the child.

### *Division 5—General*

#### **Reports by family and child counsellors and welfare officers**

- 651.**—(1) In proceedings under this Part in a court, the court may—
- (a) direct a family and child counsellor or welfare officer to report to the court on such matters that are relevant to the proceedings as the court considers to be appropriate; and
  - (b) adjourn the proceedings until the report is made.

(2) A family and child counsellor or welfare officer may include in a report, in addition to the matters required to be included in the report, any other matter that relates to the welfare of the child.

(3) The court may make such orders, or give such further directions, as it considers appropriate in relation to the preparation of the report including, if the court considers it appropriate, orders or directions in relation to the attendance on the family and child counsellor or welfare officer of a party to the proceedings or of the child.

(4) If a person fails to comply with any order or direction under subregulation (3), the family and child counsellor or welfare officer must report the failure to the court.

(5) If, under subregulation (4), a family and child counsellor or welfare officer reports to the court a failure of the kind referred to in that subregulation, the court may give such further directions in relation to the preparation of the report as the court considers appropriate.

(6) A report made to the court in accordance with a direction given under this regulation may be received in evidence in any proceedings under this Part.

(7) The court may direct the CEO to inform a Central Authority in a convention country about a matter that—

- (a) relates to the welfare of the child; and
- (b) under subregulation (2), is included in a report.

### **Service of notice of certain applications**

**652.**—(1) Subject to subregulation (2), notice of an application under regulation 631, 637 or 642 that includes a copy of the application must be served by the applicant in accordance with the Rules of Court on—

- (a) in the case of an application under regulation 631 (in relation to wrongful removal or retention) — on the person (or persons) who the applicant claims has (or have) wrongfully removed or retained the child who is the subject of the application;
- (b) in the case of an application under regulation 637 (for discharge of an order for the return of a child) — on any other party to the proceeding for return of the child; and
- (c) in the case of an application under regulation 642 (for access to a child in the Fiji Islands) — on the person, institution or other body in possession of the child who is the subject of the application.

(2) In accordance with the Rules of Court, the court to which an application referred to in subregulation (1) is made may dispense with service of notice of the application under that subregulation.

### **Evidentiary provisions**

**653.**— (1) This regulation applies in a proceeding in a court under regulation 631, 637 or 642 in which the applicant is the CEO.

(2) The application under regulation 631, 637 or 642, or a request under regulation 622, 641 or 642 relating to that application, or any document attached to or given in support of that application or request, is admissible as evidence of the facts stated in that application, request or document.

(3) An affidavit of a witness who resides outside the Fiji Islands that is filed in the proceeding is admissible as evidence even if the witness does not attend the proceeding for cross-examination.

- (4) A statement contained in a document that purports—
  - (a) to set out or summarise evidence given in a proceeding in a court in a convention country, or before a competent authority of that country, in relation to the custody of a child and to have been signed by the person before whom the evidence was given;

- (b) to set out or summarise evidence taken in a convention country for the purpose of a proceeding under this Part (whether in response to a request made by the court or otherwise) and to have been signed by the person before whom the evidence was taken; or
- (c) to have been received as evidence in a proceeding in a court in a convention country or before a competent authority of that country in relation to the custody of a child and to have been signed by a judge, an officer of the court or that authority,

is admissible as evidence of any fact stated in the document to the same extent as oral evidence of that fact, without proof of that person's signature or official position.

- (5) The court may take judicial notice of the following matters:
  - (a) a law in force in a convention country;
  - (b) a decision of a judicial or administrative character made by a judicial or administrative authority of a convention country.
- (6) A document that purports—
  - (a) to be an order, or a copy of an order, of a court in a convention country, or a decision of a competent authority of that country, in relation to the custody of a child; and
  - (b) to have been signed by a judge, an officer of the court or that authority,

is admissible as evidence of that order or decision without proof of that person's signature or official position.

- (7) In this regulation, “custody”, in relation to a child, includes—
  - (a) guardianship of the child;
  - (b) responsibility for the long-term or day-to-day care, welfare and development of the child; and
  - (c) responsibility as the person or persons with whom the child is to live.

### **Costs of applications**

**654.** (1) If—

- (a) either—
  - (i) the CEO has applied to the court for an order in relation to a child under Division 3 or 4; or
  - (ii) an Article 3 applicant has applied to the court for an order in relation to a child under Division 3; and
- (b) the court makes an order under regulation 632, 634, 637, 642 or 651; and
- (c) the CEO or Article 3 applicant applies to the court under this regulation,

the court may make an order that the person who removed or retained the child, or who prevented the exercise of rights of access to the child, must pay to the CEO or the Article 3 applicant the costs of the application.

- (2) In this regulation, “costs of the application”—
  - (a) means the necessary expenses incurred—

- (i) by or on behalf of the person, institution or other body on whose behalf the CEO made the application; or
  - (ii) by the Article 3 applicant; and
- (b) may include any of the following:
- (i) travelling expenses;
  - (ii) costs incurred in locating the child;
  - (iii) costs of legal representation;
  - (iv) expenses incurred in returning the child;
  - (v) costs incurred in relation to the attendance by the child or an interested party before a family and child counsellor or a welfare officer for the preparation of a report by that counsellor or officer.