



Criminal Procedure (Transfer of Information) Amendment Regulations 2019

Patsy Reddy, Governor-General

Order in Council

At Wellington this 13th day of May 2019

Present:

Her Excellency the Governor-General in Council

These regulations are made under section 387 of the Criminal Procedure Act 2011 on the advice and with the consent of the Executive Council.

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Regulations

1 Title

These regulations are the Criminal Procedure (Transfer of Information) Amendment Regulations 2019.

2 Commencement

These regulations come into force immediately after the commencement, on 1 July 2019, of the Family Violence Act 2018.

3 Principal regulations

These regulations amend the Criminal Procedure (Transfer of Information) Regulations 2013 (the **principal regulations**).

4 Regulation 3 amended (Interpretation)

- (1) In regulation 3(1), insert in their appropriate alphabetical order:

CoCA means the Care of Children Act 2004

CoCA proceeding means a proceeding in the Family Court, District Court (for example, the District Court exercising jurisdiction under section 15 of the Family Court Act 1980), or High Court in respect of any of the following applications:

- (a) an application for a guardianship order under section 19 or 27 of the CoCA:
- (b) an application for a direction under section 46R of the CoCA in relation to a guardianship dispute:
- (c) an application for a parenting order under section 48 of the CoCA (whether an interim parenting order or a final parenting order):
- (d) an application for a variation of a parenting order, under section 56 of the CoCA

- (2) In regulation 3(1), definition of **court file**, replace “a court” with “the court”.

- (3) In regulation 3(1), replace the definition of **protection order** (as amended by section 259(2) and Part 2 of Schedule 2 of the Family Violence Act 2018) with:

protection order has the same meaning as in section 8 of the Family Violence Act 2018 (as that section is read in light of both—

- (a) clause 3 of Schedule 1 of that Act; and
- (b) section 133(3) of the Domestic Violence Act 1995)

- (4) In regulation 3(1), definition of **relevant court**, paragraphs (a) and (b), replace “a court” with “the court”.
- (5) After regulation 3(2), insert:
 - (3) A reference in these regulations to an offence against section 112 of the Family Violence Act 2018 includes, without limitation, a reference to an offence against section 49 of the Domestic Violence Act 1995.

5 Regulation 4 amended (Transmission of entry in permanent court record relating to breach of protection order, restraining order, or non-contact order)

In the heading to regulation 4, after “**breach of protection order**”, insert “**(or related property order)**”.

6 New regulations 6A to 6C inserted

After regulation 6, insert:

6A Information about party’s offending available to court dealing with CoCA proceeding

- (1) In this regulation,—
 - family relationship** has the meaning given to it by section 12 of the Family Violence Act 2018
 - violence** has the meaning given to it by section 9(2) of the Family Violence Act 2018.
- (2) This regulation applies if a party to a CoCA proceeding—
 - (a) is a defendant in a criminal proceeding in which he or she is charged with—
 - (i) an offence against section 112 of the Family Violence Act 2018; or
 - (ii) an offence that—
 - (A) involves the use of violence; and
 - (B) is committed against a person with whom the party is, or has been, in a family relationship; or
 - (b) has been a defendant in a criminal proceeding in which he or she was convicted of—
 - (i) an offence against section 112 of the Family Violence Act 2018; or

- (ii) an offence that—
 - (A) involved the use of violence; and
 - (B) was committed against a person with whom the party was, or had been, in a family relationship.
- (3) A Registrar of the court that is dealing with a CoCA proceeding may obtain information about the criminal proceeding referred to in subclause (2) from—
 - (a) the court file relating to that proceeding;
 - (b) any database relating to that proceeding;
 - (c) the permanent court record relating to that proceeding.
- (4) A Registrar of the court that is dealing with a CoCA proceeding and who has obtained information under subclause (3) must make that information available to the court.

6B Criminal record available to court dealing with CoCA proceeding

- (1) A Registrar of the court that is dealing with a CoCA proceeding may obtain details of a party's criminal record (if any) from—
 - (a) the court file relating to any criminal proceeding;
 - (b) a database relating to any criminal proceeding;
 - (c) the permanent court record relating to any criminal proceeding.
- (2) A Registrar of the court that is dealing with a CoCA proceeding and who has obtained information under subclause (1) must make that information available to the court.
- (3) In this regulation, **criminal record**, in relation to a party, means a record of any of the following:
 - (a) charges laid against the party that have resulted in a conviction;
 - (b) convictions entered against the party;
 - (c) sentences imposed on the party;
 - (d) orders imposed on the party as a result of a conviction.

6C Address information available to court for purpose of serving document in CoCA proceeding

- (1) This regulation applies if, in a CoCA proceeding, a document that has been issued for service is not able to be served on a party because the party's current address is not known.
- (2) A Registrar of the court that is dealing with the CoCA proceeding may obtain from any court file details of the party's current address.
- (3) If a Registrar obtains, under subclause (2), details of the party's current address, that information may be used only for the purpose of arranging for the party to be served with the document.

- 7 Regulation 7 amended (Information about respondent’s offending available to court dealing with domestic violence proceeding)**
- (1) In regulation 7(2)(a)(ii)(B) and (b)(ii)(B), replace “domestic” with “family”.
 - (2) In regulation 7(3) and (4), replace “a court” with “the court”.
- 8 Regulation 7A amended (Criminal record available to court dealing with domestic violence proceeding)**
- In regulation 7A(1), (1)(a), and (2), replace “a court” with “the court”.
- 9 Regulation 8 amended (Information about criminal proceedings in harassment proceedings)**
- (1) In regulation 8(1), replace “a District Court” with “the District Court” in each place.
 - (2) In regulation 8(2),—
 - (a) insert “the office of” before “the court”; and
 - (b) replace “that court” with “that office”.
 - (3) In regulation 8(3) and (3)(a), insert “the office of” before “the court” in each place.
- 10 Regulation 8A amended (Information about criminal proceedings in VOAVOA proceedings)**
- (1) In regulation 8A(1), replace “a District Court” with “the District Court”.
 - (2) In regulation 8A(2),—
 - (a) insert “the office of” before “the court”; and
 - (b) replace “that court” with “that office”.
 - (3) In regulation 8A(3), insert “the office of” before “the court”.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force immediately after the commencement, on 1 July 2019, of the Family Violence Act 2018, amend the Criminal Procedure (Transfer of Information) Regulations 2013 (the **principal regulations**). The amendments complement other amendments made to the principal regulations, on 1 July 2019, by the Family Violence Act 2018. Some also arise from amendments made on that date,

to the Care of Children Act 2004 (CoCA) and the Criminal Procedure Act 2011, by the Family Violence (Amendments) Act 2018.

New regulation 6A of the principal regulations will allow the Family Court, District Court, or High Court dealing with a CoCA proceeding (as defined in regulation 3 of the principal regulations) to obtain more information about a party's criminal offending. In particular, the court will be able to obtain—

- information about any offence a party has been charged with, or convicted of, involving family violence (as defined in the Family Violence Act 2018) that is committed against any person with whom the party is, or has been, in a family relationship (as so defined, and the offence does not have to have been committed against a person seeking the protection of, or protected by, a protection order);
- information about that offending held electronically and on the permanent court record, as well as on the court file.

New regulations 6B and 6C are inserted in the principal regulations to enable a court dealing with a CoCA proceeding to obtain details of—

- a party's criminal record (*new regulation 6B*); and
- a party's current address for the purpose of serving a document issued for service in the proceeding (*new regulation 6C*).

Regulation 7 of the principal regulations is about information about a respondent's criminal offending being available to the court dealing with a family violence proceeding (which is a proceeding in the Family Court under the Family Violence Act 2018 in which an application for a protection order is pending or has been granted). The regulation is amended so that it, like that Act, refers to a family relationship (within the meaning of section 12 of that Act).

Regulations 3(1), 7, 7A, 8, and 8A are also amended to reflect the changes made by the District Court Act 2016. That Act reconstituted the District Courts as a unitary court with a division known as the Family Court. Consequently, various references in those regulations to “a court” need to be specifically updated.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 16 May 2019.

These regulations are administered by the Ministry of Justice.