

Family Law Regulations (Amendment) 1996 No. 71

EXPLANATORY STATEMENT

STATUTORY RULES 1996 No. 71

Issued by the Authority of the Attorney-General

Family Law Act 1975

Family Law Regulations (Amendment)

Subsection 125(1) of the *Family Law Act 1975* (the Act) empowers the Governor-General to make regulations for the purposes of the Act.

The amendments to the Family Law Regulations (the regulations) first, make a series of amendments which are consequential upon the passing of the *Family Law Reform Act 1995* (the Reform Act). These amendments take into account the terminology and re-numbering changes to the Act as a result of the Reform Act. The amendments also regulate certain aspects of private and community mediators, provide for a revised location orders procedure, amend and update family violence provisions and amend provisions dealing with the recognition and enforcement of overseas maintenance orders.

Section 19P of the Reform Act provides that the regulations may prescribe requirements to be complied with by community mediators and private mediators in relation to the family and child mediation services they provide.

The regulations provide for minimum levels of qualifications, training, and experience for community and private mediators. The regulations also contain a set of consumer protection provisions. All potential parties to a mediation are required to be assessed by a mediator to ensure that the parties are in a position to negotiate freely. Issues such as family violence, safety of the parties and equality of bargaining power are addressed to ensure that the matter in dispute is appropriate for mediation.

The regulations also provide that information on factors such as the process of mediation, child's interests issues, the right to terminate a mediation session, the right to obtain legal advice, the immunity of mediators from any civil liability, the inadmissibility, confidentiality and disclosure obligations, qualifications of the mediators and other factors has to be given to the parties in a written statement prior to the mediation. The regulations also contain provisions relating to the advertising of the services of family and child counsellors and mediators and approved arbitrators.

The Reform Act amends the Act in relation to location orders and enables a Court to make an 'Commonwealth information order'. A Court is empowered to make a Commonwealth information order if it is satisfied that information about a child's location is likely to be contained in or come into the records of a Department or Commonwealth instrumentality. The amendments to the regulations contain a list of Departments and Government instrumentalities prescribed for the purpose of the making of a Commonwealth information order. To allow a Department or Government instrumentality to put information relevant to the making of an order to the court, a Commonwealth information order may not be made against a prescribed department or instrumentality until 7 days after service of the application, except in special circumstances.

The Reform Act provides for State and Territory Courts exercising jurisdiction in family violence matters to make an order which revives, varies, discharges or suspends an existing Family Court contact order. An amendment to the regulations will provide a method for a copy of the State or

Territory Court's order which made, revived, varied, discharged or suspended a Family Court contact order to be registered in the Family Court.

The amendments update Schedule 5 of the regulations. Section 60 of the Act defines "child welfare laws" as "a law of a State or Territory prescribed or included in a class of laws of a State or Territory prescribed, for the purposes of this definition". Schedule 5 to the Family Law Regulations lists laws which are prescribed as "child welfare laws" for the purposes of the definition of that term in section 60.

The amendments include a new schedule 8 to the regulations. Section 60D of the Reform Act defines a family violence order as an order (including an interim order) made under a prescribed law of a State or Territory to protect a person from family violence. Schedule 8 to the regulations lists laws which are prescribed laws of a State or Territory to protect a person from family violence.

The regulations also make minor amendments to Schedule 2 to the Family Law regulations to allow the recognition and enforcement in Australia of maintenance orders made by courts in the Slovak Republic and the Republic of Ireland.