

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2006 No. 129**

#### **ISSUED BY AUTHORITY OF THE ATTORNEY-GENERAL**

#### *FEDERAL MAGISTRATES ACT 1999*

#### *FEDERAL MAGISTRATES AMENDMENT REGULATIONS 2006 (No. 2)*

Subsection 120(1) of the *Federal Magistrates Act 1999* (the Principal Act) provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

Subsection 10(1) of the Principal Act provides that the Federal Magistrates Court (the FMC) has such original jurisdiction as is vested in it by laws made by Parliament by express provision, or by the operation of section 15C of the *Acts Interpretation Act 1901*.

Subsections 39(5AA) and (5A) of the *Family Law Act 1975* (the FLA) confer jurisdiction on the FMC in respect of certain matters under the FLA, and therefore expressly provide the FMC with original jurisdiction in respect of those family law matters.

The purpose of the Regulations is to amend the *Federal Magistrates Regulations 2000* to reflect changes in terminology within the divorce and child-related provisions of the FLA as amended by:

- the *Family Law Amendment Act 2005* (2005 Amendment Act), and
- the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Shared Parenting Responsibility Act).

The Regulations commence on 1 July 2006, coinciding with the commencement of Schedules 1 and 2 to the Shared Parenting Responsibility Act.

Details of the Regulations are as follows:

#### **Regulation 1 - Name of Regulations**

Regulation 1 provides that the name of the Regulations is the *Federal Magistrates Amendment Regulations 2006 (No. 2)*

#### **Regulation 2 – Commencement**

Regulation 2 provides for the Regulations to commence on 1 July 2006.

### Regulation 3 – Amendment of *Federal Magistrates Regulations 2000*

Regulation 3 provides that Schedule 1 amends the *Federal Magistrates Regulations 2000* (the Principal Regulations).

#### Schedule 1 – Amendments

#### **Items [1], [2] and [4] - Paragraph 7(2)(a), subparagraph 7(2)(d)(i) and Schedule 1, item 2A, column 2**

Items 1, 2 and 4 amend the Principal Regulations to reflect changes in terminology within the divorce provisions of the FLA.

The *Family Law Amendment Act 2005* amended the FLA to modernise the terminology used in relation to divorce and principal relief. The Regulations replace references to terms such as 'decree of dissolution of a marriage' by 'divorce order' to reflect this modern terminology.

#### **Item [3] – Subparagraphs 7(2)(d)(v) and (vi)**

Item 3 amends subparagraphs 7(2)(d)(v) and (vi) of the Principal Regulations to include references to a 'residence order' and 'an order that a child lives with a person'.

The amendments ensure that the provisions reflect the changes in the child-related terminology of provisions of the FLA made by Schedules 1 and 2 of the *Family Law Amendment (Shared Parental Responsibility) Act 2006*.

Consultation on the content of the Regulations was undertaken under section 17 of the *Legislative Instruments Act 2003* with the Family Court of Australia, the Family Court of Western Australia, the Federal Magistrates Court of Australia, the Department of Justice in each State and Territory and the Department responsible for child welfare in each State and Territory. The consultation involved exchange of correspondence and discussions.