EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 183

Issued by Authority of the Attorney-General

Family Law Act 1975

Family Law (Family Dispute Resolution Practitioners) Regulations 2008

Section 125 of the *Family Law Act 1975* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that are required or permitted by the Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 10A (1) of the Act provides that the regulations may prescribe Accreditation Rules. These are rules relating to, among other things, the accreditation of persons as family dispute resolution practitioners. Subsection 10A (2) of the Act provides examples of matters the Accreditation Rules may deal with, such as the standards that are to be met by persons who seek to be accredited and how accreditation is to be recognised.

The purpose of the Regulations is to introduce a new competency based accreditation system for family dispute resolution practitioners. The Regulations provide for three different pathways for a person to become accredited, depending on their current skills and experience. The Regulations also consolidate all aspects relating to family dispute resolution which are currently spread out in several provisions of the *Family Law Regulations 1984*.

The Regulations also replace the interim Accreditation Rules contained in Parts 4A, 4B and 4C of the *Family Law Regulations 1984* that expire on 1 July 2009. It was intended that these rules would be replaced once new qualifications and competency standards for the workforce were developed.

The new competency-based approach to family dispute resolution was part of extensive consultations undertaken by the Industry Skills Council in late 2006 and early 2007 and included key stakeholder groups such as the National Alternative Dispute Resolution Advisory Council , legal aid commissions, the Law Council of Australia and Family Relationship Services Australia. The qualifications were subsequently endorsed by the Ministerial Council on Education, Employment, Training and Youth Affairs on 24 September 2007.

Further consultation with the National Alternative Dispute Resolution Advisory Council occurred in July 2008 after the commencement of a new National Mediator Accreditation System to ensure the new System was recognised in the Regulations. As part of that, consultation was also undertaken with higher education providers during which recognition of equivalent higher education qualifications (to the Vocational Graduate Diploma) was incorporated into the Regulations.

A separate Minute recommended that the *Family Law Regulations 1984* were amended to remove the provisions relating to family dispute resolution and Parts 4A, 4B and 4C.

The Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003.*

The Regulations commence on 1 January 2009. This means that practitioners can be progressively registered as they meet the new requirements allowing a smoother transition to the new accreditation requirements prior to 1 July 2009.

Details of the Regulations are as follows:

Part 1 – Preliminary

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008*.

Regulation 2 – Commencement

This regulation provides for the Regulations to start on 1 January 2009. This allows family dispute resolution practitioners to be accredited under the Regulations if they meet the accreditation criteria from 1 January 2009, allowing a six month transition period for family dispute resolution practitioners.

Regulation 3 – Definitions

This regulation provides for definitions necessary to allow the Regulations to be understood and applied.

Definition of ***accredited family dispute resolution practitioner***

Part 2 of the Regulations prescribes the accreditation process for family dispute resolution practitioners, pursuant to section 10A of the Act. The definition of 'accredited family dispute resolution practitioner' explains that a person who is accredited under Part 2 is an 'accredited family dispute resolution practitioner'.

Definition of ***Act***

'Act' is defined as the *Family Law Act 1975*.

Definition of ***appropriate qualification***

The definition of 'appropriate qualification' is relevant to Part 2, which sets out the accreditation process. The accreditation criterion (subparagraph 5 (3) (a) (i)) requires people to have been awarded an 'appropriate qualification'.

Clearly, only some areas of study have relevance to the provision of family dispute resolution. Appropriate qualifications are specified as a higher education award in law, psychology, social work, conflict management, mediation or dispute resolution.

The definition also allows for the acceptance of a higher education award or vocational graduate diploma which in the opinion of the Secretary of the Attorney-General's Department is relevant to the provision of family dispute resolution services.

*Definition of **Australian Qualifications Framework***

The definition of 'Australian Qualifications Framework' is relevant to the definition of the Vocational Graduate Diploma of Family Dispute Resolution below. This is because the Vocational Graduate Diploma must be recognised by the 'Australian Qualifications Framework'.

The 'Australian Qualifications Framework' has the meaning given in the Dictionary to the *Higher Education Support Act 2003*.

*Definition of **certified postgraduate award***

Part 2 of the Regulations prescribes the accreditation process for family dispute resolution practitioners. Subregulation 5 (2) provides for the accreditation of a person if that person has or is entitled to a 'certified postgraduate award'.

A 'certified postgraduate award' is defined as a postgraduate degree or diploma (however described) provided by a higher education provider that has been certified by the higher education provider under regulation 7.

A higher education provider is defined below. Also see Part 2 below for further information on regulation 7.

*Definition of **higher education award***

The definition of a 'higher education award' includes a degree of at least bachelor level or a postgraduate award of a diploma (however described) of at least 12 months full time study or the equivalent part time study.

This definition is relevant to the definition of an appropriate qualification.

The 'higher education award' may be from an Australian or overseas provider.

*Definition of **higher education provider***

A definition of 'higher education provider' explains the bodies that are eligible to certify under regulation 7 that a postgraduate degree or diploma is equivalent to a Vocational Graduate Diploma of Family Dispute Resolution. See below for the definition of a 'Vocational Graduate Diploma of Family Dispute Resolution'.

A 'higher education provider' has the meaning given in the Dictionary to the *Higher Education Support Act 2003*.

Definition of ***legal practitioner***

The definition of a 'legal practitioner' has the same meaning as regulation 3 of the *Family Law Regulations 1984*.

Definition of ***National Mediator Approval Standards***

The definition of 'National Mediator Approval Standards' is relevant to subparagraph 5 (3) (a) (ii) which allows those accredited through the National Mediator Accreditation System to complete the six compulsory units from the Vocational Graduate Diploma (or higher education provider equivalent). This recognises that accreditation through this System is equivalent to an 'appropriate qualification' as defined above. This national accreditation system is considered to capture those with skills and experience in the area of general mediation, which is considered to be sufficiently related to the skills required from a family dispute resolution practitioner to allow the completion of only the six compulsory units.

Definition of ***other Regulations***

The definition of 'other Regulations' is prescribed as the *Family Law Regulations 1984* as in force on 30 June 2009.

Definition of ***registered training organisation***

The definition of 'registered training organisation' is relevant to Part 2 of the Regulations which prescribes the accreditation process for family dispute resolution practitioners. See the information on Part 2, regulation 5 below.

The definition of 'registered training organisation' is given at section 3 (1) of the *Skilling Australia's Workforce Act 2005*.

Definition of ***Secretary***

The definition of 'Secretary' has the meaning given in regulation 3 of the *Family Law Regulations 1984*.

Definition of ***Vocational Graduate Diploma of Family Dispute Resolution***

This definition is relevant to Part 2 of the Regulations which prescribes the accreditation process for family dispute resolution practitioners. See the explanation of the pathways for accreditation in regulation 5 below.

Subregulation 3 (2) specifies the three units that have been identified as the new requirements that existing practitioners may not already have achieved through their general mediation / dispute resolution training and supervision. They are: 'responding to family and domestic violence in family work', 'creating a supportive environment for the safety of vulnerable parties in dispute resolution' and 'operating in a family law environment'. It is considered that these three units provide practitioners with skills which are essential to the delivery of family dispute resolution.

Subregulation 3 (3) specifies what is meant by the *accreditation criteria.* This defines which criteria family dispute resolution practitioners need to meet to become

accredited. These criteria are contained in subregulation 5 (1), (2), (3) or (4) and regulation 6.

PART 2 – Accreditation Process

Regulation 4 – Family dispute resolution practitioners under section 10G of the Act

This regulation provides for people who meet the requirements in paragraph (a) of subsection 10G (1) of the Act to be accredited. Accreditation is linked to section 10G of the Act which says that a person is accredited as a family dispute resolution practitioner under the Accreditation Rules.

Regulation 5 – Criteria for accreditation relating to qualifications and competencies

This regulation provides for three different pathways to be accredited as a family dispute resolution practitioner. These pathways are framed around the competencies contained in the new Vocational Graduate Diploma of Family Dispute Resolution.

The pathways recognise that higher education providers who certify that they provide the equivalent courses or units as the Vocational Graduate Diploma (see regulations 7 and 8), as well as Registered Training Organisations (from the vocational education and training sector) can deliver the training required for accreditation.

Subregulations 5 (1), (2), (3) and (4) provide for the pathways available to meet the accreditation requirements. The pathways included under these subregulations are:

1. completion of the full Vocational Graduate Diploma of Family Dispute Resolution (or the higher education provider equivalent under Regulations 7 and 8); or
2. an appropriate qualification or accreditation under the National Mediation Accreditation System (as defined in regulation 3) and competency in the six compulsory units from the Vocational Graduate Diploma of Family Dispute Resolution (or the higher education provider equivalent under regulations 7 and 8); or
3. inclusion on the Register before 1 July 2009 and competency in the three specified units (as defined in regulation 3).

Pathway 1 – see subregulation 5 (1) and (2) – recognises that those who hold the full Vocational Graduate Diploma qualification (or higher education equivalent) meet the accreditation standards. The Vocational Graduate Diploma packaging rules require six compulsory units and four elective units. It also includes ‘workplace application’ under direct supervision. This means that those who hold this qualification will have had experience applying skills and knowledge in the real working environment. Direct supervision involves the practitioner actually being present, observing, working with and if necessary directing the person who is being supervised.

Pathway 2 – see subregulation 5 (3) – allows those who hold an appropriate qualification or accreditation under the National Mediator Accreditation System to be accredited if they complete the six compulsory units from the Vocational Graduate Diploma (or higher education equivalent units). This recognises that people with

related qualifications, such as law, psychology, social work, mediation, dispute resolution, conflict management, or NMAS accreditation, should be able to have a shorter pathway to accreditation. NMAS is a national scheme that recognises the skills and experience of those working in the field of mediation (under separate approval standards that were finalised in September 2007). NMAS accreditation is considered to represent experience and qualifications in the mediation area, and would therefore be the equivalent to an appropriate qualification under this pathway. The requirement to complete the six compulsory units (or higher education equivalent units), with the associated workplace application requirements, ensures that those being accredited under this pathway have the specific family dispute resolution knowledge and workplace application.

Pathway 3 – see subregulations 5 (4) and (5) – allows those family dispute resolution practitioners who are included on the Register (through the *Family Law Regulations 1984*) by 1 July 2009, to be assessed as competent in three specified units of competency from the Vocational Graduate Diploma (or higher education equivalent units) to meet the accreditation standards. These three units have been identified as the new requirements that existing practitioners may not already have achieved through their general mediation / dispute resolution training and supervision. They are: 'responding to family and domestic violence in family work', 'creating a supportive environment for the safety of vulnerable parties in dispute resolution' and 'operating in a family law environment'.

Subregulation 5 (5) allows those on the Register by 1 July 2009 to complete the three units of competency (or equivalent units from a higher education provider) until 30 June 2011. If practitioners have not completed the units by 1 July 2009, they will no longer be accredited and so will not be able to issue certificates under the Act. However, these practitioners will still be entitled to complete only the 3 units if they do so before 1 July 2011. This recognises that there are qualified practitioners who are on extended leave (for example, maternity or overseas) who should be given the opportunity to update their skills and become accredited within a reasonable timeframe.

<u>Regulation 6 – Other criterion for accreditation</u>

Regulation 6 sets out the other criteria for accreditation.

Paragraph (6) (1) (a) provides that people who have been prohibited under State and Territory laws from working with children are not eligible for accreditation as practitioners. It is not appropriate for such people to provide family dispute resolution services to families. If an accredited practitioner becomes prohibited from working with children he or she no longer meets the requirements for accreditation.

States and Territories have legislation that set out requirements with which people who wish to work with children must comply. For example, people seeking such work in Queensland must obtain a 'blue card', which involves a detailed national check of a person's criminal history, including any charges or convictions. Paragraph (6) (1) (b) provides that people must comply with such requirements in order to be eligible for accreditation. If an accredited practitioner fails to comply with those requirements, he or she no longer meets the accreditation requirements.

Paragraph (6) (1) (c) provides that practitioners need to have access to a complaints mechanism to be accredited. The ability of clients of family dispute resolution practitioners to make complaints about the services they receive is an essential consumer protection mechanism.

Paragraph (6) (1) (d) provides that a person must be suitable to perform the functions and duties of a family dispute resolution practitioner. This accreditation criterion requires family dispute resolution practitioners to demonstrate that they have the appropriate personal qualities to perform the functions and duties necessary in their position.

Paragraph (6) (1) (e) provides that a person must not be disqualified from accreditation (see paragraphs (6) (2) (a) and (b) below).

Paragraphs (6) (2) (a) and (b) provide that a person is disqualified from accreditation if the person has been convicted of a sex-related or violent offence.

This requirement recognises the importance of ensuring that the safety of families is not compromised by practitioners who have convictions of a violent or sexual nature. Convictions that are 'spent' under Commonwealth, State or Territory law do not need to be disclosed. Spent convictions laws allow the criminal records of offenders to be amended after a certain period of time, usually subject to no future convictions.

Regulation 7 – Certified postgraduate awards

Subregulation 7 (1) allows qualifications from higher education providers (as defined in subregulation 3 (1)) with content and 'workplace application' (see regulation 5, pathway 1) equivalent to the Vocational Graduate Diploma to be recognised.

While the Vocational Graduate Diploma was developed specifically to standardise the new competencies required for family dispute resolution practitioners, the accreditation rules recognise higher education providers that certify their postgraduate course covers the same content and workplace application as the Vocational Graduate Diploma. The higher education provider must certify in writing that the course is equivalent to the Vocational Graduate Diploma.

Including higher education providers that offer the equivalent course as the Vocational Graduate Diploma offers more choice for students seeking to become accredited practitioners and enhances the development of the workforce. Involvement from the higher education sector will also offer the benefits of potential academic research in the family dispute resolution field.

Subregulations 7 (2) and (3) requires higher education providers who have certified in writing that they offer the equivalent qualification to notify the Secretary, in writing, if the content or workplace application requirements change and are no longer equivalent, or if the provider no longer offers the qualification.

Regulation 8 – Certified postgraduate units equivalent to those of the specified or compulsory units of competency of the Vocational Graduate Diploma

This regulation provides for higher education providers who offer the equivalent of the six compulsory units from the Vocational Graduate Diploma (under subparagraph 5 (3) (b) (ii)) or the equivalent of the three specified units (under subparagraph 5 (4) (b) (ii)) to deliver the training.

Regulation 9 – Application for accreditation

Regulation 9 sets out the requirements with which applications for accreditation as an individual family dispute resolution practitioner must comply. Subregulation 9 (1) provides that a person may apply to the Secretary for accreditation. Paragraph 9 (2) (a) provides that the application must be in writing and in a form approved by the Secretary. Paragraph 9 (2) (b) provides that the application must include the information set out at regulation 10 (set out below).

Paragraph 9 (3) (a) provides that the application form may require applicants for accreditation to make a statutory declaration about information, documents or other matters given by the applicant in or with the accreditation application. As the statutory declaration requires applicants to attest to the veracity of information and evidence provided in their application, this requirement enables the Secretary to have a higher degree of confidence in that information. The *Statutory Declarations Act 1959* provides that intentionally making a false statement in a statutory declaration is an offence, with a maximum penalty of four years imprisonment.

Paragraph 9 (3) (b) provides that the application form may require an applicant to give consent to the Secretary to verify information, documents or other matters given by the applicant in or with the application including information about the applicant's criminal history. This allows the Secretary to check the information provided is accurate. This is an important safeguard to ensure the integrity of the information about practitioners.

Regulation 10 – Information to be included in application

Regulation 10 provides that an application for accreditation must include the information mentioned in this regulation. Importantly, paragraphs 10 (1) (b) and 10 (1) (c) provide that the application must include a statement about how the applicant meets the accreditation criteria set out in regulations 5 and 6 above and any other matter required by the Secretary.

Under subregulation 10 (2), the Secretary is able to ask the applicant to provide additional information necessary to enable the Secretary to determine whether the applicant meets the requirements of regulations 5 and 6 above. If the Secretary asks the applicant to provide additional information he or she must do so in writing and must specify a time in which the additional information must be provided.

Subregulation 10 (3) provides that if the Secretary asks the applicant to provide additional information for the purposes of paragraph 10 (2) above, the Secretary is not required to consider the application for accreditation while waiting for the information to be given.

Subregulation 10 (4) provides that if the requested information is not submitted in the specified time, the application for registration is considered to have been withdrawn.

Regulation 11 – Determination on application

On receiving an application for accreditation that complies with the requirements of regulation 10, subregulation 11 (1) provides that the Secretary must either:

- accredit the applicant if he or she complies with the requirements for accreditation, or
- refuse to accredit the applicant if he or she is ineligible for accreditation.

In keeping with well established administrative law principles, paragraph 11(2) (a) provides that in deciding an application for accreditation the Secretary must have regard to the information in the application, including any evidence, documents and other matters that accompany the application and any additional information provided by the applicant in response to a request from the Secretary under subregulation 10 (2) above. In addition, the Secretary may have regard to any other information that is relevant to deciding whether the applicant meets the requirements for accreditation set out at regulations 5 and 6 above.

Subregulation 11 (3) sets out the procedures that must be followed when the Secretary has reached a decision that the applicant meets the accreditation criteria.

If the Secretary decides to accredit the applicant, he or she must:

- notify the applicant in writing of the decision; and
- inform the person that accreditation is subject to the conditions set out in regulation 12 (explained in detail below) and any other conditions specified in the notice.

Subregulation 11 (4) sets out the procedures that must be followed when the Secretary has reached a decision that the applicant does not meet the accreditation criteria.

If the Secretary decides not to accredit the applicant, he or she must notify the applicant in writing of that decision and the reasons it was made and inform the person of their review rights under regulation 24 (set out below).

PART 3 – Obligations of accredited family dispute resolution practitioners

Regulation 12 – Conditions of accreditation

Regulation 12 provides that the accreditation of a person as a family dispute resolution practitioner is subject to compliance with a number of conditions (set out in regulations 13, 14 and 15 below) which may be changed, added to or revoked at any time. Details about varying conditions of accreditation are set out in regulation 16 below.

Regulation 13 – Notification of information

The conditions of accreditation set out at regulation 13 would require an accredited family dispute resolution practitioner to:

- *Comply with any request for information by the Secretary*

  This allows the Secretary to check that people are complying with the conditions of accreditation and obtain other relevant information from accredited practitioners.

- *Notify changes to name or contact details*

  Accredited practitioners are required to notify the Secretary about any change to their name or contact details within 28 days of the change, to ensure that the Secretary maintains up-to-date and accurate records of accredited family dispute resolution practitioners.

- *Notify matters that may affect the person's accreditation*

  Accredited practitioners are required to notify the Secretary, within seven days, about any matter that may affect their eligibility to continue to be accredited. The time period for notification of these matters is seven days, rather than the 28 days allowed for notification of changes to a practitioner's name or contact details, as the matters that may affect continued accreditation may render the family dispute resolution practitioner inappropriate to deliver family dispute resolution services to families. See regulation 17 and 18 below for the situations which would lead to the suspension or cancellation of a person's accreditation.

  The matters that must be communicated to the Secretary within seven days include:

  - *if the practitioner has been prohibited under a law of a State or Territory from being employed in child-related employment or working with children (subparagraph (13) (c) (i))*
  - *if the practitioner has failed to comply a law of a State or Territory relating to employment of people working with children (subparagraph (13) (c) (ii))*
  - *if the practitioner is charged with an offence that if convicted will result in either of the circumstances mentioned in subparagraphs (13) (c) (i) and (ii) above (subparagraph 13(c)(iii))*
  - *if the practitioner is charged with, or convicted of an offence mentioned in subregulation 6 (2) above (subparagraph 13(c)(iv))*
  - *the practitioner has ceased to provide family dispute resolution and the reasons for it (subparagraph 13(c)(v))*

    It is important that the Secretary be notified when practitioners cease to provide family dispute resolution services, and the reasons why they have done so. This allows the Secretary to monitor the family dispute resolution practitioner workforce and, if necessary, act to address any problems which might arise in relation to the number and distribution of family dispute resolution practitioners.

- *if the practitioner has ceased to have access to a complaints mechanism mentioned in paragraph 6 (1) (c) above (subparagraph 13(c)(vi))*

  The ability for clients of family dispute resolution services to make complaints about the services they receive is an essential consumer protection mechanism. It would not be appropriate for a practitioner to be accredited if he or she is not able to offer clients access to a process to deal with grievances. A practitioner who ceases to have access to a complaints process could have their accreditation suspended in order to give him or her an opportunity to arrange for his or her clients to have access to another complaints mechanism (see paragraphs 17 (2) (a) and (b) below). If a practitioner fails to gain access to an alternative complaints mechanism within a period specified by the Secretary, his or her accreditation may be cancelled under subregulation 17 (d).

Regulation 14 – Education, training and professional development

Regulation 14 provides that it is a condition of accreditation for the practitioner to undertake at least 24 hours education, training or professional development in family dispute resolution in each 24 month period starting on the day of the person's accreditation as a family dispute resolution practitioner.

The family law sector is a dynamic environment with continual evolving practice. It is important that family dispute resolution practitioners remain up to date on the legal environment in which they provide services, and developments in the theory and practice of dispute resolution. Subregulation 14 (1) ensures that accredited practitioners undertake regular relevant training.

There may be cases where a practitioner fails to complete the required training in circumstances where the Secretary considers that, rather than suspend the practitioner's accreditation under paragraph 17 (2) (a), or cancel the accreditation under paragraph 17 (1) (b), it is appropriate to give the practitioner extra time to complete the required hours of training, education or professional development. Subregulation 14 (2) allows the Secretary to provide a specified extra period in which the accredited practitioner must complete the required training.

Regulation 15 – Professional standards

There is a requirement for people wishing to go to court to settle a parenting matter to attend family dispute resolution before applying to the court for an order under Part VII of the Act. This requirement has increased the significance and relevance of family dispute resolution. Regulation 15 requires practitioners to uphold professional standards.

Regulation 16 – Secretary may impose conditions

Subregulation 16 (1) provides that the Secretary can add, vary or revoke a condition of accreditation by giving the accredited practitioner notice in writing. This provides the Secretary with flexibility to adjust the requirements placed on one or more accredited practitioners. For example this could be in response to emerging practice issues, or to address the behaviour of an individual practitioner. Accredited

practitioners must comply with all conditions of accreditation, whether they are set out in regulations 13, 14 and 15, or added at a later date.

Under subregulation 16 (2), the Secretary's notice includes his or her reasons for adding, varying or revoking a condition and the practitioner's review rights under regulation 24. If the Secretary does not include his or her reasons for adding, varying or revoking a condition and the practitioner's review rights under regulation 24 the validity of a condition is not affected.

PART 4 – Suspension or cancellation of accreditation

Regulation 17 – Grounds for suspension or cancellation of accreditation generally

Regulation 17 sets out the circumstances in which the Secretary may suspend or cancel the accreditation of a family dispute resolution practitioner. The Secretary decides whether the behaviour in question warrants the cancellation or suspension of the family dispute practitioner's accreditation.

Subregulation 17 (1) provides that the Secretary is able to cancel a practitioner's accreditation if he or she is satisfied that the practitioner:

- *has failed to comply with the Act or any obligation imposed on the practitioner by the Act (paragraph 17 (1) (a)).*

  Family dispute resolution practitioners play an important role in the family law system. It is inappropriate for people who have failed to comply with any obligations imposed on them by the Act to continue to be accredited.

- *fails to meet the accreditation criteria (paragraph 17 (1) (b)).*

  As set out in relation to regulation 4, above, in order to be accredited, a person must be a 'family dispute resolution practitioner'.

  Regulation 5 above sets out the accreditation criteria relating to qualifications and competencies. Regulation 6 above sets out the other criteria for accreditation.

  If a person fails to meet these criteria their accreditation may be cancelled. For example if a practitioner does not have access to an appropriate complaints mechanism (see subregulation 6 (c)) paragraph 17 (1) (b) allows the Secretary to cancel the practitioner's accreditation.

- *knowingly gave false or misleading information, or failed to disclose material information, in order to be accredited (paragraph 17 (1) (c)) .*

  As practitioners play an important role in the family law system it is be inappropriate for people who have been found to have been deliberately dishonest in order to gain accreditation, to continue to be accredited.

- *has failed to comply with any condition of the accreditation (paragraph 17 (1) (d)).*

  As set out in relation to regulations 12 to 15 above, the accreditation of a practitioner is subject to compliance with a number of conditions, which may be changed, added to, or revoked at any time. The conditions are imposed in order

to ensure that people who are accredited as family dispute resolution practitioners are appropriate people to be delivering services to families. If accredited practitioners do not comply with these conditions, it may be appropriate to cancel their accreditation.

- *has engaged in conduct that is likely to bring family dispute resolution into disrepute (paragraph 17 (1) (e)).*

  Paragraph 17 (1) (e) allows the Secretary to cancel the accreditation of a family dispute resolution practitioner who behaves in a manner which negatively affects the public's perception of family dispute resolution.

  An example might be where a family dispute resolution practitioner disseminates racist propaganda in family dispute resolution sessions. Legislative prescription of behaviour that is 'likely' to bring a profession or body into 'disrepute' is not unusual, at both the Commonwealth and State and Territory level.

Subregulation 17 (2) provides that the Secretary can suspend a practitioner's accreditation if he or she is satisfied that the practitioner:

- *meets one of the grounds in paragraphs 17(1) (a) (b) (d) or (e) but the failure or conduct can be remedied (paragraphs 17 (2) (a) and (b)).*

  Subregulation 17 (2) allows the Secretary to suspend a family dispute practitioner's accreditation if they are satisfied that at least one of the grounds in paragraph 17 (1) (a) (b) (d) or (e) applies, but the family dispute practitioner's failure or conduct can be remedied or mitigated by the practitioner in a reasonable time.

  For example a practitioner who ceases to have access to a complaints process may be suspended in order to give him or her an opportunity to arrange for his or her clients to have access to another complaints mechanism. If a practitioner fails to gain access to an alternative complaints mechanism within a period specified by the Secretary, his or her registration may be cancelled under paragraph 17 (1) (b).

Subregulation 17 (3) provides that the Secretary can suspend a practitioner's accreditation if he or she is satisfied that the practitioner:

- *has been charged with an offence which if convicted would prohibit the practitioner under a law of a State or Territory from working with children (subparagraph 17 (3) (a) (i)).*

  Subparagraph 17 (3) (a) (i) provides that if a person is charged with an offence that if convicted would result in the person being prohibited under a State or Territory law from working with children, his or her accreditation may be suspended while the case is dealt with. If the charge is dropped by the prosecution or the practitioner is found not guilty after a trial his or her accreditation may be reactivated. If the practitioner is convicted of the offence, his or her accreditation will be cancelled under regulation 18.

  As set out in relation to regulation 6 above, people who have been prohibited from working with children under such laws are not eligible to be accredited. It is obviously not appropriate for such people to provide family dispute resolution

services to families. If an accredited practitioner becomes prohibited from working with children he or she no longer meets the eligibility requirements for accreditation.

- *has been charged with an offence which if convicted would result in the failure to comply with a law of a State or Territory relating to employment of people working with children (subparagraph 17 (3) (a) (ii)).*

  Subparagraph 17 (3) (a) (ii) provides that if a person is charged with an offence that if convicted would result in the person failing to comply with a law of a State or Territory relating to the employment of persons working with children, his or her accreditation may be suspended while the case is dealt with. If the charge is dropped by the prosecution or the practitioner is found not guilty after a trial his or her accreditation may be reactivated. If the practitioner is convicted of the offence, his or her accreditation will be cancelled under regulation 18.

  As set out in relation to regulation 6, people must have complied with such requirements in order to be eligible for registration.

- *has been charged with an offence involving violence against a person or a sex-related offence (paragraph 17 (3) (b)).*

  Paragraph 17 (3) (b) allows the Secretary to suspend a practitioner's accreditation if they are charged with an offence mentioned in subregulation 6 (2). If a person is charged with such a violent or sex-related offence his or her accreditation will be suspended while the case is dealt with. If the charge is dropped by the prosecution or the practitioner is found not guilty after a trial his or her registration will be reactivated. If the practitioner is convicted of the offence, his or her registration would be cancelled under regulation 18.

  As set out in relation to regulation 6, above people who have been convicted of an offence involving violence against a person or a sex-related offence are not eligible to be accredited.

Subregulation 17 (4) provides that a person is not considered to be accredited for the duration of any suspension. It is not be appropriate for a person whose accreditation has been suspended to be providing family dispute resolution.

Subregulation 17(5) defines 'conduct' for the purpose of this regulation as including an omission or failure to act.

<u>Regulation 18 – Grounds for immediate cancellation of accreditation</u>

Regulation 18 allows the Secretary to immediately cancel a practitioner's accreditation without notice if the practitioner:

- is prohibited under a State or Territory law from working with children;
- has been convicted of an offence the substance of which is a failure by the practitioner to comply with a law of a State or Territory relating to employment of persons working with children; or
- has been convicted of an offence mentioned in subregulation (6) (2).

For the protection of families, it is inappropriate for the practitioner to retain their accreditation in these circumstances.

Regulation 19 – Notice to show cause and decision

Subregulation 19 (1) provides that if the Secretary is of the opinion that a practitioner's accreditation should be suspended or cancelled, he or she must notify the practitioner in writing of that belief and the reasons for it, and ask the practitioner to show cause why his or her registration should not be suspended or cancelled. The exceptions to this requirement are set out in regulation 18 above.

This process ensures the practitioner receives comprehensive information about the circumstances that have led to the Secretary's belief that the practitioner's registration should be suspended or cancelled. This would also allow the practitioner, if he or she chooses, to fully explain the situation, which may involve correcting misconceptions or detailing extenuating circumstances.

For example, a practitioner may fail to notify the Secretary of a change to his or her name or contact details within 28 days as required under subregulation 13 (b) due to the death of a family member. This obviously is relevant to the Secretary's decision on whether that person's accreditation should be suspended or cancelled. The practitioner must provide the written information that he or she believes shows cause as to why his or her accreditation should not be revoked within a period specified in the Secretary's notice, which must be at least 28 days from receipt of the notice.

Subregulation 19 (2) provides that the Secretary must not make a decision under regulation 17 until either the person responds to the notice or the end of the period specified in the notice, whichever is earliest. This allows the practitioner time to respond to the Secretary and also provide for the matter to be dealt with within a reasonable time frame should the practitioner fail to respond.

If the practitioner does not respond during the specified period, or if he or she attempts to show cause as to why his or her registration should not be suspended or cancelled, but fails to satisfy the Secretary, the Secretary may suspend or cancel the practitioner's registration.

Regulation 20 – Notice of suspension

Regulation 20 provides that if the Secretary decides to suspend a practitioner's registration, he or she must give the practitioner written notice of the decision, including reasons for the decision. The Secretary must also inform the person of their review rights under regulation 24.

Regulation 24 provides that various decisions relating to accreditation, including the Secretary's decision to suspend a person's accreditation, may be reviewed by the Administrative Appeals Tribunal (the AAT). This provision is required as the *Tribunal Act 1975* (AAT Act) provides that the AAT may only review decisions that have been identified in legislation as appealable to it.

It is important for people to receive written notice of a decision and the reasons for it from a natural justice perspective. Written notification allows people to ensure that they are able to properly understand why a decision has been made and have a firm basis on which to base an appeal of t e decision, if they seek to do so. This is reflected in the AAT Act, which allows any person entitled to apply for review of a

decision by the AAT to request the person who made the decision to furnish a written statement setting out findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

Further detail is provided on appeal processes in relation to regulation 24.

Regulation 21 – Notice of cancellation

Regulation 21 provides that if the Secretary decides to cancel a practitioner's registration, he or she must give the practitioner written notice of the decision, including reasons for the decision. The Secretary must also inform the person of their review rights under regulation 24.

Regulation 24 provides that various decisions relating to accreditation, including the Secretary's decision to cancel a person's accreditation, may be reviewed by the Administrative Appeals Tribunal. Such provision is required as the AAT Act provides that the AAT may only review decisions that have been identified in legislation as appealable to it.

It is important for people to receive written notice of a decision and the reasons for it from a natural justice perspective. Written notification allows people to ensure that they are able to properly understand why a decision has been made and have a firm basis on which to base an appeal of the decision, if they seek to do so. This is reflected in the AAT Act, which allows any person entitled to apply for review of a decision by the AAT to request the person who made the decision to furnish a written statement setting out findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

Further detail is provided on appeal processes in relation to regulation 24.

Regulation 22 – Automatic suspension and cancellation

Subregulation 22 (1) provides that the Secretary must suspend a person's accreditation if the person requests the Secretary, in writing, to do so for the period or until the happening of an event specified by the person. For example a practitioner may request that their accreditation be suspended if they are overseas for a lengthy period of time.

Subregulation 22 (2) provides that the Secretary must cancel a person's accreditation if the person requests the Secretary, in writing, to do so, or if the person dies.

PART 5 – Offences

Regulation 23 – Offences

Regulation 23 sets out a number of offences relating to the accreditation of family dispute resolution practitioners. Regulation 23 is prescribed pursuant to section 10K of the Act, which provides that the regulations may prescribe penalties not exceeding 10 penalty units in respect of offences against requirements for family dispute resolution practitioners that are prescribed in the regulations.

The value of a 'penalty unit' is set out at section 4AA of the *Crimes Act 1914*. It is currently $110. Thus the maximum penalty that may be prescribed in the Regulations pursuant to section 10K is a fine of $1,100.

Subregulation 23 (1) provides that a person is guilty of an offence if they fail to notify the Secretary of a change to their name or contact details (as required under paragraph 13 (b)) within 28 days of the change. Practitioners who do not comply with these requirements may have their accreditation suspended or cancelled under paragraph 17 (1) (d).

It is important that personal information about a practitioner remains current and correct so the Secretary is able to monitor a practitioner's compliance with the accreditation requirements. In view of this, the provision provides that a person who fails to comply with the notification requirements set out above would be guilty of an offence with a maximum penalty of 10 penalty units.

Subregulation 23 (2) provides that a person is guilty of an offence if they fail to notify the Secretary of a change or matter that may effect their eligibility to continue to be accredited (as required under paragraph 13 (c)) within seven days of the occurrence of the relevant event. The matters that must be notified under these paragraphs include:

– if the practitioner has been prohibited under a law of a State or Territory from being employed in child- related employment or working with children;
– if the practitioner has failed to comply a law of a State or Territory relating to employment of people working with children; and
– if the practitioner has been convicted of an offence involving violence to a person, or a sex related offence.
– if the person has ceased to provide family dispute resolution
– If the practitioner has ceased to have access to a complaints mechanism

The time period for notification of these matters is seven days, as the nature of the matters that must be advised are such that they may render the family dispute resolution practitioner inappropriate to deliver family dispute resolution services to vulnerable families.

In addition, paragraph 9 (3) (a) provides that the accreditation application form may require applicants to make a statutory declaration about information, documents or other matters given in or with the application. As the statutory declaration requires applicants to attest to the veracity of information and evidence provided in their application, this requirement enables the Secretary to have a higher degree of

confidence in that information. The *Statutory Declarations Act 1959* provides that intentionally making a false statement in a statutory declaration is an offence, with a maximum penalty of four years imprisonment.

PART 6 – Review of decisions

Regulation 24 – Review by the AAT

Regulation 24 sets out the decisions relating to accreditation that may be reviewed by the AAT. This provision is required as the AAT Act provides that the AAT may only review decisions that have been identified in legislation as appellable to it.

When reviewing a decision, the AAT generally has the same powers as the person or body that originally made the decision and may, if it considers it appropriate, vary or substitute its own decision for the original decision. The AAT will look at the merits of the decision, that is, whether it was the 'the correct and preferable decision'.

Decisions of the AAT may be appealed to the Federal Court on questions of law.

PART 7 – Family Dispute Resolution Practitioners

Part 7 reproduces Division 1 of Part 5 and regulation 12CAA of the *Family Law Regulations 1984.*

Regulation 25 Family Dispute Resolution practitioners – assessment of family dispute resolution suitability

Regulation 26 – Family dispute resolution certificates

Section 60I of the Act requires parties to attend family dispute resolution (subject to certain exceptions, including situations involving violence or child abuse) before the court may hear an application for an order under Part VII of the Act (which deals with matters concerning children).

Section 60I aims to ensure that parties attempt to resolve their disputes about children's matters under Part VII of the Act, before commencing a court process. This assists people in resolving family relationship issues outside the court system, which is costly and can lead to entrenched conflict.

Subsection 60I (7) provides that the court must not hear an application for an order under Part VII made by a person to whom the requirement to attend family dispute resolution in section 60I applies unless the application is accompanied by a certificate from a family dispute resolution practitioner. This certificate must state that either:

- as set out in paragraph 60I (8) (a), the person did not attend family dispute resolution due to the refusal or failure of the other party or parties to attend the process;
- as set out in paragraph 60I (8) (aa), the family dispute resolution practitioner considers, having regard to the matters prescribed in the Principal Regulations,

that it would not be appropriate to conduct the proposed family dispute resolution;
- as set out in paragraph 60I (8) (b), the person attended family dispute resolution, conducted by the practitioner, with the other party or parties to the proceedings, at which they discussed and made a genuine effort to resolve the issue or issues in dispute; or
- as set out in paragraph 60I (8) (c), the person attended family dispute resolution, conducted by the practitioner, with the other party or parties to the proceedings, but that the applicant, the other party or another of the parties did not make a genuine effort to resolve the issue or issues in dispute. (For example, a party who sits through family dispute resolution without making an effort to engage with the family dispute resolution practitioner or the other party.)

Subregulation 25(1) provides that before a practitioner provides family dispute resolution they must be satisfied that an assessment has been conducted of the parties to the dispute and that family dispute resolution is appropriate.

When assessing if a matter is appropriate subregulation 26 (2) provides that, before issuing a certificate under paragraph 60I (8) (aa) of the Act, a family dispute resolution practitioner must have regard to the matters mentioned in subregulation 25 (2). Subregulation 25 (2) provides that the practitioner must be satisfied that consideration has been given to whether the ability of any party to negotiate freely in the dispute is affected by any of the following matters:

- a history of family violence (if any) between the parties;
- the likely safety of the parties;
- the equality of bargaining power among the parties;
- the risk that a child may suffer abuse;
- the emotional, psychological and physical health of the parties; and
- any other matter that the family dispute resolution practitioner considers relevant to the proposed family dispute resolution.

Subsection 60I (7) of the Act provides that a court cannot hear an application for an order under Part VII unless the applicant has also filed, with the application, a certificate by a family dispute resolution practitioner. Exceptions to this requirement are set out at subsection 60I (9) of the Act.

Part VII of the Act deals with matters which, unlike property or other traditional legal matters, are not usually suited to a one time only resolution. Rather, because they concern children whose needs and desires change as they grow, matters dealt with under Part VII usually need to be renegotiated over time.

In addition, owing to the emotional nature of family law matters, particularly those concerning children, the ability of parents to negotiate with each other, or participate constructively in family dispute resolution, will vary over time. In order to maximise the opportunities for parents to make arrangements for their children, one attempt at family dispute resolution should not allow people to make an application to the court at any stage in the future, regardless of the length of time that has elapsed since the family dispute resolution. There is a need to recognise that the issues in dispute, and/or the attitudes of the parties, will usually change over time, in a manner that may warrant another attempt at family dispute resolution.

To ensure that parties are given maximum encouragement to make their own arrangements for their children, rather than relying on the court to do so, subregulation 26 (3) provides that a family dispute resolution practitioner may not issue a certificate to a person under subsection 60I (8) of the Act after 12 months has elapsed since the date of the last attendance (or attempted attendance, as per paragraphs 60I (8) (a) and (aa)) at family dispute resolution in relation to the same matter as the person's intended application to the court.

To achieve the same objective, subregulation 26 (1) provides that a person who is required, under subsection 60I (7) of the Act, to file a certificate given to that person by a family dispute resolution practitioner under subsection 60I (8), may file that certificate only within 12 months of the date of the last attendance (or attempted attendance, as per paragraphs 60I (8) (a) and (aa)) of that person at family dispute resolution.

As set out above, the certificates that a family dispute resolution practitioner may provide under subsection 60I (8) of the Act include certificates to the effect that:

- the applicant did not attend family dispute resolution due to the refusal or failure of the other party or parties to attend the process (paragraph 60I (8) (a)); and
- the applicant attended family dispute resolution with the other party or parties to the proceedings, but that the applicant, the other party or another of the parties did not make a genuine effort to resolve the issue or issues (paragraph 60I (8) (c)).

The note following subsection 60I (8) provides that the court may take the type of certificate filed with an application into account in determining whether to make an order referring parties to family dispute resolution under section 13C of the Act or award costs against a party under section 117 of the Act.

As a result of the cost consequences that may flow from the certificates provided under paragraphs 60I (8) (a) or (c), and the fact that the court may (or may be perceived to) draw negative inferences in relation to a party as a result of these certificates, it is important that people are aware of the consequences that may result from non-attendance at family dispute resolution (or attendance without genuine effort to resolve the dispute).

To ensure that people are properly informed of the potential consequences of not attending family dispute resolution, subregulation 26 (4) provides that a family dispute resolution practitioner must not provide a certificate pursuant to paragraph 60I (8) (a) of the Act unless the party or parties who have failed to attend the process have been contacted at least twice, with at least one of these contacts being made in writing, and have been provided with a reasonable choice of days and times for attendance at family dispute resolution. In these contacts the party or parties must be informed that if they do not attend family dispute resolution, a certificate may be provided by the family dispute resolution practitioner under paragraph 60I (8) (a) of the Act and that this certificate may be taken into account by a court when determining whether to make an order referring parties to family dispute resolution under section 13C or awarding costs against a party under section 117 of the Act. (Regulation 28 would outline the information that must be provided to each party before family dispute resolution is conducted.)

The section 60I requirement is based on the fact that often people who attend family dispute resolution will, with the family dispute resolution practitioner's help, be able to reach agreement on issues that they have previously been unable to resolve. If issues are resolved in family dispute resolution, there will be no need to request a certificate as there will be no reason to apply to the court for an order. However, it is possible that agreements made in family dispute resolution may break down or not be adhered to by one or more parties (as, indeed, occurs even with court orders). In such cases people who attended family dispute resolution may seek a certificate from a family dispute resolution practitioner for filing with the court after some time has elapsed since the family dispute resolution session. As provided by subregulation 26 (3), the certificate may be issued up to 12 months from the last attendance, or attempted attendance at family dispute resolution. It is possible that, in the period between the family dispute resolution (or attempted family dispute resolution) and the request for a certificate, the practitioner who conducted the family dispute resolution may become incapable of providing the certificate (for example, due to death, loss of accreditation, inability to be contacted, etc). To avoid people needing to re-attend family dispute resolution in these circumstances, subregulation 26 (5) allows an organisation for which a family dispute resolution practitioner provides services to issue a certificate on the practitioner's behalf if he or she is unable to issue the certificate. However, if the issues in dispute have changed since the original family dispute resolution took place, the people involved should be encouraged to attend family dispute resolution again, and organisations should avoid issuing certificates in such circumstances.

<u>Regulation 27 – Certificate by family dispute resolution practitioner (Act s60I (8))</u>

Regulation 27 provides that a certificate provided by a family dispute resolution practitioner under subsection 60I (8) of the Act must be in accordance with the form prescribed in Schedule 1.

The form prescribed in Schedule 1 requires the family dispute resolution practitioner to record:

- *The names of the person or people who attended, or attempted to attend, family dispute resolution with the practitioner*

  This information is especially valuable to the court if a certificate of the kind set out in paragraphs (a) or (d) of the form (which reflect the certificates in paragraphs 60I (8) (a) and (d) of the Act) is filed with an application to the court. As the note following subsection 60I (8) of the Act makes clear, the court may take the type of certificate filed with an application into account in determining whether to make an order referring parties to family dispute resolution under section 13C or award costs against a party under section 117. The court will need to know which of the parties did not attend, or attended but did not make a genuine effort at, family dispute resolution, if a costs order is being considered.

- *The issue or issues in dispute*

  A certificate filed under subsection 60I (7) of the Act must relate to family dispute resolution that dealt with the issue or issues with which the court order sought under Part VII of the Act would deal. It is therefore important that the

certificate identify the issues that were discussed in the family dispute resolution session, as if the session did not deal with the relevant issues, the certificate may not meet the requirements of subsection 60I (8) and the people involved may need to attend a further family dispute resolution session to discuss the issues in relation to which a court order is sought.

- *Relevant dates*

  The certificate requires the family dispute resolution practitioner to record both the date on which the certificate was issued and either:
  - the date of the last attempted attendance at family dispute resolution; or
  - the date of the last attendance at family dispute resolution.

  There is a need for these dates to be identified on the certificate as, under subregulation 26 (3) a family dispute resolution practitioner may not issue a certificate to a person under subsection 60I (8) after 12 months has elapsed since the date of the last attendance, or attempted attendance, at family dispute resolution, conducted by the family dispute resolution practitioner, in relation to the issue or issues that are the subject of the person's intended application to the court. In addition, subregulation 26 (1) provides that a person who is required, under subsection 60I (7) of the Act, to file a certificate given to them by a family dispute resolution practitioner under subsection 60I (8), may file that certificate only within 12 months of the date of the last attendance (or attempted attendance) of that person at family dispute resolution.

  The family dispute resolution practitioner will record the date of the last attempted attendance at family dispute resolution if the certificate indicats that the circumstances in paragraph (a) or (b) occurred in the case. (These paragraphs of the certificate reflect paragraphs 60I (8) (a) and (aa) of the Act.)

  The family dispute resolution practitioner will record the date of the last attendance at family dispute resolution if the certificate indicates that the circumstances in paragraph (c) or (d) occurred in the case. (These paragraphs of the certificate reflect paragraphs 60I (8) (b) and (c) of the Act.)

Subregulation 27 (2) provides that the validity of proceedings for a Part VII order, and any order made pursuant to those proceedings, is not affected by a failure to provide a certificate in accordance with the prescribed form. This prevents appeals based on technical defects with a certificate after the court has already considered the case. This is appropriate if parties have already gone to the trouble and expense of having a matter heard.

<u>Regulation 28 – Information to be given to parties before family dispute resolution</u>

Regulation 28 requires family dispute resolution practitioners to ensure that specified information is provided to each party to the family dispute resolution before the dispute resolution is conducted. This ensures that consumers receive information to enable them to understand important elements of family dispute resolution including:

- *that it is not the role of the family dispute resolution practitioner to give legal advice (unless the family dispute resolution practitioner is also a legal practitioner) (paragraph 28 (1) (a))*

- *the family dispute resolution practitioner's confidentiality and disclosure obligations under section 10H of the Act; (paragraph 28 (1) (b))*
- *that, provided section 10J of the Act applies, evidence of anything said, or an admission made, at family dispute resolution is not admissible (paragraph 28 (1) (c))*

  Paragraphs (b) and (c) require practitioners to outline the general rule that communications during family dispute resolution are confidential and not admissible in court. However, sections 10H and 10J of the Act specify exceptions to the general rule when disclosure by a family dispute resolution practitioner is permitted. Sections 12G and 63DA of the Act may impose additional information-giving obligations.
- *the qualifications of the family dispute resolution practitioner to be a family dispute resolution practitioner (paragraph 28 (1) (d)*
- *the fees (including any hourly rate) charged by the family dispute resolution practitioner in respect of the family dispute resolution (paragraph 28 (1) (e))*
- *that family dispute resolution must be attended if required under Section 60I of the Act, before applying for an order under Part VII of the Act (paragraph 28 (1) (f))*
- *that, if a person wants to apply to the court for an order under Part VII of the Act, the family dispute resolution practitioner may provide a certificate under subsection*
  60I (8) of the Act (paragraph 28 (1) (g))

  This requires practitioners to explain that before applying to the court for an order under Part VII of the Act and, should a party wish to apply to the court the practitioner may provide a certificate under section 60I of the Act, which includes information to the effect that the person:

  - did not attend family dispute resolution due to the refusal or failure of the other party or parties to attend the process; or
  - the person attended family dispute resolution with the other party or parties to the proceedings, but that the person, the other party or another of the parties did not make a genuine effort to resolve the issue or issues.
- *if a certificate under subsection 60I (8) of the Act is filed, the court may take it into account in considering whether to make an order under section 13C of the Act referring the parties to family dispute resolution or to award costs (paragraph 28 (1) (h))*

  This requires practitioners to explain that the type of certificate provided by the practitioner may be taken into account by the court when determining whether to make an order referring parties to family dispute resolution under section 13C or awarding costs against a party under section 117 of the Act. This ensures that people are aware of the consequences that may flow from failure to attend, or make a genuine effort to resolve the issue or issues in dispute when attending family dispute resolution; and

- *information about the complaints mechanism that a person who wants to complain about the family dispute resolution services may use (paragraph 28 (1) (i))*

  This requires practitioners to explain the complaints mechanism to which people may have recourse if they wish to complain about family dispute resolution services provided by the practitioner. The ability for clients of family dispute resolution services to make complaints about the services they receive is an essential consumer protection mechanism.

Regulation 29 – Obligations of family dispute resolution practitioner – general

Regulation 29 sets out a number of requirements to ensure that practitioners provide family dispute resolution which is appropriate for the parties. Regulation 29 means practitioners:

- *must ensure that, as far as possible, the family dispute resolution process is suited to the needs of the parties involved (for example by ensuring the suitability of the family dispute resolution venue, the layout of the family dispute resolution room and the times at which family dispute resolution is held) (paragraph 29 (a)).*

  Many people have work commitments which may make it difficult for them to attend family dispute resolution. A party may also have other needs resulting for example from disabilities or a fear of the other party. This requirement ensures that these needs are taken into account as far as possible.

- *must ensure that family dispute resolution is provided only in accordance with this Part (subparagraph 29 (b) (i)).*

  Given the central role of family dispute resolution in the family law system it is important that any family dispute resolution process is carried out in accordance with the Act and Regulations.

- *must ensure that any record of family dispute resolution is stored securely to prevent unauthorised access to it (subparagraph 29 (b) (ii)).*

  This prevents people accessing confidential information which is given to a family dispute resolution practitioner.

- *must terminate the family dispute resolution if requested to do so by a party (subparagraph 29 (c) (i)), or if the practitioner is no longer satisfied that family dispute is appropriate (subparagraph 29 (c) (ii)).*

  The requirement to terminate the family dispute resolution if a party requests it is important as the practitioner may or may not have an understanding of the impact the process is having on a person.

- *must not provide legal advice to any of the parties unless the family dispute resolution practitioner is also a legal practitioner (subparagraph 29 (d) (i)) or the advice is about procedural matters (subparagraph 29 (d) (ii)).*

  Practitioners who do not have formal legal training do not have the skills to provide legal advice. It is however, important that a practitioner is able to give parties some information about procedural matters. This might for example include information about where to make an application at court or general

information about a court process. It would not include helping people prepare court documents.

- *must not use any information acquired from a family dispute resolution for personal gain (subparagraph 29 (e) (i)) or to the detriment of any person (subparagraph 29 (e) (ii)).*

  The role of a practitioner is to assist people resolve their dispute about a child. They must not use the information they obtain for any other purpose.

Regulation 30 – Obligations of family dispute resolution practitioner – avoidance of conflicts of interests

Section 10F of the Act requires a family dispute resolution practitioner to be independent of all parties involved in the family dispute resolution process.

Regulation 30 sets out a number of requirements to ensure that a family dispute resolution practitioner avoids a conflict of interest. The regulation applies in relation to a person who is a party to a dispute that is the subject of family dispute resolution, or any other party to that dispute, a family dispute resolution practitioner:

- *has acted previously in a professional capacity (otherwise than as a family dispute resolution practitioner, a family counsellor or an arbitrator) (paragraph 30 (1) (a)); or*
- *has had a previous commercial dealing (paragraph 30 (1) (b); or*
- *is a personal acquaintance (paragraph 30 (1) (c)).*

In these situations a practitioner's professional judgement may be directly and significantly affected, or have the appearance of being directly and significantly affected, by their previous relationship with a party.

Subregulation 30 (2) allows a family dispute resolution practitioner to provide services to a party mentioned in subregulation (1) only if:

- *each party to the family dispute resolution agrees (paragraph 30 (2) (a)); and*
- *the professional dealing does not relate to any issue in the dispute (paragraph 30 (2) (b)); and*
- *the previous commercial dealing or acquaintance is not of a kind that could reasonably be expected to influence the family dispute resolution practitioner in the provision of his or her family dispute resolution services (paragraph 30 (2) (c)).*

These exceptions recognise that there may have been a previous professional or personal relationship between the parties which has no relation to any issues in the dispute. All parties must agree that the practitioner is suitable in these circumstances to provide the family dispute resolution.

PART 8 – Transitional arrangements

Regulation 31 provides for transitional arrangements that allow practitioners who applied before 1 July 2009 and who meet the current accreditation and registration requirements but are processed before 1 July 2009 to be accredited and included on the register for the purposes of meeting the new accreditation requirements. This will enable these practitioners to complete the three specified units to meet the new accreditation requirements.

SCHEDULE 1 – Certificate by family dispute resolution practitioner

Schedule 1 provides the form for the certificate referred to in regulation 27.