

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 18

ISSUED BY AUTHORITY OF THE ATTORNEY-GENERAL

FAMILY LAW ACT 1975

FAMILY LAW (FAMILY DISPUTE RESOLUTION PRACTITIONERS) AMENDMENT REGULATIONS 2009 (NO. 1)

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.

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.

In particular 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. The *Family Law (Family Dispute Resolution Practitioners) Regulations 2008* (the Principal Regulations) currently set out the form of such a certificate in Schedule 1 to those Regulations.

However, subsequently the *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008* inserted a new paragraph into the Act to add an additional circumstance in which a family dispute resolution practitioner may issue a certificate.

The additional certification covers the situation where a family dispute resolution practitioner becomes aware during the course of the family dispute resolution that it would be inappropriate to continue the family dispute resolution due to factors prescribed in subregulation 25(2) of the Principal Regulations (for example, if it becomes apparent that there is a history of family violence among the parties, or there is a risk that a child may suffer abuse).

The Regulations update the form of the certificate in Schedule 1 to include the additional certification, at paragraph (e) of the certificate.

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

The Regulations commence on 1 March 2009.

Consultation to update the form of the certificate was undertaken with Family Relationship Services Australia, which is the national peak body for family

relationship services. This level of consultation is appropriate and sufficient, as this amendment is of a minor nature only and does not substantially alter existing arrangements.

Authority: Section 125 of the *Family Law Act 1975*