



**FEDERAL MAGISTRATES COURT OF AUSTRALIA  
PRACTICE DIRECTION: NO. 1 OF 2008**

**Family Dispute Resolution - Applications for orders under Part VII of the *Family Law Act 1975***

*Practice Note No 2 of 2007 1 July 2007 is revoked and the following Practice Note is substituted*

**Introduction**

From 1 July 2007, applicants wishing to apply for an order under Part VII of the *Family Law Act 1975* will be required to provide a certificate from a registered family dispute resolution practitioner, unless they fall within the exception to this requirement under ss 60I(5) or (9). From a date yet to be proclaimed (expected to be 1 July 2008), the exception under section 60I(5) will cease to apply.

This requirement will apply to all applicants for an order under Part VII, including those seeking changes to an existing order.

This Practice Direction sets out the procedural requirements for applicants who seek to file an application for an order under Part VII of the *Family Law Act 1975* in the Federal Magistrates Court of Australia

**Practice Direction**

This Practice Direction is effective from **1 March 2008**

A certificate pursuant to section 60I(8) from a registered family dispute resolution practitioner must be filed with an application for an order under Part VII of the *Family Law Act 1975* unless the applicant falls within one of the exceptions.

If the applicant contends that section 60I(7) does not apply because of ss60I(5) or (9), the applicant must set out the factual basis upon which the exception is asserted to apply in either:-

- the affidavit filed with the application pursuant to Rule 4.05 *Federal Magistrates Court Rules 2001*; or
- the pro forma affidavit approved for use pursuant to the *Family Law Rules 2004 (Affidavit - Non – Filing of Dispute Resolution Certificate)*

If the factual basis for the exception is included in the affidavit filed pursuant to Rule 4.05, there will need to be some identification of those paragraphs to assist the Registrar in making a determination.

Amendments to the *Federal Magistrates Court Rules 2001* will come into force from 1 March 2008 to delegate the powers under s 60I(9) to the Registrars. This will enable Registrars (usually Duty Registrars) to make a determination at the time a person seeks to file an application, about whether an exemption from filing the certificate can be granted. A person who is not satisfied with the Registrar's decision can consider review options set out in Division 20.2 of the *Federal Magistrates Court Rules 2001*.

If these requirements are not met and the applicant does not file a certificate or fall within an exemption, then the application will not be filed.

### **Section 60J**

Where the exemption relied upon is that there has been abuse to a child by one of the parties to the proceedings or that there has been family violence by one of the parties to the proceedings, the application will be required to obtain information from a family counsellor or family dispute resolution practitioner about the services and options (including alternatives to Court proceedings) available in circumstances of abuse or violence and to provide a written acknowledgement of having received that information before the Court can hear the application.

An applicant must provide written acknowledgment of receiving the information in either

- the affidavit filed with the application pursuant to Rule 4.05 *Federal Magistrates Court Rules 2001*; or
- the form *Acknowledgment - Information from a Family Counsellor or Family Dispute Resolution Practitioner*

Obtaining the information is not required where, in addition to the grounds listed above, the Court is satisfied there are reasonable grounds to believe that:

- there would be a risk of abuse of a child if there were a delay in applying for the order; or
- there is a risk of family violence by one of the parties to the proceedings.

*JH Pascoe .*

JOHN PASCOE AO  
CHIEF FEDERAL MAGISTRATE  
FEDERAL MAGISTRATES COURT OF AUSTRALIA

DATE *26th February 2008*