

Family Law Regulations (Amendment) 1997 No. 157

EXPLANATORY STATEMENT

STATUTORY RULES 1997 No. 157

ISSUED BY THE AUTHORITY OF THE ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

Family Law Act 1975

Family Law Regulations (Amendment)

Paragraph 125(1)(ca) of the *Family Law Act 1975* (the Act) provides that the Governor-General may make regulations prescribing fees to be payable in respect of the use of the counselling or mediation facilities of the Family Court in situations other than where a court orders or directs a person to attend the counselling or mediation.

The purpose of the Regulations is to provide for the fees payable for the voluntary use of the counselling and mediation services of the Family Court.

Details of the Regulations are as follows:

Regulation 1 - Commencement

Regulation 1 provides that the regulations commence on 1 July 1997

Regulation 2 - Amendment

Regulation 2 provides that the Family Law Regulations are amended as set out in these Regulations.

Regulation 3 - Regulation 21AA (Biennial increases)

Regulation 21AA provides for biennial increases of the existing fees payable under the Family Law Regulations. Subregulation 3.1 provides, in effect, that the biennial increase provisions will also apply to the fees for counselling and mediation payable under new regulation 75.

Regulation 4 - Regulation 21AB (Calculation of increase)

Regulation 21AB provides for the method of calculating the biennial increase, provided for under regulation 21AA. Subregulation 4.1 provides, in effect, that the definition of fee includes the fees for counselling and mediation payable under new regulation 75.

Regulation 5 - Part 5, new Division 4

Subregulation 5.1 provides for new Division 4 to be inserted in Part 5, after regulation 73.

New regulation 74 provides that Division 4 prescribes the fees payable for the use of the counselling or mediation facilities of the Family Court.

New regulation 75 provides that the fees are not payable where the use of the counselling or mediation facilities of the Family Court is directed or ordered under the following sections of the Act:

* 16A - which provides that the court may direct people to attend counselling;

- * 62F(2) - which provides that the court may make an order directing the parties to attend a conference with a family and child counsellor;
- * 62G(5) - which provides that, for the purposes of preparation of a report by a family and child counsellor or a welfare officer, the court may make orders, including orders or directions for the attendance on the counsellor of a party to the proceedings;
- * 62F(1) - which provides that, in proceedings for a parenting order, the court may order the parties to attend a conference with a family and child counsellor;
- * 65G(2) - which provides that a court must not, in specified circumstances, make a specific issues order or a residence order unless the parties to the proceedings have attended a conference with a family and child counsellor or a welfare officer; and
- * 65L(1) - which provides that if a court makes a parenting order in relation to a child, the court may also make an order requiring compliance with the parenting order to be supervised by a family and child counsellor or a welfare officer and/or an order requiring a family and child counsellor or a welfare officer to give any party to the parenting order such assistance as is reasonably requested by the party in relation to compliance with the parenting order.

New regulation 75 also provides that the fees are not payable for an attendance at counselling or mediation if the appointment for the attendance was made before 1 July 1997. Therefore, people who make appointments for counselling or mediation before the fees commence will not have to pay fees, even though the counselling or mediation takes place after the fees commence.

New regulation 75A provides that the fee payable for each attendance at counselling (except for emergency telephone counselling) is \$30, the fee for each attendance at mediation is \$50 and that the fee must be paid before the counselling or mediation begins.

New regulation 76 provides that the fee is payable by each person who attends for counselling and mediation, but is not payable by a person, for example an interpreter, who attends the counselling or mediation session in a support role. New regulation 76 also provides that the fee is not payable by a person who is in receipt of legal aid, in possession of a card entitling them to Commonwealth health benefits, under 18 years of age, in receipt of AUSTUDY or ABSTUDY or in respect of whom a registrar has made a decision to waive the payment of the fee.

New regulation 76A provides that a person can apply to a registrar for a decision to waive payment of the fee on the grounds of financial hardship, that the registrar must determine the application within 28 days of receiving it, and that a person who is dissatisfied with a registrar's decision to refuse to waive payment of the fee may apply to the Administrative Appeals Tribunal for a review of the decision.

These new regulations regarding the exemption from and waiver of payment of the fee for counselling and mediation services are, in effect, the same as the existing regulations regarding the exemption from and waiver of payment of the other fees payable in the Family Court.

New regulation 77 provides, in effect, that if a person pays a fee and the fee is not payable, a registrar of the Family Court must refund the fee.

The proposed Regulations commence on 1 July 1997.