

EXPLANATORY STATEMENT

Family Law Act 1975

Family Law Regulations (Amendment)


(Statutory Rules 1985 No. 183 )

Sub-section 125 (1) of the Family Law Act (the Act) provides 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, including but not limited to prescribing court fees payable in respect of proceedings under the Act.

Section 110 of the Act enables regulations to be made prescribing jurisdictions to be reciprocating jurisdictions for the purposes of bilateral maintenance enforcement.

Section 111 of the Act provides that regulations may make such provision as is necessary to enable the performance of the obligations of Australia under the United Nations Convention on the Recovery Abroad of Maintenance signed at New York on 20 June 1956.

Section 114 of the Act provides for the issue of injunctions to protect parties to a marriage or their children. Section 114AB of the Act saves the operation of prescribed State or Territory laws that may otherwise fail for inconsistency with the Act.



Sub-regulation 11(1) of the Family Law Regulations, in its form prior to amendment by the Statutory Rules, provided that, subject to sub-regulation 11(4), a court fee of \$125 was payable in respect of proceedings for a decree of dissolution or of nullity of marriage.

Sub-regulation 16(1) of the Family Law Regulations, in its form prior to amendment by the Statutory Rules, provided that, subject to sub-regulation 16(3), a court fee of \$190 was payable in respect of an appeal under section 94 of the Act, which provides for appeals to the Full Court of the Family Court of Australia.

The purpose of the Statutory Rules is to -

increase the court fee payable in respect of proceedings for a decree of dissolution or nullity of marriage from \$125 to \$200 and the court fee payable in respect of an appeal under section 94 of the Act from \$190 to \$300. The reason for the court fee increases is to achieve a higher level of recovery of costs from litigants which will offset, to some extent, the costs involved in running the Family Court of Australia and the Family Court of Western Australia. Court fees are not payable where a person initiating proceedings or an appeal has been granted legal aid in relation to those proceedings or appeal from a legal aid scheme or service approved by the Attorney-General or where payment of the fee would impose hardship;



Details of Regulations

Regulation 1 sets a commencement date of 1 August 1985 for the amending regulations.

Regulation 2 amends sub-regulation 11(1) to increase the court fee payable in respect of applications for a decree of nullity of marriage or a decree of dissolution of marriage from \$125 to \$200.

Regulation 3 amends sub-regulation 16(1) to increase the court fee payable in respect of appeals under section 94 of the Act from \$190 to \$300.

Regulation 4 inserts a new paragraph into regulation 19 prescribing certain provisions of the Justices Act 1959 of the State of Tasmania in order that these provisions may have concurrent operation with sections 114 and 114AA of the Act. The Tasmanian provisions were inserted by the Justices Amendment Act 1985 of that State.

Regulation 5 is a drafting provision to amend sub-regulation 47(1) which incorrectly refers to sub-regulation 46(2) instead of sub-regulation 46(3).



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- . prescribe certain provisions of the Justices Act 1959 of the State of Tasmania as a prescribed law for the purposes of section 114AB of the Act. Those State provisions provide special domestic violence remedies which may otherwise fail for inconsistency with sections 114 and 114AA of the Act;
- . prescribe Hawaii and Iowa as reciprocating jurisdictions for the purposes of bilateral maintenance enforcement; and
- . rearrange the existing Schedule 2 jurisdictions into alphabetical order and correct a reference to sub-regulation 46(2) in sub-regulation 47(1).

The commencement date of the regulations was 1 August 1985. The reason for this was that the Attorney-General considered 1 August 1985 to be the earliest practical date on which the increased court fees could be introduced. It was convenient to include the other amendments to the Family Law Regulations at that time, and so the other amendments also commenced from 1 August 1985.

Details of the regulations appear at Attachment A.

(Authorised by the Attorney-General)



Regulation 6 amends Schedule 2 of the regulations by prescribing 2 United States jurisdictions with which new bilateral maintenance enforcement agreements have been negotiated. These are Iowa and Hawaii. The second change to Schedule 2 is a drafting amendment to rearrange into correct alphabetical order the list of Canadian Provinces and Territories with which there are bilateral maintenance enforcement arrangements.

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