

## EXPLANATORY STATEMENT

### FAMILY LAW ACT 1975

#### FAMILY LAW REGULATIONS (Amendment)

#### (STATUTORY RULES 1988 No 164 )

The purpose of the amendments to the Family Law Regulations (the Principal Regulations) is:

- . to remove the present entitlement in regulation 10 of parties in family law proceedings to a free copy of a transcript of the proceedings. This amendment is a consequence of a Government decision that all users of the Commonwealth Reporting Service will be charged for recording and transcript services;
- . to provide a mechanism within the Principal Regulations whereby Australia may declare overseas countries for the purpose of reciprocal enforcement of overseas custody orders;
- . to enable the functions of the prescribed offices of a State or a Territory to institute, continue or prosecute proceedings with respect to maintenance of a party or a child to be extended to apply to all children and not only the children of a marriage in all mainland States and Territories except Western Australia and Queensland, and in Norfolk Island;
- . to amend Regulation 19 to take account of recent amendments to the NSW domestic violence laws to ensure there is no conflict between State law and the relevant provisions of the Commonwealth Family Law Act 1975;
- . to declare 47 States of the United States of America in addition to Papua New Guinea as reciprocating overseas jurisdictions thereby establishing reciprocal arrangements on custody with Australia, and;
- . to include the State of Idaho as one of the States of the United States of America which have established reciprocal arrangements on maintenance enforcement with Australia.

Details of the proposed Family Law Regulations (the Proposed Regulations) are as follows:

Regulation 1 - provides for a commencement date of 1 July 1988.

Regulation 2 - will repeal subregulation 10(3) of the Principal Regulations. Subregulation 10(3) of the Principal Regulations provides that where proceedings in the Family Court are transcribed, a party to proceedings or the legal representative of a party to proceedings is entitled to one copy of the transcript of the proceedings free of charge. The Government has decided that, as from 1 July 1988, all users of the services of the Commonwealth Reporting Service will be charged for recording and transcript services.

Regulation 3 - will repeal Regulation 14 of the Principal Regulations and replace it with a new Regulation 14 which permits the declaration of a country, or part of a country, to be a prescribed overseas jurisdiction for the purposes of the definition of overseas custody order in section 60 and for the purposes of section 69 of the Act. The new Regulation will enable Australia to extend its present arrangements for the reciprocal enforcement of overseas custody orders which under section 68 of the Act may be registered in courts in Australia. Under section 69 of the Act an order made by a court in Australia may be transmitted to a prescribed overseas jurisdiction for enforcement.

Regulation 4 - will amend subregulations 15(1) and (2) of the Principal Regulations as a result of the restructuring of the Act to place all provisions relating to children in one part of the Act by the Family Law Amendment Act 1987. Former section 89A applied to maintenance of parties to a marriage and to children of a marriage. With the restructuring by the Family Law Amendment Act 1987 section 89A was limited to the parties to a marriage and new section 70E, in new Part VII of the Act, applies to the maintenance of children. The amendment to subregulations 15(1) and (2) provides a drafting change to refer to section 70E, as well as section 89A.

Regulation 5 - Subregulation 16(2) of the Principal Regulations provides that the court fee payable in respect of an appeal under section 94 of the Act (appeal to a Full Court of the Family Court) is payable by the appellant not later than one month after the date on which the notice of appeal is filed. Where an appeal is filed and the court fee is not paid within the prescribed period, the appeal cannot be dealt with by the Court. This adds to the administrative workload of the Court as well as inconveniencing a respondent to the appeal. Regulation 5 of the proposed Regulations will overcome these difficulties by requiring the fee to be paid at the time of the filing of the appeal.

Regulation 6 - Regulation 6 of the proposed Regulations amends Regulation 19 of the Principal Regulations, which prescribes State and Territory domestic violence legislation for the purpose of the preservation of their concurrent operation with the Family Law Act by sub-sections 114A(1) and (2) of that Act, to substitute references to provisions of the Crimes Act of the State of New South Wales following amendment of that Act by the Crimes (Personal and Family Violence) Amendment Act 1987.

Regulation 7 - Regulation 7 will insert a new Schedule 1A to the Principal Regulations to declare a country, or a part of a country, for the purposes of the definitions of "prescribed overseas jurisdiction" in subsection 4(1) of the Act. In addition to Papua New Guinea, Schedule 1A declares 47 States of the United States of America as prescribed overseas jurisdictions. The American Uniform Child Custody Jurisdiction Act is substantially similar to Australian child custody laws. The American Act provides that the Act may have international application if reciprocity is available. Only 47 States of the U.S.A. have implemented the international application provision. Those States are to be declared in Schedule 1A as reciprocating overseas jurisdictions thereby establishing reciprocal arrangements on custody with Australia.

Regulation 8 - Regulation 8 will include Idaho in the list of reciprocating jurisdictions in Schedule 2 to the Principal Regulations. Section 110 of the Act, relating to overseas maintenance orders, provides for reciprocal arrangements of enforcement with overseas jurisdictions to be declared in the Regulations. Regulation 25 of the Principal Regulations provides that the jurisdictions specified in Schedule 2 are declared to be reciprocating jurisdictions.

The American Uniform Reciprocal Enforcement of Support Act (URESA) is substantially similar to Australian maintenance laws. All 50 States of the U.S.A. have enacted URESA and Australia currently has reciprocal arrangements with 39 of the States as listed in Schedule 2 to the Principal Regulations. The State of Idaho has indicated its desire to establish reciprocal arrangements on maintenance enforcement with Australia.

(Authorised by the Attorney-General).