

1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FAMILY LAW AMENDMENT BILL 1996

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Attorney-General,
the Honourable Daryl Williams, AM QC MP)



TABLE OF CONTENTS

	page
GENERAL OUTLINE	1
FINANCIAL IMPACT STATEMENT	1
NOTES ON CLAUSES	2
SCHEDULE 1 - AMENDMENT OF THE FAMILY LAW ACT 1975	2

FAMILY LAW AMENDMENT BILL 1996

GENERAL OUTLINE

Currently the power to make regulations which prescribe a fee to be payable for a service provided by the Family Court is set out in s.125(1)(c) of the Family Law Act. That paragraph limits the power to make such regulations to those which impose a fee in relation to a proceeding under the Family Law Act or that relate to the arbitration by an approved arbitrator of a dispute, proceeding or matter resulting from an order made under s.19D of the Act.

The main purpose of this Bill is to amend the regulation making power set out in s.125(1)(c) to allow regulations to be made to impose fees for voluntary counselling and mediation services provided by the Family Court. At present similar counselling and mediation services are provided both by the Family Court and by the community based sector. The community based sector charges fees for its services whereas the services provided by the Family Court are free. Those using the voluntary counselling services of the Family Court can do so without making any contribution to the running costs of the Court.

In addition the Bill extends the power to grant exemptions from fees to the proposed mediation and counselling fees. It is envisaged that the exemption provisions that currently apply to other fees payable in the Court would apply to any fees imposed in relation to voluntary counselling and mediation services. The Bill also provides that regulations may require the refund of fees. The existing regulations require other fees to be refunded in situations where the fee has been paid by someone else or the person is exempt from paying the fee. Finally the Bill inserts the word "and" at the end of the paragraphs (a) to (e) of subsection 125(1).

FINANCIAL IMPACT STATEMENT

The amendment itself will not impose any fee. However, it is the intention of the Government to prescribe a fee, equivalent to the average of the fees levied by the community based sector, from 1 January 1997. This will place the Court provided services on the same footing as those provided by the community. The revenue from these fees will make a significant contribution to the Government's aim of reducing the Budget deficit. It is estimated that the fee would raise \$0.835m in 1996-97, rising to \$1.9m in 1998-99.

NOTES ON CLAUSES

Clause 1 – Short title

1. Clause 1 provides that this Act will be called the *Family Law Amendment Act 1996*.

Clause 2 – Commencement

2. Clause 2 provides that the Act will commence on the day that it is given the Royal Assent by the Governor-General.

Clause 3 – Schedule(s)

3. This clause provides for the Schedule to the Act. The clause provides that the Acts specified in the Schedule to the Act are amended as set out in that Schedule.

Schedule 1 – Amendment of the Family Law Act 1975

4. Clause 1 of Schedule 1 provides for the word "and" to be added to the end of each of paragraphs (a) to (e) of subsection 125(1). This is a technical amendment to reflect modern drafting style and does not affect the meaning of the provision.
5. Clause 2 of Schedule 1 inserts a new paragraph 125(1)(ca) into the Family Law Act. This new paragraph will allow regulations to be made to set fees for counselling and mediation services provided by the Family Court except in situations where a party is, or parties are, ordered by the Family Court to attend such counselling or mediation.
6. Clause 3 of Schedule 1 inserts a reference to new paragraph 125(1)(ca) into existing paragraph 125(1)(d). The existing paragraph 125(1)(d) allows regulations to be made which exempt certain persons from paying fees. The existing regulations deal with people who hold health care entitlement cards from the Department of Social Security or the Department of Veterans' Affairs, those on legal aid, prisoners, those in receipt of AUSTUDY or ABSTUDY and those who a registrar finds would suffer financial hardship if they had to pay a fee.
7. Clause 4 of Schedule 1 inserts a reference to new paragraph 125(1)(ca) into existing paragraph 125(1)(e). The existing paragraph 125(1)(e) allows regulations to be made which require a refund of fees paid. The existing regulations made under this provision require fees to be refunded where they have been paid by someone else or the person paying the fee is exempt under regulations made under paragraph 125(1)(d).