

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

FAMILY LAW AMENDMENT (LEGAL AID COSTS) BILL 1983

EXPLANATORY MEMORANDUM.

(Circulated by authority of the Attorney-General,  
Senator the Honourable Gareth Evans)



## OUTLINE

These amendments to the Family Law Act 1975 provide for grants to the States and to the Northern Territory for legal aid in family law matters to be made subject to conditions, provide for payments for legal aid to be made subject to conditions and provide for the making of regulations with respect to fees payable to legal practitioners by bodies providing legal assistance in family law matters.



## NOTES ON CLAUSES

### Clause 1 - Short title, etc.

This provides for the citation of the Act.

### Clause 2 - Commencement

This provides that the Act comes into operation on the day it receives the Royal Assent.

### Clause 3

This provides for the inclusion of new sections 116A, 116B and 116C in the Family Law Act 1975.

New section 116A provides pursuant to section 96 of the Constitution for financial assistance to the States or to the Northern Territory subject to conditions as follows.

New sub-section 116A(1) provides that payments by way of financial assistance for the purpose of legal assistance in matters arising under the Family Law Act or Regulations may be made to a State or to the Northern Territory out of moneys lawfully available and on such conditions as may be specified in writing by the Minister, being conditions relating to the provision of legal assistance in matters under the Family Law Act or Regulations.

New sub-section 116A(2) provides that a payment made subject to conditions specified by the Minister in accordance with sub-section (1) is subject to the additional condition that if a condition specified is not fulfilled the relevant State or the Northern Territory will, if the Minister so determines,

repay to the Commonwealth such amount, not being an amount greater than the amount of the payment, as the Minister specifies.

New sub-section 116A(3) provides that the amount repayable by a State or by the Northern Territory to the Commonwealth by reason of the operation of sub-section (2) is a debt due by the State or Northern Territory to the Commonwealth.

New sub-section 116A(4) provides that section 116A binds the Crown in right of the Commonwealth, of each of the States and of the Northern Territory.

New section 116B provides pursuant to section 81 of the Constitution for payments to be made subject to conditions as follows.

New sub-section 116B(1) provides that payments may be made by the Commonwealth for legal assistance in relation to matters arising under the Family Law Act or Regulations out of moneys lawfully available and on such conditions as may be specified in writing by the Minister being conditions relating to the provision of legal assistance in matters under the Family Law Act or Regulations.

New sub-section 116B(2) provides that a payment made subject to conditions as specified in accordance with sub-section (1) is made on the additional condition that if a condition is not fulfilled the payee will, if the Minister so determines, repay to the Commonwealth such amount as the Minister specifies but not an amount greater than the payment.

New sub-section 116B(3) provides that an amount repayable by a person, authority or body to the Commonwealth by reason of the operation of sub-section (2) is a debt due by the person, authority or body to the Commonwealth.

New sub-section 116B(4) provides that section 116B binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

New section 116C provides, pursuant to the constitutional provisions enabling the Commonwealth to legislate with respect to family law matters, for regulations to be made in relation to payments to legal practitioners by legal aid bodies as follows.

New sub-section 116C(1) will enable regulations to be made in relation to matters arising under the Family Law Act or Regulations to fix or limit the amounts that may be paid by relevant authorities (as described in sub-section (5) below) to legal practitioners acting in such matters.

New sub-section 116C(2) provides that where a relevant authority pays to a legal practitioner acting in a family law matter an amount in excess of that permitted by regulations under sub-section (1) it is, if the Minister by instrument in writing determines, liable to pay to the Commonwealth such amount as the Minister determines but not an amount greater than the over payment.

New sub-section 116C(3) provides that an amount repayable by a relevant authority in accordance with a determination by the Minister under sub-section (2) is a debt due by the relevant authority to the Commonwealth.

New sub-section 116C(4) provides that section 116C and the regulations made under sub-section (1) bind the Crown in right of the Commonwealth, each of the States, of the Northern Territory and of Norfolk Island.

New sub-section 116C(5) describes a "relevant authority" as a person, authority or body, including an authority or body established under State or Territory law, that receives from time to time relevant funding as described.

"Relevant funding" in relation to a person, authority or body is described as meaning funding received, whether directly or indirectly, by the person, authority or body from the Commonwealth for the purpose of the provision of legal assistance by the person, authority or body in matters arising under the Family Law Act or Regulations.